

## Property

Section 6  
Spring 2021  
Professor William Fisher

This is a four-hour take-home examination. It may be downloaded from exam4.com starting at 12:01 a.m. EDT on May 12, 2021. Your answer is due four hours after you download the exam or by 11:59 p.m. EDT on May 12, whichever is earlier.

The exam contains two questions. You must answer both.

Question #1 has four parts. You must answer all of them.

Question #2 has three options. You must answer one and only one.

The word limits associated with the components of the exam – and the weight that will be given during grading to your responses – are indicated below.

	<i>Word Limit</i>	<i>Weight</i>
Question 1, Part A	1,000 words	20%
Question 1, Part B	300 words	10%
Question 1, Part C	500 words	15%
Question 1, Part D	200 words	5%
Question 2	2,000 words	50%

The exam mode is TAKEHOME. During the exam, you may consult any written or recorded material you wish. However, during the exam, you may not consult in any way with any other person.

Until 11:59 p.m. EDT on May 12, you may not discuss the exam with anyone or make publicly available any information concerning it.

Exam4 will automatically put your Anonymous ID and word count on the exam copy. Do not write your name on any part of your response. To preserve the anonymity of your response, avoid including any information that would enable the instructor to identify you.

## Question #1

This question contains four parts. You must answer all four.

### Part A

In 1975, Paula and Owen (a married couple) purchased, as tenants by the entirety, a 50-acre farm in rural Illinois, near Springfield, the state capital. They used a portion of the land for grazing dairy cows, another portion to grow corn, and another portion as a hayfield. The remainder was wooded. A stream, known locally as “Clear Creek,” entered the property in the northeastern corner and exited on the western side. It contained a healthy stock of smallmouth bass. An aerial photograph of the farm, taken in the spring of 1980, appears below. The boundaries of the property are marked in yellow.



Neither Paula nor Owen owned significant assets other than the farm. In 1985, Owen died without a will. Paula decided to cease operating the farm but to continue to live in the farmhouse. She retained one cow (to provide her milk) and ten chickens (to provide her eggs), but sold all of the other animals and let the bulk of the land go fallow.

In 1990, Paula died. Her will (signed by Paula, notarized, and attested by two disinterested witnesses) provided that the farm and the remaining animals should go to Talia, Paula's niece. At the time, Talia and her husband Sam lived in San Francisco. Dismayed by the changing culture of the Bay Area, they embraced the opportunity to move with their two children (Rebecca and Quentin) to a less populated state. The farmhouse suited them well, and they kept the cow and the chickens. Both obtained jobs as teachers in the local public school.

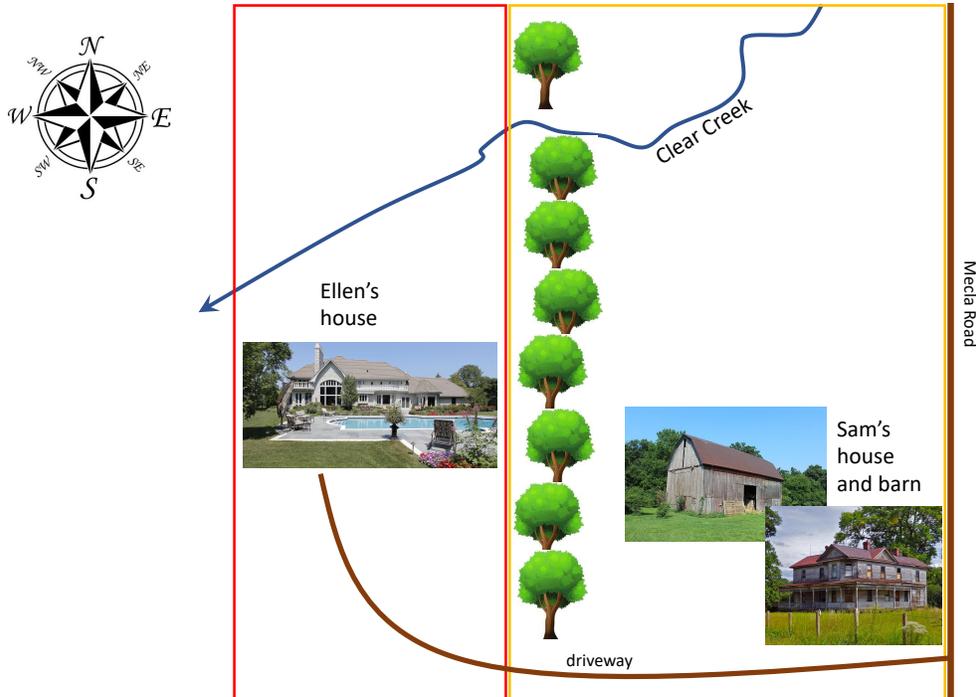
In 2000, Rebecca and Quentin, now adults, both moved back to San Francisco. Partly in response, Talia decided to quit her job, enabling her to pursue her passion: landscape painting. To ensure that she and Sam had enough money to live on, she decided to sell off 20 acres of her land – specifically, the area located to the west of the line of trees that ran from the north to the south in the property. Sam was skeptical of this plan, but Talia persisted.

Dan, a wealthy member of the Illinois Senate, agreed to buy the 20 acres for \$500,000. As part of the transaction, Talia agreed (in writing) to extend her existing driveway across the southern portion of her property and to allow Dan to use the driveway to gain access to his land. In addition, Dan wanted assurance that the neighborhood would remain bucolic. Accordingly, Talia promised (in writing) “on behalf of myself, my heirs, and assigns, that the property I am retaining will only be used for residential purposes or farming.” Sam, resentful, did not participate in the negotiation or the transaction. Soon after the sale, Dan built an elegant house on his tract and moved in.

In 2004, Dan lost his bid for re-election. He sold his land and house to Ellen, the candidate who had defeated him, and moved to Chicago. One of reasons Ellen bought the parcel is that she enjoys fishing. In the evenings after stressful legislative sessions, she frequently fished in Clear Creek. In addition to fishing on her own land, she often walked upstream onto Talia’s land and fished in the section of the creek located there. Ellen released all the fish she caught, so her activities did not diminish the population of bass in the stream.

In 2010, Talia died unexpectedly. Her will (signed by Talia, notarized, and attested by two disinterested witnesses) provided that her house and land should go to Sam. (Rebecca and Quentin were the beneficiaries of her life insurance policy.) Depressed, Sam threw himself into his teaching and ceased maintaining the house. By 2015, it was badly in need of painting and repair. Ellen, who had to drive past the house every day, complained to Sam about its appearance, but he paid no attention.

The relationship between the parties as of 2019 is illustrated in the following diagram. (Sam’s parcel is outlined in orange; Ellen’s parcel is outlined in red.)



In March of 2020, the pandemic forced closure of the school where Sam taught, and he was laid off. Sam, like many of his neighbors, doubted the seriousness of the threat posed by the coronavirus. Sam contacted several of those neighbors, offering to provide (for a modest fee) “home schooling” on his property for up to 10 of their children. He proposed that, during the morning of each day, the children would study traditional academic subjects in the dining room of his house. During the afternoon, he would provide them hands-on instruction in agriculture and animal husbandry. The response was enthusiastic; soon, 10 children were coming to Sam’s house every weekday. None of them wore masks. To make the afternoon instruction realistic, Sam purchased 10 cows and 20 chickens. To house the animals, he expanded the barn and built a new chicken coop. To ensure that the cows had adequate grazing land, he cut down a substantial subset of the trees that had grown up in the preceding 35 years. Finally, he revived the dormant hayfield.

Ellen was dismayed by what she regarded as Sam’s socially irresponsible behavior, worried that she would contract the virus from the children, and believed that, if Sam’s activities became widely known, the value of her property would decline. She pleaded with Sam to cease the operation. Instead, he did what he could to augment her annoyance. With the children’s help, he painted the barn garish colors. He piled the manure generated by the cows on the western edge of his property so that, when the wind blew from the east, odors and flies would drift onto Ellen’s land. He encouraged the children, after they completed their chores, to fish in the portion of Clear Creek that lay within Sam’s property – and to keep the fish they caught. As a result, the stock of bass throughout the creek diminished. Finally, Sam demanded that Ellen cease coming on his land to fish.

Ellen is now furious. Sam is defiant. Both are considering legal action.

In an essay containing no more than 1000 words, analyze the relative rights of Ellen and Sam. If you need additional information to answer the question, indicate what that information is and why it matters.

*Part B*

*To the facts set forth in Part A, above, add the following:*

The income that Sam is currently earning from his home-schooling operation is less than the amount he formerly earned as a teacher. To make ends meet, last summer he decided to rent a portion of his house. He installed a wall in middle of the second floor, thereby creating a separate apartment containing one bedroom, one bathroom, and a kitchenette. To provide access to the apartment, he built an exterior stairway. To provide heat, he installed a wood stove.

On September 1, 2020, Sam leased the apartment to Frank “for one year, in return for a monthly rental payment of \$500.” The lease expressly provided that the apartment was being provided “as is,” and that Sam had no obligation to maintain the premises.

Until December, both Frank and Sam were happy with this arrangement. When the weather turned cold, however, Frank discovered that the dilapidated house was sufficiently drafty that the woodstove was incapable of keeping the apartment warm. On the coldest days, the temperature in the apartment never rose above 55 degrees Fahrenheit. In the mornings after nights when Frank failed to keep the fire in the woodstove going, he sometimes found ice in the toilet, which abutted an exterior wall. When he complained, Sam pointed to the terms of the lease.

In February, Frank, fed up, stopped paying rent. Arguments between Sam and Frank intensified. In March, Frank discovered that ice had cracked the tank of the toilet, and it was beginning to leak. He demanded that Sam repair it; Sam not only refused, but threatened to evict Frank.

In an essay containing no more than 300 words, analyze the relative rights of Sam and Frank. If you need additional information to answer the question, indicate what that information is and why it matters.

*Part C*

*Change the facts set forth in Part A, above, in the following respects:*

Talia's will provided that her house and farm shall go "to Sam for his natural life, then to the first of my descendants to graduate from an accredited graduate program in fine arts." Rebecca is currently enrolled in such a program and expects to graduate in June of 2021. Quentin is in law school.

Rebecca believes that her father is behaving irresponsibly. In addition, she would much prefer that the land remain wooded and undeveloped. Quentin, by contrast, supports his father.

In an essay containing no more than 500 words, discuss how, if at all, these additional facts would affect the relative rights of Rebecca, Quentin, Sam, and Ellen? If you need additional information to answer the question, indicate what that information is and why it matters.

*Part D*

*To the facts set forth in Part A, above, add the following:*

For many years, to reduce her consumption of water from the municipal water system, Ellen has been filling her swimming pool with water from Clear Creek. The long-range weather forecast for central Illinois predicts a severe drought in the summer of 2021. Ellen fears that, in such a drought, Sam would use all of the water in Clear Creek to provide drinking water for his cattle and to irrigate his hayfield. As a result, not only would all of the fish in the creek downstream of the diversion die, but there would be insufficient water to supply Ellen's swimming pool.

In an essay containing no more than 200 words, discuss the legal rights that Ellen would have if this occurred. If you need additional information to answer the question, indicate what that information is and why it matters.

**Question #2:**

Select **one and only one** of the following options:

- (a) In what respects, if any, should the legal rules currently in force in United States governing (i) exclusionary zoning and (ii) racial discrimination in housing be modified?
- (b) “The levels of protection that the law currently gives to traditional knowledge, fictional characters, and computer software are all misguided. Traditional knowledge and software should both be accorded more protection than they currently enjoy, while fictional characters should be accorded less.” Comment.
- (c) “When lawmakers or scholars rely upon a single theory to reshape the rules governing relative rights to resources, things go awry. Welfare theory, fairness theory, corrective justice, and distributive justice are all helpful when tuning legal rules. But none should be our sole beacon. Instead, insights drawn from all of them must be integrated.” Comment. Illustrate your answer by discussing its applicability to two of the types of resources considered in this course.

Your answer to this question may not contain more than 2000 words.

End of Exam