

Exam Number \_\_\_\_\_

**FINAL EXAMINATION**  
**EMPLOYMENT DISCRIMINATION LAW**

December 7, 2011

Professor Shanor

This **two and one-half hour exam** contains **5 short answer questions**. Each question carries approximately the same credit, so you should spend about 30 minutes per question. Including this cover sheet, the **exam has three pages**.

Your **exam number** should appear on **each exam page** and **each answer page**. This exam is covered by the **honor code**; by placing your exam number on this copy of the exam and your answers, you are pledging to abide by the code.

The exam is **open book** (including casebook, notes, written study aids). Computer research, downloading, electronic cutting and pasting, etc. are **forbidden**, as is assistance from any other person. This exam is being administered at different times. **Do not discuss the exam** -- some classmates may not have taken it.

**Answer concisely but use legal authorities where available**; verbose answers do not help you, will interfere with your analysis, and will cause you unnecessary time pressure. If you think you need **additional information** to analyze any question, state what you believe is needed and why it makes a difference.

**All exam questions must be returned at the end of the exam, whether you write or type your answers!**

Read, think, and organize before you write!

GOOD LUCK AND HAVE A HAPPY HOLIDAY!

**Questions**  
**(Five Questions; Approximately ½ hour each)**

1. Andrea Santee, a light-skinned African-American woman whose hair was dyed blond, applied for a position as a housekeeper at the Windsor Court Hotel in New Orleans. The Executive Housekeeper, an African-American woman herself, informed Santee during the interview that her hair color would need to be changed because the hotel had a policy against “extreme hair styles” and that Santee “should be proud to be black rather than being a white wannabee.” Santee replied that she would not change her hair color “just to obtain this or any other job.” Santee was denied the job with the Windsor Court Hotel, and came to you shortly thereafter seeking advice on the strength of a claim under federal law against the Windsor Court Hotel. Advise her.

2. An eight-year Duke University study found that the most overweight workers in the American workplace had thirteen times more lost workdays due to work-related injuries than fit workers and that the medical claims for these injuries were seven times more costly than those of their fit co-workers. Shortly after publication of this study, a boutique clothing store in fitness-conscious Aspen, Colorado, adopted a policy that any applicant whose BMI (body mass index) exceeded the ideal weight for persons of their height, weight, and gender by 20% would not be hired. The policy provided further that any employee who subsequently exceeded this weight benchmark would be discharged. Comment on the legality of this anti-obesity policy under federal law.

3. Tara Germain, an unmarried Suffolk County police officer, informed the police chief in early 2010 that she was pregnant with triplets. On the advice of her doctor, she requested light duty. The chief said police department policy was to grant light duty only to police officers with on-the-job injuries, but she later learned light duty had been granted to an officer with a back injury incurred in a football game. Later in 2010, while on leave, Germain applied for a promotion that would also have meant a pay raise, but this was denied because of a Suffolk County policy that “only employees currently on full-time duty are eligible for promotion.” Finally, in denying a promotion opening in September 2011, the chief said, “It was nothing you did or didn’t do, but with the kids you just have a lot on your plate right now.” After this third rebuff, Germain filed a charge with the EEOC alleging discrimination under Title VII. Analyze her chances of prevailing on her potential claims connected with denial of light duty and both promotions.

4. Cornelius Jefferson, a 65-year-old highly skilled African-American welder in Atlanta's largest auto repair shop, was terminated during the summer of 2011 during a "downsizing" that the company president said was due to "the sorry economy." Shortly before Jefferson was notified he was being let go, the manager of the welding operations, Mike Patterson, commented that, if he were in Jefferson's position, he would "spend some serious time traveling, fishing, eating soul food, watching reruns of Cosby and visiting the grands." When Jefferson asked Patterson what he meant, Patterson said "Man, you got it made. Pension, social security, medicare, empty nest, and a house that's paid for. If I were you, I wouldn't be hanging around this junk-heap." Jefferson tried various activities and odd jobs after his termination but became bored. He missed the challenge of work and companionship of co-workers. He came to you a few weeks ago asking you to evaluate his chances of successfully challenging his discharge on race and age grounds. Do so.

5. When hired in 2010 as a legislative lobbyist in Georgia by Hale Consultants, Van Glenn appeared to be male. However, although Glenn had been born male, he was diagnosed as having Gender Identity Disorder (GID), a medical condition recognized by the American Psychiatric Association. His health-care providers recommended in early 2011 that Glenn undergo sex change surgery and they advised him to live as a woman prior to the surgery. When Glenn appeared at work following a month-long summer vacation in September 2011 dressed as a woman, the company owner, Abner Hale, told Glenn to go home and dress appropriately. Glenn did so, but notified Hale that he was going to undergo the surgery and thereafter dress as a woman. Glenn provided literature concerning GID to Hale, but Hale fired Glenn anyway, saying "Your presentation as a woman would be seen by clients and legislators as immoral, and you would make other employees uncomfortable." Glenn has filed suit under Title VII and the ADA alleging discrimination. Assess Glenn's case and Hale Consultants' likely responses.