Real Property
Prof. Belle
Final Examination – Spring 2017
Answer Outlines -- Essay Qs

Q1 (easement) ➔ *based on drafting discussion (pp. 811-812) + 02/09/17 in-class exercise*

• Descriptions of the parties' properties, and the purpose of the document.
  • *Is the dominant tenement (Blaze's property) sufficiently identified?*
  • *Is the servient tenement (AEO's property) sufficiently identified?*
  • *Are the location of the dominant tenement, the location of the servient tenement, and their proximity and relation to each other sufficiently described?*

• Explanation of the precise interest being created (and what is not being created).
  • *Does the language make it clear that an easement is being created? Or could it be construed as creating a license? Or an estate? If the latter, what kind?*
  • *Is the easement clearly appurtenant? Or could it be construed as being in gross?*
  • *Is it clear that the easement exclusive or nonexclusive?*

• Descriptions of the location, scope, and duration of the interest being created.
  • *Is the location of the easement sufficiently described?*
  • *What is the scope of the easement? Is it clear? Ambiguous?*
  • *What is the duration of the easement? Is it stated expressly or by implication?*

• Specification of the parties' ongoing responsibilities after the interest is created.
  • *Which party is responsible for maintaining the easement? Or repairing it? Who must do the work? Who must pay for it? Who must (or may) approve or agree to the work? Are there any limits or restrictions to such matters? Should there be? What kind?*

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Q2 (eminent domain) ➔ *based on Kelo (p.1111) + 03/23/17 in-class exercise*

Key points:

• Background: The Takings Clause term "public use" has morphed into "public purpose" -- from *Berman* (urban redevelopment as a valid public purpose) to *Midkiff* (redevelopment as a use that is a "benefit to the public" or another use considered "rationally related to a conceivable public purpose"), and most recently with *Kelo*. The U.S. Supreme Court has approved a "deferential" approach to legislative judgments in such matters.
[Note: Specifying exact case names for discussion of Berman and Midkiff is not necessary]

• *Kelo*
  • Majority:
    • Promoting economic development is a legitimate governmental interest.
    • A public purpose may be served, even while also benefitting private parties.
    • States may (and many already do) limit the takings power anyway.
  • Dissent(s):
    • Construing "public use" as "public purpose" does not realistically exclude any takings.
    • The (federal) courts have the responsibility to protect individual rights.
    • This ruling unfairly benefits those with disproportionate power and political influence.

• The legislature has the responsibility to protect its communities/citizens against land grabs by wealthy and politically powerful special interests.

• If the state does not act, there is no limit to what local governments might do in the name of economic development; no private property would be safe from such "development."

• The prospect of new jobs is not a guarantee; a city or county could not realistically "force" a private entity to either follow through on its stated plan (e.g., to build a factory), or to continue its operations for any particular amount of time once the development is in place. Without any such safeguard, a community could be left in a worse condition than before.