

**LANDLORD-TENANT
FINAL EXAMINATION
SPRING, 2002**

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This exam consists of eleven (11) short essay questions. You must answer them all. There is enough time for you to answer all 11 essays, but you will have to work quickly and efficiently. You will see that each essay calls for very focused answers. If you stick to the pertinent issues, time should not be a factor.

Please put all your answers into blue books marked only with your social security numbers. 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 a blue book as scrap paper. Please turn in your scrap blue book with your exam booklet. I will not accept any blue books after you have turned in your exam materials. No exceptions.

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

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

GOOD LUCK!

QUESTIONS

1. On November 14, 2001, Larry Landlord and Terry Tenant orally agreed that Larry would rent Blackacre to Terry at a rate of \$750 a month. On December 1, 2001, at Terry's request, Larry handed her a piece of paper that stated: "This is to certify that the rent at Blackacre is \$750.00 a month, and that immediate occupancy may be had by Terry Tenant, and rent obligations are to begin on December 1, 2001. After a period of two years, the rent shall become \$900.00 a month." What is the relationship between Larry and Terry. Please fully explain your answer.
2. Larry and Terry entered into written lease for Blackacre on July 14, 2000, with a term that began on August 1, 2000 and ended on July 31, 2001. The lease provided for rent in the amount of \$9,000, payable in monthly installments of \$750 on or before the first day of each month. Terry lived at Blackacre without incident. On August 1, 2001, Terry did not move out. On August 3, 2001, Terry handed Larry a check for \$750, which Larry endorsed and deposited into his bank account. On August 10, 2001, Tony offered to rent the apartment from Larry for \$1,000 a month. On August 11, 2001, Larry delivered to Terry a notice to quit, informing her to leave before October 1, 2001. Terry claims that she does not have to leave by that date. Who is correct in Massachusetts, Larry or Terry? Under multistate law? Please fully explain your answers.
3. Please determine the date (month, day and year) of termination of each "periodic" tenancy in the following circumstances. Please fully explain your answers.
 - A. The periodic tenancy is a year-to-year tenancy. The cycle begins on July 1, 2000 and ends on June 30, 2001. On December 3, 2000, landlord gives tenant written notice that he is terminating the tenancy. When will the term end?
 - B. The periodic tenancy is a year-to-year tenancy. The cycle begins on July 1, 2000 and ends on June 30, 2001. On January 3, 2001, landlord gives tenant written notice that he is terminating the tenancy. When will the term end?
 - C. The periodic tenancy is a month-to-month tenancy. The cycle begins on July 1, 2000 and ends on June 30, 2001. On May 3, 2001, landlord gives tenant written notice that he is terminating the tenancy. When will the term end?
 - D. The periodic tenancy is a month-to-month tenancy. The cycle begins on July 1, 2000 and ends on June 30, 2001. On January 3, 2001, landlord gives tenant written notice that he is terminating the tenancy. When will the term end?
4. Seller and Buyer executed a purchase and sale agreement (P & S) under which Seller agreed to sell Blackacre to Buyer. The closing was scheduled for 60 days after the P & S was signed. A week after the P & S was signed, Buyer asked whether he could move in 30 days prior to closing. He offered to pay carrying costs (fuel, electric, insurance, etc.). The Seller, a very nice man who wasn't living in the home, agreed. On the day of

closing, Buyer refused to close and refused to move out. Seller figures he needs to get Buyer out so, at the very least, he can sell the home to someone else. Please fully explain your answers to the following questions:

- A. Is B a tenant or a trespasser?
- B. Will Seller have to commence an eviction action, or can he forcefully remove the Buyer without going to court? Is there some other action Seller can bring?
- C. If you had represented Seller, what advice would you have given when Buyer asked to move in early?

5. Please refer to the calendar attached to the back of this exam, and fully explain your answers to the following questions:

- A. Today is Thursday, May 23, 2002. Assuming that a 14 day notice to quit can be served tomorrow, May 24, 2002, what is the *earliest* date you can choose for an entry date on a summary process summons and complaint?
- B. Based on the entry date you chose in answering question 5.A, what would the trial date be?
- C. Based on the entry date you chose in answering question 5.A, on what date would the answer be due?
- D. Based on the entry date you chose in answering question 5.A, on what date would requests for discovery be due?
- E. Based on the entry date you chose in answering question 5.A, if discovery requests were timely served, on what date would the trial be held?

6. 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. Please fully explain your answers to the following questions:

- A. If Lincoln sues Bubka for rent for the month of August, 1988, who will win?
- B. If Lincoln sues Tetley instead of Bubka for the August, 1988 rent, who will win?
- 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 that suit?

Terri Tenant is a resident of 816 Jette Court, which is part of Commonwealth Development in the Brighton section of Boston. The property is owned by the Boston Housing Authority (BHA) and managed by Corcoran Management Co., Inc. (Corcoran). Terri, her two children, and her nephew are the only authorized tenants of the unit.

William Taylor, an unofficial occupant of the apartment, came to visit Terri every two or three weeks and stayed with her for two or three days at a time. In 1998, she went on a two-week trip to Europe with him. But the relationship between Taylor and Terri was so close that neighbors perceived him to have been living in the apartment for two years.

Corcoran had scheduled extermination work in the units in Terri's building for January 11, 1999. It sent notices to tenants to that effect in late December, 1998, and again on January 9, 2000. The notices to Terri were slipped between her door and door-jamb.

When the exterminators entered Terri's apartment on January 11, 2000, they noticed a box of ammunition on the kitchen table, a barrel of a sawed-off shotgun poking over the broom closet, and a paper fold containing white powder in one of the bedrooms. They informed the site manager, who was outside. The site manager entered the apartment and saw the sawed-off shotgun and ammunition in the kitchen, as well as the notice of extermination on top of the refrigerator. He returned to his office and telephoned the housing authority police to inform them of the situation. He also attempted unsuccessfully to locate Terri's work telephone number.

Officer William Smith of the housing authority police responded to the telephone call. He went to the apartment and spoke with the site manager and one of the exterminators. He then entered the apartment and observed the ammunition, the sawed-off shotgun, and the powder. Based on his experience and training, he believed the powder to be cocaine. He then secured the unit, and removed the sawed-off shotgun. He then went to obtain a search warrant at Brighton Division of the District Court Department. The warrant was issued and Smith conducted a search. The search revealed a sawed-off shotgun, a .22 caliber pistol, a triple beam balance scale, a smaller scale, drug paraphernalia, two telephone "beepers," a bag of 6.18 grams of cocaine, and three bags of marijuana. The bag of cocaine was found in the pocket of a child's jacket.

The Commonwealth immediately instituted criminal proceedings against Terri and Taylor for illegal possession of weapons, illegal possession of ammunition, possession of Class B drugs with intent to distribute, and possession of Class D drugs with intent to distribute. In February, 2000, a judge of the Superior Court granted motions by both Terri and Taylor to suppress all evidence seized from the apartment. He found that Smith's initial entry into the apartment before obtaining the warrant was not justified by

any exception to the warrant requirement of the Fourth and Fourteenth Amendments to the United States Constitution or Article 14 of the Massachusetts Declaration of Rights the Massachusetts Constitution. The judge therefore held that the subsequent search pursuant to the warrant also was illegal. The Commonwealth did not appeal, and the criminal cases were dismissed.

The BHA and Corcoran want to remove all the occupants of 816 Jette Court as soon as possible. What should they do? Please fully explain your answer.

8. Landlord and Tenant entered into a commercial lease for a grocery store, with a beer and wine license, that contained, *inter alia*, the following lease covenants:

The Lessee covenants and agrees that it will use and occupy the demised premises solely for purposes consistent with applicable zoning ordinances and all governmental rules and regulations pertinent thereto for the sale of groceries, liquor and wine and malt beverages and related items and for no other purposes without the written consent of the Lessor....

PROVIDED ALSO, and these presents are upon this condition, that if the Lessee shall neglect or fail to perform or observe any of the covenants contained in these presents, and on its part to be performed and observed, ... then, and in any of the said cases (*notwithstanding any license of any former breach of covenant or waiver of the benefit hereof or consent in a former instance*), the Lessor lawfully may, immediately or at any time thereafter, and without demand or notice, enter into and upon the said premises or any part thereof in the name of the whole, and repossess the same as of his former estate, ... and upon entry as aforesaid this Lease shall determine ... " (emphasis supplied).

Tenant violated the liquor laws on March 23, 1985, July 11, 1985, and May 25, 1986, and that was sufficient cause for the Landlord to terminate the tenancy. The Landlord served a notice to quit for those violations on June 1, 1986.

Landlord continued to take Tenant's rent checks for June 1986 and July 1986. At trial on July 19, 1986, Tenant moved to dismiss the case. What should the judge rule? Please fully explain your answer.

9. Landlord has commenced a summary process eviction action against Tenant for failure to pay rent. The following evidence has come in at trial:

i. Thirty-five photographs, which include fourteen photographs of the kitchen pantry, sixteen photographs of the bathroom, and five photographs of the kitchen cooking area. The photographs convincingly show that construction work that the landlord performed at the tenant's apartment was substantial work of extremely poor quality.

ii. The photographs show that the landlord removed and replaced one of the tenant's three living room windows, but boarded up the adjoining two windows, thereby diminishing the apartment's Merrimack River view as shown in photographs that were taken before the alterations.

iii. On one day, the landlord caused the parking area at the apartment house premises to be painted, numbered, roped-off, and posted, and later the same day, without warning, called a towing service to remove a truck that belonged to the tenant's boyfriend, the tenant's boyfriend avoided having his truck towed only by paying a \$75 towing charge.

iv. The parties stipulated that there is unpaid rent totaling \$5,050.00, at \$150.00 for March 2001 and at \$700.00 for the seven months thereafter through October 31, 2001.

v. The landlord's explanation for blocking the windows rather than replace them was to save himself some money. Before he blocked the windows he had negotiated with the tenant a \$150 per month rent.

Tenant has claimed that the landlord has breached her covenant of quiet enjoyment. Is she correct? Please fully explain your answer.

10. Assume the same facts as in Question 9, but in addition to those facts: prior to the landlord's summary process eviction action, Tenant complained by letter about the boarded-up windows and expressly informed the landlord that she was withholding rent as a result of the landlord's actions. Does this give rise to any other causes of action on behalf of the tenant? Who will prevail? Please fully explain your answer.

11. Landlord rents to Tenant an apartment. If the apartment had been up to code, the fair rent would have been \$1,000 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 was because of all the defects. Landlord states that a contract is a contract is a contract.

Tenant refuses to pay any more rent. After three months of no rent, the Landlord served a notice to quit and commenced a summary eviction action for failure to pay rent. The Tenant counterclaims for breach of the implied warranty of habitability. Please answer the following questions fully:

- A. Please 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 the Landlord to have violated the implied warranty of habitability, please articulate the proper rules to apply in measuring Tenant's damages.
- D. Assuming the court finds the Landlord to have violated the implied warranty of habitability, please calculate the actual damages.

END OF EXAM
HAVE A GOOD SUMMER