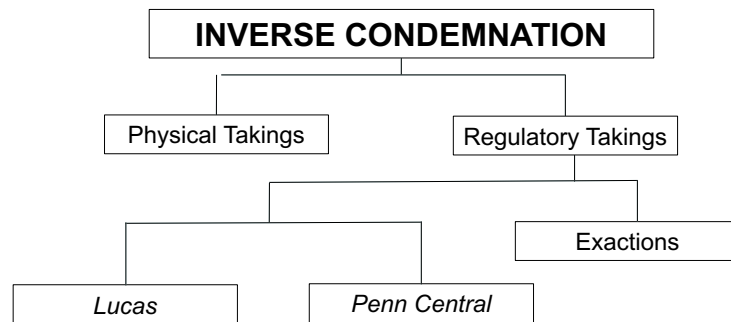


UT LAW SCHOOL 28<sup>TH</sup> LAND USE CONFERENCE

# THE EVOLUTION OF INVERSE CONDEMNATION LAW: A TWENTY YEAR RETROSPECTIVE

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## Terminology

- “Inverse” because condemnation cases are filed by the government.
- A physical taking occurs when the governmental literally takes property from its owner.
- A regulatory taking occurs when property rights are restricted to such an extent as to become the functional equivalent of a physical seizure.

## Takings Elements

A property owner suing for compensation must show that the government (1) engaged in an affirmative act or course of conduct that resulted in the taking, damaging, destruction, or application of property; and (2) did so with the necessary intent—that is, with knowledge that either (a) the conduct is causing identifiable harm or (b) specific property damage is substantially certain to result.

## Physical Takings

- Flooding cases
  - Federal
  - State
- Encroachment Cases

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## ***Tarrant Reg. Water Dist. v. Gragg, 151 S.W.3d 546 (Tex. 2004)***

- Richland-Chambers Reservoir impounded Trinity River.
- Only 8% excess storage capacity
- Court distinguished between mere negligence and intentional actions
- In this case, District knew flooding would result due to design

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