

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

**LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2024**

LANDLORD AND TENANT

(WEDNESDAY, MAY 15, 2024)

Instructions to Students

- (a) Time: **3½ hours**
- (b) Answer **ALL** questions.
- (c) In answering any question, 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.**
- (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

Andrew, an overseas student, on completion of medical school at the University, secured an internship in the capital of the jurisdiction. Having completed the programme, Andrew was no longer eligible to live in housing provided by the university, and needed a place to live.

During December 2023, Andrew was introduced to Bob, an experienced surgeon, at a party organized by the local medical association to congratulate the new graduates. During the course of their conversation it became apparent to Andrew that Bob would be one of the doctors assigned to supervise him (Andrew). He told Andrew that, he had a small one-bedroom, unfurnished, flat, adjacent to his own residence, that he could make available to him (Andrew) if he was interested.

Bob and Andrew subsequently met at the flat, which was located in the upscale community of Blue Hills. Andrew liked it, and he agreed to take it.

They agreed that Andrew would take the premises for five years, beginning on the last Saturday in January, 2024, to enable him to, 'settle in' before commencing work at the hospital on the first working day in February, 2024.

Andrew agreed to make a monthly payment of \$50,000 into Bob's bank account on the first calendar day of each month, to cover a standing order for Bob's mortgage payment. Bob also insisted that Andrew pay him an additional sum of \$75,000, before moving into the flat.

Andrew undertook to effect, at his own cost, any repairs to the flat that became necessary, and to directly engage, and pay, the relevant service providers for any utilities he required at the flat.

Although he said it was unlikely that he would use it, Bob insisted on including a clause in the agreement, providing that he (Bob) could terminate their agreement at any time, by giving Andrew no less than three months' written notice. He (Bob) also insisted on the

agreement being executed as a deed, and to its being called a “licence”, “to avoid complications”, and they did so.

Andrew came to see you recently. He has instructed you as follows:

1. That the outgoings associated with the flat are too high given that he has already had to spend \$30,000 on plumbing and electrical repairs in the few months since moving into the flat; and also, because he had recently taken a loan to purchase a car and had to service the loan payments.
2. That his friend and colleague, Chad, occupies a much bigger two-bedroom flat closer to the hospital where they work. Chad had indicated a willingness to allow him (Andrew) to occupy the smaller of the two bedrooms with adjoining bathroom, exclusively, and share the common areas with him (Chad), if he (Andrew) would pay him \$18,000 each month, and split the cost of utilities with him. That further, Chad was willing to hold the place for him if he paid \$18,000 within the next week. The bedroom being offered by Chad is unfurnished.
3. He wants to take up Chad’s offer. He has asked you to prepare and deliver, as soon as possible, a notice to Bob terminating their relationship in three months’ time, and demanding the immediate refund of the \$75,000 paid to Bob in January, so that he can pay Chad \$18,000 and have some cash in hand.

Rent restriction legislation applies to both premises.

Advise Andrew on:

- (i) the nature of the agreement with Bob, and the rights and obligations arising therefrom, including whether he is entitled to terminate the agreement; and
- (ii) whether he can immediately recover the \$75,000 from Bob.

Your advice must, in each case, clearly indicate the reasons for the advice.

QUESTION 2

David owns a two-acre lot in the quiet community of River View. The lots in River View are statutorily zoned for residential use. Rent restriction legislation applies to the lots in River View.

David's lot comprises a two-storey dwelling house, and a bungalow. Access to both buildings is facilitated by a common entrance gate and driveway.

David converted the two-storey dwelling house into three separate units a few years ago, and the units are occupied by Ethel, Gavin, and Holly. Ethel occupies the unit on the upper floor, Unit A, and Gavin and Holly occupy the units on the lower floor, Units B and C, respectively. Access to the upper floor is provided by a staircase located on the eastern side of the building. David lives in the bungalow.

Both Ethel's and Gavin's leases commenced on April 5, 2021, and are for a term of eight years each. Both Ethel and Gavin entered into written leases executed as deeds.

Holly entered into possession of Unit C on October 1, 2023, and pays a yearly rent to David. There is no documentation executed between David and Holly.

None of the three leases makes any provision for forfeiture.

David has come to see you on several matters, most of which were raised by Holly, who threatened to commence proceedings against him if he did not address her concerns to her satisfaction.

David instructs you as follows.

1. That he has noticed over the last couple of weeks or so, several strangers going to and coming from Unit A, occupied by Ethel.

That, although he has not been able to ask Ethel about it, Holly has told him that Ethel had been using the unit not only as her residence, but, since mid-April 2024,

also for the purposes of an exclusive day spa; and that she operates the day spa six days per week. That Holly said that Ethel recently invited her to partake of her services.

Holly's complaints were that Ethel's business facilitates strangers (Ethel's clients) who regularly enter the property and peer into Unit C, which Holly occupies as her residence, whenever they use the staircase to go to and from Ethel.

Furthermore, that when she complained to Ethel, Ethel told her (Holly) that "you had better get used to it because, having recently retired, the earnings from the spa will be my main source of income. Furthermore, my clients are not interested in looking into your unit, and that if you are so concerned, you can put up a curtain to block their view".

2. Holly complained that on Saturdays, Gavin is involved in carpentry, making various pieces of furniture for family members and friends, and that she is disturbed by the noise of the various machines and implements used by Gavin. In particular, that she is unable to sleep on Saturday afternoons, as she likes to do, when he is involved in making the furniture because on those days he typically begins at 7:00 a.m. and goes until sunset. According to David, Gavin's carpentry is a hobby which he has engaged in for many years.
3. Holly has also complained that, last week, Gavin purchased additional sheets of lumber which he has stored in an area which causes some of the pieces to protrude from his Unit (Unit B) onto part of the area specially designated for her (Holly) to park as occupant of Unit C, and that makes it more difficult for her to park and enter her unit through her front door. She said that when she raised the matter with Gavin, he said that she should "just be patient since in another couple of weeks the lumber would have all been used up".

4. Holly seems to be a busybody and that although he understood her concern about Ethel, it might suit him to terminate his relationship with Holly and find a more agreeable tenant.

David seeks your advice as to:

- (i) What if any liability he has to Holly, in relation to -
 - (a) her complaints concerning the disturbance caused by Ethel's use of the premises for the purposes of a day spa;
 - (b) the disturbance from Gavin's carpentry work on some weekends; and
 - (c) the lumber protruding from Gavin's unit onto Holly's parking area.
- (ii) How, and the earliest date when, Holly's relationship with David can/will be brought to an end; and whether, and if so, any additional steps he must take to recover possession of Unit C from Holly, so that he can rent it to someone else.

Your advice must, in each case, clearly indicate the reasons for the advice.

QUESTION 3

Irwin, a businessman, returned to the jurisdiction in 2020 with plans to set up a custom-made tailoring business. For the purposes, he entered into a lease of commercial premises situated in the Executive Commercial Complex (Complex) in the jurisdiction, which was, at the time, newly constructed. The Complex comprised several commercial spaces and carried a number of high-end clothing, shoe and accessories stores. Although the rent was higher than he had budgeted, Irwin took the lease because the patrons of the other stores in the Complex were those he wanted as customers. Given the size of the unit, Irwin decided to use a part of it to display fabric for sale to his customers. The remaining space he uses for the actual tailoring work. The unit that Irwin rents is Unit 5, and it is

owned by Jessica. He has been advised that Unit 5 had been valued the previous year, at \$25,000,000.

Rent restriction legislation does not apply to any of the units in the Complex.

His lease was for a term of 10 years from March 1, 2021, and was executed as a deed.

The terms of the lease include the following:

LEASE

1. The Tenant shall:

1.1 pay the rent, monthly, into the Landlord's account named in the Schedule on the first day of each month of the term, and in the sum of \$50,000;

...

1.3 not assign, or sublet, the demised premises without the prior written consent of the Landlord;

1.4 keep the demised 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 under or in trust for him;

...

Last week, Irwin came to see you on matters relating to the lease. His instructions were that:

1. Although business was initially good, it gradually declined, most significantly, following the opening of a new commercial complex in the capital in June 2023, and the movement out of the Complex, of several of the businesses that had operated there when he entered into the lease.

The loss of business impacted his ability to pay the rent, which had fallen into arrears since March 2024.

2. As a result of the passage of a recent tropical storm across the jurisdiction, part of the roof of the unit was blown off and several window panes were broken, and need to be replaced.

In addition, over time, some of the wooden floor panels in the unit had become damaged.

An engineer who inspected the premises confirmed that the flooring would need to be replaced, and advised that the damage was worsened by an underlying design defect in it (the flooring) from the time the building was constructed. Further, that in order for the repairs to be properly done, the design defect would need to be corrected.

Irwin received an estimate of the cost of repairs, as follows:

AC Engineering Company Limited

Estimate of Repairs

April 23, 2024

To: Irwin

RE: Unit 5 – Executive Commercial Complex

<i>Replacement of zinc sheets (materials and labour)</i>	<i>\$150,000</i>
<i>Replacement of window panes (x 12) (materials and labour)</i>	<i>\$ 40,000</i>
<i>Replacement of wooden floor panels (materials and labour)</i>	<i>\$ 80,000</i>
<i>Rectification of design defect in flooring</i>	<u><i>\$ 35,000</i></u>
	<i>\$305,000</i>

3. Two days ago, Russell, the operator of a restaurant business adjoining his (Irwin's) unit, indicated an interest in taking a lease of part of his (Irwin's) unit for a year, in the first instance, to expand his (Russell's) business. Russell proposed the period June 1, 2024 - May 31, 2025 at a monthly rental of

\$30,000. That he (Irwin) was thinking that the offer proposed by Russell might give him (Irwin) an opportunity to earn a contribution to his own rent, and the space to consider his next steps. He decided that he would give Russell the space that he (Irwin) currently uses to display fabric.

In view of the circumstances outlined, Irwin seeks your advice as to:

- (i) any liability he has to Jessica in relation to:
 - (a) the non-payment of rent; and
 - (b) the estimated remedial work, given that the damage to the roof and windows was the result of an Act of God; and that the degree of damage to the flooring was worsened by a defect in its design at the time the building was constructed; and

- (ii) whether he can go ahead with the offer from Russell.

Your advice must, in each case, clearly indicate the reasons for the advice.

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