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Employment Discrimination La  
Final Exam Fall 1985

EMORY UNIVERSITY



Exam Number 200000031217

FINAL EXAMINATION  
in  
EMPLOYMENT DISCRIMINATION LAW

December 20, 1985

Professor Shanor

This two and one-half hour exam contains four questions which will be weighted approximately in accordance with the time allocated to each.

The exam is closed book and may be taken only in this room (105), the typing room, or the smoking room.

Read, think, and organize before you write.

Write all your answers in bluebooks or type them on typing paper.

Write your exam number on each bluebook and on each page of the exam in the space provided. Return the exam questions with your bluebooks.

GOOD LUCK!

II.  
(30 minutes)

King's College, an historically black institution, is considering adopting an affirmative action program designed to attract whites to its faculty. Under the program, the next ten faculty positions (approximately two years' worth of hiring) will be reserved for members of the white race. Publication requirements will be relaxed for those hired under this program and student teaching evaluation processes will be replaced with a "peer review process" to assess teaching performance by white faculty members. The reasoning behind this last change is fear that the college's predominantly-black student body might permit racial factors to enter into evaluation processes.

As house counsel for the College, you have been asked to prepare a memorandum for the President and the Board of Trustees concerning what problems, if any, this affirmative action plan poses under federal employment discrimination laws.

III.  
(30 minutes)

You are the law clerk for a federal court of appeals judge who has just heard argument in a case in which the appellant, Larry Blalock, was fired from his job as a salesman at Metals Trades Company.

The crucial evidence presented at trial below was a letter from company president Wendall Woodward to the EEOC explaining that Metals Trades was "generally satisfied" with Blalock's performance of sales duties but not with his "attitude towards his supervisor." The letter continued:

Larry was hired with the full knowledge and understanding that Metals Trades is a Christian Company and our rule book is the word of God, or the Bible. He said he wanted to work for a Christian Company and, being a salesman contacting new accounts, he wanted to witness to them. Larry's problem is that he refuses to submit himself to those in authority over him and the Bible makes it clear that we are to be in submission. Larry was let go for strictly secular reasons but the root of his problem is spiritual, as the scriptures will show (passages omitted).

The District Court, after applying the disparate treatment analysis of McDonnell Douglas Corp. v. Green and Texas Department of Community Affairs v. Burdine, held that "plaintiff has not proved that defendant fired him because of his religion." The opinion reads in part as follows:

The personal relationship between plaintiff and Mr. Woodward that motivated Mr. Woodward to tolerate plaintiff's poor performance as an employee was rooted in their shared religious experience. Mr. Woodward tolerated conduct and attitudes on the part of plaintiff that he may not have tolerated with any employee with whom he did not share such a relationship. When this relationship broke down, Mr. Woodward no longer felt motivated to close his eyes to plaintiff's attitudes and behavior as an employee. Regardless of the fact that religion was an important aspect of the personal relationship between plaintiff and Mr. Woodward, plaintiff has not proved that defendant fired him because of his religion or because of any particular religious beliefs he may have held.

Write a memorandum to your judge advising her whether the district court should be affirmed or reversed and why.

IV.  
(45 minutes)

Finkerton Private Patrol (PPP) is a nationwide firm which provides security guards to protect the premises of private industrial concerns, including many substantial government contractors. Pinkerton has a written procedure which establishes "minimum standards" for hiring "security guard trainees." These standards exclude from further consideration all applicants who have a history of alcohol or drug abuse or any criminal arrests or convictions. Additionally, the company gives priority consideration to applicants who have had "practical experience in the use of weapons against other human beings" such as in combat or police duty.

Ms. Misfit, a black woman rejected for a trainee position with PPP, has come to you for advice. You know the following facts about her qualifications: (1) she was once an alcoholic but has not touched the stuff for three years; (2) she was once arrested but was not convicted; and (3) she has had neither combat nor police experience but was once a WAC and last year won the state skeet-shooting contest. You also know that 10% of PPP's trainees are female and that 40% of the trainees are black; the population of the city in which this office of PPP is located and Ms. Misfit lives is 50% female and 25% black.

- a. Evaluate Ms. Misfit's chances of success in any individual actions she might have under federal employment discrimination laws. (30 Minutes)
- b. Discuss whether you would recommend an individual or class action approach to representing Ms. Misfit. (15 minutes)