

HYBRID JD PROGRAM

REAL PROPERTY

Final Examination

Spring 2022

Prof. A. Blomquist

Instructions:

There are three (3) questions in this examination.

Total Time Allotted: Three (3) Hours.

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and facts upon which the case turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other. Your answer should evidence your ability to apply the law to the given facts and to reason in a logical, lawyer-like manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles; instead, try to demonstrate your proficiency in using and applying them. If your answer contains only a statement of your conclusions, you will receive little credit. State fully the reasons that support your conclusions and discuss all points thoroughly. Your answer should be complete, but you should not volunteer information or discuss legal doctrines that are not pertinent to the solution of the problem.

Question 1

Jim and Teri purchased a suburban residential duplex in fee simple as joint tenants. Jim lives in one half of the duplex (Unit A) and Teri lives in the other half (Unit B), and they share a common wall that separates the two units.

All the deeds in the neighborhood, including Jim and Teri's Deed, refer to the following covenant, which is properly recorded:

The property shall be used for residential purposes only. No business may be run from the property.

Some of the neighbors worked from home, but none of them had businesses open to the public on their property.

In 2015, Jim began having friends over to Unit A for regular poker games. Over several years, the poker games became larger and began to include other forms of gambling.

In 2018, Jim decided to turn the gambling into a business. Jim took out a mortgage on his interest in the duplex and signed a promissory note to Bank. The mortgage was properly recorded.

By 2020, Jim's gambling had become very profitable, and he had many different people coming to his property to participate in a variety of gambling games. Jim's gambling activities were frequently rowdy and loud, often until 2 a.m. or later when Teri was trying to sleep. Teri repeatedly asked Jim to stop, but Jim said he needed to continue the gambling to pay his mortgage.

One night in 2022, one of Jim's games went very late and was very loud, so Teri did not get any sleep. The following day, Teri made some mistakes at her job due to the lack of sleep, which resulted in her termination by her employer.

Teri promptly filed suit against Jim for nuisance, breach of covenant, and for equitable relief to enforce an equitable servitude.

1. What will be the result of each cause of action in Teri's lawsuit against Jim. Discuss.
2. If Jim died, would Teri be liable for the mortgage or the promissory note? Discuss.

Question 2

Bob owned a square parcel of land surrounded with roads on all four sides. He subdivided the lots three by three into nine lots total. He numbered the lots in the pattern in the picture below:

1	2	3
4	5	6
7	8	9

Bob built residences on all nine of the lots. Utilities ran along the east road, so Bob ran utilities underground from east to west across the lots to reach the lots to the west. Lot 5 had an express easement, properly recorded, across a dirt road on lot 4 to reach the west road.

In 2010, Dan bought Lot 4, Eddie bought Lot 5, Frank bought Lot 6, and Greta bought Lot 8.

The dirt road on Lot 4 was not very convenient for Eddie because the lot was sloped and the road often got washed out in the rain, which required Eddie to frequently repair the dirt road.

In 2014, Eddie asked Greta if he could drive across her property to reach the south road. Greta refused, but Eddie started driving across Lot 8 anyway. Greta did not notice at first because she spent a lot of time taking care of her elderly aunt in another state. Later that year, when Greta finally noticed and confronted Eddie, Eddie denied driving across Greta's property.

In 2015, track marks from Eddie's frequent trips over Lot 8 became clear. Greta was furious, but she did not have the time or the money to file suit against Eddie at the time.

In 2016, Dan and Eddie discussed the easement across Lot 4. Eddie told Dan, "I have a better route so I don't need the easement anymore." Dan then leveled the area where the dirt road was located and built a garden there.

In 2022, Frank decided to build a swimming pool in his backyard. During the excavation, Frank discovered the utility lines running underground to the lots to the west. Frank did a title search and did not see any easement recorded, so he tore the utility lines out. Dan and Eddie no longer had utility access.

1. In a suit by Greta against Eddie for trespass, what result? Discuss.
2. In a suit by Eddie against Dan to quiet title to the easement on the dirt road, what result? Discuss
3. In a suit by Eddie against Frank for tearing up the utility lines, what result? Discuss.

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Question 3

John has owned property in a rural area for decades. John's neighbor, Ned, has operated a horse boarding ranch in the neighboring property for that entire time.

Since 2000, the nearby Town grew substantially. By 2020, the Town had expanded so that John's property was surrounded by residences on all sides.

In 2021, John realized that he could make substantial income if he began operating a horse boarding ranch like Ned, so he spent \$80,000 building some stables and corrals to begin his business.

The smell from Ned's horses already bothered some of the neighbors when the wind blew, and neighbors were concerned when they saw John building the stables and corrals. The neighbors complained to the authorities to ask them to stop John from boarding horses. In response, John and Ned's properties were rezoned with the following restriction:

Property shall not be used for boarding animals. An exception shall be granted by the zoning board for preexisting use.

John's property is currently worth \$900,000.

1. Will the zoning regulation be upheld if Ned challenges it? Discuss.
2. Is John entitled to compensation from the State for a taking? Discuss.
3. Can John obtain a variance or an exception? Discuss.
4. Can Ned obtain a variance or an exception? Discuss.

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Exam Question 1

1. Causes of Action
 - a. Nuisance (30%)
 - i. Substantial
 1. Noise past 2 a.m.—offensive to average person in the community
 - a. No noise
 - ii. Unreasonable
 1. Utility—pay mortgage, entertainment
 2. Harm—noise, morals?
 - iii. Damages/injunction
 - b. Covenant (20%)
 - i. Writing—properly recorded
 - ii. Intent to bind future successors
 - iii. Touch and concern land
 - iv. Privity—no horizontal privity since they are co-owners of the property
 - v. Remedy—Damages
 - c. Equitable servitude (20%)
 - i. Intent to bind future successors
 - ii. Touch and concern land
 - iii. Notice—recorded—constructive notice, inquiry notice (no other businesses)
 - iv. Remedy—Injunction
2. Liability for mortgage (30%)
 - a. Mortgage
 - i. Title theory—mortgage would sever joint tenancy
 - ii. Lien theory—split in authority as to whether the mortgage would remain after Jim's death after right of survivorship
 - b. Promissory note
 - i. No liability since she didn't sign it or assume it

Exam Question 2

1. Easement by prescription (20%)
 - a. Actual use
 - b. Hostile—Greta refused
 - c. Open and notorious—Tire tracks
 - d. Continuous

2. Express Easement (10%)
Easement by Necessity (10%)
Termination (30%)
 - a. Abandonment
 - b. Estoppel
 - c. Prescription

3. Implied Easement (30%)
 - a. Notice—inquiry and actual, but not constructive
 - b. Preexisting use
 - c. Necessity
 - d. Prescription

Exam Question 3

1. Constitutionality (30%)
 - a. Rational Basis test
 - i. Limiting nuisance—putting it in its place
2. Takings (40%)
 - a. Effect of zoning law
 - b. Interference with investment-backed expectations
 - c. Spot zoning
 - d. Does not render property useless.
3. Variance (10%)
 - a. Requires problem unique to landException does not apply (5%)
4. Variance (5%)
 - a. No undue hardship
 - b. No problem unique to landException (10%)
 - a. Preexisting use

1)

1. What will be the result of each cause of action in Teri's lawsuit against Jim?

1a. NUISANCE

A property owner can be liable for nuisance if the conduct, or their use of the property, causes (1) a substantial harm, and is (2) an unreasonable interference with another's right to use or enjoy their property. In California, nuisance is analyzed by a reasonable person standard. Private nuisance is where a single landowner is harmed. Whereas a public nuisance allows anyone in the general public to sue for nuisance, so long as they show a special injury.

Great!

Substantial Harm & Unreasonable Interference

A use causes a substantial harm where it is offensive or harmful to a reasonable person in the community; at times causing a measurable harm. An unreasonable interference requires a balancing of the harmfulness of the use against the utility. Factors to consider is: coming to the nuisance, hypersensitive plaintiffs, does zoning allow the use.

Good

Here, Jim's gambling business would carry late into the night and early morning which would affect Teri's sleep and ultimately her performance at work. It is safe to presume a reasonable member of the community would be sleeping at 2 a.m. and do not expect to hear very loud neighbors carrying about. Teri would not be considered a hypersensitive plaintiff because her expectation of a quiet neighborhood at 2 a.m. is reasonable and acceptable in the community. Teri lost her job because of her lack of sleep, which would be a measurable harm. Teri also did not come to the nuisance because Jim did not start facilitating gambling games until after they moved into the duplex. Lastly, the facts fail to

Good

suggest Jim acquired appropriate licensing, or is zoned, to run a gambling business-- especially in a residential community.

There was a fair amount more worth analyzing here. What benefit does gambling have to the community? What other harm can it cause?

Remedies Available

A party suing for nuisance may seek an injunction or compensatory damages. An adverse party may seek to shift the abatement costs to the opposing party if the facts suggest that is fairest for both parties.

Here, Teri can seek equitable relief and request the court grant an injunction ordering Jim to desist his gambling games. Teri can also seek compensatory damages for lost wages caused by Jim's interference with her sleep. Jim may seek to shift the costs of moving his gambling business to another location.

Very good

CONCLUSION

Teri will be successful in seeking injunctive relief stopping Jim from continuing his gambling business at the duplex. It is likely Teri will not be successful in seeking compensatory damages for lost wages because it will be difficult to prove her mistake was solely caused by Jim's nuisance. Furthermore, Jim will not be successful in shifting abatement costs to Teri because she did not come to the nuisance, he was not zoned or licensed to run this type of business in the community, as well as he was breaching a real covenant.

1b. BREACH OF COVENANT -- (*monetary/ damages relief sought*)

A covenant is an enforceable promise to do something (affirmative), or not do something (negative), related to land. A covenant runs with the land. To create a covenant there must be (1) a writing to satisfy the Statute of Frauds; (2) the original covenanting parties

had an intent to bind future successors; (3) the covenant touches and concerns the land; (4) horizontal and vertical privity; and (5) notice.

A Writing

A writing is satisfied if the covenant is expressed in the deed. Here, all deeds in the neighborhood included a negative covenant restricting property owners from running businesses from the property. This is a satisfactory writing. Good

Intent to Bind

The original covenanting parties must have an intent for the covenant to bind future successors. Here, because every deed in the neighborhood included this deed it manifests an intent to bind all future property owners to the promise of not running a business from their property. This element is satisfied. Good.

Touches & Concerns the Land

A covenant touches and concerns the land when it affects the property holder's right with respect to the land. Here, the covenant is restricting property owners from using their land the way they want, this is restrictive and affect's their rights with respect to their land. The covenant touches and concerns the land. Good again

Privity (Horizontal & Vertical)

The original covenanting parties must have horizontal privity. Here, Jim and Teri purchased the property together from the previous owner or developer. This is a direct, horizontal privity to the covenanting parties. Jim and Teri each have a possessory right and undivided interest in the property, but they are also neighbors as they live in separate

units with separate addresses. Because they are neighbors and have separate addresses, it is likely vertical privity will be satisfied.

This privity section is mostly incorrect. It's best to break vertical and horizontal privity apart so you can clearly address this issue.

Notice

There are three types of notice: (1) actual; (2) record/constructive notice; and (3) inquiry notice. Jim had actual notice of the covenant because it was specifically expressed in the property's deed. The covenant was also recorded in the deed. Jim would be put on notice constructively if he checked public records. Lastly, Jim would be put on inquiry notice because a reasonable person could inquiry that no other neighbor ran a business out of the neighborhood which is indicative of a common development plan. Jim saw no signs or advertisements to suggest businesses were being run out of the neighbor's residences, which could give rise to inquiry notice.

This last sentence is not a fact in the pattern. However, a slight variation could fix this. Example: "Here, there are no facts suggesting there were any signs or advertisements..."

CONCLUSION

The negative covenant restricting property owners from running businesses in the neighborhood is a valid covenant.

TERMINATION OF COVENANT

There are 7 ways to terminate a covenant: merger, release, abandonment, estoppel,

Merger is not applicable because the interests did not merge. Release is not applicable because there is no writing releasing Jim from his promise to abide by the covenant.

Abandonment is not applicable because all other neighbors were still conforming to the covenant restriction.

This termination discussion is missing quite a bit; fortunately, termination was not a major issue here.

CONCLUSION

Because the covenant did not terminate, Jim was in breach for running a gambling business out of the duplex when a negative real covenant was in effect. Teri would be successful in a breach of covenant cause of action against Jim and can seek compensatory damages for his breach.

1c. EQUITABLE SERVITUDE -- (*equitable relief sought*)

An equitable servitude is similar to a real covenant, however the relief sought in breach is equitable in nature (i.e. injunctive relief). Modernly there is no difference in an analysis for the creation of real covenants and the creation of equitable servitudes. Modernly, the intent of the parties is analyzed as it relates to the burden and the benefit of the servitude. At common law, the parties must show: (1) a writing to satisfy SOF; (2) intent to bind future successors; (3) touches and concerns the land; (4) notice. Privity is not necessary to establish the creation of an ES.

Good rules except that there isn't really an applicable modern/common law distinction here.

Because all elements carry the same analysis as listed above in the covenant analysis, a restrictive equitable servitude was created.

TERMINATION OF EQUITABLE SERVITUDE

There are four ways to terminate an equitable servitude: acquiescence; unclean hands; laches; estoppel.

These are defenses; they do not terminate the servitude.

Acquiescence

If other people who are bound to the servitude are also in breach, a defending party can claim the servitude was terminated for failure to enforce the servitude to everyone. Here, nothing suggest others were in breach.

Good quick analysis

Unclean Hands

If the plaintiff is also in breach, they cannot bring suit against another breaching party. Here, nothing suggests Teri was in breach as she was not running any business out of her residence.

Laches

When a party unreasonably delays pursuing their rights, the defending party can claim the servitude is terminated under a laches theory. Here, Jim started treating the gambling hobby as a business in 2018, in 2022 is when Teri had enough and pursued her rights after losing her job. Jim will argue she unreasonably delayed pursuing her rights because for 4 years she did not pursue them, and for 2 years it was very obvious Jim was breaching the servitude. However, Teri will argue that she asked Jim repeatedly in 2020 (two years into the business) to stop. It is likely this servitude did not terminate because Teri took so long to pursue her rights.

Good

Estoppel

When a party relies on the conduct of another party and violates the servitude because of the reliance the servitude is terminated and the plaintiff is estopped from seeking relief. Here, nothing suggest Teri (or the development/community) acted in any way to give Jim the impression the servitude terminated. No termination by estoppel.

Overall
Conclusion?

2. If Jim died, would Teri be liable for the mortgage or the promissory note?

JOINT TENANCY (JT)

A joint tenancy is a concurrent estate where all owners have possessory interests in the property. A JT is an undivided interest, with a right of survivorship. Modernly, JTs are

unfavorable and not created unless expressed a right of survivorship is included. A right of survivorship means if one cotenant dies their interests are automatically acquired by the surviving cotenant(s). Here, the facts suggest Jim and Teri created a joint tenancy, even though it does not say a right of survivorship was intended. It will be assumed it is a valid joint tenancy. Joint tenancies are alienable, but not defeasible or descendible.

MORTGAGING JOINT TENANCY

In a lien theory jurisdiction (majority) a cotenant mortgaging their interests does not act as a severance. In a title theory jurisdiction (minority) mortgaging an interests acts as a severance of the portion of property that is mortgaged. Excellent!

Here, Jim mortgaged his portion of the property and then passed away. Teri did not sign the mortgage or promissory note. If Jim dies, Teri would acquire Jim's property interest automatically because the right of survivorship, and would be liable for the mortgage payments, however deficiency judgment could not be brought against her for the promissory note.

Very close to perfect. There is a split as to whether the mortgage would stay in a lien theory jurisdiction, but other than that, this was great.

Grade: 85

This was a really impressive answer, overall. You demonstrated strong understanding of most of the issues. The points you missed were on some of the trickiest issues. Learning those minor details and practicing privity would boost your score further.

4)

1. In a suite by Greta against Eddie for Trespass, what result?

EASEMENT:

An easement is a grant of non-possessory interest for the holder to use the land of another for some use or enjoyment. Easements can be appurtenant or in gross. Under these facts, all of the potential easements will be appurtenant because there are always two parcels of property at issue.

Good

APPURTENANT:

Require two parcels of land - the dominant land that receives the benefit and the servient land that bears the burden. Here, the dominant land would be Eddie's because he receives the benefit of driving over Greta's servient land which bears the burden of Eddie driving over it.

Good

EASEMENT CREATION:

Easements can be created through prescription, implication, necessity, or express grant. Here, if an easement exists, it will likely be created through prescription since the facts indicate that Great told Eddie he could not drive over her property. An easement by necessity will not apply here, because Eddie technically still has access to the road over Dan's lot even though it is "inconvenient to use".

Great way to frame the issues!

CREATION BY PRESCRIPTION:

An easement can be created by prescription when the holder uses the elements of adverse possession to create the easement. Exclusive use is not a necessary element for easements.

It would be good to lay out the elements of prescription here, but I see you identified them all below.

CONTINUOUS THROUGH THE STATUTORY PERIOD:

The use must be continuous and uninterrupted throughout the statutory period. Here, there is not statutory period specified. However, the statute for adverse possession is usually 5 years in most jurisdictions. Here, Eddie has been using the easement over Greta's property continuously from 2014-2022. Since that is a total of 8 years, it is likely that the continuous element will be met.

OPEN AND NOTORIOUS:

The use must also be Open and Notorious. This means the use is substantially apparent to put a reasonable owner on notice of the use. Here, the facts indicate that there were track marks from Eddie's vehicle on Greta's property, so it would be reasonable that an owner would notice tire track marks on their property. The facts also indicate that Greta was furious at Eddie's use, but did not have time of money to file suit against him. Thus, the open and notorious requirement is likely met because Greta actually does know about Eddie's use.

ACTUAL USE:

The use must be actual, but need not be exclusive. This means that the easement holder must actually physical enter the property of the true owner. Here, the facts indicate that Eddie drives over Greta's property, which is a physical entry. Thus, the actual element is likely met.

HOSTILE OR ADVERSE:

Thus use must also be hostile or adverse. This means that the use must be done without permission from the true owner. Here, the facts indicate that Greta explicitly denied Eddie use of her property as an easement to the south road in 2014, so Eddie does not

have Greta's permission to use her land as an easement. Thus, it is likely that the hostile/adverse element is also met.

CONCLUSION:

Thus, it is likely that an easement by prescription has been created over Greta's property.

EASEMENT TERMINATION:

Easements can be terminated through estoppel, necessity, destruction, condemnation, release, abandonment, or prescription. There are no facts to indicate that Greta or Eddie took any steps to terminate the easement. Thus, it is likely the easement still persists.

OVERALL CONCLUSION:

Because an easement was successfully created via prescription, and no steps were taken to terminate it, Greta will likely be unsuccessful in her suit for trespass against Eddie.

2. In suit by Eddie against Dan to quiet title to the easement on the dirt road, what result?

RULES FOR EASEMENT SEE SUPRA.

The easement appurtenant of Eddie (dominant land) and Dan (servient land) will be created via Express Grant.

CREATION VIA EXPRESS GRANT:

An easement is created by express grant when it is in writing and follows all the formal elements of a deed. Here, the facts indicate that Lot 5 (Eddie's) had an express easement

properly recorded across a dirt road on lot 4 (Dan's). Because the easement was properly recorded, it can be inferred that it satisfies the writing requirement and the formal elements fo a deed. Thus, it is likely that Eddie has a valid easement across Dan's property. Excellent. However, creation by necessity had some points that were missed here.

TERMINATION VIA ABANDONMENT:

However, an easement can be terminated with the dominant owner expresses, through physical action, the intent to never use the easement again. Non-use and mere words are not enough. Here, the dominant owner is Eddie and he tells Dan, the servient land owner, that he no longer needs access to the road because he has found a better route. Eddie continues to use the road over Greta's land and never uses the easement over Dan's land. However, although Eddie no longer uses the easement on Dan's land, he did not take any physical action, like building a new road, which would show his intent to never use the easement again. Because words and non-use are not enough, the easement over Dan's land has not be successfully terminated via abandonment. Great

TERMINATION VIA ESTOPPEL:

An easement can be terminated if the dominant owner expresses an intent to terminate and the servient owner materially changes their position in reliance on the dominant owner's statement. Here, the dominant owner, Eddie, tells Dan, the servient land owner, that he no longer needs access to the road because he has found a better route. Dan, then materially changes his position based on Eddie's statement when Dan levels the dirt road and builds a garden. Because Eddie's words caused Dan to materially changed his position, it is likely that the easement has been terminated via estoppel. Very good

CONCLUSION:

I would have also like to see a discussion of termination by prescription here.

Eddie will likely be unsuccessful in his suit against Dan to quiet title to the easement because the easement was properly terminated.

3. In a suit by Eddie against Frank for tearing up the utility lines, what result?

RULES FOR EASEMENT SEE SUPRA.

The easement appurtenant of Eddie (dominant land) and Frank (servient land) will be analyzed infra:

CREATION VIA NECESSITY:

An easement will be created via necessity when a grantor conveys land to a grantee who has no access to the land or utilities of the land except through the use of other land not belonging to the grantee. Here, the dominant land owner is Eddie and Frank is the servient land owner because the utility lines are under Frank's land. Eddie has an easement via necessity to the utility lines because he has no other way to access the utilities except through the lines under Frank's lands. Eddie needs access to the utilities from Frank's property because the facts do not indicate that Eddie has any other way to access them. Thus, an easement via necessity is created.

TERMINATION VIA DESTRUCTION:

An easement can be terminated when the servient land is destroyed, through no intentional wrongdoing of the servient owner. Here, although Frank's land is destroyed, his intent for the destruction was to build a swimming pool. He intended for the land and the utility lines to be destroyed. Therefore, this easement was not successfully terminated via destruction.

Destruction doesn't really terminate an easement, though. Also, termination by prescription was also discussible.

CONCLUSION.

It is likely that Eddie will succeed in his suit against Frank for tearing up the utility lines because an easement by necessity was created. Frank may be able to argue that he did not have notice of the easement because it was not recorded, but Eddie will likely argue that Frank was on inquiry notice that the lines would exist for some reason of necessity due to the configuration of the lots and the needs of all lots to have access to utilities.

Grade: 80

I can tell you understand the applicable law well in the issues you spotted. The points you missed were almost entirely from issues that did not get addressed. (See my comments above.) To improve, I suggest practicing issue spotting more on some of the sample fact patterns you have and comparing them to the model answers/rubrics. However, overall this essay demonstrates above-average understanding and a working knowledge of most of the issues.. Nice job.

3)

1. Will the zoning regulation be upheld if Ned challenges it?

ZONING:

Through police powers, states create statutes to reasonably control land through restrictions for the protection of health, safety, morals, and welfare of its citizens. Here, the zoning restriction is to prevent properties in the zone to be used for boarding animals. The facts indicate that the reason for the rezoning was that the neighbors were concerned about the smell. The facts do not indicate anything other than the smell being the concern of the neighbors and the rezoning board. If there were arguments to be made about the smell being caused by Ned irregularly cleaning the stables which lead to infestation of flies in the neighborhood, then the neighbors and zoning board may have an argument on their hands for health, safety, and welfare of the neighborhood. However, that is not the case here.

I was looking for analysis of the rational basis test here.

NONCONFORMING USE:

When an existing use is grandfathered in to the zoning restriction. The restriction also includes a stipulation that an exception will be granted by the zoning board from pre-existing use. The facts also indicate that Ned has been boarding horses for decades prior to the zoning restriction coming into affect in 2021. Because Ned has been boarding horse for decades, it is likely that the zoning board will grant Ned an exception for pre-existing use.

CONCLUSION:

Thus, it is likely that the zoning regulation will not be upheld against Ned if he challenges it.

2. Is John entitled to compensation from the State for a taking?

EMINENT DOMAIN:

Government's 5th Amendment powers that allow them to take private property for some public purpose with just compensation (fair market value) to the owner. Here, the government is not actually taking John's private property for a public purpose, the government is simply asking John to refrain from boarding animals on his property. Thus, it is likely that eminent domain does not apply to these circumstances.

This is incorrect

REGULATORY TAKING:

When the government restrictions take all economic value from the owner without physical entry to the property. Temporary restriction or mere decrease in value do not constitute a taking. Here, the facts indicate that John realized he could make more money off of his property if he used it for a horse boarding ranch than if he did not. The facts do not indicate that his property was entirely worthless without being used for a horse boarding ranch. The facts also indicate that John spent \$800,000 to build the stables and corrals and that his property is currently worth \$900,000. This implies that if he were to remove the stables and corrals, the property itself would still be worth \$100,000. What this implies is that even with the new zoning restriction applying to John, the state did not take ALL of the economic value from his property. It simply decreased the value of this property, which per the rule is not enough to constitute a taking. Thus, it is likely that the new zoning ordinance does not constitute a regulatory taking because John's property still has some economic value without being able to board horses.

CONCLUSION:

Good. I would have also liked to see some analysis of investment-backed expectations and spot zoning

John is not entitled to compensation from the State for a taking.

3. Can John obtain a variance or an exception?

John cannot obtain an exception because the restriction explicitly states that exceptions will be granted for preexisting use. John does not have preexisting use because he began building his stables in 2021 after living on the property for decades without the desire to board horses. However, he may be able to obtain a variance. Great!

VARIANCE:

Special permission to depart from the zoning restrictions may be granted through a showing of undue hardship and proof that the variance will not decrease the property value. Here, John will have to show both the undue hardship and that the variance will not decrease the property value. Here, the facts indicate that John increased the value of his property by \$800,000 by building the stables and corrals. This likely means that granting the variance will likely not decrease his property value since it has already been increased by \$800,000. However, John will still need to show undue hardship.

Unfortunately, there are no facts to indicate that John will experience undue hardship if he is unable to operate the horse boarding ranch. The only facts present indicate that John realized he could make a substantial income if he opened the ranch. In order for undue hardship to be shown, John would have to show that he would likely lose his property if not for being able to operate the horse boarding ranch. Thus, it is likely that a variance will not be granted. Very good

CONCLUSION:

John will likely not be able to obtain a variance or an exception.

4. Can Ned obtain a variance or an exception?

NONCONFORMING USE:

When an existing use is grandfathered in to the zoning restriction. The restriction also includes a stipulation that an exception will be granted by the zoning board from pre-existing use. The facts also indicate that Ned has been boarding horses for decades prior to the zoning restriction coming into affect in 2021. Because Ned has been boarding horses for decades, it is likely that the zoning board will grant Ned an exception for pre-existing use.

OK. But what if he did ask for a variance?

CONCLUSION:

It is likely that Ned does not need to pursue a variance because he will be given an exception by the zoning board per the zoning restriction in the facts.

END OF EXAM

Grade: 70

This essay demonstrates an average to above-average understanding of the issues addressed. Many more points could have been picked up with thorough analysis of the rational basis test, which got mostly skipped over. You will get lots of practice applying that test in your Constitutional Law class, though.