

Property I – Law 715A -- §LS2
Professor Stanley -- Fall 2007 Final Exam

Monday, December 10, 2007

General Instructions

1. You have three (3) hours to complete this exam.
2. This is an entirely closed book exam. You may not use any books, notes, outlines or materials during the exam.
3. This exam consists of 14 pages, including these Instructions and a two-page Statutory Supplement to be used with Essay Question #2. Check to make sure you have all pages before beginning the exam.
4. Write your **exam number** on your exam envelope, at the top of the exam question packet, and on the ParScore form. Also, write your exam number on the cover of **each** Blue Book. **Do not use your name, student ID number, or Social Security Number on any exam.**
5. There are two parts to this exam. There is, however, no formal restriction of time between Parts I and II, and you may allocate the full three hours as you deem best.
 - **Part I consists of 20 Multiple Choice questions. Each question in this Part is worth five points, with the total of all multiple-choice questions worth 100 points.** Part I should consume approximately 60 minutes of the allotted time. Please answer the multiple-choice questions on the ParScore provided to you using a #2 pencil. If you change your answer, please be sure that your erasures are complete. The exam will be scored by a machine and ambiguities will be counted as a wrong answer
 - **Part II consists of two essay questions each worth 150 points.** You should allocate 60 minutes to answer each question. Make sure you answer each part of the call of the question, and include your reasoning and analysis as well as your conclusion. If you use Examsoft, please use a 12-point font and double space. If writing, please answer the essay questions in the blue books provided to you, **writing only on the right hand side of the page.**

Please take time to organize your answer before you begin to write, and write clearly and concisely. **Read the facts carefully.** Answers based on incorrect facts are treated as incorrect answers. If you believe a question is vague or a material fact is lacking, state explicitly the assumption of fact you are making in answering the question. It is possible that a key fact or facts may have been intentionally omitted. In these instances, in order to fully answer the question, you must make an assumption and supply the key fact or facts. Furthermore, unless otherwise noted, if you conclude that different results could be reached

depending on the applicable law of a particular jurisdiction, your answer should cover alternative situations, e.g., the majority, the minority, and the California rule. You may abbreviate where appropriate.

6. Your final grade in the class will be comprised of your score on the midterm (20 multiple choice questions of 5 points each = 100 points or 20% of your final grade) plus this final exam (20 multiple choice questions of 5 points each = 100 points plus two essays worth 300 points = 400 points or 80% of your final grade).
7. Unless otherwise stated, assume: (a) all parties are unmarried and unrelated to each other; (b) all property is separate (not community) property; (c) the jurisdiction has adopted the common law Rule Against Perpetuities without modification by statute, and (d) the jurisdiction has **abolished** the Rule in Shelley's Case, the Rule Regarding Destructibility of Contingent Remainders, and the Doctrine of Worthier Title.
8. The entire exam and all scrap paper are to be turned in at the end of the exam period, together with your exam blue books. Answers appearing on scrap paper will not be read.
9. At the conclusion of the exam, return all test materials to the exam envelope and submit it to the proctor. Do not seal the envelope. Failure to return all materials will result in academic sanctions, which may include a failing grade for the course.

GOOD LUCK!

THANKS FOR BEING SUCH A GREAT CLASS!

PART II -- Essay Question 1

(150 points total -- Suggested time: 60 minutes)

Gulliver's Restaurant ("Gulliver's") has been a local fixture in the City of Metropolis for over fifty years. Gulliver's is jointly owned by two brothers, Bob and Ben Gulliver. They inherited the restaurant property from their father 20 years ago, when he devised it to them "jointly and severally." The restaurant is located in a busy commercially-zoned area adjacent to a local commuter airport that is privately owned by an influential real estate developer.

Bob Gulliver, his wife Lily of 30 years, and their two adult children work full time at the restaurant. Ben Gulliver, who is single and has no children, has been mentally and physically disabled since he was the victim of a drunk driver ten years ago. Ben

is now in an institution for the disabled out of state. Ben never worked in the restaurant; he did, however, receive a large insurance settlement which will be sufficient to cover the costs for his support and institutional care for the rest of his life.

Gulliver's makes an annual profit of roughly \$1 million from operations. Bob has always kept that profit since Ben never worked in the restaurant and had no additional financial needs. For the last 20 years, Bob has paid all of the costs of maintaining the restaurant out of the proceeds from the restaurant operations including taxes, repairs, and the cost of improvements when he expanded the restaurant to include a large party room five years ago.

The City of Metropolis has decided to double the size of the local airport and has passed an ordinance condemning the land on which Gulliver's is located. Once condemned, the restaurant will be closed and the land will be sold to the developer of the airport for its expansion. As part of the expansion, the airport will lease space to Traveler's Restaurant, a long time competitor of Gulliver's. The news that the City planned to close down Gulliver's caused Bob such grief that he had a massive heart attack and died. When Lily found Bob's properly executed will, Bob had devised all of his property to his two sons.

The City of Metropolis is in a community property jurisdiction that follows the common law. Lily, Bob's widow, has now consulted you for legal advice and answers to the following questions:

1. Is the City's proposed condemnation of Gulliver's legal? What can she do, if anything, to stop it?
2. If the City can seize the property by eminent domain, who is entitled to receive the "just compensation"?
3. Can she get reimbursement for all the costs that she and Bob incurred for the last 20 years to maintain and improve the restaurant? If so, from whom?

Essay Question 2

(150 points total -- Suggested time: 60 minutes)

Larry constructed a four-unit apartment building on a beach-front lot in a small coastal community. Larry had purchased the land from Seller, who had divided his lot. During the construction period, Larry's workers routinely parked on Seller's adjacent land, and Seller never objected because he wasn't using the vacant land and there really was no other place to park to access the apartment building.

All of the apartments were one-bedroom, one bath units, and the building had a single story. Larry had three tenants, each of whom signed a lease for one year, commencing October 1, 2006, for annual rent of \$12,000, payable monthly. All of the leases prohibited tenants from subleasing the units without Larry's consent. The

tenant in Unit A, Adam, was a musician who played in a hard rock band. The tenant in Unit B, Bert, was a law student who also surfed a lot. Clara, an elderly woman and retired police dispatcher, rented Unit C. Larry lived in Unit D.

The winter of 2006-07 shattered all local records for rain and stormy weather. Due to shoddy construction, some of the windows in the apartment building were installed improperly and rain water seeped into the apartments. Only Adam, in Unit A, noticed water “pooling” inside on the window sill (and a little discoloration on the interior drywall near his bedroom window). He didn’t think anything of it. Frankly, he was too busy with his band, which usually practiced in his apartment late into the evenings. The loud music really bothered Clara, two doors down, who felt that Larry had promised her the peace and quiet one would expect in an ocean-front apartment. She called Larry to complain about the noise, but when he didn’t return her call she just stopped paying rent. About this same time, Bert, the student in Unit B, began having breathing difficulties while in the unit due to toxic mold that had developed from the rain seepage over the winter months. Bert didn’t know about the mold, and had suffered from respiratory ailments since childhood so he didn’t bother to see a doctor. Besides, Bert was leaving in June for a prestigious summer internship in New York; while he was gone he allowed his friend, Freda, to move in to Unit B for the summer months, charging her \$2,000 per month.

Larry wasn’t around to hear Adam’s noisy band, or receive Clara’s phone call, or see that Freda was living in Unit B because he had volunteered for a six-month expedition studying climate change in Antarctica. When he returned in December 2007, Adam and Clara and Freda remained in the units; Bert transferred to New York to finish law school. Although Bert continued to pay Larry \$1,000 rent each month, he became angry when he learned that Freda was paying Bert \$2,000 rent each month. Larry also was angry to learn that he had been sued by Nancy, who had purchased the adjacent vacant lot from Seller. Nancy was demanding that Larry (1) pay her fair rental value for the use of her property as a parking lot by his tenants since October 2006, and (2) immediately stop parking on the property as she had leased it to the Disney Company for development of a new amusement park.

Overwhelmed by all of these problems, Larry consults your boss for legal advice. **Draft a legal memorandum to her discussing all of the property law issues raised by these facts and addressing Larry’s rights, responsibilities and options as a landlord and property owner.**

The boss also wants you to address the merits of Nancy’s lawsuit. The boss has encouraged you to analyze Larry’s situation using any statutes from this jurisdiction that might apply, as reproduced in the attached statutory supplement, or, if the statutes are not applicable, to apply property law rules as from common law.

Statutory Supplement for Essay Question 2

§ 1. An agreement to let upon hire binds the letter to secure to the hirer the quiet possession of the thing hired during the term of the hiring, against all persons lawfully claiming the same.

§ 2. The letter of a thing may terminate the hiring and reclaim the thing before the end of the term agreed upon:

1. When the hirer uses or permits a use of the thing hired in a manner contrary to the agreement of the parties; or,

2. When the hirer does not, within a reasonable time after request, make such repairs as he is bound to make.

§ 3. The hirer of a thing may terminate the hiring before the end of the term agreed upon:

1. When the letter does not, within a reasonable time after request, fulfill his obligations, if any, as to placing and securing the hirer in the quiet possession of the thing hired, or

putting it into good condition, or repairing; or,

2. When the greater part of the thing hired, or that part which was and which the letter had at the time of the hiring reason to believe was the material inducement to the hirer to enter into the contract, perishes from any other cause than the want of ordinary care of the hirer.

§ 4. The hiring of a thing terminates:

1. At the end of the term agreed upon;

2. By the mutual consent of the parties;

3. By the hirer acquiring a title to the thing hired superior to that of the letter; or,

4. By the destruction of the thing hired.

§ 5. (a) If a lessee of real property breaches the lease and abandons the property before the end of the term or if his right to possession is terminated by the lessor because of a breach of the lease, the lease terminates. Upon such termination, the lessor may recover from the lessee:

(1) The worth at the time of award of the unpaid rent which had been earned at time of termination;

(2) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the lessee proves could have been reasonably avoided;

(3) Subject to subdivision (c), the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the lessee proves could be reasonably avoided; and

(4) Any other amount necessary to compensate the lessor for all the detriment proximately caused by the lessee's failure to perform his obligations under the lease or which in the ordinary course of things would be likely to result therefrom.

§ 6. The hirer of a thing must use ordinary care for its preservation in safety and in good condition.

§ 7. The hirer of a thing must repair all deteriorations or injuries thereto occasioned by his want of ordinary care.

§ 8. The letter of a thing may terminate the hiring and reclaim the thing before the end of the term agreed upon:

1. When the hirer uses or permits a use of the thing hired in a manner contrary to the agreement of the parties; or,

2. When the hirer does not, within a reasonable time after request, make such repairs as he is bound to make.

§ 9. The hirer of a thing may terminate the hiring before the end of the term agreed upon:

1. When the letter does not, within a reasonable time after request, fulfill his obligations, if any, as to placing and securing the hirer in the quiet possession of the thing hired, or

putting it into good condition, or repairing; or,

2. When the greater part of the thing hired, or that part which was and which the letter had at the time of the hiring reason to believe was the material inducement to the hirer to enter into the contract, perishes from any other cause than the want of ordinary care of the hirer.

§ 10. The lessor of a building intended for the occupation of human beings must, in the absence of an agreement to the contrary, put it into a condition fit for such occupation, and repair all subsequent dilapidations thereof, which render it untenable, except such as are mentioned in § 7 .

§ 11. A dwelling shall be deemed untenable if it substantially lacks any of the following affirmative standard characteristics:

(a) Effective weather protection of roof and exterior walls, including unbroken windows and doors.

(b) Plumbing or gas facilities, maintained in good working order.

(c) A water supply capable of producing hot and cold running water.

(d) Heating facilities maintained in good working order.

(e) Electric lighting maintained in good working order.

(f) An adequate number of appropriate receptacles for garbage and rubbish, in clean condition and good repair at the time of the commencement of the lease or rental agreement.

(g) Floors, stairways, and railings maintained in good repair.

§ 12. (a) No duty on the part of the landlord to repair a dilapidation shall arise if the tenant is in substantial violation of any of the following affirmative obligations, provided the tenant's violation contributes substantially to the existence of the dilapidation or interferes substantially with the landlord's obligation to effect the necessary repairs:

- (1) To keep that part of the premises which he occupies and uses clean and sanitary.
- (2) To dispose from his dwelling unit of all rubbish, garbage and other waste, in a clean and sanitary manner.
- (3) To properly use and operate all electric, gas and plumbing fixtures.
- (4) Not to permit any person on the premises, with his permission, to willfully or wantonly destroy, deface, damage, impair or remove any part of the structure or dwelling unit or the facilities, equipment, or appurtenances thereto, nor himself do any such thing.
- (5) To occupy the premises as his abode, utilizing portions thereof for living, sleeping, cooking or dining purposes only which were respectively designed or intended to be used for such occupancies.