

SAN LUIS OBISPO COLLEGE OF LAW

**Real Property**

Final Examination

Spring 2023

Prof. C. Lewi

Instructions:

There are three (3) questions in this examination. You will be given three (3) hours to complete the examination.

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

Blackacre (BA) is a 10 acre parcel of land, zoned at all relevant times “residential only.” It presently has 40 quarter-acre parcels. Each of these 40 parcels has a house; each house is and has been occupied at all relevant times. At all relevant times, Main Street bordered and borders BA’s eastern boundary.

Greenacre (GA) is a 20 acre parcel adjacent to BA to the West, zoned at all relevant times “commercial only.” It presently has a shopping center constructed on it. At all relevant times, Broad Street bordered and borders its western boundary.

In 1995, when BA was first developed, as part of the subdivision process and general plan, Owner/Developer of all 10 acres created and recorded a “dedicated easement” for “residential traffic purposes” for ingress and egress over described land within BA, starting at the far eastern boundary (which was bordered by Main Street) terminating at the fence constructed on the boundary between BA and GA. As stated in the recorded easement, the intent of the dedication was to ensure that all 40 parcels in BA were able to come and go by accessing Main Street. However, none of the actual deeds from Owner/Developer to the various Residents of BA actually say anything about the easement.

In 2010, when the shopping center was constructed on GA, the developer took down the fence between BA and GA at the western terminus of the easement, allowing residents of BA – but also allowing all other manner of vehicles (including grocery delivery trucks and through traffic) – to drive through BA to get to GA.

Now, in 2023, the amount of traffic using the easement has become overwhelming – many persons use the roadway to access GA, including the Owner of GA itself, and the roadway on the easement has become a de facto through way, with persons driving through BA and the shopping center on GA to go back and forth from Main to Broad streets. Drivers speed through and there has been at least one crash where a young child from the BA neighborhood was badly injured. At least some of the Residents of BA want to take legal action to decrease the traffic running through the neighborhood and they are also demanding that their elected City Council Person “do something about it.”

The pertinent law provides an applicable 10 year statute of limitations to take an action affecting title or claims with respect to real property.

Assume (1) the relevant zoning restrictions are valid and lawful and (2) that the doctrine of changed conditions does not apply.

Discuss (1) the Residents’ legal theory(s) and the defense(s) to them; and (2) the City’s ability to “do something about it”, from a zoning perspective only, to restrict the amount of traffic running through the neighborhood.

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Question #2

A husband and wife purchased a home, taking title as tenants in the entirety.

The husband got into the habit of trading stock online after work each evening. He soon began to spend five to seven hours at the computer each night, and lost a great deal of money from bad investments. He was ashamed to tell his wife the extent of his losses, so to cover those losses, the husband conveyed his interest in the marital home to an investor, who saw the property as a good investment, but had no interest in taking up occupancy. The wife knew nothing of the conveyance. The husband entered psychotherapy to control his trading habit, which had only worsened after the conveyance to the investor. Eventually, the husband drank himself to death, in remorse for squandering his savings. The husband left a will by which he bequeathed all his personal property to his wife and all his real property to his son from a former marriage.

**Question A:** In an action to quiet title to the marital home, the court will most likely find that ownership of the property is held by whom?

**Question B:** Assume that at all relevant times husband and wife held title as joint tenants; is your answer different? Why?

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Question #3

Paul owns Redacre (RA), thirty (30) acres of vacant land. At all relevant times, RA is and was zoned for agricultural uses (AG); that zone also permits two single family residences for each five acres of land. Under the zoning ordinance, Paul, as owner, can apply to the County to put his land to its highest and best use for which the land is adapted. During the six (6) years Paul has owned RA, the value and hence the assessed property taxes have increased 600 percent due to increased commercial and industrial development in the surrounding area.

Realizing he can make a lot of money, Paul wants to develop his 30 acres, and take it out of the AG zone so he can develop the land. Perhaps a little early, but ever the optimist, in anticipation of his development, Paul on request granted easements and dedicated portions of RA for purposes such as street widening, curbing and utilities.

Paul applied to the County for a zoning change to “CPD” – a commercial planned development zone. There was a hearing before the County on Paul’s request and in addition to Paul’s presentation, the County also heard testimony and considered evidence that RA lies within the primary impact area of a major proposed new airport project. Moreover, there are a number of large aircraft manufacturing facilities already there (Lockheed, Boeing, Northrop, the US Air Force), including air operations where jet engines are tested and jet aircraft fly in and out, meaning that at times RA is within an area that receives high noise levels of 100 db(A) or more – a level at the average human pain threshold.

Paul’s request was denied, the County finding that Paul did not “adequately demonstrate need for additional commercial zoning in the area.”

Paul sues the County, alleging, among other things that the County’s refusal to rezone RA resulted in Paul’s private property being taken for public use without just compensation and without due process and equal protection of law. Paul asks for an award of \$2million, which is the amount of the value in RA he says the County’s actions took from him.

The County opposes the lawsuit and says Paul should get nothing.

Discuss (1) Paul’s claim and its basis in the law, (2) the County’s defense(s), if any, and (3) who has the better argument.

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ANSWER OUTLINE – QUESTION #1

Residents' Legal Theory(ies) and Defense(s)

In a close call, Residents can seek injunctive relief but no money damages to enforce the “residential use” only easement on an equitable servitude basis

First, preliminarily, we assume the recorded easement identifies both the servient and dominant tenements and is proper on its face.

Second, because the problem tells us that the doctrine of changed conditions does not apply, we make no analysis of the facts and law on that theory.

Third, we analyze whether the Residents have a legal interest in the easement that they can enforce? The answer is yes, under an equitable servitude theory.

1. Is the recorded easement a real covenant running with the land?:
  - i. Easement is in writing;
  - ii. Easement was created by a common grantor at time of development
  - iii. Intent of easement by grantor is known
    - (1) “the intent of the dedication was to ensure that all 40 parcels in BA were able to come and go by accessing Main Street.”
    - (2) and that it is recorded shows Owner really meant it
  - iv. Touches and concerns the land
    - (1) an easement on physical land by definition touches and concerns
  - v. But is there privity?
    - (1) Probably not
      - (a) None of the deeds say anything about the easement
      - (b) horizontal privity missing
        - (i) Owner cannot grant an easement to himself and until he actually transfers a parcel within BA to a Resident, the better argument is that there is no horizontal privity
      - (c) vertical privity
        - (i) the facts do not tell us if any of the Residents are successors to the original Grantees so we may not have to worry about vertical privity

- (ii) but, without horizontal privity, vertical privity is a moot point.
  - (d) not a real covenant
  - (e) Residents, or their successors, cannot sue on the easement for money damages
2. Can Residents enforce easement and seek injunctive relief on an equitable servitude theory?
- a. Yes, under a “common scheme” theory
    - i. equitable servitude does NOT require privity
  - b. Easement is recorded at the beginning of subdivision of BA and thus constructive notice to Residents and the world
  - c. Owner’s intent is clear
    - i. Easement, by its terms, is for the benefit of each parcel within BA

### ANSWER OUTLINE – QUESTION #3

Facts and analysis based on *Gilliand v. County of Los Angeles* (1981) 126 Cal.App.3d 610

Paul’s claim and its basis in the law

1. Regulatory Taking or “Inverse Condemnation”:
  - a. 5<sup>th</sup> Amendment “Takings Clause”
    - i. Govt shall take no private property for public use without fair compensation
    - ii. This is easy where Govt “condemns” – takes – someone’s house for a public use, e.g., a road widening project.
      - (1) straight forward taking by Govt of private property for public use
      - (2) Govt pays “fair compensation” to landowner whose property was taken
  - b. Inverse Condemnation
    - i. The harder scenario is where Govt does not overtly take anything
    - ii. But rather, a govt action , like a zoning decision, has the effect of taking private property without compensation.
    - iii. This is called a regulatory taking or inverse condemnation and is what Paul is arguing here.
  - c. Most Zoning Decisions or Ordinances are Not Takings
    - i. The caselaw is clear that almost by definition, zoning ordinances result on the reduction of someone’s property values but this does not make it a “taking”
    - ii. Indeed, the reasonable exercise of the “police power” for the public health, safety, welfare or morals is almost always NOT a taking.
    - iii. To be a taking, the zoning ordinance or decision must essentially wipe out entirely the landowner’s economic value in the land – “substantially all use of the land” and

similar language

(1) This is not easy under the law.

(a) e.g., Village of Euclid v Ambler

(i) zoning decision that prevented owner from using the land for commercial purposes, reducing market value from \$10,000/acre to \$2,500/acre, was not a complete deprivation of all economic value and not a taking.

(2) Paul's argument must be that his land has increased in value 600% in 6 years and that denying him the zoning change to CPD deprives him entirely of his economic realization in the land without compensation.

not be successful

(1) property ownership is not a fundamental right under the caselaw.

County's defense(s), if any

2. This is not an overt taking or permanent physical occupation case, so the issue of a "taking" is by no means easy or clear.
3. Where hardship is occasioned by zoning restrictions, administrative relief is potentially available, and Paul has the right to appeal and challenge County's decision, which he did, so not deprived of due process.
4. Property ownership is NOT a "fundamental right", and thus, the zoning decision should be subjected to the rational basis standard of review.
  - a. Did the County behave in a non-arbitrary fashion?; and
  - b. Did the County enact or make a land use decision that promotes the public health, safety, welfare, or morals?
  - c. If YES, then the AG zone and the County's decision to not change the zone to CPD was a normal land use regulatory process that does not arise to a compensable taking.
5. Zoning regulations have traditionally been sustained against constitutional attacks.
  - a. See, e.g., Euclid v. Ambler Realty Co.
  - b. The Courts have held that inverse condemnation does not lie in zoning actions in which it is alleged that the market value of property is reduced. (See Euclid v. Ambler; see also HFH, Ltd. v. Superior Court (1975) 15 Cal.3d 508
  - c. Therefore, the enactment by County of a zoning decision here does not constitute a taking without just compensation in violation of the Fifth and Fourteenth Amendments which would support an action in inverse condemnation.
    - i. The zoning ordinance does not on its face take plaintiffs' property without just compensation. The ordinance for AG does not deprive Paul of "substantially all use of the land." It is clear from a reading of the ordinance that there are many uses to

which the land may be put in addition to residential use. E.g.,

(1) farming

(2) 2 residences on each 5 acres

(3) Paul knew it was AG when he bought the properties, so he was on notice of the limitations imposed by the zone.

- ii. The specific zoning regulations here at issue constitute exercise of the county's police power to protect local residents from the adverse effects of urbanization in specifying of the airport, this exercise of the police power does not constitute a taking compensable in damages.

Who Has the Better Argument?

County has the better argument by far. Routine exercise of police power and Paul's value is not gutted in RA at all.

Paul's course of action at this point is political. Because zoning and land use rules are created by political bodies, they can be changed by those same political bodies. Paul's next step is to work at getting people friendlier to his vision elected into the relevant political positions and/or to make his issue so thorny or embarrassing for the present political board, that it will have to vote his way as matter of political expediency.



- ii. “the intent of the dedication was to ensure that all 40 parcels in BA were able to come and go by accessing Main Street.”
  - d. We make the presumption that the easement for residential ingress and egress was material to grantees and their successors.
  
- 3. Most easement theories will not work for GA
  - a. Not a grant easement from BA to GA
  - b. No implied easement
    - i. No necessity, and certainly no strict necessity
      - (1) GA always had access from Broad St.
    - ii. No prior existing use
  - c. No easement by estoppel
    - i. No license from BA to GA that ripened
  - d. We do not see this a good candidate for equitable easement
    - i. No “big guy” vs. “little guy”
    - ii. GA does not have clean hands
      - (1) tore down fence
  
- 4. Are Residents Barred by Prescriptive Easement Principles? In a close call, No, for lack of “exclusive use”
  - a. A recorded easement can be terminated by prescription
  - b. 10 year statute of limitation, per the problem
  - c. GA and the public’s adverse use of easement began in 2010
  - d. 2010 to 2013 is 13 years, longer than 10 years
  - e. Residents may not have an enforceable right to limit the use of the easement.
    - i. At least with respect to any identifiable private person who can meet all the elements
      - (1) Open and obvious
        - (a) assumed yes
      - (2) actual over a definite and certain line of travel
        - (a) yes; the roadway itself
      - (3) Hostile use
        - (a) facts tell use GA simply took down fence and started using easement
        - (b) no permission from BA
        - (c) thus hostile
      - (4) for continuous 10 year period
        - (a) yes
      - (5) exclusive
        - (a) this is the Residents’ potential defense
        - (b) The “public” is not an exclusive user
          - (i) Generally, No, absent an express dedication to the public
            - 1) see, e.g., Cal Civil Code 1009(b)
            - 2) no such dedication to the public
              - a) dedication is only for benefit of the residents of BA
              - b) not the general public
          - (c) Owner of GA, as an adjacent landowner, will have to prove that at least a relevant portion of the users were going to GA, and thus this is not a “public

- easement” but a private easement not affected by CC 1009
- (i) Residents will defend on the argument Owner of GA’s use is indistinguishable from the public’s use

City’s ability to “do something about it” from a zoning perspective and restrict the amount of traffic running through the neighborhood

- 5. Can City enforce the Residential only zoning restriction against GA and Public? Yes
  - a. San Francisco v. Safeway Stores, Inc. (1957) 150 Cal.App.2d 327 (from which this problem is somewhat based.)
  - b. We assume, as instructed by the problem, that the “residential only” and “commercial only” zoning decisions re BA and GA are valid and lawful so make no analysis challenging them.
  - c. We further assume that the “residential” only zoning decision was premised on the usual findings that a quieter, residential only neighborhood, would promote public safety and welfare, among others.
  - d. In a conflict between a private covenant and a public zoning ordinance, the more restrictive will prevail..
  - e. Thus, the more restrictive “residential use” easement will prevail over any “commercial” zoning ordinance that may impact it.
  - f. It is City that has the legal standing to enforce its zoning laws
    - i. Private persons cannot do so on their own accord
    - ii. Private persons have no standing
  - g. Zoning ordinances are not subject to a prescriptive easement analysis
    - i. Cannot obtain prescriptive rights over public lands
    - ii. No time bar issues for City, at least on face of problem
  - h. The use of the residential easement for commercial purposes violated the residential zoning ordinance.
    - i. Further, the commercial use of the easement constituted a public nuisance because it detrimentally affected the real and personal property and personal enjoyment and health of the nearby residents.
  - i. Judgment for City in its suit against the Owner of GA to have the use of an easement for ingress and egress declared a public nuisance and enjoined.

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**What can the City do from a Zoning perspective point?**

Zoning is the exercise of police power essentially the power of the government to protect the health, safety welfare and morals. Zoning is designed to prevent harmful neighborhood effects.

Zoning can be challenged by 1. The ordinance not authorized by the enabling statute. 2. the enabling statute is void for vagueness 3. The enabling statute and /or ordinance is unconstitutional.

Here, Black acre (BA) is a 10 acre parcel that has 40 quarter acre parcels that is zoned at all times for residential "purposes only". There use to be a fence that subdivided Green Acre (GA) and BA however, GA removed the fence so that people can drive through BA to get to GA so that people can go to the mall that was located on GA. Now that more people are trying to access GA to go to the mall. As state in the fact pattern traffic has be a de facto from Main Street to Broad Street. This has caused a lot of congestion for the resident of BA. The traffic has gotten so bad, drivers speed through and there has been at least one crash where a young child from the BA neighborhood was badly injured. The residents became angry and concerned and want to take legal action to decrease the traffic running through the neighbor hood that is zoned for "residential only".

Here the residents wanted their elected city counsel person to "do something about it". Here the city should enforce the current zoning regulation that is in place that all relevant times BA should be used for zoning regulation for "residential only" against GA. GA

Winner !!

would be held liable for they took down the fence to allow traffic to cross from BA to GA. By doing so it allows residents of BA to cross over to go to the mall on to GA. This made a traffic congestion which allowed commercial vehicles such as delivery trucks. This caused the issue that made it hard on the community of BA. This goes hand to hand with what a zoning ordinance does for the people of the community. The zoning ordinance is designed to prevent harmful neighborhood effects such as children getting severely injured in their own neighborhood by fast business trucks such as a grocery delivery truck.

**Under the ration basis test**, it is rationally related to the legitimate government interest to protect its citizens of BA.

This is one possible legal theory

### **Public Nuisance:**

A public nuisance is an 1. Interference with 2. mental health, safety or property rights of the community.

Here there would be a public nuisance because there is a substantial interference with the community because, GA removed the fence that allowed traffic to cross from BA to GA that interfered with the Property right of the community. The property owners have a right because the zoning ordinance is for residential purposes.

The city should file a Prohibitory injunction to stop the flow of traffic against GA that is causing the traffic in BA to become very overwhelming. The city may also file a Mandatory injunction which is a preventative measure to fix the problem. This could be putting the original fence back between the two parcels of land. This would prevent any other traffic collisions that could lead to the death from the residential kids in BA wanting to play and be outside near the traffic.

→ You got it.

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This would be another possible defense.

### **Creation of an Easement:**

the basic methods of creating an easement are express, easement, or reservation, implied and prescription

**Prescriptive Easements:** An easement by prescription is created, when the use has been actual, open and notorious, hostile, exclusive and meets the statute of limitations in this case it is ten years. This is similar though adverse possession, but the dominant gains right of access not ownership.

Here this would be a possible defense for GA because they took down the fence back in 2010 when the shopping center was constructed on GA. BA now wants to stop them in 2023. In the fact pattern there is a 10 year of statute of limitations that would prevent BA residents from bringing up the suit. When GA took down the fence they were open and notorious, hostile, exclusive and meets the statute of limitations in this case it is ten years.

This could be a defense for GA.

→ good

**Implied Easement By prior Use :** An implied easement by prior existing use is an easement that grants rights based on previous use of land for a specific purpose. Requires unity of title, appropriate existing and continuous use and apparent to the new owner upon reasonable inspection and a reasonable necessity of the use.

Here GA would argue this as a defense this would not work because upon reasonable inspection GA would find the original owner recorded in the chain of title that dedicated the easement for residential traffic only prohibiting Commercial use on BA.

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Thus this would not be a good defence for GA for they were put on on Constructive notice.

**Easement By strict Necessity:** An easement by strict necessity can arise when to or from the property is strictly impossible. easements by strict necessity expire as soon as the strict necessity ends Easement by necessity requires 1. unity of ownership subdivided by a common owner. 2. strict necessity at the time of severance.

This would not work as a defence to GA because there is another road to access GA which would be broad street.

**Covenant :**

A covenant is a promise to do or not to do something it consist of the intent to enter in to an agreement with terms that are certain. A real covenant is one that is put in to writing that satisfies the Statute Of Frauds.

Here the Owner/ Developer of BA created and recorded a dedicated easement for residential traffic purposes. Notice can be by actual notice , inquiry notice or constructive notice. constructive notice is when the record is recorded and can be found on the chain of title . Here the residents can enforce the easement for residential purposes only.

→ good

**This I Also Know :**

GA should be held liable for the damages if any that was sustained on BA and should put the fence back up

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**Easements:** An easement can either be Affirmative or negative, most easements are affirmative which means that the holder is entitled to make affirmative use of the servient estate. A Negative easement entitles its holder to compel its possessor of the servient estate to refrain from engaging in activity on the servient property. Negative easements are confined to light, air, lateral support, surface water flow. Negative easements are really restrictive covenants. Easements are the right to use someone else's property.

**Easement Appurtenant:** An easement is appurtenant when it benefits the holder in his physical use or enjoyment of another's property. For an easement to be appurtenant there must be two parcels of land that are adjacent to each other. The one that has the burden to run with the land is the servient estate and the one who benefits from an easement is the dominant estate. There were two parcels BA and GA and there was an easement appurtenant.

This is a good, solid analysis on a short period of time.

END OF EXAM

- ① Yes; City can enforce zoning
- ② Yes; BA resident can enforce "residential only" too by covenant or eq servitude.

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A) Who owns the property?

NICE

### Conveyance of land

Land can be conveyed through a joint tenancy, tenants in common, or a tenancy in the entirety.

### Tenants in entirety

A tenancy in the entirety is when there is 1) equal interest, 2) equal possession, 3) the deed for the land was done at the same time, 4) each party has full access and use of the entirety of the property, and 5) the couple were married at the time of the acquisition of the property. Tenants in entirety cannot convey their portion of the land without the others consent. Further there is a right to survivorship.

Yes

Here, the prompt states that the husband and wife purchased a home as tenants in the entirety. After a string of bad investments in online stock trading the husband conveyed his portion of the land to an investor. The investor will likely claim that he has a legitimate interest in the property since he paid for the husband's portion of the home. However, the husband would be unable to convey his portion of the land since he and his wife are tenants in the entirety. As tenants in the entirety both parties must consent to a conveyance of the land or a portion of the land to another. Even though the husband does have a legitimate interest in the home he cannot convey it to another unless he and the wife both agree to the conveyance. We know that the wife did not consent to the conveyance to the investor because the husband did it without her knowledge. Therefore the wife was not a consenting party and the husband alone could not convey the land to another. Therefore, he cannot sever the tenancy in entirety on his own.



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The wife and husband are still tenants in entirety until his death.

### **The Will**

A will can convey property from one party to another.

Here, the husband left a will where he bequeathed all his personal property to his wife and his real property to his son. After the husband's death, the son will try to argue that he has a legitimate interest in the home since his father conveyed all his real property to him upon his death. This follows the same argument as the one above. As tenants in the entirety, the husband cannot convey his land to another without the wife's consent. Here, the wife was not a part of the husband's will and according to the facts provided had no knowledge of the will before the husband's death. Therefore the wife could not have consented to the conveyance and the house she and the husband had purchased. Upon the death of the husband the home would be hers with no other joint tenants or tenants in common. The son would not be able to claim the home as his personal property, but he may be able to claim any other potential real property the husband owned prior to his death.

### ***Conclusion***

The wife is the sole owner of the property.

### **B) Who owns the property if initially joint tenants?**

#### **Joint tenants**

A joint tenancy is when the parties have an 1) equal interest in the land, 2) equal possession of the land, 3) the deed for the land was done at the same time, and 4) each party has full access and use of the entirety of the property. A joint tenancy is severed if

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one or more parties convey their interest to another party. The land will then become a tenancy in common. Further, there is a right to survivorship.

Here, the altered prompt states, the husband and wife purchased a home as joint tenants. After a string of bad investments in online stock trading the husband conveyed his portion of the land to an investor. The investor will likely claim that he has a legitimate interest in the property since he paid for the husband's portion of the home. Unlike the argument above, the husband would be unable to convey his portion of the land since he and his wife are joint tenants in this example. As joint tenants both parties do not need to agree nor consent to a conveyance of the land or a portion of the land to another. Although, the wife did not consent to the conveyance to the investor nor had any knowledge of it, the husband can still sever the joint tenancy by conveying his portion of the land to another. The husband does have a legitimate interest in the home as a joint tenant and therefore he can convey it to another. This would however, sever the joint tenancy and replace the title of the land as a tenancy in common.

### **Tenancy in Common**

A tenancy in common occurs when parties share possession of the property however, the possession of the land need not be equal. Further each party must have full access to the land. A tenancy in common is the most common type of land conveyance.

Here, as argued above if the husband and wife had initially purchased the home as joint tenants it is likely after an action of quiet title that the wife and the investor would be tenants in common. As stated above, the husband conveyed his portion of the land to an investor after he had made a string of bad investments in online stock trading which left him little to no money. This severed the joint tenancy and the joint tenancy and the property then became a tenancy in common.

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Therefore, the wife and investor are now tenants in common for the home. ✓

### **The Will**

See rule above

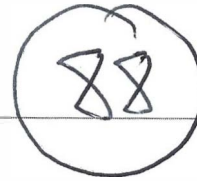
The son would have no claim or argument to ownership of the home here. The son may claim the will would convey the husbands portion of the home to himself, however, since the land was no longer in the possession of the husband there is no portion of the home for him to claim. Therefore just like concluded above the son would not be able to claim the home as his personal property, but he may be able to claim any other potential real property the husband owned prior to his death.

### ***Conclusion***

Therefore, the wife and investor are now tenants in common. ✓

**END OF EXAM**

*this is right on the money.*



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## Takings

There are two ways the government can take land from a private citizen: eminent domain and inverse condemnation. Eminent domain (ED) is allowed by the 14th Amendment's Due Process and Equal Protections clauses via the 5th Amendment's Takings Clause stating that a government can take a private citizen's land for a legitimate public use (modernly "public purpose") if they pay fair compensation. Public use, or public purpose is broadly defined as anything that benefits the health, safety, etc of the public. Fair compensation is whatever the fair market value of the land is at the time of the taking.

Inverse condemnation (IC) is when a government action, usually a zoning or statute regulation, so severely hinders a property owner's interest in their land that they essentially have no viable economic value in their land, thus, the government action constitutes a taking as the land owner has no more economic value in their land.


Here, Paul (P) is trying to develop land, RA, that is zoned for agriculture as a "CPD" and requested granted easements from the county board. P's request was denied as the county states there is not adequate demonstration of need for more CDP land. P brings a suit alleging that the county's actions amount to an inverse condemnation and the county owes him \$2million as a result.

### *Public Purpose/Use*

A government may only take land or enact zoning regulations if they are for a legitimate public purpose. The government need not show that the land is being used for a public purpose, just that the land *could* be for a public use. The government would need to prove

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that they have a legitimate public use for RA, that the needs in which they would take it for are foreseeable, and the the taking is reasonably necessary.



Here, the government is not re-zoning or enacting new regulations that are new restrictions on P's land. P's land is still zoned for agricultural use where he can build up to a total of 12 single (30 acres at 2 homes per 5 arcs equals 12 total single family homes within the 30 acres) family homes on the 30 acres if he chooses not to farm the land any longer. Though since there is many loud aircraft in the area, even if P did cease to farm and build the 12 homes, those homes would likely not sell for a premium as many residents do not want 100dB aircraft overhead at all hours. Though this is an option for P. Or P could continue to farm the land as plants and animals are not able to complain about loud jets like home buyers are. That's not to say all people don't want to live near an airport as there are likely many people who would enjoy the opportunity to farm 5 or so acres while watching jets blast off.

The government also has a legitimate interest in food production. If P's land is zoned for agriculture and there is already plenty of commercial land around RA, there is a legitimate interest in NOT rezoning the land as CPD so that P, or someone else, can farm the land. Simply because one citizen's plans are stifled by the government's zoning, or lack of rezoning, does not mean they do not have a viable legitimate public purpose on which to base their decisions.

Thus, as the government is may be acting in the best interest of the county by denying P's request so that the land will continue to be farmed.

### *Fair Compensation*

Fair compensation is whatever the fair market value of the land is at the time of the taking.

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Here, P is alleging that his land has increase in value by 600% and is worth \$2million. If it were to be zoned for CPD then RA may be worth that, but P has not lost all economic value of the land as he can still farm or built homes or both.

Thus, the government did not act in a way that deprives P of all viable economic value of his land, thus the land is not taken and P is not owed any compensation.

### *Other Considerations*

Though P may be anxious to develop the land the county has to be cautious with rezoning land so as not to squeeze other land out of viable use. If the county rezoned to rapidly and did not allow for an extended time for land owners to alter their land use, the other land owners could bring suit against the county for unconstitutional amortization. If sufficient time, meaning a minimum of a few years, is not given to a rezoned area and many owners are deprived of economic value, the county could not just be on the hook for a judgement with P, but all owners around RA.


Based on P's urgency and litigation happy attitude he is likely to suggest the idea of spot zoning to the county so as the allow him to specifically rezone RA. Spot zoning is generally unconstitutional and only allowed if the spot zoning comports with the county's comprehensive plan, it benefits the public, it do not simply benefit one individual, and is for a legitimate public purpose. P is essentially asking the court to spot zone for him and him alone. Generally this is unconstitutional so P would have a weak argument here, and the county a strong defense.

P may want to argue that there is a severe economic impact on RA, this action by the county has interfered with his reasonable investment backed expectations, and that the character of the government action is discriminatory against him as he wants his farm

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land turned into CPR land. But, as discussed plenty above, the action by the county does not constitute any type of taking, and definitely not a type of *Penn Central* taking as the elements discussed here mirror. The economic impact on P is slight as he still has many ways to use the land to make money, there is not investments that are interfered with besides some paperwork by P and his hopes an dreams, and the government has a legitimate interest in not acting in a way that singles P out for special spot zoning.



P may try to bring up that the time and work he has put into trying to get the grant easements applied for and the county to hear his requests amount to him being vested in RA being zoned as CPD. But that is a weak argument as that hope and dream the county would allow it is all in P's mind. Vesting in a zoning right occurs when an owner has, through no fault of their own, relied on zoning regulations and county permits to develop their land in a certain way only to have that zoning change after significant resources invested in the property. Here, P has the cart before the zoning horse. He is trying to invest time and money *so that* the county will rezone. For him to be vested he would be to be investing on the current zoning plan only to have that rug pulled out from under him after his investments. That is not the case here so the county would be able to defend this well.

### Conclusion

The county has the best argument from all angles. There is no viable legal angle P can take to make a case to allow RA to be rezoned. His next approach to the situation is entirely political. P should start attending county zoning meetings, start petitions with like minded land owners, and maybe even run for county office. P should also read some case law in this area to develop some health cynicism as he is deluded to think that the government will lose on these facts. He can simply read *Hadeshek*, *Penn Central*, or *Penn Coal* to understand what his situation could be so he should be thankful that he can still build 12 homes and farm RA. P's best bet would be to get the government to permanently

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install some cable lines on his property, then per *Lorretto*, P could at least get some compensation for a permanent occupation.

**END OF EXAM**

Super excellent work