

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2010

LANDLORD AND TENANT

(WEDNESDAY, MAY 19, 2010)

Instructions to Students

- (a) Time: 3 ½ 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 ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Tom, Dick and Harry, three law students, entered into an agreement with Langdon in August 2009 to occupy his house for their use during the 2009-2011 academic years. They each at the same time signed separate but identical documents headed "Licence Agreement" which provided as follows –

- “1. The Owner grants to the Licensee the right to use in common with others who have or may from time to time be granted the like right to the house known as “Villa Bella” Main Street, St. Michael, but without the right to exclusive possession of any part of the said house together with the fixtures, furniture, furnishings and effects now in the said house for two years from the 1st day of September 2009 to the 30th day of August 2011.
2. The Licensee agrees with the Owner as follows:
 - (1) to pay the sum of \$25,000 per month for the right to share in the use of the said house, such sum to be paid by equal monthly instalments on the first day of each month the first payment to be made on the 1st day of September 2009.
 - (2) not to damage or cause any damage to the walls or floor of the said house or to the fixtures, furnishings, furniture and effects therein.
 - (3) to share the use of the said house peaceably with and not to impede the use of the said house by such other persons to whom the owner has granted or shall from time to time grant licences to use the said house in common with the Licensee and not to impede the use by such other persons of the gas, electricity, water and telephone services supplied to the house, provided that each shares the cost of such services.
 - (4) if at any time there are less than two persons authorized by the Owner to use the said house in common with the Licensee, upon reasonable notice given by the Owner, to meet with any prospective licensee nominated by the Owner at the house, to provide an opportunity to such prospective

Licensee to agree terms for sharing the costs of services in accordance with clause 2 (3).

- (5) not to assign this agreement nor permit any other person except as licensed by the Owner to sleep or reside in or share occupation of the said house or any part of it at any time.

3. Provided as follows:

- (1) if the said sum or any part thereof shall be in arrear or unpaid for at least 14 days after the same shall have become due; or
- (2) in the event of any breach by the Licensee of the agreements herein contained then the Owner may by notice forthwith determine this agreement but without prejudice to any other remedy of the Owner.

AS WITNESS the hands of the parties hereto the day and year first before written.”

Last week Tom, Dick and Harry were given one month’s notice to quit the house to take effect on the 30th of May 2010. They now seek your advice as to whether they are in occupation as tenants or licensees.

Advise them.

QUESTION 2

Maize, who lived in Canada for many years and was soon to retire, wrote to her daughter Annie last year and asked her to lease a furnished two bedroom townhouse in a nice residential area. She asked her to negotiate the rental for the property and said that she was prepared to pay up to \$1,000 (Canadian) per month.

Annie subsequently located an appropriate townhouse (which is not subject to rent restriction legislation) and wrote to Maize indicating that she had to pay the first month's rent on January 1, 2010, in order to secure the premises. This she did, and executed the lease on behalf of Maize.

The lease is a very simple document and only provides for the term which is for three years, a description of the premises, the rent to be paid and an option to determine by either party upon giving six months notice in writing.

In March this year (2010), Maize returned home and began occupation of the premises. She then discovered that –

- (i) there are missing window panes in one bedroom;
- (ii) the townhouse is infested with cockroaches and rats which come from the garbage skip in the complex;
- (iii) the water from the toilet seeps into one of the bedrooms whenever the toilet is flushed;
- (iv) the activities of the tenants on both sides can be clearly heard – the television, bedroom activities, the children playing and crying and so on.

Having discovered these problems, Maize wrote to the landlord Gussie, asking him to remedy the situation as she thinks he is in breach of his covenant for quiet enjoyment, but he has failed to act.

Last week, as a result of the constant seepage of water into her bedroom, a part of the floor collapsed while Maize was standing on it causing injury to her legs.

Maize has therefore sought your advice.

Advise her.

QUESTION 3

Richie, the yearly tenant of commercial premises constructed in 2006, covenanted to keep the building in repair and to yield it up in repair.

The building is constructed of prefabricated concrete with ceramic floor tiles and Spanish clay roofing 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 flooring 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 tiles and, had the roof tiles been properly installed allowing 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 correctly installed.

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

Richie seeks your advice.

Advise him.

QUESTION 4

Ossec Ltd., a supplier of petrol and petroleum products, granted Ethol Ltd. a twenty-one year lease of a petrol filling station. The station is not subject to rent restriction legislation.

The lease contains, *inter alia*, the following:

- (i) a covenant by the tenant to pay the rent quarterly in advance;
- (ii) a full repairing covenant including structural repairs by the tenant; and
- (iii) a covenant stipulating that the tenant should purchase all of its petrol supplies from the landlord.

Last year (2009) Ethol Ltd. was unable to pay any rent due to financial difficulties and so on January 1, this year (2010) assigned by deed the remaining ten years of the lease to Deli Garages. Ossec Ltd. consented to the assignment but was not a party to the deed of assignment.

On March 1, this year (2010) Ossec Ltd. sold their reversion to Chivas Oils Ltd. (Chivas).

Deli Garages however has refused to pay the second quarter's rent to Chivas because it claims that the premises are in need of repairs and they have also refused to accept supplies of petrol from Chivas.

Chivas now wishes to:

- (i) recover the year's unpaid rent from Ethol Ltd.;
- (ii) recover the second quarter's rent from Deli Garages;
- (iii) enforce the repairing covenant against Deli Garages;
- (iv) enforce the covenant to supply petrol to Deli Garages.

Chivas have now consulted you. Advise Chivas.

QUESTION 5

On June 1, 2000, Pam granted a lease of her house to Babes for 10 years at an annual rent payable at the end of each year. The lease contained the following covenant –

“That the landlord will whenever requested to do so by the tenant grant her a lease of the demised premises for a further term of 10 years at the same rent and containing the same covenants and provisos as are herein contained provided that all covenants are duly performed and observed.”

On June 1, 2007, Babes with the consent of Pam assigned her interest in the house to Omari. On February 28, 2010, Omari wrote to Pam requesting a renewal of the lease but by letter dated May 2, 2010, Pam informed Omari that it was her intention to move back into the house at the end of his tenancy.

You are consulted by Omari who would like to know whether he is entitled to a renewal of the lease and, if so, whether he could insist on the inclusion of a covenant in the exact terms of the clause stated above. He has paid all the rent due to date.

- (a) Advise Omari;

 - (b) What would your advice be if the lease contained a covenant by the tenant to use the house for residential purposes only and since December 2007, he has also been conducting his insurance agency from there?
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QUESTION 6

- (a) On December 1, 2006, Porter Ltd., the landlords of commercial premises at 24 Main Street, demised to Jackie as a quarterly tenant, a shop on the second floor and a storeroom on the ground floor of the building. The building is not subject to rent restriction legislation.

On April 1, 2010, Porter Ltd. gave Jackie notice to quit in the following terms –

“Dear Jackie, we the undersigned, Porter Ltd., give you notice to quit and deliver up possession of the shop at 24 Main Street, in respect of which you are a tenant, on the 31st July, 2010.”

Advise Jackie.

- (b) On Wednesday, April 5, 2010, Wallace rented “Rosewood Cottage” from Lisa as a monthly tenant. He paid Lisa a month’s rent of \$40,000 in advance and received the keys to the cottage. On Thursday, April 6, 2010, on his arrival at work, he was told that he was being transferred on the following Monday to the company’s head office in Florida. Later that day, Wallace visited Lisa and told her of his transfer. He also gave her one month’s notice in writing of his termination of the tenancy. He offered her the keys to the cottage and requested the return of the rent. Lisa refused to accept the keys or to return the rent paid. In addition, she told Wallace that in her view the notice was invalid.

Advise Wallace.

(c) In a written lease between Jack and Jill, Clause 5 provided that –

“If the landlord requires possession of the demised premises at any time during the said term the landlord shall have the right to determine this lease by giving to the tenant not less than three (3) months’ previous notice in writing expiring at any time so as to determine the same.”

On April 22, 2010, Jack gave Jill notice to quit as follows –

“I hereby give you notice to quit the demised premises and in accordance with Clause 5 I require you to vacate the said premises within a period of three months from the date of service of this notice.”

Advise Jill.

QUESTION 7

By a lease dated August 1, 2000, Manny let his house to Topsy for twelve years at a yearly rent of \$14,400 payable by equal monthly instalments in advance. The house was then furnished by Topsy with items she had inherited from her parents as well as items taken out on hire purchase last year. Further, Manny is the landlord and Topsy the tenant of a warehouse under a five-year lease granted on January 1, 2007. Topsy uses the warehouse to store goods for persons before they are exported. Neither property is subject to rent restriction legislation.

Topsy’s rent for the house is now six months in arrears but she owes no rent for the warehouse. Manny wishes to know –

- (i) what procedure should be followed in order to distrain for the arrears of rent from Topsy; and
- (ii) whether he can also distrain on the goods in the warehouse, and if he can, what procedure should be adopted.

What is your advice?

QUESTION 8

Your client, Audrey, is the owner of a dwelling-house which was let and was subject to rent restriction legislation before she purchased it in 2000 as a residence for herself and her children.

In 2009 when Audrey's younger child migrated to Canada to join her older sister, leaving Audrey alone in the house, she decided to convert the house into two self-contained apartments. In January 2010, the conversion having been completed, Audrey went into occupation of one of the apartments and let the other to Lola.

Audrey determined the rent payable on the basis of the cost of renovation of the premises plus an annual return on investment of thirty percent. She also required the rent to be paid in United States currency.

Lola agreed to pay the rent set in U.S. currency as she was desperate for accommodation.

Audrey now seeks your advice on -

- (i) whether and why the apartment would now be subject to rent restriction legislation;
- (ii) how the rent is to be determined;
- (iii) how she might lawfully terminate the tenancy;
- (iv) the legality of calculating the rent in United States currency.

Advise Audrey.
