ANSWER KEY

Document J: Gonzales v. Raich (2005), Dissenting Opinion
1. There are no significant limits.

1. The cartoonist agrees with the argument in Document J, one of the dissents in Raich.

Document L: Maps of States With Legalized Medical Marijuana
3. Some students may say that states are choosing to exercise their power to regulate intrastate commerce even in the face of federal legislation. Others may suggest that even though the CSA was passed by Congress, it is possible that the executive branch has decided not to enforce the law, with respect to medical marijuana.

UNIT 2 – PRIVATE PROPERTY

NOLLAN V. CALIFORNIA COASTAL COMMISSION (1987)

Document A: Magna Carta Excerpts (1215)
1. Corn, money, horses, carts, wood
2. He must be paid for his property.
3. They are deeply rooted traditional rights.

Document B: Blackstone’s Commentaries on the Laws of England (1765)
1. Only by consent of the owner

Document C: The Fifth Amendment (1791)
1. Listed are protection against being deprived of life, liberty, or property without due process; guarantee of just compensation if one’s property is taken, and that takings will occur only for public use.
2. Individual rights

Document D: James Kent, Commentaries on American Law, Volume 2 (1827)
1. There are times when public welfare is more important than private property rights. Sometimes property owners must expect to put public welfare first.
2. Building of a road through farmlands.
3. Taking the property of A and giving it to B.

1. The right to keep others off of one’s property.
2. The right to keep others off of one’s property is fundamental to property rights. If the government wants to turn a private marina into a public one, it must pay just compensation to the owner, because he will have been denied his right to exclude others from his property.

* This was the majority opinion, written by Justice Rehnquist, in a 6-3 case.
Document F: Loretto v. Teleprompter
Manhattan CATV Corp. (1982)

1. A law authorizing installation of cable TV equipment on private property was a taking because the occupation of the property, though minor, was permanent, and even though there was an important public purpose—the advance of an important form of communication.

Document G: The Nollans' Bungalow

1. Small, one-story, neglected, weathered, in disrepair.
2. A large, three-bedroom home in this space would make it harder to see the beach.


1. The reason given for the easement requirement is to promote view of the beach. This would meet the legitimate public purpose of enhancing the public’s ability to use state beaches. However, the easement specified in the Nollans’ permit application was a lateral strip along the waterfront, not a path to the beach. Therefore, the easement would not have improved visibility from the street. Since the method stipulated did not achieve the purpose proposed, thereby lacking the “essential nexus” mentioned in the decision, the restriction on Nollans’ use of their property was a taking, not simply a land-use regulation.

2. Property rights include many different types of rights. The ones mentioned here include the right to improve one’s property and the right to exclude others from the property.

3. Accept reasoned answers.


1. There is no “taking” if a property owner did not have a right to the land to begin with. The public’s expectation of beach access was established in the California Constitution of 1879. The Nollans have no reasonable expectation of the right to exclude people from beach access.


1. In both cases, government attached conditions to building permits that meant owners would have to open part of their property to the public. In both cases the Courts ruled they were takings.

2. The city needed to show a more direct correlation between the requirements they imposed for Dolan’s permit and the specific benefits they expected the city to experience.

3. From Nollan—there must be an “essential nexus” between the limitation imposed by a regulation and the legitimate public purpose expected to be achieved. In other words, the requirement imposed on the property owner must actually lead to the public purpose expressed. In Nollan, the California Coastal Commission’s requirement (an easement along the beachfront) did not achieve the stated public purpose (preserving the view of the beach from the street). From Dolan—the government entity must have calculated a “rough proportionality,” assuring “that the required dedication is related both in nature and extent to the impact of the proposed development.” In Dolan, the city of Tigard did not quantify how much traffic congestion they expected to be eased by the bike path required.
Document K: Dolan v. City of Tigard (1993), Dissenting Opinion

1. This view seems to be in contrast with Documents A-C. This view may be in greater agreement with Document D.

Document A: Magna Carta Excerpts (1215)

1. Corn, money, horses, carts, wood
2. He must be paid for his property.
3. They are deeply rooted traditional rights.

Document B: Federal Farmer, December 25, 1787

1. Known, standing laws.
2. Only by consent of the governed or consent of their elected representatives, in cases of “pressing urgencies.” Reasonable compensation

Document C: The Fifth Amendment (1791)

1. Listed are protection against being deprived of life, liberty, or property without due process; guarantee of just compensation if one’s property is taken, and that takings will occur for public use.
2. Individual rights

Document D: Pennsylvania Coal v. Mahon (1922)

1. No. “While property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking.”
2. Government must provide just compensation for taken property.

Document E: U.S. v. Causby (1946)

1. Yes, to an extent.
2. No, “[It has been] establish[ed] that there was a diminution in value of the property, and that the frequent, low-level flights were the direct and immediate cause. We agree with the Court of Claims that a servitude [taking] has been imposed upon the land.”
3. Government must provide just compensation for taken property.


1. “A use restriction on real property may constitute a “taking” if not reasonably necessary to the effectuation of a substantial public purpose, or perhaps if it has an unduly harsh impact upon the owner’s use of the property.”
2. A comprehensive plan to preserve structures of historic or aesthetic interest wherever they might be found in the city.
3. No. Government did not interfere with the present use of the terminal, or with Penn Central’s reasonable expectations for use of the property as a transportation hub. The restrictions promoted the general welfare by preserving the aesthetic features of the property.


1. He believes the Court was prescient in its warning that it would be easy, but not constitutional, to put the burden on property owners when government wants to improve the public condition by limiting what they can do with their property.
2. Accept reasoned answers.