

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 2016

LANDLORD AND TENANT

(AUGUST 10, 2016)

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 black or dark blue ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Owen, for the last five years, has been the monthly tenant of a studio apartment in a complex owned by Gaspar. Gaspar, who is also the owner of an apartment complex on the adjoining lot, recently opened the access between the two complexes. He has made the apartments available for short-term rental and is generally operating them as a guesthouse. This has resulted in increased access by members of the public, who frequently come for short stays and various social activities, including the regular use of the swimming pool, tennis courts and club area.

Owen has had reason to make frequent complaints to Gaspar about the noise and disturbance caused by the several visitors going to and from their apartments, throughout the day and night. These boisterous visitors often engage in late night swimming at the pool and socializing at the bar, lasting into the early hours of the morning.

Owen, who is still a monthly tenant, is on the brink of a nervous breakdown and has come to you for advice on how he should deal with these concerns.

Prepare a letter of advice to Owen.

QUESTION 2

Ronald Rump owns a commercial two-storey building (not subject to rent restriction), which he leased to Fred Cruzey for twenty years. The lease is to expire in August 2017. Under the lease Fred covenanted to:

“... substantially repair and keep in thorough repair and condition the demised premises and to deliver up the premises at the end or sooner determination of the term in such repair and condition.”

The lease also provided for the landlord to enter and inspect the premises, on giving reasonable notice to the tenant.

Earlier this year (2016), the urban planning department served a notice on Fred, as the occupant of the building, requiring that a wall located at the side of the building be removed and rebuilt. The wall was in a dangerous state and condition and, in addition, extended out on to the public sidewalk. The notice states that if Fred fails to comply by September 1, 2016, the department will close down the building.

A copy of the notice was also served on Ronald, as owner of the building.

Prior to this, Ronald had repeatedly called on Fred to effect repairs to the wall, but Fred has always argued that rebuilding the wall does not fall under his covenant.

Ronald, who does not want to take the risk of having the building closed down, is seeking your advice. He wants to know whether Fred is in breach of his covenant to repair and the next steps you would recommend that he take, following on your advice.

Advise Ronald.

QUESTION 3

In 2011, Mrs Fluff let a dwelling house to Miss Curve at a monthly rent of \$50,000. In 2012, Miss Curve sublet two rooms in the house to Sally Divas.

Miss Curve is six months in arrears of rent and Mrs Fluff, who has made several unsuccessful demands for payment, has now consulted you. She tells you that she needs the money urgently. She prefers not to file an action for the outstanding rent because it is likely that she will have to wait several months before the case is heard.

She would like to know whether there is any legal remedy available to her, which would enable her to recover the arrears of rent quickly.

Draft a letter to be sent to Mrs Fluff, advising her on the nature of the remedy available, and outlining the procedural steps to be followed if she accepts your advice.

QUESTION 4

Teisha, Meisha and Keisha are three post-graduate social science students who have responded to an advertisement on their college's notice board. A three-bedroom house, owned by Valeria, was being offered for rent in Uny Close, which is located near to the college.

The three students met with Valeria, who showed them the house. They all liked it and told Valeria that they would definitely be interested in renting. Valeria then handed each of them a separate, but identical, document for their signature, which states, *inter alia*, as follows:

“Licence Agreement

...the Licensor shall grant, and the licensee shall accept, a licence to share with two others each to be separately licensed by the licensor and to the intent that the licensee shall not have exclusive possession of the premises, for a term of one year at a monthly licence fee of \$35,000.”

Teisha and Meisha were prepared to sign, but Keisha is not happy with the document. Keisha had passed CAPE Law with a distinction. She says that her recollection is that she would be in a better position as a tenant and wants to enjoy the legal benefits of being a tenant, rather than a licensee. Keisha is therefore seeking your advice before signing the Licence Agreement.

Advise Keisha.

QUESTION 5

On July 1, 2010, Pete leased “Home High” to Nellie and on May 1, 2012, leased “Grand View” to her as well. Both leases were for a period of five years at a monthly rent payable in arrears. Both also contained the following covenants:

- “(1) The Tenant may lease the demised premises for a further term of 5 years at the expiration of this term, at the same rent and subject to the same covenants and stipulations as are contained in this lease, except this provision for renewal.*

- “(2) The Tenant may, not less than 3 months before the expiration of this lease, purchase the reversion from the Landlord for a consideration to be determined by an independent real estate valuator appointed jointly by the parties.”*

In May 2015, Pete sold “Home High” to Sean. In November 2015, Nellie assigned the option to purchase “Grand View” to Marvin.

Last week, Nellie wrote to Pete stating that she was no longer interested in leasing “Grand View”, and she enclosed the keys to “Grand View” in her letter.

In a letter to Sean, Nellie asked to renew the lease for “Home High” for a further period of five years. Nellie last paid rent for “Home High” on February 29, 2016.

In the meantime, Marvin is seeking to exercise the option to purchase “Grand View”. Pete has told Marvin that he is not bound by any of the covenants in the “Grand View” lease because he did not agree them with Marvin in the first place.

Advise on the following, giving reasons:

- (i) the effect of Nellie’s letter to Pete concerning the “Grand View” lease and whether he is bound by the option to purchase which was assigned to Marvin; and
- (ii) whether Nellie is entitled to be granted a renewal of the lease for “Home High” by Sean.

QUESTION 6

Advise the following tenants as to the validity of the notices to quit in the following cases. The properties are not subject to rent restriction legislation.

- (i) Shady occupies premises on a month-to-month basis, and the rental period runs from the 5th day of the month to the 5th day of each succeeding month. On July 8, 2016, the landlord gave written notice to Shady to quit not later than September 8, 2016.

- (ii) Ken rented premises for a term of four years, commencing January 1, 2012 and ending December 31, 2015. Rent was payable quarterly in advance. Ken continued to occupy the premises after December 31, 2015 with the landlord's consent, and paid rent for each month after January 2016. The landlord has now given written notice to Ken to quit at the end of August 2016.

- (iii) Rita, a monthly tenant of a three-bedroom cottage with a garage, has been given notice by her landlord "*...to quit and deliver up possession of the garage.*"

- (iv) Errol, a tenant at will of one room in a dwelling house, has been given notice that he is to deliver up possession by August 15, "*...unless you are willing after that date to pay rent of \$8,000 monthly.*"

QUESTION 7

On June 1, 2014, Don granted a ten-year lease of a two-storey building to Carl for residential purposes. The annual rent of \$1,200,000 is payable by monthly instalments, at the end of each month. The lease contained the following lessee's covenants *inter alia*:

- “1. To pay the rent reserved at the times and in the manner agreed.
2. Within six months of the commencement of the term, at his expense, to build a concrete perimeter wall five feet high around the demised premises.
3. To use the demised premises as a private dwelling house.
4. To keep the demised premises at all times insured against loss or damage by fire.”

The lease also reserved a right of re-entry for breach of any covenant, without restrictions.

Don recently advised you that the wall had not been built, despite the fact that on November 30, 2015, Don spoke to Carl, insisting that he do so.

On May 1, 2016, Carl sublet the upper floor to Roosie who, from that date, has used the space for a recreation club. Carl last paid rent on June 30, 2016.

Don wants to know whether he can forfeit the lease for any of the following and, if so, what steps he should take in each case to enforce forfeiture:

- (i) failure to build the wall;
- (ii) the use of the premises as a recreation club;
- (iii) failure to insure; and
- (iv) breach of covenant to pay rent.

Advise Don, giving reasons.

QUESTION 8

On May 16, 2014, Warren granted a five-year lease of his dwelling house, together with an annex, to Ray. The lease is in writing and rent is payable by equal monthly instalments in advance. The premises are subject to rent restriction legislation.

Ray covenanted not to assign the premises or any part thereof without the landlord's consent. On November 9, 2014, Ray granted a weekly subtenancy of a room in the house to Andy, and on November 30, 2014, he assigned the annex to Eddy. In his dealing with Andy and Eddy, Ray did not obtain Warren's consent.

On December 8, 2014, Ray informed Warren, by letter, of the sublease to Andy and the assignment to Eddy. Warren replied, saying that he would still hold Ray responsible for the payment of rent for the entire premises, in spite of the information revealed in his (Ray's) letter. Ray last paid rent on April 12, 2016.

Ray died on May 4, 2016. His wife Betty, who resided with him in the house, survives him, and continues to occupy the house and pay rent.

On July 5, 2016, Warren informed Betty, Andy and Eddy that he expects them to give up possession on August 15, 2016, now that Warren has died. They have informed Warren, however, that they will not be leaving as they are protected tenants.

Prepare a letter of advice to Warren.

END OF PAPER