EXAM # _____

FINAL EXAM
CAPITAL UNIVERSITY LAW SCHOOL
PROPERTY II-A2
SPRING 2004
Professor Hirsch

Professor's Instructions: ***Read Carefully***

1. At the beginning of this exam, you should have the following:

    a. This 13-page exam packet.
    b. A scantron form sheet for the multiple choice questions and a scantron instruction sheet.
    c. A #2 pencil to mark the scantron sheet, and a pen for writing the narrative portion of the exam.
    d. Answer books.
    e. A disk if you are taking the exam on computer.

2. ***Please write your exam number on the front of your envelope, the upper right hand corner of your exam packet, on each of your answer books, and on your computer disk (if you have one).***

3. ***Please fill in the identifying information on your scantron form, as indicated in the instructions on the front of the form.***

4. This is a two hour and thirty minute (2:30) examination. It consists of 15 multiple choice questions, and an essay. I recommend that you spend 75 minutes on the multiple choice questions, and 75 minutes on the essay. In grading the exam, I will allocate points roughly in proportion to these recommended time allocations. Manage your time wisely. Make sure that you reserve enough time to answer all parts of the exam fully.

5. The multiple choice questions are to be answered only on the multiple choice scantron answer sheet (this goes even for those taking the exam on computer). Mark your answers on the scantron form by filling in the space for the letter that corresponds to the **best answer** for each question. If you erase, do so thoroughly. Otherwise the computer may grade your response incorrectly. Answers written on the exam packet itself will not be considered.

6. Write the answers to the essay in the colored answer books (unless you are taking this exam on a computer). If you write more than one answer book, number the books

sequentially (e.g. Essay, book 1; Essay, book 2, etc.) Answers written on the exam packet itself will not be considered. There is no page limit for this exam. Still, you should try to write your answers in a concise, well-organized fashion.

7. *At the conclusion of the exam, please insert your exam packet, answer books, and scantron sheet into the envelope. Then place the envelope in the box at the front of the examination room.* ***You may not make a copy of or otherwise reproduce the exam packet.***

GOOD LUCK!

MULTIPLE CHOICE
(75 minutes)

Instructions: In answering these multiple choice questions you should select *the best* answer from among those provided. Unless otherwise stated, you should assume that all the cases that we read this semester apply in the jurisdiction where the question is situated.

Question 1: The City of Detroit is preparing to condemn a 5-acre parcel of land on which a viable neighborhood currently stands. After clearing the land, the City will convey it, for a price, to Donald Trump Enterprises which will build a large casino at the site. The City Council believes that the increased taxes and jobs from the casino will benefit Detroit, which is chronically short of funds needed to provide essential services. Neighborhood residents have challenged the project. *Assuming that the Poletown case (the case about Detroit's condemnation of a neighborhood for construction of a G.M. Cadillac plant) is the only precedent to be applied here,* and based only on the facts given above, the court is most likely to

(A) Apply heightened scrutiny because the goal of the project is to build a casino, and gambling is not in the public interest.

(B) Apply heightened scrutiny because the land is being conveyed to a specific and identifiable private party.

(C) Uphold the act of eminent domain so long as just compensation is paid.

(D) Strike down the act of eminent domain because it is unnecessarily destroying a viable community.

Question 2: In 1990, Alice, the owner of Blackacre, sold the property in fee simple to Ben. The transaction went smoothly, except that Alice forgot to sign the deed, a fact that neither party noticed at the time. In 1995, Ben sold Blackacre in fee simple to Claire in a transaction that met all formal requirements. In 2000, Claire sold Blackacre in fee simple to David in a transaction that met all formal requirements. In 2002, David tried to sell Blackacre in fee simple to Ernie. However, Ernie searched through the chain of title and noticed that Alice had never signed her deed to Ben and, hence, had never legally transferred the property to him. This rendered the other purchasers' legal title invalid as well. Given that he could not sell the property, David sued Claire for return of the money that he had paid to her for Blackacre. The most likely result of this lawsuit is that:

(A) David will win if he received a quitclaim deed from Claire.

(B) David will win if he received a special warranty deed from Claire.

(C) Claire will win if she conveyed to David by general warranty deed.

(D) Claire will win if she conveyed to David by special warranty deed.

Question 3: In 1930 Albert, the owner of Greenacre, conveyed a 100-year easement to his neighbor Zelda, who paid $200 for it. The easement gave Zelda the right to cross the Northeast portion of Greenacre in order to reach the public woods that lay beyond. In 1937, Albert sold Greenacre in fee simple to Bennie by general warranty deed that mentioned the easement. In 1950, Zelda recorded a "notice of claim" that asserted her ownership of the easement. In 1955, Bennie sold Greenacre to Carla by general warranty deed that failed to mention the easement. In 1962, Carla sold Greenacre to Darryl by special warranty deed that did not mention the easement. In January, 2004, Ellen became interested in purchasing Greenacre. She searched the chain of title as far back as 1950 and saw the "notice of claim" that Zelda had recorded in that year. In March, 2004, Ellen purchased Greenacre from Darryl. She then commenced construction of an apartment complex in the Northeast corner of the property that directly blocked the right-of-way Zelda had purchased in 1930. Zelda's daughter Zina, who had inherited the easement from her mother, brought suit against Ellen to stop construction of the apartment complex insofar as it would block her right to cross the property to the public woods. The jurisdiction in which Greenacre is located, and under whose laws the suit will be decided, has a "marketable title" statute with a "root of title" search period of 40 years. There are no adverse claims in the record other than Zelda's (now Zina's) easement. The most likely result of Zina's suit is:

(A) That Zina will win because Ellen saw the "notice of claim" and knew about the easement at the time she purchased the property.

(B) That Ellen will win because, at the time of her purchase, there was a clear chain of title back to her root of title which was 1964.

(C) That Ellen will win because, at the time of her purchase there was a clear chain of title back to her root of title which was the 1962 special warranty deed from Carla to Darryl.

(D) That Ellen will win because there is a clear chain of title back to her root of title which is the 1955 general warranty deed from Bennie to Carla.

Question 4: Whiteacre, an undeveloped parcel of land located in the State of Amazement (a fictitious state in the U.S.) had been in Oswald Owner's family for generations and he owned it in fee simple. One day, when he was feeling especially sentimental, he decided to give Whiteacre to Francis Flame, an old girlfriend who lived out of state. He signed and dated a deed conveying his entire interest in Whiteacre to Francis and mailed her a copy. He then went down to the county courthouse and recorded the deed. Unfortunately, the letter to Francis got lost in transit and never reached her. Several years later, Oswald died. Francis came to the funeral and there learned for the first time about Oswald's conveyance to her. She promptly brought a quiet

title action against Oswald's estate asserting her claim to the property. The estate (on behalf of Oswald's heirs) resisted her claim. Based only on the facts above, the most likely result of this action will be that:

(A) The estate will win because Oswald's letter to Francis never reached her.

(B) The estate will win because Francis did not learn of the conveyance until after Oswald's death and it is not proper for a deed to function like a will.

(C) The estate will win because Whiteacre had been in Oswald's family for generations and it should remain in the family.

(D) Francis will win because she asserted her claim to the land shortly after learning about Oswald's conveyance to her.

(E) Francis will win because Oswald recorded the deed and tried to mail it to her, thereby demonstrating his intent to give it to her.

Question 5: In order to search chain of title in the majority of jurisdictions, it is necessary to:

(A) Search back to the earliest recorded transaction involving that parcel of land.

(B) Search back through the grantor index, and then forward through the grantee index.

(C) Search back only 40 years.

(D) Search back through the grantee index, and then forward through the grantor index.

Question 6: The small town of Wildwood is located in the northern mountains of Wyoming. Until recently, this secluded town has been reachable only by a winding mountain road that is occasionally impassable in the winter. The town has no zoning laws. Recently, and without alerting the townspeople to what it was doing, Aviation Anywhere (AA) , a private company, purchased a parcel of land on the edge of town and built a small airport there. Aviation Anywhere flies its planes to the airport during both day and night. The planes bring much-needed supplies for the town and make it easier to evacuate injured or ill people to hospitals, where necessary. They also bring tourists who are interested in hiking in the beautiful mountains that surround Wildwood. This has led to the development of a tourist industry that is adding substantially to the town's economy. The airport has also caused some significant problems for the people of Wildwood. The floodlights that it keeps on during the night, and the noise from the planes flying in overhead, make it very difficult for those who live near the airport to sleep. These neighbors complained to Aviation Anywhere. The company responded that it is using the only possible flight path through the mountains. In addition, the night flights are critical to its

economic success and, without them, it would not be able to remain in business. After months of sleepless nights, a group of neighbors bring a private nuisance suit against Aviation Anywhere seeking both damages and an injunction against flying planes into or out of the airport or using the flood lights after 9:00 p.m.. Which of the following will be ***least helpful*** to the plaintiffs in maintaining their nuisance suit:

(A) The fact that Aviation Anywhere built its airport in an area that had previously been secluded and quiet.

(B) Aviation Anywhere failed to properly inform the members of the town about its plans prior to beginning construction of the airport.

(C) Most, but not all, of the individuals whose homes lie in the flight path are experiencing sleep problems due to the lights and noise of the planes.

(D) Residents who close their windows at night are still affected by the sound of the planes overhead.

Question 7: Assuming all the facts in Question 6 to be true, and further assuming that the residents win their private nuisance suit against Aviation Anywhere, the court is most likely to issue which of the following remedies:

(A) An injunction shutting down the airport.

(B) An injunction requiring Aviation Anywhere to refrain from using its flood lights and flying planes into or out of the airport at night.

(C) A damages award compensating plaintiffs for their harms.

(D) Both injunctive relief and a damages award.

Questinon 8: On January 1, 2003, Alberta purchased a three-bedroom home from Bobby by general warranty deed. She particularly liked the large deck in the back of the house that was surrounded by a pleasant garden. That spring there was a lot of rain, as there usually was in that region. Much to Alberta's dismay, she found that the boards used to make the deck were untreated and the rain caused many of them to warp and crack. This made the deck unsafe and she had to replace it at a cost of $10,000. Alberta sues Bobby to recover the $10,000, alleging a violation of the deed warranties. Which of the following deed warranties did Bobby violate:

(A) The covenant of quiet enjoyment

(B) The covenant of general warranty

(C) The covenant of seizin

(D) The covenant of further assurances.

(E) None of the above.

Question 9: On **May 1, 1998**, Olivia Owner conveyed Greenacre, a parcel of open fields, to Diane Developer for $15,000. Diane neither recorded the deed nor entered into possession of Greenacre. A few weeks later, Fred Farmer happened to be passing by Greenacre and saw that it was unoccupied. Believing that Olivia still owned the land, he approached her about purchasing it. Without telling Fred that she had already sold the land to Diane, Olivia conveyed Greenacre to Fred for $20,000 on **June 1, 1998**. Fred did not record the deed, but he did enter into possession and began farming the land. On **September 1, 1998**, Diane saw that Fred was farming the land. She went down that day to the county recorder's office and recorded her deed from Olivia. On **October 1, 1998**, she went to see Fred and told him to get off her land. Fred insisted that it was *his* land and, just to be sure, went that day and recorded his deed from Olivia. Diane then brought a quiet title action against Fred asserting her claim to the Greenacre. *Assume that the suit is brought in a jurisdiction where the recording statute follows the "notice" rule for determining priority*. The most likely result of Diane's action is that:

(A) Fred will win because his possession and farming of the land provided notice to Diane of his claim to it.

(B) Fred will win because he knew nothing of Diane's purchase at the time he paid $20,000 for Greenacre.

(C) Diane will win because she was the first to provide record notice of her purchase.

(D) Diane will win because she was the first to notice the value of the land and so to decide to purchase it from Olivia.

Question 10: For the purposes of this question, assume that the facts are the same as in Question 9 *up until and including the events of **September 1, 1998** only*. Now assume that on **September 10, 1998**, Bob Buyer became interested in purchasing Fred's interest in Greenacre. He performed a title search and saw in the record Diane's deed from Olivia (which Diane had recorded on September 1, 1998). Undeterred, he went ahead with the deal and bought Fred's interest for $22,000 on **September 20, 1998** and recorded his deed that day. On **October 1, 1998**, Diane, who had become aware of Bob's purchase from Fred, brought a quiet title action against Bob asserting her claim to Greenacre. *As in Question 9, assume that the suit is brought in a jurisdiction where the recording statute follows the "notice" rule for determining priority*. The most likely result of Diane's action is that:

(A) Bob will win because Fred was in actual possession of the land at the time that he sold it to Bob.

(B) Bob will win so long as this jurisdiction follows the "shelter rule."

(C) Diane will win because Bob had record notice of her claim at the time that he purchased Greenacre from Fred.

(D) Diane will win because she purchased Greenacre before both Fred and Bob.

Question 11: In January 2000, Barb Buyer purchased a three-bedroom home for $200,000. Barb did not have the entire $200,000 at her disposal at the time of the purchase. She made a downpayment of $20,000 and borrowed the remaining $180,000 from Friendly Bank, the institution where she had for many years kept her checking account. Barb took out a 30-year mortgage loan from Friendly Bank, at a 5.25 percent interest rate. Barb made all the payments under the terms of her Note until October 1, 2003, when she lost her job and defaulted on the loan. At that point, Barb had paid $10,000 of the principal sum due on the loan. The rest of her payments had gone to interest. As a result of Barb's default, the Bank foreclosed on the loan and held a valid foreclosure sale. Due to a downturn in the housing market, the property sold for $160,000. How much of the proceeds from the foreclosure sale should be paid to Barb:

(A) $30,000

(B) $20,000

(C) $10,000

(D) Barb gets nothing. She owes the bank $10,000.

Question 12: Lisa Landlord rented a parcel of agricultural land to Frank Farmer for a year beginning January 1, 2003. As Frank worked the land he realized how good the quality of the soil was. In October 2003, he approached Lisa about the possibility of purchasing the land after his lease term ran out. The two agreed on a price of $20,000 and, on January 1, 2004, Lisa conveyed a fee simple interest in the land to Frank. The deed was not recorded. In March 2004, Sammy Speculator observed Frank planting seeds on the parcel of land. Sammy thought that the parcel looked like good farmland and became interested in purchasing it. He subsequently went to the county recorders office to discover who owned the land. He saw Lisa listed as the most recent grantee, but did not see her deed to Frank (which had not yet been recorded). Sammy accordingly approached Lisa about purchasing the property and offered her $35,000 for it. On April 1, 2004, Lisa conveyed the parcel in fee simple to Sammy for $35,000. The following day, Frank recorded the deed he had received from Lisa. On April 15, 2004, Sammy arrived at the property to take possession but found Frank, with all his farming equipment, still on it. Frank asserted that he, not Sammy, was the owner, and refused to vacate the property. Sammy brings suit to eject Frank from the property. The jurisdiction follows the "notice" rule of recording priorities. The most likely result of this suit is that:

(A) Sammy will win because, at the time of his purchase, nothing in the record

showed Frank's purchase from Lisa.

(B) Sammy will win because he is a subsequent purchaser for value who took without notice.

(C) Frank will win because his planting and other activities on the land should have given Sammy reason to explore further who the true owner of the property was.

(D) Frank will win because he recorded his deed first, thereby giving Sammy notice of his claim.

Question 13: On March 1, 2004, Stuart Seller and Penelope Purchaser signed a contract in which Penelope agreed to purchase Stuart's home and the five-acre lot on which it stood for $300,000. Penelope planned to build homes elsewhere on the property for her two adult children and their families so that they all could live in close proximity to each other. A week after signing the contract, Penelope went to the county recorder's office to check the property's chain of title. While there, she discovered that a valid restrictive covenant had been recorded in 1984 limiting the parcel to "one, single-family residence." This dismayed Penelope, who had counted on building the two other homes for her children. Stuart had not told her about any restrictive covenants, nor had she agreed to any. She went directly to Stuart and demanded to be let out of the contract. Stuart, who was pleased with the deal, refused. Penelope brought suit against Stuart seeking to have the contract rescinded. The most likely result of this action is that:

(A) Penelope will win because the restrictive covenant is an encumbrance.

(B) Penelope will win because she can no longer use the property for her intended purpose.

(C) Stuart will win because a restrictive covenant does not render title unmarketable.

(D) Stuart will win because the restrictive covenant has not been violated and so Penelope would not be subject to an unreasonable threat of litigation.

Question 14: The term "nonconforming use" is best defined as:

(A) A use of property that conflicts with a present zoning provision but existed lawfully prior to the enactment of that provision.

(B) A use of property that violates the terms of a negative covenant.

(C) A use of property that is at variance with other, existing uses in the subdivision.

(D) A use of property that brings down the value of other properties in the area.

Question 15: Under the statute of frauds a contract for the sale of real property must contain certain terms in order to be valid. Which of the following terms *does not* have to be included in order for a contract to be valid?

(A) The price at which the property is to be sold, where this has been agreed upon between the buyer and seller.

(B) The signature of the party against whom the contract is being enforced, but not the signature of the enforcing party.

(C) A listing of all latent and patent defects in the property.

(D) An accurate description of the real estate being sold.

(E) All of the above must be included in the contract.

ESSAY QUESTION
75 minutes

In 2000, Professors Kent Markus and Susan Gilles of Capital Law School and their adorable son Robby purchased from Sandy Seller a fee simple interest in a one-story home on a three-acre, wooded lot in Dublin, Ohio. They particularly liked the property because it retained a natural feel, and because it was only a short distance away from Lake Joyce, a public lake open to all Dublin residents. Between the Markus/Gilles property and the lake lay an undeveloped, wooded five-acre parcel of land owned by Larry Landholder. Robby would often cross it to get to the lake, using an old dirt road through the trees that he had found.

In 2001, Professor Myron Grauer, also of Capital Law School, and his wife Grazyna purchased from Landholder a fee simple interest in the undeveloped five-acre parcel between the Gilles/Markus property and the lake and built a one-story home there. Since the Grauer property was adjacent to that owned by Gilles and Markus, the three colleagues saw a lot of each other and would often carpool on their way to work. Robby frequently came over to play on the Grauer property and continued to use the old road across the property to reach the lake.

On March 1, 2002, Gilles, Markus and Grauer were driving together to work and were discussing the unique beauty of the area in which they lived with its wooded tracts and proximity to Lake Joyce. The three agreed that it would be a shame if their properties were ever subdivided. "Property law is not really my area," said Gilles, "but I think that we can prevent such a thing from happening by each agreeing to limit the use of our land to one, single-family, residence." "Great idea," said Grauer, "and in addition we should agree to keep our homes at their current, one-story level so that the buildings do not stick out above the trees and we all retain our nice unbroken view of woods." On March 15, 2002, Gilles, Markus and the Grauers signed an agreement in which they "promised" on behalf of themselves and their "heirs, assigns and successors in interest" to limit their respective properties to one, single-family residence only, and to limit all such buildings on the property to a single story. They recorded the agreement later that day.

Relations remained good between the neighbors. The Grauers particularly liked seeing Robby enjoy swimming in Lake Joyce. On July 1, 2003, Grauer, having just seen Robby taking a swim in the Lake and feeling particularly generous announced to Markus and Gilles: "I grant you and your children the right to use the road across my property to reach Lake Joyce for as long as you own the neighboring property." Gilles and Markus were delighted by this because the old dirt road was the only one that went directly down to the Lake. Gilles and Markus had long wanted to purchase a sail boat for use on the Lake, but had had no way to get the boat down to the water. Based on Grauer's verbal guarantee of easy access, Gilles and Markus went out the following weekend and spent $6,000 on a sail boat to use in Lake Joyce, and on a trailer to haul it down to the water. Lake Joyce was the only body of water nearby on which such a boat could be used. With Grauer's knowledge and permission, they also spent $2000 expanding and improving the dirt road so that it would accommodate a car pulling the trailer and boat. On many weekends during the years that followed they hauled their boat down the road to the lake

and used it for sailing and fishing with Robby, with Grauer occasionally coming along for the ride.

In 2005, Gilles and Markus decided that they needed more room in their house. In talking to an architect they realized that it would be much cheaper to add a second-story than to build a one-story addition that would require a new foundation. They knew that adding a second story might violate the March 15, 2002 agreement they had signed with the Grauers. However, the surrounding trees had grown in the interim and the Grauers would not be able to see the second story room from their land. Building it would therefore not affect the Grauers' unbroken view of the woods. Gilles and Markus accordingly went ahead and added a second-story to their home. The Grauers never appeared to notice the addition and never attempted to enforce the one-story restriction.

In 2010, the Grauers decided to move to a hip new apartment in the Brewery District and put their Dublin home up for sale. Arthur Porter, a local real estate developer, expressed interest in purchasing the property. Knowing Porter's line of business, Grauer made sure to inform him of the agreement restricting the property to one, single-family residence that is no more than one story high. Porter expressed displeasure upon hearing this and, to close the deal, Grauer had to drop his asking price by twenty percent. Porter then purchased the Grauers' entire fee simple interest in the property for the reduced price.

Not long after he had bought the property, Porter announced that he intended to subdivide it and build 20, one-story homes on it. Porter believed that the lakeside location was ideal for such a venture and that he would be able to sell the homes at a healthy profit. Gilles and Markus were distressed at this news. They feared that the subdivision would change the character of the area and bring down the value of their property. They held a meeting with Porter and showed him a copy of the March 15, 2002 agreement they had signed with the Grauers. Porter said the agreement was enforceable only against the Grauers and was not enforceable against him. He further said that if Gilles and Markus tried to enforce the agreement against him he would prohibit them from using the road across his property to reach the lake and, in addition, would counterclaim against them for adding a second story in violation of the express terms of the March 15, 2002 agreement.

Gilles and Marcus, aware that you have taken Hirsch's Property II course, have decided to come to you for legal advice. Write Gilles and Markus a memorandum in which you analyze: (1) whether they can successfully sue Porter for damages and/or injunctive relief for violating the March 15, 2002 agreement if he begins to build his subdivision; (2) whether Porter can successfully sue them for damages and/or injunctive relief for violating the March 15, 2002 agreement by building the second story room; (3) whether than can successfully sue Porter for damages and/or injunctive relief should he try to deny them use of the road to the lake. In discussing these issues, <u>evaluate and discuss all relevant common law property doctrines and fully explain your analysis of them</u>. Focus only on common law property doctrines. Do not base your answer on contract law. Also, do not base your answer on zoning law (for the purposes of the question, assume that no zoning ordinances apply). Treat all the cases we read this semester

as binding in this jurisdiction.