

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2017

LANDLORD AND TENANT

(WEDNESDAY, MAY 10, 2017)

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

In early February of this year (2017) Marsha advertised on the university's website for a tenant for her vacant apartment at 15 Canal Street. Nigel, an overseas postgraduate student, having seen the advertisement and wishing to secure accommodation for his master's programme beginning in May, sent an e-mail to Marsha. In the e-mail he expressed an interest in viewing the apartment.

In late February, Marsha met Nigel at the apartment. She told him that the rental would be \$25,000 per month and that, as he could see, the apartment was currently under repairs, but that it should be ready for occupancy in about three months' time. This arrangement suited Nigel perfectly and so he agreed.

In late March, Nigel sent an e-mail to Marsha, a copy of which he shows to you and which states as follows:

"March 25, 2017

Dear Marsha:

I am sending you this e-mail to remind you that we met in February of this year (2017) with respect to your apartment at 15 Canal Street. I am hoping to return to university in April and so expect to take up possession in early May.

Yours truly,

Nigel"

Marsha, however, responded to his e-mail as follows:

"I am sorry. I have changed my mind about renting the apartment and in fact I have sold it with vacant possession. Marsha"

Nigel has now retained you. Advise him on his rights, if any, to the apartment.

QUESTION 2

In 2014, Barry entered into partnership with his cousin, Samuel, an attorney-at-law, for the purpose of carrying on the business of computer repairs. The partnership was called Comvid Associates. In the same year (2014) Comvid Associates purchased the freehold title to a unit in a business complex.

In 2016, the cousins fell into disagreement and decided that, while they would formally continue as partners for taxation purposes, the day-to-day running of the business would be Barry's responsibility, as he was the technician. To make full use of the office space, however, it was agreed that the partnership would grant Samuel a lease of half of the office space, from which he would conduct his law practice.

Samuel then went into possession at a rental of \$15,000 per month. Three months later both parties executed a lease, which contained the following provision:

"That the lessee shall from this day (November 1, 2016) be entitled to exclusively possess the premises demised herein until such times as the Comvid Associates partnership shall cease to exist and at a rental of \$240,000 per year payable monthly since taking up possession."

Samuel, however, has continued to pay to Comvid Associates the rental of \$15,000 per month in advance, which he has paid into the business account of Comvid Associates.

Samuel is anxious to show that the 2016 lease is void and that there exists instead a periodic monthly tenancy because, by so doing, he would be able to escape liability to pay the higher rent under the lease.

Advise Samuel.

QUESTION 3

Two years ago, Tanya leased a house called “Mountain Mist” from Juan. The lease was for five years. Rent was paid monthly. They both executed the lease, drafted by Juan, which contained a number of covenants, but not a covenant for quiet enjoyment. The premises are not subject to rent restriction legislation.

Two months ago, Juan, who lives on a small farm one-quarter of a mile further up the hill from “Mountain Mist”, decided that, with the migration of his children, his house was now too large for him to continue to live in, while the house leased to Tanya was the perfect size. He therefore gave Tanya one month’s notice to quit.

Tanya refused to quit on the basis that there is no option to determine in the lease.

As a result, two weeks ago, Juan removed the foot-bridge which spans a small stream that runs through a part of “Mountain Mist”. This bridge provides direct access from the road to the house. In addition, Juan has relocated his piggery so that when the wind blows down the valley towards “Mountain Mist”, which it does most of the time, the offensive smell from the piggery engulfs the house, forcing Tanya to keep the windows and doors closed by day and night.

When Tanya spoke to Juan, he denied that his actions were intended to inconvenience her so that she would vacate the premises.

Tanya has now come to see you for your advice in this matter.

Advise her.

QUESTION 4

In 2014, Mona leased residential premises from Hope for five years. The premises are located in an exclusive residential area and she covenanted, *inter alia*, to use the premises

for residential purposes only. The house is set in a beautiful landscaped garden with a fish pond and a fountain. The premises are not subject to rent restriction legislation.

Soon after she went into possession, Mona permitted her sister to hold her wedding reception at the premises. The reception went off very well, due in part it was said, to the wonderful facilities in the house and the garden.

A number of persons at the reception approached Mona with the possibility of their holding wedding receptions and dinner parties, at the house, for a fee. Mona agreed mainly because she had lost her job three months before and was experiencing financial pressures, including her high rental. Thereafter, functions were regularly held on weekends, often involving hundreds of persons.

Last week Mona came to see you. She tells you that recently large cracks have appeared in the concrete flooring and columns of the large front verandah and that she had informed the landlord, Hope, of this disrepair. Two months ago Mona reminded Hope of the landlord's repairing covenant in the lease which states as follows:

"The landlord covenants to carry out all structural repairs to walls, ceilings, roof and floors of the demised premises."

Hope's response, however, was that she (Mona) was in breach of her covenants with respect to user, and to use the premises in a tenant-like manner. Further, the reason why the cracks had appeared was because large numbers of persons were often on the verandah which was not designed to accommodate such numbers. She therefore had no intention of carrying out any repairs and was in fact considering bringing an action against Mona for breaches of covenant.

Mona's response to this was that other residents in the neighbourhood regularly entertained large numbers of guests, so she was doing nothing out of the ordinary and these functions did not disturb other residents. Furthermore, had Hope insured the

premises (even though not required by the lease to do so), she would be able to make a claim against the insurers for the repairs to be done.

In the circumstances, Mona has sought your advice. Advise her.

QUESTION 5

In April 2012, Steve let “Maypen”, on which were situate two office buildings, A and B, to Bobbi for ten years at a rent of \$24,000 per year. The lease included the following covenants –

- “(1) The tenant shall not assign, sublet or part with possession of the demised premises without the consent of the Landlord.*

- (2) The tenant shall keep the demised premises in repair.”*

The lease also contained a right for the landlord to forfeit and re-enter for non-payment of rent or breach of covenants.

In January 2016, Bobbi, without obtaining Steve’s consent, sublet Building A to Sam who operated a computer training school from it.

In February 2016, Steve conveyed “Maypen” to Harvey.

Since February 2014, Building B has been in a state of disrepair and has not been occupied. In April 2017, Harvey peaceably re-entered Building B and changed the locks. Bobbi does not owe any rent to Harvey.

Both Bobbi and Sam have sought your advice with respect to the re-entry and whether they are entitled to any compensation.

Advise Bobbi and Sam.

QUESTION 6

- (a) Mazie was let a cottage at 40 Blueberry Drive on a tenancy agreement for one year from April 1, 2012, with an option on giving three months' notice to continue on a quarterly tenancy thereafter. The cottage is not subject restriction legislation.

The tenancy continued until near the end of 2016. On December 20, 2016, the landlord served notice to quit in the following terms –

"I hereby give you Notice to Quit 40 Blueberry Drive on or before April 1, next."

Advise Mazie on the validity of this notice.

- (b) Brown entered into a monthly letting of premises to Brakes and Light who used it as a motor car repair shop. They have now written to him stating –

"We wish to give notice of our intention to leave at the end of the next month if we find cheaper premises."

Advise Brown.

- (c) On Wednesday, April 5, 2017, Royce rented 29 Tulip Way from Vanessa as a monthly tenant. He paid her a month's rent of \$10,000 in advance and received the keys to the house.

On Thursday, April 6, 2017, on his arrival at work, Royce was told that he was being transferred on the following Monday to the company's head office in New York. Later that day Royce visited Vanessa 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. Vanessa refused to

accept the keys or to return the rent paid. In addition she told him that in her view the notice was invalid.

Advise Royce.

QUESTION 7

On March 10, 2015, Louis granted to Tim, an accountant, a lease for five years of premises comprising two buildings thereon, the main house and the other an annex, at a yearly rent of \$30,000 payable at the end of every year. Tim occupies the main house as his residence and the annex as an office. In 2016, Louis was paid the rent only after he threatened to levy distress on Tim's property. The rent payable this year is still due and unpaid, in spite of several requests by Louis for payment.

Louis has now consulted you for advice on the following:

- (a) the procedural steps involved in levying distress on Tim's property; and
- (b) whether distress can be levied on the following items:
 - (i) accounting text books in the annex;
 - (ii) three beds and dining room furniture in the main house;
 - (iii) five paintings in the main house kept in place on the walls of the building by screws;
 - (iv) whatever cash is found on the demised premises; and
 - (v) a motor car, the property of Tim, now parked in the yard of Tim's friend, Hal. (Louis has recently discovered that this vehicle was removed by Tim from the garage of the main house and taken to Hal's residence so that Louis, should he decide to levy distress, would not find it on the demised premises).

Advise Louis.

QUESTION 8

- (a) Your client, Miss Tessa Tibbs, was the monthly tenant of Larry Lightbody for twenty years prior to March of this year (2017). The premises are subject to rent restriction legislation.

In March, Miss Tibbs was served with a notice to quit by Lightbody, but refused to leave the premises on the ground that she could not find suitable accommodation in the same area.

Last week, upset at her refusal, Lightbody, along with his workmen, removed the front and back steps, preventing ingress and egress to and from the house, and also removed the roof. As a result, Miss Tibbs had to leave the house and her furniture and personal effects were subsequently damaged by rain.

Miss Tibbs now comes to see you. Advise her as to her rights, if any, in this matter.

- (b) Whitney is the landlord of premises subject to rent restriction legislation. The windows and drain on the premises were damaged by a storm and he is about to replace them. Although the galvanized zinc roof is still in good condition, he is contemplating using this opportunity to replace it with one made of aluminum tiles. He would also like to renovate the kitchen. He wishes to know how these renovations will affect the rent he can recover.

Advise Whitney.

END OF PAPER

