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KENSINGTON SWAN

Opinionated?

2020 Legal Opinion Competition

**Fact
Scenario**
Leasing
unkindness

Your team works in the commercial property department of a large Dunedin law firm. Your supervising partner, George Wendy, has just come back from a meeting with one of his clients, Kirsty Lane. For many years she has run a popular bar and nightclub near the Octagon called 'Churs'. George is one of her most loyal patrons. At Churs, he goes by the name of 'Big Norm'. Kirsty likes to think of Churs as a place where everybody knows your name, but in reality it's more of a place where everyone drinks so much that they forget their own name, like George...

Kirsty usually comes to the firm with employment law and liquor licensing issues. This time she has far bigger issues on her bar tab. George has asked you to consider Kirsty's plight, and present him with a brief memo (no more than a couple of pages) outlining the legal issues involved and the possible options the firm could put to Kirsty to help her achieve a good outcome.

If George rates your memo, he may ask you to meet with him and a couple of his senior solicitors to talk through what you have come up with, and your thoughts on the best way of presenting the advice to Kirsty. Given that one of the issues that Kirsty faces is the fact that her bar business may be insolvent, he doesn't want to waste his own time on meeting with her.

If George thinks you have a good handle on the issues, he will have you run the meeting with Kirsty to go over your advice.

Here's what George has told you about the issues Kirsty is facing:

- Like many other Dunedin bars, Churs was hit hard by the Covid lockdown. In Kirsty's case, it was even worse as she had undertaken a major refurb of the bar over the lean summer months before the students returned, and had then gone at it hard for O Week and beyond, taking on extra staff for the expected surge in business. While the wage subsidy helped, she has had to let most of her staff go, including popular bartender Sammy Malone, leaving her with just her low paid waiters Woody and Carla to help her out behind the bar.
- Compounding the financial hardship inflicted on Churs by Covid, the students whose custom Kirsty relied on have gone with Sammy to his new bar closer to uni. If it weren't for regulars Big Norm and his offsider Cliff, Kirsty would be in dire straits.
- The biggest issue facing Kirsty is her lease payment obligations. Initially, her landlord Frasier Crane was very understanding. When the lockdown hit, he told her: "You've been a great tenant over the years, Kirsty. Don't worry about paying me any rent over this lockdown period. I can just collect that from you when business picks up again and life has returned to normal".

- Trouble is, now that lockdown is over, Frasier has sent Kirsty a demand for the outstanding rent accrued during the lockdown period, and has told her that if she doesn't pay up by the end of September, she will be out on her ear. "It's so unkind" sobbed Kirsty. "I wasn't able to get back into the bar to make any money until the start of June, and income is still way down compared to what I had been projecting before the lockdown. Frasier has bags of money – how he could he do this to me? Surely I shouldn't have to pay anything for the period when I wasn't able to carry on my business! And I can't afford the rent I was paying before the lockdown hit – everyone's doing it tough, and there is no way that I would agree to that level of rent now, especially when the wage subsidy is about to run out."

A copy of the lease covering Churs is attached.

The following questions arise:

- Q1** Does Kirsty have any options under the lease (or otherwise) to avoid paying the full rent arrears that Frasier is demanding?
- Q2** Does Kirsty have any legal right to require the ongoing rent to be reduced?
- Q3** Does Frasier need to do anything further to validly terminate the lease at the end of September?
- Q4** What actions do you recommend Kirsty take?

George has indicated that the most important issue he wants you to concentrate on is any right that Kirsty has under the lease to reduce her obligation to pay rent to Frasier. That's the only way she will be able to afford the firm's fees.

Please answer each question in sequence and set out your memo accordingly. If you need more information in order to be more definitive in your response, please identify the additional information that you need in your memo. If you need to clarify anything from the fact scenario, please let us know.

NB: Please don't forget to provide an outline of the teamwork approach that you took in this exercise!