



THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

UNIT 10 – LANDLORD AND TENANT*

Time allowed: 3 hours plus 15 minutes reading time

Instructions to Candidates

- You have **FIFTEEN** minutes to read through this question paper before the start of the examination.
- **It is strongly recommended that you use the reading time to read the question paper fully.** However, you may make notes on the question paper or in your answer booklet during this time, if you wish.
- **All questions carry 25 marks. Answer FOUR only of the following EIGHT questions. The question paper is divided into TWO sections. You MUST answer at least ONE question from Section A and at least ONE question from Section B.**
- Write in full sentences – a yes or no answer will earn no marks.
- Candidates must comply with the CILEx Examination Regulations.
- Full reasoning must be shown in answers. Statutory authorities, decided cases and examples should be used where appropriate.

Information for Candidates

- The mark allocation for each question and part question is given and you are advised to take this into account in planning your work.
- Write in blue or black ink or ballpoint pen.
- Attention should be paid to clear, neat handwriting and tidy alterations.
- Complete all rough work in your answer booklet. Cross through any work you do not want marked.

Do not turn over this page until instructed by the Invigilator.

* This unit is a component of the following CILEx qualifications: **LEVEL 6 CERTIFICATE IN LAW, LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW AND PRACTICE** and the **LEVEL 6 DIPLOMA IN LEGAL PRACTICE**

SECTION A
(Answer at least one question from this section)

1. "The tenant possessing exclusive possession is able to exercise the rights of an owner of land, which is in the real sense his land albeit temporarily and subject to certain restrictions. A tenant armed with exclusive possession can keep out strangers and keep out the landlord."

Lord Templeman, *Street v Mountford* (1985)

Critically examine the methods used to determine whether "exclusive possession" has been granted and assess the extent to which the statement of Lord Templeman accurately reflects the scope of the principle in relation to both residential and business premises.

(25 marks)

2. Critically examine the scope and effect of the Landlord and Tenant Act 1954 Part II in relation to:

- (a) the conditions that must be met for an occupier of premises to be afforded protection under the Act;

(8 marks)

- (b) the impact of the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003;

(8 marks)

- (c) the difficulties faced by a landlord in opposing a new lease under s.30 of the Landlord and Tenant Act 1954 grounds (f) and (g).

(9 marks)

(Total: 25 marks)

3. Critically compare the 'cases' for possession of tenancies under the Rent Act 1977 with the 'grounds' for possession of assured tenancies under the Housing Act 1988.

(25 marks)

4. "In our view, the underlying problem is that the current law is excessively technical and unnecessarily complicated. As a consequence, it is difficult for those who are unfamiliar with the system to understand what is involved in the forfeiture of a tenancy and to appreciate the consequences of the parties' actions."

Termination of Tenancies for Tenant Default, Law Commission CM6946 (2006)

In the light of this statement, critically assess the extent to which forfeiture is an effective remedy for landlords.

(25 marks)

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SECTION B
(Answer at least one question from this section)

Question 1

King George's Court is a purpose-built block of flats which comprises six separate units. The flats were let to different tenants in 1964 for the duration of 99 years, subject to a ground rent and payment of service charges. Currently, three of the six flats are occupied by the holders of the long leases as their residence. The remaining three flats have been sublet by the long leaseholders to short-term residential tenants on Assured Shorthold Tenancies under the Housing Act 1988. The freehold is currently owned by Loki Associates Ltd ("Loki").

Tyra purchased the long lease of her first-floor flat in 2005 as part of a downsizing following her retirement. Since moving in she has encountered a number of problems with the occupants of flat 12, the flat which lies directly below hers. Tyra's main contention is that the young couples' children are too noisy, especially in view of the fact that Tyra is occupying the flat as her retirement home. Tyra is also concerned that the couple appear to be using the entrance hall as a part of their flat. The hall is constantly cluttered with bikes and prams while the couples' children leave toys on the floor and on the stairs. Tyra believes the current state of affairs constitutes a hazard for her elderly guests.

Tyra initially complained to Loki but it claimed it was powerless to do anything. Loki suggested Tyra should pursue the matter with the immediate landlord, Nicolas, and provided her with his telephone number. When she telephoned Nicolas he was unpleasant and uncooperative.

On phoning Loki a second time, the usual representative with whom she dealt was unavailable. Tyra was informed by her secretary that Loki would no longer be dealing with the property as it has negotiated a sale of the freehold reversion to another company, Addington Developments Ltd ("Addington").

Tyra searched for Addington on the internet and was concerned that some forums were littered with complaints about Addington's sharp business practices.

Advise Tyra as to:

- (a) any action she might bring in relation to flat 12 and against whom that action should be brought;

(12 marks)

- (b) whether Loki can sell the freehold to Addington or whether there are any steps the long leaseholders can take to prevent the acquisition.

(13 marks)

(Total: 25 marks)

Turn over

Question 2

Theresa rents a flat that she occupies as her home. She is unclear as to the landlord's identity but the letting is managed by a local company, Simplelet. The tenancy was granted on the 21 October 2010 and the agreement she signed was expressed to run for six months. The agreement was never renewed.

Theresa has never fallen into serious arrears with her rent but for the last six months she has been paying the rent on the 23rd of each month rather than the 21st on account of a change to her monthly pay day.

Recently, Theresa noticed a number of strange occurrences with the electrical appliances in the flat. For example, her computer tended to crash when her washing machine started a cycle and whenever the cooker and the television were on at the same time the fuse box in the hall would cut out. When she eventually managed to contact Simplelet, its representative was far from helpful. In a rather heated conversation it was explained to Theresa that landlords were not legally responsible for tenant's possessions and that if she had a problem with her electrical equipment she should take it to a repair shop or buy better quality goods.

Unsatisfied with the outcome of the conversation, Theresa expressed her complaints in a letter which she then sent to Simplelet by registered post. In reply, Simplelet warned Theresa that if she did not stop troubling its staff it would have no choice but to serve notice on her. Simplelet warned her that as the original letting contract had not been renewed she would only be entitled to one week's notice and that if it was forced to evict her it would also pursue a claim for damages in relation to the delayed payment of rent.

Advise Theresa.

(25 marks)

Question 3

Hardcore Haulage ("Hardcore") is a company that transports and sells stone of various types and descriptions. Hardcore lets two sites from Landroff Holdings ("Landroff") under two separate leases. Both leases contain a covenant preventing assignment without the consent of the landlord.

The first site was let for the purposes of a distribution yard. The lease was renewed in 2009 and was expressed to run for ten years. Hardcore uses the yard as its central hub and lorries from this site distribute Hardcore's stone all over the country. Recently, Landroff has started to clear the land surrounding the yard. Landroff's intention is to build an out-of-town shopping complex on the newly cleared land. As part of the development, Landroff has proposed a series of traffic-calming measures. Hardcore is concerned. It believes that, at the very least, the traffic-calming measures will increase its fuel costs and, at worst, the measures will prevent Hardcore from being able to use the site as a distribution yard at all.

The second site Hardcore lease from Landroff was let for use as a general builders' yard. Following a fall-off in trade, however, Hardcore no longer wants to occupy the land and wishes to assign the lease. It has found a suitable assignee but Landroff have refused to take up references unless Hardcore pay Landroff a one-off fee of £10,000 and agree to act as guarantor for any assignee.

Advise Hardcore Haulage.

(25 marks)

Turn over

Question 4

Tom is a car mechanic, who ran a successful car repair firm for more than 40 years. Tom occupied his most recent workshop by virtue of a 25-year lease granted by Lexor Fleet Operations ("LFO") in 1992.

The lease included the following covenants:

- (i) that the tenant will pay rent;
- (ii) that Tom will repair LFO's fleet cars at cost for the duration of the lease;
- (iii) that the tenant will maintain all the tools and fittings in the workshop in proper working order;
- (iv) that the tenant will not assign the lease without first obtaining the consent of the landlord.

Tom retired three months ago and the remainder of the lease was assigned to his son Robert, who has taken over the running of the family firm.

Last month, LFO received the six-monthly bill from Robert for the repair of their fleet cars. From the invoice it was apparent that Robert had applied a significant mark-up and is now charging LFO more than cost price.

Robert has also informed LFO that he no longer intends to maintain the tools in the workshop. He claims the tools are out of date and that it would cost more to maintain them than they are worth.

- (a) Advise LFO as to the enforceability of the covenants in the original lease.

(14 marks)

- (b) How would your answer differ if the lease had been granted to Tom in 1998?

(11 marks)

(Total: 25 marks)

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