

Property
Spring 2019
Prof. Ford

Take-Home Midterm Exam

This take-home midterm is worth 25% of your course grade. It will be distributed on Friday, March 22, and is due on **Tuesday, March 26 at 9:30 am**. By then, you must return **two printed copies** of your responses to the Registrar's Office. Late exams will result in a reduction of your course grade by one-third letter grade per day.

This exam consists of two questions, with points allocated as indicated. You must not spend more than **four hours total** completing this exam (I expect you will need less time than that), and you must not use more than **800 words total**.

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, neither the TA nor I will be able to answer 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 own responses, and must not paste any previously written material into your answers.

The formatting instructions in this paragraph are very important, and you should follow them or expect to lose points. Format your responses 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 serif font appropriate for body text. Do *not* use Times New Roman, which is a terrible font. Type your responses. Do not include your name or any identifying info. Instead, place only your assigned exam number on the top right of your responses. Include your total word count at the end of your exam.

As in legal practice, writing, clarity, and (especially) brevity count, so spend some time outlining your responses and leave some time to edit them. Follow standard practices of good writing: use topic sentences; break up your text into 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 (70%)

Matt Enloe is a financial advisor who specializes in selling annuities and whole-life insurance plans to wealthy retirees. The annuity and insurance companies pay Enloe a generous commission for each plan he sells, and Enloe tends to push the plans that pay the biggest commissions, even when they don't give the best financial performance. (This is, sadly, completely legal.)

To bring in new business, Enloe hosts community events, including educational seminars, golf and tennis outings, a bridge club, and so forth. He invites prospective clients by phone and written letter, getting addresses and phone numbers for promising leads through public-records searches and referrals from current clients. For a seminar on retirement planning, Enloe sent invitations to several potential clients, including Robin Trencheny. The invitation included this language:

You're invited! Join renowned financial advisor Matt Enloe and his team for a FREE two-hour retirement seminar! Plus, be one of the first twenty people to sign up and take home your FREE gift — a FOUR-DAY, THREE-NIGHT CARIBBEAN CRUISE, plus more great surprises!

Unbeknownst to Enloe, though, Trencheny had recently moved away and Jessy Tang had moved into her former home. Tang got the invitation and signed up on Enloe's website under their own real name and address.

At the seminar, Enloe's assistant, Vorian Goolsbee, checked in the attendees and gave gift bags to those among the first twenty registrants. Each gift bag contained an Enloe Financial Services coffee mug, a one-pound bag of coffee beans, and a small electric coffee grinder. It also contained a paper voucher that, by its terms, was redeemable for the cruise. Tang received one of the gift bags and sat through the seminar, mostly playing iPhone games. But Goolsbee noticed that Tang wasn't paying attention and seemed younger than the usual audience for Enloe's events. He asked Enloe what to do and Enloe, not wanting to waste the cost of the cruise on someone who wasn't invited and didn't seem to be in the market for retirement planning, told him to take back the gift. Goolsbee did so as Tang was leaving.



- (a) Tang asks you if they have a viable claim against Enloe that (1) the coffee items and (2) the cruise were binding, irrevocable gifts. Analyze that question. (Ignore other potential claims like those sounding in contract law or promissory estoppel.)
- (b) Does the common law of gifts provide the best mechanism for resolving this dispute, or would applying another area of the law be a better approach? In answering that question, consider the principles underlying the law of gifts and whether they apply to the commercial scenario here or whether there are other principles, not addressed by the law of gifts, that apply in the commercial context and would be better addressed by applying another legal doctrine.

Question 2 (30%)

O conveys Greyacre “to A for life, then to A’s children and their heirs, but if any of A’s children ever smoke cigarettes on Greyacre, then to B and her heirs.” At the time of the conveyance, A, B, and O are alive; A has three kids, all living.

What is the state of title in Greyacre immediately following this conveyance? For any contingent interests, list all contingencies. Ignore the rule against perpetuities.