LANDLORD-TENANT
FINAL EXAMINATION
Professor Peter M. Malaguti
Spring 2005 Semester

INSTRUCTIONS

Please do not turn to the next page until you are instructed to do so.

Please take four (4) blue books. Write “One,” “Two,” “Three” and “Scrap” on the four blue books. Please write your social security number on all four blue books.

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 five (5) short essay questions that count equally. The suggested time for each essay is thirty-six (36) 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, your next two essays into Book Two and your last essay into Book Three. Do not place the essay answers randomly in the blue books. I mean it when I say that I want your answers to Questions 1 and 2 in Book One, Questions 3 and 4 in Book Two and Question Five in Book Three.

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; it takes away from the time you have to score points. 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.

Please do not turn to the next page until you are instructed to do so.
THE EXAM BEGINS ON THE NEXT PAGE
**Question One**

Adam Trask, the owner of a 10 unit apartment house in Salinas, Massachusetts, leased an apartment to Samuel Hamilton on June 1, 2004. Although the apartment would have been worth $1,500 a month in satisfactory condition, the parties agreed on a rental of $1,000 a month because the apartment suffered from excessive moisture and odor problems due to the fact that other dryers in the building were venting through Samuel’s bathroom. The moisture also caused the floors in the kitchen, bathroom and living room to warp and become slimy. Although Adam sent someone to inspect the condition of Samuel’s apartment on several occasions, the moisture and odor problems persisted. To abate the problem Samuel was compelled to run the fan in the bathroom and keep the bathroom door closed at all times. On October 30, 2004, Samuel renewed his complaint by writing Adam a letter that requested corrective action.

On November 18, 2004, Samuel orally complained of an ant infestation problem. On November 22, 2004, there was a fire in the bathroom caused by the fan. A Board of Health inspection three days after the fire documented the ant infestation problem and issue with the kitchen, bathroom and living room floors. A follow up inspection in January of 2005 indicated that the infestation issue, as well as the floor issues, continued unabated.

Although Samuel thought he could tolerate these problems when he moved in, he soon found the situation intolerable. Adam did make several attempts to correct the problem (he installed a dehumidifier, sealed the foundation, repainted some of the surfaces, etc.), his efforts were ineffective. Complete correction would have required the installation of several new windows and a sophisticated ventilation system at a total cost in excess of $10,000.

In April, 2005, after paying ten months’ rent, Samuel stopped paying his rent and told Adam that he would not pay again until the problems were corrected. On May 18, 2005, after failing to receive any rent for the prior two months, Adam served a notice to quit for failure to pay rent. He intends to start an eviction action against Samuel if Samuel does not vacate. Samuel intends to assert his defenses and file a counterclaim against Adam if Adam proceeds with an eviction.

Please discuss the rights, duties and liabilities of the parties, including appropriate damages, if any.

**Question Two**

Moe and Larry were parties to a written one year lease for a standard one-bedroom apartment. Moe was the landlord and Larry was the tenant. The unit that Larry rented was in a 20 unit apartment house in Wild Hyacinth, Massachusetts.

Two months into the lease, Moe hired Larry to serve as the “superintendent” of the apartment building. Moe and Larry agreed orally that Larry would provide janitorial,
repair and maintenance services for the entire complex for at least 40 hours a week. Moe agreed to pay Larry $550 a week for the services, and to provide health insurance benefits as well as a new two-bedroom apartment with a storage area in the complex. Moe and Larry did not reduce their employment arrangement to writing.

Soon after they entered into this employment arrangement, Larry moved into the larger apartment, which was more suitable for storing his janitorial tools and the like. The value of the old apartment was $800 a month, and the value of the new apartment was $1,200 a month. Moe and Larry did not enter into a new written lease for the new apartment that Larry moved into. Nor did they enter into a written agreement renouncing their old lease.

After six months, Curley, another tenant, began to complain that Larry was playing slapstick-type jokes on many of the tenants such as poking them in the eyes, pulling their hair, and slapping them in the face. Moe investigated and determined that Curley’s complaints were accurate; Larry indeed was a stooge. Moe gave Larry a verbal warning about his behavior, but Larry just couldn’t stop poking, slapping and whacking the people around him. Eight months after Larry Moved in, Moe fired him and told him to vacate the apartment within 10 days. Larry refused to leave and hired Shemp, a well-know attorney in the firm of Howard, Fine & Howard, to represent him.

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

**Question Three**

Louise owned a 100 unit apartment complex in Urbantown, Massachusetts. The apartment complex contained a mixture of low income housing, moderate income housing and luxury units. Louise was able to obtain low interest loans from the Commonwealth of Massachusetts to purchase the apartment complex because she dedicated a percentage of the units to low and moderate income housing.

Rutherford Chesterfield Butterworth rented one of the luxury apartments for $3,100 a month. His next-door neighbor in the complex was Pete Parsimoni, who rented a low income apartment. Pete, a welfare recipient, and Rutherford, a high-income insurance industry executive who had recently transferred to Urbantown from another city, did not get along, largely as a result of differences in their cultural and economic backgrounds. Their biggest dispute was about Pete’s chain smoking. Rutherford was a health enthusiast and could not tolerate second-hand smoke.

Pete always started and ended his day with a cigarette in his mouth, and throughout the day lit new ones with those that were about to go out. Rutherford, on the other hand, began his day with a run on the treadmill in his apartment, and ended it with several sets of weightlifting.
Rutherford smelled smoke in his apartment constantly, and it bothered him greatly. He developed a cough, which he attributed to smoke emanating from Pete’s apartment. His complaints to Pete brought scorn. About a month ago, Rutherford began complaining to Louise at least twice a week. Louise did look at Pete’s state-approved lease and determined that she could only evict Pete for “cause.” As much as she sympathized with Rutherford’s dilemma, she believed that Pete should be able to smoke in the privacy of his own home, and she lacked “cause” to evict him.

Rutherford has had enough and wants to take legal action to abate the problem. Please discuss the rights, duties and liabilities of the parties.

**Question Four**

On January 1, 1997, Lincoln and Tetley entered into a commercial, written lease for a period of ten years in Lincoln’s strip mall. The lease required Tetley to pay the rent on the first day of each month and was silent about whether Tetley could assign or sublease. In February, 1998, Tetley assigned to Apache without Lincoln’s permission. In July, 1998, Apache subleased to Bubka without Lincoln’s permission. And, in August 2003, Bubka assigned to Capulet without Lincoln’s permission. In January 2004, Capulet stopped paying rent, and no one has paid rent since. Lincoln would like to bring an action for rent against as many parties as possible. Please discuss the rights, duties and liabilities of the parties.

**Question Five**

Louie and Tony orally agreed that Tony would lease an apartment from Louie for a term of one year. Louie’s and Tony’s lease was memorialized in writing. The occupancy began on December 1, 2004. Tony did not pay his January 2005 rent until Louie served a notice to quit on January 23, 2005. Tony did not pay his February 2005 rent until Louie served a notice to quit on February 18, 2005, and did not pay his March 2005 rent until Louie served a notice to quit on March 29, 2005. Tony did not pay his April 2005 rent until Louie served a notice to quit on April 10, 2005. Tony tendered the May 2005 rent to Louie today, May 20, 2005, but Louie decided he doesn’t want Tony as a tenant any more. Please discuss the rights, duties and liabilities of the parties. Include in your answer the applicable dates: (1) on which a proper notice to quit would be served, (2) on which a summary process summons and complaint would be served, and (3) the various entry, answer, etc. dates. You may use the attached calendar.

**END OF EXAM**

**ENJOY YOUR SUMMER**