

FINAL EXAMINATION
SURVEY OF EMPLOYMENT LAW
PROFESSOR YAMAUCHI
DECEMBER 13, 2005

1. You have **two and a half (2 1/2) hours** to complete both parts of this exam. You may allocate your time as you wish.
2. 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 also will evaluate and grade you on your ability to write concise, logical and thoughtful responses to the questions.

3. There are two parts to this exam, the sum of which totals 60 points:

PART ONE consists of two essay questions numbered **1** and **2** that are valued at 15 points each. Your answer for each of the two essay questions shall be a maximum of three single-spaced typed pages in 12-point font or larger, or six pages if handwritten in your blue books. The recommended time for each essay is 45 minutes.

PART TWO consists of three short answer questions numbered **3**, **4** and **5** valued at 10 points each. Your answer to each of the three short questions shall be a maximum of one single-spaced typed page in 12-point font or larger, or two pages if handwritten in your blue books. The recommended time for each short question is 20 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.

4. 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.**

5. 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

Ms. Client worked for X Company since May 2000 as a software engineer. She works in a large open space where about 20 engineers, 10 administrative support staff and two managers all work in cubicles. A female engineer, Ms. Peer, who works in the cubicle next to Ms. Client, has asked Ms. Client out on a date several times. Each time, Ms. Client politely declined. However, Ms. Peer continued to ask Ms. Client out. Ms. Client goes to Mr. Manager to complain. Mr. Manager tells Ms. Client that there is nothing he can do because this is a personal matter between Ms. Peer and Ms. Client. Then, Mr. Manager asks Ms. Client out for drinks. Ms. Client accepts and thereafter, Mr. Manager and Ms. Client start a relationship. They think they are being discrete, but Ms. Peer finds out. Ms. Peer then makes crude sexual comments about Mr. Manager and Ms. Client's relationship to Ms. Client and to other employees. Other employees start to make similar crude sexual comments about Ms. Client and Mr. Manager, sometimes in Ms. Client's presence. This goes on almost daily for one week before Ms. Client complains to Mr. Manager. Mr. Manager personally conducts an investigation. After interviewing several employees, including Ms. Peer, Mr. Manager fires Ms. Peer for inappropriate conduct. Ms. Peer denied saying anything sexually offensive about Ms. Client and Mr. Manager, but did admit that she complained to many employees that Ms. Client and Mr. Manager's relationship violated X company policy against such management/subordinate relationships. Ms. Client and Mr. Manager continue the relationship and the office gossip about them continues. Ms. Client is so upset and embarrassed by these events that she is out of work on stress leave for three months. Ms. Client used family medical leave without pay for during these three months and lost \$15,000 in income.

Ms. Client asks for your legal advice on whether or not she has any viable claims against her employer, X Company, for gender discrimination, sexual harassment or other claims and whether you are willing to take the case on a contingent fee basis. Based on the facts and your analysis, explain to Ms. Client:

- A. the standards of liability for sexual harassment applicable to her case;
- B. whether or not X Company may be liable for gender discrimination or sexual harassment in her case;
- C. whether or not any X Company employee can be individually liable to Ms. Client for sexual harassment;

- D. what liabilities her and Mr. Manager's relationship may cause for X Company; and
- E. whether or not you will take the case on a contingent fee basis and the reasons for your decision.

PART I

Essay Question #2

Mr. Driver has been employed with Big Wheels Trucking (BWT) for ten years. He has been taking medication for high blood pressure for the last three years. He did not report the diagnosis or his taking medication to BWT. As required by federal law, every year he is tested for high blood pressure and every year his tests are in the normal range. Last month, he was called in for his annual physical as required by federal law and his blood pressure was higher than that required to keep his commercial driver's license. He is given three days off to be checked again when he returns. His blood pressure is tested after three days and it is in the normal range. When he is asked if he did anything to reduce his blood pressure, he blurts out that he doubled his medication and it worked. Mr. Driver is fired later that same day. The reason given is that he placed himself, the company and others in danger and was dishonest by failing to disclose his high blood pressure diagnosis and the fact he was on medication. Federal law requires that a commercial truck driver have annual blood pressure tests in the normal range to maintain a commercial truck driver's license. There is no federal law requirement that the driver report that he is on medication for high blood pressure.

Mr. Driver asks you if BWT discriminated against him based on his disability hypertension or high blood pressure. Under the Americans with Disabilities Act (ADA), please explain your advice to Mr. Driver on the merits of his disability discrimination claim by answering the following questions using the appropriate legal standards and relevant facts. In addition, if you need more information than stated in the facts to provide your advice, state the questions you would ask Mr. Driver and explain why the information requested is relevant to your analysis and advice.

- A. Is Mr. Driver a qualified handicapped person and protected under the ADA? (Questions you would ask, if any, and the reason why you would ask each question.)
- B. Did BWT violate the ADA? (Questions you would ask, if any, and the reason why you would ask each question.)

END OF PART ONE

Be sure that the answer page contains your exam number, and that the question booklet has your exam number on every page. Turn in both the question booklet and the answer page.