SANTA CLARA UNIVERSITY
SCHOOL OF LAW
MID-TERM EXAMINATION

PROPERTY 104
PROFESSOR CARBONE
16 MULTIPLE CHOICE
3 QUESTIONS

DECEMBER 14, 1993
FALL SEMESTER
3 HOURS

THE REVISED EXAMINATION RULES ISSUED IN JUNE 1993 APPLY TO THIS EXAMINATION EXCEPT THIS IS AN OPEN BOOK EXAMINATION.

INSTRUCTIONS: This exam consists of two parts. Part I consists of 16 multiple choice questions. Part II consists of 3 essay questions. You may allocate your time as you like, but the exam allot 40 minutes for Part I and 140 minutes 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, 20 minutes)

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

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, 10 minutes)

XYZ Corporation leases the eastern half of the Belmont Shopping Center to Kahn’s Department Store. The lease provides, in relevant part, that:

1. The term of this lease shall be ten (10) years, commencing on January 1, 1984 and ending on December 31, 1993, which term shall be automatically renewed for a like term unless notice in writing is sent by either party to this lease to the other at least six months prior to the end of the current term.

2. Tenant may subdivide the space in any way it chooses so long as the entire space is used for retail purposes. Tenant may assign or sublet the premises only with the express written consent of the Landlord.

3. Tenant shall be responsible for all repairs, maintenance, alterations, and utilities. Tenant may modify the premises only with the express written consent of the Landlord.

4. In consideration for the Landlord’s agreement to lease such a large portion of the shopping center and to freely permit subdivision of the space, Tenant agrees to assume full responsibility for any damage, loss or injury to property or person by reason of any existing or future defect in the premises.
Kahn's subdivides the space, reserving the largest portion for itself, and leasing the other units to merchants that it believes will complement its business. The Landlord routinely agrees to the leases and to modifications necessary to accommodate the new businesses. One of the lessees is Scotty D's Pet Shop. Scotty's occupies a second floor space in an open air portion of the mall, and has signed a five year lease that runs from January 1, 1989 to December 31, 1993 with an option to renew for another five years.

The winter of 1992-93 is unusually wet and the summer of 1993 turns unusually hot and humid. Because of the mild climate in the area and the open air nature of the location, there is no air conditioning in Scotty's and, although there are many windows, there are no screens. The lack of air conditioning and screens has never been an issue before, but with the changed weather patterns, conditions at Scotty's deteriorate. There are many more mosquitoes than usual, the animals become listless and uncomfortable in the hot weather, and the smells become overwhelming. Scotty's insists that Kahn's provide air-conditioning or at least screens and ceiling fans, but Kahn's refuses. In the meantime, nearby tenants, who are renting directly from XYZ, complain. In mid-July, one of Scotty's customers contracts encephalitis from a mosquito bite that occurred while she was at Scotty's. She recovers, but only after several weeks of hospitalization, and is planning to sue Scotty's, Kahn's or XYZ's.

You represent the XYZ Corporation. XYZ has asked you to address the following issues:

1. Assuming that there are grounds for eviction, can the XYZ Corporation evict Scotty's directly or can it only proceed against Kahn's?

2. Explain whether Scotty's, acting independently or together with Kahn's, has any possible basis for claiming that the XYZ Corporation is responsible for air conditioning and/or screens and fans, and its likelihood of prevailing on such a claim.

3. If there is tort liability as a result of the mosquito bite, will XYZ be protected from liability to Kahn's by Clause 4 of the lease?

[You may assume, in answering these questions, that nothing in Scotty's lease with Kahn's or the other tenants' leases with XYZ, is relevant.]
Multiple Choice Question/Answer in Blue Book

4. If, on September 5, 1993, Spotty's exercises its option to renew its lease for another five years and XYZ objects,
   a. the renewal will not occur because XYZ can withhold consent for any reason whatsoever;
   b. the renewal will not occur because XYZ has good cause for withholding consent;
   c. the renewal will not occur because Kahn's lacked the ability to bind XYZ to a renewal option until after its own lease had been renewed and that has not yet occurred;
   d. the renewal will occur because XYZ consented to the original lease that granted the renewal option to Scotty's.

QUESTION II (30 minutes)

The Kents die and leave their house in the country to their two sons, Arthur and Clark, "as joint tenants." The will describes the land as ABGH on the map below, although the Kent's original deed correctly described it as ABCD. Arthur's job takes him abroad leaving Clark in sole possession. While Arthur is gone, new neighbors move in next door. Their deed describes their property as EFLJ. The neighbors frequently use the swimming hole shown on the map, they have built a cabana as noted below, and created a sand beach on the side of the lake closest to the IJ line. Clark, who does not like to be seen without his glasses, almost never visits that part of the property. Six years after the neighbors move in, Arthur is killed while on assignment abroad and leaves all of his property to his estranged wife. Advise Clark as to his interest in the property, and evaluate any claims that Arthur's widow or the neighbors may raise.
QUESTION III (40 minutes)

ANSWER EITHER A OR B

You are a legislative aide. You have been asked to pick one of the proposals set forth below, summarize the arguments for and against the proposal, and recommend which way your employer should vote.

PROPOSAL A

Section 1. Findings and Purpose.

The legislature finds that:

1. There has been a continuing increase in the number of homeless, and a chronic shortage of low income housing in this jurisdiction.

2. Compliance with the implied warranty of habitability increases landlords' costs, results in either higher rents or fewer units on the rental market, and therefore contributes to the shortage of low income housing.

3. Permitting waiver of the implied warranty of habitability will increase the availability of low income housing.

Section 2. Provision Permitting Waiver of the Implied Warranty of Habitability.

Section 2.104 (d)(2) of the Uniform Residential Landlord and Tenant Act [p. 350 of the text], which prohibits waivers of the implied warranty of habitability, is hereby repealed.

OR

PROPOSAL B

All educational degrees obtained during marriage shall be considered to be marital property whenever the spouse who did not earn the degree

a) provided more than half of the support of the family during the period in which the degree was obtained; or,

b) paid more than half of the cost of obtaining the degree.

[This jurisdiction already has on its books a provision enacting a presumption in favor of an equal division of marital property, but permitting judicial discretion "as justice requires."]

END OF EXAMINATION     HAPPY HOLIDAYS!

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