It is understood by the student whose Student Number is entered below that this examination is given and the student’s response is made and submitted pursuant to the conditions of the Honor Code.

Student Exam No. ____________

UNIVERSITY OF MISSOURI – KANSAS CITY
SCHOOL OF LAW

Law #8541 Section B                Professor Carbone
Property I                        Fall Semester 2009

FINAL EXAMINATION
Thursday, December 17, 2009
1:00 p.m.— 4:30 p.m.
Rooms 4 & 5

Length of exam: 3½ hours

This is a closed-book examination

GENERAL INSTRUCTIONS:

1. This is a closed book exam.
2. The exam consists of fifteen (15) pages, including a two page appendix.
3. The exam consists of two sections and each section has separate instructions. Section I consists of two essay questions. Section II consists of twenty multiple choice questions plus one extra credit bonus question.
4. You may answer the two sections in any order you wish, but the first six multiple choice questions refer to the facts from the essays. You should therefore read the essay questions first, even if you decide to answer the multiple choice questions before the essays.
5. Credit for all portions of the exam will be proportional to the time allowed. (A half hour is allocated to reading the questions.)
SECTION I: ESSAY (2 hours—QUESTIONS I AND II)

INSTRUCTIONS FOR SECTION I ONLY:

1. This section consists of two essay questions and the appendix to the exam.

2. Unless you are typing the exam, please write your essay answers in the bluebooks provided. Write on every other line and on every other page (i.e., do not write on the back of the pages. The ink shows through). Write the Question number (e.g., Question I) on the outside of each bluebook, and write your student number on the exam itself and on the outside of each bluebook.

3. Please start Question II in a separate bluebook (with “Question II” on the outside of the book). I grade each question separately so do not assume that I will remember what you discussed in Question I.

4. If you believe that there is an error or ambiguity in any of the question, note the error or ambiguity and any assumptions you are making in answering the question.

5. 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. The jurisdiction has, however, adopted the following provisions:

   a. a five year statute of limitations for actions in ejectment;

   b. an implied warranty of habitability in all residential leases.

The jurisdiction is subject to federal anti-discrimination laws.
QUESTION I

Owen buys a four unit apartment building at a foreclosure auction. The building, which is structurally sound and solid brick, has not been repaired in years. Owen allows the four existing tenants to stay, even though two have stopped paying rent, and begins to fix up the two units with paying tenants. He dies unexpectedly before he finishes, leaving the property to his twin sons, Jon and Don. Jon is a busy lawyer. Don is semi-employed and agrees to manage the property.

Don downloads a form lease from the web (see Appendix A), and tells Smith, one of the tenants who has not been paying rent, that he must sign the lease if he wishes to stay. Smith does so, for a one year beginning on October 1st. He still, however, pays no rent and, after the second month, Don tells him to leave. Smith agrees to do so by the end of the December and Don signs a one-year lease with Jones (with the same provisions as the lease with Smith) effective on January 1st. Jones arrives on January 1st, ready to move in, but Smith has not yet left.

Don is furious. Smith tells Don that he doesn’t have the money for a new place in part because over the last several months he paid for repairs that included replacing a broken pipe under the bathroom toilet that leaked raw sewage into the room, a broken window that required installation of a new frame because the old frame had rotted, a new refrigerator after the old one stopped working, and medical bills for injuries his son suffered when he slipped on the sewage in the bathroom and his arm became infected.

Don seeks advice from Jon, and Jon assigns you to research the issues and write a memo advising him:

A. What actions he can take against Smith, any defenses Smith may have, and any counterclaims or other actions Smith may bring, the possible remedies and the likelihood of prevailing;

B. Any potential liability to Jones;

C. Whether the provisions in the lease in Appendix A will be enforceable in any actions against Smith and Jones and whether he should continue to use the lease in the future. In reviewing the lease, you should address 1) the extent to which the lease provisions change the law that would apply without the lease; 2) the advantages and disadvantages to the landlord of each change; 3) the enforceability of the provisions; and 4) the reasons you would recommend keeping the provision or changing it.

In the course of your research, you learn that the Smith and Jones leases set the rent at $300 per month. A comparable apartment (this one has exposed brick walls, hardwood floors, high ceilings, large windows and a nice view) in mint condition in the neighborhood would run $1000 a month, and the two apartments Owen began repairing are renting for $600 per month. Don also tells you that he has never been in Smith’s apartment but he suspects that it has been in bad shape well before Owen purchased the property.
QUESTION II

Don resolves the litigation with Smith and Jones and moves into the apartment himself. While he is living there, he gets to know the neighbors who live in the house next door. They tell him that they can no longer afford the mortgage payments on their house. They also tell Don that he is free to plant a garden on part of their lot adjoining his back yard (there is no fence and the boundary is not clearly marked). Don does so, but over the winter, the bank forecloses on the house and the neighbors leave.

For the first few years after the foreclosure, Don continues to grow a garden in the same area he planted while the neighbors lived on the property. During the third year, however, he notices that his yields are declining, and he varies the location of the garden each subsequent year, expanding it to cover a larger part of the yard, adding fertilizer, and erecting wire mesh fencing around the plots to keep out the animals. In addition, after vandals break into the house (stealing the copper pipes and breaking the lock on the front door) and neighborhood children throw rocks at the windows, Don starts tending the house as well. He replaces the door locks so that only he can open them, boards up the windows, replaces the missing pipes, stores his gardening tools and supplies in the house, and occasionally, when he has guests staying in his apartment, spends the night in the house. He also builds a garage near the boundary line between the two lots. The garage covers some of the area where Don first planted his garden.

Seven years after the neighbors leave, an agent associated with the bank comes by to inspect the property. He forces his way into the house, and finds some furniture, kitchen supplies, gardening tools and other belongings that Don has placed there. The bank agent posts a no trespassing sign on the door, but takes no other action and leaves Don’s things undisturbed.

Don comes to you for advice. He has heard rumors that the bank plans to sell the property and wonders how to protect his claims to the land he has been using. He tells you that when he built the garage he believed that it was on the land he owned with his brother, but that he is not exactly sure where the boundary line is. When you check the records you discover that the line described in the deed in fact runs through the middle of the garage, but that the deed description is incorrect and the true dividing line would not include any part of the garage on the property Don and Jon own. Advise Don whether he has any basis for a claim to any of the property, any defenses the bank may have, what actions, if any, he should take to strengthen the claims, and his likelihood of prevailing.

END OF SECTION I
SECTION II: Multiple Choice (1 hour—20 questions plus one bonus question)

INSTRUCTIONS FOR SECTION I ONLY:

1. Write you exam number on the Scantron card. Do not write your name.

2. Answer by completely filling in the appropriate blank. Use a #2 pencil. Press hard. Do not make extraneous marks on the Scantron card. While more than one answer may be correct, you need to choose the single best answer. 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" on the outside of the bluebook.

3. 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 unless otherwise noted;

   c. Possibilities of reverter and rights of entry are freely alienable and devisable;

   d. The rule of convenience does not apply (and it doesn’t matter if you can’t remember what it is);

   e. Modern law presumptions with respect to the construction of ambiguous provisions apply (e.g., an interest will be presumed to be a fee simple even if it does not use the words “and his heirs”);

   f. The common law rule against perpetuities applies without statutory modification.
MULTIPLE CHOICE QUESTIONS

Questions 1-6 reflect the fact pattern in the essay questions.

1. Don manages the apartment building he and Jon inherited from Owen and collects rent from the tenants. Jon demands that Don pay him 50% of the rentals, but Don responds that he will do so only if Jon contributes to the repairs and maintenance that Don has been taking care of on his own. If Jon sues Don for half the rent and Don counterclaims for contribution to the repairs and maintenance,

   a. Jon will win on the claim for rent and Don will win on the claim for contribution to repairs and maintenance;

   b. Jon will win on the claim for rent, but Don will lose on the claim for contribution to repairs and maintenance;

   c. Jon will lose on the claim for rent, but Don will win on the claim for contribution to repairs and maintenance;

   d. They will both lose.

2. Don lives in one of the four apartments for several years. Jon sues Don for 50% of the fair rental value of the apartment. In the majority of jurisdictions, Jon will:

   a. win if Don has had exclusive use of the apartment and Jon has had no use of any other portion of the building;

   b. win if Don has had exclusive use of the apartment, Jon has had no use of any other portion of the building, and Jon contributed 50% to the costs of repairing and maintaining the building;

   c. win if Jon has insisted on using the apartment together with Don and Don has refused to allow him to enter, even though he allows Jon to use other parts of the property;

   d. lose.

3. Jon brings a partition action to divide the property and the court orders the property sold. An earlier court has ruled that the garage Don built in the essay questions above is in fact on the property Don and Jon own. In an accounting to divide the proceeds of the sale, Don will obtain 50% of the proceeds and

   a. nothing else;

   b. contribution from Jon for half of the costs that Don bore alone for repairs and maintenance;
c. contribution from Jon for half of the costs that Don bore alone for repairs and maintenance offset by half of the value of the apartment in which Don resided;

d. contribution from Jon for half of the costs that Don bore alone for repairs and maintenance and construction of the garage that Don added to the property offset by half of the value of apartment in which Don resided.

4. Owen’s will left the apartment building to “Jon and Don, jointly, remainder to the survivor.” Don runs up extensive gambling debts and, without Jon’s knowledge, obtains a loan from his friend, Laura. To secure the loan, Don gives Laura a quit claim deed conveying any interest he has in the apartment building to her. They also sign a contract in which Laura promises not to record the deed so long as Don makes the payments on the loan, and to execute a new deed reconveying the property to Don once the loan is paid off. They use this arrangement because Laura tells Don she doesn’t want the expense of enforcing a lien on the property and this will make things easier for her if he fails to pay. Before the loan is paid off, however, Jon dies, leaving a will that devises all of his property to his wife. Don would like to claim ownership of the entire apartment building. If the court rules in Don’s favor, it will be because:

   a. Owen’s will created joint life estates and alternative contingent remainders;

   b. Owen’s will created a joint tenancy with a right of survivorship;

   c. Owen’s will created a tenancy in common;

   d. The quit claim deed he gave Laura could not convey good title because Jon did not join in the transfer.

5. Larry rents an apartment from Don and signs the lease in the appendix with a one year term. Larry’s friend, Terry, needs a place to stay and moves in with him. With six months remaining on the lease, Larry moves out and Terry pays rent directly to Don. After two months, however, Terry stops paying rent. Don finds out that Larry has lost his job and would like to sue Terry directly for the back rent and any remaining rent due through the end of the term. In all jurisdictions, Don may recover

   a. only rent that is due;

   b. from Terry only if she is an assignee;

   c. back rent from Terry if the landlord is a third party beneficiary of the agreement between Terry and Larry;

   d. from Larry.
6. **Same facts as Question 5.** Lease clause #5 provides in part that:

Tenant shall not assign or sublet this Agreement. An assignment, subletting or license without the prior written consent of Landlord shall be absolutely null and void and shall, at Landlord's option, terminate this Agreement.

The significance of this clause is that:

a. The parties have agreed that the clause prohibiting transfers is a dependent covenant and therefore violation shall be grounds for termination of the lease, if the landlord so chooses, before expiration of the one year term.

b. Any transfer to Terry will be void and the landlord will therefore only be able to collect rent form Larry and not Terry.

c. The landlord will not be deemed to have waived his right to object to the transfer to Terry even if he has cashed her checks and knows (or should know) that she is occupying the premises.

d. The transfer to Terry will automatically terminate Larry’s lease, foreclosing his ability to return to the apartment.
APPENDIX A

LEASE

1. **TERM.** Landlord leases to Tenant and Tenant leases from Landlord the Premises at _____________St. for a term of one year, such term beginning on ________________, and continuing from year to year until such time as landlord or tenant notify the other of an intent to terminate the tenancy in accordance with the applicable provisions of law.

2. **RENT.** The total rent for the term hereof is the sum of $___________ payable on the _____ day of each month of the term, in equal installments of $___________, first and last installments to be paid upon the due execution of this Agreement, the second installment to be paid on ______________________.

3. **DAMAGE DEPOSIT.** Upon the due execution of this Agreement, Tenant shall deposit with Landlord the sum of ________________________ DOLLARS ($________) receipt of which is hereby acknowledged by Landlord, as security for any damage caused to the Premises during the term hereof.

4. **CONDITION OF PREMISES.** Tenant stipulates, represents and warrants that Tenant has examined the Premises, and that they are at the time of this Lease in good order, repair, and in a safe, clean and tenantable condition.

5. **ASSIGNMENT AND SUBLETTING.** Tenant shall not assign or sublet this Agreement. A consent by Landlord to one such assignment, subletting or license shall not be deemed to be a consent to any subsequent assignment, subletting or license. An assignment, subletting or license without the prior written consent of Landlord shall be absolutely null and void and shall, at Landlord's option, terminate this Agreement.

6. **NON-DELIVERY OF POSSESSION.** In the event Landlord cannot deliver possession of the Premises to Tenant upon the commencement of the Lease term, through no fault of Landlord or its agents, then Landlord or its agents shall have no liability. Landlord or its agents shall have sixty (60) days in which to give possession, and if possession is tendered within such time, Tenant agrees to accept the demised Premises and pay the rental herein.

7. **UTILITIES.** Tenant shall be responsible for arranging for and paying for all utility services required on the Premises.

8. **MAINTENANCE AND REPAIR; RULES.** Tenant will, at its sole expense, keep and maintain the Premises and appurtenances in good and sanitary condition and repair during the term of this Agreement and any renewal thereof.
9. **DAMAGE TO PREMISES.** Should a portion of the Premises thereby be rendered uninhabitable, the Landlord shall have the option of either repairing such damaged portion or terminating this Lease.

10. **INDEMNIFICATION.** Landlord shall not be liable for any damage or injury of or to the Tenant, Tenant's family, guests, invitees, or agents or to any person entering the Premises or the building of which the Premises are a part or to goods or equipment, and Tenant hereby agrees to indemnify, defend and hold Landlord harmless from any and all claims or assertions of every kind and nature.

11. **DEFAULT.** If Tenant fails to comply with any of the provisions of this Agreement, other than the covenant to pay rent, Landlord may terminate this Agreement. If Tenant fails to pay rent when due and the default continues for seven (7) days thereafter, Landlord may, at Landlord's option, declare the entire balance of rent payable hereunder to be immediately due and payable and may exercise any and all rights and remedies available to Landlord at law or in equity or may immediately terminate this Agreement.

12. **LATE CHARGE.** In the event that any payment required to be paid by Tenant hereunder is not made within three (3) days of when due, Tenant shall pay to Landlord, in addition to such payment or other charges due hereunder, a "late fee" in the amount of $50.

13. **ATTORNEYS' FEES.** Should it become necessary for Landlord to employ an attorney to enforce any of the conditions or covenants hereof, including the collection of rentals or gaining possession of the Premises, Tenant agrees to pay all expenses so incurred, including a reasonable attorneys' fee.

As to Landlord this _____ day of ________________________, 20____.

Sign: ___________________________________

Print: _________________________________ Date: ______________

As to Tenant, this _____ day of ________________________, 20____.

Sign: _________________________________

Print: _________________________________ Date: ______________