

MASSACHUSETTS SCHOOL OF LAW

FINAL EXAM – Employment Discrimination Law 2013

Professor Frederick T. Golder
617-927-9590
Email: ftgolder@gmail.com

Hypothetical Case 1

Rick James worked for the We-Haul Junk Company of Lowell, Massachusetts for twenty-one years, the last fourteen years as a Supervisor. Rick had always received very good to excellent evaluations. About six months ago, on October 1, 2011, a thirty-six year old white male manager, Frank Storm, was hired to manage the company. Rick had applied for the General Manager position but the position went to Frank Storm. For the first time in his career, James received a fair evaluation from this new manager. James is fifty-two years old and is a gay, African-American male, with a severe hearing impairment. He uses hearing aids.

On April 1, 2012, Frank Storm had to lay off two supervisors for economic reasons. He selected Rick James, and a white male, who had been with the company for less than two years. The Company retained two other supervisors, one woman (white) and one man (white), all with less seniority than Rick James, but all with better evaluations for that year than Rick James had because of the bad evaluation he received from Frank Storm.

The white male laid off with Rick James had the poorest evaluations of all the supervisors that year.

Rick James has come to you for legal advice. What potential claims does he have assuming that there are more than 50 employees? What course of action would you recommend, and why? Would your advice change if there were at least 6 employees but less than 15 employees? And if so, why? Would your advice change if he came to you after 300 days? And if so, why?

LIMIT: Four (4) blue book pages

Hypothetical Case 2

Rose Pattel, a former employee of Dacey's Department Store, has brought a claim sex discrimination, and sexual harassment in the state superior court. She has brought claims under Title VII of the Civil Rights Act, and has also brought claims under Massachusetts state law. She has also brought claims against her former supervisor, Dick Nix for sexual harassment, assault and battery, and

intentional infliction of emotional distress. You are told that Rose was hired when she was thirty-two years old and that no complaints were ever made to the Human Resource manager or anyone else at the Store about sexual harassment. She left the Store when she was thirty-eight, claiming she was constructively discharged by the hostile environment created by Dick Nix. Rose alleged in her Complaint that Dick Nix made lewd comments about Rose's body, asked her about her sex life, put his hand down her blouse, rubbed up against her body, and grabbed her breasts. He also told her that if she wanted a raise, she could go with him to a motel. You are also told that the Store 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 Rose.

The president of Dacey's comes to you to defend the claims brought by Rose. You are asked to represent both the Store and Mr. Nix. 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.

LIMIT: Four (4) blue book pages

ALL ANSWERS MUST BE IN YOUR BLUE BOOK. PUT THE NAME OF THE COURSE, THE DATE, AND YOUR IDENTIFICATION NUMBER ON YOUR BLUE BOOK. GOOD LUCK!

Hypothetical Case 3

Dan Bland began his employment with the Affordable Care Clinic in March 2003 as a registered nurse and always performed his work in a fully competent and professional manner. In December 2010, he began to experience severe back pain and had problems lifting patients from their beds. Dan took a medical leave of absence until March 1, 2010. When he returned to work, Dan asked his supervisor if he could have help lifting patients. His supervisor refused to give him any help. As a result, Dan's condition became worse. Dan had to take another leave of absence on July 8, 2011. He returned to work on November 4, 2011, with a note from his doctor stating that Dan could not lift more than ten pounds. Dan's supervisor told Dan that if Dan could not lift more than ten pounds that Dan would have to leave his employment. Rather than leave, Dan struggled to lift patients and continued to work. Dan was fifty-two years old at the time. However, Dan would frequently take days off to recuperate from his deteriorating back. By May 1, 2013, Dan had missed 63 days of work, and he was terminated on May 1, 2013, for excessive absenteeism.

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

LIMIT: Three (3) blue book pages

Hypothetical Case 4

Same facts as in Hypothetical 3, but the Clinic has come to you for advice. What defenses are available to the Clinic? What course of action would you recommend and why?

LIMIT: Three (3) blue book pages

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Good Luck!!

MASSACHUSETTS SCHOOL OF LAW

FINAL EXAM – Employment Discrimination Law 2013

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Hypothetical Case 1

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On April 1, 2012, Frank Storm had to lay off two supervisors for economic reasons. He selected Rick James, and a white male, who had been with the company for less than two years. The Company retained two other supervisors, one woman (white) and one man (white), all with less seniority than Rick James, but all with better evaluations for that year than Rick James had because of the bad evaluation he received from Frank Storm.

The white male laid off with Rick James had the poorest evaluations of all the supervisors that year.

Rick James has come to you for legal advice. What potential claims does he have assuming that there are more than 50 employees? What course of action would you recommend, and why? Would your advice change if there were at least 6 employees but less than 15 employees? And if so, why? Would your advice change if he came to you after 300 days? And if so, why?

LIMIT: Four (4) blue book pages

Hypothetical Case 2

Rose Pattel, a former employee of Dacey's Department Store, has brought a claim sex discrimination, and sexual harassment in the state superior court. She has brought claims under Title VII of the Civil Rights Act, and has also brought claims under Massachusetts state law. She has also brought claims against her former supervisor, Dick Nix for sexual harassment, assault and battery, and

intentional infliction of emotional distress. You are told that Rose was hired when she was thirty-two years old and that no complaints were ever made to the Human Resource manager or anyone else at the Store about sexual harassment. She left the Store when she was thirty-eight, claiming she was constructively discharged by the hostile environment created by Dick Nix. Rose alleged in her Complaint that Dick Nix made lewd comments about Rose's body, asked her about her sex life, put his hand down her blouse, rubbed up against her body, and grabbed her breasts. He also told her that if she wanted a raise, she could go with him to a motel. You are also told that the Store 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 Rose.

The president of Dacey's comes to you to defend the claims brought by Rose. You are asked to represent both the Store and Mr. Nix. 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.

LIMIT: Four (4) blue book pages

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Hypothetical Case 3

Dan Bland began his employment with the Affordable Care Clinic in March 2003 as a registered nurse and always performed his work in a fully competent and professional manner. In December 2010, he began to experience severe back pain and had problems lifting patients from their beds. Dan took a medical leave of absence until March 1, 2010. When he returned to work, Dan asked his supervisor if he could have help lifting patients. His supervisor refused to give him any help. As a result, Dan's condition became worse. Dan had to take another leave of absence on July 8, 2011. He returned to work on November 4, 2011, with a note from his doctor stating that Dan could not lift more than ten pounds. Dan's supervisor told Dan that if Dan could not lift more than ten pounds that Dan would have to leave his employment. Rather than leave, Dan struggled to lift patients and continued to work. Dan was fifty-two years old at the time. However, Dan would frequently take days off to recuperate from his deteriorating back. By May 1, 2013, Dan had missed 63 days of work, and he was terminated on May 1, 2013, for excessive absenteeism.

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

LIMIT: Three (3) blue book pages

Hypothetical Case 4

Same facts as in Hypothetical 3, but the Clinic has come to you for advice. What defenses are available to the Clinic? 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

FINAL EXAM – Employment Discrimination Law - 2012

Professor Frederick T. Golder

617-927-9590

Email: ftgolder@gmail.com

Hypothetical Case 1

Alice Able began her employment with Burnside Electronics Corp. of Andover, Massachusetts in November 1984. She began her work as a clerk-typist but was promoted to Sales Manager in 1992. Alice lives in Salem, New Hampshire.

On February 2, 2011, a ladder fell on her causing permanent damage to her right hand, her major hand. She returned to work on May 1, 2011 but needed a special keyboard for her computer because of her disability. Burnside provided the special keyboard at a cost of \$500.00.

Shortly after she returned to work she learned that the other Sales Managers, all male, were paid more than she was. Two of the male managers were hired after her and one was hired before her. John Jones, the COO, was the person that set the pay rates for the employees.

After she complained to the Human Resources Department on March 3, 2012, about pay disparity, she was given substantially more work than before. As a result of the additional workload, her hand condition worsened to the point where she had to take an additional medical leave of absence.

Alice's doctor told Alice that the impairment to her right hand was such that Alice could not return to work unless the workload was reduced. When Alice presented that to the Human Resources Department, Alice was told that the workload was an essential function of her job, and that if she could not do the work, she would have to resign.

Not thinking she had any choice, Alice resigned on May 10, 2012. After resigning, Alice had second thoughts and has come to you for legal advice on November 1, 2012. Alice is 54 years old, the only female Sales Manager, and the only Buddhist working at Burnside. The ages of the other Sales Managers are 58, 42, and 37 respectively. What potential claims does Alice 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. Burnside contends that all the Sales Managers were given additional workloads, and the workload was an essential function of the job. Burnside also contends that they did not know Alice's religion and in any event that had nothing do with her assignments. Burnside has come to you for legal advice. What defenses are available to Burnside? What course of action would you recommend and why?

If Alice Able brings claims against John Jones in addition to Burnside would this create an ethical issue if you were asked to defend both Burnside and John Jones? And if yes, describe what that ethical issue would be.

LIMIT: Four (4) blue book pages

Hypothetical Case 3

Jesse James began his employment with the Take the Cake Baking Co., a large commercial baking company in Methuen, Massachusetts in April 2003 as a baker. In July 2011, the position of chief baker opened up, and Jesse applied for it. The person who held the position, Fanny May, a female, was retiring. She recommended Jesse for the position. Six other people applied for the position, two of the applicants were male and four were female. Two of the female applicants were with the company longer than Jesse. One female applicant had been with the company less than a year. The applicant the company hired to the position was a female who had never worked at Take the Cake Baking Co. but held the position of chief baker at another commercial baking company located in Brooklyn, New York. The Take the Cake Baking Co. had been in existence since 1945 and had never had a male chief baker.

Elizabeth Brown was hired on August 1, 2011 as chief baker. Almost as soon as she arrived she began making sexual comments about Jesse's body. She would often "accidentally" bump into him touching parts of his body. Elizabeth would also often breathe heavily around Jesse as if she were having an orgasm. On March 1, 2012, Elizabeth gave Jesse his annual review and told Jesse that if he wanted a large raise he would have to go to a local motel with her where they could negotiate a big raise for him. This was the last straw for Jesse. He had not complained before, but now Jesse was really angry and told Elizabeth that he was not going to take anymore of this. After that confrontation, Elizabeth stopped making sexual comments about Jesse, and Jesse received the same percentage raise that all the bakers received.

Elizabeth was promoted to assistant manager on May 10, 2012, and promoted Randy Dow to the position of chief baker, the first male ever promoted to chief baker. The rumor was that Elizabeth and Randy were having a sexual relationship.

On or about November 1, 2012, Jesse was let go and told it was for economic reasons. Two other male bakers were also let go at the same time.

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

LIMIT: Three (3) blue book pages

Hypothetical Case 4

Same facts as in Hypothetical 3, but the Take the Cake Baking Co. has come to you for advice. What defenses are available to the Take the Cake Baking Co.?

What course of action would you recommend and why? Would it make any difference if the Take the Cake Baking Co. had a sexual harassment policy that Jesse failed to use?

LIMIT: Three (3) blue book pages

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MASSACHUSETTS SCHOOL OF LAW

FINAL EXAM – Employment Discrimination Law

Professor Frederick T. Golder
(617) 927-9590
Email: ftgolder@gmail.com
Fall 2011

Hypothetical Case 1

Angela Jones began her employment on July 8, 2008, as an auto mechanic for the Electric-R-Us Automobile Company. Almost from the beginning of her employment, Angela was repeatedly harassed by her co-workers. The offensive conduct consisted of making remarks about her body, intentionally bumping into her, groaning when they went by her, grabbing their crotches in front of her, and asking her to engage in sex acts. Angela complained to her immediate supervisor, Frank Dodge. By the next day the offensive conduct stopped, and Angela worked without incident until October 1, 2010. Frank Dodge left the company on September 29, 2010, and was replaced by Harry Lechter, one of the co-workers, who had harassed Angela in the past. Angela would find her tools missing when she came to work each day. She would find condoms in her work area. She would receive emails with explicit sexual content. Angela had no evidence who was doing this but suspected that Harry Lechter was behind it. When Angela confronted Harry, Harry denied it and said that if she did not like working there, she could leave. The next day when Angela came to work there was a substance on her computer that looked like sperm. While she was working underneath a car that day, someone sprayed her with a liquid. Shortly after that she received an electric shock when someone turned on the electricity of a car she was working on. Fearing for her life and safety, Angela walked out and told Harry on the way out, "I'm out of here!" Angela came back to work two weeks later. When Harry saw her, he said, "You voluntarily left. You have no job here."

Angela Jones has come to you for advice. What potential claims does Angela Jones have? What course of action would you recommend to her and why? What defenses do you anticipate will be raised by the company? What difference would it make if the Electric-R-Us Automobile Company had a sexual harassment policy that Angela failed to use?

LIMIT: Four (4) blue book pages

Hypothetical Case 2

Mary Laym began her employment with the Vasilate Visiting Nurses Association (VVNA) in March 1984 as a registered nurse and always performed her work in a fully competent and professional manner. Mary has a history of epilepsy and was once hospitalized for a month. Mary has completely recovered and is taking medication. In December 2010, Mary started getting severe headaches. Mary's doctor advised her that given her past medical history that she could no longer drive an automobile. The main part of Mary's job was visiting patients at home. Fortunately, Mary was able to use public transportation. Mary's current patients all lived near public transportation, except for two of her patients. Mary went to her supervisor, John Bent and told him about her prior medical history and the fact that she could no longer drive an automobile. John did not know about Mary's history, and told her that if she could not drive she would have to resign. Mary told John that she could switch patients with one of the other nurses and that she could arrange to visit all her patients by public transportation. John said he was sorry, but he had no choice. If Mary did not voluntarily resign, he would have to let her go for inability to do her job. If she voluntarily resigned, John would give her a month severance pay for each year she worked and a good letter of reference. Feeling she had no choice, Mary agreed on the spot and signed a settlement agreement and release that John had prepared.

Mary is fifty-seven years old and two weeks after she signed the "settlement agreement and release" and after she received her settlement money she began to have second thoughts. Mary has come to you for advice. What potential claims does Mary have? What course of action would you recommend and why? What defenses would you expect VVNA to raise? How would you respond to the defenses?

LIMIT: Four (4) blue book pages

Hypothetical Case 3

May Sharp worked for the Fluffy Donut Company for twenty-three years, the last ten years as a Supervisor on the third shift. May had always received very good to excellent evaluations. About six months ago, on June 18, 2010, a thirty-four year old white male manager, Perry Kane, was hired to head up the department. For the first time in her career, May received a fair evaluation from this new manager. May is forty-seven years old and is a lesbian, African-American female. On August 15, 2010, Perry had to lay off a supervisor for economic reasons. He selected May and retained four other supervisors, two women and two men, all with less seniority than May, but all with better evaluations for that year than May had. May's evaluations were better in prior years than the four who were retained. Two were older and two were younger. One of the men retained was African-American; the other three retained were Caucasians. None of the supervisors retained were homosexual.

May has come to you for legal advice. May claims that Perry at one time, while she was in his car, tried reached under her skirt and tried to force her head down to his crotch area. Perry has denied this, and there were no witnesses. What potential claims does she have assuming that there are more than 50 employees? What course of action would you would recommend, and why?

LIMIT: Four (4) blue book pages

Hypothetical Case 4

Same facts as in Hypothetical Case 3. The president of Fluffy Donuts has comes to you to defend the claims brought by May. You are asked to represent both Fluffy Donuts and Mr. Kane. What course of action would you take in defending these claims setting forth your rationale? If you see any ethical issues, please describe them and explain how you would resolve them.

LIMIT: Three (3) blue book pages

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MASSACHUSETTS SCHOOL OF LAW

FINAL EXAM – Employment Discrimination Law

Professor Frederick T. Golder

617-927-9590

Email: ftgolder@gmail.com

Hypothetical Case 1

James Azeed worked for the Ace Computer Co. of Lawrence, Massachusetts since 1981. He worked his way up from mail clerk to Manager of Systems Development.

On January 8, 2008, James slipped and fell on patch of ice in the company parking lot causing permanent injury to his back. He returned to work on April 1, 2008, without any restrictions.

On June 10, 2008, while on vacation, James injured himself in a boating accident that aggravated his back and caused other permanent injuries. James was not able to return to work until October 15, 2009.

Before James could return to work, the Ace Computer Co. was sold to a company based in Selma, Alabama. The new company instituted a policy that anyone who was out of work for more than six months was considered a voluntary quit.

When James sought to return, he was told that he would have to apply like a new employee. When he applied for his old job, he was told that it was no longer available.

James spoke to one of his colleagues at work who told James that they were interviewing two new employees to fill the Manager of Systems Development position. James then confronted the company with this information and was told to file an application. James was interviewed by the new COO and was told that his twenty-seven plus years of good service with the prior company would be considered.

The company employs over two hundred employees. Since taking over the prior operation, the new company hired seven new employees, all under the age of thirty, none with dark skin, no Muslims, and none of Arabic ancestry.

James is a fifty-three year old dark-skinned Muslim of Arabic ancestry who now has to use a cane for walking. James was not hired, but instead the position was filled by a twenty-seven year old American-born white female with no disabilities.

James has come to you for advice on December 7. What potential claims does James 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. The company contends that the job in question sometimes requires walking up open stairs to repair systems and that James could not perform that function. That is the reason they give for not selecting him. The company has also told you they hired the best qualified people to fill the seven positions, and that while some dark-skinned persons of Arabic ancestry applied, none were as well qualified as the persons they selected. They also did not know the religious backgrounds or handicapped status of those they rejected. Ace Computer Co. has come to you for advice. What defenses are available to Ace Computer Co.? What course of action would you recommend and why?

LIMIT: Three (3) blue book pages

MASSACHUSETTS SCHOOL OF LAW

FINAL EXAM – Employment Discrimination Law

Fall 2009

Professor Frederick T. Golder

Hypothetical Case 1

Robert Smith worked for more than 10 years as a store manager for Circuit Town in their Andover location. Circuit Town is a retail electronics company with over 500 locations throughout the United States. Donald received consistently excellent evaluations. In July 2009, Mary Whooley was hired as the new district manager for the New England region and was in charge of 18 stores, including the Andover store.

When Mary first met Robert, she asked if he was married and when he said no, asked him out for a date. When Robert refused, Mary kept insisting. Mary would rub Robert's shoulders when ever she came into the Andover store, which was often. She would also talk to him using explicit sexual terms and would rub her body against his and moan. When Robert refused her advances, Mary became angry and told Roberts that his refusals were not helpful if he wanted to get ahead at the company.

Mary then started sending Robert emails with explicit sexual content. While Robert was on vacation, Mary had an investigation conducted of Robert's computer. When the sexually explicit emails were discovered, Robert was terminated, without any reason or explanation, when he returned from his vacation.

There is a policy that Circuit Town follows in termination cases, but they did not follow the policy in Robert's case.

Robert was 55 at the time and was replaced by a 26 year old female. Although Robert is not married, he has been in a long term relationship with Tom Hocks. It was well known by the employees at the Andover store that Robert is a homosexual. Furthermore, when Robert applied for a loan, Tom Hocks was listed along with Robert as joint owners, and this information was provided to Circuit Town.

Robert Smith has come to you for advice. What potential claims does Robert Smith have? What course of action would you recommend to him and why? What difference would it make if Circuit Town had a sexual harassment policy that Robert failed to follow?

LIMIT: Four (4) blue book pages

Hypothetical Case 2

Same facts as in Hypothetical Case 1. Robert Smith has now filed a lawsuit against Circuit Town and Mary Whooley alleging age, sex, sexual orientation, and sexual harassment discrimination in the Essex Superior Court in Salem.

Circuit Town has come to you to defend the claims raised by Robert Smith. What defenses are available? What course of action would you recommend, and why? Do you see an ethical issue representing both Circuit Town and Mary Whooley? Please explain your answer.

LIMIT: Three (3) blue book pages

Hypothetical Case 3

Donald Jones began his employment with the Digital Computer Company as a security guard when he was 27. He worked there for 32 years without any problems or incidents. On December 6, 2000, he slipped and fell on ice while chasing a trespasser and sustained severe injuries to his back. He was out of work for 7 months and received workers' compensation. When Donald returned to work on July 16, 2001, he was put on light duty for 6 months and then returned to full duty on January 4, 2002. On May 18, 2002, Donald re-injured his back when a gate fell on him while making his rounds. As a result of this injury to his back, Donald was out of work for 3 months. When he returned to work on August 26, 2002, he was again put on light duty for 2 months. He again received workers' compensation.

Donald continued to work as a security guard without incident until October 18, 2007, when he slipped on some grease while chasing a trespasser and re-injured his back. He was out of work for 13 months. The company has a policy that if an employee is out of work for more than 12 months for any reason, he is automatically terminated. This policy has been in place for 26 years and had always been followed in every case.

When Donald reported back to work, he was told about the policy. The company took his keys and gave him 2 weeks of severance pay. Because of his latest injury, Donald can no longer do rounds, run, or climb stairs. He is able to sit for 30 minutes but then has to stand for at least 10 minutes. He can no longer work outside. His ability to work as a security guard is severely limited, but he could work at the desk when people come into the building.

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

LIMIT: Three (3) blue book pages

Hypothetical Case 4

Same facts as in Hypothetical 3. But now assume the company has a collective bargaining agreement with the Guard Union and the job of desk security guard is rotated among all the security guards. The Digital Computer Company has come to you for advice. What defenses are available to the Digital Computer Company? 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

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

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
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 widget 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?