

REMEDIES FINAL EXAM

Sparrow Spring 2011

****General Instructions****

IMPORTANT: By submitting your answers to this final exam, you acknowledge that you are bound by UNH School of Law's Conduct Code, and that any material that is plagiarized, even if negligently so, is a violation of the honor code.

1. This is an open-book in-class exam. You may use your text and any prepared notes or class slides.
2. You **may not use** commercial outlines.
3. You **may not use any electronic sources**.
4. You have 3 hours to complete the exam.
5. **This is an individual exam – do not collaborate or discuss this with anyone.**
6. As negotiated earlier in the semester, this examination is worth **24% of your grade** in the course.
7. I will **not** answer any questions during the exam.
8. Because some of your classmates may take the exam at a different time, **do not discuss the exam until you are authorized to do so. You are responsible** for ensuring that **no information** about this exam is heard or made known to any student who has not yet taken this exam and fully completed it.
9. This exam has **4 pages** (including 2 for these directions). Be sure you have all of them.

Exam number identification only:

1. Use **only** your assigned **Exam Number** for this exam.
2. **Do not** use your name or Social Security Number anywhere.
3. **Do not** provide any identifying information anywhere on the exam.
4. **Providing any identifying information on or after the exam and before the exam is returned is a violation of the UNH School of Law Conduct Code.**

Typeface, font, and format for questions:

1. All parts of this exam **must be typed**.
2. Put your **exam number in the header** of your exam document – **on the right-hand side**. This ensures that your exam number is on each page.
3. Use 12-point Times New Roman or Garamond type.
4. Double-space lines throughout (this equals 23 lines of type per page).
5. 1" margins all around.
6. Include page numbers at the bottom of the page.
7. Indent each new paragraph .5" or 5 spaces
8. Observe page and word limits. Nothing over the page or word limit will be read or will count.

This exam consists of two questions (with sub-parts). There are **no multiple choice** questions.

- **Question 1 (50 points)** 1250 words (5 pages maximum).
- **Question 2 (50 points)** 1250 words (5 pages maximum).

For all questions:

- All facts take place in Franklin, a fictional US State. **Sources of law:** Remedies text, notes from class.
- Assume, unless given otherwise, that there are no additional applicable relevant laws, ordinances, or statutes, which would change the analysis.
- Assume the material written is accurate and reliable.
- Assume all claims, defenses and counterclaims are within relevant statutes of limitation.
- Assume that all remedies are governed by US law.

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- Do not** include an analysis of punitive damages.
- Do not** include an analysis of attorneys' fees.
- Do not** include an analysis of present value, taxes, or interest.
- Use law, facts, and policy in answering the questions below. Policy arguments do not need to be made for each point. Instead, apply policy to the overall analysis or to one of the more ambiguous elements.
- Scoring these essays** is similar to scoring on team assessments and former final exam essays. Identifying legal issues and applying specific facts to legal principles – showing the analysis to the reader – is most important and worth **around 90% of the grade**. **Around 10% of the grade** will be based on writing and organization.

"Tips" for taking this examination:

- Read the "call of the question" and the specific instructions first. Determine the specific relevant legal issues before reading through the entire fact pattern.
- **Map or outline** your response. Often there will be multiple parts – elements, factors – that require you to address many different points. Having a sense of how many different points you need to address will help you allocate the time you spend on each.
- You know a lot about remedies. Remember that I can assess your knowledge and abilities only by what I **see** and can **understand** in your written responses; **EXPLICITLY show the steps in your reasoning**.

Relax, breathe, and do your best. I am confident each of you will add value to your clients.

Criteria for evaluating exam responses	
1. Identifies basic legal issues and ambiguities in legal issues	<input type="checkbox"/> Identifies major kinds of remedies available <ul style="list-style-type: none"> <input type="checkbox"/> Identifies which remedies are definitely available <input type="checkbox"/> Identifies which remedies may be available <input type="checkbox"/> Accurately uses terms recognized by legal sources
2. Uses law and reasoning	<input type="checkbox"/> For major kinds of remedies available, identifies and analyzes tests, rules <input type="checkbox"/> Explains basics about designing or measuring remedies <input type="checkbox"/> Explains other considerations in designing remedies, such as identifies weaknesses in the analysis
3. Applies facts from problem	<input type="checkbox"/> Identifies and applies key facts <input type="checkbox"/> Draws reasonable inferences from facts <input type="checkbox"/> Names assumed facts
4. Responsiveness to questions asked and organization	<input type="checkbox"/> Responds to assigned task <input type="checkbox"/> Writing is organized and easy to follow <input type="checkbox"/> Provides a coherent and accurate summary/conclusion at the beginning of each section <input type="checkbox"/> Uses headings and subheadings to help the reader follow content <input type="checkbox"/> Clear and precise prose, generally accurate mechanics

FACTS

Ralph and Joy Green, a retired married couple, own a home on ten acres of land in the town of Springfield in the state of Franklin. They bought the land in Springfield 20 years ago, built a second home on it 10 years ago, and permanently moved there 2 years ago, when they retired. When they moved there, the Greens loved their Springfield property and enjoyed having their two adult children, their spouses, and four grandchildren stay with them. The property had a natural pond, and forested acres with walking trails. The Greens delighted living in the country and having the opportunity to observe a variety of wildlife — birds, deer, foxes, raccoons, turtles, frogs and fish — on their land. They referred to their Springfield property as their retirement "heaven" or "paradise."

A year ago, an agent from the Renew Oil & Gas Co. (Renew) offered the Greens \$10,000 to lease the mineral rights on their land, and promised more in royalties if Renew found natural gas from drilling on their land. The Greens declined the offer, even though the agent told them all their neighbors were leasing their mineral rights. Three months ago, Renew started drilling for natural gas on their neighbors' property less than 1000 feet from the Greens' home. This well was one of the thousands of natural gas wells drilled in Franklin as part of an emerging natural gas rush. In digging its well, Renew did not violate any relevant statutes or ordinances. Renew appropriately obtained all permits before it started its natural gas excavation.

Six weeks after Renew started drilling, the Greens noticed that their tap water was brown and smelled bad. They started having unexplained health problems such as headaches, dizziness, blackouts, nosebleeds, nausea, and muscle contractions. The fish in their pond started dying, and they noticed fewer birds and animals around their home. The Greens contacted Renew, but Renew representatives told them that there was no way that the Renew natural gas well operation on their neighbors' property could have contaminated the Greens' well water or caused any other problems. Renew representatives said that the natural gas deposits were thousands of feet below water wells and the wells that brought the natural gas to the surface were encased in steel and cement. Tests showed that the Greens' water supply — they have their own well — had high levels of methane, the main component of natural gas. The water in their pond similarly had high levels of methane. Methane is harmful to drink in higher concentrations, and can also evaporate from water. If methane collects in enclosed spaces like basements, it can become flammable and explode or suffocate people who inhale it. The Greens had to purchase all water for their home.

Renew uses a process called hydraulic fracturing, or fracking, to extract natural gas. This process requires Renew to pump millions of gallons of water laced with chemicals deep underground to blast open deposits of shale rocks and release the natural gas trapped inside. Enormous shale deposits lie under the state of Franklin, potentially providing billions of gallons of natural gas. Natural gas is the cleanest -burning fossil fuel, and could provide a cleaner and less expensive source of domestic energy than coal. Experts in the field claim that natural gas is the energy source of choice until wind, solar, and geothermal become more commercially viable and could lead to reduced carbon emissions. In addition to providing a safer alternative than nuclear energy, advocates of natural gas claim that it will reduce US dependence on foreign oil, save thousands of lives of people who would otherwise die from mining coal or breathing its filthy residue, and help reduce the effects of climate change.

In recent years, Renew and dozens of similar companies have flocked to Franklin looking for natural gas. Economists estimate that drilling for natural gas in Franklin, a state seriously damaged by economic downturn and several billions of dollars in debt, would generate billions of dollars in revenue and support nearly 100,000 jobs, including those directly and indirectly involved with drilling, such as

local truck drivers, subcontractors, hotel managers and staff, and food service providers. In addition, drilling for natural gas is likely to generate an increase in sales and income taxes, which Franklin needs.

The Greens are concerned about the contamination to their well water and the ground water around their home. They have learned that the cement and steel encasing their neighbors' well may have developed cracks, which would cause toxins, such as methane, to leak into the groundwater around their home. Because the well on their neighbors' property has produced natural gas, the Greens are also increasingly frustrated that they now hear the loud hum of a gas compressor running 24 hours a day. In addition, to service their neighbors' well, Renew's large construction trucks lumber past their home several times a day, generating pollution, dust, and noise. The Greens also just learned that while Renew's drilling rig is on their neighbors' land, Renew's operation is extracting natural gas from under the Green's property line, due to a negligent mistake made by one of Renew's engineers. They have little information other than that some of the natural gas comes from shale deposits deep under their land.

The Greens have contacted Renew about their concerns several times and have not yet filed a complaint against Renew. A retired couple in their mid 60's, they live on a fixed income and do not want to move. They wish they could have their property back in its "heavenly" condition. Assume they have several causes of action that would be sufficient to survive a motion to dismiss.

Question 1 (50 points) 1250 words maximum – 5 page limit

You represent Renew, and are trying to figure out its level of exposure to the Greens.

- Please prepare a memo **identifying and analyzing the different remedies** that the Greens could seek from Renew. (Do not include a separate FACTS or QUESTION PRESENTED/ISSUE section; **only include the ANALYSIS, or DISCUSSION section**).
- Focus primarily on the remedies that the Greens are likely to obtain from Renew; spend less time on the remedies that are possible, but less likely for the Greens to obtain.
- Based on law and the facts presented, **for each remedy**:
 - Specify** the remedy.
 - Identify why** the Greens would have a valid basis for that remedy.
 - Identify the strength of** remedy - the likelihood that the Greens could obtain the remedy.
 - Use a separate heading and subheadings as appropriate.

Question 2 (50 points) 1250 words maximum – 5 page limit

Assume that the Greens would have good arguments for all remedies identified in Question 1.

- **Identify the one remedy** that would be most effective in meeting the Greens' goals and why this remedy would be more effective than the other remedies.
- Make the best argument for **that one** remedy.
- **Identify the two most significant weaknesses** the Greens would have in obtaining that remedy, and how the Greens might overcome them.



Left: View from the Greens' property of neighbors' farm and natural gas operation.

Right: Water from the Greens' well.

