FALL 99 CAMPUS ID 
COURSE: ________________________________
PROFESSOR: ________________________________

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

SANTA CLARA UNIVERSITY
SCHOOL OF LAW
MIDTERM EXAMINATION

PROPERTY 104
PROFESSOR CARBONE
18 MULTIPLE CHOICE QUESTIONS
2 ESSAY QUESTIONS

DECEMBER 10, 1999
FALL SEMESTER
3% HOURS

CLOSED BOOK

THE EXAMINATION RULES STATED IN THE STUDENT HANDBOOK APPLY TO THIS EXAMINATION.

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

INSTRUCTIONS FOR PART II ONLY:

1. You are in the State of New Brownland, a mythical jurisdiction in which there is very little law and in which the courts are influenced by precedents from other states. The courts in the state have adopted the implied warranty of habitability, but they have never ruled on whether it can be waived. The statute of limitations for actions in ejectment is five years.

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. (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 ID. on the exam and on the outside of each bluebook:
John and Mary, after living together for several years, decide to buy a house in New Brownsland as joint tenants, with a right of survivorship. Three years later, John and Mary break up. Mary tells John that she would like to buy his share of the house, but she needs time to raise the money. John agrees to wait, but insists that Mary pay rent in the interim. Without further discussion, Mary begins paying John $500 per month, approximately half of the fair market rental of the property at the time, and continues paying John the $500 every month thereafter.

Six months later, Mary’s mom, who lives in another state, becomes very ill, and Mary goes to stay with her. She leases the New Brownsland house to Peter for six months at $1200 per month. The lease is renewable for a second six months if Mary does not return. A few months after Peter moves in, John tries to enter the house, but Peter refuses to let him in. John writes to Mary insisting that their house be sold soon. Mary writes back saying that she cannot attend to the matter until her mother recovers. She nonetheless renews the lease with Peter. John again inquires about selling the house, but Mary says that her hands are tied until the expiration of the lease. When Peter’s lease expires, however, she enters into a six month lease with Ronnie for $1800 per month beginning on January 1, 1998. The lease provides that Ronnie is responsible for all repairs and maintenance. When this lease expires Ronnie stays on the premises and continues to pay Mary $1800 per month in rent although the market value had increased to $2000 per month in the interim.

Ronnie has been there ever since. Two years after Mary’s departure to care for her mother, the area of New Brownland where the house is located experiences one of the coldest winters on record. Temperatures stay in the twenties for over a week. Freezing temperatures are rare in that part of the state, and the freeze causes considerable damage. Ronnie discovers that the pipes under the house cracked, and he has been without water ever since. Much of the vegetation on the hillside behind the house dies, and he is worried about mudslides once the ground thaws. He tries to call a plumber, but none are available. He is unable to reach Mary. The neighbors tell John that there has been flooding in the house, but when he stops by to inspect, Ronnie refuses to let him in. Since then, however, Ronnie has left several messages on John’s answering machine asking him to assist with the broken pipes. John has not returned his calls, and four weeks after the freeze, starting on February 1, 1999, Ronnie stops paying rent.

John has asked you to advise him as to 1) whether either Mary, John or the two of them jointly can reclaim possession from Ronnie; 2) any claims that Ronnie and Mary may have against each other and how they may affect John; and 3) any rights, remedies or potential liability that he may have with respect to Ronnie; and 4) any rights, remedies or potential liability that he may have with respect to Mary. You have already advised John, however, that there is no possibility that either Ronnie or Mary will prevail on a claim of adverse possession and there is no need to address the issue further.
The Hopi Indians have occupied a large portion of the desert area in New Brownland for as long as anyone can remember. During the fifties, however, pursuant to federal policy encouraging tribal land to be divided among individual families, the tribe deeded a stretch of Hopi land along the river to the Bakers, a Hopi family that had recently returned from the city. The Bakers used the land in accordance with traditional Hopi customs, erecting a cabin on one corner of the land, and grazing sheep and goats on the property. They allowed other Hopi families to cross the land as they liked, and hunt, fish, and bring animals on the property so long as they did not interfere with the Bakers' flock. During the hot summers, however, the Bakers often stayed in the mountains where the weather was more tolerable.

Able, who had a Native American roommate in college and who had long admired Hopi customs, traveled to New Brownland hoping to learn more about Hopi practices. The Hopis tolerated him, but did not welcome him into their ranks. Able nonetheless rented a room in town, and began to graze sheep in what seemed to him to be vacant lands bordering the reservation. In particular, every summer, he brought his sheep to a stretch of green pasture along the river that was part of the Baker property. He liked the area so much that he bought a mobile home, and placed it at the edge of the pasture near the river. He spent every summer for the next seven years in the mobile home. During the winters, which often experienced strong winds and heavy snow, he moved the mobile home to town. He still allowed his sheep to graze in the pasture, weather permitting, though he kept them closer to the town during the worst part of winter.

Eight years after Able first brought his mobile home to the pasture, the Bakers decide to spend the summer by the river instead of traveling into the mountains. They conclude that the pasture cannot support both their flock and Able's and they ask him to leave. Able is surprised to discover that the Bakers have title to the land, and he comes to you for advice. He tells you that over the last eight years, he has fertilized the pastureland enhancing the quality of the grasses, built a dock along the river that is perfect for fishing and boating, and planted a row of trees that creates a wind break near the site of his mobile home (all on land included within the Baker deed), but that he never went near the portion of the property surrounding the Baker's cabin. He is particularly worried because he does not know how he can support his flock, which has grown considerably over the years, without access to the Bakers' pasture. Assuming that the deed from the Hopis to the Bakers is valid, advise Able what claims, if any, he may be able to pursue.