

Ross v. Blake: The Gist
John Boston
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1. Basic holding: there's no "special circumstances" exception to PLRA exhaustion, just the textual restriction to "available remedies."
2. Forget administrative law. *Woodford v. Ngo* left the impression that general principles of administrative law might help guide, and soften, the interpretation of the PLRA exhaustion requirement. *Ross* makes clear that is not the case.
3. *Ross* generally endorsed the body of law holding that "machination, misrepresentation, or intimidation" can make a prison remedy unavailable, without addressing the current disagreement whether intimidation claims are governed by an objective standard (occurrence of conduct that would deter a person of ordinary firmness) or a subjective one (such conduct actually *did* deter the plaintiff).
4. When the "facts on the ground" show that there is no possibility of relief through the administrative remedy, it is unavailable; the Court appears to countenance proving this lack of possibility with evidence unrelated to the plaintiff's own efforts to exhaust. How is this different from showing that using the remedy is futile, which has repeatedly been held not to be an excuse for non-exhaustion?
5. A remedy that is "so opaque that it becomes, practically speaking, incapable of use," or that "no ordinary prisoner can discern or navigate," is unavailable. On its face the requirement that *no* ordinary prisoner be able to use the system seems like a standard approaching impossibility. But focus instead on the language "discern or navigate": arguably, those words imply that the prisoner can make a rational choice based on the grievance policy and be reasonably confident that it is the correct decision. Arguably, if the prisoner must resort to guesswork, the system is unavailable.
6. *Ross* does not clarify what an "ordinary" prisoner is, and we know that prisoners on average have low levels of education, literacy, and English language competence, and by high levels of learning disability, developmental disability, sensorial disability, and mental illness. It is not clear what follows for actual litigation of exhaustion issues.
7. *Ross* acknowledges several ways remedies can be unavailable, but does not refer to the body of law that holds that remedies may be found unavailable based on prisoners' individual characteristics such as injury, illness, illiteracy, or disability. Although the discussion of types of unavailability does not purport to be exclusive (the Court used the phrase "as relevant here"), several lower courts have already treated it as exclusive.
8. *Ross* is the first case in which the Supreme Court has had to acknowledge the kind of chaos and dysfunction that advocates know is all too common in prison administrative remedies. Perhaps its doing so will embolden lower courts to weigh these factors more heavily when they assess the adequacy of prisoners' efforts to exhaust those remedies.