

MASSACHUSETTS SCHOOL OF LAW  
INDIVIDUAL EMPLOYMENT RIGHTS 1

FINAL EXAM, December 3, 1996

PROFESSOR FREDERICK T. GOLDER  
617-592-4000

Hypothetical Case 1

The National Esquire is a weekly newspaper publication reporting sensational news about legal issues. There are ten different regional newspapers organized into ten different regions of the country. A single managing editor oversees the editorial decisions for all ten newspapers. A central office does all of the printing, sells all of the advertising, and makes all of the decisions concerning the hiring, firing, and disciplining of employees for all ten newspapers. The content of the newspapers within each region is quite similar. About fifty to sixty percent of the reporters' time is spent gathering facts. The reporters receive a weekly salary of \$350.00 per week. Official company policy is that the reporters are not to work more than forty (40) hours per week in any work week. In fact, the reporters routinely work more than forty hours in a work week without being paid for the hours in excess of forty. The National Esquire claims that the reporters are exempt since they are employed "in a bona fide . . . professional capacity."

You are an attorney in the solicitor's office of the Department of Labor, and you have been asked to represent the secretary of labor in the claim against the National Esquire to recover overtime compensation for the reporters. What arguments would you make on behalf of reporters and why? Would it make any difference if one of the regional newspapers made less than \$500,000.00, if the ten regional newspapers made in excess of \$500,000.00? Briefly explain your answer.

Hypothetical Case 2

John Smith, an employee of the Woe Company complained to his supervisor about serious heat problems at the plant. After repeated requests to fix the problem without success, John Smith contacted the OSHA division of the Department of Labor and informed them of the heat problems. The inspector came down to the plant, inspected the plant, and found that there were no specific violations, since there were no OSHA standards regarding heat. The Woe Company found out that John Smith was the one who contacted the OSHA representative. Three days after the OSHA inspector came down, John Smith was terminated and given as an explanation for his termination that it appeared that John Smith and the company did not see eye to eye. John Smith has brought suit against the Woe Company claiming that he was terminated in retaliation for

his having contacted the OSHA representative. John Smith claims a violation of OSHA and a violation of public policy. John Smith has brought suit in the state superior court. The Woe Company has come to you for advice. What advice would you give them, and why? Please explain the rationale for the course of action you recommend to the Woe Company.

### Hypothetical Case 3

On April 1, 1996, the Dean of the law school issued an order that a mandatory blood and urinalysis drug testing program be implemented for all law school employees. The order states in pertinent part:

“The law school has a vital interest in maintaining a safe, healthy, and proper working environment for the law school. Being under the influence of a drug or alcohol as a law school employee may pose serious safety and health risks, not only to the user, but to all those who work with the user. Furthermore, the law school environment wants to foster an environment free from alcohol or drugs. In addition, the possession, use, or sale of an illegal drug or use of alcohol in the law school may also pose unacceptable risks for safety and health to the general public.”

Several of the law professors have filed a law suit challenging the policy. You have been assigned to sit as the judge in this case. Write a decision and set forth the reasons for your decision.

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MASSACHUSETTS SCHOOL OF LAW  
INDIVIDUAL EMPLOYMENT RIGHTS 2  
FINAL EXAM - 1992

Hypothetical Case 1

A woman applied for a full-time paramedic position with the city. She was married to a paramedic and had one child. When she was interviewed, the chief of the city's emergency medical services department asked her a series of questions about her family circumstances. He asked her how many children she had and whether it was "time to have more children." He also asked about child care and about how her husband would feel about her working some 24 hour shifts.

She told the chief that she had discussed the paramedic position with her husband and that her child was cared for by her mother-in-law, who lived with them.

After interviewing all the applicants, the chief discussed them with his paramedics to find out whom they thought they could work with. He also ranked the applicants according to their experience. He chose the most experienced and least experienced applicants as finalists. The woman had the most experienced of all of the applicants.

The chief hired the least experienced applicant, a 22 year old male, explaining that this applicant met the minimum requirement of being a paramedic, that he carried himself well in the interview, that his newness might be an advantage because he could be trained in "the company way of doing things," and that the chief received favorable comments from other paramedics who worked well with this applicant when he interned with the city emergency team. The woman who was rejected was 45 years of age.

The woman has come to you for advice. What causes of action does she have? What course of action would you recommend for her, and why?

Hypothetical Case 2

John White, a black man, began his employment with the Light Corporation, Lawrence, Massachusetts. The facility produces light appliances and fixtures for space shuttles.

The first incident for which White was disciplined occurred on October 1, 1986. While waiting at the laboratory, White engaged in a conversation with Allan Black, a white male and the stepson of William Bright, the Director of Human Relations. White requested that Black share some food he was eating. Black refused. White then made a derogatory remark about Black's Catholicism after which Black referred to him as a "nigger." Black called Jones, a white supervisor to tell him about the altercation. White was suspended for seven days for insubordination and disruption. He was also told that any further incident could result in his termination. Black was not disciplined for the incident in any way.

The second disciplinary incident occurred on February 16, 1987. White was observed taking a break in an area that was not White's assigned break area. White was told to leave and return to his assigned area. He refused and demanded that his union representative be called. White was sent home for the remainder of his shift. The company then decided to discharge him. A grievance was filed and ultimately the company offered to reinstate White if he agreed to a last chance agreement.

The third and final disciplinary event involving White occurred on June 18, 1987. He was observed by Jay Small, a supervisor, in the lamp department. White testified that he was there in an attempt to make sure that a new employee knew her way around the plant. Small directed him to return to his work station. Rather than complying with those instructions, White began arguing. Small further testified that White poked him in the nose while gesturing. White denies this, and testified that Small called him a "nigger" which Small denies.

There was also testimony that Small often referred to White as a "nigger" and a "lazy nigger." The testimony of plaintiff's witnesses also testified that Small often followed black employees around looking for an opportunity to cite them for company violations. Small denied all of these allegations.

You are the trial judge. What issues do you have to decide? What decision would you make in this case, and why?

### Hypothetical Case 3

The School Committee of Boston provides bus transportation for approximately 25,000 public school students.

In early 1985, as a result of the concerns of certain members of the School Committee about the past criminal records

of school bus drivers, school department staff requested to obtain criminal records of individuals seeking employment or who were employed as school bus drivers.

Smith and Jones had been school bus drivers since 1977. The School Committee received information that Jones had a 1972 conviction for assault by means of a dangerous weapon. Smith was convicted in 1975 for possession of controlled substance, marijuana, with intent to distribute for which he received a suspended sentence.

As a result, the School Committee discharged both school bus drivers. Smith and Jones have brought a complaint against the School Committee under state and federal law for race discrimination. Both Smith and Jones are black.

The School Committee has come to you to defend them. What defenses would you raise? What course of action would you recommend to the School Committee, and why?

MASSACHUSETTS SCHOOL OF LAW

INDIVIDUAL EMPLOYMENT RIGHTS 2

FINAL EXAM, MAY 20, 1993

PROFESSOR FREDERICK T. GOLDER  
617-592-4000

Hypothetical Case 1

Nancy Easy was hired as an associate on the partnership track by the Boston law firm of Billim, Chockum, and Scruem in 1987. The chairman of the litigation department, who hired her for his work, told her she would have problems at the firm because, "she was a woman, had not attended an ivy league school, and had not been on law review."

The firm decided not to admit her to partnership, and she was let go. She was able to get a job with one of the firm's clients. The evidence shows that the firm promoted men to partnership whose evaluations were substantially the same as or inferior to Easy's. Although the firm claimed that Easy lacked analytical or writing ability, it had promoted male associates with the same or worse deficiencies. Easy was also evaluated negatively for being too involved with women's issues, especially with the firm's treatment of their mostly female paralegals. She had also been criticized for being "very demanding", and that she was expected by some members of the firm to be non-assertive and acquiescent to the predominantly male partnership. She was also the target of several comments demonstrating the firm's differential treatment of women. There were also a number of sexist comments made during the course of her employment.

Nancy Easy has come to you for legal advice. What remedies are available to her. What course of action would you recommend and why. Are there any ethical issues that must be considered? If yes, what are those ethical issues, and how would you deal with them.

Hypothetical Case 2

John Henry, a black construction worker was discharged for violating a work rule. He had been disciplined nine separate times

before the incident that led to his discharge. Instead of carrying out a work assignment, he informed his supervisor that he "wanted a relief" and left the construction site without obtaining a response. He was later notified that he was being charged with a rule violation for walking off the job without permission.

His employer, the Brick Company, held a disciplinary hearing and decided to dismiss him based upon his prior disciplinary record and the latest rule violation. He then filed a charge of race discrimination with the MCAD and the EEOC. Both agencies found that there was no probable cause. There was evidence that a white employee with a worse disciplinary record was treated better than he was. He filed a complaint in the state court for violation of state law, violation of Title VII, and violation of 42 U.S.C. section 1981.

The Brick Company has come to you for advice. What course of action would you take on behalf of your client and why. What defenses would you raise and why.

### Hypothetical Case 3

A case was tried in the Federal District Court. The District Court made the following findings of fact:

The plaintiff, Frank Jones was an African-American hired as a correctional officer in May 1980. He was promoted to shift commander, a supervisory position, in July 1982. The employer, the Chelsea Rehabilitation Outplacement Center ("CROC"), is a minimum security correctional facility. Beginning in 1986, an investigation was conducted of the administration of CROC in response to complaints about poor maintenance, inadequate security, and other concerns of the facility. All persons at upper level management were either demoted or terminated and new people were hired. John Biggot became the superintendent of the facility and became Jones' immediate supervisor. John Biggot is white. Prior to 1986, Jones had a completely satisfactory employment record. His supervisors had consistently rated his performance as competent or above. He had not been suspended, written up, or disciplined in any way. However, shortly after John Biggot took over as superintendent, Jones became the subject of a series of disciplinary actions. Jones was ultimately discharged in January 1987. During the same period of time, Jones reported violations of institutional rules on numerous occasions, but his reports were generally ignored. The employees he sought to discipline were all white. During the same period approximately twelve black employees were fired and one white employee was fired.

CROC articulated a legitimate reason for discharging Jones. Jones was able to prove that the reasons articulated were a pretext, but was unable to prove that it was because of his race. The District Court based upon those facts, granted summary judgment in favor of CROC because Jones was unable to prove that his discharge was racially motivated. The case has been appealed to the Supreme Court. You are an associate justice of the Supreme Court and the case has been assigned to you to write the opinion and the decision in the case. Write the decision setting forth your rationale.

#### Hypothetical Case 4

Mary Nutt was employed by the Walnut Shoe Company as a sales person. Fifteen years ago she had a nervous breakdown because of her divorce. Mary had worked for Walnut for more than seven years and had a good work record. No one at Walnut knew about her prior history until her former husband accidentally ran into the owner of Walnut at a party. When her husband Wally found out that Mary was working at Walnut, he told the owner that Mary had a nervous breakdown in the past.

The owner of Walnut told Mary's immediate supervisor that Mary was crazy and to watch her.

Mary's immediate supervisor, Jane Bright, then began watching everything Mary did. Jane put a great deal of pressure on Mary, gave her oral and written warnings about her job performance, recommended that she be dismissed for incompetence, and the owner followed the recommendation and discharged Mary.

Jane then told a customer, when asked what happened to Mary, that Mary had to be let go because she was crazy and needed psychiatric help. The customer then revealed this to Mary.

Mary has come to you for advice. What advice would you give her and why. What course of action would you recommend and why.

MASSACHUSETTS SCHOOL OF LAW  
INDIVIDUAL EMPLOYMENT RIGHTS 2  
Fair Employment Law

FINAL EXAM, May 8, 1997  
PROFESSOR FREDERICK T. GOLDR  
617-592-4000

**Hypothetical Case 1**

Mary Christian worked for the Lyon Company for twenty-seven years, the last fourteen years as a Marketing Manager. Mary had always received good evaluations. About a year and a half earlier a thirty year old white male manager was hired to head up the department. For the first time in her career, Mary received a less than favorable evaluation. This evaluation occurred just after Mary had reported to the new manager, John Biggot that she had been diagnosed with breast cancer. On April 1, 1997, John Biggot laid off three marketing managers, Mary Christian, and two white males who had been with the company for less than three years. The Lyon Company retained seven other marketing managers, four women and three men, all with less seniority than Mary Christian, but all with better evaluations for that year. Mary Christian's husband Frank also worked for the Lyon Company in another department and at another location.

Mary Christian comes to you for your advice and wants you to tell her what claims if any, she may have, and what course of action you would recommend, and why.

**Hypothetical Case 2**

Alice Winer, a former employee of The Grill Restaurant, has brought a claim for age discrimination, sex discrimination, and sexual harassment in the state superior court. She has brought claims under Title VII of the Civil Rights Act, the Federal Americans with Disabilities Act, and has also brought claims under state law. She has also brought claims against her former supervisor, Dick Smut for sexual harassment, assault and battery, and intentional infliction of emotional distress. You are told that Alice was hired when she was fifty years old and that no complaints were ever made to the Human Resource manager or anyone else at the restaurant about sexual harassment. You are also told that the restaurant has a written policy against discrimination and against sexual harassment, and that the policies are posted and copies have been given to each of the employees, including Alice.

The president of the Grill Restaurant comes to you to defend the claims brought by Alice. You are asked to represent both the restaurant and Mr. Smut. What course of

action would you take in defending these claims, and why? What course of action would you recommend, and why? If you see any ethical issues, please describe them and explain how you would resolve them.

### **Hypothetical Case 3**

Mary Jane had been a head captain at the Notel Motel. She brought a suit under Title VII, alleging that her sex was the reason she was not promoted to the manager of the restaurants, and that after she complained about that, she was placed on probation and disciplined, and that the motel constructively discharged her by creating intolerable working conditions, which resulted in her discharge. A motion for summary judgment was denied and the case went to trial. The jury found against her on her promotion and retaliation claims, but found in her favor on the constructive discharge claim and awarded her \$20,000.00 in lost wages, and \$20,000.00 in front pay, but no punitive damages. The motel moved for judgment notwithstanding the verdict, and the district court allowed the motion and entered judgment in favor of the motel. Mary appealed the decision to your court.

As a member of the court, you have been assigned to write the opinion. Please write a decision and opinion in this case and set forth the rationale for your decision.