

HOUSING AND THE LAW: LESSON 5: DISCUSSION QUESTIONS

DISCUSSION QUESTIONS

1. Should state courts be able to legally enforce a restrictive covenant that private individuals have created?
 - a. Why or why not?
2. The Court assumes that the Shelleys and McGhees would have been able to move in and live on the properties without “restraint” had the state courts not interfered and enforced the restrictive covenants.
 - a. Do you agree with this argument? Why or Why not?
3. The Court argues racially restrictive covenants alone do not violate the fourteenth amendment. People could privately and legally discriminate however they liked.
 - a. Do you agree or disagree with this position? Do you think people should be allowed to choose who is able to live in their neighborhood while excluding others?
 - i. Why or Why not?
4. The Black real estate agents who helped the Shelleys with their case also made a profit from selling homes to them and other Black buyers at higher prices.
 - a. Why might they feel the need to do this, and was this a fair practice?
 - b. Does it matter that they did this even though they worked to help the Shelleys and other families become homeowners in better neighborhoods? Why or why not?
5. Willis Graves and Francis Dent used several strategies to argue against racial covenants. What do you think was the most persuasive argument they offered? Why?
6. Think about what this lesson tells us about race and U.S. housing law at the time.
 - a. Who was winning? Who was losing?
 - b. Whose side do you think the law was on?
 - c. Are there simple answers to these questions?

WRITING PROMPT

The Supreme Court ruled that the state courts of Missouri and Michigan could not enforce restrictive covenants that were based on race. These actions fell under the **state action doctrine** which prohibited the government from discriminating. In its reasoning, the Supreme Court claimed that even though these cases dealt with private agreements that are normally excluded from state action, the state courts were using governmental power to enforce these private agreements, which violated the fourteenth amendment's **equal protection clause**. This enforcement of racially restrictive covenants denied the Shelleys and McGhees from fully enjoying and exercising their rights to own property.

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However, had the state courts not enforced these agreements, the Supreme Court would not have found a legal issue in the racially restrictive covenants alone. The Court said that individuals could discriminate privately.

Take the perspective of a justice on the Supreme Court. Do you agree with this majority opinion? Did it go far enough? Is there anything you would change? Consider everything you have learned so far in this unit and write a statement that either *concur*s (agrees), or *dissent*s (disagrees) with the Court's opinion. It is possible to agree with some of the opinion and disagree with other parts. Use evidence and reasoning to support your argument and be sure to explain why you agree or disagree with the opinion.