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## INDIRECT DISCRIMINATION - EXERCISE 2 (1/1 point)

2. What are the arguments in favor of the two competing definitions of indirect discrimination? Choose between the following statements:

- ☐ "Disparate impact" discrimination requires the potential victim to have access to statistics, which in many cases may be difficult to obtain, in order to prove discrimination. Therefore this definition of indirect discrimination is not in the favor of victims;
- ☐ Indirect discrimination defined as a neutral measure that in fact imposes a specific disadvantage on the members of a certain group is insufficient to address all instances of indirect discrimination, because in many cases, the procedures, criteria or policies that are applied are not suspect on their face, but turn out to be potentially discriminatory only once we turn to statistics revealing disparate impact. Therefore a definition of indirect discrimination that refers to the specific disadvantage a measure imposes on a particular group is insufficient; or,
- ☒ Both of these statements are correct. 

## EXPLANATION

Indeed, each of the competing definitions of indirect discrimination presents certain deficiencies. "Disparate impact" discrimination does require that people are classified on the basis of their race or ethnicity, religion, or sex (for instance), which in certain cases may be difficult to do, either because of cultural norms within the country and the risk of this reinforcing communitarianism, or because of legal restrictions concerning the processing of personal data. But on the other hand, it is also true that a narrow definition of indirect discrimination as consisting in the adoption of apparently neutral measures that appear to *impose a specific disadvantage* on the members of a certain group may not be sufficient. Indeed such a definition will not allow to address a wide range of measures that may be discriminatory but will not, on their face, be seen as imposing such a disadvantage. For instance, informal procedures (such as job interviews) or psycho-technical tests in recruitment processes may only appear discriminatory once we are able to measure the impacts on different categories of people: the discriminatory impacts may remain invisible until such data are made available. The best approach may therefore be to combine both approaches to indirect discrimination. This would mean (i) to allow a victim to allege indirect discrimination without requiring that he or she proves this by putting statistics forward, but (ii) allowing the victim to rely on statistical evidence, where data are available and the sample statistically significant.

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