SANTA CLARA UNIVERSITY SCHOOL OF LAW – Fall 2004
MIDTERM EXAMINATION

CAMPUS ID # _____________ COURSE: _____________ PROFESSOR: _____________

THESE EXAMINATION QUESTIONS MUST BE RETURNED AT THE END OF THE
EXAMINATION. THE STANDARD EXAMINATION RULES GOVERN THE
EXAMINATION.

PROPERTY 104
PROFESSOR CARBONE
20 MULTIPLE CHOICE QUESTIONS
2 ESSAY QUESTIONS

DECEMBER 3, 2004
FALL 2004
3.5 HOURS
CLOSED BOOK

THE EXAMINATION RULES STATED IN THE STUDENT HANDBOOK
APPLY TO THIS EXAMINATION.

ANSWER THE EXAMINATION AS WRITTEN!

IF YOU BELIEVE A MISTAKE IN DRAFTING THE EXAMINATION HAS BEEN MADE
OR THAT A QUESTION IS AMBIGUOUS, STATE YOUR ASSUMPTIONS IN YOUR
ANSWER. YOUR PROFESSOR WILL REVIEW YOUR STATED ASSUMPTIONS IN
GRADING THE EXAMINATION.

DO NOT ATTEMPT TO CONTACT THE PROFESSOR TO SECURE A CLARIFICATION.

INSTRUCTIONS: This exam consists of two parts. Part I consists of 20 multiple choice
questions. Part II consists of 2 essay questions. You must answer all of the questions. Suggested
times are given below, but you may also allocate your time as you like. The credit given will be
proportional to the time allowed. IN THE EVENT OF AN EMERGENCY, HOWEVER, THE
MULTIPLE CHOICE QUESTIONS AND ANSWERS WILL BE COLLECTED SO THE
SAFEST COURSE IS TO DO THE MULTIPLE CHOICE SECTION FIRST.

STOP! DO NOT FLIP THIS COVER PAGE UNTIL TOLD TO DO SO BY THE PROCTOR!
PART II (2 HOURS)

INSTRUCTIONS FOR PART II ONLY:

1. 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 each question in a separate bluebook. Write your student I.D. on the exam and on the outside of each bluebook.

2. You are in the State of Calm, a mythical jurisdiction in which there is very little law and in which the courts are influenced by precedents from other states. The State is part of the United States, and federal anti-discrimination statutes apply.

3. The State of Calm has adopted the statutes addressing adverse possession and assignments and subleases contained in the appendix.

4. If a question is ambiguous in any material way, point out the ambiguity and explain how various interpretations of the ambiguity would affect your answer.

QUESTION A (60 MINUTES)

“Unhappy Acres” was once a stable middle class neighborhood in a large city. Thirty years ago, after a cluster of cancer cases, an investigation revealed that a nearby chemical plant had leached toxic substances into the soil. Property prices plummeted, homes were abandoned, and the residences that remained were not well maintained. Empty lots now dot the neighborhood, with junk and debris over much of the area.

The chemical company, however, was required to undertake a clean up, and decontamination efforts have been completed. A non-profit neighborhood association acquired title to many of the abandoned lots, and it is trying to lure residents back to the neighborhood. On November 1, 1999, the Association sells a large debris-covered lot to Andy and Petra at a price considerably below fair market value. The deed conveys title to “Andy and Petra and their heirs so long as they construct and maintain a residence on the property, but if they fail to maintain the lot, the Association has a right to reenter.”

Andy and Petra’s deed describes the area marked ABGH on the map. As they begin cleaning the debris from the lot, they notice the remains of an old fence on what appears to be the CD line on the map. They remove the last vestiges of the old fence and clear the area around it, but in beginning construction, they plan their new house within the area marked ABCD on the map. The house takes four years to complete with Andy and Petra doing much of the work by themselves. After the house is finished in late 2003, they decide to add a garage that will straddle the CD line, and begin to clear the remainder of the lot. As they work on the far end of the lot from their home, a man they have never seen before yells at them not to mess with his stuff. He asserts that the portion of the lot marked EFGH on the map is his, and the shopping carts, empty cans, and construction material that Andy and Petra have been treating as junk are his belongings. Andy and Petra avoid that portion of the lot for the next several months, but a search of the county records indicates that the man has no title to the property. The next time they see him (in early May 2004) they ask him to leave. When he becomes
belligerent, they have him arrested for trespass. He is convicted and sentenced to a short jail term. In the meantime, the Association is upset because Andy and Petra have left a significant portion of the property in its original junk-filled condition. Andy and Petra come to see you. They inform you that:

1) The Association had difficulty clearing title to many of its properties, and their original deed may be invalid.
2) The land they thought they purchased originally consisted of two lots, ABCD, and CDGH. The Association's title to ABCD is more secure than the basis for its claim to CDGH, and the original owner to CDGH is likely to claim title.
3) If the Association deed is valid, the Association will assert that Andy and Petra violated the condition in the deed, particularly with respect to the uncleared portion of the lot. Andy and Petra are quite distressed. They have laid the foundation and begun work on the garage. After the trespasser was arrested, they have also spent many hours clearing the debris from the far portion of the lot. Advise them on any possible claims they can bring, indicating which depend on the validity of the deed and which do not, any defenses or counterarguments that the Association can raise, and the likely outcome.

**QUESTION B (60 MINUTES)**

Alexandra, a recent immigrant from Eastern Europe, rents an apartment in a working class neighborhood in an urban area on July 1, 2002. She signs a one year lease, and pays a security deposit of one month’s rent. When the lease expires, she proposes a one year extension, but the landlord tells her that he is thinking of selling the property. He adds, however, “if you don’t hear from me in a couple of weeks, you can assume it’s okay.” Alexandra continues paying rent as before. A year and a half pass, and they do not discuss the matter again.

In recent months, drug dealing has increased in the park across the street from the apartment. Alexandra complains to the landlord that she has been solicited, insulted and occasionally accosted on her way home, but the landlord tells her there is nothing that he can do, and she should call the police. Alexandra, however, comes from a country where people are fearful of the police and she does nothing. One evening, as she is walking near the park, a persistent vendor follows her to the door. As she enters the front of the apartment building, he forces his way in with her. Frightened, Alexandra runs to her apartment. The vendor pursues her. Alexandra succeeds in getting into the apartment, but the vendor tries to force the lock with a screwdriver. The neighbors come out to see what is happening, and he flees before he can open the door. Later that night, someone throws a rock through Alexandra’s window.

Alexandra reports all of this to the landlord, tells him she is planning to leave, and requests her security deposit back. The landlord responds that since she has continued past the expiration of the original lease, he is holding her to a new lease term of a year, and she has several months to go before the lease expires. He also tells her that she is responsible for the damage to the apartment door and window. Alexandra is very frustrated, but her friend Peter is willing to rent the apartment from her “for the remainder of the term so long as he is able to resolve his immigration status.” When Alexandra informs the landlord that Peter will be moving in, however, the landlord refuses to accept him as a tenant, informing her that he cannot understand Peter’s heavy Russian accent.
Alexandra has come to you for advice. She believes that the landlord should be responsible for the damage to the window, which she has boarded up, and the door to her apartment, which no longer securely locks. She also cannot understand why the landlord will not accept Peter, and suspects that he does not trust Russians. Alexandra brings with her the original lease she signed with the landlord. It contains the following provisions:

Tenant may not assign the premises without the express written consent of the landlord, and the landlord may withhold consent for any reason or no reason.

Tenant agrees to keep the apartment in good repair. Tenant is responsible for any damage that occurs to the apartment during the tenancy unless it is caused by the landlord or someone acting under the landlord’s authority.

Advise Alexandra of her rights and remedies, any claims the landlord may have against her if she leaves, and any defenses she or the landlord may have to the respective claims raised against them.

END OF EXAMINATION
HAPPY HOLIDAYS!
ADVERSE POSSESSION STATUTES


§ 320. Entry on real estate

No entry upon real estate is deemed sufficient or valid as a claim, unless an action be commenced thereupon within one year after making such entry, and within five years from the time when the right to make it descended or accrued.


§ 321. Possession, when presumed; Occupation deemed under legal title, unless adverse

In every action for the recovery of real property, or the possession thereof, the person establishing a legal title to the property is presumed to have been possessed thereof within the time required by law, and the occupation of the property by any other person is deemed to have been under and in subordination to the legal title, unless it appear that the property has been held and possessed adversely to such legal title, for five years before the commencement of the action.


§ 322. Occupation under written instrument or judgment, when deemed adverse

When it appears that the occupant, or those under whom he claims, entered into the possession of the property under claim of title, exclusive of other right, founding such claim upon a written instrument, as being a conveyance of the property in question, or upon the decree or judgment of a competent court, and that there has been a continued occupation and possession of the property included in such instrument, decree, or judgment, or of some part of the property, under such claim, for five years, the property so included is deemed to have been held adversely, except that when it consists of a tract divided into lots, the possession of one lot is not deemed a possession of any other lot of the same tract.


§ 323. What constitutes adverse possession under written instrument or judgment

For the purpose of constituting an adverse possession by any person claiming a title, founded upon a written instrument, or a judgment or decree, land is deemed to have been possessed and occupied in the following cases:

1. Where it has been usually cultivated or improved;
2. Where it has been protected by a substantial inclosure;

3. Where, although not inclosed, it has been used for the supply of fuel, or of fencing-timber for the purposes of husbandry, or for pasturage, or for the ordinary use of the occupant;

4. Where a known farm or single lot has been partly improved, the portion of such farm or lot that may have been left not cleared, or not inclosed according to the usual course and custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved and cultivated.

**Code Civ Proc § 324 (2004)**

§ 324. Premises actually occupied under claim of title deemed to be held adversely

Where it appears that there has been an actual continued occupation of land, under a claim of title, exclusive of any other right, but not founded upon a written instrument, judgment, or decree, the land so actually occupied, and no other, is deemed to have been held adversely.

**Code Civ Proc § 325 (2004)**

§ 325. What constitutes adverse possession under claim of unwritten title

For the purpose of constituting an adverse possession by a person claiming title, not founded upon a written instrument, judgment, or decree, land is deemed to have been possessed and occupied in the following cases only:

1. Where it has been protected by a substantial inclosure.

2. Where it has been usually cultivated or improved.

Provided, however, that in no case shall adverse possession be considered established under the provisions of any section or sections of this code, unless it shall be shown that the land has been occupied and claimed for the period of five years continuously, and the party or persons, their predecessors and grantors, have paid all the taxes, state, county, or municipal, which have been levied and assessed upon such land.
CIVIL CODE – ASSIGNMENTS AND SUBLEASES

§ 1995.010. Applicability of chapter

This chapter applies to transfer of a tenant's interest in a lease of real property for other than residential purposes.

§ 1995.020. Definitions

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.


(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.

§ 1995.220. Construction

An ambiguity in a restriction on transfer of a tenant's interest in a lease shall be construed in favor of transferability.

§ 1995.230. Prohibition of transfer

A restriction on transfer of a tenant's interest in a lease may absolutely prohibit transfer.

§ 1995.240. Standard or condition of transfer

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 transferee in excess of the rent under the lease.

§ 1995.250. Requirement of landlord's consent

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.

§ 1995.260. Standard for giving or withholding consent

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.

§ 1995.270. Legislative 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.