UNIVERSITY OF KENTUCKY

COLLEGE OF LAW

PROPERTY II

PROFESSOR MOORE

FINAL EXAMINATION SPRING 1995

TIME LIMIT: 3 HOURS

INSTRUCTIONS

This examination consists of 30 multiple choice questions and 4 essays. The multiple choice questions are worth 2 points each for a total of 60 points. The first essay question is worth 25 points, the second is worth 40 points, the third is worth 30 points, and the fourth is worth 25 points for a total of 120 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 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 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 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.

In turning in this exam, I hereby pledge on my honor as a student that I have neither given nor received unauthorized aid on this exam.

PART II

QUESTION ONE

(SUGGESTED TIME: 25 MINUTES)
On October 3, 1993, Lena leased a 2-story house at Keeneland Road to Tony (T) for a period of three years for $800 per month. The lease was in writing and signed by both parties. It contained a covenant of quiet enjoyment, a covenant to pay rent and a further provision that "this lease shall terminate in the event that the demised premises are assigned by Tony or his heirs."

Tony suffered a heart attack on December 5, 1993 and died intestate on December 7, 1993. On December 9, Tony's heirs executed an instrument which stated in full: "We, Tony's heirs, hereby assign to Muffy all of our interest in the house at 333 Keeneland Road. Should Muffy violate any covenants of the original lease between Tony and Lena, we shall be entitled to possession." On February 3, Muffy paid Lena $800 for the month of February. On February 20, Muffy informed Lena that she would have difficulty meeting the March rent. Muffy asked if she could pay future rent in two installments - half ($400) on the 3rd and half ($400) on the 18th of each month. Lena agreed and Muffy did so through June 18.

When it became warm in late May, Muffy realized that the air conditioner did not cool -- the fan worked but the compressor did not cool the air. Muffy complained to Lena on six different occasions in May and June. Each time Lena said she would have the unit fixed but no one ever came to fix it. By the end of June the temperature in the house had twice reached 90 degrees and the hot sticky air made the house very unpleasant. On July 2, 1994, Muffy vacated the premises and mailed the key to Lena.

On September 5, 1994, Lena comes to your office and asks you to write a concise and well-organized memorandum explaining any rights L has against Tony's heirs and/or Muffy as well as any defenses or counterclaims they may have to any action you might bring on Lena's behalf.

QUESTION TWO

(SUGGESTED TIME: 40 MINUTES)

On September 1, 1994, Oliver entered into an agreement to sell Blackacre, an undeveloped property to Anna. Anna gave Oliver a check for $10,000 as a down payment on the property. Oliver executed a general warranty deed in favor of Anna and gave it to his attorney, Manzer, to hold in escrow until Anna paid the balance of the purchase price.

On September 15, 1994, Bob paid Oliver $5,000, and Oliver executed a quitclaim deed to Blackacre in his favor. Bob recorded his deed on October 1, 1994. Oliver died on November 1, 1994.

On November 15, 1994, Anna sent Manzer a check for $50,000, the remainder of the purchase price. Unable to discuss the matter with Manzer, who was on vacation in Fiji, Manzer's secretary sent Anna the deed. Anna recorded the deed on December 1, 1995.

On March 1, 1995, Bob, unaware of the deed to Anna, conveyed Blackacre to Christy by special warranty deed. Christy paid Bob $10,000 for the property. Christy recorded her deed on April 20, 1995.

Christy entered the property on April 21, 1995. When Anna discovered this, she brought an action to eject Christy from
the property. Assume that the state's recording act reads as follows: "No conveyance of real property shall be good and effectual in law or equity against creditors or subsequent purchasers for a valuable consideration and without notice unless the same be recorded according to the law." Which party should prevail and why?

QUESTION THREE

(SUGGESTED TIME: 30 MINUTES)

In 1960, the Minnifields owned a block bounded by Main Street on the east, Sixth Street on the north, and Broad Street on the west. (See next page for a map.) The Minnifields leased a building (A, B, H, G) at the corner of Main and Sixth Streets to the Van Coeurs. The Van Coeurs operated the Brick restaurant in that building. The Minnifields leased a second building (G, I, K, J) adjacent to the Brick to the Chigliacks where they operated Ruthann's Store. Immediately to the rear of the buildings was a vacant lot extending along Sixth Street to Broad Street. Beginning in 1965, the Minnifields leased the lot to the city of Cicely which has operated the property (C, N, M, L) as a municipal parking lot since then. When the Minnifields leased the lot to the city, the Minnifields advised the Van Coeurs and the Chigliacks that they had a right of access to and from the parking lot. Since 1965, customers have used the parking lot to gain access to the rear entrances to both buildings, and trucks have used it to make deliveries or pick up refuse from Ruthann's Store.

In 1985, the Minnifields sold the Van Coeurs and the Chigliacks the buildings they presently occupy. In addition to the property previously occupied by Ruthann's Store, the Chigliacks purchased a portion of the building which had been a part of the Brick. The building originally occupied as Ruthann's Store extended back from Main Street approximately 100 feet. The building originally occupied by the Brick extended back a distance of only 80 feet. In order to make the rear property lines (C, F, I, L) straight, the Minnifields' conveyance to the Chigliacks included a small paved lot (E, F, I, H) approximately 20 feet square at the rear of that portion of the building that had previously been leased to the Van Coeurs. The Minnifields' conveyance to Van Coeurs included a similar paved area (B, C, F, E). At the time of the conveyances, the Minnifields told the Van Coeurs and Chigliacks that they should feel free to continue to use the parking lot.

Shortly after acquiring title to their buildings, the Van Coeurs and Chigliacks made significant structural and decorative improvements to the rear entrances of their buildings. The Chigliacks installed display windows and a new door (point X) which opened onto the 20 foot plot acquired with the building by the deed from the Minnifield family.

In 1994, the Minnifields conveyed the parking lot property to the Van Coeurs. The city continues to maintain a municipal parking lot on the property. Following their purchase of the property, the Van Coeurs closed off the rear entrance to Ruthann's Store by erecting a chain link fence (E, F, I) along the two open sides of the 20 foot plot at the rear of their building. At the moment, the fence only serves to block access between Ruthann's Store and the parking lot. The Chigliacks have brought suit against the Van Coeurs to compel them to remove the fence. Discuss any theories the Chigliacks may invoke to support their suit.
QUESTION FOUR

(SUGGESTED TIME: MINUTES)

In 1980, Mitchell Adams divided his large farm. He kept half, Blackacre, and sold half, Whiteacre, to Brian Josephs. In the deed to Whiteacre, Adams granted Josephs permission to construct a drainage ditch along the northern boundary of Blackacre. The deed from Adams to Josephs contained the following provision: "The grantee and his heirs, successors, and assigns covenant to build and maintain a four-foot high wooden fence along the ditch in Blackacre in order to prevent livestock from entering the ditch." The deed was duly recorded.

Josephs built the fence and maintained it for ten years. Adams leased Blackacre to Jonathan Livingstone in 1985. After five years of drought, in 1990, Josephs sold Whiteacre to Freddy Hill who ceased keep the fence in repair. In 1992, one of Livingstone's cattle fell into the ditch and was seriously injured; Livingstone paid $500 to have the fence repaired. However, the fence again fell into disrepair and another cow was injured in 1995. As a result, Livingstone filled in the ditch.

Hearing that flash floods were forecast, Hill brought suit against Livingstone, seeking to compel him to restore the ditch. Livingstone has counterdaimed, seeking damages for the cost of repairing the fence in 1992. In addition, Livingstone asked the court to declare the Hill and Josephs no longer had any rights in the ditch, or, in the alternative, that Hill be required to maintain the fence. Discuss the issues raised by these facts.