

COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
FIRST YEAR EXAMINATIONS, 2019

LANDLORD AND TENANT

(WEDNESDAY, MAY 8, 2019)

Instructions to Students

- (a) Time: **3½ hours**
- (b) Answer **FIVE** questions.
- (c) In answering any question, a candidate may reply, in accordance with the law of a Commonwealth Caribbean territory zoned for this school, **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.

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PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

## QUESTION 1

In October 2018, Tom and Jerry met at a mutual friend's house. While discussing their histories, Tom told Jerry that he was an airline pilot about to go to Kuwait to fly with their national airline. The contract with the airline will be for three years, with a break clause after two years. Jerry in turn told Tom that he was a teacher who had recently returned from the United States of America.

In further discussions between them, it turned out that Jerry was looking for somewhere to live and that Tom was looking for someone to live in his house while he was away, so it was agreed that Jerry would occupy the house.

They agreed that the arrangement would be kept simple to avoid consulting an attorney-at-law who would charge substantial fees. So Tom prepared the following document, which they both signed.

### *"Licence Agreement*

*I, Tom James of 10 Ocean View Road, Pilot, hereby grant to Jerry Tubbs of 22 Moonlight Avenue, Teacher, from October 30, 2018, the right to occupy my house at 10 Ocean View Road and the contents therein, such contents to be maintained by Jerry during the period.*

*Jerry is to pay all utility bills, to carry out any repairs necessary, and to lodge into my bank account at the National Bank the sum of \$1000 per month on a standing order for my life insurance policy.*

*This agreement is for three years but may be determined by me (Tom) if I end my contract after two years."*

Last week Jerry came to see you. He has told you that he was having difficulty finding permanent employment and that the outgoings on the house were too high. He said that

he wanted your advice as to the effect of the agreement and, in any event, any legal rights and obligations he may have.

Advise Jerry.

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## **QUESTION 2**

John Brown owns two bungalows (“House 1” and “House 2”), situated on adjoining plots of land on Shady Lane in the capital city in the jurisdiction. Rent restriction legislation does not apply to either house.

On January 1, 2017, John let House 1 to Mark Green for a term of 10 years from that date. Mark lives in the house with his wife and teenaged children.

On December 10, 2018, John let the neighbouring house, House 2, to the owners of Vibes Hotel. He was able to negotiate with the CEO of the hotel, a rental which was three times the rental he receives from Mark. At the time he rented House 1 to Mark, it had been vacant for a long time and John was keen to have someone occupy and maintain it, to prevent the house from falling into decay.

The main hotel buildings are located in a cul-de-sac at the end of Shady Lane. The owners of the hotel rented House 2 from John for use as a discotheque and lounge, and the terrace is used on a weekend during the daytime for brunch (when the main hotel dining room is full).

Mark and his wife both work on shift and often come home late at night. When they work late, they are forced to park on the neighbouring street, Leafy Terrace, because the patrons of the hotel park all along Shady Lane and usually block the entrance to their home. In addition, House 1 vibrates as a result of the volume at which the music is played

in the disco. The disco and lounge are open every night until 4:00am, except on Monday nights when they are closed.

Earlier this year (2019), Mark began to complain to John about the noise coming from House 2 which prevents him and the members of his family from sleeping at night, and, of the inconvenience of (Mark's or his wife's) having to park on Leafy Terrace and walk home from there, almost every night.

John has ignored all of Mark's complaints because he wants to keep the owners of Vibes Hotel as a tenant. He has told Mark that if he is not happy living there, he is willing to release Mark from the lease. Mark insists that he is happy with the location and the rental he pays, and that he does not want to move. He says that he wants John to do what is necessary to allow him to live in peace in the house.

Over the course of the last week, John has, on three occasions, turned off the main outside pipe that carries water into the house in an effort to force Mark to leave the house. Mark only discovered this one day when there was no water in the house and his son said that he saw John outside turning off the pipe.

Mark has come to you for advice.

Advise him.

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### **QUESTION 3**

On April 1, 2018, Edgar took a lease of premises situated on Industrial Row, which he uses for the purposes of a used-car dealership. The premises had been modified a month before Edgar looked at it with the realtor. The modification included an extension to the building, which previously housed a showroom and office space only, to include a space suitable for a garage. Edgar found the premises ideal since he wanted to be able to service

the cars he sold, on site. In his excitement at finding the perfect place, Edgar merely glanced over the document before signing.

The lease, contained, *inter alia*, a covenant by the tenant to:

*“... keep the premises in good and substantial repair.”*

Shortly after moving in, Edgar noticed that the door between the showroom and office was hanging on a single hinge and that one of the doors in the ladies’ bathroom could not close because the door had become swollen over time.

Furthermore, after a period of heavy rains recently, he noticed that there was flooding in the showroom and garage near to the partition between those two parts of the building. In the office, water comes in through the windows whenever there is even a light shower of rain, apparently because the wooden louvres were rotting.

Edgar sought professional advice on the reason for the flooding and was told that the roofing material was not properly joined when the garage was added to the pre-existing building.

Edgar sought an estimate of the cost for all the repairs and received one for \$540,000 and has written to the landlord, advising him of the issues and asking for the repairs to be done as soon as possible. He has enclosed the estimate with the letter. The landlord’s letter in reply directed Edgar to the repairing covenant in the lease, and said that the repairs were Edgar’s responsibility.

Edgar cannot believe the landlord’s response and has come to you for advice.

You are advised that the building is valued at \$10,000,000.

Advise Edgar.

#### **QUESTION 4**

On June 1, 2015, Kwame granted a lease of a property comprising a large dwelling house and a small (detached) cottage to Shawn for a term of eight years. Rent restriction legislation does not apply to the premises.

The lease contained several covenants undertaken by the tenant, including the following covenants:

- (i) to pay rent monthly on the first day of each month;
- (ii) to use the premises for the purposes of a private single family dwelling only; and
- (iii) not to assign the premises without the prior written consent of the landlord.

In addition, the landlord reserved in the lease, a right to enter and view the state of the premises from time to time on reasonable notice to the tenant.

On February 1, 2018, without consulting Kwame, Shawn sub-let the cottage to Paula for the remainder of his (Shawn's) term less one month, for the purpose of operating an upscale beauty salon.

Shawn is an amateur bodybuilder and maintains a state-of-the-art "home gym" in the basement of the house. Two months ago, Shawn began training several work colleagues and their close friends at the house on weekday evenings.

Furthermore, Shawn has not yet paid rent for the month of May.

Kwame learned about Paula, and of Shawn's use of the basement, when he (Kwame) walked through the premises on March 1, 2019, having given reasonable notice to Shawn.

The morning after Kwame's visit to the premises, he telephoned Shawn to remind him of his obligations under the lease and asked him to address the breaches of covenant. Shawn's response was that he is a tenant entitled to do what he wants with the rented

property for the term of the lease, without consulting Kwame. Shawn said nothing about settling the overdue rent.

Advise Kwame on any liability Shawn has for breach(es) of covenant.

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### **QUESTION 5**

- (a) Brown, by way of deed, granted a lease of premises for a term of two years to Green commencing on September 1, 2017. The lease provided, *inter alia*, for the tenant to keep the premises in good and tenantable repair, and to paint the interior and exterior of the premises at the end of the first year of the term. In addition, the landlord covenanted as follows:

*“The landlord at the expiration of the term, agrees to grant to the tenant, his executors, administrators or assigns, a new lease, subject to the same covenants save for this covenant for renewal, provided that the tenant or his executors, administrators or assigns to indicate their intention to renew the lease by notice in writing to the landlord no less than ninety days prior to the expiry of the term, and that the tenant’s covenants have been duly performed.”*

Green gave written notice to Brown on March 10, 2019, of his intention to renew the lease.

Brown has written to Green in response, advising him that he will not renew the lease. His letter says that the reasons for not renewing the lease are that Green did not repaint the outside of the premises at the end of the first year of the term as required and has still not painted it, and that when he drove past the house recently he noticed that one of the windows was broken and is therefore in a state of disrepair.

On receiving Brown's letter, Green, anxious about the response from Brown, comes to you for advice. Green has explained that he intended to repaint the house and fix the window at the end of April, when certain loan funds from his credit union are expected to come through.

Advise Green.

- (b) Assuming that the facts set out in (a) apply, except that Green had repainted the exterior of the house and repaired the window on February 1, 2019, advise Green.
- (c) Assuming that Green has not breached any of the covenants and he assigned the lease to Blue on February 28, 2019, advise Blue as to whether he is entitled to exercise the option.

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### **QUESTION 6**

On January 1, 2016, Leroy granted to Tony, a management consultant, a lease of premises with two buildings thereon, the main house and an annex, at a yearly rent of \$18,000 payable at the end of every year. Tony occupies the main house as his residence and the annex as his office.

In May 2018, Tony paid the rent due for the previous year (ended December 31, 2017) of the tenancy only after Leroy threatened to break down the doors and seize his computer, and his digital projector, which he uses for presentations to clients. The rent payable for last year (ended December 31, 2018) is still due and unpaid in spite of several requests by Leroy for payment.

Leroy has now consulted you and said he would like to levy distress on the following:

- (i) some management textbooks in the annex;
- (ii) his computer and digital projector;
- (iii) two beds and living room furniture in the main house;



- (iv) whatever cash is found on the demised premises; and
- (v) a motor cycle, owned by Tony, now parked in the yard of Tony's friend, Hal.

Advise Leroy.

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### **QUESTION 7**

In November 2018, Victor purchased residential premises, which are subject to rent restriction legislation and which have been occupied for several years by Myra, who has used it as a residence for herself and her three children. She uses a room in the house as a day care centre for her friend's two children. She is paid for this service.

Victor, as a condition of Myra's continuing as a tenant, requested a security deposit of three months' rent. The previous landlord had not required a security deposit. Myra has not complied with Victor's request for a deposit.

In early January this year (2019), Myra went overseas on a business/vacation trip having instructed her son to pay the rent in cash to Victor on the 30<sup>th</sup> day of each month as required by the tenancy.

On her return on April 16, Myra discovered that no rent had been paid by her son and, therefore, immediately paid the arrears by cheque to Victor's wife at his residence.

Later, on the same day, Myra received a notice to quit the premises in a month's time for non-payment of rent and security deposit and for conducting a business on the premises.

Myra has now come to see you for advice with respect to her legal position.

Advise Myra.

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## **QUESTION 8**

In January 2019, Sharon leased from Nicole for five years, a one-bedroom apartment in a four-storey block of apartments, which is part of a condominium/strata complex.

The apartment is on the ground floor and is not subject to rent restriction legislation. The lease stated that Sharon was entitled to use a parking space in the residents' parking area.

The lease also contained, *inter alia*, a covenant by the tenant –

*“to keep the interior of the leased premises and all the leased fixtures, fittings and glass therein in good tenantable repair.”*

There was no covenant on the part of the landlord to carry out any repairs.

Sharon tells you that soon after she went into possession, she noticed moisture, flaking and discolouring on the ceilings of the bedroom, bathroom and kitchen. Approximately two weeks later, water began to drip from all three ceilings.

Last week, she spoke to Nicole who told her that it was not her responsibility to repair the various leaks as they were coming from the apartment above, and that she should discuss the matter with Phill who was the owner and occupier of that apartment.

Sharon spoke to Phill, who told her that the water dripping in the bedroom and bathroom in the apartment she occupied came from an abandoned pipe running along the horizontal dividing wall between the two apartments. Phill further explained that the management corporation had nine months earlier, abandoned the use of all the old pipes in the building, but that the leaking pipe had not been properly sealed by the management corporation's plumber, hence the leaks. The management corporation, however, was of the view that the pipe was no longer their responsibility, but that of the two owners.

With respect to the leak in the kitchen, Phill explained that as far as he was aware, that leak came from the pipe leading from the water heater installed in the leased apartment,

which runs in the ceiling and therefore was a problem with respect to the leased apartment only.

Sharon also tells you that she is often unable to park her car in the parking area designated for residents, which is in a secured area, but has to park in the visitors' parking area which is unsecured.

Sharon now seeks your advice.

Advise Sharon.

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**END OF PAPER**