

FINAL EXAMINATION
EMPLOYMENT DISCRIMINATION LAW 832A-LSN

PROFESSOR YAMAUCHI

MAY 5, 2008 6:30 pm – 9:00 pm

You have **two and a half (2 ½) hours** to complete this exam. You may allocate your time as you wish.

This is an **open** book exam. You may use your assigned textbook, class notes and information discussed during class. However please refrain from “borrowing” from any materials written by others. I am testing your personal knowledge and analytical skills based on your reading of the text and our class discussions. I will also evaluate and grade you on your ability to write concise, logical and thoughtful responses to the questions.

There are two parts to this exam with questions that are worth a total of 60 points:

PART ONE consists of two essay questions numbered **1** and **2** that are valued at 20 points each. The recommended time to answer each question is 50 minutes.

PART TWO consists of two short answer questions numbered **3** and **4** that are valued at 10 points each. The recommended time for each short question is 25 minutes.

If you are using blue books, please write clearly and **legibly**. Illegible essays will not be graded. Write on every other line and every other page to permit instructor comments. If you are using exam software, be sure to frequently save to the diskette. Write your **exam number** on your exam envelope. Put your correct class section and student exam number at the top of this page, each page of questions, and each blue book. **Do not use your name, student ID number or Social Security Number on any exam materials.** At the conclusion of the exam, return all exam materials to the exam envelope and submit it to the proctor. Do not seal the envelope. Failure to return this exam with all its pages intact will result in a failing grade.

PART I

Essay Question #1 20 POINTS

Ms. S immigrated to California from India in 1985 and became a U.S. citizen in 1997. She was hired as a Teller in 1990 by Big Bank located in San Jose, California. In 1997 she was promoted to Customer Service Manager. Big Bank is owned by the National Bank of India, based in India. Bank Managers of Big Bank have always been India Nationals, that is, not permanent residents or citizens of the United States, and are rotated in on 3 year assignments. All employees other than the Bank Manager are American permanent residents or citizens of India national origin. Mr. K became Bank Manager in 2006 and his family remained in India. Soon after he started working, he asked Ms. S to drive him back and forth to work, do his shopping, dry cleaning, cooking and other chores in addition to her usual bank duties. She did so and did not complain to anyone.

In October and November 2007, Ms. S worked overtime and asked Mr. K whether she would be paid for overtime. He told she would if she was “good” to him. Around early December, she asked when she would be paid for the overtime she worked in October and November. He showed her a check for her overtime work and said “you have to give to get” as he pulled back the check. He said he could come over around midnight when her husband was out working his night shift. She refused his proposition. She did not receive the check.

Soon thereafter, Mr. K stopped inviting her to bank management meetings, criticized her work and gave her the lowest performance evaluation she had ever received at Big Bank, denied her a raise and a bonus and at the Big Bank holiday party gave everyone a gift except her. Further, he did not give the overtime pay check to her.

In January 2007, Ms. S filed a complaint with the EEOC alleging gender discrimination, sexual harassment and retaliation. In March 2008, the EEOC gave her a right to sue.

In February 2007, Ms. S again asked Mr. K about her overtime check, her low evaluation, the denial of a raise and bonus and why she was not allowed to participate in management meetings. He showed her the EEOC complaint and threw it at her and said “this is why.” Ms. S states that she was not given a raise or a bonus for 2007 as she had each year since 1997. Mr. K in a declaration under penalty of perjury denied making sexual advances and stated that Ms. S performance was poor so she did not deserve a good evaluation, raise, bonus or holiday gift.

Ms. S consults with you about her possible legal claims and asks your opinion as to the following:

1. What are her possible claims under Title VII?
2. For each possible Title VII claim, what is your legal analysis of the merits of each claim based on these facts and applicable law and cases?
3. Can Mr. K be personally liable for her damages and if so, on what claims and why?

Essay Question #2 20 POINTS

In 2000, Ted was hired by The Company to work at its four-wheel drive tractor plant. He operated a forklift and other machines several times a day. In 2005, Ted was diagnosed with multiple sclerosis (MS). MS is a common disorder of the central nervous system, causing sclerosis in the brain and spinal chord. Typical symptoms include visual loss, weakness, partial paralysis, and bladder abnormalities. The disease is progressive and there is no known cure.

In January 2006, Ted began to suffer from weakness in his lower right leg, which caused him to walk slowly. His condition started to worsen in 2007. His supervisor became concerned about his ability to move quickly to avoid falling objects at the plant (a common event) and his ability to safely operate a forklift. Ted gave The Company permission to speak with his doctors about his condition. Ted's physicians were also concerned about his inability to move quickly. In June 2007, Ted agreed to be transferred to a machinist position which did not require him to operate a forklift.

In light of Ted's worsening conditioning, The Company asked Ted to undergo a functional capacities assessment/evaluation by its Senior Assessment Specialist to review Ted's work capabilities. The specialist determined that Ted could not continue to safely perform the machinist position. Rather, Ted fell into the category of light work. The Company did not have any light duty jobs and placed Ted on short-term disability. Ted wanted to stay in his current job.

Ted's doctors reviewed the specialist's assessment and informed The Company that if it could not provide a light duty job, Ted would need permanent disability. Ted submitted an application to The Company for long-term disability benefits, on which his physician checked "yes" on the questions whether Ted was unable to perform his regular work and unable to perform other gainful work.

Ted timely filed a charge and lawsuit for discrimination based on disability under the ADA. He claims The Company failed to provide a reasonable accommodation for his disability. The Company has moved for summary judgment, arguing that Ted has failed to present evidence sufficient to state a prima facie case. In the alternative, The Company argues that even if Ted presented a prima facie case, The Company should prevail because it reasonably accommodated his disability and also that Ted posed a direct threat to safety.

You are the law clerk to Judge Yamauchi and are to draft an opinion on the defendant's motion. The judge advises you to carefully evaluate the plaintiff's claims and supporting evidence and the defendant's defenses and supporting evidence. Explain whether the plaintiff has established a prima facie case. Explain whether the defendant should prevail on any or all of its defenses. The judge expects you to reach a decision (for or against summary judgment) that is based on a well reasoned, organized and persuasive analysis of the applicable standards of law and the relevant evidence in the case.

END OF PART ONE