

Exam # _____
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UNIVERSITY OF CALIFORNIA
HASTINGS COLLEGE OF THE LAW

YEAR-END EXAMINATION: JURISPRUDENCE
(COURSE #43221)

PROFESSOR EVAN LEE

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SPRING SEMESTER 1996

TOTAL TIME: 24 HOURS

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INSTRUCTIONS:

This is a take-home exam. You have 24 hours to complete it. Please limit your answers to a total of 15 double-spaced, typed pages or four handwritten bluebooks. In writing your answers, you may consult only the course reader and your class notes.

You may take this exam any time within the exam period. Please do not discuss the exam with any of your classmates until the exam period ends. The three questions will weigh equally in your final grade.

(Question 1 begins on next page)

BEWARE: THE FACTS AND LAW IN THIS HYPOTHETICAL HAVE BEEN FICTIONALIZED.

1. Atlantic Law School, a public institution in the State of Atlantic, has an affirmative action element to its admissions program. Applicants who seek some consideration of their disadvantages apply to a separate program, called Positive Steps Toward Empowerment (PoSTE). In this separate admissions program, consideration is given to the following factors (in addition to GPA and LSAT): disadvantages suffered in primary and secondary education; English as a second language; instability in the home during the formative years, including abuse by the parents; financial hardship; socioeconomic and cultural composition of the neighborhood the applicant was raised in; documented learning disabilities; and race. Records show that each of these criteria has at one time or another played a decisive part in the admission of PoSTE students.

Statistics show that students admitted through PoSTE have roughly twice as high an academic failure rate as students admitted through the regular process. They also show that PoSTE students pass the Atlantic bar in their first attempt at about half the rate of students admitted through the regular process. Many PoSTE graduates pass the Atlantic bar the second or third time around, and some of them eventually pass the bar in other states instead. Alumni records show that several PoSTE graduates have gone on to become well-known and successful public interest lawyers, legal aid lawyers, private practitioners, and judges. However, a significant number of PoSTE graduates never pass any bar exam.

In the winter of 1996, Amanda Ashley, a middle-class Caucasian female with no learning disabilities, applied for admission to Atlantic Law School. She applied through the PoSTE program, claiming that she suffered disadvantage when her parents were divorced early during her childhood. The Atlantic admissions department refused to place her in the PoSTE program, and instead shunted her application onto the regular admissions track. Ashley's GPA from Atlantic State was 3.3, and her LSAT was in the 85th percentile. This placed her just below the presumptive admit threshold at Atlantic Law School. She was denied. Records show that more than 75 percent of the non-white students admitted through PoSTE that year had a lower overall admissions index than Ashley.

(Question 1 continues on next page)

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The only relevant United States Supreme Court decision is a 1978 case, Atlantic University Medical School v. Allan Brekke. In that case, the Court ordered a white male admitted to a state-run medical school because a certain number of slots had been set aside for non-whites. The Court stated that, although race might be considered as one factor in the admissions process, it could not be the dominant factor.

A recent, methodologically valid poll shows that 65 percent of Americans think affirmative action works an injustice on white people. Even 48 percent of the non-white people in the poll agreed with this statement. Moreover, 57 percent of Americans think affirmative action hurts non-white people in the long run.

Ashley filed suit in the Atlantic Superior Court, requesting an injunction ordering her to be admitted to the law school. She argued that PoSTE discriminated against her on the basis of her race. The Superior Court, based on its interpretation of Brekke, held for Ashley and issued the injunction. The state court of appeals and state supreme court affirmed.

How would a "legal pragmatist" Supreme Court justice decide this case? Is there a range of outcomes that would be acceptable to a pragmatist? What considerations would be essential to a pragmatist? How would a pragmatist approach differ from a "foundationalist" approach? (Don't worry if you don't know any Equal Protection law. Assume your notions about it are correct and go from there.) Be sure to give at least one concrete example of an outcome that would be acceptable to pragmatists generally, if such an outcome exists.

(Question 2 on next page)

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2. You are on a seven-hour, cross-country flight. The old man next to you has just opened his newspaper to the story about the Supreme Court upholding the affirmative action program at Atlantic Law School against a reverse discrimination challenge.

He turns to you and says: "Well that's those liberal Supreme Court justices for you. The school admits it's discriminating against white people and the court still won't do anything about it. I guess the Constitution doesn't mean anything. These judges do whatever they want."

How might a typical Legal Realist or Critical Legal Scholar respond to this statement? A typical legal liberal? A typical Critical Race Theorist? You?

(Question 3 on next page)

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3. In your opinion, what are the principal arguments made in Professor Regina Austin's Sapphire Bound!? Please indicate whether you agree or disagree with each of these principal arguments, and why.

END OF EXAMINATION
