

UNIVERSITY OF MISSISSIPPI
SCHOOL OF LAW

EMPLOYMENT DISCRIMINATION LAW
Professor Secunda

FINAL EXAM

Date: December 5, 2005

Time Allowed: 3 Hours, 30 minutes

Instructions

1. This is an open book examination. You may refer to any materials.
2. Please "sign" the following pledge by writing your examination number on the line after the pledge. DO NOT write your name on this examination or on any bluebook.

By the act of submitting my examination, I do pledge, on my honor, that I have neither given nor received any improper assistance and that I will report any improper assistance given or received by others of which I am aware.

Exam No. _____

3. No examinations may leave the examination room. Return your examination to the front of the room at the end of the examination.
4. The first thirty (30) minutes of the examination is recommended for the purpose of reading over the examination and organizing your thoughts.

GOOD LUCK AND HAVE A GREAT WINTER HOLIDAY!

DO NOT TURN TO THE NEXT PAGE UNTIL INSTRUCTED

THREE QUESTIONS (100 Points)

QUESTION ONE (One Hour; 35 points)

Unbeknownst to Mr. Crab, Spongebob Squarepants has decided to leave the pleasures of working at the Krusty Krab and has accepted a job at Plankton's new Crabby Patty Factory. Including Spongebob, the factory now has 14 full-time employees, 2 part-time employees, and a volunteer employee. Additionally, Patrick Starfish is working as an independent contractor for Plankton in the area of Strategic Communications.

Although Spongebob loves working at Plankton's factory, Sandy the Squirrel (a female) believes she is being treated worse than Spongebob as far as salary, working conditions, and promotions are concerned. Sandy and Spongebob started working at Plankton's on the same day, but Spongebob is now her supervisor on the Crabby Patty assembly line and has a plush corner office. And even when Sandy and Spongebob worked on the assembly line together doing what appeared to Sandy, the same work, Spongebob was paid an additional \$5,000 in salary. When Sandy asked Plankton about the discrepancy in wages, he merely replied that Spongebob's prior experience made him a more valuable employee to the factory.

In order to protest the better treatment of men at Plankton's, Sandy sets up a picket line after work outside of Plankton's, asking consumers not to purchase Plankton's Crabby Patties until he treats women as well as men in the workplace.

Irate when he finds out about Sandy's disloyal off-duty activities, Plankton immediately fires her, stating aloud for everyone in the factory to hear, "Tarter Sauce! I would have fired her anyway since she was impermissibly taking time off work to go visit Texas."

- A. Sandy comes to your law office seeking legal advice. Please explain to her what potential legal relief is available to her under employment discrimination law. In doing so, please explain the remedies that might be available to her as well.
- B. Can Patrick Starfish bring a claim under Title VII against Plankton, in his individual capacity, for terminating him because of his religion (Taoist)?

QUESTION TWO (One Hour; 35 points)

Dora the Explorer, and her best friend Boots the Monkey, work for Little People Adventures Corporation (LPAC), a large company which takes young children on adventure trips throughout the world. (For this question, assume that no child labor law has been violated and that Dora is a statutory employee for purposes of Title VII).

For some time now, Dora, a Mexican-American, has agitated for better health insurance benefits from the company, given the risky, and sometimes dangerous, aspects of her job

(you never know when you are going to run into Swiper the Fox). On January 1, 2006, Dora is told that she will be terminated from her adventure guide position due to lack of business, effective April 1, 2006. Dora has no ability to appeal this decision within the company.

Dora believes that she has been fired because she is Mexican-American. Indeed, LPAC does have a policy against hiring non-U.S. citizens which appears to disproportionately impact Mexican-Americans.

Dora files a charge of discrimination with the EEOC on May 1, 2006 (the state in which Dora resides is a non-deferral jurisdiction like Mississippi), alleging national origin and sex discrimination. After waiting 180 days, and after receiving no indication that her charge of discrimination has been investigated by the EEOC, Dora asks for, and receives, a right to sue letter. She thereafter files a class action on behalf of all Mexican-American employees who have suffered any type of employment discrimination at the hands of LPAC from the date she was hired (January 1, 2002) until her date of termination (April 1, 2006).

- A. LPAC comes to you and wants you to represent them in all legal matters concerning Dora the Explorer. Please explain to LPAC how you will seek to defeat Dora's the employment discrimination claims, including the certification of the class Dora seeks to represent. You **do not** need to discuss remedies in answering this question.
- B. If there had been historical discrimination against females at LPAC, and as a result, LPAC set up a voluntary affirmative action plan to hire more women, would such a plan be in violation of Title VII?
- C. Can Dora base her employment discrimination claims on the fact that one of her supervisors made an anti-Mexican-American statement to her in June of 2003?

QUESTION THREE (One Hour; 30 points)

Comment critically on the following statement:

"The *McDonnell Douglas* framework is no longer necessary after the United States Supreme Court's decision in *Desert Palace, Inc. v. Costa*, and all claims for intentional discrimination under Title VII should henceforth be decided under a Civil Rights Act of 1991 mixed motive analysis."

Integrate cases and policy arguments in supporting your answer. In answering, please first state what the current law *is*, and then consider what the law *should be*.