

GENERAL INFORMATION -- SEXUAL HARASSMENT EXERCISE

Last year, Jane Doe was a first year law student at the Yalebridge Law School, which is part of Yalebridge University, a private, non-sectarian institution. Ms. Doe was a student in Professor Alexander Palsgraf's Tort Law class.

During the first semester, Professor Palsgraf made sexually suggestive comments to Ms. Doe on several occasions. These comments were always made outside of the classroom and when no other individuals were present. Ms. Doe unequivocally indicated her personal revulsion toward Professor Palsgraf's remarks and informed him that they were entirely improper and unappreciated.

During the latter part of the second semester, Professor Palsgraf suggested to Ms. Doe in his private office that she have sexual relations with him. Ms. Doe immediately rejected his suggestion and told Professor Palsgraf that he was "a degenerate and disgusting old man who was a disgrace to the teaching profession."

Last June, Ms. Doe received her first year law school grades. She received one "A", two "A-", one "B+", and one "D", the latter grade pertaining to her Tort Law class. She immediately went to see Professor Palsgraf to ask him about her low grade. He said that he was sorry about her "D", but indicated that the result might well have been different had she only acquiesced in his request for sexual favors.

Ms. Doe then had Professor Irving Prosser, who also teaches Tort Law at Yalebridge, review her exam. He said that it was a "most respectable paper" which should certainly have earned her an "A-" or "B+", and possibly even an "A".

Ms. Doe has sued Professor Palsgraf in state court for \$250,000 based upon three separate causes of action: (1) sexual harassment in violation of Title IX of the Education Amendments of 1972; (2) intentional infliction of emotional distress; and (3) fraud. Professor Palsgraf has a net worth of \$450,000, including the \$350,000 equity in his house and a \$50,000 library of ancient Gilbert's outlines.

CONFIDENTIAL INFORMATION -- JANE DOE

Your client wants to obtain several forms of relief from Professor Palsgraf: (1) a grade of "A" or "A-" in Tort Law; (2) the resignation of Professor Palsgraf from the Yalebridge Law School; and (3) a sufficiently large sum of money to deter such offensive conduct by other professors in the future.

(I) Score plus 35 points if Professor Palsgraf agrees to change Ms. Doe's Tort Law grade to "A-", and plus 50 points if he agrees to change her grade to "A".

(II) Score plus 200 points if Professor Palsgraf agrees to resign from the Yalebridge Law School faculty. If Professor Palsgraf does not resign, but agrees to take a one-year leave of absence or a one-year sabbatical leave from the Law School during the coming academic year (i.e., Ms. Doe's second year), score plus 50 points. If Professor Palsgraf agrees to take a leave of absence and/or sabbatical leave during the coming year and the following year (i.e., Ms. Doe's final two years of law school), score plus 75 points.

(III) If Professor Palsgraf does not resign, but he does agree to seek psychiatric counseling and personally apologize to Ms. Doe, score plus 50 points.

(IV) Score plus 2 points for each \$1,000, or part thereof, Professor Palsgraf agrees to immediately pay Ms. Doe in settlement of her suit.

(V) Ms. Doe is concerned about the publicity surrounding this matter and the impact that publicity may have on her future employment opportunities. Score plus 50 points for a clause guaranteeing the confidentiality of any settlement reached with Professor Palsgraf.

Since Ms. Doe wishes to have this matter resolved now so that she may concentrate fully on her legal education, you will automatically be placed at the bottom of your group if no settlement agreement is achieved.

CONFIDENTIAL INFORMATION -- PROFESSOR PALSGRAF

Your client realizes that his conduct was entirely inappropriate, and he is deeply sorry for the difficulty he has caused Ms. Doe. He would thus be willing to submit to psychiatric counseling and to personally apologize to Ms. Doe. Should you agree to either or both of these requirements, you lose no points.

Professor Palsgraf fears that Ms. Doe may ask for his resignation from the Yalebridge Law School, and he would rather lose everything before he would forfeit his Yalebridge position. Should you agree to have Professor Palsgraf resign his Yalebridge professorship, you must deduct 500 points.

Your client recognizes that he will have to provide Ms. Doe with the grade she should have received. He is readily willing to change her grade to "A-", and you lose no points for agreeing to an "A-". Professor Palsgraf does not think that Ms. Doe's exam performance was really worthy of an "A". You thus lose 50 points if you agree to have Ms. Doe's Tort Law grade changed to an "A".

Professor Palsgraf is currently eligible for a one-year, paid "sabbatical leave." He has been saving this leave to enable him to go to Cambridge University in two years. If you agree to have Professor Palsgraf take that "sabbatical leave" during either of the next two academic years, you lose 25 points. Should you agree to have him take a "leave of absence" during either of the next two academic years, which, unlike a "sabbatical leave," would not involve a continuation of his salary, you lose 100 points. (If you agree to both a one-year sabbatical and a one-year leave of absence, you lose a total of 125 points.)

Professor Palsgraf will almost certainly have to provide Ms. Doe with monetary compensation for the wrong he committed. You lose 3 points for each \$1,000, or part thereof, you agree to pay Ms. Doe. Any agreement regarding the payment of money must be operative immediately--no form of future compensation may be included.

Professor Palsgraf is concerned about the publicity surrounding this tragic affair. Score plus 50 points for a clause guaranteeing the confidentiality of any settlement reached.

Since Professor Palsgraf believes that the continuation of this law suit may ruin his outstanding legal career, you will automatically be placed at the bottom of your group if no settlement is achieved.

SEXUAL HARASSMENT EXERCISE EFFICIENCY

- I. "A-" is **More Efficient** grade than "A" [Net Gain of 35 pts. for A- vs. 0 pts. for A]]

A- generates +35 pts. for Pl. at No Cost to Def.

A generates +50 for Pl., but at cost of -50 to Def.

If Pl. accepts A- and saves Def. 50 pts., Def. can afford to give Pl. additional \$10,000 to \$15,000-- costing Def. fewer than 50 pts. while generating extra 20 to 30 pts. for Pl. which, when added to +35 for A-, results in more than +50 Pl. would get for A alone.

- II. Personal Apology **and** Psych. Counseling generate +50 for Pl. at No Cost to Def.

By giving Pl. +50 here, Pl. could reduce Monetary Demand by \$25,000 and still gain same +50-- reduction of \$25,000 saves Def. -75 pts. [25 x -3].

- III. Resignation generates Net Loss of 300 pts.-- Pl. gets +200, but Def. loses 500 pts.

If Def. willing to lose 500 pts., Pl. should seek the \$167,000 that would cost Def. -501 pts. while generating +334 for Pl.

- IV. Sabbatical Leave generates Net Gain of 25 pts.-- Plus 50 for Pl. with only -25 for Def.

Leave of Absence generates Net Loss of 50-- Plus 50 pts. for Pl., but -100 for Def.

- V. Confidentiality Clause generates +50 for EACH party. [When first party requests this clause, does opponent immediately agree to it or use it as False Issue in effort to obtain additional concession for same Confidentiality Clause it also wants?]

- VI. Money is Net Loser-- Each \$1000 gets +2 pts. for Pl., while costing Def. -3 pts.