

Jurisprudence 2000 Answer Key (210 points possible)

I. Natural Rights (Evan Allgood)

\_\_\_ 5 justification for law is in morality; source of principles is either divine or found in human nature—religious and scientific strands

\_\_\_ 5 which moral system, since values and truths change over time (looking for truth regardless of current state of law) v. need for predictability and stability in laws

\_\_\_ 5 biblical context (could be used to demonstrate a “natural order”—man is superior to other beings—or to demonstrate precepts of dignified treatment—thou shalt not kill)

\_\_\_ 5 scientific evidence (significant differences between apes and humans): what are features of “being human” (social communities, cognitive and emotive capacities, self-awareness, DNA, but no empathic abilities) and where should lines be drawn?

\_\_\_ 5 precedent from protection of minority groups (e.g., slavery until 130 years ago and antimiscegenation laws as recently as 1960s)

\_\_\_ 5 animal testing serves known humans (the majority of humans use animals as a food source v. increasingly recognizing animals as emotional companions); Dworkin says rules are interpreted by prevailing morals and political structure of community

\_\_\_ 5 if the current treatment is unjust it should prompt civil disobedience and protests (comparison of Socrates, Thoreau, Rawls and Martin Luther King)

\_\_\_ 10 natural rights theorist could go either way, depending upon which strand (religious or scientific) he favored *and* what interpretation of it: might argue for at least the right to life but might not ban experimentation “for any reason” (perhaps only experimentation that causes unnecessary suffering) or might use religious and scientific tenets to argue for hierarchy of species or might use scientific principles (dwindling to point of extinction) to argue for preservation for scientific purposes

II. Law and Economics (Rick Stein)

\_\_\_ 5 cost-benefit analysis to determine which rule promotes efficiency; rationality defined economically

\_\_\_ 10 compare value of scientific research (gains of both knowledge—genetic similarity and ability to be test subjects for human diseases—and money) to chimp protection (extinction concerns; would not be analyzed as chimp dignity—because the market doesn’t care about fairness to chimps—but as market response to scarce goods); supply

and demand principles will regulate (and avoid extinction because prices will rise as supply dwindles)

\_\_\_ 5 animal rights advocates' wishes can be assessed in the calculation of utility (everything is commensurable)

\_\_\_ 5 examine whether regulation of animal experimentation is Kaldor-Hicks efficient (who is better off, worse off)

\_\_\_ 5 general preference for an unregulated market, as with Landes and Posner's baby-selling and Epstein's cure for employment discrimination

\_\_\_ 5 leave the area unregulated and allow animal rights activists to compete with pharmaceutical companies and purchase chimps to protect them (people vote with dollars in the marketplace to allocate scarce resources)

\_\_\_ 5 positive v. normative law and economics: normative law and economics would ask a different question (if rights extended, how to do so most efficiently)

\_\_\_ 5 law and economist probably would favor status quo (absence of regulations and present practice seemingly efficient), would not address whether chimps have characteristics of personhood (or even whether chimps can make "rational" decisions)

### III. Cultural Feminist (Katherine Franklin)

\_\_\_ 5 focus on connectedness to and ethic of care for others and nurturance, all of which dictate social responsibility to others West

\_\_\_ 5 emphasis on differences or special treatment (would recognition be of differences between species or of disempowered position of apes?), or recognition of similarities (98.5% DNA, community-building capacities)

\_\_\_ 10 would examine what is behind the law as presently constructed (concepts of living beings as property, hierarchy, reminiscent of treatment of women, absence of rights and legal standing)

\_\_\_ 5 cultural feminists recognize the social construction of both identity, so chimps' social and community building qualities would be important to cultural feminists in determining whether they should be accorded rights or at least humane treatment, and of knowledge, so the lack of evidence about chimps' empathic abilities may be due to the frailties of the state of our scientific knowledge

\_\_\_ 10 recognition of dignity in treatment and attention to issues of bodily integrity, e.g., Roe v. Wade parallel with avoiding windowless, cinder-block cages, injection with HIV virus, would benefit humans as well v. right to life ideas dangerous re abortion rights

\_\_\_ 5 feminists focus on the ways substance and process interact—the absence of legal standing = absence of effective voice; at a minimum would afford standing to determine fair treatment

\_\_\_ 5 cultural feminist would probably support protective legislation, in part because the cage, property treatment of chimps and absence of legal standing parallels are strong, and since such legislation promotes empathy and dignity

#### IV. Critical Legal Studies (Dan Canady)

\_\_\_ 5 application of indeterminacy idea: look at politics of present laws (protecting economic and selfish human interests)

\_\_\_ 10 keeping the area unregulated promotes the ideology of human superiority (and of hierarchies generally) Kennedy; regulation might promote humane treatment within our species; on the other hand, legal rules will not stop practices of animal experimentation

\_\_\_ 5 crits would deconstruct the concept of animals as property (thinking outside the cage, as it were), but the deconstructive effort has no stopping point (earthworms have circulatory systems and feel pain, bunnies and gerbils are popular children's companions) Balkin

\_\_\_ 10 crits would be less concerned with conferring legal standing or rights (the "critique of rights") and thus unwilling to use rights to solve problems of unequal treatment, and more concerned with creating understanding and compassion for animals who may, to some people, be seen as family members

\_\_\_ 5 guaranteeing humane treatment to chimps might decrease alienation generally by making people think about others and the roles into which we put them Gabel

\_\_\_ 5 CLS adherent probably would support protective legislation that promotes Singer's warm and fuzzy values of dignity and decrease of suffering but might unbundle right to life ideas (abortion, capital punishment consequences) from humane treatment concepts

\_\_\_ 5 Organization and compliance with formal requirements: word count, number pages, exam number on all pages

\_\_\_ 10 Analytical depth; Use of theorists; Answering the specific question, and tying the points to the particular theories—specific factual analysis of the problem and avoidance of a generalized high-level theory discussion; Specific examples

\_\_\_ 10 Innovative arguments and Originality of thought and language, rather than sheer repetition of words and ideas from class or books

\_\_\_ 10 Writing style, grammar, composition, use of complete sentences, spelling, polish, typos