

LANDLORD-TENANT
FINAL EXAMINATION

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SUMMER 2002

Question Four

In 1996 Contractor installed gas kitchen ranges in twelve apartments under a contract with Landlord to construct new low-income housing units in Hadley, Massachusetts. Contractor failed to properly fit the stoves for propane gas.

Beginning in August 1997, tenants made numerous complaints to Landlord about the stoves and ovens not working properly. Between May 1999 and June 2002 Landlord received thirty-five service requests from ten apartments relating to problems with the stoves and ovens. Landlord generally responded to these complaints by repairing the stove or oven in question.

In October and November 2000 several tenants from different apartments called the Hadley Fire Department and the local Division of Inspectional Services (DIS) complaining of nausea and headaches, and reporting gas odors and sounding carbon monoxide alarms. The fire department and DIS directed Landlord to repair the gas leaks on November 22, 2000, after it found excessive carbon monoxide levels in several apartments. Landlord agreed to install proper gas orifices in the stoves and carbon monoxide detectors in each apartment by the following day.

On December 1, 2000, after receiving additional calls regarding possible gas leaks from tenants, DIS wrote a second letter to Landlord, stating that the fire department had received three calls from the same apartment reporting unsafe carbon monoxide levels and had heard no word from Landlord regarding replacement of the orifices. Through 2002 tenants continued to report strong propane odors, problems with the operation of their stoves, and sounding carbon monoxide alarms.

A group of tenants has threatened to sue Landlord claiming injury as a result of exposure to carbon monoxide. In the event that the tenants sue, Landlord would like to file a third-party complaint against Contractor.

What causes of action should the tenants include in their complaint? What causes of action should Landlord include in its third-party complaint? On the basis of these causes of action, please discuss the rights, duties, liabilities and defenses of the parties.

END OF EXAM

ENJOY THE REST OF YOUR SUMMER

INSTRUCTIONS

Please take five (4) blue books. Write "Part One" on one of the blue books, "Part Two" on another, "Part Three" on another, "Part Four" on another, and "Scrap" on the fifth blue book. Please write your social security number on **all five** 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 (4) essay questions, and the suggested time is forty-five (45) minutes. **Do not exceed five (5) single-spaced pages for each essay answer**. Do not test me on this; I will not read beyond the fifth page on either essay. Also, **do not put more than one essay answer in any one blue book**. Each essay counts for 25 of a possible 100 points.

When you are finished, please put all three blue books and this exam booklet 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.

Unless the facts of the questions suggest otherwise please use 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 the **application of properly stated rules of 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 pre-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 give you three (3) hours to complete the exam.

I will tell you when there are 15 minutes left, 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*.

Good luck.

Question One

Rita Reschke owned a house, which Harriet Honda "house sat" in November 2001. During the "house sitting" period, Harriet paid no rent. The parties did not memorialize their arrangement in writing; nor did they discuss the status of Harriet's occupancy at that time.

Rita was due to return from her trip on December 1, 2001. In anticipation of Rita's return, Harriet moved from the main part of the house into a furnished bedroom/bathroom unit at the back end of the house on November 25, 2001. Reschke returned from her trip on December 1, 2001, and on December 17, 2001, the two women entered into an oral agreement for Harriet's continued occupancy of that bedroom/bathroom area in Rita's house. They agreed that Harriet would pay \$500 per month, which included all utilities. Harriet was to pay for any telephone and was to provide a \$515 security deposit. She could share use of Rita's kitchen, laundry room, living room and dining room. Rita also agreed to allow Harriet to use one of two rear parking spaces and an unfinished room adjoining the rented bedroom/bathroom for storage of painting materials. Harriet paid \$500 for January, February and March 2002. She also paid the \$515 security deposit. She moved her furniture into the bedroom/bathroom area toward the end of January.

Sometime after Rita's return, she began to feel "uneasy" around Harriet. If Harriet was in the kitchen, Rita would not enter the kitchen. If Harriet had parked in one of the two parking spaces in the rear of the house, Rita parked in front. By February or March, Rita was not comfortable in her own home.

Rita spoke with an attorney related to her by marriage. They decided that Rita's attorney would prepare a "Room Rental Agreement" and send it to Harriet, which the attorney did. The Agreement, which anticipated an April 2002 signature date, expressly stated that Harriet was a "licensee" and not a "tenant," and could be removed by Rita at any time. Harriet refused to sign it.

By letter to Harriet dated May 15, 2002, Rita's attorney stated that if Harriet did not sign the Agreement, she would be "removed" from the bedroom/bathroom area. Harriet has steadfastly refused to sign the agreement. On May 24, Harriet wrote a letter to Rita complaining that Rita was discriminating against her because she was an artist whose "only vice in life is to smoke a joint or two." In the letter Harriet further complained that \$500 was a lot to pay for a room that was plagued with mice, and often quite cold due to a persnickety heating system.

Harriet has now come to you, a practicing attorney in Massachusetts, to discuss her options. She believes that Rita is going to change the locks and place her Please discuss Harriet's status, and her options in full detail. In doing so, please also consider the rights, duties and liabilities of both Harriet and Rita.

GO TO THE NEXT PAGE FOR THE NEXT QUESTION

Question Two

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, June 27, 2002. Assuming that a 14 day notice to quit can be served tomorrow, June 28, 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 Two A, what would the trial date be?
- C. Based on the entry date you chose in answering question Two A, on what date would the answer be due?
- D. Based on the entry date you chose in answering question Two A, on what date would requests for discovery be due?
- E. Based on the entry date you chose in answering question Two A, if discovery requests were timely served, on what date would the trial be held?
- F. 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.
- G. Assuming that a notice to quit to terminate a tenancy at will can be served tomorrow, June 28, 2002, 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?

GO TO THE NEXT PAGE FOR THE NEXT QUESTION

Question Three

Landlord rented an apartment to Tenant. If the apartment had been up to code, the fair rent would have been \$1,000 a month. However, the place was a hell-hole, and both Landlord and Tenant knew it. The bathroom toilet was leaky, there were no light fixtures in the bathroom, the stove in the kitchen sometimes works and sometimes does not, one of the living room windows was cracked, brown water comes out of the faucets, there were holes in the ceiling plaster in the bedroom, and several of the electrical outlets failed to function. Landlord and Tenant agreed that Tenant would pay only \$500 a month because of the problems with the apartment.

Tenant moved in and almost immediately determined that, although he thought he could tolerate these conditions, he just didn't have the stomach for it. He almost immediately notified the Landlord in writing of the existence of the problems, and asked the Landlord to fix them. The Landlord responded 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 stated that a contract is a contract.

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

- 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 the Landlord to have violated the implied warranty of habitability and rent withholding statute, please articulate the proper rules to apply in measuring Tenant's damages as to each. (No need to give numbers here; just state the rules.)
- D. Assuming the court finds the Landlord to have violated the implied warranty of habitability and rent withholding statute, please calculate the actual damages under each. (I do want numbers here.)

GO TO THE NEXT PAGE FOR THE NEXT QUESTION