

PART I
(25 Points)

You have just been hired by the Legal Eagle Law Firm because you stressed your knowledge of Employment Law during your interview. The Legal Eagle Law Firm wants to develop an employment law practice and is looking for the appropriate case to take on to “make a name for themselves.” The senior partner has asked you to evaluate two, related, potential clients and advise the partners concerning the strengths and weaknesses of their claims.

On Monday, December 4, 2017 you interview Harry Hasben and Louie Lost, two potential clients. Harry tells you that he and Louie worked for Tip-Top Telephone Company (“TTTC”) and that he was recently fired and Louie quit. Harry says that he is 59 years old and worked for TTTC for 25 years and Louie is 48 and worked for TTTC for 15 years. They were both employed as salesmen and were responsible for selling TTTC’s services to customers in California. Last May, TTTC hired a new Vice President for Sales, Arnie Aggressive, who was charged with boosting TCCC’s sales in California. Harry states that shortly after Aggressive arrived, the company began to advertise for “recent college graduates” in “their early 20’s and 30’s.” Aggressive also offered employees a \$500.00 bonus for “referring a friend’s younger brother or sister.”

Additionally, Harry and Louie tell you that starting in July, their supervisor, Gerry Goalong, began to criticize their performance stating that they were not meeting their sales quotas. He told them that their methods were “old fashioned” and that, perhaps, they weren’t “driven” anymore. They also overheard Arnie tell Gerry that “sales was a young man’s game” and that he wanted to “put young guys on the street.”

Louie said he couldn’t take the harassment anymore, saw the handwriting on the wall and resigned in September. The only job he could find was as a barista at Starbucks. Harry said he was fired in October for poor performance.

After Harry and Louie leave the office, you sit down to compose your memo to the senior partner explaining the strengths and weaknesses of their respective cases. At a minimum, you need to discuss:

- What other facts you need to know
- Prerequisites to filing suit
- Where you would file suit and why
- The viability of suing TTTC; Mr. Aggressive; Mr. Goalong
- Possible causes of action and their viability
- TTTC’s potential defenses

- What are the parties burdens of proof
- Potential damages
- Would you advise taking the case or not and why?

PART II
(25 Points)

You have joined the legal department of Amazing Amusements (“AA”), a company that manufactures and distributes a wide range of toys. You are their employment law specialist. AA has approximately 900 employees throughout the United States with 300 employees located in their home office in Santa Rosa. AA’s locations are all non-union. None of its employees have written contracts.

The President and CEO of AA, Frank N. Stein, is very interested in the employment law matters at the company. He frequently calls you with questions and somewhat “exotic” human relations ideas. He expects a prompt response. On the day before you are to leave on your honeymoon, he calls with the following questions. You need to compose a memo to Mr. Stein discussing whether each of these ideas is legal and would you advise him to do it.

1. Mr. Stein is increasingly concerned that toys seem to be disappearing before they can be shipped out to distributors and retailers. Despite the ability to purchase toys at less than 50% of retail cost, it appears some employees favor the 100% discount they get through theft. He tells you that AA has installed security cameras at the loading docks, but the installation was well known by employees and did not deter theft or produce any evidence of wrongdoing. Mr. Stein has some other ideas. He wants to know if it is legal for him:
 - a. To hire the Truth or Consequences polygraph firm to give polygraphs to all employees with access to completed toys;
 - b. To set up a “hot line” so employees can send a text or email message reporting the name of any employee suspected of stealing company merchandise and to give cash awards to tipsters;
 - c. To do random pat-downs of employees leaving work, and searches of employee lockers and cars.

2. Mr. Stein also has four ideas about how to hire only honest employees.
 - a. He wants to have all potential employees take an honesty questionnaire, thereby allowing human resources to screen out “marginal” risks;
 - b. He wants to do criminal background checks on all applicants;
 - c. He wants to join an employer consortium, which distributes lists of employees who have left their company after suspicions of wrongdoing;
 - d. He wants to establish a voluntary bible study group that would meet once a week during lunch and discuss living a virtuous and honest life.

Discuss each of Mr. Stein’s ideas and explain to him if they are legal or not and the rationale supporting your position.

PART III
(15 Points)

You have recently passed the bar examination and have met your friend, Emily Employer, for a drink to celebrate. Emily runs a small but growing high-tech company. She tells you that she has some questions that have occurred to her as she tries to help her company achieve profits and add employees. She knows you recently took a course in Employment Law and asks you the following:

1. Emily has a number of employees whose first language is Chinese but none of her supervisors speak Chinese. Without an English-only rule, Emily is worried that supervisors will not be aware of what is happening in the workplace and will not be able to respond to developing challenges. Can the company order employees to speak English to each other, including during lunch in the cafeteria?
2. Emily's company lets employees use their at-work computers as they wish, for example during lunch time. An employee, Cam Cameron has complained that his office-mate, Daniela Diamond, loads "dirty pictures" on her computer screen during lunch time and has made frequent lewd and suggestive remarks to him. Must Emily take action and why?
3. Several of Emily's supervisors have complained that they should be getting overtime pay. They say they are only supervising work and not people and therefore are not exempt from overtime. How would you advise Emily and what else would you need to know?