

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

**LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, AUGUST 2022**

LANDLORD AND TENANT

TUESDAY, AUGUST 2, 2022

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 a bibliography are not to be used.
- (g) Where word limits have been given, the actual word counts must be included at the end of your answer. Students who have exceeded the word limits will be penalised.

- (h) Students shall number the pages of their examination script as follows: Page 1 of 12, Page 2 of 12, etc.
- (i) 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.**
- (j) 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.
- (k) 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 AUGUST 2022 EXAMINATIONS, LANDLORD AND TENANT DROP BOX on TWEN** by **WEDNESDAY, AUGUST 3, 2022 NOT LATER THAN** 9:00 a.m. (Jamaica), 8:00 a.m. (Belize) and 10:00 a.m. (Eastern Caribbean).
- (l) 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 - 1185** must upload script, cover page and Academic Integrity Statement to folder titled **“Drop Box A Year I – 1100 - 1185”**.

- Year I students with Examination ID numbers between **1186 - 1271** must upload script, cover page and Academic Integrity Statement to folder titled “**Drop Box B Year I - 1186 - 1271**”.
- Year I students with Examination ID numbers between **1272 - 1357** must upload script, cover page and Academic Integrity Statement to folder titled “**Drop Box C Year I - 1272 - 1357**”.

You are an associate attorney-at-law in the firm A, B, C & Co.

The senior partner has just passed a file to you, containing the file note that he prepared after meeting with Alana, a new client of the firm, last Thursday. Alana seeks advice in connection with certain properties she owns jointly with her husband, Ben. The file note contains the information set out below.

Alana and Ben own two units in the small residential complex, Shady Grove, situated in the capital of the jurisdiction. They live in one of the units, Unit 1. Unit 2 is currently occupied by tenants.

They also own commercial premises known as 1 Hope Road, in the parish of St. Peter in the jurisdiction (Commercial Premises). The Commercial Premises comprise a three-storey building and the open area surrounding the building. The ground floor of the building was used by Ben as a dental office for many years before his retirement a few years ago.

Alana manages both Unit 2, Shady Grove, and the Commercial Premises as investment properties, on behalf of herself and Ben. Ben has given the requisite legal authorization for Alana to do so.

Rent restriction legislation applies to the Shady Grove properties. Each of them has been assessed in keeping with relevant rent restriction legislation. The rent agreed in each case (including any agreed increases) does not exceed the maximum allowable/standard rent. The maximum allowable/standard rent for Unit 2 was assessed at \$130,000 per month.

The Commercial Premises do not fall within the scope of rent restriction legislation.
There are no statutory zoning restrictions in relation to any of the properties.

Shady Grove

Unit 2

Unit 2 is rented to Carla. The lease is for a term of seven years from February 1, 2020. It is properly executed by both parties as a deed, but contains very few express provisions.

It contains a full description of the parties and the premises; an indication of the commencement date and duration of the lease; the rental amount and when and how it is to be paid; provision for the premises to be supplied with water and electricity by the landlord at the landlord's cost; and a requirement for a security deposit in the sum of \$260,000 to be paid by the tenant on signing. The annual rent of \$1,560,000 (monthly \$130,000) is due and payable on the last day of each month of the lease. The security deposit was paid, as agreed, and Carla given a receipt for it.

Alana is dissatisfied with how the relationship with Carla has evolved over recent months, for a few reasons.

First, Carla complains that a neighbour, the owner of Unit 3, has, apparently, begun to operate a catering/restaurant business from that unit as of March, 2022. Carla complains, specifically, about the noise associated with the weekday operations of the business, including the noise made by customers when they visit Unit 3 to collect their meals. She also complains about the noise on Sundays, which she says is worse than on weekdays because of the number of patrons who utilise the dining services offered on Sundays, for brunch.

More particularly, Carla complains that she considers Sunday a day of rest and rejuvenation and that the constant noise prevents her from enjoying Sundays for that purpose. Further, that when her friends occasionally come to visit on a Sunday afternoon, there is nowhere for them to park because the patrons attending brunch at Unit 3 fill the entire visitors' parking lot.

Carla is threatening to commence proceedings against Alana for breach of the terms of her lease if Alana does not stop the owners of Unit 3 from conducting the catering/restaurant business.

Alana is also suffering the noise and inconvenience associated with the operations of the catering/restaurant business by the owners of Unit 3, and is distressed by Carla's threats of court proceedings against her, particularly since she does not own Unit 3.

Second, Alana discovers that Carla is operating a hairdressing salon from Unit 2. Alana asks Carla about it and tells her to stop using Unit 2 in this way. Carla responds by saying that she is entitled to use the Unit as she sees fit; and that in any event she does not have many clients, she operates only three days a week, and, she is very careful to schedule her appointments so that there are no more than two clients at Unit 2 at any given time. Alana told Carla that if she does not stop this use, immediately, she (Alana) will have no choice but to arrange to discontinue the supply of electricity and water to Unit 2.

Third, Alana's son, Dwayne, tells her that he has been promoted to a new position by his employer, and that consequent on the promotion, he will begin to work from the business's head office located in the capital. Dwayne and his family will need to relocate from the rural parish where they are living, to the capital, and they want to live in Unit 2 since it is so close to Alana and Ben. Dwayne is scheduled to begin the new job, on November 20, 2022.

Alana wants to make Unit 2 available for Dwayne and his family and she wants Carla to vacate the property by the end of October, 2022, to accommodate Dwayne and his family in time for the start of his new job.

Required:

Advise Alana on the matters set out below.

- (i) Carla's threats to commence proceedings against her in connection with the interference arising from the conduct of the owners of Unit 3 and their patrons.

- (ii) Any recourse she might have against Carla as a result of her use of Unit 2 to operate the salon, and her plan to arrange the disconnection of the water and electricity if Carla does not cease to do so over the next couple of days.
- (iii) Her desire to terminate the lease with Carla so that she can give the Unit to Dwayne.

Commercial Building

Ground Floor

The ground floor unit, previously occupied by Ben, is rented to Ethan, also a dentist. The lease commenced on October 1, 2020, and is for a term of five years.

The terms of the lease with Ethan are set out in a deed, which was duly executed by the parties on the day it commenced, i.e. October 1, 2020.

An extract of the terms of the lease is as set out below.

LEASE

1. *The Tenant shall:*

1.1 pay the rent in the sums set out below, in arrears on the last day of each month of the tenancy, by manager's cheque, delivered to the Landlord.

The rent payable during the term is \$100,000 per month.

1.2 pay a security deposit in the sum of \$200,000 (being the equivalent of two months' rent) on or before the commencement of the lease – receipt is acknowledged;

...

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

1.7 permit the Landlord or his agent with or without workmen or others at all convenient times and after reasonable notice (which shall be for a period of no less than 24 hours) to enter on the leased premises and examine their condition;

...

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;

2.2 keep the premises in repair;

...

Alana collects the rent every month on the last day of the month at the Commercial Premises. The arrangement is that, on arrival at the Commercial Premises, Alana calls Ethan to advise that she is on property. Ethan's receptionist (usually) meets her in the parking lot, hands her a manager's cheque for the month's rent and collects a receipt from Alana for the sum paid, for delivery to Ethan.

For the last several months, every time Alana goes to collect the rent from Ethan, she finds almost every space in the large parking lot in use. She mentions her observation to Ethan in one of their brief conversations, but he dismisses it.

On a day in June, 2022, when she visits the Commercial Premises for the purposes of showing the middle floor unit to a prospective tenant, George, Alana decides to ask Ethan about this. Her concern is that there has been no appreciable difference in the number of cars in the parking lot, despite the fact that the middle floor has been unoccupied since the former tenant, a very successful attorney-at-law, moved out of the building some months before.

After meeting with George, Alana goes to see Ethan. On entering the main door to the ground floor unit, she notices that a small lobby area has been created with two doors on either side of the lobby. Ethan's name and title are etched on one door and on the other door, the following is etched: "*Dr. Holly Campbell, Ophthalmologist*".

Alana asks Ethan's receptionist about the other area, apparently occupied by the ophthalmologist. She is told that Ethan has partitioned the ground floor and has made certain modifications to provide office space for the exclusive use of his daughter-in-law, Holly, at market rent. Ethan confirms what Alana has been told by his receptionist, and gives the following additional details. The ground floor unit is divided into two separate and distinct spaces, using drywall. An additional bathroom and a small kitchenette have been established on the side occupied by Holly. Ethan has retained the use of the pre-existing bathroom and kitchenette in the part of the unit that he continues to occupy.

Alana says Ethan told her that she should be happy about the work that he has done on the place because, in the future, the re-configured space will yield extra rental income for her.

Ethan also tells Alana that Holly's patients probably account for the increase in the use of the parking lot because, according to Ethan, Holly's fees for consultations are far below the fees charged by other ophthalmologists and she has a large patient load.

Before Alana leaves that day, Ethan reminds her of her covenant to repair as set out in the lease, and tells her about certain areas where she is required to do remedial work.

Specifically, Ethan says that the hinges on the entrance door to the ground floor unit appear to have loosened; that when it rains, water enters the building through gaps in the wall where his contractor installed three additional air-conditioning units (one unit on the side Ethan occupies, and the other two units, on the side Ethan rents to Holly); and that large cracks have begun to appear throughout the unit, but more extensively in the area rented to Holly and the lobby.

Alana tells Ethan that she will send an engineer the following day, June 10, 2022, to examine the premises, and that he will also be hearing from her attorney-at-law in due course.

Alana's engineer visits the premises the following day and provides a report on his findings. In essence, the report states that the:

- contractor who had cut the wall and installed the air-conditioning units did not cut the wall to the requisite specifications, and that the contractor's ineptitude was the reason for the gaps in the wall;
- large cracks in the floors, particularly on the side occupied by Holly, was the result of the added burden on the building, arising from the large increase in the number of persons using the building and the weight of the various pieces of medical equipment installed, namely Ethan's previously installed equipment and the additional equipment installed by Holly;
- loosening of the hinges on the main door was also the result of overuse.

Alana's concerns in connection with the ground floor unit are that:

- (i) Ethan has rented a part of the ground floor unit to Holly, without Alana's knowledge or consent.
- (ii) Ethan has demanded that she rectify the problems with the current state of the premises, namely the cracks throughout the floor of the unit, the holes in the wall around the air conditioning units and the damage to the entrance door, particularly since these problems were the result of the increased burden on the premises arising from Ethan's taking in Holly as a tenant, and the negligence of the contractor who installed the air conditioning units.
- (iii) Ethan's reconfiguration of the ground floor so as to change the character of the unit by way of partitioning into two discrete offices, the addition of another bathroom and kitchenette and the holes in the walls around the new air conditioning units.

Required:

Advise Alana to her rights and liabilities in connection with the concerns outlined.

Middle Floor

Following their initial meeting earlier in June, 2022, Alana and George enter into a quarterly periodic tenancy, commencing on June 24, 2022.

It is a term of the lease that George is required to pay rent monthly, in advance, on the 24th of each month in the sum of \$75,000 per month. The lease also provides for the payment of a security deposit of \$75,000 prior to the commencement of the tenancy.

Alana gives George the keys to the Middle Floor on June 24, 2022, after she receives the first month's rent and security deposit from George.

The terms of the lease were never set out in writing.

Alana goes to collect the rent for the following month on the due date, July 24, 2022. On arrival at the Commercial Premises, she finds George loading a large professional grade printer and a filing cabinet into the back of a pickup truck.

George tells her that he has found a cheaper, more suitable place to rent and that since his friend can help him to move some heavy items that day, he has begun to move.

George tells Alana that he will provide her with "a month's notice" as soon as he signs a lease for the new place, which he plans to do later that day.

George does not pay the rent due on the day, and tells Alana that he will do so before he moves out but that, in any event, she has \$75,000 (the security deposit) for him.

Alana receives the following notice from George, on July 27.

NOTICE

July 27, 2022

I, George, hereby give you, Alana, notice of my intention to quit and deliver up possession of the middle floor unit, of building at 1 Hope

Road, in the parish of St Peter, Jurisdiction which I hold from you, in a month's time.

George

Alana is concerned about George's behaviour. Specifically, she is concerned that:

- (a) George has not yet paid the rent which fell due on July 24, 2022;
- (b) she thought she could use the security deposit and has already used it to purchase a new computer;
- (c) George has purported to terminate the tenancy so soon, and that the notice does not seem proper in the circumstances; and
- (d) her friend told her that since the arrangements with George were not set out in writing, she was not entitled to any notice at all.

Required:

Advise Alana on the matters outlined below.

- (i) What action she is entitled to take against George in connection with the unpaid rent.
- (ii) Whether George's comment about the security deposit is correct, giving reasons.
- (iii) Whether the notice given by George is effective to terminate the tenancy, giving reasons.
- (iv) Whether the fact that the relationship was never set out in writing affects your answer at (iii), giving reasons.

Your advice must not exceed **4,500 words**.

END OF PAPER