

SUPPLEMENTAL CASE MATERIALS

The deadline for submitting questions and clarifications regarding the problem was November 17, 2023. This shall be the official memorandum that may be used in the competition. This supplement may be used as provided below:

Supplemental Materials- Evidentiary Value:

The supplemental clarifications may be used in all the same ways (including for impeachment and as testimony) that the main body of the case materials are used. Answers clarifying a witness statement are to be treated as follows: Where necessary, information will be attributed to a specific witness in which case the clarifying information becomes part of that witness' statement. If the clarifying information is not attributed to a single witness, assume that all witnesses have this knowledge. The practical implication of this is that if a witness is challenged as to his or her knowledge reflected in the statement, he or she may refer to these supplemental clarifications to show knowledge.

- 1) Is there a reason to include jury related information when the facts say that the case will be tried before a judge?

Yes, the jury instructions are to help students formulate their arguments and strategies. Although the jury instructions will not be utilized,

- 2) Exhibit 5- the "10-year average" reflects the "3-year average".

Thank you for pointing out that typographical error. It should be a 3-year average, rather than 10 year average.

- 3) Exhibits 6, 12, & 13 have references to bog turtle.

This should be amended to reflect an `alala and/or bird.

- 4) Exhibit 2- Typo

All photos were taken on October 1, 2023.

- 5) Can teams redact this exhibit or do all 4 parts come in?

All parts of all exhibits are admissible under the mock trial rules of evidence.

- 6) Can teams object to the words contained in exhibits 2.1 through 2.4?

Please review the stipulations. Defendant reserves the right to contest whether Exhibit 2.1 is of its property, whether Exhibit 2.1 depicts an `alala that was actually physically present on its property, and whether Exhibit 2.1 depicts an `alala that was actually physically present on the property depicted in Exhibit 2.1, wherever that is.

- 7) Legal arguments regarding collateral estoppel may be made based on the case materials. Will teams be able to argue this?

Coaches should not introduce principles of collateral estoppel into the case because insufficient information is included in the case to determine a resolution of this issue. Further, no decisional or statutory law is provided as a basis for a collateral estoppel argument or claim. The findings in Cabrera's case should be treated as any other evidence and should be objected to as permitted under the mock trial rules of evidence.

Judges will be reminded that they are not to evaluate the case based on the legal merits.

- 8) Will the defense get a rebuttal due to the burden shifting principle?

No. The format will be the same as last year and years prior.

Judges will be reminded that they are not to evaluate the case based on the legal merits.

- 9) There is some confusion regarding the burden shifting.

The following is a summary of the jury instructions and other materials, and is being provided for clarification and ease of reference only. The case materials contain a complete statement of the applicable law. Accordingly, unlike the foregoing portions of this supplement, it may not be cited at trial as authoritative.

Burden of Proof:

In a typical injunction case, plaintiff is required to show 1) actual success on the merits; 2) irreparable injury to it from the denial of injunctive relief; 3) the granting of the permanent injunction will not result in even greater harm to the defendant; and 4) the injunction would be in the public interest.

Here, the Court has already held that if FOA can show that the land is critical `alala habitat, the Endangered Species Act means that irreparable harm to plaintiff is presumed and will outweigh the harm to the defendant. So, the only remaining issues are 1) success on the merits and 2) public interest.

To succeed on the merits, FOA needs to show that the Endangered Species Act would be violated if ZenoPharma expands. It does this by showing that the land is "critical habitat" for the `alala.

There are two ways to show that the land is a critical habitat. First, FOA can show that `alala live on the land. If it does that, the land is automatically critical habitat and it succeeds on the merits, regardless of whether ZenoPharma can show that here would be a negative economic impact to the community.

Alternatively, FOA could show that the land is critical habitat even if there isn't an `alala on it by showing that it "contains physical or biological features essential to the conservation" of `alala.

If FOA makes this argument, ZenoPharma may argue that there is an economic impact that overrides the `alala's interest in the land. Notably, this argument can only be made if `alala are not present on the land. If there are `alala actually there, the land is automatically critical habitat.

If FOA shows that the land is critical habitat, then it has met its burden. The burden of proof then shifts to ZenoPharma to show that the public interest in allowing the expansion outweighs the Endangered Species Act and any other public interest, such as a threat to public health the expansion allegedly poses.

If FOA shows that there were actually `alala on the land at issue, ZenoPharma must prove that the public interest in allowing the expansion significantly outweighs the public interest in preventing it, including the harm to the `alala.

If FOA does not show that there were actually `alala on the land at issue, ZenoPharma must prove only that the public interests in allowing the expansion outweigh the public interests in preventing it, including the harm to `alala.

In making its case, either party may refer to the statutes, regulations, and decisions in the Applicable Law section.

In short:

- FOA bears the burden of proving that the land in question is a critical habitat for `alala. If it cannot do so, it loses.
- If FOA shows that `alala are actually present, then the expansion will be stopped unless ZenoPharma proves that the public interests in the expansion significantly outweigh those against it.
- If FOA cannot show that `alala are actually present, but does show that the land is a critical habitat, the expansion will be stopped unless ZenoPharma proves that the public interests in the expansion outweigh those against it.

ANY DISPOSITIVE MOTIONS (i.e., Motions for Summary Judgment, Motions for Directed Verdict) AFTER PLAINTIFF'S CASE WILL NOT BE ENTERTAINED BY THE JUDGES.