

CAPITAL UNIVERSITY  
LAW AND GRADUATE CENTER

JURISPRUDENCE  
FALL SEMESTER, 1996  
FINAL EXAMINATION

PROFESSOR STRASSER  
NOV. 27, 1996  
TAKE HOME

INSTRUCTIONS

1. THIS EXAM IS DUE NO LATER THAN 6:00 P.M. ON WEDNESDAY, DEC. 18 IN MY OFFICE (121). As a matter of convenience, the exam may be turned in earlier. LATE EXAMS WILL HAVE ONE TENTH (1/10) OF THE TOTAL POSSIBLE NUMBER OF POINTS DEDUCTED FOR EACH TWENTY-FOUR HOUR PERIOD THAT THEY ARE LATE. THUS, AN EXAM TURNED IN AT 6:01 P.M. ON WEDNESDAY, DEC. 18, WILL HAVE ONE TENTH (1/10) OF THE TOTAL POSSIBLE NUMBER OF POINTS DEDUCTED. AN EXAM TURNED IN AT 6:01 P.M. ON THURSDAY, DEC. 19, WILL HAVE ONE FIFTH (1/5) OF THE TOTAL POSSIBLE NUMBER OF POINTS DEDUCTED. ETC. If your exam is late, please put the date and time that you are turning it in on the first page.

2. Please make sure that you LABEL YOUR EXAM ON THE FIRST PAGE - "Jurisprudence"

3. a. The exam must be TYPED (wordprocessing output is acceptable) and DOUBLESPOCED on 8 1/2" by 11" paper.

b. There should be 1 INCH MARGINS, and the print should be no smaller than TWELVE characters per inch (12 cpi). (For illustration purposes, the print of this exam is 12 cpi)

c. THE NUMBER OF LINES OF PRINT PER PAGE SHOULD NOT EXCEED TWENTY-SEVEN (27).

d. THE EXAM MUST NOT EXCEED FOURTEEN (14) PAGES. Number your pages. You may allocate the pages as you see fit but you may only write on one side of each page.

e. THERE MUST BE AT LEAST A PAGE BETWEEN THE END OF YOUR FIRST ANSWER AND THE BEGINNING OF YOUR SECOND ANSWER. (The blank page should not be numbered and does not count toward the 14-page limit.)

f. STAPLE (do not clip) the pages of your answer together.

g. Do not use footnotes.

FAILURE TO FOLLOW THESE DIRECTIONS MAY RESULT IN A SIGNIFICANT LOSS OF POINTS.

4. The questions are of EQUAL WEIGHT.

5. 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.

6. **AMBIGUITIES:** If you find the facts given to be insufficient to answer a question, state any additional factual assumptions you deem necessary and answer the questions as though your assumptions were part of it. **WARNING: DO NOT MAKE THE MISTAKE OF CHANGING THE QUESTION BY CHANGING THE FACTS.**

7. **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.

8. **REPETITION.** When I grade these, I will look at Question One in ALL of the exams and then look at Question Two in ALL of the exams. Merely because you have said something in Question One does not mean that you will get credit for it in Question Two. **DO NOT CROSS-REFERENCE.** (I don't want my judgment of how you are doing in Question Two to be affected by my judgment of how well you did on Question One.)

9. **CITATION** When citing to a case we discussed in class, it will suffice to use the name of the case.

10. Make an extra copy of your exam.

11. **DO NOT CALL TO ASK ME QUESTIONS ABOUT THE EXAM ONCE THIS CLASS HAS ENDED. AS A MATTER OF FAIRNESS, I DO NOT WANT TO GIVE ANSWERS TO SOME STUDENTS THAT OTHERS DO NOT HAVE THE BENEFIT (OR DETRIMENT) OF HEARING. YOU WILL SIMPLY HAVE TO USE YOUR OWN JUDGMENT ABOUT HOW TO HANDLE ANY POSSIBLE DIFFICULTIES WHICH YOU HAVE DISCOVERED ONCE THE TIME FOR ASKING QUESTIONS HAS PASSED.**

## QUESTION 1

Progressiveville High School has been rocked again by tragedy. Three high school students have been charged with the murder of a fellow student. Witnesses had heard the accused yelling, "Die, gayboy," while they had beaten the individual to death.

In response to this incident, a series of beatings motivated by orientation bias, and some recent suicide attempts by gay and lesbian students, the Progressiveville Board of Education decided to do something it had been considering for awhile -- setting up a special high school for gay, lesbian, and bisexual youth. There are already several specialized programs in the school district, for example, for students who wish to specialize in the natural sciences, the performing arts, or the mechanical arts.

Experience in other districts indicates that setting up a separate school for lesbian, bisexual, and gay youth will increase test scores and the number of students going to college, reduce truancy and violence, and promote tolerance in all district high schools. Nonetheless, one year after the school had been established, a suit was brought challenging the creation and maintenance of such

a school on Equal Protection grounds.

You are a clerk for the District Court judge who must decide whether such a school passes constitutional muster. You have been asked to write a brief which both clarifies the issues and makes a recommendation about how the case should be decided. In your analysis, please limit your discussion of cases to those we read in class. (It is of course true that not all of the cases we read in class will be relevant here.)

## QUESTION 2

The state of Capania has passed a law which allows competent, terminally ill individuals to receive assistance-in-dying in certain specified conditions from thanatologists (individuals who are licensed to prescribe or, if necessary, inject lethal drugs). Basically, two doctors must certify that the individual is terminally ill and one psychologist must certify that the individual is indeed competent. The individual must state his or her desire to die on three separate occasions (with at least one week having passed between each of the declarations). When these conditions have been met, a thanatologist is authorized to prescribe or administer (whichever the patient requests) the lethal, painless drug.

One year after the statute was implemented, it was challenged by several public interest groups who argued that the statute is unconstitutional because a disproportionate number of racial minorities, women, and the poor have been thanatized.

A different group argues that the statute is underinclusive, since it does not allow incompetent individuals to be thanatized, even if they had met the requirements while they were still competent and had made their wishes clear in a Living Will.

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

You have been asked to write a memo analyzing the positions, which will likely be adopted by the above judges. Be sure to include the reasoning which each would employ.