CAPITAL UNIVERSITY
LAW AND GRADUATE CENTER

JURISPRUDENCE — PROFESSOR STRASSER
FALL SEMESTER, 1995 — NOV. 22, 1995
FINAL EXAMINATION — TAKE HOME

INSTRUCTIONS

1. THIS EXAM IS DUE NO LATER THAN 6:00 P.M. ON WEDNESDAY DEC. 13 IN MY OFFICE (121). As a matter of convenience, the exam may be turned in earlier. If I am not there when you want to turn in the exam ask Vicki Cosby-Jefferson (the secretary down the hall) to let you into my office to place your exam in the appropriate box.

2. The exam must be TYPED and DOUBLESPACED on 8 1/2 by 11 paper. There should be 1 INCH MARGINS, and the print should be between ten and twelve characters per inch (10 cpi - 12 cpi). THE EXAM MUST NOT EXCEED FOURTEEN (14) PAGES. You may only write on one side of each page. Number your pages. You may allocate the pages as you see fit. However, YOU MUST BEGIN YOUR ANSWER TO EACH QUESTION AT THE TOP OF A NEW PAGE. THE FAILURE TO FOLLOW THESE DIRECTIONS WILL RESULT IN A LOSS OF POINTS.

3. The first question counts for three quarters (3/4) of your grade whereas the second question counts for one quarter (1/4) of your grade.

4. This is an open book exam. However, you are not permitted to consult with anyone about the questions or answers until all papers have been submitted. YOU SHOULD BE ABLE TO DO VERY WELL ON THIS EXAM WITHOUT ANY OUTSIDE RESEARCH.

5. IDENTIFICATION: Write your exam number on the first page and on every succeeding page. Neither your name nor any other identifying mark, other than your exam number, should appear anywhere on your answer.

6. Take time to organize your answers, which should be concise and to the point.

7. CITATION When citing to a case we discussed in class, it will suffice to use the name of the case, e. g. , the Baby M. court or the Hogan Court.

QUESTION 1

The Board of Education in the city of Progressive in the state of Columbia (which is in the 14th Circuit) has set up a separate high school for African-American males. There is ample evidence that minorities (including women) perform better in single sex/single race schools. For example, the dropout rate decreases significantly and test scores improve dramatically. The Board of Education has decided that it has a duty to provide the best educational opportunities possible for its students. Regrettably, because of limited funds, the Board could only set up one such school. Other schools (e.g., for other minorities) will be considered depending upon the success of this program.

The school has facilities which are as good as but no better than the facilities in the other schools. No one is forced to attend this school, although only African-American males have the option to attend.

The only potentially relevant case law to be considered here involves the following:

Commonwealth v. Aves, 35 Mass. Rep. (18 Pickering) 193 (1836)
Plessy v. Ferguson, 163 U.S. 537 (1896)
Brown v. Board of Education, 347 U.S. 483 (1954)
McLaughlin v. Florida, 379 U.S. 184 (1964)
R.A.V. v. St. Paul, 112 S. Ct. 2538 (1992)
Wisconsin v. Mitchell, 113 S. Ct. 2194 (1993)

There are five judges on the court, which is to hear this case, each of whom follows a particular legal tradition. The traditions are represented by the following theorists:

DWORKIN
KENNEDY
BELL
MACKINNON
HOLMES

The policy has been challenged by the parents of a white, male student who argue that this facially discriminatory policy violates the Fourteenth Amendment guarantee of Equal Protection. You have been asked to write a memo analyzing the positions, which will likely be adopted by each of the above judges. Be sure to include the reasoning which each would employ.

QUESTION 2

The state of Capitania has decided that there are too many difficulties associated with commercial surrogacy. Rather than prohibit the practice entirely, the Capitania Legislature has decided that only married women will be permitted to engage in the practice. The state has articulated several reasons to support that policy:

1. It is immoral for unmarried women to bear children. This statute promotes morality.
2. Married women are more likely than unmarried women to have had children and thus are more likely to know the difficulties associated with pregnancy and with surrendering parental rights.
3. Married women are less likely to be economically coerced into providing this kind of service because they are more likely to have someone else (i.e., a spouse) providing at least some financial support.
4. In case something should go wrong and the commissioning couple should refuse or be unable to accept the child, it is more likely that a married woman (as opposed to an unmarried woman) could provide a structured, stable home for the child.
5. Because of some of the factors listed above, unmarried women are unlikely to be able to give informed consent when making the surrogacy contract and thus must be barred from making them as a matter of public policy.

This policy has been challenged by an unmarried woman who has been a commercial surrogate in the past and who wishes to be one again. You have been asked to write a memo within one of the legal traditions we covered in class, discussing the constitutionality of the above statutory classification. (Please explicitly identify the tradition within which you are writing.) For present purposes, the only potentially relevant case law is listed below:

Bradwell v. State, 83 U.S. 130 (1873)
Buck v. Bell, 274 U.S. 200 (1927)
Griswold v. Connecticut, 381 U.S. 479 (1965)
Eisenstadt v. Baird, 405 U.S. 438 (1971)
Geduldig v. Aiello, 417 U.S. 484 (1974)
Mississippi University for Women v. Hogan, 458 U.S. 718 (1982)
In re Moe, 432 N.E.2d (Mass. 1982)
Bowers v. Hardwick, 478 U.S. 186 (1986)
In re Baby M, 537 A.2d 1227 (N.J. 1988)
Barnes v. Glen Theatre, 111 S. Ct. 2456 (1991)