STUDENT I.D. #_______

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

SANTA CLARA UNIVERSITY
SCHOOL OF LAW
MIDTERM EXAMINATION

PROPERTY 104
PROFESSOR CARBONE

DECEMBER 13, 1996
FALL SEMESTER
3 AND 1/2 HOURS

THE EXAMINATION RULES STATED IN THE STUDENT HANDBOOK APPLY TO THIS EXAMINATION EXCEPT THIS IS AN OPEN BOOK EXAMINATION.
PART II (2 hours)

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 except as otherwise noted.

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 student I.D. on the exam and on the outside of each bluebook.

3. There are two essay questions. The first question is somewhat longer, and it will be accorded greater weight. Please pay close attention to the instructions given as to how you are to answer each question.

QUESTION I

Luis Leaman owns a two-story building near the downtown area of a small city. Leaman ordinarily rents the first floor diner, and a three bedroom apartment on the second floor to separate tenants. A fire, however, badly damages the diner, and both tenants leave.

Ted and Theresa Terner approach Leaman about the possibility of renting the apartment. The Terrers have two small children, and they have been living in city parks since Ted lost his job several months ago. The prior tenants have left the apartment in disrepair, and the Terrers offer to rent it “as is” if Leaman will give them a break on the rent. Leaman, who is also financially strapped, agrees on the condition that the Terrers repair the damage to the diner. Although neither of the Terrers have construction experience they agree to the following three month lease:

1. Landlord agrees to rent the premises at 123 South St. to Tenants for $300 per month for three months, $500 per month lower than the usual rental for the second floor apartment, and $1700 per month lower than the usual rental for the entire building.

2. In consideration for the rent reduction, Tenants agree that they have inspected the premises and accept them “as is,” and further agree to assume responsibility for any necessary maintenance or repairs.

3. Tenants assume responsibility for compliance with local housing codes, and agree that the condition of the premises may not be used in any way as a defense to eviction for non-payment of rent.
4. Tenants agree that, at the end of the second month of the lease, they will vacate the first floor of the premises, having repaired all damage to the first floor, and leaving the first floor in a condition ready and appropriate for rental as a restaurant. Failure to comply with this provision shall be grounds for termination of the lease.

5. Tenants may assign or sublet the second floor apartment only with the express written consent of the landlord.

At the time of the rental, none of the toilets in the apartment work, several windows are broken, there is smoke damage throughout the apartment, and the balcony outside the kitchen is unsafe. The Terners fix one of the two toilets in the apartment, and board up the broken windows, but otherwise concentrate on the first floor repairs. Three weeks later, the Terners are injured in an automobile accident. Unable to work on the repairs, they sublet the first floor to their friend, Sam, in exchange for Sam’s promise to complete the repairs.

Three weeks before the end of the second month, Leanan discovers that Sam is living in the diner. The Terners tell Leanan about their accident, and explain that because of the accident, they will be unable to resume work on the repairs for several weeks, Theresa has lost her job, and they will be at least two weeks late with the third month’s rent. Leanan serves Sam and the Terners with an eviction notice the next day. At the time he does so, Sam has largely completed the repairs to the first floor, but the second floor balcony remains unsafe, the windows are still covered with boards, the smoke damage remains, and the only toilet in working condition begins to overflow.

Discuss any defenses that Sam or the Terners may have to eviction. You may assume that the jurisdiction has adopted the implied warranty of habitability, but has only one case on the issue of waiver -- a per curiam opinion for the landlord in the case of Lewis v. Teague. (See appendix for the facts. A per curiam opinion is one in which the court delivers a judgment without discussion of the reasons for its decision. I.e., the only thing you know about the case for purposes of this exam is that on the specific facts involved in that case the landlord won. You need not discuss the reasons the judges announced from the bench during the class moot court exercise.)
QUESTION II

In 1980, Antonia purchases two acres of land in a hilly, wooded area several miles outside of a small city. The rear part of the lot slopes steeply downward to a stream. Antonia assumes that the stream marks the boundary between her land and Bill's. (See "B's land" on map.) Shortly after moving in, she adds a bench and a garden near the stream, and builds a fence separating her property from Carla's. (See "C's land" on map.) In 1983, she adds a storage shed. Throughout, she and her children walk their dogs along the stream, swim in the water during hot weather, and maintain the garden during the summer months. Although they often see Bill fishing or wading in the stream, they have never seen him on what they believe to be "their" property. Bill's dogs, however, roam freely throughout the area, and when Antonia complains about the droppings they leave near her garden, Bill promptly crosses the stream to clean the mess.

In 1990, Bill sells his land to the Bogarts. Antonia and the Bogarts develop an instant dislike to each other and, in 1996, the Bogarts have the land surveyed and inform Antonia that the true boundary is not the stream, but the dotted line on the map. The Bogarts sue Antonia, seeking to eject her from the property marked WXYZ (Points Y and Z are in the center of the stream) on the map and specifically asking that she remove the bench, garden and storage shed from that portion of the property.

Antonia has come to you for advice. She tells you that if Bill had requested that she vacate that portion of the land, she might have considered doing so, but she would do anything she could to prevent the Bogarts from claiming "her" land. Advise her of the likelihood of prevailing in a claim to any or all of the disputed land.

You may assume that your jurisdiction has recently adopted a statute with the following provisions, but that it has not yet been interpreted in the courts:

Sec. 1. An action to recover real property or the possession thereof cannot be maintained by a party other than the people, unless the plaintiff, his or her ancestor, predecessor or grantor, was seized or possessed of the premises in question within fifteen years before the commencement of the action.

Sec. 2. For the purpose of constituting an adverse possession by a person claiming title not founded upon a written instrument or a judgment or decree, land is deemed to have been possessed and occupied in either of the following cases and not others:
1. Where it has been protected by a substantial inclosure.
2. Where it has been usually cultivated or improved.

END OF EXAMINATION
HAPPY HOLIDAYS!
A's land

true boundary unmarked

storage shed

garden

B's land

C's land

bench

stream

Question II