

UNIVERSITY OF MISSISSIPPI
SCHOOL OF LAW

EMPLOYMENT DISCRIMINATION LAW
Professor Secunda

FINAL EXAM

Date: August 7, 2007

Time Allowed: 3 Hours

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. There are **THREE PARTS** to the exam, allotted equal time. Please be sure to do all parts of the exam, spending sufficient time on each.

GOOD LUCK AND HAVE A GREAT REST OF THE SUMMER!

DO NOT TURN TO THE NEXT PAGE UNTIL INSTRUCTED

THREE PARTS (100 Points)

PART ONE (One Hour; 6 Questions, 6 points each for a total of 36 points)

QUESTION ONE

Harry Potter is a member of a church which does not permit its members to work on Fridays. The problem is that he does not have enough seniority to bump into a shift that does not have Friday work. Must his employer, Hogsmeade Hoagies, accommodate Harry's religious practices?

QUESTION TWO

Hermione Granger, who is a lesbian, believes that she is receiving unwanted sexual attention from Ginny Weasley. For Title VII purposes, does it matter whether Ginny is harassing Hermione because Ginny is a lesbian or because Ginny dislikes woman who have masculine qualities?

QUESTION THREE

Severus Snape works for Hogwarts Honey. He is hired to make sure all of the computers run properly. He does not have an office at Hogwarts, brings his own tools to the job, is paid once every two months, and receives a 1099 tax form for his wages.

Severus believes that he is being discriminated against by a manager at Hogwarts because he is a Gypsy. Does Severus have a claim under Title VII?

QUESTION FOUR

Albus Dumbledore, a black employee with Diagon Alley Doors (DAD), wishes to bring a class action claim on behalf of all black employees who believe they have suffered disparate treatment discrimination and retaliation at the hand of DAD supervisors. If Albus does not individually have a retaliation claim, may he nevertheless bring a class retaliation claim on behalf of black employees who do?

Assuming that Albus only brings the disparate treatment claim, what type of certification should he seek so that he does not have to notify class members of their opt out rights? What types of damages will the class be eligible for?

QUESTION FIVE

Neville Longbottom must take disability leave because he is undergoing chemotherapy for prostate cancer. His employer, Dursleys Doughnuts, which has 17 full-time employees, refuses to allow Neville to return to work before he receives a doctor's note which indicates that he is "100% healed." Because his doctor cannot attest to this even

though he believes Neville can perform perhaps less onerous jobs at Dursleys, he is not able to return to work. Has Dursleys violated the Americans with Disabilities Act?

QUESTION SIX

Luna Lovegoode does not speak English very well, being of Mexican-American origin. Consequently, although she speaks understandable English to customers at Voldemort's Vault of Candy, she speaks Spanish with her co-worker, Bellatrix LeStrange, at all other times. Voldemort's then passes an English-only rule requiring that English be spoken at all times while at work. Is such a rule likely to be found unlawful if Luna files a charge of discrimination with the EEOC about the English-only rule?

Does the analysis change if Voldemort's only applies the rule when employees speak to customers, but not at other times?

PART TWO (One Hour; 34 points)

Remus Lupin, a white 55-year-old employee, is sometimes a werewolf. Most of the time, however, he is a darn good supervisor of a toilet hinge manufacturer company, Draco Malfoy Commodes (DMC) in Oxford, Mississippi. Nevertheless, being somewhat older and used to the old ways of things, he and one of his workers, Kingsley Shackbolt, a black, 30-year-old employee, do not get along. Call it generational differences.

At one point, Kingsley and Remus get into a heated argument, with Remus telling Kingsley that the "young punk" might as well start looking for another job because he is going to file insubordination charges against him. During the conversation, Remus let's drop that he does not know why the United States ever did away with segregation in the good ol' days. Fact of the matter is that although things got heated, Kingsley was not being insubordinate.

Remus calls Victor Krum, a human resources representative at DMC's headquarters in New York City, and ask that he terminate Kingsley's employment. In support of his request, and based on his dislike of younger and African-American employees, he makes up attendance and other company rule violations that Kingsley committed. Without doing further investigation, Victor accepts Remus's allegations and sends a termination letter to Kingsley.

After being terminated, Kingsley decides to file a sex and age discrimination claim and an equal pay act claim against DMC and Remus Lupin. He believes that Remus discriminated against him because of his race and age in recommending his firing and that DMC should be held vicariously liable for the unlawful discrimination. There is also evidence that Kingsley has been paid less than women doing the same job in the toilet hinge department. However, the three women in question work the night shift while he works the day shift and they have college diplomas and he does not.

- A. Kingsley comes to you and wants you to represent him in all legal matters concerning his employment discrimination claims against DMC. Please explain to Kingsley how his legal claims will be analyzed and whether they will be successful.
- B. Assuming that Kingsley is successful in his claims, what type of remedies may he seek?
- C. May Kingsley also bring a pattern practice claim on behalf on other black employees who have also been fired by Remus over the last five years. What type of evidence would he need to prove his prima facie case? What defenses would DMC have?
- D. May DMC defend itself in the individual discrimination case by admitting that Remus is a racist but saying because their customers do not like black employees, that being white is a bona fide occupational qualification (bfoq) for the job?
- E. If DMC holds Catholic religious views and says that it fired Kingsley for the legitimate non-discriminatory reason that Kingsley, a Unitarian, pledged support for pro-choice causes in a local newspaper, will DMC prevail?

PART THREE (One Hour; 30 points)

Comment critically on the following statement:

"Congress should pass the Lilly Ledbetter Pay Discrimination Act and legislatively overturn Ledbetter v. Goodyear."

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*.