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### **Question 1.**

#### **Quiet Enjoyment**

A landlord has the duty to make available a leased property to a tenant for the quiet enjoyment of the tenant starting at the date of the tenancy, in both commercial and residential leases. For residential leases this is in addition to the implied covenant of habitability, which is not present in commercial leases. When a tenant is unable to take possession of a property, the tenant has three rights: (i) notify the landlord and request possession of property, withholding the lease until said property is made available, (ii) terminate the lease and claim damages, (iii) find a similar property and claim damages until the landlord enables acquisition of possession.

#### **Damages**

Compensatory damages aim to bring back the non-breaching party to a position as if the breaching party had not breached and the contract was valid. They include damages directly related to the breach, as well as any foreseeable breaches that occur which are a reasonable result of the breach as reasonable at the date of formation. Any loss of profit damages must be envisaged before the contract, if time is of essence. Merely a date being stated does not make time of essence in a contract.

Here, Tuan has entered into a commercial lease of a warehouse, leased by the landlord Leo, with a start of January 1. Tuan tried to enter into the property and was faced with Anika, meaning Leo had breached his duty to provide Tuan possession of the property in line with the lease agreement. Tuan immediately rented an identical warehouse. If Tuan informed Leo as to the matter and Leo did not take immediate action, Tuan may request the difference in rent of Leo's warehouse and Bruno's warehouse (\$500) until Leo makes available as compensatory damages. Any incidental damages can also be claimed such as move in/out truck fees, broker fees incurred. Here we can understand that time is of essence, so a loss of profit could perhaps also be claimed but the facts state that Tuan immediately rented a new warehouse, so Tuan should not be able to claim any damages for not being able to store his inventory, and therefore loss of profit.

### **Question 3.**

#### **Complete possession**

If a landlord does not provide possession to the entirety of a leased property, the tenant must provide notice to the landlord and (i) request the landlord remediate such deficit immediately and provide a reasonable time such remediation, (ii) decrease the rent proportionally, (iii) withhold the entire rent until the deficit is remediated. If the landlord does not remediate the issue within the reasonable amount of time, the tenant may terminate the lease and sue for damages.

#### **Liability for rent**

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If a tenant vacates a property without just cause, they will be liable for the rent until the end of the contract term. A landlord must try to rent the property to another tenant in good faith, but if they cannot find a new tenant or must lease at a lower rent (acting in good faith), then the tenant will be liable for the difference in rent. Additionally any incidental charges will also be the tenant's liability.

Here, upon Anika vacating the warehouse for Tuan to take over possession, Tuan did not provide Leo the option to remediate, and immediately terminated the lease. As Tuan did not let Leo remediate, Tuan was still tied with the contract and liable for rent payments. We understand that Leo in good faith tried to rent the warehouse to another tenant immediately the next day, and was only able to rent for \$500. Tuan will be liable for the difference in rent, namely \$500 a month until the end of his tenancy agreement on Jan 1 for another 9.5 years.

Question #3 Final Word Count = 626

**END OF EXAM**