JURISPRUDENCE
Fall 2016
Professor Terrell

FINAL EXAMINATION

Time allowed:
From Tuesday, Nov. 29, 2016, to the last day of the exam period: Dec. 9, 2016

Instructions:

1. Answer both questions.

2. The exam’s two questions will have different “weights” as I assess them: 65% for question One and 35% for Question Two. The grade on this exam will be calculated ultimately as a function of 4.0, which would be a “perfect” response. Thus, for the JD students in the class, your grade, as on the midterm exam, might be something like a “3.75” or “2.9,” which will then be combined with your midterm grade to determine your final “number” grade in the course. That number will then be placed within the mandatory curve for the course, which will produce your final letter grade.

3. Your exam answers as a whole should total no more than 6000 words, which should translate to something like 16 or so double-spaced pages. You may allocate your words to the two questions as you see fit. YOUR EXAM MUST NOTE AT ITS END THE TOTAL NUMBER OF WORDS YOUR ANSWERS CONTAIN.

4. The exam is being distributed through Blackboard or OPUS or whatever system the Law School (meaning my assistant, Linda Jackson) is using to all class members on Tuesday, Nov. 29, 2016. If you have any difficulty receiving the exam, notify me or my assistant (or her designee) immediately. Her telephone number is 404-727-7790. Her email address is ljack05@emory.edu.

5. The exam is, of course, completely open book. If your exam answer contains direct quotations or specific references to any materials, you should give them at least a short accompanying citation like “(Rawls, p. 23)”.

6. You may submit your exam answers at any time up until 5:00 pm on Dec. 9, 2016. You may submit the answers either in hard copy, either with your name on the exam or just your exam number, delivered to Ms. Jackson, or by email attachment. If you so desire, you can send your email response to Ms. Jackson with only your exam number, or you can email it directly to me. My email address is tterrel@emory.edu.

7. Do not communicate with anyone about the questions on this exam or your answers thereto until after the entire exam period.
QUESTION 1

A recent addition to the world of moral and political philosophy is the concept of “luck egalitarianism.” This theme generally examines whether inequality that is the result of “luck” (or “chance” or various levels and kinds of uncertainty or risk) should be remedied or corrected by society – luckiness, either positive or negative, being viewed as inappropriately unfair. The usual dichotomy that is discussed is the difference in one’s life circumstances (distributive effects) brought about by “brute luck,” like being struck by a meteorite, versus “option luck,” like winning the lottery, which entails “deliberate gambles,” as Ronald Dworkin described it. Thus, brute luck does not involve individual choices; option luck does.

The philosophical question, then, is the extent to which society should redistribute resources to compensate for unfortunate (or fortunate) instances of either – if, of course, the two can be meaningfully distinguished.

Note that this topic further involves the question of “redistribute to achieve what?” – that is, equal (or equivalent) life outcomes, or equal means to achieve life-plans (access to resources), or equal human capabilities (access to developmental opportunities), or what?

The discussion this semester of the work of Rawls, Mill, Aristotle (his concern with the elements of a good “character”), Cornell, and Terrell are all potentially relevant to an analysis of these topics (although in your judgment, perhaps some more than others), and therefore ought to be included to one degree or another in your effort. You are also free, of course, to range beyond these listed sources if you have space to do so.

One way to anchor your essay could be to consider an example that brings these various thematic elements together. I will suggest one, but you are welcome to identify and develop your own: Should national healthcare legislation prohibit health insurance providers from imposing higher insurance premiums on people with certain characteristics, like, perhaps, “fertility” (could become pregnant), or “obesity,” or “residence near a volcano,” or “owns a motorcycle,” or “lacks a college degree”?
QUESTION 2

With specific reference to my articles ("Flatlaw" and "Confronting the Legal Meaning of Religious Faith") and Drucilla Cornell’s book (At the Heart of Freedom) – and then any other material from the course you believe particularly relevant -- discuss the implications of the following hypothetical:

John and Martha, who have been living together for a short time, are now contemplating marriage. But they have different perspectives on parenthood: John is looking forward to raising children, Martha not so much. Oddly enough, however, Martha is very interested in solidifying their relationship with marriage vows, etc., John not so much. One additional fact: Martha is quite wealthy (due to inheritance from her deceased parents), John not nearly so much.

On the issues of marriage and children, John proposes a compromise, and a deal between the two of them: John will agree to marry Martha forthwith if and when she signs a contract that pledges that if she becomes pregnant, she will notify John before she seeks an abortion, and she further agrees to give John the right to veto the abortion, as long as Martha’s life is not in significant danger in continuing the pregnancy and giving birth. Martha also agrees that if she breaches this contract, this will be sufficient grounds for divorce, and she will pay John a considerable sum in liquidated (meaning “agreed upon in advance”) damages.

In the State in which they live, abortion is quite legal, and the local courts have specifically invalidated statutes that have required spousal notification prior to an abortion.

Should this contract be enforceable?