INSTRUCTIONS

Please take three (3) blue books. Write “One,” “Two” and “Scrap” on the three blue books. Please write your social security number on all three blue 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, scrapbook, or this exam booklet that 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. The only thing you may use as scrap paper is the “scrap” blue book. 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 four short essay questions that count equally. The suggested time for each essay is forty-five (45) minutes. Do not exceed four (4) single-spaced pages for each essay answer. Do not test me on this; I will not read beyond the fourth page on either essay.

Please put your first two essays into Book One, and your last two essays into Book Two.

When you are finished, please put the two essay blue books into your “Scrap” blue book and place them in the box at the front of the room. Please do not hand these materials to me. You may keep this exam booklet.

Unless the facts of the questions suggest otherwise please use Massachusetts law. You will receive additional credit for discussing “multistate” law where it differs from Massachusetts law.

This is a comprehensive examination designed to test your ability to analyze and apply the concepts we covered over the entire semester. You will score points only for a proper recitation of the relevant law and a proper application of the law to the presented facts in a cogent, efficient manner. This is not a brain dump; you will not receive any points for merely regurgitating memorized law. You should not waste precious time spouting irrelevant law, esoterica or minutiae. Please assume I know the facts, but nothing else. I will not guess that you know concepts you have not explained.

Please make your answers legible. I cannot grade what I cannot read.

I will tell you when there are 15 minutes left in the exam, at which point no one may leave the room. I will also warn you when there are 5 minutes left and 1 minute left. When I call time, you are to bring up your exam and blue books immediately.

Please do not turn to the next page until I tell you to.
The exam begins on the next page.


Question One

The Nina Building Trust ("the Trust") owned property located at 162 West Union Street, Ashland for the benefit of the Knights of Columbus. The Nina Building Association, Inc. ("the Association"), a corporation owned by members of the Knight of Columbus, managed the property. The property consisted of ten acres of land and a building and softball field. The Knights of Columbus used the building for meetings and functions such as wedding receptions, birthday parties, dances and other group activities.

George and Deborah Connors ("the Conners") own and operate a business known as Ashland Country Dance Company. In May 1997, the Conners entered into an oral agreement with the Association, on behalf of the Trust, for the for the "rental" of the upstairs portion of the building at 162 West Union Street on Sunday, Monday, Thursday, Friday and the first and third Saturday of each month. The Conners were permitted to place a sign for their dance company on the property, to store their equipment in the building and to use the defendants' voice messaging system. The Conners usually paid $2,000.00 per month or $100.00 per night for the use of the upstairs portion of the property. The Conners submitted monthly schedules listing the nights they intended to use the upstairs portion of the property. When the Conners used the building, the Association, on behalf of the Trust, operated and staffed a bar on the premises for the Conners' customers. The Conners did not receive any portion of bar receipts. The Conners' use of the building was limited to the nights they conducted their business.

At some point, the Conners became aware that the Trust was considering selling the property. At one point, George Connors expressed an interest in purchasing it for development. In October 1997, the Trust began negotiating to sell the property to the Town of Ashland. On January 7, 1998, the Trust accepted the Town's offer to purchase the property. Within a week the trust told the Conners of the agreement to sell, and that the Conners would have to stop using the upstairs by March 31, 1998. The closing was delayed, and the Trust told the Conners that they could continue using the property for the time being. In mid-April 1998, the Trust told the Conners that they could continue to use the property until April 30, 1998. The Trust later orally extended that date to include May 3, 1998.

On May 8th, the Trust changed the locks. The Trust sold the property to the Town of Ashland on May 13, 1998, and the Town has no intention of allowing the Conners to continue their business at the property. The Conners would like to continue to use the upstairs portion of the property.

Please discuss the rights, duties and liabilities of the parties.
Question Two

The landlord, Uwa O. Lawrence, owns a six-unit residential building in the Mattapan section of Boston. In May 1997, he rented a two-bedroom apartment to Justina Ebhojiaye and Sally Hui. In June 1997, Peace Osuagwu replaced Hui as Ebhojiaye’s co-tenant, as allowed by the lease. Ms. Osuagwu and Ms. Ebhojiaye signed a second lease, beginning on January 1, 1998, and ending on December 1, 1998. The monthly rent was $725.

On September 25, 1998, Lawrence sent the tenants a letter stating that lease was ending on December 1, 1998, and offering a new lease, beginning January 1, 1999, for $850 per month. Osuagwu and Ebhojiaye paid $725 for rent in December 1999 without objection or other demand by Lawrence.

On January 7, 1999, Lawrence served on Osuagwu and Ebhojiaye a fourteen-day notice to quit for nonpayment of rent. On January 25, 1999, Lawrence served on Osuagwu and Ebhojiaye a summary process summons and complaint, alleging nonpayment as the grounds for the eviction. Osuagwu and Ebhojiaye filed an answer, denying any agreement to pay rent in the amount of the $850 per month.

Osuagwu and Ebhojiaye continued to pay Lawrence $725 per month until Ebhojiaye vacated the apartment in April 1999. Then, Osuagwu told Lawrence that she needed to find a new roommate for financial reasons. Osuagwu continued to live in the apartment, but paid only $400 per month in May, June, and July 1999.

On June 5, 1999, Osuagwu received a telephone voice message from Lawrence stating that he had found her a new roommate -- a male. Osuagwu telephoned Lawrence and left him a telephone voice message that, for personal and religious reasons, she could not accept a man as her roommate.

Upon returning home that evening, Osuagwu found that a man already had moved into the second bedroom of the apartment. Osuagwu told the man that he would have to leave. He refused, stating he was the new tenant and that she would have to speak with the landlord.

Osuagwu called the police. Lawrence told the police that he had rented the apartment to the man and that the lease was in the man’s name. Osuagwu explained that she occupied the apartment and that she had not agreed to accept the man as her roommate. The police told the landlord that the man had to leave. The man removed his belongings and vacated the apartment.

Lawrence proceeded with the eviction action filed pursuant to the fourteen-day notice to quit for nonpayment of rent. Please discuss the rights, duties and liabilities of the parties.
Question Three

Tenant moved into the premises (a former motel) owned by Landlord on October 29, 1999, and occupied it as a tenant at will. He lived first in Unit No. 3 and moved to Unit No. 18 on May 29, 2000.

On May 4, 2001, Tenant complained in writing to Landlord that the shower drain had become blocked, and that tiles on the kitchen floor had loosened and "popped out." Landlord responded by letter dated May 7, 2001 that he was able to fix the drain with a plunger, that a plunger would be available in the laundry room if the problem arose again, and that an easy chair in the tenant's kitchen was causing the tiles to loosen. Landlord closed his letter with the following: "It is evident to me that our facilities here are not going to be adequate for your needs. Rather than having ongoing repeated problems I believe it would be best for you to look for accommodations elsewhere."

At various other times in May 2001, Tenant complained orally that the accumulation of steam from taking a shower set off the smoke detector; that the smoke detector generally was too sensitive and, therefore, went off too frequently; that the bathroom door was too tight and scraped the floor when being opened and closed; that the bathroom fan did not "sound right." Landlord fixed the shower drain by pouring in a drain cleaner and plunging it. Landlord replaced the loose tiles, but others began "to deteriorate" after he did so. The sensor in the smoke detector and the fan unit in the bathroom were also replaced.

On November 3, 2001, Landlord sent Tenant a letter notifying him that several other tenants had complained that his smoke alarm had gone off late at night, and requesting a "written explanation." In response, Tenant vehemently denied having anything to do with the alarm going off. Many parts of his letter were highlighted with single, double and triple underlines as well as multiple exclamation points. Landlord wrote back, characterizing Tenant's response as "not acceptable" and "full of anger." Landlord went on to state: "I am requesting you compose another letter using a more moderate tone. If not then please vacate the apartment. You are a tenant at will - both yours and mine. Either we communicate well or we don't communicate at all." He ended his letter by explaining that the control panel indicated that the tenant's smoke detector was "tripping" the fire alarm, and that he needed to know if the detector was defective since it would cost $175.00 to replace it.

On November 12, 2001, Landlord served a notice to quit stating a termination date of December 31, 2001. On December 3, 2001 Tenant had the local board of health inspect the unit. The resulting report by the board's agent, dated December 11, 2001, listed some of the matters discussed above as violations of the State Sanitary Code's "Minimum Standards of Fitness for Human Habitation." The report did not, however, designate which specific sections of the
Code were involved. Tenant did not leave on December 31, 2001.

After re-inspection on January 23, 2002, the health agent noted that five "[v]iolations [had] not been corrected." In addition to the tile and scraping door problems, the other listed violations were that the bottom of a metal cabinet, which sat directly on the kitchen floor, was "rusting and discoloring the floor;" that paint "was peeling off the floor of the shower stall;" and that the floor covering was applied "with poor workmanship" in that there were "gaps between the tiles of one-eighth inch ... or larger."

Landlord has proceeded with a summary process eviction action. Tenant has defended and counterclaimed. Please discuss the rights, duties and liabilities of the parties.

**Question Four**

Landlord and Tenant were parties to a tenancy at will for a single-family house that began on July 1, 1997. There was a cesspool beneath the house. About three months after moving into the house, Tenant noticed standing water, giving off a disgusting odor of sewage, in the yard alongside the house. Because Landlord resided in Florida for most of the year, Tenant complained about the situation to "Mike," who Landlord had hired as caretaker of the property.

Tenant's complaints were of no immediate avail. Three days before Christmas, 1997, sewage backed up into the house. Tenant was unable to use water for any purpose, household or personal. Tenant contacted a local sanitation company, which dug up and pumped out the cesspool.

During her tenancy, Tenant was twice forced to remove to a motel. Tenant was also forced to monitor the cesspool and determine whether and when she should have a sanitation company pump out the septic system. From December 1997 through February 1999, the cesspool remained exposed and had been pumped over twenty times. Although Tenant made many complaints to Landlord and his caretaker, the situation went uncorrected.

In April 1998, the local board of health sent written notice to Landlord, at his Florida address, informing him that the cesspool had failed and had to be replaced with a septic system meeting all the requirements of State and local law. Landlord hired an engineer to draw up a preliminary design for a new septic system. Those plans were apparently submitted to, but rejected by, the local authorities because the system was not set far enough away from the artesian well that provided the property with water.

Each of the landlord's options (redesign the septic system, relocate the well, seek a variance from the setback requirement from various governmental
authorities) was costly and time consuming. Faced with these choices, Landlord, on November 12, 1998, gave written notice to Tenant that she would have to find another rental on or before January 1, 1999. Tenant refused to move from the property, stopped paying rent, and brought an action against Landlord. Landlord responded with a complaint for summary process in which he alleged that Tenant had failed to comply with the notice to vacate, and that she owed him rent in the amount of $2,325.

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

END OF EXAMINATION