

Student Exam Number: _____

Final Exam

ENVIRONMENTAL LAW (COURSE #5390)

Prof. Hester – Fall 2016

EXAM INSTRUCTIONS

YOU MUST RETURN THESE QUESTIONS AT THE END OF THE EXAM.

This exam has three separate essay questions.

Please write your ***exam number*** in the blank on the top of this page.

If you are ***handwriting*** your exam, write your exam number on the cover of ***each*** of your bluebooks. Also number the bluebooks to indicate how many in total you turn in and the correct order. For example, if you use four bluebooks, they should be labeled “1 of 4”, “2 of 4”, “3 of 4”, and “4 of 4”. Use **ONE SIDE** of a page only and endeavor to write legibly. Also, remember to leave yourself some space in between answers so that you can come back to an answer if you desire.

If you are using a ***computer*** to take the exam, you must use the Law Center’s exam software. Treat each *question* of the exam as a separate question in your answer; do not answer subparts of questions as independent questions.

This exam is open-book and you may use any written materials assigned for this class or prepared by you (either individually or with others). A dictionary will be provided in the examination room. You may not use any materials stored on computer or disk or any electronic materials. You are bound by the Law Center’s Honor Code and must sign the Pledge with your exam number at the end of these instructions. We also will ask you to affirm your attendance at the end of these instructions.

Below is the percentage each section will count towards your final exam grade and the time we estimate you should allow to answer each section. You will have **three hours** to complete the examination (foreign LLM students will have **four hours**).

Section Number	Question Type	Number of Questions	Estimated Points Value	Estimated Minutes to Spend per Question
	Essay Questions	3	30 points per essay question	60 minutes per essay question
Total			90 points	3 hours

For the issue-spotting essays, your job is to analyze the facts in each question. Do not make up facts or law or fight the facts given. If you need more information to resolve a difficult question, state what information you would need and how it would affect your answer. Read carefully. Think before you write. Good organization, clear statement, and avoidance of irrelevancies are all appreciated. A longer test answer will not necessarily translate to a better score. In fact, sometimes the opposite is the case.

Please take time to answer all questions on the test. You are much better off answering all sections of the test with less attention than you might desire instead of failing to answer all the questions asked. Note that I tend to give some points just for effort, so don't leave a blank section.

At the end of the exam, you **MUST** turn in the exam questions, your answer sheet, any scrap paper, and your flash drive or bluebooks.

HONOR CODE. It is a violation of the Honor Code to use any **UNAUTHORIZED** aid in connection with this exam; to fail to report any such conduct on the part of any other student that you observe; to retain, copy, or otherwise memorialize any portion of the exam; or to discuss its contents with any student in this class who has not yet taken it. ***Do not discuss this exam with anyone that is not a member of this class. Do not discuss this exam with any student in the class without first asking such student whether he or she has taken the exam.***

***** CONFIRM YOUR CLASS ATTENDANCE ON THE NEXT PAGE *****

By placing your exam number in the PLEDGE blank below, you are representing that you have or will comply with these requirements. Your representation is subject to the honor code. If for any reason you cannot truthfully make that pledge, notify the exam proctor as soon as possible.

PLEDGE: _____

(Fill in your *exam number*, not your name.)

ATTENDENCE (select one).

_____ I affirm that I have missed six or fewer classes in Environmental Law this semester.

OR

_____ I missed more than six classes. Specifically, I missed _____ days.

(Fill in your *exam number*, not your name.)

ESSAY QUESTIONS

Answer **ALL** of the following questions. Please provide concise legal opinions supported by relevant case law, statutes, regulations, and examples discussed in class or in the readings, **not** broad policy discussions.

Question 1 (30 points):

For your final semester, you have decided to enroll in the University of Houston Law Center's new Environmental Law Clinic. While the Clinic handles a wide variety of permit applications, contested hearings and litigation, it also assists the University of Houston on particularly important or novel environmental issues. Your professor has brought one of the biggest matters to your desk as your semester project – congratulations!

The University of Houston has been asked to help form a new group that will seek to build a large dike along the Galveston coastline and through the Houston Ship Channel to protect the Houston-Galveston area from hurricane storm surges. UH would join a coalition of other universities, corporations, municipalities, individuals and non-profits in financing and controlling the new entity - named SafeCoast – to design, fund, build and operate the complex set of dikes, ditches and breakwaters needed to shield the Texas Coast from another large hurricane. The local press has already dubbed the new project as “Ike Dike Plus.”

The massive system will require the construction of large berms along the coastline that will rise up to six feet tall. To construct the berms, SafeCoast will need to excavate and level off large swaths of land along the Galveston coastline, at the edges of Galveston Bay, and up through the Houston Ship Channel until it reaches east Houston. The coastline protection system will also use massive swinging gates, similar to those used in large shipping canals, to shut off the Galveston Bay system from approaching storms. These gates will use huge industrial engines powered by diesel fuel in case the electrical power grid fails during the storm.

The dike construction would take place in all of the different neighborhoods and terrain that the Houston-Galveston area has to offer, including pristine open fields, marshy areas next to bayous, old abandoned industrial areas, wealthy and impoverished residential developments, wildlife habitat, and active commercial districts. SafeCoast is not a governmental organization, and it therefore lacks the power of eminent domain or sovereign immunity.

The University of Houston's general counsel and provosts have several concerns about the project, but they are particularly worried about its compliance with environmental laws. The UH Environmental Clinic director has asked you to prepare a memorandum assessing the potential environmental permitting needs for the SafeCoast project, and the possible environmental legal challenges and liabilities that opponents might raise against SafeCoast (including likely legal risks that the University of Houston might face as a participant in SafeCoast). Be sure to identify any additional facts or information that you might need to request from your client to weigh possible claims and strategies.