

Property
Spring 2018
Prof. Ford

Take-Home Final Exam

This take-home final exam is worth 75% of your course grade. It will be administered on Wednesday, May 2, 2018. You have **eight hours** to complete the exam (or twelve hours if you have been granted extra time). At the conclusion of the exam, email your responses to **registrar@law.unh.edu**.

Please do not put your name or any identifying information on your exam. Place your assigned exam number on the **top right corner** of your answers.

Format your responses similarly to this exam: **single-spaced with 1.5-inch margins and empty space between paragraphs**. Use 12-point Cambria, Century, Constantia, Book Antiqua, or another high-quality serif font; do *not* use Times. Number your pages. I recommend you submit your answers as a PDF file.

You may consult **any preexisting material you wish** while completing this exam. This specifically includes online research tools like Google and Lexis, though I do not recommend relying heavily on such tools. Answers discussing cases, doctrine, or principles that were not assigned or discussed in this course will receive no credit. **You must write your entire response, yourself, during the exam period; you may not paste any previously written material into your answers, whether written by you or anyone else. You may not discuss the exam with anyone**, including other students, attorneys, or participants on online discussion boards, until every student has finished taking it. Please type the following at the top of your exam: *I affirm that I have not discussed this exam with other students or anyone else during its administration.*

This exam consists of **five questions**, which are weighted as shown. **There is a total word limit of 4,000 words for your entire exam.** This is a generous limit; you do not need to use this many words, and **concise and well-organized responses will be rewarded**. Do not include the questions in your responses. **List your total word count at the end of your exam.**

If any questions are unclear or missing information, draw reasonable inferences from the available information—and explain why you draw those inferences—or, if no such information is available, state explicitly any assumptions you make and explain how your answer depends on those assumptions.

Good luck and have a wonderful summer!

Question 1 (40%)

Oceanside is a picturesque town on New Vermont's Atlantic coastline. The town includes Cranberry Island, a 165-acre island named after cranberry processing plants that used to be there. Today, the island is mostly residential, with about 225 homes, though there are also some commercial parcels, including a marina and a small downtown area with a hotel, restaurants, art galleries, and shops appealing to tourists and the mostly-seasonal population.

At the last Island Meeting, the major topic of conversation was a recent spate of flooding that had damaged coastal homes (about a third of the homes), private docks, and the bridge to the mainland. Residents and business owners are angry about the flooding and want to find a way to do something about it without damaging their views or the tourist business on the island.

Conferring after the meeting, the head of the Oceanside Town Council (who happens to live on the island) and the head of the Cranberry Island Community Association (a property owners association with all island property owners as members, organized pursuant to an equitable servitude) decided to consult with an ocean scientist from nearby New Vermont University. The scientist explained that the flooding was caused by rising ocean temperatures due to climate change and that although this cause was unlikely to go away any time soon, there are several potential actions to reduce the effects of flooding.

After some additional research and consultation, the two leaders have decided to use town funds to shore up the bridge. (The town councilor has enough political power to make this happen.) They're considering five additional plans:

- (a) The Council could enact a zoning rule requiring each owner of a coastal lot to construct a seawall, six feet high, along the coastline. (If you do an image search for "seawall," you will see that there are lots of ways to build one without destroying the view, though any seawall will likely have some effect on an owner's ability to use her property.)
- (b) The Council could enact a rule declaring the portion of land within 20 feet of the high-water line to be town property and use town funds to construct a single unified seawall on this property. (Without such a change, the portion of the coastline below the high-water line is public property, while the portion above the line is privately owned. In most cases, the 20 feet of land represents a small portion of a home's back yard.)
- (c) The Association could assess each property owner \$15,000 (i.e., require each owner to pay \$15,000 as a one-time payment to the Association) and use the funds to build the seawall.

- (d) The Association could do the assessment and use the funds to invest in a local startup that plans to build underground balloons that will, over the course of a few years, be slowly inflated, lifting the island by a few feet. Though the technology is unproven, the startup's founder, the Association head's nephew, is confident it would work.
- (e) The island's property owners could band together and sue the petroleum and automobile industries for creating the nuisance of climate change by releasing carbon dioxide and other greenhouse gases.

The leaders ask you, a local lawyer, to advise them on any legal or policy issues presented by each plan. Do so, being sure to address the likelihood that anyone will raise legal objections to the plan and the merits of those objections, any practical difficulties the plan might face, and any reasons to think the plan might be a good or bad idea as a policy matter.

Question 2 (15%)

O gives Blackacre, *inter vivos*, "to A for life, then to my grandchildren."

- (a) Ignoring the rule against perpetuities, what is the state of title in Blackacre after this conveyance? For any contingent interests, list all contingencies.
- (b) Is the gift valid under the common-law rule against perpetuities? Explain.
- (c) Does it change the answer to (b) if the gift is in O's will? Explain.

Question 3 (15%)

"As *State v. Shack* tells us, '[p]roperty rights serve human values.' In the conflict between the living and the dead, property law should serve the living. Just as the court correctly refused, in *Eyerman v. Mercantile Trust Co.*, to enforce a will ordering a perfectly good house be destroyed for no reason, they should refuse to recognize outdated rules like the *numerus clausus* principle and the rule against perpetuities that limit the ability of property owners to do with their property as they intend. Only then can property law properly serve the living instead of the dead."

Assess this statement. Specifically, do two things: (a) Explain the statement. What is its argument? Give one example from a case or doctrine that we discussed that illustrates or supports the argument and one that goes the other way. Explain how they do so. (b) Evaluate the statement. Are there normative arguments that support it? Counterarguments? In view of these arguments, is the statement persuasive? Explain.

Question 4 (15%)

Jenn Dangerous and Trin Garritano, a married couple, purchase Blueacre, a parcel of vacant land in New Vermont worth \$500,000, as tenants by the entirety. The following events then occur, in this order:

- Dangerous takes out a loan for \$250,000 from the Bank of New Vermont to expand her podcast business. After reviewing Dangerous's assets, the loan officer had structured the deal as a mortgage on her interest in Blueacre. Dangerous then signed the papers without reading them or understanding that she was obtaining a mortgage.
- Garritano is sued for defamation by Alex Cox for comments Garritano made on a podcast. The court finds the comments to be defamatory and orders Garritano to pay Cox damages of \$350,000.
- Garritano and Dangerous sign a document conveying Blueacre to Dangerous in fee simple absolute for consideration of \$1.
- Dangerous dies, devising all her assets to Garritano. Dangerous's records aren't very well organized, so no one realizes that there is an outstanding loan for \$250,000, which comes due and is never repaid.
- Cox and the Bank separately sue Garritano, seeking to attach Blueacre to satisfy the \$350,000 judgment (Cox) and \$250,000 debt (the Bank).

New Vermont adheres to the lien theory of mortgages and the majority rule barring creditors from reaching individual interests in a tenancy by the entirety.

- (a) The lawsuits by Cox and the Bank are consolidated and heard together before one judge. What result? Explain.
- (b) Does it change the answer if New Vermont were instead aligned with Alaska, Arkansas, New Jersey, New York, and Oregon in holding that the interest of a debtor spouse in a tenancy by the entirety may be levied upon for her separate debts, subject to the other spouse's contingent right of survivorship? Explain.

Question 5 (15%)

How would the *Pierson v. Post* court have decided *Spur Industries v. Del E. Webb Development Co.*? Explain. In doing so, consider the *Pierson* majority's policy goals, the normative assumptions and methods the court relied upon in advancing those goals, and the ways that such a court might resolve the dispute between the feedlot and its neighbors in *Spur*.