

# FINAL EXAMINATION

## Landlord-Tenant

SUMMER 2001

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**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 20 short answer questions. The suggested time is 45 minutes. Please answer the 20 short answer questions in the space provided after the applicable question in this examination booklet, not in a blue book. Part One counts for 25% of your grade

The second part is a long essay question, and the suggested time is one and one-half hours (90 minutes). It counts for 50% of your grade. Please answer the long essay question in the blue book labeled "Part Two." You may not use more than one (1) blue book for this answer.

The third part consists of one (1) short essay. The suggested time is 45 minutes. Part Three counts for 25% of your grade. Please answer the short essay question in the blue book labeled "Part Three." You may not use more than one (1) blue book for this answer.

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 (3) hours to complete the exam. When I call time, you are to bring up your exam and blue books immediately.

**GOOD LUCK!**

**PART ONE**

**20 SHORT ANSWER QUESTIONS**

**SUGGESTED TIME: 45 MINUTES**

**PERCENTAGE OF TOTAL SCORE: 25% (25 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.

**QUESTION 1**

True or false, a license is a property interest that is terminable at will and provides no right to exclusive possession? (Please circle the correct answer)

TRUE

FALSE

**QUESTION 2**

Within the spaces, please define an estate for years.

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QUESTION 3

On January 1, 2000, A and B entered into a year-to-year periodic tenancy. The parties agreed that each respective year would run from January 1 to midnight on December 31. On July 3, 2000 B notified A in writing that he intended to terminate the tenancy. On what date will the tenancy terminate?

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QUESTION 4

True or false, the placement of a provision in a lease which is in clear violation of the security deposit statute can also constitute a "forbidden" act under the reprisal statute.

TRUE

FALSE

QUESTION 5

In Massachusetts, A and B agree in writing that A will lease San Clemente to B for a term of one year. The lease is to begin on January 1 and end on December 31. B did not pay his February rent until A served on him a notice to quit on February 23. B did not pay his May rent until A served on him a notice to quit dated May 18. B did not pay his June rent until A served on him a notice to quit on June 29. B did not pay his July rent at all in the month of July. On July 20, A served on B a notice to quit. B tendered his rent to A on August 1. A does not want to accept the rent because he believes that B is a deadbeat. May he refuse to accept the rent and evict B? (Please circle "yes" or "no")

YES

NO

QUESTION 6

Assume the same facts as in QUESTION 5 except that the agreement to lease San Clemente is oral. May A refuse to accept the rent and evict B? (Please circle "yes" or "no")

YES

NO

PLEASE GO ON TO THE NEXT PAGE

QUESTION 7

Please refer to the calendar attached to the back of this exam. Today is Thursday, June 28, 2001. Assuming that a 14 day notice to quit can be served tomorrow, June 29, 2001, what is the *earliest* date you can choose for an entry date on a summary process summons and complaint?

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PLEASE GO ON TO THE NEXT PAGE

QUESTIONS 8-20

PLEASE CONNECT THE CONCEPTS ON THE LEFT WITH THE APPROPRIATE ONE ON THE RIGHT.  
PUT THE APPROPRIATE LETTER IN THE SPACE BESIDE THE NUMBERS IN THE LEFT COLUMN.

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|-----|--|----|---|
| 8.  | The reason why a landlord's failure to cause visitors to common areas of an apartment who deal drugs in open does not breach the implied warranty of habitability. _____ | A. | Until the day the answer is due in court in a summary process eviction action.  |
| 9.  | Although a physical facility, it is not one that is considered "vital" to the habitability of an apartment. _____  | B. | Payment and acceptance of rent after a notice to quit has been served.  |
| 10. | The amount of time a residential tenant under a tenancy for a term of years has to cure in a failure to pay rent case. _____   | C. | Difference between the value of the premises as warranted and the value of the premises as they exist with defects.   |
| 11. | The amount of time a commercial tenant under a tenancy for a term of years has to cure in a failure to pay rent case. _____  | D. | None. Liability is strict or absolute.  |
| 12. | The landlord's only duty is to deliver the "right to possession." _____  | E. | The minimum standard required to find a violation of the covenant of quiet enjoyment.   |
| 13. | The minimum standard required to find a violation of the implied warranty of habitability. _____   | F. | Rent withholding  |
| 14. | The English Rule _____   | G. | It does not deal with a physical facility.  |
| 15. | Negligence _____   | H. | Whatever the lease says, or in the absence of a lease provision on the matter, until the day the answer is due in court in a summary process eviction action.                                     |
| 16. | Used only in regard to "rent abatement." _____   | I. | The landlord is an absolute guarantor of the tenant's actual possession.  |
| 17. | Used only in regard to "rent withholding." _____   | J. | The reason supporting the denial of an implied warranty of habitability claim when a small child fell from a window, and the tenant claimed that the landlord should have put in stops or guards. |
| 18. | Employed under both the implied warranty of habitability and the rent withholding statute. _____   | K. | Difference between the agreed upon rent and the value of the premises as they exist with defects.   |
| 19. | This statute provides that the tenant must pay rent into court in certain circumstances. _____   | L. | The percentage reduction approach.  |
| 20. | This may unwittingly create a new tenancy that requires the landlord to start over on an eviction. _____   | M. | The American Rule.  |

## **PART TWO**

### **LONG ESSAY QUESTION**

**SUGGESTED TIME: ONE AND ONE-HALF HOURS (90 MINUTES)**

**PERCENTAGE OF TOTAL SCORE: 50% (50 of 100 points)**

On November 4, 1998, Landlord and Tenant entered into a written lease for a term of approximately one year for apartment 427 at 46 Birchwood Road in Randolph, Massachusetts. The parties agreed that the lease would commence on November 9, 1998 and terminate on October 31, 1999. The monthly rent was \$800, payable on the first of each month. Tenant paid a proportionate amount for the month of November, 1998.

On September 9, 1999 the Landlord offered to renew the lease for a six-month period at a monthly rent of \$950. The Tenant rejected the offer and continued to occupy the apartment after the expiration of the lease, paying \$800 on both November 2, 1999 and December 1, 1999. The Landlord accepted each payment.

On November 16, 1999, a leak occurred in the ceiling of Tenant's apartment. It caused Tenant to have to put a pan under it. During periods of rain or wet snow, the leakage was so heavy that tenant could not use the kitchen. This happened about three times between November 16 and December 31, 1999.

On December 21, 1999, Tenant called the health department of the Town of Randolph. A health inspector came out and wrote up a violation for the leaky roof. Landlord repaired the roof within two weeks.

On December 28, 1999, Landlord served on Tenant a notice to quit asking Tenant to vacate the apartment by February 1, 2000. Tenant refused to do so. Landlord has commenced a summary process eviction action.

Please write an essay addressing **only** the following matters. Please support your answers with law and analysis (applying fact to law):

1. What type of tenancy did the parties have when they initially entered into the lease on November 4, 1998?
2. What type of tenancy did the parties have immediately after October 31, 1999?
3. What type of tenancy did the parties have after the tenant first paid rent, which Landlord accepted, on November 2, 1999?
4. Was there a violation of any laws we learned about this term? If so please state which

ones, and support your answers.

5. Assuming the court finds that the Landlord has violated the implied warranty of habitability, please articulate the proper measure of damages, and state a correct formulation of those damages. (I will accept your reasonable assumptions about the impact that each problem will have on the habitability of the apartment.)

### **PART THREE**

#### **ONE SHORT ESSAY**

**SUGGESTED TIME: 45 MINUTES**

**PERCENTAGE OF TOTAL SCORE: 25% (25 of 100 points)**

On January 1, 1997, 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, 1998, Lincoln permitted Tetley to assign to Apache. In July, 1998, Apache assigned to Bubka in writing and without permission. No one paid rent for the month of August, 1998.

#### **Questions**

- A. What is the most likely result if Lincoln sues Bubka for rent for the month of August, 1998? Why?
- B. What is the most likely result if Lincoln sues Tetley instead of Bubka for the August, 1998 rent? Why?
- 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, 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? Why?
- 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 REST OF THE SUMMER**