

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2016

LANDLORD AND TENANT

(WEDNESDAY, MAY 11, 2016)

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.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Fridrik, is an international tax expert from Cubeland, who has been engaged as a consultant to the revenue authorities in your jurisdiction since July 2013. Fridrik's wife, Brigitte, and his two sons joined him in August 2013 and, at that time, he entered into a five-year lease with Dominelli of a three-bedroom town house with a basement.

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

"...(3) That the tenant shall not assign, sublet or part with possession of the demised premises or grant any licence thereto without the prior consent in writing of the landlord;

...(5) That if either party shall desire to determine the present demise at the expiration of the first three years of the said term and shall give to the other party six months' previous notice in writing of such desire then immediately on the expiration of such notice the present demise and everything herein contained shall cease and be void but without prejudice to the remedies of either party against the other in respect of any antecedent claim or breach of covenant."

Brigitte, in the meantime, set up a yoga studio in the basement, in an effort to relieve her boredom during the days when Fridrik was at work and the children at school. The studio gradually attracted many of the other expatriate spouses, who willingly paid a fee for yoga classes and refreshment, which they enjoyed while socialising after classes.

Fridrik endorsed Brigitte's enterprising venture since he wanted to ensure she was happy, given his demanding work schedule. There were no discussions with Dominelli on the matter, but Dominelli's wife, Sheila, whom Brigitte met through a mutual friend, had participated in the classes on a few occasions, on Brigitte's invitation.

Fridrik has just been recalled to his company's head office in Cubeland, with immediate effect. He is to lead the company's team of tax advisers in a very high profile restructuring transaction for a major client.

Fridrik will be terminating his consultancy and does not intend to return to the jurisdiction when he leaves in the next few days. However, Brigitte will stay until July when the children complete the school year, because they are both concerned that a rushed move may be disruptive for children. In any event, this will give Brigitte some time to sort out her affairs, including closing the studio.

Fridrik tells you that he called Dominelli to tell him of the situation and says that Dominelli told him that as far as he is concerned he entered into the agreement for five years and he wants nothing less. Dominelli further stated that since Brigitte had turned his place into a money machine with her "gal pals" the lease had been breached and the time was right to get compensation for the breach.

Fridrik now seeks your advice on his obligations under the lease, the procedural steps he is required to take to address them and whether Dominelli is entitled to compensation in the circumstances.

Draft a letter to Fridrik advising him.

QUESTION 2

Henry Flynn, a plumber, was employed by your client, Willie Wimble, as a plumber/handyman in his restaurant and bar business.

On February 1 this year (2016) Henry employed Willie on the following terms:

“Hours: Monday – Friday 4 p.m. to 12 midnight, break 8 p.m. – 9 p.m.

Wages: \$6,000 per week

Overtime: \$200 per hour

Room: rent-free whilst employed

Notice of termination: two weeks to be served either way”

The room was built to house a handyman because of the work hours. In the past it has proven difficult to get a plumber or even a handyman to work at those hours without accommodation being offered.

On February 2, Henry moved into the room. However, his competence as a plumber and his general attitude proved unsatisfactory. Henry was often found fast asleep in his room after his break, having had a few drinks at the bar. As a result, Willie gave him written notice on April 1 as follows:

“To Mr Henry Flynn.

After three months’ trial I have decided that your performance on the job is most unsatisfactory and therefore as per our agreement you have two weeks’ notice, to take effect from April 15, 2016. I also remind you that the room is to be cleared out and vacated by April 30, 2016.”

Willie now informs you that although Henry accepts termination of his employment, he refuses to vacate the room on the ground that he is a tenant and is entitled to all rights of a tenant.

Prepare your letter of advice to Willie.

QUESTION 3

By a lease dated January 1, 2002, Biggie Jon demised Upper Park Great House to Lady Dee for a term of 21 years. The house was built in the early 1950s.

Clause 3 of the lease states as follows:

“The Tenant hereby covenants to keep the demised premises and all additions thereto at all times during the said term in good repair.”

Two weeks ago, Biggie, in exercising his right to inspect the premises once per year, visited the property. His building engineer friend, Paulos, went with him.

Biggie has now presented Lady Dee with a list, outlined below, identifying a range of dilapidations in various parts of the house. He is claiming that, pursuant to the lease, these are matters for Lady Dee’s attention and necessary action.

“Schedule of Dilapidations

- (i) One-third of the shingle roof and support beams have rotted and require replacement – cost \$500,000;*
- (ii) 40% of the upstairs wooden flooring has rotted as a result of the disrepair of the roof, which disrepair allows water to come in when it rains – replacement cost \$300,000;*
- (iii) Laundry room and gardener’s change room (added to the rear of the house in 1970) walls deemed unsafe due to poor construction in breach of the building code – cost \$3,000,000; and*

- (iv) *House requires repainting; woodwork in formal dining room and part of the living room rotten and need to be replaced – cost \$400,000.”*

Lady Dee has since received a valuation report, which states that the house is valued at \$12,000,000.

Lady Dee has instructed the firm to which you are employed, seeking advice as to her liability, if any, for the defects set out above.

Prepare a memorandum directed to John Bethel, the partner to whom you are assigned, outlining your legal opinion on Lady Dee’s liability, if any.

QUESTION 4

By a lease dated February 1, 2012, Machel became the tenant of a two-storey building owned by Cecil. The lease was for 7 years at an annual rent of \$600,000 payable by equal monthly installments. Machel has been living on the upper floor with his son, George, an IT technician. Machel, who designs and makes costumes, carries on his business on the ground floor. He has not paid rent for the past six months and claims that business has been very slow because there has been a significant reduction in the demand for carnival costumes.

Two days ago, at 3:30 p.m, a bailiff acting on behalf of Cecil, entered the ground floor of the building through an unlocked door. He announced that he was there because Machel had not been paying his rent. He then proceeded to seize an industrial-sized sewing machine, which had been bolted to the floor, four bolts of fabric, some body suits on display for sale, and two body suits that were being altered by Machel for two customers, Shelly and Terry.

The bailiff then went upstairs where he seized a refrigerator, stove, bed, an HP laptop and HP printer. The laptop and printer belong to George. While leaving the premises, he seized Machel's 2015 Hilux pick-up truck, which was parked on the main road at the gate to the premises. As he was driving away, the bailiff shouted to Machel that he was taking everything to the Government warehouse.

The next day, Machel was shocked to see George driving the pick-up into the yard. George said that he had seen it parked outside the infamous ReyTey Club and had used his spare key to drive it away.

Machel is embarrassed about the turn of events and seeks your advice as to the validity of the bailiff's actions. He is anxious to know whether he can get back the items seized and, in particular, how the matter of the pick-up truck can be addressed. Although he is most upset at where George found it, he is also concerned about any liability he or George may face for having it in his yard.

Advise Machel.

QUESTION 5

On March 1, 2006, Bernie granted a lease of his house to Hillary, for 10 years at an annual rent, payable at the end of the year. The lease contained the following covenant:

"That the landlord will whenever requested to do so by the tenant grant 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."

The lease also contains a covenant by the tenant to repair the house.

On March 1, 2013, Hillary, with the consent of Bernie, assigned her interest in the house to Billy. On December 30, 2015, Billy wrote to Bernie requesting a renewal of the lease. However, by letter dated March 2, 2016, Bernie informed Billy that it was his intention to move back into the house at the end of the tenancy.

Billy has consulted you and 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 above stated clause. Billy has paid all rent due to date but the house has been in a state of disrepair since December 2012.

Advise Billy. Give reasons.

QUESTION 6

Your client, Mall Limited, are the owners of a four-storey building on Main Street. The building was designed and is currently used for mixed residential and commercial occupation. It is constructed on registered land. The ground floor is leased to Fashions Limited under a 10 year lease, which was entered into in October 2010. The three upper floors are divided into six apartments, two on each floor. All were let in 2007 on 21 year leases.

The lease to Fashions Limited, which was dated July 15, 2010, contains, *inter alia*, the following covenants:

“(6) Not to do or suffer or permit to be done or suffered on the premises anything which may be or become an annoyance, inconvenience or nuisance to the lessors or the other owners or occupiers of any adjoining or neighbouring property or to the neighbourhood or which may infringe any legislation for the time being in force.

(7) *Not to carry on or permit upon the premises or any part thereof any noisy or dangerous trade business or manufacture or occupation or any nuisance nor use the same or allow the same to be used for any illegal or immoral purpose.”*

The lease also contains the following proviso for forfeiture and re-entry:

“... provided that if the rent hereby reserved or any part thereof is at any time in arrears and unpaid for 21 days after it is due, whether legally demanded or not, or if there shall be any breach of any of the covenants on the part of the tenant contained herein, then it shall be lawful for the landlord at any time thereafter to re-enter the demised premises and thereupon the term shall absolutely cease and determine.”

In July 2014, Fashions Limited, with the consent of your client, Mall Limited, sublet the ground floor to Slim Limited for use as a health club for a term of three years. The covenants in this lease were all identical to those in the head lease but there was no proviso for forfeiture and re-entry.

In February this year (2016), a number of the residential tenants complained to Mall Limited, (your client) that Slims Limited have allowed the club to be used for illegal and immoral purposes. They allege that, in particular, Slims Limited have employed as masseuses, women who, for reward, commit lewd and immoral practices at the request of customers of the business. These activities have brought the premises as a whole into disrepute.

Further, a large number of persons seeking such services attend at and loiter near the building, smoking marijuana and so causing a nuisance and annoyance to the residential tenants.

Mall Limited, through its manager, comes to see you. They admit to hearing rumours about the activities of the club but had attributed the concerns to the conservative nature of the tenants. Further, when they sought confirmation from Fashions Limited, they denied knowledge, saying that, in any event, the health club was promoting healthy living and that the use of marijuana was for medicinal purposes as far as they were aware.

Recent checks have, however, confirmed the complaints of tenants and Mall Limited now seeks your advice.

Prepare a letter of advice to Mall Limited.

QUESTION 7

Dianne rented a four-bedroom house to Petra for \$40,000 per month. Petra covenanted to use the premises for residential purposes only and not to sublet or assign same in whole or in part. The property, located in Long Road, is not subject to rent restriction legislation.

Dianne, who now lives abroad, tells you that she learnt from her friend, that a mere six months after renting the property, Petra sublet the entire premises, except for one room, to Gayle for \$45,000 per month. Gayle is now conducting her hairdressing business on the premises.

Dianne has complained to Petra about these activities but continues to collect rent from Petra.

Gayle has so expanded her business that she has made extensive modifications to the garage and has also added a new room to the house, which is being used as a waiting room. She has cut down the East Indian and "Julie" mango trees in the garden to allow

for the area to be paved for use as a parking lot. Dianne became aware of the modifications, but has not expressed her objection to Petra.

Four months after construction was completed, Dianne served the following notice on Petra and Gayle jointly:

“You are hereby given notice to quit and deliver up my house in Long Road as soon as you may legally be required to do so for the breaches of covenants and waste.”

Two weeks ago, Dianne began proceedings against Petra and Gayle for recovery of possession and for breaches of covenants and waste.

Petra now seeks your advice on her rights in the circumstances.

Advise Petra.

QUESTION 8

Dave is the owner of business premises. On March 1, 2012, Beany entered into a one-year lease for Shop No. 5 on Dave’s premises. At the expiration of that lease, Beany continued in occupation of the shop, paying a monthly rent of \$50,000.

Dave has other plans for the shop and wants Beany out. He asks his friend, Lauyer, to draft a notice to quit to be served on Beany. The notice is dated March 20, 2016 and advises Beany that he is to vacate the premises **“on or before April 20, 2016”**. Dave left the notice with Beany’s shop manager because Beany was not there at the time.

Fran also occupies Shop No. 10 on a yearly tenancy on the same premises. This arrangement commenced on July 1, 2009. Fran recently constructed her own business place and intends to move in shortly, once the property is formally handed over by the

building contractor. On April 1, 2016, Fran purported to serve a notice to quit on Dave dated the same day, which reads as follows:

“Dear Dave,

It has been a pleasure being your tenant. However, please take notice that I intend to quit your premises (Shop No. 10) at the end of May this year (2016). It may be even sooner than that depending on how things go with me, and once things come through for me. I know you will understand. Thanks for everything.

Best, Fran.”

Dave is now seeking your advice. His instructions are that Beany is refusing to move, on the basis that, his lawyer has told him that he was not given proper notice. He has also learnt that Fran has started to remove the fixtures from her shop.

Prepare a letter of advice to Dave, outlining the validity of the respective notices and the procedural steps that you recommend he take in the circumstances.

END OF PAPER

