

# ADMINISTRATIVE LAW

## EXAMINATION

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1. This is a two hour examination. The state in question I is one of the United States.
2. You may use a copy of the Administrative Procedure Act in the form distributed in class.
3. If you believe your answer requires facts not given, you may assume specific, limited facts, but you must state your assumptions.
4. The two principal questions will be weighted equally.
5. If writing by hand:
  - Start each question in on a new page, or in a new blue book
  - Write on only one side of each blue book page
  - Number blue books
  - Write exam number on each blue book
  - Write legibly; double spacing is preferred
6. If typing, start each new question on a new page.
7. Read the question carefully, and pay particular attention to the call of the question. Take time to think about and outline your answers. Conclusory answers, without adequate analysis generally receive little credit. If applying historical approaches, trends, or minority opinions, be sure to so state.
8. If a preliminary issue could be considered to be dispositive, say so, but proceed to discuss the other issues presented by the facts.
9. Remember that the prime focus is the application of the law to the facts of the question. Recitation of law without facts should be kept to the minimum necessary to introduce discussion of the facts.

**WATCH YOUR TIME!**



A state statute provides:

The Parole Board shall release on parole any person confined when in its opinion there is a reasonable probability that the prisoner can be released without detriment to the prisoner or the community. Parole shall be ordered only for the best interests of society.

"Parole" is the release from confinement on certain conditions to be observed by him before the full sentence has been served.

Upon receipt of an application, the Board makes an initial review. If it is found that the prisoner is not eligible for parole, either (a) because of the terms of his sentence or (b) because the required period since a prior application has not passed, the Board will reject the application without further consideration, and the prisoner is informed in writing of the decision.

If, after initial review by the Board the application is found to have "possible merit," the Board submits copies of the request by mail to (1) the warden of the prison in which the prisoner is incarcerated and (2) the district attorney who prosecuted the prisoner, and requests written responses.

The Board then reviews the applicant's prison records, the replies of the warden and the district attorney, and any written material the prisoner has submitted with his application. The prisoner is informed in writing of the decision.

Discuss any claim by a prisoner whose application has been denied that he has been denied a constitutionally protected right:

- A. If denied after initial review.
- B. If denied after a finding of "possible merit."

The (Federal) Equal Economic Opportunities Commission (EEOC) is responsible for enforcement of the Americans With Disabilities Act (the "Act"). The staff of the EEOC has written and prepared an Employer's Compliance Manual.

Employers are required to make reasonable accommodations for employees who suffer from an "impairment" which affects a "major life activity."

One section of the Manual defines an "impairment" for purposes of the Act. It specifies that certain things are not impairments within the meaning of the Act, and defines the "major life activities" which must be affected for a particular set of characteristics to be an impairment.

Several active groups which support the rights of handicapped individuals contend that both the definitions of "impairment" and "major life activities" improperly narrow the meaning of the Act, and deny coverage to many persons that Congress intended to cover.

The Commissioners have asked you:

- A. Whether the EEOC may proceed to enforce the Act on the basis of the Manual despite the objections of the support groups.
- B. Whether it would be appropriate for the EEOC to advise employers that it will rely on the Manual in its decision making despite the objections of the support groups.
- C. Whether it would make any difference as to EEOC enforcement policy and reliance by employers if the Manual were promulgated as an EEOC rule.
- D. What procedure would the EEOC follow to promulgate the Manual as a rule?

Respond to each of the foregoing.