

Memorandum

To: Employment Law Students
From: Professor Daniel
Date: August 13, 2015
Re: Final Examination - **Three Hours**

Your final exam consists of three essay questions totaling 65 points. You will have **THREE HOURS** to complete this exam. The remainder of your grade (35 points) is composed of your class presentation, the back-up written material, and your class participation. Part I is worth 25 points; Part II is worth 15 points; and Part III is worth 25 points. I recommend that you divide your time accordingly.

You should carefully read each question and outline each answer before you begin. An answer that consists of conclusions with no reasoning will receive little credit. Support all of your conclusions with a full discussion of the facts and the issues; how the facts apply to the rule(s) of law; and any appropriate cases we have studied. If you assume facts that are not given, explain why you need to assume these facts and how they affect your conclusions.

If you are handwriting this exam, please write on every other line in your bluebook and write only on one side of each page. Please skip a page between questions and **write legibly**.

If you are using your computer, please double space and begin a new page for each question.

Enjoy!

Empire College School of Law
Professor Susan Daniel
Employment Law – Final
Thursday, August 13, 2015

PART I (25 Points)

You are a leading management employment lawyer in the city of Absurdity in the state of California. One of your clients is Curious Creatures (CC), a company that manufactures original and bizarre stuffed animals. CC, one of the few stuffed animal companies not to have moved its manufacturing operations to China, employs about 550 employees. All of the employees are non-union and no employees have a written contract.

The President and CEO of CC, Yogi Baer, is very interested in employment matters and frequently calls you with employment law questions and somewhat strange human relations ideas. He expects a prompt and thorough response, in writing, which explains what liabilities he might face in any given situation and your recommendations concerning what actions he should take. He appreciates when you cite the applicable law and cases.

Today he phoned you and related event that occurred last week. An employee in the accounting department, Roxy Rambo, is going through a bitter divorce with her abusive, militaristic husband, who has a long history of mental health problems. He threatened to “get her” wherever she went. After leaving him, Roxy sought and obtained a protective order from the Family Court in Absurdity. Roxy notified her supervisor about the protective order and, at Mr. Baer’s direction, CC hired In Your Face, LLC (“IYF”), a security company. IYF sent 12 uniformed, heavily armed, security personnel to protect the CC facility and its employees in the event Mr. Rambo showed up at the company. Roxy was pleased, but not all the employees had a positive reaction. Harvey Grunt was an Iraq war veteran who suffered from PTSD. At the sight of the heavily armed security guards at the workplace, Grunt suffered “flashbacks” and began freaking out. He was so disruptive that Mr. Baer fired him. Mr. Baer then cancelled the contract with IYF and hired a plain-clothes guard company, Undercover Heat. A clause in Undercover Heat’s contract prohibited CC’s management from disclosing that they were on the job or the identities of any of the guards. When the uniformed guards were removed and seemingly not replaced, animal stuffer Franny Faint was very upset and filed a complaint with Cal-OSHA, asserting that the workplace was unsafe due to the possibility of violence. When Mr. Baer heard “through the grapevine” that Franny complained to OSHA, he fired her. He also was growing weary of trying to make his factory safe from Roxy Rambo’s crazed, estranged husband, so he fired her. Now, he tells you that he thinks he may have gone too far.

Analyze the legal issues presented and explain what you would advise Mr. Baer to do about the employee-related events.

PART II (15 Points)

Mary Money Penny has worked for seven years at Mine & Grow, Inc., which makes custom vehicles for use in mining and agriculture. She meets you at a party, learns that you are an expert in employment law, and starts asking you questions. With a drink in your hand, you decide that it would be smarter to send her a memo after you give her questions an hour or so of thought. You decide to answer only **THREE** of her questions, **and also question F** which she told you was very important. You **MUST** answer Question F

- A) Mary has been asked to chair a committee that will choose a new chief financial officer at Mine & Grow. She wonders whether candidates can be asked if they have children and if so what their childcare arrangements are, and also what their plans are for future childbearing.
- B) Mine & Grow sells vehicles to the state government. The state has a policy of choosing suppliers based in part on the companies' employee diversity. Mary thinks Mine & Grow should try hard to find a racially diverse candidate for the CFO position. Can she emphasize diversity in selecting finalists to be interviewed? Can she ask her assistant to call applicants whose race is unclear in their written application and ask them their race?
- C) An individual at the company who reports to Mary has caused complaints from fellow workers. These are office workers whose desks are in a confined space. The individual in question gives off a body odor that disturbs the workday for office neighbors. What can Mary legally do about this? What should she do?
- D) Mary is good with numbers. Her boss, a vice president at Mine & Grow, asks her to look over his tax return and see if she catches any missed opportunities. She doesn't want to do this but is worried that if she declines, her boss will hold it against her. She asks you about her legal rights.
- E) Mine & Grow has a Defined Contribution pension plan. After an employee's first year with the company, the company puts 8% of salary in a 401K plan and gives the employee the option of adding 2% of their salary. The plan has been producing pensions which are quite generous; more generous than their competitors. Mary's idea, to save money, is to cut the employer contribution in half for employees who have been at the company for more than 25 years. Would that be legal?
- F) Mary was approached by Oliver Overreach, of High-Roller Hedge Fund. Oliver says he will pay Mary to tell the hedge fund about Mine & Grow's policies: what suppliers are they buying from? What suppliers have they dropped for selling second-rate products? This will give the hedge fund information useful in deciding when to buy and sell the stock of supplier companies. This would be easy money for Mary and will not hurt Mine & Grow. Mary asks if she will be running any legal risks if she accepts the offer from High-Roller.

PART III (25 Points)

You are a new associate in one of Santa Rosa's leading plaintiffs' law firms. Your senior partner has asked you to sit in while he talks to a prospective client and then to help him evaluate her claims.

Sally Sincere, your prospective client, explains that she had been working for Transcontinental Trucking, a subsidiary of Transcontinental International, and that she resigned her position two months ago. Transcontinental, a nationwide shipping company, uses trucks operated by two drivers, and is headquartered in Petaluma, CA. As a new driver, Sally's training included 28 days on the road with a lead driver. The lead driver has no authority to hire, promote, discipline or terminate the trainee. A fleet manager supervises both the lead driver and the trainee. Her fleet manager was Barry Blind.

Sally began training with Larry Leech as her lead driver. She explained from the first day of training he made comments to her including: he "didn't have a problem helping her buy 'female products'; "what happens in the truck, stays on this truck;" what happens between two consenting adults is nobody's business but theirs"; and "if she had a hammer and a nail, he had the wood." He also asked her if she had a vibrator with her and constantly asked if he could tickle her. Sally said she told him "no," "shut up," or "that's not going to happen." Once Larry reached out and caressed her leg as she stepped up to the top bunk of the truck and another time he caressed her hand while she was driving. Sally said she didn't tell him to stop because she "was there to drive the truck."

When the truck needed repairs, Sally and Larry had to stay at a motel and took one room with a single bed, Sally explained that the company would have charged them half of the additional cost if they stayed in separate rooms. Larry went in to take a shower, came out of the bathroom "buck naked" and "crawled into bed." Sally said she was in shock and ignored him. After she showered and put on pajamas she said she was sitting on the side of the bed when Larry pulled her down. The next thing she remembers was Leech on top of her and inside her. She didn't scream or push him away because she "froze." She remembers lying there and staring at the curtains and being blank.

After the training period was completed, she filed a standard evaluation of Leech and did not mention the sexual comments, touching or intercourse. Leech recommended to the fleet manager that she be approved as a driver.

She was then assigned to work with Harry Hands as a co-driver. The first night he set up the bunk beds in the truck so that only the bottom bunk could be slept on. Sally told him to put the top bunk down. The next day she left the truck. She called her fleet

manager and told him that she wanted to quit and she didn't want to be put in the position of having to have a "boyfriend-girlfriend relationship" and not a "professional relationship." She also told him that Leech had engaged in some inappropriate conduct and made sexual comments. Barry Blind suggested she think about it and took her off Hands' truck. He gave her a list of other lead drivers she could request.

Blind put a notation in Hands file but did not take any other action. He did not contact the Human Resources department A few days after speaking with Blind, Sally sent a 2-page resignation letter to the company. In the letter she said that from the beginning of her employment she had "been subject to the over-all feelings, that in order to be an effective co-driver I would be required to sleep with a male co-driver or be kicked off the truck." She also stated that "it is a known fact and even the fleet managers advised another woman driver to interview co-drivers as a potential romantic interest as platonic teams don't work." She concluded her letter (which also had a full page dealing with the detailed expenses she had incurred and the time and mileage during her training period) by saying she had been taken advantage of because she was a woman and a new driver. To date, Transcontinental has not responded to her.

After Ms. Sincere leaves the office, your senior partner tells you that cases like this are taken on contingency and that it is extremely important that the partners understand all the possible causes of action and defenses. He asks you to draft a memo to the partnership which analyzes Ms. Sincere's legal situation and recommends whether the firm should take the case.

At a minimum, you are expected to fully discuss:

- Best forum(s) in which to sue/why;
- Possible defendants;
- Causes of action and their viability;
- Burdens of proof;
- Potential defenses;
- Evidence issues;
- Potential damages.