

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE

FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 2006

LANDLORD AND TENANT

(TUESDAY, AUGUST 1, 2006)

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

- (a) In 2002, Gail gave Thalia permission to live rent free in a studio apartment attached to her house and a few months later permission to park her car in Gail's garage.

In 2003, Gail granted Thalia a five year lease of the apartment which lease contained no reference to the use of the garage. Last year Gail sold and conveyed the whole of the property (including the apartment) to Richard who now refuses to allow Thalia to park her car in the garage.

Advise Thalia.

- (b) In 1994, KOLEEN obtained a lease of commercial premises for a term of ten years. The premises contained a workshop. The lease contained a covenant which states as follows –

“not to assign sublet or part with possession of part only of the demised premises.”

KOLEEN subsequently permitted Chris to use the workshop for his business of making jewellery. In 2005, KOLEEN entered into an oral agreement with Chris to grant him a lease of the workshop for a term of one year and thereafter yearly until determined by six months notice on either side.

KOLEEN, however, has refused to execute a written lease and Chris has now threatened to seek a decree of specific performance against KOLEEN.

Advise KOLEEN.

QUESTION 2

On July 1, 2005, Hardy employed Drew as a horseman to help with the horses in his stable. Drew's job was to exercise and feed the horses every morning and evening and to groom them in the afternoon. Drew recently arrived from the country so Hardy allowed Drew to occupy a small cottage, Cottage No. 1, on Hardy's property adjacent to the stables. Hardy informed Drew that he could occupy it because it would facilitate the better performance of his job if he lived close by. Hardy and Drew agreed that a token sum of \$1,000 per month would be deducted from Drew's salary for this purpose.

On August 28, 2005, Hardy's best friend asked him to put up a student in the unoccupied cottage, Cottage No. 2, for a semester. Hardy agreed and the student, Dunn Care, entered into occupation on September 1, 2005. Hardy's wife provided meals for Dunn Care and at the end of each week would let herself into the cottage with her own keys, to clean it and to supply fresh linen. Dunn Care paid Hardy \$4,000 per month for this service.

Last week, Hardy learnt that Drew accepted a job as a jockey with a rival stable. On the same day, he also learnt that Dunn Care had been in trouble with the police for driving a friend's car without a licence. He wants them both off his property. He gave them each two days' notice to vacate the respective cottages.

Drew and Dunn seek your advice. Advise them.

QUESTION 3

- (a) Tyson, a music teacher, entered into a three-year lease with Leighton the owner of premises in Uptown. Prior to signing the lease Tyson informed Leighton that he intended to use the premises as his residence and for giving music lessons. Leighton agreed and indicated that there would be no breach of zoning regulations in doing so.

Immediately upon entering into possession, however, Tyson found it impossible to conduct music lessons as a result of the noise from next door. The occupants of the adjoining premises, who were also Leighton's tenants, used the premises as a social club and games arcade.

Tyson, therefore, informed Leighton that if he could not conduct his music lessons he would have no option but to vacate the premises. Last month he left the premises.

Advise Leighton.

- (b) Tim is the tenant of an apartment in a strata/condominium complex. He has always paid the rent on time. His rent includes the maintenance charges on the apartment.

Three days ago he came home from abroad to find that there was no water in the apartment. At first he thought that there was a general water lock-off but later discovered that in fact the management committee had locked off the water to the apartment. This was done as his landlord was two months in arrears with payment of the maintenance charges on the apartment although he had paid the rent to the landlord.

Further, the corporate body/corporation has started to construct a tennis court in the common area in front of Tim's apartment. Tim does not play tennis and complains that the noise and dust created by the construction are intolerable.

Advise Tim.

QUESTION 4

In April 1998, Eileen granted John, a used car dealer, a 10 year lease of a one hectare car parking and vehicle storage area. The lease provided that the rent was \$200,000 per annum payable monthly in advance and that John would "keep in good repair" the chain link boundary fence surrounding the demised premises.

In 2005, John discovered that the boundary fence was rusting very badly as a result of faulty manufacturing. In that same year the entrance to the premises was obstructed by building contractors employed by the local water authority who were carrying out major excavations on the local sewage system.

John wrote to Eileen in relation to both these matters requesting that Eileen replace the boundary fence and request the local authority to reorganize their works so as to clear the entrance to the premises. Eileen did not respond.

As a result of the local authority's works the entrance to the premises has remained obstructed, rendering the business inoperable since then.

From June this year (2006), John has refused to pay the rent. Eileen has now written to John demanding the outstanding rent and requesting that he carry out the necessary repairs to the fence.

Advise John.

QUESTION 5

By a deed dated December 31, 1990, Veronica granted a lease of a farm of which she was the owner in fee simple to Paul for 30 years commencing January 1, 1991. The lease contained a covenant by the lessor that –

“if the lessee at any time during the term hereby granted shall give to the lessor six months’ notice in writing that he desires to purchase the reversion in fee simple in the demised premises the lessor upon the expiration of such notice and on payment of the sum of \$900,000 and of all arrears of rent up to the expiration of such notice shall convey the demised premises to the lessee in fee simple free from all encumbrances.”

On August 7, 1999, Veronica sold and conveyed the farm to Owen in fee simple and on May 4, 2005, Paul assigned his lease to George.

George now wishes to purchase the fee simple in the farm.

- (i) Advise George;
 - (ii) What would your advice be if, instead of the above-mentioned covenant, the lease contained a covenant giving Paul an option to renew the lease for a further term of 30 years?
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QUESTION 6

In July 2003, Roy granted a lease of a dwelling-house to Simone at a rent of \$144,000 per annum payable by equal monthly instalments at the end of every month.

The lease contained the following covenants by the tenant –

- (i) to pay the rent reserved at the times and in the manner aforesaid;
- (ii) to keep the premises at all times in good and tenantable repair, fair wear and tear excepted;
- (iii) not to assign, underlet or part with the possession of the demised premises without the consent of the landlord such consent not to be unreasonably withheld;

The lease also contained a proviso for re-entry and forfeiture if the rent is in arrears for 21 days “whether formally demanded or not” and also for breach of any other covenant contained in the lease.

On August 15, 2003, Simone sublet the downstairs of the house to Barry, a reputed drug dealer without obtaining the landlord’s consent. The ceiling tiles in the house are water-logged and some had recently fallen causing the house to leak. Roy had written to Simone requesting her to fix the ceiling tiles but he had received no reply. Simone last paid rent in June 2006.

- (i) Advise Roy whether he can forfeit the lease and if so, what action he should take;

- (ii) If Roy can forfeit the lease, advise Barry if he can obtain relief against forfeiture.
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QUESTION 7

Brown, having been asked to go to Cayman on an assignment for his firm, arranged with his close friend, Black, to park (Brown's) car under a tree in Black's yard. The car had been recently acquired for \$200,000 by Brown with the aid of a loan from Black of \$50,000. It was agreed that Black could use the car freely while Brown was away.

When Brown returned two days ago he discovered that the car had been seized the previous day by a bailiff, Grey, on behalf of Black's landlord, Green, to whom Black was \$90,000 in arrears with his rent.

- (i) Advise Brown of any legal right he may have to recover his car;
- (ii) Assume that, acting promptly upon advice given in (i) above, the appropriate action has been taken, but when Brown presents himself on Tuesday morning at 8:00 a.m., having spoken to Grey and seen his car parked at nearby premises late on Monday evening, he is told that the car was sold about half an hour earlier for \$70,000. When challenged, Grey informed him that the buyer paid \$60,000 immediately and has promised the balance at the end of August.

Advise Brown.

QUESTION 8

Jenny has for the past four years been the tenant of a two-bedroom flat in Hermitage at a rental of \$15,000 per month which she has paid regularly. The flat is subject to rent restriction legislation. In January 2005, Zeta purchased the flat and requested Jenny to give up possession since she (Zeta) claims she needs that flat for her teenage son who is to commence his studies at the University in September.

Advise Jenny on the following facts –

- (i) Jenny is unwilling to move since her children are doing very well at the local school and accommodation in the areas is very scarce. In July, Zeta decided to padlock the front gate. Jenny broke the padlock and regained possession. Zeta threatens to sue Jenny for trespass;
 - (ii) Jenny gave up possession in consideration of a payment of \$10,000 by Zeta and provision of alternative accommodation. Two months later she now wishes to regain possession of the premises since the accommodation she has moved to is very unsuitable for her family. It appears also that Zeta is not using the accommodation for her son but rather has decided to convert it into offices for her own use.
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