INSTRUCTIONS: This exam consists of two parts. Part I consists of 20 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. (A half hour is allocated to reading the questions.) This is closed book exam.

PART I (60 minutes)

INSTRUCTIONS FOR PART I ONLY:

1. Write your student I.D. on the Scantron card.

2. Answer by completely filling in the appropriate blank. Use a #2 pencil. Press hard. Do not make extraneous marks on the Scantron card. 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 labeled "Part I."

3. 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.

4. 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.
PART II (2 hours)

INSTRUCTIONS FOR PART II ONLY:

1. You are in the State of Misery, 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. The State has adopted the implied warranty of habitability, but has never ruled on whether it can be waived. The State is part of the United States and as such is subject to federal laws barring discrimination on the basis of “race, color, religion, sex, familial status, or national origin.”

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. (*e.g., 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 second 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 (40 minutes)

Oneida moves to the State of Misery, which borders on Alaska and has a similar climate, to care for her grandmother, Anita. Her grandmother is a member of the Tlingit tribe, and she lives in a camper trailer on land in a rural area that has been used by the tribe as long as anyone can remember. When the grandmother was young, many tribe members lived in the area, but in more recent years, only Anita and two other Tlingit families have used the land. There has never been any clear division between their lots, and Anita and her neighbors have freely used the entire area for hunting, fishing, storage and recreational purposes.

When Anita dies, her will leaves “all of the land between the Nome River and Elk Creek, and any other land to which I have a claim to my granddaughter Oneida.” (See map). After her grandmother’s death, Anita moves the camper trailer to a new location closer to the road. She builds a picnic area with a gravel pit, wood blocks as chairs, and a storage bin for firewood near the spot where the camper had been located. She also constructs a reindeer pen that she uses to confine the reindeer she has raised on the property. Like her grandmother, Oneida takes seriously the tribe’s belief that residents should act as “stewards of the land,” and maintain it in its natural condition. She freely permits her neighbors to cross the land, fish in the creek and river, and use the picnic area. She has, however, on two or three occasions asked campers from outside the area to leave because they were burning her firewood. For several months during the severe winters, Oneida stays with friends in a nearby city, but she has spent every summer since her grandmother’s death living in the camper trailer.

Twelve years after her grandmother’s death, Coal 2000, a mining company with a deed from the State of Misery to all of the property in the area, asks Oneida to leave. She comes to you asking for advice as to any possible bases she has to claim the land and her prospects for
success. During your research you discover that the Tlingit tribe has lived in the area since at least 1700, that Oneida's grandmother never had any kind of deed, and that the county records show that the only title to the land that has ever been recorded is the deed that the State granted to Coal 2000 in 1970. You also discover that in 1965 the State of Misery passed the following statute, which has never been interpreted by the courts of the state:

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 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:
   1. Where it has been protected by a substantial inclosure.
   2. Where it has been usually cultivated or improved.
   3. Where, although not inclosed, it has been used for the supply of fuel or of fencing timber, either for the purposes of husbandry or for the ordinary use of the occupant.

Sec. 3. 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.

QUESTION II (1 hour, 20 minutes)

Lee and Terry’s parents’ holographic will leaves a large apartment building to the two children “together, and if anything happens to one of them, then the other shall have the entire property.” Lee attends college in another state, and Terry, who is several years older, manages the building, living in one of the apartments, tending to maintenance and repairs, and reinvesting the proceeds. Terry is invited to join some friends on a trek in the Himalayas, and asks Lee to keep an eye on things during the trip. When Terry does not return after several weeks, Lee learns that Terry’s party disappeared during a storm.

Lee is soon overwhelmed with management of the apartments. Lee has little in the way of savings and no access to Terry’s investments. The apartment building is old and constantly in need of repair. Unlike Terry, Lee does not live in the building and cannot make more than simple repairs without help. At the advice of a friend who is attending law school, Terry inserts the following language into all new leases:

Tenant acknowledges that he/she has examined the premises subject to this lease and that he/she accepts such premises as being in good, safe, clean and sanitary condition and repair. Tenant agrees to:

(a) Keep the premises in good order and condition;
(b) Assume responsibility for any repairs that cost less than a total of $1000;
(c) Immediately notify Landlord of any defects, dilapidation, or dangerous conditions;
(d) Promptly reimburse Landlord for the cost of any repairs caused by Tenant’s negligence, misuse or failure to repair or maintain the premises, or by the negligence or misuse of Tenant’s invitees, licensees, or guests.
(e) Assign the premises only with the express written consent of the Landlord.
(f) In consideration for a rent reduction of $100 per month, the tenant covenants not to sue the landlord and the landlord will not be liable to the tenant for any damage, loss or injury to property or person by reason of any existing or future defect in the premises for which (1) the tenant has assumed responsibility for repair or maintenance; (2) the landlord was unaware because of the tenant’s failure to notify the Landlord; or (3) the Tenant failed to reimburse the Landlord in accordance with clause (4) above.

On September 1, 1996, Lee rents one of the apartments to Fred pursuant to a one year lease with the above provisions. At the time that Fred rents the apartment, the sink in the bathroom leaks, and the lock on the emergency exit from the apartment does not latch securely. When Fred complains to Lee shortly after moving in, Lee inform him that the repairs are unlikely to cost more than $1000, and that they are therefore Fred’s responsibility.

Fred plans to be away the following summer, and proposes transferring the apartment to his friend Jana and her two children during July and August. Lee refuses to approve the arrangement. He does not give Fred a reason, but Lee is concerned that having two children in the apartment will increase the wear and tear, disturb the neighbors, and increase his potential liability. Fred, frustrated by Lee’s refusal, invites Jana and the children to stay there as his guests
while he is out of town. Lee observes the children playing in the building, but assumes that they are visiting Fred. Fred pays the July rent and Jana reimburses Fred without telling Lee.

In July, the air-conditioning unit in the apartment breaks down. It will cost approximately $500 to replace the window box unit, and Lee insists that the repairs are the tenant’s responsibility. Jana’s children, frustrated that one of the windows in the apartment is stuck and won’t open, breaks it. Jana does not tell Lee for fear that they will be held responsible. A week later, robbers, enter through the broken window, and leave with a TV set, computer, stereo and other goods worth over $2000 through the emergency exit. The alarm did not go off because of the broken latch. Jana moves out, Fred withholds the August rent, and the housing authorities (who are unaware of the provisions of the lease) impose a $10,000 fine and a lien that will force sale of the building if the fine is not paid. Shortly thereafter, Terry is found, badly frostbitten, his survival uncertain.

Lee comes to you for advice in late August, 1997. Advise your client about (1) whether, and if so, when and on what grounds Lee and/or Terry can evict Fred, evaluating any defenses Fred might have;

(2) whether the lease provisions will provide Lee with any protection in the event that Fred brings a tort action for damages caused by the robbery (you do not have to evaluate the prospects for a tort action, only the effect of the lease provisions); and,

(3) if Terry survives, any claims that Terry may have against Lee, or that Lee may have against Terry or his estate.

END OF EXAMINATION

HAPPY HOLIDAYS!