**Alternate Case Problems**

*Chapter 24*

**Real Property and Environmental Law**

**24-1. Taking.** James and Marilyn Nollan sought a building permit from the California Coastal Commission (CCC) to replace a single-story house on the Nollans’ beachfront property with a two-story structure approximately three times larger. The CCC con­cluded that the new house would obstruct the public’s view of the ocean, increase private use of the beach, and create a “psychological barrier” to access to the public beaches that were on both sides of the Nollans’ property. The CCC agreed to issue the permit if the Nollans would dedicate a strip of their land for public use. The strip, which ran next to the water’s edge along the beach, would connect the public beaches. The Nollans ap­pealed to a court, contending that the CCC’s condition was a taking of private property for public use without compensation. Is the CCC’s condition a taking? Discuss fully. [*Nollan v. California Coastal Commission,* 483 U.S. 825, 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987)]

**24-2. Lease Renewal.** MCM Ventures, II, Inc., leased premises from Rushing Construction Co. on which to operate a restaurant. The lease term was for two years: January 1, 1987, to December 31, 1988. The lease agreement stated in part that MCM “shall have a continuing option for a period of eight (8) consecutive years to renew this lease.” MCM did nothing to renew the lease before it expired but, after it expired on December 31, 1988, made monthly rent payments in the same amount as before in January and February 1989. Then, on February 28, 1989, MCM notified Rushing by mail that it wanted to exercise its option to renew the lease. Rushing refused to renew the lease, contending that MCM had forfeited the option by not exercising it prior to the expi­ration of the lease agreement in which the option had been given. Discuss fully whether MCM still had a right to exercise the lease renewal option as late as February 28, 1989. [*Rushing Construction Co. v. MCM Ventures, II, Inc.,* 100 N.C.App. 259, 395 S.E.2d 130 (1990)]

**24-3. Maintaining the Premises.** ARG Enterprises, Inc., operated a Black Angus res­taurant on premises leased from SDR Associates. The lease included a provision that re­quired ARG to return the premises in the condition in which it had received them. In re­turn for ARG’s agreeing to maintain the premises, SDR charged lower rent payments than it otherwise would have. About six months before the lease was due to expire, SDR notified ARG of the need to return the premises in good condition if the lease was not re­newed. When the lease expired, however, the premises were in disrepair. Extensive re­pairs were required for the roof as well as for the air-conditioning unit, the exhaust fans, and the parking lot. These problems prevented SDR from renting the premises to anyone else. Before the lease expired, SDR had been negotiating with Toys “R” Us, Inc., about the possibility of demolishing the building and selling just the land; but SDR’s preference was to relet the building as a restaurant. At the time of trial, the structure had not been destroyed. SDR sued ARG, alleging that ARG had breached the lease agreement by fail­ing to return the premises to SDR in good condition. Among other things, SDR sought damages in the amount of $200,000 as the cost for restoring the premises to good condi­tion.Given the fact that SDR was contemplating the demolition of the building, should the court require ARG to pay the $200,000 in damages to restore the premises to their ear­lier condition? Explain. [*SDR Associates v. ARG Enterprises, Inc.,* 170 Ariz. 1, 821 P.2d 268 (App., Div. 2 1991)]

**24–4. Clean Water Act.** Attique Ahmad owned the Spin-N-Market, a convenience store and gas station. The gas pumps were fed by underground tanks, one of which had a leak at its top that allowed water to enter. Ahmad emptied the tank by pumping its contents into a storm drain and a sewer system. Through the storm drain, gasoline flowed into a creek, forcing the city to clean the water. Through the sewer system, gasoline flowed into a sewage treatment plant, forcing the city to evacuate the plant and two nearby schools. Ahmad was charged with discharging a pollutant without a permit, which is a criminal violation of the Clean Water Act. The act provides that a person who “knowingly violates” the act commits a felony. Ahmad claimed that he had believed he was discharging only water. Did Ahmad commit a felony? Why or why not? Discuss fully. [*United States v. Ahmad,* 101 F.3d 386 (5th Cir. 1996)]

**24–5. Commercial Lease Terms.** Metropolitan Life Insurance Co. leased space in its Trail Plaza Shopping Center in Florida to Winn-Dixie Stores, Inc., to operate a supermarket. Under the lease, the landlord agreed not to permit “any [other] property located within the shopping center to be used for or occupied by any business dealing in or which shall keep in stock or sell for off-premises consumption any staple or fancy groceries” in more than “500 square feet of sales area.” In 1999, Metropolitan leased 22,000 square feet of space in Trail Plaza to 99 Cent Stuff-Trail Plaza, LLC, under a lease that prohibited it from selling “groceries” in more than 500 square feet of “sales area.” Shortly after 99 Cent Stuff opened, it began selling food and other products, including soap, matches, and paper napkins. Alleging that these sales violated the parties’ leases, Winn-Dixie filed a suit in a Florida state court against 99 Cent Stuff and others. The defendants argued in part that the groceries provision covered only food and the 500-square-foot restriction included only shelf space, not store aisles. How should these lease terms be interpreted? Should the court grant an injunction in Winn-Dixie’s favor? Explain. [*Winn-Dixie Stores, Inc. v. 99 Cent Stuff-Trail Plaza, LLC,* 811 So.2d 719 (Fla.App. 3 Dist. 2002)]

**24–6. Clean Water Act.**  The Anacostia River, which flows through Washington, D.C., is one of the ten most polluted rivers in the country. For bodies of water such as the Anacostia, the Clean Water Act requires states (which, under the act, include the District of Columbia) to set a “total maximum daily load” (TMDL) for pollutants. A TMDL is to be set “at a level necessary to implement the applicable water-quality standards with seasonal variations.” The Anacostia contains biochemical pollutants that consume oxygen, putting the river’s aquatic life at risk for suffocation. In addition, the river is murky, stunting the growth of plants that rely on sunlight and impairing recreational use. The Environmental Protection Agency (EPA) approved one TMDL limiting the *annual* discharge of oxygen-depleting pollutants and a second limiting the *seasonal* discharge of pollutants contributing to turbidity. Neither TMDL limited daily discharges. Friends of the Earth, Inc. (FoE), asked a federal district court to review the TMDLs. What is FoE’s best argument in this dispute? What is the EPA’s likely response? What should the court rule, and why? [*Friends of the Earth, Inc. v. Environmental Protection Agency,* 446 F.3d 140 (D.C.Cir. 2006)]

**24–7. Environmental Impact Statement.**  The fourth largest crop in the United States is alfalfa, of which 5 percent is exported to Japan. RoundUp Ready alfalfa is genetically engineered to resist glyphosate, the active ingredient in the herbicide RoundUp. The U.S. Department of Agriculture (USDA) regulates genetically engineered agricultural products through the Animal and Plant Health Inspection Service (APHIS). APHIS concluded that RoundUp Ready alfalfa does not have any harmful health effects on humans or livestock and deregulated it. Geertson Seed Farms and others filed a suit in a federal district court against Mike Johanns (then the secretary of the USDA) and others, asserting that APHIS’s decision required the preparation of an environmental impact statement (EIS). The plaintiffs argued, among other things, that the introduction of RoundUp Ready alfalfa might significantly decrease the availability of or even eliminate, all nongenetically engineered varieties. The plaintiffs were concerned that the RoundUp Ready alfalfa might contaminate standard alfalfa because alfalfa is pollinated by bees, which can travel as far as two miles from a pollen source. If contamination occurred, farmers would not be able to market “contaminated” varieties as “organic,” which would affect the sales of “organic” livestock and exports to Japan, which does not allow the import of glyphosate-tolerant alfalfa. Should an EIS be prepared in this case? Why or why not? [*Geertson Seed Farms v. Johanns,* \_\_ F.Supp.2d \_\_, 2007 WL 518624 (N.D.Cal. 2007)]

**24–8. Ownership in Fee Simple.** Thomas and Teresa Cline built a house on 76 acres next to Roy Berg’s home in Virginia. The homes were about 1,800 feet apart but in view of each other. After several disagreements between the parties, Berg equipped an 11-foot tripod with motion sensors and floodlights that intermittently illuminated the Clines’ home. Berg also installed surveillance cameras that tracked some of the movement on the Clines’ property. The cameras transmitted on an open frequency, which could be received by any television within range. The Clines asked Berg to turn off, or at least redirect, the lights. When he refused, they erected a fence for 200 feet along the parties’ common property line. The 32-foot-high fence consisted of 20 utility poles spaced 10 feet apart with plastic wrap stretched between the poles. This effectively blocked the lights and cameras. Berg filed a suit against the Clines in a Virginia state court, complaining that the fence interfered unreasonably with his use and enjoyment of his property. He asked the court to order the Clines to take the fence down. What are the limits on an owner’s use of property? How should the court rule in this case? Why? [*Cline v. Berg,* 273 Va. 142, 639 S.E.2d 231 (2007)]

**24–9. Environmental Impact Statement.** The U.S. National Park Service (NPS) manages the Grand Canyon National Park in Arizona under a management plan that is subject to periodic review. In 2006, after nine years of background work and the completion of a comprehensive environmental impact statement, the NPS issued a new management plan for the park. One part of the plan allowed for the continued use of rafts on the Colorado River, which runs through the Grand Canyon. The number of the rafts was limited, however. Several environmental groups criticized the plan because they felt that it still allowed too many rafts on the river. The groups asked a federal appellate court to overturn the plan, claiming that it violated the wilderness status of the national park. When can a federal court overturn a determination by an agency such as the NPS? Explain. [*River Runners for Wilderness v. Martin,* 593 F.3d 1064 (9th Cir. 2010)]

**24-10. A Question of Ethics**

The Stanards have owned lakeshore property since 1963. In 1969, the Urbans purchased lakeshore property adjoining the Stanards’ lot and used the property for a summer cabin from 1969 through 1974. In 1975, the Urbans converted the summer cabin into a year-round home and moved there permanently. Since 1969, the Urbans have used a grassy area of land—part of which belonged to the Stanards—up to a wooded area between the two houses. Between 1969 and 1988, the Urbans mowed the grassy area up to the woods line and kept the weeds down, let their children and grandchildren play in the grassy area, and stored their boat dock on the grassy area each winter. In 1981, the Urbans constructed a white tin storage shed—mounted on a concrete slab—on the grassy area. Most of the shed was located on the Stanards’ property. In 1988, the Stanards brought a lawsuit against the Urbans for trespass and sought removal of the white shed. The Urbans claimed that they acquired ownership of the property by adverse possession because they had used the property since 1969 (the state’s statutory requirement for adverse possession was fifteen years). The Stanards claimed that the measurement of the statutory period should begin in 1981, when the permanent storage shed was constructed. Given these circumstances, consider the following questions. [*Stanard v. Urban,* 453 N.W.2d 733 (Minn.App. 1990)]

**1.** Do you think that the Urbans’ use of the Stanards’ property prior to 1981 (when the shed was built) met the requirements for adverse possession? That is, was the use actual, open, hostile, continuous, and exclusive during those years? Or is this situation similar to many others in which there are no fences between neighboring lots and the respective owners and their families occasionally trespass on the others’ property?

**2.** Would it affect your answer to the above question if you knew that the Urbans, sometime between 1980 and 1982, offered to purchase the parcel of property in question from the Stanards?

**3.** At what point should trespass on another’s property constitute adverse possession? For example, if your neighbors customarily store their boat partially on your property, and you do not object, should this circumstance trigger a statutory period for adverse possession? What if your neighbors’ children also customarily play on your side of the boundary line between your property and your neighbors’ property?

**4.**  Why do you think that state statutes permit people to acquire title to property by adverse possession? What public policy is reflected in these statutes?