

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 2017

LANDLORD AND TENANT

(AUGUST, 2017)

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. Erasable pens are not allowed.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

In June 2012, Mark leased half-acre of land on Queens Street to Sand Oil Company (“Sand”) for a period of twenty-one years, at a rental of \$72,000 per annum, for the first seven years. Thereafter, an increased rental is to be agreed between the parties.

Between July and December 2012, Sand erected a modern motor vehicle service station at a cost of \$1,500,000. On completion of the station, and with effect from January 1, 2013, Sand entered into an agreement with Mark to manage and operate the station on the terms and conditions as therein set out.

This agreement contained various clauses dealing with the operation and maintenance of the station and provided, *inter alia*, that the licensee should pay an annual licence fee of \$200,000 for the use of the station, that he should have quiet enjoyment thereof, and that the agreement could be terminated for any cause whatsoever by either party giving to the other one month’s notice, in writing, to that effect.

Last month, Mark received a letter from Sand giving him one month’s notice to quit, with effect from July 31, 2017. The notice, the letter said, was in accordance with clause 4 of the agreement.

Clause 4 states as follows –

“This agreement may be terminated for any cause whatsoever by either party hereto on giving to the other of them one month’s notice in writing to that effect such notice expiring at the end of the calendar month”.

Mark has consulted you with respect to his rights in this matter.

What is your advice? Give reasons.

QUESTION 2

Your client, Grace Gold, consults you. She tells you that she has been a monthly tenant for the past fifteen years at Bayfarm. In November 2016, she received notice from her landlord, Lou Light, that the house was up for sale, that he was increasing the rent by 10% as of January 2017

and would be making all outstanding repairs. The premises are not subject to rent restriction legislation.

Grace tells you that she began paying the increased rent in January this year (2017), but no repairs have been done and, in February, she received a notice to quit the premises served on behalf of the purchasers, expressly with the consent of the landlord.

When she contacted Lou, however, he denied giving his consent to the notice, as the premises have not yet been sold. In fact, he then offered to sell her the premises but they could not agree on a price.

Grace further tells you, that in July she received a new notice to quit by persons who said they were the new owners and who stated that she was to vacate the premises in two months' time (September 2017). They also told her that in the interim she is to send the rent to them by a banker's cheque.

Last week, however, before the rent was due to be paid, Lou telephoned her, instructing her to pay the rent to him on the due date. In addition, her efforts to find somewhere else have so far proved futile.

She now seeks your advice as to –

- (i) whom she should pay the rent; and
- (ii) her legal position, should she be unable to find somewhere else by September.

Advise Grace Gold.

QUESTION 3

Harold is the owner of a large parcel of land on which he has constructed two factories and several dwelling houses. By an agreement in writing he lets one of the houses to Roy for use as his residence. Roy's house is separated from the factories by a private road.

Harold lets one of the factories to Calvin who uses it to manufacture plastic products, while Harold retains possession of the other factory.

Shortly after Roy's occupation of the house, he became ill due to noxious fumes coming from Calvin's factory. Two months after Roy recovered from this illness, he again became ill, this time due to noxious fumes from Harold's factory.

Further, last week, Harold let a dwelling house, next door to Roy's house, to a group of young musicians for residential use. However, they have been rehearsing there until late into the night thus affecting Roy's sleep.

Advise Roy as to his remedies, if any, under his tenancy agreement.

QUESTION 4

Regal Cinemas Ltd ("Regal") in October 2010, became the lessee by way of a properly executed lease of a cinema. The term of the lease was for ten years and terminates in October 2020.

In 2015, Regal discovered that the roof, which was covered with shingles, was in a state of disrepair and as a result of this a number of concrete beams had been severely eroded by water. Regal immediately gave notice to the lessor, Land Holdings Ltd, to carry out the repairs.

The lease contained a covenant by the lessee:

“to keep the demised premises and the sanitary and water apparatus and all additions and improvements thereto in good and substantial repair and condition and properly decorated and in a state in every respect for cinematographic entertainment, but nothing in this clause contained shall render the lessee liable for structural repairs of a substantial nature to the main walls, roof, foundation or main drains of the demised building.”

Having made a further request to Land Holdings Ltd to carry out the repairs, Regal began to make arrangements for the roof to be replaced with wood and felt shingles and to replace the cement rendering on the beams.

Last month, workmen employed by Land Holdings Ltd sought access to the premises to carry out repairs but were refused entry. Since then, Regal has completed the repairs as planned and has written to Land Holdings Ltd claiming a refund of \$350,000.

Land Holdings Ltd has sought your advice and has informed you that the state of disrepair of the roof and beams was the result of persistent neglect by the lessee to carry out minor repairs.

What is your advice? Give reasons.

QUESTION 5

In 2010 Oxset Co Ltd, a supplier of petrol and petroleum products, granted Kevin Ltd a ten-year lease of a petrol filling station.

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, Kevin Ltd was unable to pay any rent due to financial difficulties and so on January 1 this year (2017), assigned the remaining three years of the lease to Sonny Garages. Oxcet Co Ltd consented to the assignment but was not a party to the deed of assignment.

On March 1 this year, Oxcet Co Ltd sold its reversion to R. B. Oils.

Sonny Garages has refused to pay the second quarter's rent to R.B. Oils because it claims that the premises are in need of repairs and it has also refused to accept supplies of petrol from R.B. Oils.

R. B. Oils now wishes to –

- (a) recover the year's unpaid rent from Kevin Ltd;
- (b) recover the second quarter's rent from Sonny Garages;
- (c) enforce the repairing covenant against Sonny Garages; and
- (d) enforce the covenant to supply petrol to Sonny Garages.

R. B. Oils has now consulted you.

What is your advice? Give reasons.

QUESTION 6

On March 1, 2015, Lydia leased her house (which is exempt from rent restriction legislation) to Ted for five years, at an annual rent of \$6,000, payable by equal monthly instalments. The lease contained the following covenants by the tenant –

- “(i) to pay the rent reserved at the time and in the manner aforesaid;*
 - (ii) at the tenant's expense to build a swimming pool at the demised premises;*
 - (iii) to keep the demised premises at all times insured against loss or damage by fire;*
- and*

(iv) to use the demised premises for residential purposes only.”

The lease also contained a proviso for re-entry on breach of any of the tenant’s covenants.

On March 10, 2017, Ted began conducting his real estate business from the demised premises. Further, the swimming pool has not yet been built and the house is uninsured although on September 5, 2016, Lydia had requested Ted to commence the construction of the pool and to insure the house.

Advise Lydia whether she can forfeit the lease and, if so, what steps she should take in each case to enforce the forfeiture.

QUESTION 7

By a lease, under seal, made between Cain and Abel, Cain leased residential premises known as “Belvedere” to Abel for a term of ten years, beginning on June 1, 2007, at a monthly rental of \$25,000, subject to the usual covenants, conditions and agreements contained in residential leases.

The lease also contained the following clauses –

“(i) On payment of the sum of \$300,000 on signing hereof the lessee shall be granted the option to purchase the demised premises for the sum of \$3 million, such option to be exercised on or before May 31, 2017.

(ii) In the event the lessee being prepared to lease the demised premises for a further term of ten years at the expiry of the term hereby created the lessee shall have the right of first refusal to lease the demised premises for a term of ten years commencing from the

expiry of the term hereby created such first refusal to be exercised by the lessee on or before the expiry of the present term.”

On executing the lease, Abel paid to Cain the sum of \$300,000 in consideration of the option. On June 1, 2017, Abel informed Cain verbally that he intended to exercise his option to renew and that as Cain had been a good tenant he could not refuse to do so, but Cain rejected this request.

On July 1, 2017, Abel nevertheless tendered a cheque to Cain for the sum of \$3 million and said that it was for the purchase price of the premises. Cain, however, refused to accept the cheque and, instead, requested that Abel vacate the premises as the tenancy had expired and the premises were in the process of being sold.

On July 15, 2017, Cain executed an agreement for sale with Eve who has contracted to purchase “Belvedere” for \$5 million.

- (i) Abel has now sought your advice. Advise him.
- (ii) Would your answer be any different if Cain had entered into a lease with Eve on July 1, 2017, at a rental of \$40,000 per month?

QUESTION 8

In June 2015, Developers Ltd (“Developers”) acquired a substantial property at Collins Green, consisting of an old house, six hectares of land, and a variety of outbuildings. The property is subject to rent restriction legislation. Developers has converted the ground floor of the house to provide three office units, one to be used by it, the other two to be let to a firm of architects and insurers, respectively.

The upper floor has been converted to provide four studio apartments, one of which is to be used by Developers to accommodate the caretaker of the premises. Another is retained by the architects to accommodate occasional visiting clients. Three of the six hectares have been let on

a 49-year building lease to Techomes Ltd. A small detached house on the grounds, subject to a tenancy at the time of sale, has been substantially improved and extended by arrangement with the tenants, who were paying a standard rent of \$15,000 per month.

Developers consults you about its right or duty to have standard rents fixed on all these units and about any principles likely to be applied. It is also concerned about making a fair return on capital.

Advise Developers.

END OF PAPER