

**PROPERTY I
FINAL EXAMINATION: ESSAY COMPONENT**

1. This final examination is broken into two (2) parts: 1) a multiple-choice section (30 questions) worth 50% of your final grade for the course and 2) an essay section, worth 50%.
2. All exam questions are to be turned in with your answer sheets. Write your exam number in the upper right hand corner of this page. Write your exam number on the cover of each exam book too, or if you type your exam, put the number at the top of each page.
3. The directions for the multiple-choice component of the exam have been provided in a separate instruction sheet. This essay component is a limited open-book exam. For the essay component of the exam, **you MAY consult ONLY:** your casebook; your course syllabus; any handouts from class; and any materials prepared by you or by a group in which you were an active participant, including your notes and outlines. **You MAY NOT** consult any other materials, including, but not limited to, hornbooks; treatises or commercially prepared materials. You may not access any information in electronic form through your laptop or other technology for this exam. Except solely for use of ExamSoft, laptops, cell phones, hand-held computers or similar technology are strictly prohibited.
4. There is one essay question. It is worth 50% of your grade for the course and is estimated to take 90 minutes.
5. You have up to 3 hours total to complete this exam: 90 minutes for the multiple-choice section and 90 minutes for the essay portion. Returning the exam late will result in your receiving NO points for the exam.
6. This essay portion of the exam is four (4) pages long (including these instructions). **Make sure that your copy is not missing any pages.**
7. If any pertinent facts appear to have been omitted, or if you are convinced there is an error, make reasonable assumptions, state them, and proceed with your answer.
8. **You MAY NOT consult with, or in any way receive assistance, from anyone during this exam.** Per the student code of conduct, if you witness, or have knowledge of, anyone who violates this rule, you have an obligation to report such violation to the proper authorities at the law school.

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9. Please write as legibly as possible. Write on **every other line** of the exam book and on the **front side only** of each page. You may use as many exam books as you deem necessary.

10. Take time to think through and briefly outline your answers before you begin to write. Grading will be based on your responsiveness to the questions asked, the ideas and information contained in your answers, application of doctrines and rules to the facts, as well as organization, clarity and the careful nature of your analysis. Assume for all questions that the cases assigned this semester are all equally binding precedent for your evaluation, unless the question specifically directs you to do otherwise.

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Carter and Abby are both medical doctors and long-time friends. They decide to jointly enter into a lease renting office space so that they can each see patients who are in need of medical attention. Carter and Abby will share space, but not patients. Each of them will be operating their own separate medical practice, and their relationship to one another will simply be “officemates” (not partners). Accordingly, they enter into a valid five-year lease with Layla, who owns a large modern ten-story office building in the city of Metropolis located in the (fictional) state of Delvania. Among many other standard provisions, such as rent payable monthly, the lease provides: “Each co-tenant owns and shares an undivided interest in the lease and thus has a right to possess the whole property.” However, Carter and Abby informally agree between themselves to divide the physical space and the rent obligation equally. The lease does not otherwise address the relationship between Carter and Abby, nor does it address the power to transfer the leasehold.

The officemates get along nicely for the first two years of the lease. However, at the end of Year 2 of the lease, Carter decides he will go to Africa for a year to volunteer to help those in need of medical attention there. Accordingly, he subleases his interest in the property for Year 3 to another medical doctor, Kerry. Carter and Kerry enter into a legally valid sublease and they agree that Kerry will pay rent to Carter, and Carter will continue to pay rent directly to Layla. Carter is pleased with this arrangement because he is making a hefty profit from his rental agreement with Kerry, as she pays him twice the amount of rent he pays Layla. (Carter was able to charge so much because it is very difficult to find office space in Metropolis.) Abby walks into her office one day shortly thereafter, and finds Kerry there who gives her the news that she is her new officemate. Abby is furious because Carter had not asked her, nor even told her, about the sublease.

Three months after Kerry took possession of Carter’s portion of the space, problems with the space developed. At times there was no hot water. It turned out that raw sewage and water was accumulating in the basement of the building. That would cause the flame of the hot water heater to go out—thus, no hot water. Additionally, this caused a foul odor to permeate the building, especially the lower floors where the medical offices were located. On the days when this occurs, the smell is oppressive and presents significant health risks to the tenants and anyone in the building. The basement leakage also made access to the internet sporadic, making it difficult sometimes to accurately maintain medical records, which were primarily kept electronically on the web. Admittedly, the doctors were negligent in failing to keep paper records and did not back up the electronic files. Entire patient records were lost. As a result of all of these issues, both doctors have been losing patients who come seeking treatment who are frustrated, disgusted and concerned for their health. As a consequence, the doctor’s professional reputations are eroding as well. They may lose even more patients as word starts spreading about the problems and if they continue.

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Kerry called Carter to complain, but he stayed out of it since he was out of the country. Abby called Layla and she did attempt to resolve the problem repeatedly, by pumping out the basement and relighting the pilot. Still, for another 3 months, the same problems continued, sometimes several days each week. It would be possible to solve the problems in part by putting in a new and quite expensive connector between the pipes in the building and the city's sewer pipes. But even with this kind of repair, the problems would largely persist, because the city of Metropolis has very old sewer pipes that are faulty. In theory, it is possible for Layla to sue the city, as she does pay for services such as the sewer and water systems provided by the city. However, such litigation would be expensive, time consuming and risky.

Kerry and Abby are understandably very upset. Kerry finally tells Abby how much rent she is paying. Now they both become even more upset. Particularly given the circumstances, Kerry feels she has been overcharged for rent, and Abby cannot believe that Carter stuck her with a replacement tenant and has been making a profit this whole time (and keeping it to himself), while she and Kerry have suffered. They both agree to stop paying rent until the problems with the space are permanently resolved. In the meantime, they receive some awful news: Carter died while in Africa.

QUESTION I: Assume that you are a law clerk for a judge who is responsible for determining the resolution to all the legal issues presented by these facts. Write a memo to the judge describing the issues and presenting your legal analysis of these circumstances. Fully discuss all relevant and applicable law and facts regardless of who you predict will be successful. Assume that modern majority rules govern. However, Delvania law has not yet been established for one issue: the judge has asked for your opinion and your reasoning as to whether the modern trend governing implied warranties should be adopted here.

DO NOT DISCUSS the duty to mitigate or adverse possession.

NOTE: Estimated time allocation is 90 minutes.

**END OF EXAMINATION
HAPPY HOLIDAYS!
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