

FINAL EXAMINATION
Landlord-Tenant
SPRING 2001
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 25 short answer questions. The suggested time is 45 minutes. Please answer the 25 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

25 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

This semester, we discussed three types of conduct that may cause a landlord to be found liable for breaching the covenant of quiet enjoyment. What are they?

QUESTION 2

What is the difference between the "English Rule" and the "American Rule" when determining if a landlord has breached his or her duty to deliver the premises.

QUESTION 3

In Massachusetts, A and B orally agree that A will lease to B the premises located at 1313 Mockingbird Lane for a term of 6 months. The term was to begin on January 1 and to end on June 30. What type of tenancy have A and B entered into?

QUESTION 4

Assume the same facts as in question 3 except that 1313 Mockingbird Lane is not in Massachusetts. Instead, the jurisdiction is the state of Multistate. What type of tenancy have A and B entered into?

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 either "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 either "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, May 24, 2001. Assuming that a 14 day notice to quit can be served tomorrow, May 25, 2001, what is the *earliest* date you can choose for an entry date on a summary process summons and complaint?

QUESTION 8

Based on the entry date you chose in answering question no. 7 what would the trial date be?

QUESTION 9

Based on the entry date you chose in answering question no. 7, on what date would the answer be due?

QUESTION 10

Based on the entry date you chose in answering question no. 7, on what date would requests for discovery be due?

QUESTION 11

Based on the entry date you chose in answering question no. 7, if discovery requests were timely served, on what date would the trial be held?

PLEASE GO ON TO THE NEXT PAGE

QUESTION 12

L and T are landlord and tenant in a tenancy at will. Five months ago L served upon T a notice to quit for failure to pay rent. T immediately cured. T did not pay his April or May rent. L served upon him a notice to quit on May 3. L wants T out, but T wants to stay. T makes application to court for a stay of the eviction because he has looked for similar housing in the same town with no luck. T provides convincing evidence that he will have great difficulty finding similar housing because there is a severe housing shortage in the area. If you were the judge, what action would you take in regard to T's application?

QUESTION 13

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

PLEASE GO ON TO THE NEXT PAGE

QUESTION 14

In Massachusetts, L discovered that one of his tenants, T, was selling illegal drugs from his apartment. L called the police who came and arrested T for controlled substances violations. L immediately placed all of T's furnishings and household possessions on the sidewalk and changed the locks. What is L's best argument that his actions were lawful?

QUESTION 15

Assuming that L does not prevail in Question 14, state at least two (2) potential remedies will T have against L?

PLEASE GO ON TO THE NEXT PAGE

QUESTION 16

In Massachusetts, what is the measure of damages for failure of the landlord to deliver possession of premises?

QUESTION 17

True or false, the covenant of quiet enjoyment does not apply to commercial leases because the concept of peaceful enjoyment is inapplicable to the everyday exercise of commercial dealings? (Please circle the correct answer.)

TRUE

FALSE

QUESTION 18

From the perspective of the owner of a building, please state at least one advantage in establishing a license relationship with an occupant instead of a landlord-tenant relationship.

PLEASE GO ON TO THE NEXT PAGE

QUESTION 19

From the perspective of the owner of a building, please state at least one disadvantage in establishing a license relationship with an occupant instead of a landlord-tenant relationship.

QUESTION 20

What is the difference between the two reprisal statutes set forth at G.L.c. 186 § 18 and G.L.c. 239 § 2A?

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QUESTION 21

Please read Questions 21, 22 and 23 before answering any of them.

In Massachusetts, what is the measure of damages for a breach of the implied warranty of habitability?

QUESTION 22

In Massachusetts, what is the measure of damages for a breach of G.L.c. 239 § 8A, the rent withholding statute?

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QUESTION 23

What is the "percentage reduction approach" and how does it work?

QUESTION 24

What are the three circumstances under the security deposit statute, G.L.c. 186 § 15B, that might lead to triple damages against the landlord?

PLEASE GO ON TO THE NEXT PAGE

QUESTION 25

What must always happen before a tenant can get triple damages under the security deposit statute, G.L.c. 186 § 15B?

EXTRA CREDIT:

Please answer one of the two following questions:

1. Which student (first name is sufficient) in the Spring 2001 Landlord-Tenant class is the king of 60s and 70s music trivia?

2. Which student (first name is sufficient) in the Spring 2001 Landlord-Tenant class is the queen of "Tom and Nicole" gossip?

PLEASE GO ON TO THE NEXT PAGE FOR PART TWO

PART TWO

LONG ESSAY QUESTION

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

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

Landlord rents to Tenant an apartment. If the apartment had been up to code, the fair rent would have been \$1000 a month. However, the place is a hell-hole, and both Landlord and Tenant know it. The bathroom toilet is leaky, there are no light fixtures in the bathroom, the stove in the kitchen sometimes works and sometimes does not, one of the living room windows is cracked, brown water comes out of the faucets, there are holes in the ceiling plaster in the bedroom, and several of the electrical outlets fail to function. Landlord and Tenant agree that Tenant will pay only \$500 a month because of the problems with the apartment.

Tenant moves in and almost immediately determines that, although he thought he could tolerate these conditions, he just doesn't have the stomach for it. He almost immediately notifies the Landlord in writing of the existence of the problems, and asks the Landlord to fix them. The Landlord responds that Tenant is an intelligent adult who has made a deal, and that the Tenant must abide by the deal. Indeed, the reason the parties agreed on the rent \$500 rent was because of all the defects. Landlord states that a contract is a contract is a contract.

Tenant refuses to pay any more rent, and calls the Department of Inspectional Services which requires Landlord to repair the problems at a cost of \$12,000.00. After three months of no rent, and just as he is finishing the repairs, Landlord serves a notice to quit and commences a summary process eviction action against Tenant for failure to pay rent.

Please write an essay addressing **only** the following matters.

- A. Please argue that Tenant has waived the implied warranty of habitability.
- B. Please argue that Tenant has not waived the implied warranty of habitability.
- C. 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.)
- D. Please explain whether Tenant has a proper "reprisal" claim against Landlord, and support your argument with law.
- E. Please list (do not explain) every cause of action Tenant should assert in his counterclaim.

PART THREE

ONE SHORT ESSAY

SUGGESTED TIME: 45 MINUTES

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

On March 1, 1996, Lou, as landlord, leased Millacre to Tim, as tenant, by written lease for a term of 10 years. The lease was for commercial use, and the rent was \$2,500 a month. The lease was silent on the question whether Tim could assign or sublease Millacre.

Tim occupied Millacre from March 1, 1996 to February 28, 1998, and paid all his rent when it became due. As of March 1, 1998, Tim "assigned all [his] right, title and interest in Millacre" to Tammy. Tammy moved in immediately and made all rental payments to Lou as required.

As of March 1, 2000, Tammy "assigned all [her] right, title and interest to Tony for a term of three (3) years." Tony immediately moved in and began to pay rent.

As of March 1, 2001, Tony "assigned all [his] right, title and interest in Millacre" to Toliver. Toliver never paid any rent, and rent is now due and owing for the months of March 2001, April 2001 and May 2001.

Lou desires to bring a contract action to collect the \$7,500 he is owed in back rent. Against whom, and upon what grounds, may he bring such an action?

END OF EXAM

HAVE A GREAT SUMMER!