

**LANDLORD-TENANT
FINAL EXAMINATION -- Spring 2008 Semester
ANSWERS**

- | | |
|--|--|
| 1. The reason why a landlord's failure to deal with nonresident drug dealers in common areas of an apartment complex does not breach the implied warranty of habitability.
G | A. Until the day the answer is due in court in a summary process eviction action. |
| 2. Although a physical facility, it is not one that is considered "vital" to the habitability of an apartment.
J | B. Payment and acceptance of rent after a notice to quit has been served. |
| 3. 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.
A | C. Difference between the value of the premises as warranted and the value of the premises as they exist with defects. |
| 4. 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.
H | D. None. Liability is strict or absolute. |
| 5. The landlord's duty is to deliver only the "right to possession."
M | E. The minimum standard required to find a violation of the covenant of quiet enjoyment. |
| 6. The minimum standard required to find a violation of the implied warranty of habitability.
D | F. Rent Withholding |
| 7. The English Rule
I | G. It does not involve a physical facility. |
| 8. Negligence
E | 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. |
| 9. Used only in regard to "rent abatement."
C | I. Under it, the landlord is an absolute guarantor of the tenant's actual possession. |
| 10. Used only in regard to "rent withholding."
K | 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. |
| 11. Employed under both the implied warranty of habitability and the rent withholding statute.
L | K. Difference between the agreed upon rent and the value of the premises as they exist with defects. |
| 12. This statute provides that the tenant must pay rent into court in certain circumstances.
F | L. The percentage reduction approach. |
| 13. This may unwittingly create a new tenancy that requires the landlord to start over on an eviction.
B | M. The American Rule. |

Short-Answer Questions Based On Fact Patterns

Questions 14 and 15 are based on the following fact pattern:

Liza, as landlord, entered into a lease with Tanya, as tenant, for 2,000 square feet of space to be used as a law office. The term of the lease was for five (5) years. The lease contained the following clause: "Tenant may not assign this leasehold interest without the express, written consent of the landlord." The agreed-upon rent was \$1,200 a month. Tanya took possession and began making payments on the first day of each month. After one year, Tanya found that her legal practice did not grow as fast as she had predicted, and she was left with a lot of unused space. She therefore entered into a written sublease with another attorney for about half of the space she had leased from Liza. The term of the sublease was for one (1) year. Liza objected to the sublease and has commenced an eviction action, claiming a breach of lease. Tanya claims she was entitled to act as she did.

14. In the eviction action brought by Liza, who will prevail? (Please circle the best answer.)

Liza

Tanya

15. In the space below, please *briefly* state the reasoning for your last answer.

Assignments and subleases are strictly construed. The ban of an assignment does not prohibit a sublease, and vice versa. Here, the only prohibition in the lease was on assignments. Thus, Tanya was free to sublease.

Questions 15 through 17 are based on the following fact pattern:

Lanza, as landlord, and Tybalt, as tenant, orally agreed to a lease of 1313 Mockingbird Lane, Apt. #13, Munsterville, Massachusetts, for a term beginning on January 1, 2007 and ending at midnight of December 31, 2007. As agreed, Tybalt moved in on January 1, 2007, and he faithfully paid rent on the first day of each month. In early May 2007, Tybalt learned that his employer was going to transfer him to Honolulu, Hawaii on June 1, 2007. On May 15, 2007, Tybalt gave notice to Lanza that would vacate the premises on May 31, 2007. Tybalt vacated on that date and paid no more rent. In December 2007, after having tried diligently for six months to relet Apartment # 13, Lanza brought an eviction action, which also sought rent for the months of June through December 2007.

15. What kind of a tenancy existed at inception between Lanza and Tybalt?

Tenancy at Will

16. What kind of a tenancy would it be if the premises were located in “Multistate” rather than Massachusetts?

Tenancy at will / Term of Years if student construes the term as less than a year.

17. In Massachusetts, what is the earliest date Tybalt could have lawfully vacated with proper, written notice?

June 30 / July 1

Questions 18 through 27 are based on the following fact pattern:

Tammy leased a two-bedroom apartment from Larry under a written lease that: (1) identified the parties, (2) described the land by its proper address and apartment number, (3) stated the proper term, which began on January 1, 2007 and ended at midnight on December 31, 2007, and (4) was signed by both parties. The lease made no provisions for extension after December 31, 2007. As the end of the lease term approached, neither Tammy nor Larry notified the other of their intentions regarding a new lease term or extension of the current lease. At the end of the lease term on December 31, 2007, Tammy remained in the apartment. On January 1, 2008, Tammy mailed to Larry a rent check in the same amount as her payments for each of the previous twelve months. It is now January 4, 2008 and Larry has not deposited or cashed the check.

18. What kind of a tenancy existed at inception between Larry and Tammy?

Estate/Term of Years

19. In the space below, please *briefly* state the reasoning for your last answer.

The lease stated a definite beginning and ending time and the term was agreed to in advance. SOF was satisfied: (1) identified the parties; (2) described the land; (3) signed by the party to be charged; and (4) stated the term.

20. What kind of a tenancy existed between Larry and Tammy on January 4, 2008 as Larry was contemplating what to do with Tammy’s rent check?

Tenancy at Sufferance

21. In the space below, please *briefly* state the reasoning for your last answer.

The estate for years ended under its own terms. The parties did not reach an agreement on a new tenancy. Tammy had been in rightful possession, but no longer was. Essentially, she was waiting to get evicted.

22. Assuming that the apartment is in Massachusetts, what will be the effect of a decision by Larry to endorse and deposit the effect he received from Tammy in January 2008?

To create a new tenancy at will

23. In the space below, please *briefly* state the reasoning for your last answer.

The unconditional payment of rent by a tenant and acceptance by a landlord creates a presumption of a new tenancy at will. It is a tenancy at will rather than an estate for years or periodic tenancy because no writing contains elements satisfying the statute of frauds.

24. Assuming that the apartment is in "Multistate," what will be the effect of a decision by Larry to endorse and deposit the effect he received from Tammy in January 2008?

To create a periodic tenancy.

25. In the space below, please *briefly* state the reasoning for your last answer.

In multistate law, a tenancy at sufferance that becomes a tenancy will be deemed a periodic tenancy despite the lack of a sufficient writing needed to satisfy the statute of frauds in Massachusetts.

26. Assume for this question that Larry wants to get rid of Tammy as soon as possible. Should he serve on her a notice to quit in order to begin the eviction process? (Please circle the best answer.)

Yes

No

27. In the space below, please *briefly* state the reasoning for your last answer.

The purpose of a notice to quit is to terminate a tenancy. Here, the tenancy already ended under its own terms. There is no need, therefore, to terminate the tenancy by serving a notice to quit.

Questions 28 through 31 are based on the following fact pattern:

Tim looked at a house that Lyle had put on the rental market for \$1,800 per month. Tim liked the house and told Lyle that he would take it. Tim initially insisted on a written lease, but eventually agreed to rent it without a lease. Two days before Tim was to move in, Lyle decided to lease the house to someone else who offered to pay \$2,000 per month, and has refused to allow Tim to take occupancy. Tim has filed a law suit against Lyle seeking to establish his status as a tenant.

28. In the space below, *briefly* describe Tim's status at the time of the law suit.

Tim is not a tenant of any kind. To the extent he has any rights, they are contractual.

29. In the space below, please *briefly* state the reasoning for your last answer.

Without a written lease or memorandum satisfying the SOF, the most Tim could have been was a tenancy at will. But the tenancy at will does not begin until the tenant takes possession. Tim never took possession and therefore was not a tenant of any kind.

30. What cause of action against Lyle might be more effective than Tim's action for a declaration that he is a tenant?

Breach of contract to make a lease

31. In the space below, please *briefly* state the reasoning for your last answer.

While Tim had no real estate rights, it could be argued that he and Lyle entered into a contract to make a tenancy at will, which was supported by offer, acceptance and consideration. By refusing to honor the contract, Lyle breached it.

Questions 32 through 46 are based on the following fact pattern:

Trifecta lived in a bottom floor flat in a double-decker house in East Roxchester, Massachusetts. The double-decker's owner was Overlord, who lived on the floor above Trifecta. When Trifecta was in the third month of a one-year written lease, she started to experience a series of unexplained respiratory illnesses. After several visits to the doctor, Trifecta finally received a diagnosis that the illnesses likely were caused by exposure to toxic mold. Trifecta hired a private inspector who determined that sections of the walls and ceilings of her apartment contained high levels of toxic mold.

32. After receiving the inspector's report, Trifecta moved out her belongings, handed her keys to Overlord, and declared, "I'm outta here!" Based only on the facts as stated above, was Trifecta justified in abandoning the apartment under the common law covenant of quiet enjoyment? (Please circle the best answer.)

Yes

No

33. In the space below, please *briefly* state the reasoning for your last answer.

At common law, a landlord could not be deemed liable under the covenant of quiet enjoyment unless he engaged in purposeful, affirmative conduct that directly interfered with the tenant's peaceful possession. Here, there is not evidence that Overlord caused the mold.

34. Overlord had never experienced respiratory illness of the type suffered by Trifecta. Nor had any of the previous tenants who resided in the bottom floor flat prior to Trifecta experienced similar illness. Prior to Trifecta's illness, Overlord had no reason to believe that any part of the house might be infested with toxic mold. Under such circumstances, was Trifecta justified in abandoning the apartment under the Massachusetts statutory covenant of quiet enjoyment, G.L. c. 186 § 14? (Please circle the best answer.)

Yes

No

Go on to the next page for Question 35

35. In the space below, please *briefly* state the reasoning for your last answer.

To be liable under G.L. c. 184 § 14, at a minimum a landlord must be negligent. It would be extremely difficult to show that Overlord was negligent when he had no prior knowledge of the mold, or no reason to believe there was a problem.

36. Looking back to the common facts and those stated in Question 32, even if Trifecta is unable to prevail on a claim that Overlord breached the common law and statutory iterations of the covenant of quiet enjoyment, what additional defense she can raise in response to a claim by Overlord that she is liable for the remaining nine months' rent?

That Overlord accepted her surrender of the apartment and thus relieved her of further rent liability. As an alternative, I'll also accept a defense of the implied warranty of habitability or rent withholding (G.L. c. 239 § 8A).

37. Please *briefly* explain the grounds for the cause of action identified in your last answer in the space below.

A landlord's acceptance of a tenant's surrender of the premises relieves the tenant of further rental obligations and liability. An argument can be made that, by accepting the keys from Trifecta, which are integral to control of the apartment, Overlord accepted her surrender of the apartment.

38. Assume that, instead of abandoning, Trifecta did notify Overlord of the information she had received from her doctor and home inspector. Overlord's response was to place high-volume air blowers in various spots in Trifecta's apartment with the intent to dry out the areas infected by the mold. After two weeks, Trifecta's health still had not improved. At that point, her inspector told her that the only way to remove the toxic mold was to rip out the areas of wall, ceiling and insulation that had been infected, thoroughly clean those areas with industrial strength antibacterial solvents, and replace the removed areas with fresh materials. This would cost Overlord several thousand dollars. When Trifecta informed Overlord of this recommendation, his response was to bring in even more high-volume air blowers. Yet, once again, after another two weeks, Trifecta's health still did not improve. At this point, will Trifecta be able to make out a successful quiet enjoyment claim under G.L. c. 186 § 14? (Please circle the best answer.)

Yes

No

39. In the space below, please *briefly* state the reasoning for your last answer.

This is much like *Simon v. Solomon* where the landlord offered only "band-aid" remediation. It can be argued that Overlord was "reckless" – conduct that exceeds negligence – in failing to take meaningful steps to solve the problem, while Trifecta's health continued to suffer.

40. Assume for this question that Trifecta does prevail on her G.L. c. 186 § 14 claim. What damages and/or remedies are available under the statute?

(1) Criminal Law: fine of \$25 to \$300 and up to 6 mo. in prison; (2) actual and consequential damages or 3 mo. rent, whichever is greater; (3) costs and reasonable attorneys' fees; and (4) injunctive relief.

41. Assume for this question that Trifecta wishes to pursue a claim under the Massachusetts common law warranty of habitability (*BHA v. Hemmingway*) rather than under the covenant of quiet enjoyment. Does she have a viable claim under the implied warranty of habitability? (Please circle the best answer.)

Yes

No

42. In the space below, please *briefly* describe how she does or does not meet the elements as stated in *BHA v. Hemmingway*.

There must not be any latent or patent physical defects in facilities vital to the use of the premises for residential purposes. The mold constitutes a physical defect. The walls, ceilings and insulation – the areas housing the mold – undeniably are vital facilities. The defects affected Trifecta's health, safety and welfare.

43. Assume for this question that Trifecta prevails in her claim that Overlord breached the implied warranty of habitability. At what point do damages start to accrue?

The moment Trifecta notified Overlord of the mold problem.

44. Please state the legal measure of damages that Trifecta would recover under the common law implied warranty of habitability.

The difference between the value of the premises as warranted and the value of the premises in their defective condition.

45. Please state the legal measure of damages that Trifecta would recover under G.L. c. 239 § 8A, the so-called statutory implied warranty of habitability.

The difference between the agreed-upon rent and the value of the premises in their defective condition.

46. Please explain how a court would implement the two legal measures of damages in a real case.

Under the percentage reduction approach: assign a fractional or percentage reduction of the value of the lease for each defect, add up the total percentages for each defect, and deduct the sum from either the value of the premises as warranted (IWH) or agreed-upon rent (rent withholding).

Question 47 is based on the following fact pattern:

Tracy rented half of a duplex from a grandfatherly man named Lerch, who lived in the other half of the duplex. Lerch immediately took a strong liking to Tracy, saying that she reminded him of his granddaughter who lived in California, and whom he did not get to see that often. Tracy responded that she was originally from California, and had no family in the area. Lerch told her not to worry; he would look out for her as if he really were his grandfather. Soon, Lerch began to use his master key to let himself into Tracy's apartment to "check things out and make sure everything was okay." Lerch would enter on an almost-daily basis, usually when Tracy was not around, but sometimes when she was in the apartment. Lerch would never knock; he would just announce his entry as he was coming through the front door to the duplex. Tracy has found it difficult to have friends over, and has come to feel as if she has no privacy whatsoever. She has politely asked Lerch to stop entering without permission, but Lerch always responds that "someone has to look out for my little granddaughter."

47. Please list the remedies are available to Tracy if she decides to take legal action.

- **A straight trespass action: injunction and damages**
- **Breach of the common law covenant of quiet enjoyment: abandonment by the tenant**
- **Breach of G.L. C. 186 § 14 (civil): damages, triple damages, injunction, attorneys' fees, and costs**
- **Breach of G.L. C. 186 § 14 (criminal): jail and/or fines**
- **Criminal trespass: jail and/or fines**

Questions 48 through 51 are based on the following fact pattern:

Tabatha leased an apartment from Lou under a written lease for a term of years. The written lease was utterly silent about the condition of the apartment. It did state that the tenant is responsible for paying all electricity and heating bills. The apartment was serviced by a central air conditioning system, although the lease said nothing about the provision or maintenance of air conditioning. The air conditioning does run off of the electrical service, and Tabatha paid for air conditioning by way of the electric bill she received from the local utility. In the middle of

summer, during the worst heat wave of the year, the condenser in Tabatha’s air conditioning system broke and her apartment became extremely hot. Lou refused to repair the unit.

48. Would Tabatha have an action against Lou under the Massachusetts common law or statutory (G.L. c. 186 § 14) covenants of quiet enjoyment? (Please circle the best answer.)

Yes

No

49. In the space below, please *briefly* state the reasoning for your last answer.

Although many people in Massachusetts have air conditioning, many people do not, and our societal expectations have not reached the point where air conditioning is deemed essential to peaceful possession of residential premises in this climate. Nothing in the lease makes air conditioning an essential service under G.L. c. 186 § 14.

50. Would Tabatha have an action against Lou under the Massachusetts common law or statutory (G.L. c. 239 § 8A) implied warranties of habitability? (Please circle the best answer.)

Yes

No

51. In the space below, please *briefly* state the reasoning for your last answer.

This is essentially the same answer as for Q. 49; air conditioning is not essential to residential habitability. In addition, under the warranty of habitability, air conditioning is not a “vital facility.”

Questions 52 and 53 are based on the following fact pattern:

Lorraine leased an apartment to Talisker. One night, “the lights all went out in Massachusetts” because of a major problem occurring at a regional power station. Unfortunately, the lights stayed out for 6 days, leaving Talisker without any electricity. On the second day of the blackout, Talisker notified Lorraine that he was going to deduct money from his next rent payment because the apartment was not up to the minimum standards of fitness for human occupancy prescribed by the State Sanitary Code. The State Sanitary Code does require that landlords provide electricity to all premises rented for residential purposes. Lorraine informed Talisker that the power outage was not her fault, and that she expected Talisker to pay the rent.

52. Regardless of whether you agree with the argument, please make your best argument that Talisker *is* legally authorized to withhold rent under the Rent Withholding Statute.

Today, residential premises must have electricity in order to be habitable. Electricity is now considered a “vital facility.” Neither the implied warranty of habitability nor the rent withholding statute require “fault” on the part of the landlord for him/her to be liable. Liability is strict and Talisker can deduct rent.

53. Regardless of whether you agree with the argument, please make your best argument that Talisker *is not* legally authorized to withhold rent under the Rent Withholding Statute.

The implied warranty of habitability and rent withholding statute are based on contract principles. Hence, contract defenses should apply. Lorraine may be able to make out a valid “impossibility” or “commercial frustration” defense. See the Saab case we did in class.

Questions 54 through 61 are based on the following fact pattern:

Toni rented a large apartment from Lucy as a tenant at will under a written lease in the town of Normal, Massachusetts. The rent was \$1,500 per month, payable in advance on the first day of each month. After two months of uneventful occupancy, Toni convinced two of her friends to move in with her and share the rent. This upset Lucy greatly although the lease did not contain any restrictions on assignments, subleases, or additional occupants. Within a week after learning about the additional occupants, Lucy mailed Toni a letter announcing that she was terminating the old tenancy and offering a new one at a rent of an additional \$300 a month. Lucy also stated that she would no longer provide certain services outlined in the written lease. Finally, Lucy’s letter asserted that these modifications would become effective at the end of the next rent payment period. A week after receiving the letter from Lucy, Toni and her new roommates called the Normal Health Department and asked that the apartment be inspected for State Sanitary Code violations. The Health Inspector came, found seven Sanitary Code violations, and notified Lucy of them in writing. Six months and one day after she received the written notice of violations from the Health Inspector, Lucy served a notice to quit directing Toni and her roommates to vacate the apartment at the end of the next full rental payment period. Toni and her roommates believe that all of Lucy’s above-described actions were retaliatory.

54. Please list the “protected activities” under the Massachusetts Retaliation Statute, G.L. c. 186 § 18.

- (1) notifying landlord in writing of problems with the premises**
- (2) contacting the board of health or its equivalent about the condition of the premises**
- (3) commencing an administrative or judicial action involving housing laws**
- (4) creating or joining a tenants union or similar organization**

55. Please list the “forbidden activities” under the Massachusetts Retaliation Statute, G.L. c. 186 § 18.

- (1) **terminating a tenancy**
- (2) **raising the rent**
- (3) **materially changing the terms of the tenancy**

56. Please describe the “presumption” that might be created under G.L. c. 186 § 18.

It is presumed that the landlord retaliated against the tenant if the landlord engages in one of the “forbidden activities” within 6 months after a tenant engaged in one of the “protected activities.”

57. Please state the manner by which a landlord can overcome the “presumption” you described in your last answer.

S/he can show by clear and convincing evidence that: (1) his/her actions were not in retaliation for the tenant’s protected conduct, and (2) the landlord would have acted the same way even if the tenant had not engaged in protected conduct.

58. Please state whether Lucy’s action modifying the lease to impose a \$100 a month rent increase and deletion of certain services under the written lease violated the Retaliation Statute, G.L. c. 186 § 8A. (Please circle the best answer.)

Yes, it violated

No, it didn’t violate

59. In the space below, please *briefly* state the reasoning for your last answer.

At that point, Toni had not engaged in any protected conduct. Adding new tenants is not protected conduct.

60. Please state whether Lucy’s action in serving the notice to quit violated the Retaliation Statute, G.L. c. 186 § 8A. (Please circle the best answer.)

Yes, it violated

No, it didn’t violate

61. In the space below, please *briefly* state the reasoning for your last answer.

Toni engaged in a protected activity (complaining to the health department) and Lucy responded with a forbidden action (terminating the tenancy). Although the forbidden action was more than 6 mo. After the protected conduct, and the presumption does not apply, Toni is allowed to prove retaliation by a preponderance of the evidence.

Questions 62 through 68 are based on the calendar at the back of this exam booklet.

62. Today is Thursday, May 15, 2008. Assuming that a 14 day notice to quit can be served tomorrow, May 16, 2008, what is the *earliest* date you can choose for an entry date on a summary process summons and complaint?

June 9

63. Based on the entry date you chose in answering question 62, what would the trial date be?

June 2 → June 12

June 9 → June 19

June 16 → June 26

June 23 → July 3

64. Based on the entry date you chose in answering question 62, on what date would the answer be due?

June 2 → June 9

June 9 → June 16

June 16 → June 23

June 23 → June 30

65. Based on the entry date you chose in answering question 62, what is the latest date that requests for discovery could be served?

- June 2 → June 9
- June 9 → June 16
- June 16 → June 23
- June 23 → June 30

66. Based on the entry date you chose in answering question 62, if discovery requests were timely served, on what date would the trial be held?

- June 2 → June 26
- June 9 → July 3
- June 16 → July 10
- June 23 → July 17

67. Assuming that the tenancy was a tenancy at will, and that the 14 day notice to quit complied with the “grace/cure period” notification requirements of G.L. c. 186 § 12, when will the “grace/cure period” end?

May 26

68. Assuming that a notice to quit to terminate a tenancy at will can be served tomorrow, May 16, 2008, and that the landlord is terminating the tenancy through no fault of the tenant, what is the *earliest* date you can choose for an entry date on a summary process summons and complaint?

July 14

Questions 69 and 70 are based on the following fact pattern:

Torrone leased an apartment from Lorenzano as a tenant at will. After one month in the apartment, Torrone called Lorenzano and told her that he was unhappy in the apartment house and wanted to leave at the end of the next full rental period. Lorenzano thanked Torrone for the call and stated that she would treat the lease as terminated if Torrone made his final rental payment. Torrone made the final rental payment in cash, secured a new apartment and left at the end of the next rental payment period. Lorenzano changed her mind, however, and after Torrone left demanded that he continue to pay rent.

69. Was Lorenzano within her legal rights in demanding additional rent after Torrone vacated? (Please circle the best answer.)

Yes

No

70. In the space below, please *briefly* state the reasoning for your last answer.

All tenancies, including the tenancy at will, must be terminated by a notice in writing.

Torrone's and Lorenzano's oral conversation did not end the tenancy. Hence, Terrone continues to be liable for rent.

Questions 71 and 72 are based on the following fact pattern:

Lucinda owned an older rental home in Pleasanthaven, Massachusetts. Although residential, the home was located in the retail district in the center of town. In 2004, Lucinda entered into a 10-year lease agreement for the home with Theresa. The lease stated the property was only to be used as a single-family residence. In 2007, Theresa decided to convert the first floor of the home to use as an upscale Italian restaurant. Theresa made significant structural changes to the premises, and installed commercial kitchen and cooking equipment. She even knocked out walls to increase seating capacity, and moved around several doors and windows. All of this made the first floor of the building entirely unsuitable for residential use, but it has doubled the value of the real estate. Lucinda is looking to evict Theresa on the ground that she committed waste.

71. What is waste?

- **Permanent and lasting destruction of real estate; or**
- **“An unreasonable or improper use, abuse, mismanagement or omission of duty touching real estate by one rightfully in possession which results in substantial injury.” *Delano v. Smith***

72. In the space below, please make your best argument that Theresa is not liable for waste.

An exception to waste is the doctrine of “ameliorating waste,” which excuses what otherwise would be considered waste if it increases the value and/or productivity of the real estate. Theresa's actions did, in fact, increase the value of the property.

Questions 73 and 74 are based on the following fact pattern:

Dotty Com owned a large piece of commercially-zoned land in Silicon, Massachusetts. Intending to build a high-tech office park, she obtained a construction loan of \$1,500,000 from

the Technocrat National Bank, and granted a mortgage on the loan. The mortgage was valid in all respects, and was properly recorded. Dotty then built an impressive office park and landed several well-regarded high-tech companies. Each of these companies entered into long-term leases with Dotty, which were duly recorded, and their businesses thrived. Unfortunately, however, Dotty liked to invest in the risky commodities' market, and she often did so "on margin." When some of her investments went sour, Dotty was left unable to pay the mortgage on it despite the fact that her office park was doing well financially. The Technocrat National Bank foreclosed, and Opportunist, Inc., the company that purchased at foreclosure, notified all of Dotty's tenants that their leases were no longer valid. Of course, Opportunist offered new leases to the tenants at double the previous rent.

73. Was Opportunist within its rights in declaring the leases of Dotty's tenants to be cancelled? (Please circle the best answer.)

Yes

No

74. In the space below, please *briefly* state the reasoning for your last answer.

The foreclosure of a "senior" mortgage extinguishes all "junior" real estate interests, including leases. Here, the TNB mortgage was senior to all the leases, which were thus extinguished upon TNB's foreclosure. Opportunist had the right to remove the tenants or to do new leases.

Questions 75 is based on the following fact pattern:

In 1999, Lon leased to Tim for 10 years. Tim assigned his interest to Tammy in 2000. In 2003, Tammy subleased to Tony. In 2006, Tony assigned his interest to Tanana. Now, no one is paying rent to Lon.

75. Please state every person against whom Lon can recover a judgment for rent.

Tim and Tammy

END OF EXAM

Calendar on Next Page

2008 Calendar --<http://www.vertex42.com/calendars/2008-calendar-clipart.html>

January 2008

Su	M	Tu	W	Th	F	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

February 2008

Su	M	Tu	W	Th	F	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	

March 2008

Su	M	Tu	W	Th	F	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

April 2008

S	M	T	W	Th	F	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

May 2008

S	M	T	W	Th	F	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

June 2008

Su	M	Tu	W	Th	F	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

July 2008

Su	M	Tu	W	Th	F	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

August 2008

Su	M	Tu	W	Th	F	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

September 2008

Su	M	Tu	W	Th	F	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

October 2008

Su	M	Tu	W	Th	F	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

November 2008

Su	M	Tu	W	Th	F	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

December 2008

Su	M	Tu	W	Th	F	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			