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 3, 1990
FALL SEMESTER
3 HOURS

THE REVISED EXAMINATION RULES ISSUED IN OCTOBER 1990 APPLY TO THIS EXAMINATION EXCEPT THIS IS AN OPEN BOOK EXAMINATION.

INSTRUCTIONS: The exam consists of two parts. Part I consists of sixteen multiple choice questions. Part II consists of three essay questions. You must answer all of the questions asked. You may allocate your time as you like, but the examination is designed so that you should spend 50 minutes on Part I and the remaining time on Part II. The credit for each section will be proportional to the time allowed.

This is an open book examination. You may consult the textbook and your notes, but not commercial outlines or hornbooks.
PART II

INSTRUCTIONS FOR PART II ONLY:

1. This question consists of three parts. You must answer all three parts. Parts A and B involve the same fact pattern. Part C involves unrelated facts. Part A is the longest.

2. Write your answers in the bluebooks provided. Please write on every other line and on every other page. Please identify the part you are answering on the outside of the bluebook. Begin Part B in a separate bluebook.

3. Write your social security number on the outside of each bluebook and on the examination.

4. The examination takes place in a mythical jurisdiction which has very little law and is influenced by the precedents from other jurisdictions. If the jurisdictions are split, you should discuss the different possibilities and the outcome you think will be most likely in this jurisdiction.*

5. THE STATUTE OF LIMITATION FOR ACTIONS IN REAL PROPERTY IN THIS JURISDICTION IS 5 YEARS.

6. Each question contains directions at the end which indicate how you should approach the answer.

PART A (60 minutes)

Developer builds Graybeard Estates, a condominium complex in a warm, sunny climate. Her plans to sell the condos are thwarted by the declining real estate market. Developer therefore rents the units as part of a retirement community, with leases available for five year terms. The leases specify that each tenant shall belong to the Graybeard Tenants' Association, and that the Tenants' Association shall assume the exclusive responsibility for all maintenance, repair and upkeep at the complex. The leases also specify that the units may not be assigned or sublet without the express written consent of the Manager of the Tenants' Association. Ida Smith, age 74, signs a five year lease for one of the units.

Four years after Smith signs her lease, the Tenants' Association's new manager disappears with all of the Tenants' Association funds. Maintenance and repairs come to a halt. Although Ida complains repeatedly, the Tenants' Association fails to repair her leaky dishwasher, her water heater, and the broken window in her bedroom. Ida, who is in ill health, moves into a nursing home. She requests permission to transfer her interest in the remaining 10 months of her lease to her nephew, Maurice, but the Tenants' Association, which has only an acting manager, does not respond. Ida nonetheless gives Maurice permission to take over the premises "until she is able to live on her own again." Ida's doctors inform Maurice that Ida is unlikely ever to be able
to live on her own again. Maurice, who is aware of the conditions in the apartment, moves in and notifies the Tenants’ Association. Three days later, he slips and falls on a wet spot caused by the leaky dishwasher. After the Tenants’ Association learns of the incident, the Acting Manager informs Ida that he will not approve a transfer of Ida’s interest in the lease to Maurice. Neither Maurice nor his aunt pay rent that month.

At the beginning of the following month, Developer serves Ida and Maurice, who is still in the hospital recovering from his fall, with eviction notices on the grounds of a) abandonment; b) failure to pay rent; and c) attempt to assign or sublet the premises in violation of the lease. Ida and Maurice come to you for advice. They want to know 1) whether they have any defenses to the eviction; 2) any claims that they will be able to raise against Developer either in the eviction or in a separate proceeding; 3) their responsibility for rent in the event that a) they lose the eviction proceeding and Developer is unable to relet the premises because of the Tenants’ Association’s failure to make repairs or b) they defeat the eviction and are able to remain on the premises. Your clients inform you that the Tenants’ Association has very little money and you may therefore omit any discussion of the Associations’ potential liability. You may also assume, for purposes of this question, that you are in a jurisdiction that has recently applied the implied warranty of habitability to residential dwellings as a matter of common law.

PART B (40 minutes)

Jules Jones also entered into a five year lease with Developer due to expire on January 1, 1985. On November 15, 1984, Jones asked the Developer to approve a new 5 year lease, but, on December 24, Developer wrote back indicating that the real estate market had improved, that she wished to sell Jones’ unit, that she would not approve an extension of the lease under any circumstances, and that she expected Jones to vacate the premises as soon as the lease expired. Jones inquired about purchasing the unit, but received no reply.

Jones remained on the premises without paying rent until March, 1985. In March, the new Tenants’ Association Manager, responsible for collecting both rent and condo fees, sent a notice to all Graybeard Estates residents informing them that condo fees were rising to $500 a month. Jones, who had been paying rent of $350 a month, began sending the Tenants’ Association Manager a monthly check for $500. The condo fee includes an amount covering local taxes.

In April 1988, Jones decided to move to another city to be closer to his daughter. He painted the two bedroom unit and signed a 5 year lease renting the unit to Jason Andrews for $650 per month. Andrews paid the rent to Jones and Jones continued to pay the condo fees. In December 1990, the Tenants’ Association Manager discovered that Jones had never purchased the unit.
Developer brings an action to eject Jones and Andrews as trespassers. Discuss any defenses that Jones and Andrews may have to Developer’s action.

PART C (30 minutes)

[Part C bears no relationship to the facts in Parts A and B.]

Sally’s doctor informs her that her pregnancy is life threatening and Sally reluctantly agrees to consider an abortion. The consent form the doctor gives Sally includes the following disclosure:

The patient consents to the medical procedure described below with the knowledge that Dr. __________ and the Midland Community Hospital routinely make organs, tissue, blood, and other human cells acquired during authorized medical procedures available, for a fee, for research and commercial purposes.

Sally writes under this paragraph "I object to the use of fetal cells for commercial purposes." She then signs the consent form.

The doctor performs the abortion. The hospital then sells the fetal tissue to a cosmetics company. Before the tissue is transferred to the company, however, a lab employee steals the tissue and sells it to a less reputable firm.

Sally sues the Midland Community Hospital and the Hospital sues the lab employee, both for conversion. Discuss whether or not Sally or the Hospital have a property interest in the cells sufficient to survive a motion to dismiss the conversion actions.

END OF EXAMINATION

HAPPY HOLIDAYS!