

Property
Spring 2018
Prof. Ford

Take-Home Midterm Exam

This take-home midterm is worth 25% of your course grade. It will be distributed on **Thursday, March 15**, and is due on **Tuesday, March 20 at 10:00 am**. By that time, you must return **two printed copies** of your exam responses to the Registrar's Office. Late exams will result in a reduction of your **course grade by one-third letter grade per day**. Please do not include your name or any identifying info. Instead, place only your assigned exam number on the top right of your responses.

Because you have flexibility about when to complete the exam, other students may be completing this exam before or after you do so. Accordingly, you **must not discuss the exam with anyone, student or not, until I tell you in class that every student has turned in his or her exam**. Additionally, I will not be able to answer any questions about the exam while it is in progress. You may use any materials you wish while completing this exam, though you must write your responses yourself, and must not copy and paste any pre-written material into your answers.

This exam consists of **two questions**. Question 1 is worth two-thirds of the grade, while question 2 is worth one-third. This exam has strict time and word limits. You must not spend more than **four hours** completing this exam (I expect you will need much less time than that), and you must not use more than **1000 words total**. (I recommend, but do not require, that you allocate those words in proportion to the scoring.) Please list your total word count at the end of your exam.

The formatting instructions in this paragraph are really important, and you should follow them or expect to lose points. Type your responses. **Format them similarly to this document: single-spaced, with 1.5-inch margins, numbered pages, and empty space between paragraphs**. Print one-sided and staple each copy of your responses at the top left corner of the page. Use 12-point Century, Palatino, Constantia, Book Antiqua, Cambria, or another high-quality proportionally spaced body-text font; do *not* use Times New Roman.

As in legal practice, **writing, organization, and clarity count**, so spend some time outlining your responses and leave some time to edit. Follow standard practices of good writing: use topic sentences; break up your text into reasonably sized paragraphs, each focused on a single idea; use short, complete, grammatically correct sentences.

Please also type the following at the top of your exam (again, without copying and pasting!): "I affirm that I have not discussed this exam with other students or anyone else during its administration. I further affirm that I understand and have complied with the word and time limits governing this exam."

Good luck!

Question 1

Alex Cox, a prominent and successful modern artist, wants to buy a lake house in the state of New Vermont, about 90 minutes north of her home in New York. After months of looking, she finds the perfect house, a beautiful 1860s Victorian directly on Lake Temkin in the scenic vacation town of Lyndon. The house is well maintained and has been owned for decades by Merlin Mann, a local criminal-defense lawyer who is retiring and moving to Florida. As photographed and described in the real-estate listing, the house comes with a large barn, which would be perfect for Alex's summer art studio.



Alex hires you to advise her on the purchase. You do some research and discover a problem: the barn, which was built by Mann by hand about 20 years ago during a mid-life crisis, isn't located on Mann's lot. Instead, it's located on a neighboring plot owned by the Nature Scouts of New Vermont, a nonprofit organization that uses the land for camping and events held by troops of New Vermont middle schoolers.

You get in touch with Mann's real-estate agent to ask about the issue. He asks his client and tells you that when Mann built the barn 20 years ago, he thought he was building it on his own property, but because he misread the survey report from when he bought the house, he accidentally built it about fifty feet over the property line. Mann discovered the error seven or eight years ago when he had some dying trees removed, but figured that the Nature Scouts wouldn't care, and that if he remembered his 1L property class right, he probably owned the barn by adverse possession or something. He has continually used it for storage, working on classic cars, and occasional woodworking. You ask if anyone else has used it, and he said no, except that occasionally in the summer some of the scout troops would ask to store their supplies there or sleep in it during rainstorms. But they always knocked on the door and ask for permission, which Mann was happy to give. You ask if it would be possible to move the barn so it's on Mann's land, but it turns out that it's in the only good flat area, so moving it would be prohibitively expensive.

The New Vermont limitations period for adverse possession is 15 years. The state's Supreme Court hasn't decided any adverse-possession cases in decades, but in 1944

the Court held that adverse possession requires an intentional trespass. In recent years, though, a few cases in the lower state courts have held that a trespasser's mental state is irrelevant; other cases have assumed the same thing, though without seeming to recognize the conflict with the Supreme Court's precedent.

You quietly ask around and learn that while it's possible that Cox would be able to settle the matter with the Nature Scouts, it wouldn't be easy because the organization is dysfunctional and prone to infighting, and because it's reluctant to do anything that might upset donors. So it would be much simpler if you can just deal with Mann.

Analyze the likelihood that Mann has adversely possessed the barn, and thus that your client will be able to keep it if she buys the house.

Question 2

"As John Locke tells us, when a man or woman gathers acorns into a pile, most of the value of that pile comes from his or her efforts. This is even more true when it comes to ideas — with patents, copyrights, and other forms of intellectual property, the *entire* value comes from the creator's efforts. It follows, then, that intellectual property should be the strongest form of property."

Evaluate this quotation. Specifically, address these three issues: (a) What is the author's argument? What underlying normative assumptions is the author making? (b) Take a case we have read and discussed in the first unit of this course that would turn out differently under the author's reasoning and explain how it would have come out and why it would have been different. (c) Is the statement persuasive? Are there counterarguments? If so, what normative assumptions underlie those counterarguments, and why do they lead to a different conclusion?