

**COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL**

**LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, MAY 2021**

LANDLORD AND TENANT

MONDAY, MAY 3, 2021

Instructions to Students

- (a) Duration: **24 hours**
- (b) Students shall enter their Examination ID Number **only**, not their names, on the cover page, the Academic Integrity Statement and on every separate page of the examination script.
- (c) The examination should be answered on letter-sized (8.5 x 11) paper only.
- (d) The examination should be submitted in Arial font 12 line spacing 1.5.
- (e) Students should clearly indicate the names of any cases with the citation and legislative provision/s (section number and Act) on which they rely to support their arguments. Consider using italics and/or bold text to make references prominent. (For example, *Rylands v Fletcher* [1868] UK HL1; **s.69 Real Property Act**). Sufficient detail is required to allow the examiners to understand the source of law that is being cited.
- (f) Footnotes, endnotes and bibliography are not to be used.
- (g) Students shall number the pages of their examination script as follows: Page 1 of 12, Page 2 of 12, etc.
- (h) In answering any Part, a candidate may reply in accordance with the law of a Commonwealth Caribbean territory zoned for this school, **but must state at the beginning of the answer the name of the relevant territory.**
- (i) Each Student **must** ensure that their Anonymous ID in TWEN is changed to their four digit Examination ID Number, prior to submitting their examination script.
- (j) The examination script, with the cover page and Academic Integrity Statement saved in **ONE PDF DOCUMENT**, must be submitted in **ELECTRONIC** format via the **Year I MAY 2021 EXAMINATIONS, LANDLORD AND TENANT DROP BOX** on TWEN by **Tuesday, May 4,**

2021 NOT LATER THAN 9:00 a.m. (Jamaica) 8:00 a.m. (Belize) and 10:00 a.m. (Eastern Caribbean).

- (k) To upload the examination script which has been saved as one pdf document which includes the cover page and Academic Integrity Statement, you must follow these steps:
- Go to ***www.lawschool.westlaw.com***.
 - Log in using your username and password credentials and select the **TWEN** button.
 - Click on the link for “**Assignments and Quizzes**” located on the left-hand side of the navigation screen.
 - Select the relevant examination and the examination drop box as follows:
 - Year I students with Examination ID numbers between 1100 -1192 must upload script, cover page and Academic Integrity Statement to folder titled “***Drop Box A Year I - 1100-1192***”.
 - Year I students with Examination ID numbers between 1193 -1283 must upload script, cover page and Academic Integrity Statement to folder titled “***Drop Box B Year I - 1193-1283***”.
 - Year I students with Examination ID numbers between 1284 -1376 must upload script, cover page and Academic Integrity Statement to folder titled “***Drop Box C Year I - 1284-1376***”.

Arnold Young is the owner and operator of a successful carpentry business. He works exclusively with cedar and mahogany. He has made furniture and cabinetry for individual residential use and for use in several high-end all-inclusive hotels for many years. He currently operates the business from 10 Woodbridge Road in the capital, which he rents from George.

Arnold and Bella, his wife, live in a three-bedroom split-level house in the town of Sunshine in the capital. The complex in which they live was developed by Arnold and its construction was completed at the end of 2019. The complex was specifically designed by Arnold to comprise four identical units, including the one he and Bella occupy. Two of the units were intended for each of his two children and the other was to be used as an investment property. He decided he would call the complex “Young Villas” for the purposes of a formal address. The entire complex, including all four units, is owned by Arnold as sole proprietor.

Arnold's attorney-at-law who advised him on the development, knowing that Arnold intended for one of the units to be used for investment purposes, made the requisite checks and confirmed that rent restriction/control legislation applied to (all) the units in the complex. The attorney-at-law also arranged for the relevant authority to assess the units on completion of the construction, and the maximum allowable rent for each unit was assessed at (\$2,220,000 annually) or \$185,000 per month.

When the construction was completed, each unit was valued at \$30,000,000.

Both of Arnold's adult children, Camille and Darren, have families of their own. Camille is an orthopaedic surgeon and Darren, a civil engineer. Darren is married with two young sons. Camille is married with a daughter.

Arnold and Bella, as well as Camille and her family, moved into the complex in January, 2020. Arnold and Bella occupy Unit 1, and Camille and her family occupy Unit 2. Darren moved into Unit 3 in February 2020.

Unit 4 is occupied by Ian, who pays a monthly rental to Arnold.

Arnold has come to you for advice in relation to certain matters that have arisen in connection with two of the units in the complex, and the commercial premises that he rents for his business.

Re: Unit 4

Ian was introduced to Arnold by Arnold's friend Louis, in early December, 2019. At that time, Ian had just opened a restaurant in the capital. The restaurant was doing so well that Ian decided he needed a place to live in the capital, to allow him to more closely supervise its operations. Arnold showed Ian Unit 4, which Ian liked very much. He immediately offered to rent it for \$170,000 per month, asking when he could move in. Arnold told him that the construction and landscaping were not yet complete and that he wasn't sure when it would be ready for occupation. Arnold also told Ian that he would have to consider the proposed \$170,000 because that was \$15,000 less than the permissible rent for the unit.

Arnold subsequently discussed the matter with Bella and they agreed that as Ian appeared to be a successful businessman, likely to be able to pay the rent, Arnold would insist on \$185,000 per month.

Arnold advised Ian of this decision. He told Ian that the rent would be payable each month, in advance, and that he would be required to pay a deposit of \$185,000. Ian agreed and on December 20, 2019, he paid Arnold the sum of \$370,000, being \$185,000 as the first month's rent and the security deposit of \$185,000.

Other than the rent and security deposit, no other terms were discussed between Arnold and Ian.

On January 4, 2020, Arnold handed Ian the keys to Unit 4 and Ian moved in the following day, January 5, 2020.

The relationship with Ian began quite well. Ian was faithful in paying the first few months' rent, in advance, as had been agreed.

During April and May 2020, however, Ian failed to pay the rent when due, and at the end of May, Arnold demanded that he pay the arrears and leave the premises immediately. Ian claimed that because of the onset of the COVID-19 pandemic in March, and the associated government controls and reduction in business, he was unable to pay the rent. He asked for some time to pay, and Arnold relented on his plans to have him leave immediately.

During the month of June 2020, Ian paid the arrears of rent for April and May, 2020. He paid the rent for July when it was due, together with the arrears of rent for June. Ian continued, through the rest of the year (2020), to make payments on time. In January 2021, the rent was paid late and he has not paid any rent since then.

Arnold is most upset that Ian has failed to pay rent since February. Arnold also regrets not having put Ian out of the unit from last year.

Arnold instructs you that at this point, he wants to recover the unpaid rent and also wants to bring the relationship with Ian to an end, immediately.

He further instructs you that he is concerned about the fact that he did not have a signed document with Ian.

Arnold also tells you that his plan is to use the \$185,000 security deposit he received from Ian, which he has in hand, to buy a new 55" "smart" TV.

Advise Arnold as to his rights and obligations in the circumstances outlined by him.

Re: Unit 2

In September 2020, Camille and her husband, David, also a physician, both received offers to take up fellowships in their respective areas of specialty, in England. Each offer included not only the one-year fellowship, but also a post-fellowship contract for one year, if they chose to remain. The fellowships were scheduled to commence on November 1, 2020. Camille and David saw this as an opportunity they could not refuse and decided to accept the offers.

Since they planned to be away for a period of two years, Arnold decided to rent Unit 2 for the time they planned to be away. Arnold agreed with Edward to rent Unit 2 to him for two years commencing November 1, 2020.

Given the experience that he had been having with Ian, Arnold, in October 2020, instructed Frank, an attorney-at-law to prepare an appropriate lease for Unit 2. Frank prepared the lease as a deed and arranged for Arnold and Edward to sign it as a deed, which they did. Edward paid the first month's rent and security deposit which was required as a term of the lease, and on November 1, 2020, Arnold delivered the keys to Edward who moved in with his family on that day.

The lease provides, *inter alia*, as follows:

“

LEASE

...

1. *The Tenant shall:*

1.1 *pay the rent reserved in the sums set out in the Schedule below, in advance on the first day of each month, by direct deposit to the bank account more fully described in the Schedule below (“Bank Account”);*

...

1.8 *keep the premises in repair ...*

2. *The Landlord shall:*

2.1 *permit the Tenant peaceably to hold and enjoy the demised premises during the term without any interruption or disturbance from or by the Landlord or any person claiming title under or in trust for him;*

...

...

Schedule

...”

Arnold relates the following:

Edward has been consistent in paying the rent on the due dates, but has not otherwise been a very agreeable tenant, for the reasons set out below.

Both Arnold and Bella are music enthusiasts and, having been given a restored antique record player for Christmas, they began to play old records every evening between 8pm and 11pm. Neither Darren and his family, nor Ian (Arnold's other tenant), has complained about the music, but Edward complains constantly.

Edward also complains about the noise Darren's children make when they play and ride their bicycles in the complex most evenings, and the loss of privacy he and his wife suffer when the children peer into their kitchen window, from time to time.

In addition, Edward complains that Arnold has an antique car that he (Arnold) bought at the end of January 2021, which he has parked under a tree in the complex, but which blocks access to a part of the double carport connected to Unit 2. Edward claims that he has lost part of the benefit of the unit because he and his wife are unable to park both of their cars there at the same time. Arnold has not moved the car because he says that he owns the entire complex and that he needs the shade and the space to work on restoring the car.

Again, Edward has complained that the unit he occupies suffered damage as a result of an extended five-day period of rainfall during the last week of March, 2021. Edward only told Arnold about this two weeks after the rains had ceased. He also informed Arnold that he had arranged for a contractor to come the following Monday to review the damage and prepare an estimate of the cost of any necessary work. He told Arnold that he would give the estimate of costs to him for Arnold to arrange for the repairs to be done.

Edward further told Arnold that part of the roof over the verandah had lifted and would need to be properly anchored, or replaced; and also that rain had blown in through the back verandah, causing the door that separated the verandah from the living room to become damp and affected by dry rot. Edward recommended that the door be replaced. Edward also complained that there had been flooding in the lower floor of the unit, which he and his wife used as a recreation room. Up to the time when Edward spoke with Arnold, he told Arnold that the water had not yet receded.

Arnold told Edward that he didn't need the details of the estimate because Edward was responsible under the lease to fix the unit. Edward did not respond to Arnold's comment.

The following week Monday, Edward went back to Arnold and told him that the contractor had come that day. Edward said that by the time the contractor came, the flooding in the lower floor had receded. He said that the contractor advised that although there was no damage or disrepair of any kind to the lower floor there was apparently a design defect in the flooring, which should be repaired to avoid flooding again.

Edward said that the contractor had also advised that the living room door, which was obviously damaged, would have to be replaced, and that the roofing in the area above the verandah, which had lifted, would also have to be replaced. The estimated cost to

replace the door was \$200,000 and to reinstate the damaged section of the roof, \$1,300,000. The cost to repair the design defect in the lower floor was estimated at \$1,700,000. Edward said that the contractor would have been available to begin the work on the Thursday of that week.

Arnold said that he insisted that there was no need to tell him all of this because he (Edward) was responsible to do the repairs. He told Edward that he would come and inspect the unit once the work was done.

He has received a letter from an attorney-at-law on behalf of Edward, contending, among other things, that the attorney-at-law is instructed to commence proceedings against Arnold if Arnold does not immediately, and in any event within seven days of the date of the letter:

- (i) cease disturbing Edward and his family in their use and enjoyment of Unit 2 by:
 - the playing of music every evening, between 8pm and 11pm, which often prevents them from going to sleep when they want to;
 - parking his car on part of the carport of Unit 2;
 - the noise and behaviour of Darren's children;
- (ii) failing to replace the part of the roof that lifted and the living room door, and repair the design defect in the lower floor.

Arnold seeks your advice as to what his rights and obligations are in the circumstances outlined in the letter from Edward's attorney-at-law.

Re: Woodbridge Road

Arnold tells you that he has been having some concerns relating to the lease for the premises at Woodbridge Road. He explains that it is a 10-year fixed-term lease which commenced on April 1, 2015, and that there are three adjoining buildings on the property. The main building comprises a factory/warehouse with a lunchroom and appropriate bathroom facilities, altogether comprising 17,000 square feet ("Main Building"). There are two other buildings adjoining the Main Building at the western and eastern ends, respectively. The building adjoining the eastern end of the Main Building comprises 4,000 square feet, and has a large office area, two meeting rooms, a bathroom and kitchenette ("Office Building"). The building at the western end of the Main Building comprises an open area 1,500 square feet in size, and a small bathroom ("Small Building").

Rent restriction legislation does not apply to the premises.

The lease provides, *inter alia*, as follows:

“

LEASE

...

1. *The Tenant shall:*

1.2 *pay the annual rent reserved, in advance, on the first day of each month in equal monthly instalments, by direct deposit to the bank account more fully described ... (“Bank Account”); the rent for the first year shall be \$1,200,000 and shall increase in each successive year at the rate of 5 percent per annum;*

...

1.6 *not to use the premises other than for commercial purposes, and in any event not to use the premises for an illegal or immoral purpose;*

1.7 *not at any time to assign, sublet or part with possession of the demised premises;*

...

2. *The Landlord shall:*

2.1 *permit the Tenant peaceably to hold and enjoy the demised premises during the term without any interruption or disturbance from or by the Landlord or any person claiming under or in trust for him;*

...”

Arnold instructs you that until earlier this year, he had been diligent in paying the rent on time and in accordance with the lease, despite the difficulty in doing so because of a reduction in business.

Arnold explained that the (carpentry) business had declined even further since January 2021 and that he was barely able to pay the rent for February and March. He has not been able to pay the increase for the months of April and May, although he eventually paid the rent for both months, at the old rate.

Arnold also tells you that he gets \$7,500 per week from Shawn, the wife of one of his employees, Robert, whom he allows to use the Small Building. Arnold explains that Robert approached Arnold about a month ago to ask Arnold whether he would consider allowing Robert’s wife, Shawn, to use the Small Building from time to time as an office. Robert explained to Arnold that Shawn is a graphic artist and works mostly from home, but that she sometimes has to meet clients and so she wanted a small space to use for the purposes of those meetings. Arnold said that Robert said Shawn would be willing to pay him something for the use of the Small Building. When they met, Shawn explained

that she would set up a desk and chair for herself, and two chairs for clients, and 'high spec.' computer necessary for her meetings, in the building.

Although they agreed that Shawn would not need the use of the building every day, Arnold decided that since the computer would be in the building and he was afraid of any damage or loss to it arising from his employees accessing the building he would limit himself in the use of the building, and give Shawn the exclusive use of it. He cleared out all the items he had previously stored there, and gave Shawn the keys on April 12, 2021. Arnold agreed with Shawn that for this "licence to occupy" the Small Building, Shawn would be required to pay him a flat fee per week of \$7,500, regardless of the number of days Shawn used the building for meetings.

Arnold instructs you that two days ago, George, his landlord, telephoned him, demanding that he pay the outstanding rent (i.e. the amount of the unpaid increase for April and May). Arnold says that in the same conversation George told him that he understands that Arnold has rented out the Small Building contrary to the terms of the lease.

Arnold is in distress because although his earnings from the business have declined, it remains his main source of income and he is afraid that he might lose the premises because of what George said. He is also concerned because he has not rented the Small Building to Shawn, having given her only a licence to occupy.

Arnold wants to know:

- (i) whether he has an obligation to pay the increased rent to George;**
- (ii) whether he is in breach of any of his obligations in giving Shawn the licence to occupy the Small Building; and**
- (iii) what (if any) action George can take against him.**

Advise Arnold.

Note:

Your answer should not in total exceed **4,500 WORDS**.

END OF PAPER