

A Primer on Eminent Domain

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Real Estate Finance Association
of Connecticut,
Fairfield/Westchester Chapter


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Eminent Domain Pop Quiz

- 25 questions, multiple choice
- Six sections:
 - Basics
 - History
 - Connecticut procedure
 - Connecticut cases
 - Kelo v. New London
 - Responses to Kelo
- High score wins valuable prize
- Ringers ineligible
- No group deliberations



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Basics

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Question No. 1

Eminent domain is an inherent power of the federal and state governments. The U.S. Constitution, in the Bill of Rights, limits this power, stating: “[Nor] shall property be taken for public use, without just compensation.” What amendment contains this language?

- a) Fourth
- b) Fifth
- c) Sixth
- d) Seventh



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Question No. 2

Every state constitution contains its own “takings clause,” limiting eminent domain. Some state constitutions require compensation not only when property is “taken,” but also when it is “damaged.” Does the Connecticut Constitution contain this added protection?

- a) Yes, provides additional protection
- b) No, same as federal Fifth Amendment

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Question No. 3



Which of the following are typical and accepted “public uses” for which governments use eminent domain?


- a) Government buildings
- b) Roads
- c) Utilities/infrastructure
- d) Schools
- e) Clearance of slums/blighted areas
- f) All of the above


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Question No. 4

In general, when land is taken by eminent domain for “public use,” does this mean that


- a) The public must actually use the land after it is acquired, or
- b) The public need only benefit from whatever use of the land the government ultimately allows?

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<h3>Question No. 5</h3>
<p>When the Constitution requires government to pay “just compensation” for property that is taken, this usually means that the owner will be paid the property's</p> <ul style="list-style-type: none"> a) Rental value b) Collateral value c) Residual value d) Fair market value


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<h3>Question No. 6 – True or False?</h3>
<p>When government, by eminent domain, takes land on which an operating business exists, it must compensate the owner for lost profits and lost goodwill.</p>


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<h3>Question No. 7 – True or False?</h3>	
	<p>In general, land that is already devoted to a public use cannot be taken by eminent domain by another government or agency for a <u>different</u> public use.</p>


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<h2>History</h2>

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<h3>Question No. 8</h3>
<p>One seminal case involving taking land for private economic development was <u>Courtesy Sandwich Shop v. Port of New York Authority</u> (New York 1963), which authorized condemnation in Manhattan of a delicatessen and “Radio Row,” several city blocks of stores that sold electronics. What was built on this condemned land?</p>
<ul style="list-style-type: none"> a) Rockefeller Center b) Lincoln Center c) World Trade Center


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<h3>Question No. 9</h3>
<p>In <u>Berman v. Parker</u> (1954), the U.S. Supreme Court established the law that prevailed for 50 years and was reaffirmed in <u>Kelo</u>: what constitutes a “public use” is up to the legislative branch of government, and the courts will defer to that decision. In <u>Berman</u>, what did the government take by eminent domain?</p>
<ul style="list-style-type: none"> a) An operating, profitable department store in the middle of a blighted area b) Vacant land adjacent to Union Station c) Waterfront land where the Kennedy Center now sits

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Question No. 10



The holding of Berman v. Parker was also reaffirmed in 1984 by the U.S. Supreme Court in Hawaii Housing Authority v. Midkiff. In that case, eminent domain was used for what purpose?

- To preserve Waikiki Beach for use by surfers
- To break up ownership of large "estates" remaining from when Hawaii was ruled by a king
- To establish a safety zone around an active volcano

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Question No. 11

Prior to Kelo, the most controversial case involving eminent domain for private economic purposes was Southwest Illinois Development Authority v. National City Environmental (2002). What did the agency try to condemn and why?

- Vacant land, for the new Abraham Lincoln museum in Springfield
- An abandoned school building, to make way for a new Tyson Foods processing facility
- Land for a new parking garage for a NASCAR racing track

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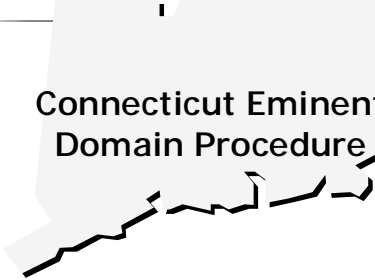
Question No. 12

In "SWIDA," what aspects of the condemnation process made it suspect?

- The race track owners supplied the \$1 million used by the agency to pay the property owner
- The new parking area was located across a busy highway from the race track, undermining the agency's claim that it was taking the land to provide safer pedestrian access
- The condemning agency did not prepare a study of economic benefits of the taking
- All of the above


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Connecticut Eminent Domain Procedure



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Question No. 13 – True or False?



The basic procedure in Connecticut for condemning land is:


- A legislative body votes to take the land
- The government issues a "notice of condemnation" to the owner and all lien holders
- The government deposits fair market value with the court
- Within as little as 12 days, the court issues a certificate of taking
- Certificate is recorded, title transfers to condemnor


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Question No. 14



When government uses eminent domain to take land, what potential defenses/objections can a property owner raise?

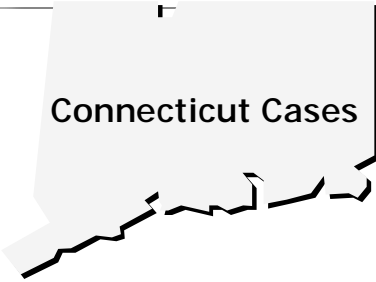
- Failure to follow statutory procedures
- Agency not authorized to take the land
- Failure to negotiate before taking
- Taking not "necessary" for ultimate use
- Taking not for "public use"
- Bad faith condemnation
- All of the above




20	<h3>Question No. 15 – True or False?</h3>
<p>Under Connecticut's Freedom of Information Act, government agencies proposing eminent domain may do so in closed/non-public session, and can protect studies and reports about eminent domain from public disclosure.</p>	

21	<h3>Question No. 16 – True or False?</h3>
<p>In Connecticut, when government condemns property and has its fair market value appraised in order to determine "just compensation," it may DEDUCT the costs of environmental remediation/cleanup.</p>	

22	<h3>Question No. 17 – True or False?</h3>
<p>A Connecticut statute allows a government, prior to using eminent domain, to conduct environmental testing on the property, without court permission.</p>	 


23	<h3>Connecticut Cases</h3>
	

24	<h3>Question No. 18</h3>
<p>In <u>Aposporos v. Urban Redevelopment Commission</u> (2002), the Connecticut Supreme Court issued an injunction against the condemnation of Curley's Diner in downtown Stamford because</p> <ol style="list-style-type: none"> The agency relied on a blight determination made in 1963 and not updated Curley's is a favorite dining spot for Stamford judges and lawyers The agency intended to convey the condemned land to another restaurant owner 	

25	<h3>Question No. 19</h3>
<p>The Connecticut Supreme Court in <u>Pequonnock Yacht Club v. City of Bridgeport</u> (2002) stopped a condemnation by the City of Bridgeport based on</p> <ol style="list-style-type: none"> Failure to try, before condemnation, to incorporate the yacht club into the redevelopment area plan Failure to obtain legislative authorization to deposit fair market value with the court A finding that the condemnation was a bad-faith, political vendetta 	

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Question No. 20



In AvalonBay v. Town of Orange (2001), why did the Connecticut Supreme Court issue an injunction against the condemnation of land for an "industrial park?"


- The industrial park plan was "hastily conceived" and "poorly drafted"
- The Town's actual purpose was to block an affordable housing development
- There were already two age-restricted residential uses within or adjoining the proposed industrial park
- All of the above

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Kelo v. New London

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Question No. 21




In Kelo, the Connecticut Supreme Court and the U.S. Supreme Court upheld the condemnation because:

- The City's economic development plan proposed substantial tax and employment benefits
- The City acted in good faith
- Connecticut courts and the U.S. Supreme Court have a long history of deferring to legislative determinations of what is a public use
- All of the above

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Question No. 22



Justice Stevens wrote the Kelo majority opinion in June 2005. What did he tell an audience at the American Bar Association's Annual Meeting in August 2005?

- Critics of the Kelo decision are unpatriotic
- Mrs. Kelo and her neighbors created their own problem by refusing the City's reasonable offers
- Had he been a New London City Councilor, he would have voted against this use of eminent domain

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Responses to Kelo

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Question No. 23


To date (3/1/06), in how many states have restrictions on eminent domain in response to Kelo been enacted or passed both houses of the legislature?

- Three
- Seven
- Nineteen
- Forty-one



32	<h2>Question No. 24</h2>
	<p>In general, among the states that have enacted or are considering limits on eminent domain, which of the following is not being considered?</p> <ul style="list-style-type: none"> a) Prohibiting eminent domain for private economic development b) Strengthening notice and voting requirements c) Defining "public use" d) Defining "blight" e) Premium compensation

33	<h2>Question No. 25</h2> 
	<p>In January 2006, what did BB&T Corp., a bank based in North Carolina, announce?</p> <ul style="list-style-type: none"> a) It will bring a lawsuit to stop Winston-Salem from condemning its offices to make way for a school b) It will not lend money to developers whose land acquisition is aided by taking land from private citizens by eminent domain c) It had offered a job to retiring Justice Sandra Day O'Connor

34	<h2>Scoring</h2> 
	<p>0 – 7 Remedial Civics course begins March 31 at UConn/Stamford</p> <p>8 – 15 Thanks for your input; we'll take it from here</p> <p>16 – 19 Good job, but don't forget to check with Town Attorney</p> <p>20 – 25 You have no problem with E.D.</p>

35	<h2>Red Flags in Condemnation</h2>
	<ul style="list-style-type: none"> ⌘ Power to take land given to non-government agency ⌘ Private party pays all or most of "just compensation" ⌘ Primary beneficiary of condemnation is private entity whose finances not open to public inspection ⌘ Condemning more land than necessary for public use

36	<h2>Red Flags in Condemnation (continued)</h2>
	<ul style="list-style-type: none"> ⌘ Condemning for private economic use without thorough, credible study ⌘ Condemning for use that will be entirely privately run ⌘ Condemning so as to violate fair housing, affordable housing, or ADA ⌘ Stretching definition of "blight"