

MASSACHUSETTS SCHOOL OF LAW
EMPLOYMENT DISCRIMINATION LAW

FINAL EXAM, May 2, 2002
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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?