Exam Number ________

UNIVERSITY OF KENTUCKY

COLLEGE OF LAW

PROPERTY PROFESSOR MOORE

FINAL EXAMINATION FALL 1993

TIME LIMIT: 3 HOURS

INSTRUCTIONS

This examination consists of 25 multiple choice questions, 5 short answer questions, and 2 essays. The multiple choice questions are worth 2 points each for a total of 50 points. The short answer questions are worth a total of 30 points and the essay questions are worth a total of 100 points. The number of points allocated to each question indicates how much time you should spend on it.

The examination is closed book. Casebooks, class notes, and other materials may not be used and should not be left near your desk.

Write your answers to the multiple choice questions in pencil on the computer form provided. Write your answers to the short answer questions in pen on the lines provided on the examination and write your answers to the essay questions in pen in the blue books. Only write on the front side of each page of the bluebook(s). Be sure to put your exam number on this page, the cover sheet of each part of the examination, the computer form, and each blue book.

Be sure to budget your time carefully. No further writing will be allowed once time is called. At the end of the examination, please number your blue books, e.g., 1 of 2, 2 of 2, and turn in this page, all three parts of the exam, the computer form, your blue books, and any scratch paper you have used. These materials should be collected and turned in together inside one blue book.

All academic endeavors of the students of the University of Kentucky College of Law are governed by the Honor Code. The Honor Code prohibits lying, cheating, stealing, and interference with academic pursuits. In addition, the Honor Code places an affirmative duty to report a breach of the Code on all students. A failure to report is a violation of the Honor Code.

Please write your exam number on the space provided on this page and the cover sheet of each part of the exam now. Do not turn over any of the cover sheets until you are told to do so. You may complete the parts in any order you wish.

PART III

QUESTION I

(1 Hour 10 Minutes)
In November 1993, DILIGENT, a third year law student, inherited a 40 acre farm in Eastern Kentucky. Shortly after finals, DILIGENT went out to look at his property. He found a small farmhouse and two tobacco barns on the property. It looked as though no one had lived or cultivated anything there for a number of years. DILIGENT decided not to farm the property but to keep it as an investment.

After graduation, DILIGENT went to work for an entertainment firm in Los Angeles. Each year, he spent New Year's week with his parents in Paducah. DILIGENT always spent a portion of his annual visit checking his farm in Eastern Kentucky. Each year, the weeds seemed a little taller but the property otherwise appeared unchanged.

In 1997, SLIMY and his brother, SLEAZY saw DILIGENT'S farm and thought it would be the perfect place to grow marijuana. In the spring of that year, SLIMY and SLEAZY moved into the farmhouse and began to grow marijuana on 25 acres of the farm. SLIMY and SLEAZY spent the summer and fall living and growing marijuana there. In October, they picked the marijuana and put it in one of the tobacco barns. They then cleaned up the house, packed up all of their belongings, except the marijuana which they stored in the barn till spring, and moved to Florida for the winter.

New Year's week 1998, DILIGENT drove out to his farm. He looked around but did not notice the marijuana in the barn. He thought the property looked as it always had - deserted.

Each spring from 1998-2010, SLIMY and SLEAZY returned to the farm, sold the marijuana they had grown there the year before, and grew a new crop on the same 25 acres of the farm. Each October, they cleaned up the house, packed up all their belongings, except that year's crop which they stored in a barn and some cash which they stored under a floor board in the house, and moved to Florida for the winter.

Each New Year's week from 1999-2004, DIUGENT went out to his farm. He never saw the marijuana in the barn or the money under the floor board and thought the property remained unchanged.

Firm life in the big city was rough on DIUGENT. In June of 2004, he moved back to Paducah. In October of 2004, he was declared insane. DILIGENT never saw his farm again.

In March of 2011, DILIGENT met and fell in love with his new doctor, FROID. A week after they met, DILIGENT said to FROID, "I give you all of my property in Eastern Kentucky." Two weeks later, DILIGENT was hit by a car and died.

In April of 2011, FROID drove out to Eastern Kentucky to look over the property. Although she did not notice the marijuana hanging in the barn, she found $200,000 in cash under a floor board in the farmhouse. FROID decided to use that money to move her family to the farm.

In May of 2011, SLIMY and SLEAZY returned to the farm and, found, much to their dismay, that FROID and her family had taken up residence there. SLIMY and SLEAZY filed suit to eject FROID from the farm and recover the $200,000 they had stored in the farmhouse. The executor of DILIGENT'S estate learned of the suit and joined as a party to claim title to the farm and the cash.

Draft a BENCH MEMO for the judge that DESCRIBES the arguments presented by each of the parties and
RECOMMENDS how the judge should rule.

For purposes of the bench memo, assume that KRS 123.123 provides that "an action to recover title to or possession of real property shall be brought within 10 years after the cause of action accrues, but if a person entitled to bring such an action, at the time the cause of action accrues, is within the age of minority or of unsound mind, such person, or the person claiming through him, may, though the period of 10 years has expired, bring the action within 3 years after the disability is removed." Assume further that the cultivation and sale of marijuana is illegal but that criminal forfeiture will not apply in this case.

QUESTION II

(30 Minutes)

In recent years, bear skin coats have become all the rage in New Columbia, and New Columbia has passed an ordinance permitting bear trapping from June through October in its state park. Pursuant to bear trapping custom, each June, bear trappers stake out a portion of the state park and lay out their traps. The traps are clearly identified as belonging to a particular trapper and the trappers do not disturb the bears snared by others' traps. Most trappers check their traps at least once a week. Generally, they kill and skin the bears they have caught and sell the skins to a local manufacturer which produces the popular coats.

GREENPEACE owns a farm adjoining the New Columbia state park. She believes that the trapping custom, which results in bears being held hostage for up to a week, is a crime against nature. (The traps rarely kill the bears, but instead, simply detain the bears until the trapper comes by to check the trap.) In order to protect the bears, GREENPEACE has been feeding and otherwise enticing the animals to come and stay on her property. At least twenty bears have made GREENPEACE'S farm their permanent home. In addition, another twenty, including SMOKEY, have made it a habit to spend the night at GREENPEACE'S farm and spend the day wandering around the state park.

One morning, a trap set by JOHN, a professional trapper, captured SMOKEY. NAT, a deerhunter unfamiliar with New Columbia trapping custom, happened upon the trap holding SMOKEY. Since NAT had had such an unsuccessful week deer hunting, NAT decided to kill SMOKEY and take the skin to a local manufacturer to have it made into a coat for his wife.

JOHN, learning of these events, filed suit against NAT to recover the coat. GREENPEACE, hearing about the suit, joined as a party and claimed title to the coat.

Draft a BRIEF for JOHN EXPLAINING why he should prevail. The brief should ANTICIPATE and RESPOND to the arguments GREENPEACE and NAT are likely to make.