

Introduction to Legal Studies

Fall 2006

Final Examination

You have two hours to complete this exam (4:00 to 6:00 p.m.). *All students must respond to question one. You must then choose between questions two or three (answer one or the other). You may answer them in either order you wish, however. Responses must be in essay form. Question one will count for 66% of the grade, question two or three will count for 33%. We recommend you spend at least 45 minutes on the first question and at least 30 minutes on the second.*

Question One (*all students must answer the following question*):

Read the following story and analyze it according to the ideas set out in *The Common Place of Law*. You are NOT expected to touch on every single way in which this story connects to the concepts discussed in the book. However, you must demonstrate that you understand the concepts contained within Ewick & Silbey's book and that you can correctly apply those concepts to the story below, explaining in each case why it applies. Be sure to talk not only about Before the Law, With the Law, and Against the Law but also the four sub-categories (normativity, constraint, capacity, and time & space).

It was chance that brought the three teachers, Alicia, Bella and Clara, together at the Bay State bar that night. All three were drinking pretty heavily after what had been an intense semester at Holyoke High School. They should have been at home relaxing, but they were too wound up. As they began talking over bourbon, then beer, it turned out they were all there for the same reason.

Sitting with their drinks at the bar, Alicia spoke first. She'd just gotten out of a hearing before the local school board. Over the course of the past year the assistant principal, a man named Bill Robertson, had been causing serious problems for her. In faculty meetings he would talk over her whenever she spoke. He made it a habit to come into her classroom and comment on her outfits – how high the necklines were or how short the skirts were. It dawned on her slowly that she was being treated differently than other teachers. And it was only after long conversations with other new teachers – male and female – that she realized that he only treated women this way. She got mad. When she realized that Robertson paid her \$10,000 less per year than male teachers who had the same qualifications, she decided to take action.

Alicia began keeping notes in a notebook every time Robertson said or did anything to her that smacked of discrimination or harassment. She wanted to stop Robertson's treatment of her and figured this was the best way to deal with it. She also started talking to her friends who had gone to law school about the law of sexual harassment. And, very quietly, she started to check into how to file a complaint before the local school board. She wanted Robertson fired, or at least punished. So she began to learn about the hearing process and going to the library to read the school board records of past cases and the questions that were important. She wasn't going to leave anything to chance, even though she knew from reading the files that the outcome was never sure.

Alicia learned all she could and waited for the perfect moment to file a complaint. She filed the complaint with the school board the same day that the Robertson began his annual negotiations with the faculty union. Filing then, she figured, would screw Robertson because he'd be so busy with negotiations that he couldn't defend himself in her case. She was right. The timing was terrible for Robertson. In desperation, he tried to fire Alicia but that backfired when Alicia notified him of the grievance procedure that he'd failed to go through before any teacher could be fired. When the board hearing happened Alicia was prepared with her notebooks of incidents, printouts of sexual harassment law and cases, and a good sense of the types of questions each board member was going to ask. Robertson brought along a lawyer, but the lawyer had never been to such a hearing and clearly didn't know what he was in for. These proceedings didn't happen like the court cases he had argued. As a result, Alicia tied him up in knots. After an hour of deliberation the school board ruled and Alicia won: Robertson got leave without pay for two years. Alicia headed to the Bay State bar for a celebratory drink.

Bella toasted Alicia's success, but admitted that her experience was somewhat different. Robertson had pretty much done all the things to her that he'd done to Alicia. Bella asked him to stop, but he never did. Still, she didn't feel comfortable going to the school board or filing a lawsuit. That just didn't seem right. But at a party one night a year ago, Bella met a woman who'd quit teaching at Holyoke High a few years before. The woman told her that she'd been sexually harassed by Robertson and that there were dozens of women who'd left the school for the same reasons. "I hope that guy gets what's coming to him someday. All of us want to see it happen." Bella went home and talked to her girlfriend. They agreed that somebody had to take the guy to court to get justice for all of these women.

The next day Bella went to see a lawyer and told her story. The lawyer took down some notes and told her he'd call her when they were ready to file the suit. So much time passed that Bella almost forgot about the suit, but a few months later the lawyer called her and told her to show up at the courthouse the next day. She waited for hours to testify in the courtroom. When she finally got on the stand she told her story again, feeling a bit intimidated by the oak-paneled courtroom and the high bench. The judge loomed over her and the lawyers spat questions at her. But she had faith that once the judge heard her story something would happen to Robertson. She hoped someday her case would be written down in one of those big books for everyone to see that Robertson was wrong to do what he did. But, on the night she went down to the Bay State bar she'd wanted a drink to calm her nerves. It had been six months since she testified and the judge still hadn't made a decision. She couldn't take this much longer. But she didn't feel like she had any choice but to wait.

Clara bought Bella a drink. She needed it. Clara thought the other two were suckers and she told them so. She'd been harassed by Robertson, too, but she was never going to file a complaint or start a lawsuit. "What's the point? It never leads anywhere," she said. Turns out that Clara had moved to a new school each year because everywhere it was the same story. At her first school the principal had made it clear on her first day that if she wanted to keep her job she'd have to sleep with him. She put him off for a while, she even got him on tape making the threats. But when she filed a lawsuit the judge threw out the evidence on the tapes because of some law about taping people without their consent. Her next job, same story with the new boss. "I followed all the rules and filed a complaint with the school board, but one of them was buddies with the principal and got the complaint thrown out."

Clara was determined that this time things would be different. When Robertson started discriminating against her she took action. First thing she did was call the phone company and pretend she was the manager of the local strip club. She took out an ad in the Yellow Pages that said "All Night Girl Action!" and put Robertson's home number on it. She heard Robertson complaining the other day that his phone has been ringing all night every night and that he's going crazy. Next, she volunteered to write for Robertson a bunch of reports for the state Department of Education and then, when the deadlines got near she waited until the last possible minute to turn them in. Robertson was sweating bullets because if a report were late he'd lose his job.

But she didn't miss the deadline. She knew he couldn't fire her unless she did something wrong. Then she started turning the tables on him, calling out about his "sweet ass" in those "tight Dockers" when he walked down the hall (to the amusement of every woman who worked at the school). When Robertson filed a complaint against her she never contested it. Instead she just dragged the process out, asking for extensions of time for legitimate reasons but making the case take as long as possible. It drove Robertson crazy, but that was the point. If he was losing his marbles he would be too busy to bug any other teachers.

When Clara finished her story she threw back her glass of bourbon, smiled at the other two women and walked out. Alicia and Bella were shocked into silence.

Questions Two and Three (you must answer **ONE** of the following **TWO** questions):

2. Drawing on the materials assigned for this course, describe the concept of legal pluralism. Please discuss how the concept may apply to contexts (a) overseas and (b) in the USA. You must draw on at least 3 of the readings listed below.
3. Drawing on the materials assigned for this course, describe the concept of legal consciousness. How does the concept help you understand (a) the practices of legal education and (b) how certain individuals may operate with regard to accessing health care? You must draw on at least 3 of the readings listed below.

- Sally Engle Merry "Colonial and Postcolonial Law"
- Mitchell Dunier "Sidewalk"
- Laura Nader's film "Little Injustices"
- Laura Nader 'The Case of the Spilled Chillies'
- Franz Kafka "Before the Law"
- Duncan Kennedy "Legal Education and the Reproduction of Hierarchy"
- Patricia Williams "Diary of a Law Professor"
- Michael Musheno "Legal Consciousness on the Margins of Society"