

FINAL EXAMINATION SUMMER 2000

Peter M. Malaguti

YOUR SOCIAL SECURITY NUMBER: _____ - _____ - _____

INSTRUCTIONS:

Please take three (3) blue books. Write "Part Two" on one blue book, and "Part Three" on the second blue book. Write "Scrap" on the third blue book. Please write your social security number on all three books.

Please do not identify yourself in any way other than by social security number. Please do not write any information in your blue book, scrap book, or this exam booklet which might reveal who you are.

This is a closed-book examination. Other than writing implements, you are not to have any materials on your table or at your feet. Please place all books, knapsacks, briefcases, etc. at the side or front of the room.

Please do not use your own scrap paper. You may use the "Scrap" blue book as scrap paper. Please turn in your scrap blue book with your exam blue books and this exam booklet. I will not accept any blue books after you have turned in your exam materials. No exceptions.

This examination consists of three (3) parts. The first part consists of 30 short answer questions. The suggested time is 60 minutes. Please answer the 30 short answer questions in the space provided after the applicable question in this examination booklet, not in a blue book.

The second part is a long essay question, and the suggested time is one hour. It counts for 35% of your grade. Please answer the long essay question in the blue book labeled "Part Two."

The third part consists of two short fact patterns. The suggested time is one hour. Part Three counts for 35% of your grade.

When you are finished, please put your blue books and this exam booklet into one of your blue books and hand them in.

You have three and one-half(3 ½) hours to complete the exam. When I call time, you are to bring up your exam and blue books immediately.

GOOD LUCK!

PART ONE

30 SHORT ANSWER QUESTIONS

SUGGESTED TIME: ONE HOUR

PERCENTAGE OF TOTAL SCORE: 30% (30 of 100 points)

INSTRUCTIONS:

Please limit your answers to the lines provided below each question. I will not read beyond the lines provided under each question. Please make each answer readable in terms of neatness and size of the handwriting. (I will not use a magnifying glass to read your answers.) please answer the question responsively; don't provide information not asked for in the question. For example, if the question asks "who wins," please state the name of the person who wins; do not state why he or she wins. Please state your reasoning only if the question asks for it. Please note that the lines provided sometimes extend onto the next page.

GO ON TO NEXT PAGE

QUESTIONS

1-10

Please connect the concept on the left with the one on the right. Put the appropriate letter in the space beside the numbers in the left column.

- | | | | | |
|-----|--|-------|----|---|
| 1. | Always required to be in writing in Massachusetts. Only required to be in writing in multistate law if it is for one year or longer. | _____ | A. | One of the tests used to determine whether an action is an unfair or deceptive one within the meaning of Chapter 93A. |
| 2. | Rent Abatement Damages. | _____ | B. | You don't need physical manifestations of harm to support this claim. |
| 3. | Intentional or reckless infliction of emotional distress. | _____ | C. | The entry date. |
| 4. | It creates a periodic tenancy in multistate law, but a tenancy at will in Massachusetts. | _____ | D. | This would most likely constitute a violation of the reprisal statutes: M.G.L. C. 186, § 18, C. 239, § 2A. |
| 5. | The second Thursday after the entry date. | _____ | E. | Rent Withholding Damages. |
| 6. | Within "at least the penumbra of some common law, statutory, or other established concept of unfairness." | _____ | F. | The cardinal principle of security deposit law. |
| 7. | Always on a Monday. | _____ | G. | Tenancy for a term of years. |
| 8. | Landlord increases the tenant's rent after the tenant complained in writing to him about the condition of the premises. | _____ | H. | The trial date. |
| 9. | The difference between the agreed-upon rent and the value of the premises in their defective condition. | _____ | I. | The tenant holds over after the expiration of the term and offers rent, which the landlord accepts. |
| 10. | The money belongs to the tenant. | _____ | J. | The difference between the value of the premises as warranted and the value of the premises in their defective condition. |

11. Please state all four "protected" activities contained within the reprisal statutes, M.G.L. C. 186, § 18, C. 239, § 2A.

12. Please refer to the calendar attached to the back of this exam. Today is Thursday, August 3, 2000. Assuming that a 14 day notice to quit can be served tomorrow, August 4, 2000, what is the *earliest* date you can choose for an entry date on a summary process summons and complaint?

13. Based on the entry date you chose in answering question no. 12, what would the trial date be?

14. Based on the entry date you chose in answering question no. 12, on what date would the answer be due?

15. Based on the entry date you chose in answering question no. 12, on what date would requests for discovery be due?

16. Based on the entry date you chose in answering question no. 12, if discovery requests were timely served, on what date would the trial be held?

17. Why is it difficult for most residential tenants to appeal decisions rendered against them in summary process eviction actions?

18. What two remedies does a tenant have under the “repair and deduct” statute, G.L.c. 111 § 127L?

19. Which of the following concepts apply to *commercial* as well as residential tenancies. Please circle *all* that apply.

- Implied warranty of habitability
- Reprisal, M.G.L. C. 186, § 18, C. 239, § 2A
- Rent withholding, M.G.L. C. 239, § 8A.
- Covenant of Quiet Enjoyment / Constructive Eviction.
- Repair and Deduct, M.G.L.c. 111 § 127L
- The Security Deposit Statute, M.G.L. C. 186, § 15B
- Essential Services, M.G.L. C. 186, § 14.

20. What is the remedy a tenant has if the landlord does not give him or her an advance rent receipt?

21. Lou rents to Tammy for a term of 5 years. Tammy then assigns the remainder of the lease to Tony. *After the assignment*, from whom can Lou recover rent?

22. Assume that Tony then subleases to Terry for a term of one year. *After that sublease*, from whom can Lou recover rent?

23. Assume the same facts as in Question 22, except that Tony *assigned* rather than subleased to Terry. From whom can Lou recover rent?

24. Assume that, after Tony assigned to Terry, Terry then subleased to Tommy. *After that sublease*, from whom can Lou recover rent?

25. State 3 of the 6 circumstances that will lead to a forfeiture of the security deposit.

29. Today in Massachusetts, what is the *minimum* standard of fault required on the part of a landlord for a tenant to recover under the covenant of quiet enjoyment?

30. Which *one* of the following courses of action would you recommend a landlord to take if he discovers that a tenant is dealing hard drugs from his apartment? Please circle the correct answer

use self help to remove the tenant as soon as possible

commence a summary process eviction action that will likely take at least 45 days

seek an injunction in court preventing a continuing trespass

ask to police to notify the tenant to get out of town within 48 hours

make a citizens' arrest

GO ON TO NEXT PAGE

26. State *all 3* circumstances that will lead to triple damages if a landlord fails to return a security deposit upon the proper demand of the tenant.

27. What is the difference between a license and a tenancy?

28. When are tenancies for a term of years required to be in writing under *Massachusetts* law?

PART TWO

LONG ESSAY QUESTION

SUGGESTED TIME: ONE HOUR (60 MINUTES)

PERCENTAGE OF TOTAL SCORE: 35% (35 of 100 points)

Larry owned a building at 9 Lake Avenue in Woburn, Massachusetts. Although the area was zoned for only single and two family dwellings, Larry's building contained four apartments. On January 1, 1994, Larry executed a written lease with Tommy and Tammy under which Tommy and Tammy would occupy Apartment No. 2, on the second floor, for \$700.00 per month. The lease was to end on December 31, 1994. Upon moving into Apartment No. 2, Tommy and Tammy paid Larry \$2,100.00. The parties understood that this represented "first and last months' rent, and a security deposit." They exchanged no paperwork in regard to the \$2,100.00 deposit.

Apartment No. 2 has only one means of egress; the State Building Code requires two. In addition, the State Sanitary Code, 105 CMR s 410.354(C), required separate electrical meters for each apartment. There were only two electrical meters for the four apartments at 9 Lake Avenue. All the tenants paid for their own electricity by a bill that Larry sent them each month.

After December 31, 1994 came and went, Tommy and Tammy continued to occupy the premises. Larry did not forward any interest on the deposit Tommy and Tammy had made a year earlier. In fact, Larry never would pay any interest on the deposit.

On October 1, 1996, Larry responded to a complaint by Teddi, the tenant in Apartment No. 1, which was downstairs from Tommy and Tammy's apartment. Teddi had returned from a trip to find that her apartment was flooded and had a very strong, unpleasant odor. Since it appeared that the flood emanated from upstairs, Larry demanded that Tommy and Tammy let him in to inspect. Tommy and Tammy refused. Larry called the Woburn Police and Woburn Building Inspector. After a 45 minute standoff Tommy and Tammy finally allowed Larry, the police and Building Inspector into Apartment No. 2. Upon entering the apartment, Larry, the police and Building Inspector observed a "crack pipe" on the kitchen counter, a nickel bag of marijuana on the dining room table, and assorted drug paraphernalia. They also discovered a burst pipe in the apartment, which was the obvious cause of the flooding. Tommy, who obviously was under the influence of drugs, admitted that the rupture had happened a week earlier and that neither he nor Tammy had reported the problem to Larry. At that time, Larry, the police and Building Inspector observed huge quantities of trash and garbage in the apartment, and an odor that made it difficult to breathe. They also observed piles of paper towels, rotting food and human waste on the floor. The bathroom sink was covered with a half-inch layer of growing mold. The line taking water and garbage from the garbage disposal in the kitchen sink had been directed to the floor. The refrigerator was full of rotting food. The police arrested Tommy and Tammy on drug charges.

The Building Inspector condemned the apartments of both Tommy and Tammy (No. 2) and Teddi (No. 1), posted notices to that effect, and ordered the tenants to vacate. The Board of

Health ordered Larry to repair the conditions. Throughout the month of October, 1996, Larry had all debris thrown into a dumpster. All kitchen cabinets were discarded and replaced. The garbage disposal, refrigerator, stove and stove hood, subfloor, floor tile and ceramic tile were all replaced, as were the bathroom sink and toilet. Larry paid an estimated \$18,000.00 to subcontractors and to his own employees for all of the work, and received some insurance reimbursement. Neither Tommy and Tammy nor Teddi paid rent for the month of October while the work was being done. Larry put Teddi into a hotel for the month, and paid for all her living expenses. Tommy and Tammy did come to Apartment No. 2 on one or two occasions in October, while the work was being performed, to pick up personal property.

As soon as the work was completed, Larry changed the locks on the doors of Apartment No. 2. When Tommy and Tammy tried to move back into Apartment No. 2 on November 1, 1996, Larry denied them access and told them he would never allow them back in. Larry informed the mail carrier that Tommy and Tammy had moved, which caused their mail service to be terminated. As a result, Tommy did not receive a letter from the Massachusetts Registry of Motor Vehicles notifying him of the suspension of his driver's license. Tommy alleges that this caused him to be subsequently arrested and prosecuted for operating after suspension of his license.

All personal property of the Tommy and Tammy which had not been dumped as trash was placed in a storage unit at Larry's expense. Larry offered to have the property delivered anywhere within a 100 mile radius.

On November 1, 1996, Larry told Teddi that she could move back into her apartment. Teddi still had 6 months remaining on her written lease. She paid \$800.00 a month. Teddi has refused to move back in, and has rented another apartment in a different town.

Please discuss the rights, liabilities, duties and obligations of Larry, Tommy and Tammy, and Teddi.

GO ON TO NEXT PAGE

PART THREE

TWO SHORT FACT PATTERNS

SUGGESTED TIME: ONE HOUR

PERCENTAGE OF TOTAL SCORE: 35% (35 of 100 points)

1st Fact Pattern

Keating hired Mogilevsky to serve as the “superintendent” of the 30 unit apartment house that Keating owned. The parties entered into an oral agreement whereby Mogilevsky would provide superintendent services in exchange for housing. Additionally, Keating would pay Mogilevsky \$100.00 per week. Mogilevsky got an apartment just like that of everyone else in the building. It had one bedroom, a livingroom, a kitchen and a bathroom. It had a door that locked from the inside. There was no housekeeping service, and Mogilevsky generally prepared his own meals in his apartment. After 13 months, Keating decided to fire Mogilevsky on the ground that Mogilevsky was not adequately performing his job duties. At the time of the firing, Keating told Mogilevsky to leave the apartment within 7 days. Mogilevsky has refused to leave.

Please discuss the rights, duties, obligations, and liabilities of the parties.

2nd Fact Pattern

This question consists of a short fact pattern followed by four (4) specific questions (A, B, C and D) related to the fact pattern. Please answer each specific question in a blue book and give your reasoning, based on law, with the answer.

On January 1, 1987, Lincoln entered into a four year written lease with Tetley for an apartment in Lincoln's apartment house. The lease required Tetley to pay the rent on a monthly basis, and forbade Tetley from assigning without Lincoln's permission. In February, 1988, Lincoln permitted Tetley to assign to Apache. In July, 1988, Apache assigned to Bubka in writing and without permission. No one paid rent for the month of August, 1988.

Questions

- A. What is the most likely result if Lincoln sues Bubka for rent for the month of August, 1988?
- B. What is the most likely result if Lincoln sues Tetley instead of Bubka for the August, 1988 rent?
- C. Suppose that Bubka assigned the lease to Capulet with Lincoln's permission, and that Capulet subsequently assigned to Dogma, again with Lincoln's permission. Dogma took

possession. Lincoln's minor and unemancipated son, a musician, played extremely loud music. After 2 months of consistent loud music, Dogma abandoned the apartment. Lincoln has sued Dogma for rent for the period after Dogma moved out. What is Dogma's best defense to the suit?

- D. Assuming that the facts of the previous question are still in effect, if Lincoln sues Capulet for rent due during the period after Dogma left, what is Capulet's best defense?

END OF EXAM

HAVE A GOOD REMAINDER OF THE SUMMER