



CILEX Level 6 Single Subject Certificate/CILEX Level 6 Professional Higher Diploma in Law and Practice/CILEX Level 6 Graduate Fast-Track Diploma

Unit 10 – Landlord and Tenant Law

Question paper

June 2023

Time allowed: 3 hours and 15 minutes (includes 15 minutes reading time)

Instructions and information

- It is recommended that you take **fifteen** minutes to read through this question paper before you start answering the questions. However, if you wish to, you may start answering the questions immediately.
- There are **two** sections in this question paper — Section A and Section B. Each section has four questions.
- You must answer **four** of the eight questions — at least **one** question must be from **Section A** and at least **one** question must be from **Section B**.
- This question paper is out of 100 marks.
- The marks for each question are shown — use this as a guide as to how much time to spend on each question.
- Write in full sentences — a yes or no answer will earn no marks.
- Full reasoning must be shown in your answers.
- Statutory authorities, decided cases and examples should be used where appropriate.
- You are allowed to make notes on your scrap paper during the examination.
- You are **not** allowed access to any statute books.
- You must comply with the CILEX Exam Regulations – Online Exams at Accredited Centres/CILEX Exam Regulations – Online Exams with Remote Invigilation.

Turn over

SECTION A

Answer at least one question from this section.

1. "There can be no tenancy unless the occupier enjoys exclusive possession; but an occupier who enjoys exclusive possession is not necessarily a tenant." (Lord Templeman, Street v Mountford (1985))

Critically assess whether this statement reflects an unhelpful degree of uncertainty in this area of the law.

(25 marks)

2. (a) Critically evaluate the impact of the Landlord and Tenant (Covenants) Act 1995 in relation to the enforceability of the tenant covenants in a lease following assignment or underletting.

(16 marks)

- (b) Critically evaluate what effect the ability of a landlord to require an authorised guarantee agreement from a tenant has on that impact.

(9 marks)

(Total: 25 marks)

3. Critically assess whether the security of tenure provisions in Part II of the Landlord and Tenant Act 1954 unduly favour the interests of tenants to the detriment of landlords.

(25 marks)

4. "Whatever the deficiencies of the Rent Act 1977 may have been, the introduction of the assured shorthold tenancy unduly favoured landlords over tenants. The proposals to abolish section 21 of the Housing Act 1988 and to move all tenants who would previously have had an assured tenancy or assured shorthold tenancy onto a single system of periodic tenancies (as set out in the White Paper 'A fairer private rented sector') will restore the balance between them."

Critically evaluate this statement.

(25 marks)

SECTION B

Answer at least one question from this section.

Question 1

Alain leases a two-storey building on Kempston High Street from Brendan. The building comprises a shop unit on the ground floor (which is occupied by Alain for the purposes of his hairdressing business) with a flat on the first floor. Alain lived in the flat until March this year, when he moved into a new house with his partner.

Alain's lease:

- prohibits assignment or underletting of the whole or any part of the premises without first obtaining the landlord's consent, which is not to be unreasonably withheld
- contains a proviso for re-entry on breach of covenant
- requires Alain to pay the annual rent (£24,000) quarterly in advance on the usual quarter days.

Following a relationship breakdown in late March this year, Alain's sister, Celine, urgently needed somewhere to stay. As a temporary measure, Alain let Celine move into the flat above the shop. She continues to live there and so far has paid Alain £250 on the first day of April, May and June as a contribution to the rent payable by Alain.

Cash flow problems earlier this year meant that Alain was unable to pay the March quarter's rent when it fell due.

Last week, Brendan went to see Alain to emphasise that he was expecting Alain to pay the rent arrears and the June quarter's rent in full on the June quarter day. Whilst Brendan was in the shop, he became aware that Celine was living in the flat. Brendan told Alain that Celine's occupation of the flat was a breach of the lease and that he would be taking steps to "sort this mess out".

Yesterday, both Alain and Celine received letters from Brendan. The letter to Alain stated that Brendan intended to bring forfeiture proceedings for non-payment of rent and unlawful underletting. The letter to Celine stated that she had seven days to vacate the flat, failing which Brendan would instruct agents to remove her and her belongings.

Advise:

- (a) Alain as to whether Brendan is entitled to forfeit the lease and, if so, how Alain might avoid this;
(17 marks)
- (b) Celine as to whether Brendan can require her to leave as set out in his letter.
(8 marks)

(Total: 25 marks)

Turn over

Question 2

Darius owns the freehold of a large Edwardian house in Kempston, which he has converted into three flats. Two of the flats (Flats 1 and 2) share the use of the front door to the house and an entrance hall, from which leads a flight of stairs up to Flat 2. The third flat (Flat 3) is located in the converted basement of the house and is accessed via an external staircase at the front of the house.

Darius lets out the flats on assured shorthold tenancies for an initial fixed term of six months and then allows a periodic tenancy to arise once the fixed term has expired. Each tenant pays £950 per month. Each of the tenancy agreements contains an express covenant by Darius “to keep the structure and common parts of the Building (including, for the avoidance of doubt, the external staircase to Flat 3) in good and substantial repair”.

Flat 1, which is located on the ground floor, is occupied by Eli. He has complained to Darius that there appears to be a problem with the drains. In particular, the bath and washbasin in the bathroom seem to drain more slowly than before. As a result, foul odours are entering the flat from the waste outlets in both. Darius has suggested that Eli should pour some drain cleaner and/or bleach into the bath and washbasin in order to solve the problem, but Eli is adamant that that is not his responsibility.

Flat 2, which is located on the first floor, is occupied by Farah. She has complained that the flat suffers from mould and damp: a surveyor friend has told Farah that these conditions are caused by condensation which is attributable to poor ventilation in the property as a result of the way in which the house was originally constructed. Farah has asked Darius to sort out the mould and damp, to which he replied that she should open the windows in the flat more often.

Guinan is the tenant of Flat 3. Last week, when walking down the exterior staircase to the flat, Guinan fell and sustained a broken wrist and multiple bruising. Guinan has told Darius that she considers him to be responsible for her injuries: she claims that she would have been able to prevent herself from falling if there had been a handrail on the stairs that she could have grabbed onto. Darius tells you that there was no handrail on the stairs when he bought the property several years ago, and he has never been asked, nor felt he was under any obligation, to install one.

Advise Darius whether he has any obligation or liability in respect of any of the above matters about which his tenants have complained.

(25 marks)

Question 3

Hotspur plc operates an out-of-town retail outlet centre at which various retailers sell discontinued or slightly damaged goods at substantial discounts to the public. Shop units at the centre are let on fixed terms of three years at an agreed rent which is payable monthly in advance.

Hotspur uses a property management company (Ivanhoe Ltd) to manage the centre, including dealing with all the practical arrangements for granting any new lease of a vacant unit.

In September 2022, Ivanhoe was approached by Jagtar, who wanted to take a lease of one of the vacant units at the centre. However, Jagtar was only willing to take a new lease if certain repairs were carried out to the unit, so he signed an agreement for lease under which he agreed to take a lease of the unit once the repairs were completed (which was expected to be within a five-to-six-week timescale). Ivanhoe signed the agreement for lease on behalf of Hotspur. The draft lease for the unit was attached to the agreement for lease.

Ivanhoe informed Hotspur of the agreement and was told to send the two parts of the lease to Hotspur and Jagtar respectively for execution once the repairs had been carried out.

The repairs were completed on schedule. Jagtar's part of the lease was then sent to him for execution but unfortunately Hotspur's part was not sent to it for execution. When Jagtar delivered his duly executed part of the lease to Ivanhoe, he was given the keys to the unit.

Jagtar has been trading from the unit since that time and has regularly paid the monthly rent since taking possession. However, in the last couple of months he has realised that the business is not making a profit.

Jagtar has consulted you for advice as to how he might terminate the lease. He tells you that, ideally, he would like to give one month's notice to quit.

Advise Jagtar.

(25 marks)

Turn over

Question 4

Kempston Mansions is a former Victorian warehouse that has been converted into a block of six separate flats. The flats were each originally let to different tenants in 2009 for a term of 125 years, subject to a ground rent and payment of a service charge. Three of the current long leaseholders live in their respective flats. The remaining three flats have been underlet by the respective long leaseholders to short-term residential undertenants on assured shorthold tenancies under the Housing Act 1988.

The freehold of Kempston Mansions is owned by Lupine Properties Ltd (Lupine).

Magda purchased the long lease of her ground floor flat in 2017. Since moving in, she has encountered a number of problems with the young couple who live in the flat directly above her. They are tenants of one of the long leaseholders (Nina). Magda's main complaint is that the couple are too noisy, often playing loud music late into the night. Magda is also concerned that the couple appear to be using the entrance hall to Kempston Mansions as a part of their flat, with the entrance hall repeatedly being left cluttered with their bikes and other sports equipment.

Magda initially complained to Lupine, who promised to take action. However, after waiting several weeks and with no improvement having occurred, Magda rang Lupine again. However, on this occasion she was told that Lupine would no longer be dealing with the property, as it had negotiated a sale of the freehold reversion to another company, Opal Properties Limited (OPL).

Magda has carried out some internet research into OPL and is concerned that some of the online forums she visited contain serious complaints about OPL's performance as a landlord in relation to other properties it owns and manages.

Advise Magda as to:

- (a) any action she might bring against Lupine in relation to the noise and activities of the young couple;

(12 marks)

- (b) whether there any steps that she and the other long leaseholders can take to prevent the sale to OPL.

(13 marks)

(Total: 25 marks)

End of the examination

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