

Property
Spring 2017
Prof. Ford

Take-Home Final Exam

This take-home final exam is worth 75% of your course grade. It will be administered on Friday, May 12, 2017. 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 only 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 **four 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 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 (50%)

Remember Sandra from the midterm? She's back! After she won Mike's lawsuit over ownership of the gold bars and coins and the "Big Green Egg" barbecue grill, she sold the gold at auction for \$355,000. (Turns out the set included some especially rare and collectable coins, which the first appraiser missed.) She kept the grill, though, and developed a passion for outdoor cooking. She began experimenting with the grill, using it to cook everything from pork spare ribs to pizza to wild-caught Maine lobster. She began making instructional videos and uploading them to YouTube, eventually developing a following as a folksy and down-to-earth cooking teacher with a knack for unusual flavor combinations. Her video demonstrating how to make grilled lobster with cocoa powder, for instance, racked up 285,000 views in a month and got her invited to appear on *The Ellen DeGeneres Show*, a popular daytime talk show.

After her appearance, Sandra decided to turn her passion into a business. She envisioned a restaurant and cooking school near her home in Chester, New Vermont, with a studio for her YouTube videos and the TV show she aimed to launch. With the \$355,000 from the gold sale, plus some savings from her YouTube income, she began looking for locations she could use to build her business. She narrowed the search to two finalists, parcel X and parcel Y. Parcel X was a gigantic Victorian house near downtown Chester and built in the 1860s, while parcel Y was an empty lot farther out among farms and woodland. Before making an offer, she hired you, a local property lawyer, to advise her on the property search. You did some research and discovered the following:

- Parcel X is zoned for single-family residential use. It is located on a street in which most houses have been converted to commercial use; parcel X is one of the few remaining single-family houses in a neighborhood full of stores, restaurants, and art galleries. The Chester zoning process is notoriously difficult to navigate, though; for several years, the Zoning Board has had a voting majority that favors limited development and grants few exceptions or adjustments.
- Parcel X has a driveway that provides access to a separate garage located behind the home. The driveway has also been used for ten years by residents of a rental apartment located above a neighbor's garage. The neighbor's property has its own driveway, used by the art gallery located in the main house, but that driveway does not connect to the surface parking area used by the apartment's tenants. The driveway also appears to encroach onto the neighbor's property by about two feet, though a survey would be needed to be certain.

- Parcel Y is owned by Sullivan Development Corp.; the lot is three acres and is at the edge of a 180-acre block of contiguous land owned by the company. It is zoned for residential or commercial use (which would include Sandra's uses). Most of the land has not been developed, but about 25 acres, at the other end of the 180 acres from parcel Y, has been turned into Evergreen Terraces, a planned community of (to date) 40 single-family homes. The deed to each home in the development contains a covenant restricting the lots to single-family use and empowering the Evergreen Terraces Community Association to (among other things) enforce the covenant for the reciprocal benefit of homeowners in the community. The deeds do not, however, define the scope of the community; Sullivan has not prepared or recorded a general plan for the community.
- Parcel Y is adjacent to the Chesterford River, a small stream not especially befitting its grand name. For much of the year, the stream is dry, but with spring snowmelt it swells to a rapid flow. About a mile upstream of Parcel Y, the Narragansett Metal Recycling Company pumps about half the river's flow to its plant, a mile away in a different watershed. It also pumps back hazardous waste—mostly dilute sulfuric and hydrochloric acid, with some dissolved heavy metals as well—which it dumps in the river, untreated.

Sandra is interested in both properties. She likes the location of parcel X and the fact that she wouldn't have to build a new building, but is concerned about the difficulty of renovating the space to meet her needs. On the other hand, she likes that parcel Y would let her design the space for her needs and about the prospect of building an outdoor dining area along the river, but is concerned about the remote location and about whether her business would be a good fit for the area. And she hasn't considered whether either site presents any significant legal problems.



Parcel X.

Prepare a memo advising Sandra on the potential legal issues that could arise with each parcel, including an assessment of her options in response to those issues and the likelihood that each issue would prevent her from successfully establishing her business at each location. Based on your analysis, should Sandra prefer one parcel to the other?

Question 2 (20%)

Céline Dion, a modestly talented singer with an inexplicably large fanbase, owns several rental apartments in New Vermont. One of the apartments is rented by Brynn and Chris Comey, a married couple with a four-year-old daughter, Rachel. The Comeys have lived in the apartment for three years.

After they sign a one-year lease renewal, things start going wrong. First, the heat stops working in October; although a wood-burning fireplace means that the living room is fine, the bedrooms—including Rachel's bedroom—go down to 45°F (7°C) at night in November and December. Céline promised she would fix it, but three months after the problems began she had failed to do so, despite four attempts to make repairs. Second, annoying neighbors moved in next door, playing loud music during Rachel's afternoon nap time and smoking marijuana, which entered Rachel's bedroom through the ventilation system. After Rachel became sick, Brynn and Chris took her to a doctor, who diagnosed her with an unusually strong sensitivity to marijuana smoke.

One night in January, the apartment got so cold that the Comeys decamped to a hotel. The next day they complained again about the heat. Céline responded "I'm tired of your whining. Just get out. Consider your lease canceled."

The Comeys come to you for legal advice. On the one hand, they don't want to keep living in a freezing apartment full of marijuana smoke that makes their daughter sick. On the other hand, they don't want to go to the effort of moving, at least not without some compensation, and the affordable options in New Vermont are limited. Advise them on their options, including each option's likelihood of success and Céline's potential countermoves.

Question 3 (15%)

O devises Greenacre "to the Chester School District, but if it is ever not used for school purposes, then to the first of my children to reach the age of 25." At O's death, O has three children, ages 7, 4, and 2.

- (a) Ignoring the Rule Against Perpetuities, what is the state of title at O's death?
- (b) Is the conveyance valid under the common-law Rule? Explain.
- (c) Does it change your answer to (a) or (b) if the conveyance read "to the Chester School District for use as a school, then to the first of my children to reach the age of 25"? Explain.

Question 4 (15%)

New Vermont is considering an amendment to its state constitution that would end the practice of eminent domain. Consider the following excerpt from the debate in the state House of Representatives:

Rep. X: There is never a need for the harsh remedy of eminent domain. As the Coase Theorem shows, you get the most efficient use of land even without eminent domain. The government can just buy land at market prices whenever it needs to build a new office building or parking lot; if it isn't the winning bidder, then that shows the government isn't the best user of the land.

Rep. Y: All eminent domain does is convert a property rule for purchasing land into a liability rule; it doesn't change the legal entitlement. So by definition it does not impinge on anyone's liberty. You get exactly the same use of land; it just changes how that land is paid for and provides a simpler, more efficient means of effecting the transaction.

Explain and evaluate each representative's argument. In doing so, address the following questions: (a) What is each representative asserting? (b) Are those assertions correct or incorrect? What counterarguments are there? (c) Based on these arguments and the counterarguments, what can we conclude about the value (or lack thereof) of eminent domain?