THESE EXAMINATION QUESTIONS MUST BE RETURNED AT THE END OF THE EXAMINATION.

SANTA CLARA UNIVERSITY
SCHOOL OF LAW
MID-TERM EXAMINATION

PROPERTY 104
PROFESSOR CARBONE

DECEMBER 7, 1992
FALL SEMESTER
3 HOURS

THE REVISED EXAMINATION RULES ISSUED IN JUNE, 1992 APPLY TO THIS EXAMINATION EXCEPT THIS IS AN OPEN BOOK EXAMINATION.

INSTRUCTIONS: The exam consists of two parts. Part I consists of 21 multiple choice questions. Part II consists of three essay questions. You must answer all of the questions. You may allocate your time as you like, but the exam allows 60 minutes for Part I and 2 hours for Part II. The credit for each section is proportional to the time allotted.

This is an open book exam. You may consult your textbook, the Student Guide, any materials distributed in class, and your notes, but not commercial outlines, books or treatises.
PART II (2 hours)

INSTRUCTIONS FOR PART II ONLY:

1. You are in a mythical jurisdiction in which there is very little law and in which the courts are influenced by precedents from other states. This jurisdiction has, however, adopted the following provisions:

   a. The statute of limitations for actions involving real property is five (5) years. All other requirements for adverse possession have developed as a matter of common law.

   b. There are no statutes addressing security deposits or the implied warranty of habitability. On a common law basis, however, the jurisdiction's highest court recognizes an implied warranty of habitability in every residential lease. The court has never decided whether the implied warranty may be waived.

   c. The jurisdiction has adopted the statute attached to the end of this exam pertaining to assignments and subleases of commercial leases. (See Appendix "Assignment & Sublease.")

   d. Federal civil rights statutes apply. There are no separate state statutes.

2. Unless you are typing the exam, please write your answers in the blue books provided. Write on every other line and on every other page. (I.e., do not write on the backs of the pages. The ink shows through.) Begin Question II in a separate bluebook. Write your social security number on the exam and on the outside of each bluebook.

3. There are three essay questions. The first one is the longest. The weight given each question is proportionate to the time allowed. Please pay close attention to the instructions given as to how you are to answer each question.

QUESTION I (1 hour)

Your firm has recently been retained as counsel for the Shady Manor complex, a large apartment complex with stores and other commercial establishments on the first floor. The firm is in the process of reviewing the form leases used at Shady Manor, and a senior partner has asked for your evaluation of the following clauses used in the lease. For each clause, discuss a) whether the clause is likely to be enforced as written (if you believe that the applicable law is unsettled, include a discussion of the policy considerations that may influence a court to rule one way or the other on the issue); b) the advantages and disadvantages of keeping the clause as written (even if you conclude that a lease provision is unenforceable,
for example, you should consider whether there are any advantages to retaining it, and the possible consequences of doing so; c) any changes that should be considered; and d) the recommendations that you believe your firm should make to the client.

All leases, commercial and residential, contain the following provision:

V. The tenant may not assign or sublet the premises without the express written consent of the landlord. The landlord need not give reasons for refusing consent, and he may withhold consent for any reason whatsoever.

The commercial leases provide that:

W. The tenant agrees to maintain the premises and to make any necessary repairs or renovations. The landlord agrees only to maintain common areas. The landlord assumes no responsibility for the conduct of other tenants. The landlord's failure to maintain common areas shall not be grounds for withholding rent.

The residential leases provide that:

X. The tenant agrees to maintain the premises in good repair. The landlord agrees only to maintain common areas, and to make necessary and appropriate repairs within a reasonable time after submission of a written request by the tenant. The landlord retains sole discretion to decide which repairs are "necessary and appropriate." A "reasonable" time for the repairs shall be determined in accordance with the nature and expense of the repairs, and the availability of repair workers and supplies. In no event shall a reasonable period be deemed to be less than 30 days. The landlord assumes no responsibility for the conduct of other tenants. The landlord's breach of this clause shall not be grounds for withholding rent.

Y. The tenant agrees to pay a security deposit equal to two months rent. The landlord reserves the right to withhold the security deposit for, among other things, unpaid rent, damages to the apartment, cleaning fees, and painting. "Unpaid rent" shall include rent not paid for any reason, including rent withheld on the basis of a claim, whether successful or not, that the landlord has violated a provision of this lease.

The senior partner informs you that one of the commercial establishments is a restaurant and that, in the past, many tenants have complained about the smells and aromas (only some of which are pleasant), and the noise (especially on Friday and Saturday nights when the restaurant has music and dancing until 1 a.m.). Shady Manor maintains that it has no responsibility for the conduct of the restaurant, and that the lease provisions were drafted, in part, to emphasize that point.
QUESTION II (25 minutes)

The senior partner also informs you that several years ago, an African-American couple sued Shady Manor for refusing to rent to them on the basis of their race. The case was settled out of court for a substantial sum. Since that time, Shady Manor, unlike most other landlords, includes the phrase "references required" in all of its ads. Prospective tenants are required to file out a lengthy application form and to list five references. The application form specifies that references from current or former tenants are preferred. In addition, the apartment manager rarely decides to accept or reject tenants on an individual basis. The preferred practice is to make no decisions until at least three applications have been received.

Arthur Andrews, who is African-American, recently sought to rent an apartment at Shady Manor. Although he was the first to apply, the apartment manager, in keeping with the practice described above, kept the application pending (and the apartment vacant) for two months until three applications were received. She then selected another tenant. She explained that while Mr. Andrews' income and credit history were similar to those of the successful applicant, the decisive factor was the references. Mr. Andrews listed only three references, none from current or former Shady Manor tenants. The successful applicant listed five references, two from current tenants. There are no African-American tenants at Shady Manor now, and there have been only four or five since the 100 unit complex was built 12 years ago.

Mr. Andrews is threatening to sue. The senior partner has asked you to evaluate the strength of his case, and any changes you would recommend in Shady Manor's tenant selection procedures.

QUESTION III (35 minutes)

Issac bought a large, undeveloped lot in the country twenty years ago. The deed mistakenly described the property as ABF. The correct boundary line should have been ABCD, with CD corresponding to a small stream running through the property. Although Issac built a small house and carefully landscaped the lot, he never set foot on the portion of the land across the stream (CDEF). At his death, Issac left the property to his daughter, Jasmine. Jasmine, who lives in the city, rented the property to Kenneth in accordance with a lease that described the rental property as ABF and provided that the tenant was to undertake no renovations, additions or other material changes without the express written consent of the landlord. In violation of that provision and without Jasmine's knowledge, Kenneth built a storage shed across the stream. (See diagram).
Question III
Jasmine, who rarely visits, learned of the storage shed (which she regards as an eyesore) two years later and promptly evicted Kenneth for violation of the lease. She then rented the property to Lee, who agreed to tear down the shed, but failed to do so. When Lee left four years later, Jasmine decided to sell the property. In preparation, she tore down the shed. Shortly thereafter, she discovered that the original deed her father received to the property was defective. Write a letter to Jasmine describing what, if anything, she owns and on what basis she may claim title. Your preliminary research discloses that CDEF has not been used during the period in question for any purpose other than the shed, that Marisa holds a valid deed to a lot described as CDGH, and that her only presence on the undeveloped lot over the last twenty years has been to exercise her horses.

END OF EXAMINATION

HAPPY HOLIDAYS!
This chapter applies to transfer of a tenant's interest in a lease of real property for other than residential purposes. Leg.H. 1989 ch. 982.

As used in this chapter:
(a) "Landlord" includes a tenant who is a sublandlord under a sublease.
(b) "Lease" means a lease or sublease of real property for other than residential purposes, and includes modifications and other agreements affecting a lease.
(c) "Restriction on transfer" means a provision in a lease that restricts the right of transfer of the tenant's interest in the lease.
(d) "Tenant" includes a subtenant or assignee.
(e) "Transfer" of a tenant's interest in a lease means an assignment, sublease, or other voluntary or involuntary transfer or encumbrance of all or part of a tenant's interest in the lease. Leg.H. 1989 ch. 982.

(a) Subject to the limitations in this chapter, a lease may include a restriction on transfer of the tenant's interest in the lease.
(b) Unless a lease includes a restriction on transfer, a tenant's rights under the lease include unrestricted transfer of the tenant's interest in the lease. Leg.H. 1989 ch. 982.

An ambiguity in a restriction on transfer of a tenant's interest in a lease shall be construed in favor of transferability. Leg.H. 1989 ch. 982.

A restriction on transfer of a tenant's interest in a lease may absolutely prohibit transfer. Leg.H. 1989 ch. 982.

§1995.240. Transfer Restrictions Subject to Standard or Condition.
A restriction on transfer of a tenant's interest in a lease may provide that the transfer is subject to any express standard or condition, including, but not limited to, a provision that the landlord is entitled to some or all of any consideration the tenant receives from a transfer at excess of the rent under the lease. Leg.H. 1989 ch. 982.

A restriction on transfer of a tenant's interest in a lease may require the landlord's consent for transfer subject to any express standard or condition for giving or withholding consent, including, but not limited to, either of the following:
(a) The landlord's consent may not be unreasonably withheld.
(b) The landlord's consent may be withheld subject to express standards or conditions. Leg.H. 1989 ch. 982.

If a restriction on transfer of the tenant's interest in a lease requires the landlord's consent for transfer but provides no standard for giving or withholding consent, the restriction on transfer shall be construed to include an implied standard that the landlord's consent may not be unreasonably withheld. Whether the landlord's consent has been unreasonably withheld in a particular case is a question of fact on which the tenant has the burden of proof. The tenant may satisfy the burden of proof by showing that, in response to the tenant's written request for a statement of reasons for withholding consent, the landlord has failed, within a reasonable time, to state in writing a reasonable objection to the transfer. Leg.H. 1989 ch. 982.

§1995.270. Findings and Declarations.
(a) The Legislature finds and declares:
(1) It is the public policy of the state and fundamental to the commerce and economic development of the state to enable and facilitate freedom of contract by the parties to commercial real property leases.
(2) The parties to commercial real property leases must be able to negotiate and conduct their affairs in reasonable reliance on the rights and protections given them under the laws of the state.