

19 January 2022
Level 6
LANDLORD AND TENANT LAW
Subject Code L6-10

THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

UNIT 10 – LANDLORD AND TENANT LAW

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 this question paper fully.** However, you may make notes on this 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. This 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.

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

1. Explain:

(a) the requirements for creating a legal leasehold estate;

(13 marks)

(b) the circumstances in which an equitable leasehold estate may come into existence.

(12 marks)

(Total: 25 marks)

2. “Until the landmark decision of Forbes J in Ravenseft Properties Ltd v Davstone (Holdings) Ltd (1980) it had been widely thought that a repairing covenant did not require the covenantor to make good what was described as an ‘inherent defect’ in the subject-matter of the covenant” (per Lewison LJ in Mayor and Commonalty and Citizens of the City of London v Various Leaseholders of Great Arthur House (2021)).

Critically evaluate, with reference to this statement, how the common law in relation to a covenant to repair has evolved since the decision in *Ravenseft Properties*.

(25 marks)

3. Critically evaluate the implied obligations that are owed by a landlord to a tenant.

(25 marks)

4. Critically evaluate:

(a) what distinguishes a lease from a licence;

(11 marks)

(b) the principal consequences of that distinction;

(5 marks)

(c) the factors which may override that distinction in order to justify the conclusion that only a licence has been granted.

(9 marks)

(Total: 25 marks)

Turn over

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

Question 1

Amal owns a high-street building consisting of separate commercial units on the ground and first floors of the building.

The first floor unit is let to Benjamin, an aspiring artist, for use as a studio. Twelve months ago, Benjamin took the premises on terms that the letting would be for an initial period of three months and thereafter from month to month until notice of termination was served by either himself or Amal. Benjamin has not yet sold any of his paintings, but he makes a living by drawing caricatures for tourists at a nearby theme park. Unbeknown to Amal, Benjamin has also been living at the studio for the last two months, after splitting up with his girlfriend.

The ground floor unit is let to Clarisse. She runs a coffee shop from the premises. When Clarisse first approached Amal in May 2021 about taking the premises, shortly after the relaxation of Covid-19 restrictions, she was unsure whether the business would be a success. She also had very little money. Amal therefore agreed that:

- he would let Clarisse have the premises for a trial period of six months, with the opportunity for Clarisse to extend the lease for a further six months if things went well (Clarisse duly exercised the right to extend in November 2021, with the result that her lease now expires in May 2022);
- he would take 25% of Clarisse's turnover each month by way of rent.

In December 2021, Amal received an offer from a supermarket operator, which wants to buy the building and convert it into one of its supermarkets (with the retail operation on the ground floor and staff rooms, storage and other ancillary facilities on the first floor). The prospective buyer has told Amal that it will only proceed with the purchase if it can secure vacant possession of the building.

Clarisse has not paid any rent to Amal for the last two months. She claims that she is not obliged to do so, because she has not made any profit from the business over the winter. However, she is refusing to provide any financial information to Amal about the business.

Advise Amal as to:

- (a) whether the tenancies in favour of Benjamin and Clarisse are protected by the Landlord and Tenant Act 1954 and, if so, the nature of the protection that they enjoy;
(11 marks)
- (b) what steps he should take to terminate each of the tenancies;
(7 marks)
- (c) his chances of success, in each case, of obtaining vacant possession.
(7 marks)

(Total: 25 marks)

Question 2

Dover Court is a development that consists of two former Victorian warehouses, which were converted into separate blocks of flats in the mid-1990s. Each block contains 20 flats. All 40 flats were sold off shortly after completion of the conversion works to different tenants by way of long lease for a term of 125 years subject to a modest ground rent and payment of a service charge. The blocks of flats are now known as 'The Laurels' and 'The Cedars' respectively.

Dover Court is owned and managed by Evergreen Homes Limited (EHL). EHL is the landlord in relation to all the flat leases. For many years, the flat tenants have been unhappy with EHL's management of Dover Court.

Farouk owns one of the flats in The Laurels. He has received a letter from EHL informing him that EHL is planning to sell Dover Court to Gargantua Management Limited (GML) and that, following the sale, Farouk will need to pay his ground rent and service charge to GML.

Farouk has consulted you in relation to the proposed sale. He believes that it would be beneficial for all the tenants if they could buy Dover Court from EHL because they would be able to:

- take control of the very large service charge sinking fund currently being held by EHL;
- use that fund to pay for the essential repairs and decoration needed at Dover Court;
- establish a proper programme of repair and maintenance for the future;
- set service charge contributions at a reasonable level.

Farouk tells you that 20 of the other tenants are also interested in buying Dover Court: 10 of them live in The Laurels and 10 of them live in The Cedars.

Advise Farouk:

(a) as to the circumstances in which Part 1 of the Landlord and Tenant Act 1987 would allow him and the other interested tenants to buy Dover Court from EHL;

(16 marks)

(b) what steps they would need to take.

(9 marks)

(Total: 25 marks)

Turn over

Question 3

In May 2020, Helen let a house in London to Imogen for a term of six months by way of an Assured Shorthold Tenancy agreement. Imogen moved in with her young son, Jack. Imogen and Jack continue to occupy the house as their home.

Last month, Helen telephoned Imogen, to inform her that she intended to repair and redecorate the exterior of the house. Helen said that she would be engaging contractors to do the work, and that they would need access to the interior of the house in order to carry out works to some of the more inaccessible parts of the exterior (by leaning out of windows, etc), as well as to make cups of tea and to use the other facilities in the house. These works would be completed while Imogen was at work and Jack was at school. Helen estimated that it would take about two weeks to complete the redecoration.

Imogen replied that she was uncomfortable with this proposal, because she was concerned about a loss of privacy. When Helen said that Imogen had no choice in the matter, Imogen replied, 'Well, we'll see about that'.

Imogen subsequently changed the locks on the front and back doors to the house, and has since refused Helen's requests to be allowed entry to the house.

Last week, Helen sent a letter to Imogen, giving her one month's notice to terminate the tenancy 'because you are in breach of our agreement and you are stopping me from carrying out necessary works to my property'.

In that letter, Helen also stated that if Imogen did not leave voluntarily at the end of the notice period, then she would:

- authorise a locksmith to use force to gain entry to the house;
- arrange for the locks to be changed again, so as to deny Imogen the ability to re-enter the house;
- hold Imogen responsible for the costs of engaging the locksmith and repairing any resultant damage to the house.

You have been consulted by Imogen in relation to Helen's letter.

Advise Imogen.

(25 marks)

Question 4

Karim is the owner of a shop which is currently let to Lakmali under a five-year lease, the terms of which include:

- a covenant to use the premises for the sale of sandwiches, hot and cold beverages and ancillary products only;
- a covenant not to use the premises as a hot food takeaway;
- a covenant to pay the rent quarterly in advance.

The lease also includes a proviso for re-entry in the event of any breach of the tenant's covenants.

Lakmali did not pay the last quarter's rent. When Karim visited the shop last week to discuss the arrears with her, he discovered that Lakmali was selling freshly toasted sandwiches and paninis, along with hot soups, at the shop.

Karim has now consulted you as to whether he can terminate the lease because of Lakmali's breaches of covenant. He also wishes to know what other remedies might be available to him.

In the course of your meeting with him, Karim tells you that Lakmali has just asked him to come round to the shop later that day, so that she can pay him the outstanding rent.

Advise Karim.

(25 marks)

End of Examination Paper