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 17, 1991
FALL SEMESTER
3 HOURS

THE REVISED EXAMINATION RULES ISSUED IN MARCH 1991 APPLY TO THIS EXAMINATION EXCEPT THIS IS AN OPEN BOOK EXAMINATION.
PART II (2 hours)

INSTRUCTIONS FOR PART II ONLY:

1. Part II consists of three subparts and you must answer all three of them. Each subpart builds on the same fact pattern so please read them in the order presented.

2. Unless you are typing the exam, please write your answers in the bluebooks provided. Write on every other line and on every other page. Please identify the subpart you are answering on the outside of the bluebook. Begin each subpart 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 jurisdictions are split on a particular issue, 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.

SUBPART A (60 minutes)

Manuel, a journalist, enters into a two year lease with Vinko, the landlord, for a small two bedroom house in the hills. After living there for three months, he is assigned to his paper's Paris bureau. Unsure how long the Paris assignment will last, he arranges for Jasna and her five year old daughter to live there at the same rent "until either he returns from Paris or the lease expires." Two months later, a fire destroys every other house in the neighborhood, but miraculously leaves the rental house unscathed. The fence and many of the trees behind the house, however, are badly charred.

Jasna, after her initial elation that the house and her belongings survived the fire, becomes concerned that the backyard is a safety hazard and that there is no place else in the
neighborhood for her daughter to play. Although she has complained repeatedly to the landlord, he has taken no action. Jasna also finds the devastated neighborhood depressing, but rents have gone up since the fire and she is worried that she will have trouble finding another place to live at the same rent. She suspects that the landlord would like her to leave so that he can raise the rent.

Jasna comes to you for advice. First, if she wishes to leave, she wants to know how much notice she should give, and whether she faces any potential liability for back rent (and to whom) if she leaves immediately and the house proves impossible to relet without cleaning up the backyard. Second, she wishes to know what rights and remedies she has if she stays. She tells you that she spoke to a fire marshall and he informed her that the backyard violates local fire codes, but that because of the extent of the devastation, the fire department will not take action to enforce the codes for some time.

SUBPART B (40 minutes)

Jasna leaves. Manuel returns from Paris and moves back into the house. Rents in the area rise dramatically. In response, the county enacts a rent control ordinance. Several months later, Manuel is reassigned to Vukovar, Yugoslavia and proposes to assign the remaining ten months of the lease to Anita at a rent 20% higher than the the rent he has been paying. The landlord objects to the assignment without giving any reasons. The lease specifies that Manuel "may not assign or sublease the premises without the express written consent of the landlord." Manuel has threatened to sue.

Vinko, the landlord, has come to your law firm for advice. He tells you that his primary reason for objecting to the assignment is that he believes that he, not Manuel, should profit from any increase in rent. A senior partner asks you to write a memorandum evaluating the strength of the case against Vinko.
Your preliminary research discloses that 1) Manuel's assignment at the higher rent will not violate the rent control ordinance, 2) under the rent control ordinance, Vinko will not be able to evict Manuel solely because of the expiration of the lease, 3) Vinko could raise the rent dramatically if Manuel were to leave, and 4) the only case on point is Kendall v. Ernest Pestana, Inc. (the case at p. 406 of the textbook that we discussed in class). The senior partner has specifically asked you to discuss the policy implications of the issue in your memorandum. [You may assume for purposes of this question that the fact that Manuel also transferred his interest in the lease to Jasna in Subpart A is irrelevant.]

SUBPART C (20 minutes)

Vinko and Manuel settle their dispute and Anita moves in. Over six months have passed since the fire and Anita, convinced that Vinko is unlikely to replace the fence, does so herself. At the time she does so, the yard is covered with debris and there is nothing but ashes on the neighboring lot. Anita inadvertently places the fence two feet farther away from the house than the old fence.

Four years later, the neighbors discover that the fence extends more than four feet over the property line. The neighbors learn that the old fence, erected by the neighbors' predecessor eight years earlier (i.e., four years before Anita erected her fence), had extended two feet over the property line and that Anita had extended the fence an additional two feet over the property line. The neighbors file an action in ejectment against Vinko. (Anita left over three years ago and a succession of new tenants have lived in the house since then.) Discuss the likelihood that the neighbors will prevail and evaluate the strength of any defenses Vinko will be able to raise.

END OF EXAMINATION

HAPPY HOLIDAYS!

12