

JURISPRUDENCE AND PHILOSOPHY OF LAW: MAKE-UP TAKE-HOME TEST

This make-up test is meant to help you improve the grade you got in the midterm. If you missed the midterm, you need to do this test.

This test is a take-home test for you to do at home (or computer lab, or library) during the week of Nov. 13. During that week you will work on the test. We will not meet in class. We will meet in the classroom again on Nov. 20.

Write the opinion of each of the following judges on this case. Each judge follows a particular legal school of thought: Oliver (Legal Realism/Sociology of the Case), Francis (Natural Law), and Hans (Positivist Law). As authority, precedents, laws, and rules you may only use the materials that we have discussed in class. This includes the rules explicitly stated in this case, students' contributions to class discussions, articles that we read, videos that we watched, and scenarios that we analyzed in class, among others. A material that is on the course website or course outline but that was not actually discussed in class may not be used. Be sure to include the reasoning which each judge would employ.

You are not permitted to consult with anyone about the case or its analysis. You should be able to do very well on this test without doing any outside research. Do not ask me questions about the test, once the review class has ended. As a matter of fairness, I do not want to give answers to some students that others do not have the benefit (or detriment) of hearing. You will simply have to use your own judgment about how to handle any possible difficulties, which you have discovered once the time for asking questions has passed.

Submission: You need to hand in this evaluation personally on November 20, 2017 at 1 pm IN CLASS. There are no other submission dates or places.

In the State of Lauraland, Dustin Hoffman has been accused of sexual harassment against a 17-year-old intern in 1985. Writer Anna Graham Hunter alleges that the actor, now 80, groped her on the set of TV movie *Death of a Salesman* and spoke inappropriately about sex with her. "He asked me to give him a foot massage my first day on set; I did." "He was openly flirtatious, he grabbed my ass, he talked about sex to me and in front of me. One morning I went to his dressing room to take his breakfast order; he looked at me and grinned, taking his time. Then he said, 'I'll have a hard-boiled egg ... and a soft-boiled clitoris.' His entourage burst out laughing. I left, speechless. Then I went to the bathroom and cried."

In 1985 there were no laws against sexual harassment. The Criminal Code provided only that sexual assault was defined as "vaginal penetration by a man against a woman's will." The laws now criminalize sexual assault as "intentionally touching another person for sexual purposes without that person's [valid] consent." Consent is defined as "voluntary agreement to engage in the sexual activity in question. The legal age for consent for sexual activities is 16. There is no valid consent when: (i) someone says or does something that shows they are not consenting to an activity, (ii) someone says or does something to show they are not agreeing to continue an

activity that has already started; (iii) someone is incapable of consenting to the activity; (iv) the consent is a result of someone abusing a position of trust, power, or authority; (v) someone consents on someone else's behalf.

The prosecutor of the State of Lauraland prosecutes Disting Hoffman for sexual assault of write Anna Graham Hunter.