

MASSACHUSETTS SCHOOL OF LAW

FINAL EXAM - Employment Discrimination Law

May 5, 2004

Professor Frederick T. Golder

781-334-4284

Email: ftgolder@verizon.net

Hypothetical Case 1

James Roe began his employment with the Town of Framingtown in November 1992 as an inspector and always performed his work in a fully competent and professional manner.

James Roe has epilepsy but had no problems at work for eight years. In June 2000, the symptoms of James Roe's epilepsy increased substantially.

James Roe was forced to undergo surgical procedures in order to keep his job, and as a result, James Roe did undergo brain surgery in January 2001. By May 2001, James Roe was ready, willing, and able to return to work on a full time basis and needed no a reasonable accommodation.

Although James Roe requested to return to work on a full-time basis, working his regular work shift of 35 hours per week, from Tuesday through Friday, Framingtown limited his hours of work to 28 hours per work week and required him to work Monday through Thursday, and also reduced his pay.

As a result of the stress, and the alleged harassment and retaliation, James Roe was forced to take a medical leave of absence from December 2001 through December 4, 2002.

Although James Roe was ready, willing, and able to return to work on December 4, 2002, Framingtown refused to allow James Roe to return to work.

On March 18, 2003, Framingtown held a hearing to consider James Roe's employment status in relation to a "charge of assault with a dangerous weapon, in addition to your other criminal charges pending before the Framingtown District Court."

James Roe states that the charges involved a dispute with his brother while James Roe was out on a medical leave of absence and that it had nothing to do with his job.

By letter dated March 18, 2003, Framingtown stated that, "Based upon the information presented at the hearing and the policy and practice of the Town of Framingtown," James Roe was "Suspended, without pay until the pending cases are resolved."

Although the criminal charges were resolved, Framingtown refused to allow James Roe to return to work. By letter dated June 3, 1997, Framingtown sought to terminate James Roe's employment for the following reasons: "1. That you have a history of emotional outbursts which are unpredictable, and sometimes violent and/or dangerous; 2. that criminal charges and other court proceedings have been initiated against you resulting in pre-trial probation with certain conditions."

A Termination Hearing was conducted on July 29, 2003. James Roe asserts that the Termination Hearing was not conducted in accordance with due process and was violative of James Roe's Constitutional rights. By letter dated August 8, 2003, Framingtown terminated James Roe's employment asserting as grounds: (1) "a history of emotional outbursts which are unpredictable and sometimes violent and/or dangerous;" (2) "unprofessional behavior, including emotional outbursts;" (3) "a continuing problem with your emotional behavior."

James Roe has come to you for advice. What potential claims does James Roe have? What course of action would you recommend and why?

LIMIT: Four (4) blue book pages

Hypothetical Case 2

Same facts as in Hypothetical 1, but Framingtown has come to you for advice. What defenses are available to Framingtown? What course of action would you recommend and why?

LIMIT: Three (3) blue book pages

Hypothetical Case 3

Scott Dredd began his employment with the ABC Construction Co. in 1986, as a contract laborer. In 1990, he was promoted to a contract crew supervisor. The ABC Construction Co. had a practice of entering into contracts with people to act as crew supervisors to repair and renovate properties. These contracts of employment would be renewed periodically as long as there was work to be done. From 1990 through 2004, all persons employed as crew supervisors were continually re-employed. In 2004, crew supervisors were being paid \$80,000.00 a year. Scott's contract had been renewed continually from 1990 through January 2004.

In December 2003, James Crowe became Scott's immediate supervisor and had the responsibility of deciding which crew supervisors would be employed by the ABC Construction Co. James is white. Soon after he began his employment, James hired his cousin and one of his brother-in-laws to be crew supervisors. When Scott's employment contract ended, James did not renew it. However, James continued to renew the contract of his brother-in-law and cousin, both who were younger than Scott and white.

Scott is an African American and in January 2003 he was fifty-eight years of age. There were ten crew supervisors employed as of January 2004. Scott had been employed as a crew supervisor longer than any of the other ten crew supervisors. He was the oldest African American crew supervisor. Scott was the first crew supervisor whose contract had not been renewed. The ABC Construction Co. continued to renew the contracts of the other crew supervisors, most of who were younger than Scott. Shortly after not renewing Scott's contract, the ABC Construction Co. did not renew the contract of the second oldest African American crew supervisor.

James continued to renew the contracts of all of the other crew supervisors, including his cousin and brother-in-law. One African American crew supervisor was hired for a three month period after Scott had filed his charge of discrimination. There were no other African American crew supervisors hired while James was in charge.

Scott Dredd has come to you for advice. What claims does Scott Dredd have? What course of action would you recommend and why? What defenses do you anticipate will be raised?

LIMIT: Four (4) blue book pages

Hypothetical Case 4

John Snow began his employment on July 8, 2000, as an auto mechanic for the Stunt Auto Company. Almost from the beginning of his employment, John was repeatedly harassed by his immediate supervisor, Roger Dodger. The offensive conducts by Roger consisted of routinely rubbing up against John and grabbing him by the crotch. In addition, Roger would on several occasions ask John if he wanted to engage in sex acts with him. When John was repairing cars, Roger would sneak up on him and expose himself and ask John if he wanted some of this.

By December of 2003, John was so emotionally distraught, that he complained to the President. Following this complaint, the demeanor of his supervisors changed. They began to criticize his work performance, and they eventually wrote him up for insubordination. On May 1, 2004, John was terminated for poor performance.

John Snow has come to you for advice. What potential claims does John Snow have? What course of action would you recommend to him and why? What defenses do you anticipate will be raised? What difference would it make if the Stunt Auto Company had a sexual harassment policy that John failed to follow?

LIMIT: Three (3) blue book pages

ALL ANSWERS MUST BE IN ONE BLUE BOOK AND RETURNED TO THE OFFICE BY MAY 7, 2004.

Good Luck!!

MASSACHUSETTS SCHOOL OF LAW

FINAL EXAM – Employment Discrimination Law

May 12, 2005

Professor Frederick T. Golder

781-334-4284

Email: ftgolder@verizon.net

Hypothetical Case 1

Jane Woe worked for The Salvation Navy from 1985 until she was fired on March 18, 2005. Woe's excellent work history at The Salvation Navy reflected increased advancement and responsibilities and numerous managerial positions. In May 2000, Woe accepted the position of Associate Director of Programs and was, in effect, during this period of time, Executive Director in all but title. Before her promotion, Woe and Larry Dugan, the Executive Director promised Woe that in exchange for Woe doing all the work and not disturbing him, he would promote her to the job of Executive Director when he retired.

At no time during the course of her employment at The Salvation Navy did Woe receive any oral or written warnings of any kind. All her evaluations show Woe as a hard working, responsible, talented, caring and dedicated employee with excellent administrative ability. When Dugan retired, Woe was eminently qualified for the position of Executive Director. Instead of selecting Woe for the position, The Salvation Navy hired John Sludge, a male from the outside, who was less qualified than Woe.

Sludge began working for The Salvation Navy in January 2005. In addition to at least one department head meeting, Woe had five different lengthy one-on-one meetings with Sludge between January 2005, when Sludge began working at The Salvation Navy, and March 18, 2005, the day Woe was fired. When Woe asked Sludge for his thoughts on her performance, Sludge was very positive and complimentary, stating that he had learned to trust and respect her work and thanked her for working so hard. At no time during any of the five meetings did Sludge ever express any criticism of Woe or Woe's job performance.

On March 16, 2005, Sludge told Woe to fire John Strait, a homosexual. Woe refused because there was no valid reason, except that Sludge did not like working with homosexuals. On March 18, 2005, Woe was terminated for what was reported as "inability to do her job."

Jane woe has come to you for advice. What potential claims does Jane Woe have? What course of action would you recommend and why?

LIMIT: Four (4) blue book pages

Hypothetical Case 2

Same facts as in Hypothetical 1. Jane Woe has brought a lawsuit against The Salvation Navy and filed suit in the state superior court including a federal claim. The Salvation

Navy has come to you for advice and to defend the case. What defenses are available to The Salvation Navy? What course of action would you recommend and why?

LIMIT: Three (3) blue book pages

Hypothetical Case 3

Tom Finn began his employment with Accidental Insurance Company (“AIC”) in August 1977, as an outside claim representative. As a result of his professional competence and performance, Finn received raises and promotions and was promoted to Head of the Subrogation Unit in 2000. Finn always received above-average annual appraisals. While Finn was Head of the Subrogation Department from 2000 until 2004, the department never missed a year end major goal, and the Subrogation Unit always had excellent results. Finn went away on vacation and returned in late August 2004, at which time he was relieved of his duties as Unit Head Supervisor of the Subrogation Department, without any valid reason, and was assigned to the Auto Damage Unit performing the function of a Claim Representative, a demotion but one without loss of title or salary. Finn was replaced by a much younger person in her early twenties, who was not as well qualified as Finn.

From the beginning of his transfer in the Auto Damage Unit, Finn received a full case load, even though in his twenty-seven (27) years in the Claim Department he never directly handled that type of claim. Although Finn requested help, he received minimal help from his immediate supervisor, Terry Cotter, and rarely received any advice from Cotter regarding auto damage claim handling and the mechanics of handling the files.

Finn contends that AIC intentionally and systematically caused Finn to have excessive case loads, under staffing, and a stressful atmosphere to force Finn out. Finn’s work load was so heavy and demanding, that he could easily be subjected to complaints about the quality of his work. Finn always performed his work in a fully competent and professional manner, and if there were any problems concerning his work performance, it was not as a result of his failure to perform to his best ability, but it was rather the fact that the work load was so heavy, that no one could perform it successfully.

Finn contends that AIC is engaged in a pattern or practice of discriminating against older workers by increasing their work load beyond their ability to perform it successfully, and that there were a number of employees over the age of 40 who were given excessive case loads and excessive work loads for the purpose of forcing them to quit.

As a result of the excessive work load and the constant harassment, Finn took a medical leave of absence on or about January 4, 2005. Finn began to have suicidal thoughts and tendencies with erratic and violent behavior. Finn required a reasonable accommodation in order to return to work. Finn was prepared to return to work at AIC, if AIC provided a reasonable accommodation. AIC refused to provide Finn a reasonable accommodation. Although Finn never received any formal notification, he contends that he was terminated, effective May 8, 2005, while he was out receiving workers' compensation benefits.

Tom Finn has come to you for advice. What claims does Tom Finn have? What course of action would you recommend and why?

LIMIT: Four (4) blue book pages

Hypothetical Case 4

Same facts as in Hypothetical 3.

AIC has come to you for advice. What defenses would be available to AIC? What course of action would you recommend and why?

LIMIT: Three (3) blue book pages

ALL ANSWERS MUST BE IN ONE BLUE BOOK.

Good Luck!!

MASSACHUSETTS SCHOOL OF LAW
EMPLOYMENT DISCRIMINATION LAW

FINAL EXAM, May 2, 2002
PROFESSOR FREDERICK T. GOLDER
781-592-4000
Email: ftgolder@aol.com

Hypothetical Case 1

The Tiger Company is a widgett manufacturer, located in Andover, Massachusetts, and employing between 100 and 150 people at any given time. The Tiger Company hired John Doe in July 1970. On May 1, 1977, he was promoted to Manager of the second shift, supervising between 10 to 30 people. John Doe worked for the Tiger Company for thirty years, until his industrial accident in 2000. During that thirty year period, his evaluations were good or better than good. On February 2, 2000, a Mississippi conglomerate purchased the Tiger Company. On March 8, 2000, John Doe sustained a severe industrial accident causing permanent injury to his back. He was out of work from March 8, 2000 until July 16, 2001. When he sought to return to work with the new company in control, he was told that there were no supervisory positions available. When he learned that there were in fact two openings for supervisory positions, he applied for the positions, was interviewed, and was rejected. John Doe was 56 years old.

Instead of recalling Mr. Doe to a supervisory position, the new ownership hired two young (under the age of thirty), non-handicapped persons for supervisory positions that Mr. Doe could have filled. These two young, non-handicapped persons had never before worked for this company.

The new company had a policy that if an employee is out of work for any reason for more than a year, the employee is considered to have voluntarily resigned. John Doe was sent this notice that he had been separated from the company due to their uniformly enforced policy.

The reason given by the company for rejecting John Doe was that the two younger, non-handicapped persons were better qualified than John Doe.

John Doe has come to you for your advice and wants you to tell him what claims if any, he may have, and what course of action you would recommend, and why. What remedies are available to John Doe?

Hypothetical Case 2

Same facts as in Hypothetical Case 1. John Doe has brought a lawsuit against the Tiger Company for age and handicap discrimination.

The Tiger Company has come to you for advice. What defenses will you raise and why? What advice would you give the Company and why?

Hypothetical Case 3

Jane Doe began her employment in June 18, 1999, as a secretary for the S. Lime Company. Almost from the beginning of her employment, Ms. Doe was repeatedly harassed by her immediate supervisor, Steve Handy ("Handy"). The offensive conducts by Handy consisted of routinely rubbing up against Ms. Doe's breasts, breathing heavy when near her, as if faking an orgasm, pointing phallic symbols at her.

By July of 2001, Ms. Doe was so emotionally distraught, that she complained to the Vice President of Human Resources, Frank Look ("Look"). Following this complaint, Handy began to criticize her work performance, and he eventually wrote her up for insubordination. On October 21, 2001, Ms. Doe resigned.

Jane Doe has come to you for your advice and wants you to tell her what claims if any, she may have, and what advice would you recommend, and why. What claims does she have? What remedies are available to her? What advice would you recommend and why?

Hypothetical Case 4

Jerry Klutz began his employment with the Town of Qark in November 1998 as an inspector and always performed his work in a fully competent and professional manner.

Klutz has epilepsy and was forced to take a medical leave of absence from December 1999 through December 4, 2000. The Town did not know about Klutz's epilepsy when they hired him and only learned about this when he took his medical leave.

Although Klutz was ready, willing, and able to return to work on December 4, 2000, the Town refused to allow Klutz to return to work.

By letter dated March 18, 2001, the Town held a hearing to consider Klutz's employment status in relation to a "charge of assault with a dangerous weapon pending before the Qark District Court."

The events regarding the criminal charge occurred while Klutz was out on medical leave and involved a dispute with his father-in-law. Klutz had kicked his father-in-law with a shoe when his father-in-law called Klutz a "lazy good for nothing weirdo."

Although the criminal charges were resolved, the Town refused to allow Klutz to return to work.

A Termination Hearing was conducted on July 29, 2001. By letter dated August 8, 2001, the Town terminated Klutz's employment asserting as grounds: (1) "a history of emotional outbursts which are unpredictable and sometimes violent and/or dangerous;" (2) "unprofessional behavior, including emotional outbursts;" (3) "a continuing problem with your emotional behavior."

Klutz has brought a suit in the state superior court alleging claims under state law, G.L. c. 151B, and under the federal ADA.

The Town of Qark has come to you for advice and to defend the claims. What course of action would you recommend, and why? What defenses would you raise, and why?

MASSACHUSETTS SCHOOL OF LAW

FINAL EXAM - Employment Discrimination Law

May 5, 2004

Professor Frederick T. Golder

781-334-4284

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Hypothetical Case 1

James Roe began his employment with the Town of Framingtown in November 1992 as an inspector and always performed his work in a fully competent and professional manner.

James Roe has epilepsy but had no problems at work for eight years. In June 2000, the symptoms of James Roe's epilepsy increased substantially.

James Roe was forced to undergo surgical procedures in order to keep his job, and as a result, James Roe did undergo brain surgery in January 2001. By May 2001, James Roe was ready, willing, and able to return to work on a full time basis and needed no a reasonable accommodation.

Although James Roe requested to return to work on a full-time basis, working his regular work shift of 35 hours per week, from Tuesday through Friday, Framingtown limited his hours of work to 28 hours per work week and required him to work Monday through Thursday, and also reduced his pay.

As a result of the stress, and the alleged harassment and retaliation, James Roe was forced to take a medical leave of absence from December 2001 through December 4, 2002.

Although James Roe was ready, willing, and able to return to work on December 4, 2002, Framingtown refused to allow James Roe to return to work.

On March 18, 2003, Framingtown held a hearing to consider James Roe's employment status in relation to a "charge of assault with a dangerous weapon, in addition to your other criminal charges pending before the Framingtown District Court."

James Roe states that the charges involved a dispute with his brother while James Roe was out on a medical leave of absence and that it had nothing to do with his job.

By letter dated March 18, 2003, Framingtown stated that, "Based upon the information presented at the hearing and the policy and practice of the Town of Framingtown," James Roe was "Suspended, without pay until the pending cases are resolved."

Although the criminal charges were resolved, Framingtown refused to allow James Roe to return to work. By letter dated June 3, 1997, Framingtown sought to terminate James Roe's employment for the following reasons: "1. That you have a history of emotional outbursts which are unpredictable, and sometimes violent and/or dangerous; 2. that criminal charges and other court proceedings have been initiated against you resulting in pre-trial probation with certain conditions."

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James Roe has come to you for advice. What potential claims does James Roe have? What course of action would you recommend and why?

LIMIT: Four (4) blue book pages

Hypothetical Case 2

Same facts as in Hypothetical 1, but Framingtown has come to you for advice. What defenses are available to Framingtown? What course of action would you recommend and why?

LIMIT: Three (3) blue book pages

Hypothetical Case 3

Scott Dredd began his employment with the ABC Construction Co. in 1986, as a contract laborer. In 1990, he was promoted to a contract crew supervisor. The ABC Construction Co. had a practice of entering into contracts with people to act as crew supervisors to repair and renovate properties. These contracts of employment would be renewed periodically as long as there was work to be done. From 1990 through 2004, all persons employed as crew supervisors were continually re-employed. In 2004, crew supervisors were being paid \$80,000.00 a year. Scott's contract had been renewed continually from 1990 through January 2004.

In December 2003, James Crowe became Scott's immediate supervisor and had the responsibility of deciding which crew supervisors would be employed by the ABC Construction Co. James is white. Soon after he began his employment, James hired his cousin and one of his brother-in-laws to be crew supervisors. When Scott's employment contract ended, James did not renew it. However, James continued to renew the contract of his brother-in-law and cousin, both who were younger than Scott and white.

Scott is an African American and in January 2003 he was fifty-eight years of age. There were ten crew supervisors employed as of January 2004. Scott had been employed as a crew supervisor longer than any of the other ten crew supervisors. He was the oldest African American crew supervisor. Scott was the first crew supervisor whose contract had not been renewed. The ABC Construction Co. continued to renew the contracts of the other crew supervisors, most of who were younger than Scott. Shortly after not renewing Scott's contract, the ABC Construction Co. did not renew the contract of the second oldest African American crew supervisor.

James continued to renew the contracts of all of the other crew supervisors, including his cousin and brother-in-law. One African American crew supervisor was hired for a three month period after Scott had filed his charge of discrimination. There were no other African American crew supervisors hired while James was in charge.

Scott Dredd has come to you for advice. What claims does Scott Dredd have? What course of action would you recommend and why? What defenses do you anticipate will be raised?

LIMIT: Four (4) blue book pages

Hypothetical Case 4

John Snow began his employment on July 8, 2000, as an auto mechanic for the Stunt Auto Company. Almost from the beginning of his employment, John was repeatedly harassed by his immediate supervisor, Roger Dodger. The offensive conducts by Roger consisted of routinely rubbing up against John and grabbing him by the crotch. In addition, Roger would on several occasions ask John if he wanted to engage in sex acts with him. When John was repairing cars, Roger would sneak up on him and expose himself and ask John if he wanted some of this.

By December of 2003, John was so emotionally distraught, that he complained to the President. Following this complaint, the demeanor of his supervisors changed. They began to criticize his work performance, and they eventually wrote him up for insubordination. On May 1, 2004, John was terminated for poor performance.

John Snow has come to you for advice. What potential claims does John Snow have? What course of action would you recommend to him and why? What defenses do you anticipate will be raised? What difference would it make if the Stunt Auto Company had a sexual harassment policy that John failed to follow?

LIMIT: Three (3) blue book pages

**ALL ANSWERS MUST BE IN ONE BLUE BOOK AND
RETURNED TO THE OFFICE BY MAY 7, 2004.**

Good Luck!!

MASSACHUSETTS SCHOOL OF LAW

FINAL EXAM – Employment Discrimination Law

May 12, 2005

Professor Frederick T. Golder

781-334-4284

Email: fgolder@verizon.net

Hypothetical Case 1

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At no time during the course of her employment at The Salvation Navy did Woe receive any oral or written warnings of any kind. All her evaluations show Woe as a hard working, responsible, talented, caring and dedicated employee with excellent administrative ability. When Dugan retired, Woe was eminently qualified for the position of Executive Director. Instead of selecting Woe for the position, The Salvation Navy hired John Sludge, a male from the outside, who was less qualified than Woe.

Sludge began working for The Salvation Navy in January 2005. In addition to at least one department head meeting, Woe had five different lengthy one-on-one meetings with Sludge between January 2005, when Sludge began working at The Salvation Navy, and March 18, 2005, the day Woe was fired. When Woe asked Sludge for his thoughts on her performance, Sludge was very positive and complimentary, stating that he had learned to trust and respect her work and thanked her for working so hard. At no time during any of the five meetings did Sludge ever express any criticism of Woe or Woe's job performance.

On March 16, 2005, Sludge told Woe to fire John Strait, a homosexual. Woe refused because there was no valid reason, except that Sludge did not like working with homosexuals. On March 18, 2005, Woe was terminated for what was reported as "inability to do her job."

Jane woe has come to you for advice. What potential claims does Jane Woe have? What course of action would you recommend and why?

LIMIT: Four (4) blue book pages

Hypothetical Case 2

Same facts as in Hypothetical 1. Jane Woe has brought a lawsuit against The Salvation Navy and filed suit in the state superior court including a federal claim. The Salvation

Navy has come to you for advice and to defend the case. What defenses are available to The Salvation Navy? What course of action would you recommend and why?

LIMIT: Three (3) blue book pages

Hypothetical Case 3

Tom Finn began his employment with Accidental Insurance Company ("AIC") in August 1977, as an outside claim representative. As a result of his professional competence and performance, Finn received raises and promotions and was promoted to Head of the Subrogation Unit in 2000. Finn always received above-average annual appraisals. While Finn was Head of the Subrogation Department from 2000 until 2004, the department never missed a year end major goal, and the Subrogation Unit always had excellent results. Finn went away on vacation and returned in late August 2004, at which time he was relieved of his duties as Unit Head Supervisor of the Subrogation Department, without any valid reason, and was assigned to the Auto Damage Unit performing the function of a Claim Representative, a demotion but one without loss of title or salary. Finn was replaced by a much younger person in her early twenties, who was not as well qualified as Finn.

From the beginning of his transfer in the Auto Damage Unit, Finn received a full case load, even though in his twenty-seven (27) years in the Claim Department he never directly handled that type of claim. Although Finn requested help, he received minimal help from his immediate supervisor, Terry Cotter, and rarely received any advice from Cotter regarding auto damage claim handling and the mechanics of handling the files.

Finn contends that AIC intentionally and systematically caused Finn to have excessive case loads, under staffing, and a stressful atmosphere to force Finn out. Finn's work load was so heavy and demanding, that he could easily be subjected to complaints about the quality of his work. Finn always performed his work in a fully competent and professional manner, and if there were any problems concerning his work performance, it was not as a result of his failure to perform to his best ability, but it was rather the fact that the work load was so heavy, that no one could perform it successfully.

Finn contends that AIC is engaged in a pattern or practice of discriminating against older workers by increasing their work load beyond their ability to perform it successfully, and that there were a number of employees over the age of 40 who were given excessive case loads and excessive work loads for the purpose of forcing them to quit.

As a result of the excessive work load and the constant harassment, Finn took a medical leave of absence on or about January 4, 2005. Finn began to have suicidal thoughts and tendencies with erratic and violent behavior. Finn required a reasonable accommodation in order to return to work. Finn was prepared to return to work at AIC, if AIC provided a reasonable accommodation. AIC refused to provide Finn a reasonable accommodation. Although Finn never received any formal notification, he contends that he was terminated, effective May 8, 2005, while he was out receiving workers' compensation benefits.

Tom Finn has come to you for advice. What claims does Tom Finn have? What course of action would you recommend and why?

LIMIT: Four (4) blue book pages

Hypothetical Case 4

Same facts as in Hypothetical 3.

AIC has come to you for advice. What defenses would be available to AIC? What course of action would you recommend and why?

LIMIT: Three (3) blue book pages

ALL ANSWERS MUST BE IN ONE BLUE BOOK.

Good Luck!!