

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2018

LANDLORD AND TENANT

(WEDNESDAY, MAY 09, 2018)

Instructions to Students

- (a) Time: **3½ hours**
- (b) Answer **FIVE** questions.
- (c) In answering any question, a candidate may reply by reference to the law of any Commonwealth Caribbean territory, **but must state at the beginning of the answer the name of the relevant territory.**
- (d) It is unnecessary to transcribe the questions you attempt.
- (e) Answers should be written in black or dark blue ink. Erasable pens are not allowed.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Pierre is a university lecturer in French, and under his contract of employment he is provided with a two-storey house in the vicinity of the university, which is owned by the university.

In order to increase his income, Pierre converts the bottom floor into four flats that he rents to students. Pierre regards students as unreliable and devised the following scheme to ensure payment of the rent.

Each student was required to sign separate rental agreements with Pierre whereby each purported to be a joint tenant, with all the other tenants who are also students, for a period of one year from the date of signing which was September 15, 2017. Pierre signed each rental agreement as "landlord and agent for the other tenants".

Two of Pierre's tenants were expelled from the university in March and left the flats without paying the rent. Pierre now insists that the remaining tenants, Joanne and Mark, pay the rent for the defaulting students and has threatened to commence proceedings if they fail to do so.

In the meantime, the university has offered Pierre a larger house and, as a result, he has served a notice on Joanne and Mark to immediately quit and deliver up possession of the flats they occupy. Pierre's letter to quit advises Joanne and Mark that he, Pierre, is a mere licensee of the university, and therefore cannot create a valid lease of the premises.

Joanne and Mark have now come to see you.

Advise Joanne and Mark.

QUESTION 2

On April 15, 2017, Radio Talk Ltd. (Radio Talk) leased commercial premises (not subject to rent restriction legislation) from Ron Cruze for three years. Radio Talk had recently been established, and had a limited budget and almost no advertising revenue. It was therefore agreed between the parties that no rent would be paid for the first six months; that for the next six months, it would be \$50,000 per month, and thereafter, for the remainder of the lease, the rent would be \$75,000 per month.

In October 2017, Radio Talk began paying the rent of \$50,000 per month, but in April this year (2018), they informed Cruze by phone that they would not pay the increased rental of \$75,000. They argued that the increase was unreasonable and, at any rate, was invalid because the entire rental arrangement was uncertain.

When Cruze visited the premises two days ago, he saw employees removing their equipment from the building. He then produced a heavy-duty chain and lock, and proceeded to padlock the gate to prevent the employees from removing the equipment. He then proceeded to visit your office for advice.

Advise Cruze.

QUESTION 3

Your client, Gina Moss, has come to see you. She tells you that two months ago she leased an upstairs studio apartment in August Hall. The lease is for two years certain with an option for an additional year if her studies so require. Although August Hall is located on the campus of the College of Letters, the college took a decision last year (2017) to lease the apartments on August Hall to postgraduate students as tenants. This arrangement, the college hopes, will ensure a far greater degree of responsibility on the part of the students than was previously the case, when they were all licensees.

Since she took possession, however, Miss Moss has experienced a number of difficulties with respect to her uninterrupted enjoyment of the property, which are seriously affecting her study programme. These are-

- (i) generally, noise from the adjoining apartments, but in particular the chanting, clapping and playing of music between 11:00 pm and 4:00 am from the apartment immediately beside hers;
- (ii) cigarette and ganja smoke that permeate her apartment from the apartment immediately below hers; and
- (iii) the various cooking smells that come from the communal kitchen which adjoins her apartment.

Miss Moss further tells you that she has spoken to the college administration (her landlords) in this regard. Their response to her was that the problems she is experiencing are due to the special design features of the building, where the windows are at right angles to each other, thus trapping sound, smoke and smell. Accordingly, the college has no obligation to address these problems.

Miss Moss is unhappy about this and seeks your advice.

Advise Miss Moss.

QUESTION 4

Robert, the yearly tenant of commercial premises constructed in 2008, covenanted to:

“... keep the building in repair and to yield it up in repair.”

The building is constructed of precast concrete slabs, with ceramic floor tiles and Spanish clay roof tiles.

The building is located in a former river bed, the river having been diverted many years ago. Whenever it rains heavily, however, minor flooding occurs in the area, and moisture

seeps into the flooring, causing the floor tiles to buckle and to remain uneven until the moisture dries out. In addition, the roof tiles have started to crack so that, whenever, it rains, the roof leaks.

Inspection of the building by two engineers reveals that if the flooring had been properly sealed, moisture would not have affected the floor tiles, and, had the roof tiles been properly installed to allow for expansion and contraction, the cracking would not have occurred. They advise that the only way to remedy these defects is to lift all the floor tiles and properly seal the concrete before re-laying them. All the roof tiles will also have to be replaced and the new tiles correctly installed. The total works are expected to cost approximately \$2,000,000.

Smith, the landlord, on a recent inspection of the building during heavy rains, saw the signs of disrepair, and now requires Robert to carry out the necessary work to correct the disrepair. Robert, however, is of the view that he is not responsible for effecting the repairs because, had the building been properly constructed, none of the disrepair would have occurred. Further, had it been insured by Smith (though not required by the lease), then the insurers would have paid for the repairs.

At the time of the most recent valuation, in January of this year (2018), the property was valued at \$8,000,000.

Robert comes to you for advice.

Advise Robert.

QUESTION 5

Answer both (a) and (b)

- (a) Karl is the owner of a block of shops located at the Boardwalk, in the upscale commercial district of Sawgrass.

Marie entered into a lease with Karl for one of the shops, and agreed to use it for the sole purpose of operating a:

“... women’s dress shop and boutique”

Marie has tastefully decorated the shop, furnishing it with well-appointed vases and other accent pieces. Her clients comment on how beautifully decorated the shop is, almost every time they come in, and several of them have asked her to source items for the furnishing of their own living rooms. Marie has done so for some of her clients, from time to time. Recently, however, she has begun to stock these kinds of items in the store, making them readily available for sale to any customer who may be interested.

Angie, the owner of another store on the Boardwalk, sells furniture and other items for home décor and has learnt that Marie is now selling some items in common with her, and further, that she has lost some of her clients to Marie. Angie has raised this with Karl, and threatened to terminate her tenancy if he does not put a stop to Marie’s sale of the home items.

Karl seeks your advice as to whether there are any steps he can take to prevent Marie using the store to sell the vases and other accent pieces, having regard to the covenant as to user.

Advise Karl.

- (b) Pamela, a single mother of twin boys, rents a four-bedroom house in Mountain Heights. As of September, 2017, her children took up an offer of a full scholarship at

the PremierTech University in Boston, to study Aerospace Engineering and Applied Mathematics respectively.

Pamela is not happy living alone in the house but does not wish to move. She is also interested in increasing her income, for the purposes of providing spending money to the children while they are overseas. Given the proximity of the house to the National University and based on the advice of friends, she decided to advertise for a student to rent one of the bedrooms in the house. She does not wish to be bound to provide any services for the student, by way of meals or cleaning the room. Though she does not mind interacting with the student from time to time, she does not wish to be bound to do so. In essence, she will be satisfied knowing that someone else is in the house, though the person operates independently of her.

A few students have come to see the place in response to the advertisement, and Pamela is happy with one of those she met. Pamela came to see you yesterday, asking you to draft an appropriate agreement. You have asked her for a copy of her lease agreement (i.e. the one Pamela signed with her landlord), and note that clause 3(8) provides for her to:

“Use the demised premises for the purpose of a private residence in the occupation of one household only.”

Advise Pamela as to whether, in view of clause 3(8), she is entitled to go ahead with her plan, and why.

QUESTION 6

Five years ago, Marge granted a 10-year lease of a property, comprising a shop and two detached cottages, to Xavier. The property is not subject to rent restriction legislation. The lease contained the following covenants by the tenant:

“...the premises should be kept in good tenantable repair, fair wear and tear excepted; and the premises should not be used for immoral purposes.”

It also contained a proviso for forfeiture and re-entry which stated as follows:

“ If the rent hereby reserved or any part thereof shall be unpaid for twenty-one days after becoming payable (whether formally demanded or not) or if any covenant on the tenant’s part herein contained shall not be performed or observed... it shall be lawful for the landlord at any time thereafter to re-enter upon the demised premises or any part thereof in the name of the whole and thereupon this demise shall absolutely determine but without prejudice to the right of action of the landlord in respect of any breach of the tenant’s covenants herein contained.”

Xavier later sublet the cottages to Tyrone, and Marge subsequently conveyed the reversion in the whole of the property to Leo. Leo now discovers that the cottages are being used as X-rated massage parlours; that tiles have been blown from the roof and not replaced, and that the roof timbers have consequently become damp and are now affected by dry rot.

Advise Leo on the options open to him.

QUESTION 7

On January 1, 2016, Simon Peters, a cabinet maker, leased commercial premises for the purpose of operating a small furniture manufacturing business. The rent was \$10,000 per month. Most of the machinery was acquired by way of a hire purchase agreement which is still in effect.

Soon after he went into business, Simon began to have financial challenges. The main difficulty was that many customers would order furniture to be made, and then fail to

collect the furniture and pay for it. Even though he had collected deposits, they were not enough to cover the cost of making the furniture.

As a result of the financial crisis, Simon has not paid rent for March or April. On May 1, at 10:00 am his landlord, along with a bailiff, entered the premises through a closed door (which was not locked) and distrained on the furniture and machinery, but did not remove them. Simon was present at the time of the distress.

Yesterday, the landlord began selling the furniture and pieces of machinery from the premises, the sale so far yielding \$50,000.

This morning, Simon came to see you for your advice.

Advise Simon.

QUESTION 8

Answer both (a) and (b)

- (a) In December 2017, Noel Costa leased to Jerry Jester, Apartment No. 5 in a block of apartments owned by him. Jerry holds the apartment on a yearly periodic tenancy. Apartments 1, 3 and 7 were already leased separately to Tom, Mary and Louise. All the apartments are subject to the Rent Restriction Act.

Soon after Jerry entered into possession of the apartment, his girlfriend, who lived with him, started entertaining friends during the day and evening. The music was played very loudly, causing the walls to vibrate. Their conversation was laced with obscenities and carried on at a very high pitch, and could be heard above the sound of the music. Further, sometimes obscene movies were played, again very loudly.

Not surprisingly, the tenants on either side of Jerry complained bitterly to Noel of his (Jerry's) girlfriend's activities, and requested that they should cease immediately, or else they would move from their apartments.

Noel therefore spoke with Jerry and warned him that if his girlfriend's behaviour did not improve immediately, he (Noel) would have no alternative but to serve him with a notice to quit under the provisions of the Rent Restriction Act.

Noel has sought your advice in the circumstances.

Advise Noel.

- (b) Samuel Styles is the owner of a house at 2000 Styrofoam Place. The house is subject to the Rent Restriction Act. For the past ten years, the house has been let to Penny Pincher at a peppercorn rent. As a result, Samuel has not carried out any repairs to the house, and the house is now in a serious state of disrepair. The roof leaks very badly when it rains, the wood flooring has rotted away in various parts of the house, most of the windows do not close tightly and neither do the doors. In the circumstances, the house is in need of major repairs.

Samuel has therefore asked Penny to vacate the house so that it can be repaired. She, however, claims that, as a statutory tenant, Samuel cannot force her to vacate. She fears that if she leaves, he will find a new tenant at an increased rent. Samuel has therefore come to see you for your advice concerning Penny's claims.

Advise him.

END OF PAPER