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

SANTA CLARA UNIVERSITY
SCHOOL OF LAW
MIDTERM EXAMINATION

PROPERTY 51044
PROFESSOR CARBONE

NOVEMBER 30, 1995
FALL SEMESTER
3 HOURS

THE REVISED EXAMINATION RULES ISSUED IN JULY 1994 APPLY TO THIS EXAMINATION EXCEPT THIS IS AN CLOSED BOOK EXAMINATION.

INSTRUCTIONS: This exam consists of two parts. Part I consists of 18 multiple choice questions. Part II consists of 2 essay questions. You may allocate your time as you like, but the credit given will be proportional to the time allowed.

This is a closed book exam. Copies of class materials have been attached for your convenience in answering Question II.B.

PART I (60 minutes)

INSTRUCTIONS FOR PART I ONLY:

1. Write your Social Security number on the Scantron card.

2. Answer by completely filling in the appropriate blank. Use a #2 pencil. Press hard. If you believe that there is an error or ambiguity or other matter on which you would like to comment, write your comments in a separate bluebook labelled "Part I."

3. Do not make extraneous marks on the Scantron card.

4. Circle the answer on the question sheet in addition to filling out the Scantron card. You must hand in both the questions and the Scantron card at the end of the exam.

5. In answering these questions, you are to assume that:
   a. The statute of limitations in the jurisdiction is five (5) years for all property actions;
   b. The Rule in Shelley's case, the doctrine of worthier title, and the destructibility of contingent remainders have been abolished;
   c. Possibilities of reverter and rights of entry are freely devisable and inheritable.
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. The courts imply, however, as a matter of common law, a warranty of habitability into all residential housing. The courts have never ruled on the issue of whether the implied warranty can be waived.

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 each question in a separate bluebook. Write your Social Security number on the exam and on the outside of each bluebook.

3. There are two essay questions. 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. The cases on which Question B is based are attached for your convenience.
Clara and Serra rent a three story building from Leary, the landlord, in a hilly neighborhood zoned for both residential and commercial use. The five year written lease, with an option to renew for another five years, provides that:

1. The tenant is responsible for all maintenance, repairs and alterations. Tenant shall insure that the premises remains in compliance with applicable building and housing codes.

2. The Landlord reserves the right to retake possession of the premises in the event of non-payment of rent or other breach of this agreement.

3. Tenant shall pay Landlord a security deposit of $2500.

Clara and Serra live in the upper two floors and convert the garage that occupies the entire first floor into an office for their flourishing computer repair business.

Three years later, Clara and Serra move to another city. They transfer the premises to Terry, who plans to continue the computer repair business. The agreement between Terry and Clara and Serra provides for a two year term that ends on the same day as the original five year lease. There is no mention of an option to renew. In addition, the agreement provides that Terry may assign or sublease the premises only with Leary's express written consent, and that Leary may withhold consent for any reason whatsoever. The agreement says nothing about repairs, alteration, or maintenance.

The winter after Terry takes possession is the wettest in recent memory. A mudslide from the hill behind the house (beginning on the lot above Leary's property) renders the first floor office unusable, and although the damage can be repaired, there is a recurrent danger of mudslides from the adjoining property. Terry complains to Leary, but Leary maintains that the problem is not his responsibility. Terry then proposes to transfer the property to Twila, but Leary refuses to approve the transfer or to give a reason for the refusal. Terry stops paying rent.

Leary has come to your law firm for advice. He wishes to know whether and how he can retake possession from whom he can collect back rent, whether he can hold any of the tenants responsible for restoring the first floor garage to its original condition (i.e., its condition before the mudslide and before the conversion to a storefront office), and whether he has grounds to withhold the security deposit. Leary tells you that if steps are not taken soon there may be permanent damage from the mudslide. Advise fully.
QUESTION B (45 minutes)

You are a law clerk to a justice of the highest court in your state. The judge has given you the option of preparing a memorandum on ONE of the two cases set forth below.

Case 1

A case has arisen in New York with facts identical in all material respects except for the dates to that of Van Valkenburah v. Lutz. The lower appellate court decided the case in accordance with the Van Valkenburah precedent, and the appeal asks the Court to consider overruling or modifying the precedent with respect to the mental intent required to establish the element of adversity. Discuss the pros and cons of doing so, and set forth your recommendation as to how the court should rule.

Case 2

The parties in Bryant v. Blevins ask the California Supreme Court to reconsider their recent decision in the case. Discuss the pros and cons of doing so, and set forth your recommendation as to how the court should rule.

END OF EXAMINATION
HAPPY HOLIDAYS!