

**Solution Manual for Legal Environment of Business A Managerial
Approach Theory to Practice 3rd Edition Melvin and Pujol 1259686205
9781259686207**

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Note to the Instructor:

This material is featured in the Instructor's Manual and in online content for instructors. Students do not have access to this material.

Instructor's Overview

Since at least 1970, instructors in a variety of business disciplines have been using simulations (sometimes called simulation gaming) in their courses. Business law instructors use a wide variety of simulations each with the objective of having students engage in a sequential decision-making exercise involving a legal issue that is typically covered in Legal Environment of Business/Business Law courses¹. Several journals, notably the **Journal of Legal Studies Education**, regularly feature models for use in the classroom in the form of mock hearings, moot court exercises, and negotiation exercises. However, these simulations can also be impractical for three reasons. First, the exercises are necessarily of the one-size-fits-all genre and cannot be used in settings where large numbers of students are involved. Second, the exercises sometimes tend to be too cut towards education of law students instead of business students. Finally, the simulations are sometimes taught in a vacuum because they are not tied closely enough to the textbook.

The simulations in this text are specifically crafted to be: 1) flexible enough to use in a variety of classroom settings; 2) geared towards business students who are working towards a tenable solution to a legal problem as an alternative to relying on a judicial forum to resolve the dispute; 3) directly related to one or more topics covered in the

¹ For an in depth discussion of the topic of simulations, see Professor Robert Bird's excellent article on the topic: *Integrating Simulation Games into Business Law Teaching*, 10 **J. Legal Stud. Educ.** 203 (2001)

textbook. Each simulation contains three parts. **Part 1** provides an **overview** of the simulation process, offers learning objectives for the student and gives a hypothetical **fact pattern** describing events leading up to a legal dispute. **Part 2** is a **statutory excerpt** and two hypothetical **case summaries** that give students brief facts, legal points, and short excerpts from the opinion. While these cases are hypothetical, they are based on actual cases from appellate courts in various circuits and represent a majority view. **Part 3 is an assignment sheet that is featured only in the Instructor’s Manual.** It contains templates for a wide selection of exercises, including **teaching notes** and alternative formats for using the simulation in a broad range of classroom settings. The assignment sheets are also located on the textbook’s Web site in Word format. The website may be used to generate assignment sheets (in hard copy or electronically) for students. The templates are designed to be used ‘as is’ or may be modified by the instructor to tailor to the particular needs of the course.

John Falstaff v. Revere Furniture Company
Business Law Simulation Exercise for Managers: Employment Discrimination

INSTRUCTOR RESOURCES

Table of Alternative Options for Assignments

Class Characteristic	Suggested Alternative Option Format
Mid-sized (25-35)	Format A: Arbitration Simulation Format B: Mediation Format C: Short Writing Exercise- Issue spotting Format D: Longer Writing Exercise- Advocate Memorandum Format E: Discussion Questions
Small or seminar (20)	Format A: Arbitration Simulation Format B: Mediation Format C: Short Writing Exercise- Issue spotting Format D: Longer Writing Exercise- Advocate Memorandum Format E: Discussion Questions Format F: Comparative Research Grid
Fourth Credit Hour ²	Format A: Arbitration Simulation Format B: Mediation
Large lecture section	Format C: Short Writing Exercise- Issue spotting Format E: Discussion Questions
Graduate	Format A: Arbitration Simulation

² An increasing number of colleges and universities are moving to a four credit system by adopting a “fourth credit hour” where classes meet together for 3 hours per week and 1 hour per week is spent by students to work independently, in teams or under the supervision of an instructor, on long-term assignments, projects, research or exercises (such as a simulation) related to the coursework.

	<p>Format B: Mediation</p> <p>Format D: Longer Writing Exercise- Advocate Memorandum</p> <p>Format E: Discussion Questions</p> <p>Format F: Comparative Research Grid</p>
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Instructor’s Overview: Alternative Assignment Formats

Below is a short description for each alternative assignment format listed in the Alternatives Table (above). Assignment sheet templates for each of these formats are located on the textbook’s website in Word format and are fully capable of being distributed electronically, in hard copy format as written, or they may be revised by the instructor to modify for individual course needs.

Format A: Arbitration Simulation

In this format, students are assigned to review Chapter 13 of the text, study the stipulated facts, statutory excerpt and cases, and then participate in a mock arbitration. Students are informed that the cases should be read with an eye towards understanding the differences and similarities between the court cases and the stipulated facts in the **Falstaff v. Revere Furniture Company** case. Each student (or groups of students depending on class size) is assigned the role of **Howe** manager of Revere or as **Falstaff**. The parties then prepare to participate in a private arbitration narrowed down to whether Falstaff’s condition is protected by the ADA and ADAAA. The instructor (or teaching assistant) acts as the arbitrator that runs the simulation by asking the parties questions about their theories of the case and testing their knowledge of the application of statutory and case law and the ability to cite specific points of law and excerpts in explaining how the cases support their arguments or are distinguishable from their case’s facts. Students are evaluated on: a) grasp of the legal issues; b) ability to articulate an argument and respond to questions in arbitration; c) engagement in the simulation; d) ability to work as a team (if applicable). The time of arbitration is set at a maximum of 20 minutes total.

Format B: Mediation

In this format, students are assigned to review Chapter 13, study the Stipulated Facts, statutory excerpt and the case law, and then participate in a mock mediation. Students are informed that the cases should be read with an eye towards understanding the differences and similarities between the court cases and the stipulated facts in the **Falstaff v. Revere Furniture Company** case. Each student (or groups of students depending on class size) is assigned the role of **Howe** as manager of Revere or as **Falstaff**, or as a **mediator** assigned to the case. The instructor assumes the role of Chief Mediator and serves as a resource for the parties. The parties then prepare to participate in a private mediation narrowed down to whether Falstaff’s condition is protected by the ADA and ADAAA. Mediators negotiate a variety of alternatives that will help the parties work towards a non-judicial solution. Initially, students work outside of the classroom to begin working on proposals. They are then assigned a final attempt session at mediation where the Chief Mediator is privy to the negotiations and final resolution or deadlock.

IM Simulation #2

Format C: Short Writing Exercise – Issue Spotting

IM Simulation #2

Students are assigned first to review Chapter 13, study the Stipulated Facts, statutory excerpt and the case law. Based on their knowledge of employment discrimination law as a whole, they are then assigned to compose 3-4 page **neutral** memorandum that outlines each legal issue present with a short explanation of the applicable legal rules or doctrine. The sources of law for this memorandum are the textbook's chapter on employment discrimination (Chap 13) as well as the statutory excerpt and the case law in the simulation materials. In this version of the simulation, students are not functioning as an advocate. Rather, they are being as objective as possible in spotting any and all potential issues that could arise in the case and give the analysis as to the likelihood of success on each point.

Format D: Longer Writing Exercise: Advocate Memorandum

Students are assigned first to review Chapter 13 and then to study the Stipulated Facts, statutory excerpt and the case law in the simulation materials. They are assigned to compose 5-7 page memorandum that advocates a particular party's view (as assigned by instructor) on the issue of the Revere's potential liability under the ADA and ADAAA. Students outline each legal issue applicable to a discrimination claim and support their arguments using citations to legal points and excerpts of the statutory excerpt and the case law. Students are assigned to conclude the document by suggesting any potential non-judicial solution that may mutually benefit the parties.

Format E: Discussion Questions

Students are assigned to review Chapter 13, then study the Stipulated Facts and the case law and to prepare for a Q & A discussion of the issues presented. Students may be assigned to either advocate one side or the other, or to provide a neutral analysis. Discussion questions include theories of liability, defenses, pretext and the regarded as standard under the ADA and ADAAA and any potential non-judicial, tenable solution that may mutually benefit the parties.

Format F: Comparative Research Grid

Students are assigned to review Chapter 13, then read the facts and cases in the simulation. After the instructor has given students are given a brief orientation on the use of various databases for looking up statutes and cases. Ideally, the academic universe version of Lexis and/or Westlaw should be used, but free legal research Web site services will suffice. **NOTE: A listing of high-quality Web sites that provide free access to legal research and guidelines for research on the web may be found in Appendix A of the textbook: A Business Student's Guide to Understanding Cases and Finding the Law.** Students prepare a grid that compares the federal anti-discrimination statutes with the state anti-discrimination laws in their own (or pre-selected by the instructor) state. For more advanced or internationally focused programs, the instructor may also assign a comparative analysis of a foreign country's law regarding disability protection in the workplace.

*****Important Note to Instructors:**

The following Assignment Sheet templates are included for your purposes only. The Assignments are not featured in the student's textbook. Typically, the student text's *Business Law Simulation Exercise* would end after Part 2. Teaching tips, sample answers, sample grading guidelines and other helpful features are also included in the Instructor's Manual only.

Business Law Simulation Exercise for Managers: Employment Discrimination
Assignment Sheet (Format A)
Arbitration Simulation

Introduction:

In this simulation, students take on the role of advocates in a mock arbitration. Each individual student will be assigned to [a team of two that will] assume the role of one of the parties in the case.

Additional Facts:

In addition to the *Stipulated Facts* in Part 1, assume that Falstaff and Revere agreed that they would submit to a private arbitration. Assume further that the parties have agreed to narrow the dispute to one single issue: *Is Falstaff's condition considered a disability under the ADA?* They further agreed upon the arbitrator (your instructor) and to limit the total time of the arbitration hearing to 20 minutes.

Assignment:

Using the statutory and case law featured in Part 2 as the reference to analyze this question, each party [team] should gain a full understanding of the *Stipulated Facts*, research the case law and statutes provided and prepare for an arbitration hearing. Students are strongly encouraged to use note cards or other mediums to prepare their arguments and must be prepared to cite specific points of law and/or excerpts from the cases to support arguments or defenses. Each student must be sufficiently familiar with the facts and cases during the arbitration such that each student is able to answer any questions the arbitrator will have and to justify their positions on the basis of case law and/or statutes.

Criteria for grading:

Students are evaluated on:

- Grasp of the stipulated facts, legal issues and case law;
- Ability to articulate an argument and respond to questions in arbitration;
- Engagement in the simulation [and ability to work as a team].

Teaching Tips:

- ⇒ The **Stipulated Facts** are designed to have some facts that favor Falstaff's position and some that cut towards Revere's position. It is often a good idea to inform students that they should not only articulate their own arguments, but also to anticipate alternative arguments and questions from the arbitrator.
- ⇒ Instructors may wish to take special care to help students understand that this arbitration is focused **Falstaff's claim that his impairment qualifies for protection under the ADA** and **not** on the issues in the fact pattern that could arise regarding issues that are unrelated such as pretext.
- ⇒ Instructors in certain classroom settings may wish to consider combining this format with one of the writing formats over a period of several weeks.
- ⇒ In preparing for arbitrations, students sometimes are confused how to use points and facts in their arguments. Students should be encouraged to come prepared to cite to specific points of law and excerpts and to have these points prepared on note cards for the actual arbitration. Students should also be encouraged to **factually distinguish** any cases that do not support their arguments. That is, tell the arbitrator why one case or the other can't be applied because it is factually different from the **Falstaff v. Revere Furniture Company** case.
- ⇒ Students benefit greatly from a separate sheet or e-mail that lists the arbitration dates, times, locations and names of who represents which party.
- ⇒ If students assume a fact that is not stipulated, they should be presented with the question: Where is that in the stipulated facts?
- ⇒ The suggested format of the arbitration is to begin with a question to Falstaff: What is the legal dispute that we are arbitrating today? Arbitrators may then ask questions that are designed to promote a step-by-step process giving equal time to each party.

Issue	Sample questions
<p>Disparate treatment under the McDonnell Douglass standard</p>	<p>To Falstaff:</p> <ul style="list-style-type: none"> ○ What theory of discrimination are you alleging under the ADA? ○ What is the applicable test used in this circuit for an ADA disparate treatment case? ○ Prong 1: Why is Revere covered by the ADA? ○ Prong 2: Is Falstaff’s condition a qualified disability? (See below) ○ Prong 3: Assuming that Falstaff meets prong 2, in what way could Revere have performed the job (what accommodations could Revere have possibly made?) ○ Prong 4: Isn’t there a record of poor performance that led to the discharge? Isn’t that the actual reason why he was terminated? <p>To Revere:</p> <ul style="list-style-type: none"> ○ Assuming that the McDonnell Douglass prongs are met. What is your legitimate and non-discriminatory reason for the termination? ○ Could you have accommodated Falstaff by providing breaks and having another employee designated to lift heavy items?
<p>Qualified disability</p>	<p>To Falstaff:</p> <ul style="list-style-type: none"> ○ The 14th circuit court has specifically held that obesity is not a qualified disability. Why is this case different? ○ In what way does the Adams case support your position? ○ In what way does the impairment substantially limit a major life activity? <p>To Revere:</p> <ul style="list-style-type: none"> ○ Doesn’t the ADAAA cover Falstaff’s disability because his obesity interferes with the life activity described in the Act? ○ How does the fact that Falstaff’s obesity may be related to an actual injury (lower back sprain) impact Revere’s liability under the ADA?
<p>Regarded as test</p>	<p>To Falstaff:</p> <ul style="list-style-type: none"> ○ If it is determined that you are not covered as disabled under the Act, do you have an alternative theory for coverage? <p>To Revere:</p> <ul style="list-style-type: none"> ○ Isn’t there some indication in the Stipulated Facts that Revere supervisors believed that Falstaff could not perform his job tasks even with accommodation?

Business Law Simulation Exercise for Managers: Employment Discrimination
Assignment Sheet (Format B)
Mediation Simulation

Introduction: In this simulation, students analyze the *Stipulated Facts*, case law and statutes, then work towards mediating a tenable solution to the dispute using a mock mediation process.

Assignment:

- In addition to the *Stipulated Facts* in Part 1, assume that Falstaff and Revere agreed that they would submit to a private mediation. Assume further that the parties have agreed to avoid any pretext issues and narrowed the dispute to the issue of Falstaff's claim that his impairment qualifies for protection under the ADA and that Revere failed to accommodate him.
- Review the *Concept Summaries* and your notes from chapter 13 in the textbook.
- Study the *Stipulated Facts*, case law and statutes in the *Simulation Exercise* materials.
- The facts and cases should be read with the goal of understanding the differences and similarities between the court cases and the stipulated facts in the *Falstaff v. Revere Furniture Company* case so that groups can work towards a resolution that achieves the primary objectives of both parties.
- Each student (*or groups of students depending on class size*) is assigned the role of **Howe**, as a manager of Revere, or as **Falstaff**, or as a **mediator** assigned to the case. The instructor is the **Chief Mediator** and will serve as a resource for the parties during the mediation process.
- Participants then prepare to participate in a process designed to settle issues related to **Falstaff's claim that his impairment qualifies for protection under the ADA** and that requires accommodation. Note that no other legal issues are in dispute.
- Initially, participants work outside of the classroom to begin working on proposals. The mediator initiates meetings with each party separately (no more than two 30-minute meetings with each side) and then prepares a variety of alternative tenable solutions crafted to help the parties work towards a mutually agreeable solution.
- After meeting separately, students will be assigned a 20-minute time slot for a "final attempt" session at mediation where all parties and the instructor are present. The Chief Mediator is present to facilitate a solution and to evaluate your negotiations and progress. A deadlock, in and of itself, does *not* affect your grade, so long as the parties used reasonable efforts to compromise.
- The parties should attempt to draft a detailed agreement that achieves, as best as possible, the objectives of each party: For Revere compliance with the ADA and a productive employee; for Falstaff, his former position as a floor manager with reasonable accommodations.
- The mediator should provide a copy of the alternative proposals for a more detailed resolution for each of the parties just prior to the final attempt session.

IM Simulation #2

The parties may amend the proposal by hand at the session and turn in the final product (whether agreed to by the parties or deadlock) to the instructor.

Criteria for grading:

Students are evaluated on their final mediation session. Specifically:

- Grasp of the stipulated facts and case law;
- Legal issues and ability to articulate their position in the context of achieving mutually agreeable objectives;
- Negotiation skills, engagement in the simulation, and ability to work as a team.

Teaching Tips:

- ⇒ The **Stipulated Facts** are designed to have some facts that favor Revere’s position and some that cut towards Falstaff’s position. It is often a good idea to inform students that neither side has a distinct advantage and thus a deadlock would result in a significant risk of legal liability for the business and expense of litigation.
- ⇒ Instructors may wish to take special care to help students understand that this arbitration is focused **only on** Falstaff’s claim that his impairment qualifies for protection under the ADA and that Revere failed to accommodate him and **not** on the issues in the fact pattern that could arise regarding pretext.
- ⇒ Instructors in certain classroom settings may wish to consider combining this format with one of the writing formats over a period of several weeks.
- ⇒ Instructors may wish to emphasize that a deadlock is not necessarily equated to poor performance in the simulation so long as there is evidence that the mediation took place in good faith and at arms length. On the other extreme, students should be cautioned that if the parties have concluded a one-sided deal quickly, that would have a negative impact on their grade as it indicates that no arms-length transaction took place.
- ⇒ Students benefit greatly from a separate sheet or e-mail that lists the mediation dates, times, locations and names of who represents what role.
- ⇒ At the instructor’s discretion, the mediator may be presented with the following issue/question list for use in the initial separate meeting in order to facilitate the mediation.

Issue	Sample questions
Disparate treatment under the McDonnell Douglass standard	To Falstaff: <ul style="list-style-type: none"> ○ What theory of discrimination are you alleging under the ADA?

	<ul style="list-style-type: none"> ○ What is the applicable test used in this circuit for an ADA disparate treatment case? ○ Prong 1: Why is Revere covered by the ADA? ○ Prong 2: Is Falstaff’s condition a qualified disability? (See below) ○ Prong 3: Assuming that Falstaff meets prong 2, in what way could Revere have performed the job (what accommodations could Revere have possibly made?) ○ Prong 4: Isn’t there a record of poor performance that led to the discharge? Isn’t that the actual reason why he was terminated? <p>To Revere:</p> <ul style="list-style-type: none"> ○ Assuming that the McDonnell Douglass prongs are met. What is your legitimate and non-discriminatory reason for the termination? ○ Could you have accommodated Falstaff by providing breaks and having another employee designated to lift heavy items?
<p>Qualified disability</p>	<p>To Falstaff:</p> <ul style="list-style-type: none"> ○ The 14th circuit court has specifically held that obesity is not a qualified disability. Why is this case different? ○ In what way does the Adams case support your position? ○ In what way does the impairment substantially limit a major life activity? <p>To Revere</p> <ul style="list-style-type: none"> ○ Doesn’t the ADAAA cover Falstaff’s disability because his obesity interferes with the life activity described in the Act? ○ How does the fact that Falstaff’s obesity may be related to an actual injury (lower back sprain) impact Revere’s liability under the ADA?
<p>Regarded as test</p>	<p>To Falstaff</p> <ul style="list-style-type: none"> ○ If it is determined that you are not covered as disabled under the Act, do you have an alternative theory for coverage? <p>To Revere</p> <ul style="list-style-type: none"> ○ Isn’t there some indication in the Stipulated Facts that Revere supervisors believed that Falstaff could not perform his job tasks even with accommodation?

Business Law Simulation Exercise for Managers: Employment Discrimination

Assignment Sheet (Format C)

Short Writing Exercise- Issue Spotting

Introduction: In this simulation, students analyze the *Stipulated Facts* and Longville case law and spot as many legal issues as possible. The analysis is articulated in a 3-4 page neutral (i.e., not advocating a particular side) memorandum.

Assignment:

- Review the *Concept Summaries* and your notes from chapter 13 in the textbook.
- Study the *Stipulated Facts*, statutory excerpt and the case law featured in Section 2 of the Simulation Exercise.
- Compose 3-4 page **neutral** memorandum that outlines each legal issue present with a short explanation of the applicable legal rules or doctrine. The sources of law for this memorandum are the textbook's chapter 13 as well as the case law and statutory excerpt
- Note that you should not write as an advocate on one side or the other. Rather, you should be as objective as possible in spotting any and all potential issues that could arise in the case and give the analysis as to the likelihood of success of all theories.

Criteria for grading:

- Clarity of writing, grammar, document appearance;
- Articulation of all potential issues presented;
- Quality and depth of analysis.

Due Date: *[Instructor]*

Policy on Late Work: *[Instructor]*

Teaching Tip:

Students should identify and give a brief explanation of the following issues:

Issue	Stipulated Fact Reference (Paragraph #)
Revere's as a covered employer under the ADA	1,
Falstaff's condition as a permanent disability	7,8,9
Treatment of obesity as covered under the ADA and case law	10,11,13
Impact of ADAAA	11,15
Regarded as standard	13,13,14
Pretext	15
Reasonable accommodation	8
Remedies available	N/A

Business Law Simulation Exercise for Managers: Employment Discrimination

Assignment Sheet (Format D)

(Longer) Writing Exercise: Advocate Memorandum

Introduction: In this simulation, students are asked to analyze the *Stipulated Facts*, a statutory excerpt and case law, then spot as many employment discrimination issues as possible, and then write a 5-7-page memorandum that advocates a particular side of the dispute.

Assignment:

- Review the *Concept Summaries* and your notes from chapter 13 in the textbook.
- Study the *Stipulated Facts*, the statutory excerpt and the case law included in Section 2 of the Simulation Exercise.
- Your instructor will assign you to advocate for either Falstaff or Revere.
- Compose a 5-7-page memorandum that focuses on issue of Revere's potential liability under the ADA and ADAAA. Your memorandum should contain: 1) a brief summary of relevant facts of the dispute; 2) an explanation of each legal issue in the analysis with an application of legal rules or doctrines governing the dispute; 3) a list of all remedies that your side is entitled to; 4) a tenable solution to resolve the dispute in a non-judicial forum. Your memorandum should articulate arguments that support your side of the case by citing directly from the statute, case points of law and opinion excerpts (use a simple parenthetical citation format with the first name of case and point/excerpt number such as *Grindle at Point 2*, or *Adams at Excerpt b1* or *ADAAA Section 2-2*).
- Be sure to explain why you cited a particular point. Start with your strongest argument and give an analysis as to the likelihood of success of each theory.
- In determining a tenable solution, carefully consider the objectives of each party (e.g., For Revere, compliance with the ADA and a productive employee; for Falstaff, his former position as a floor manager with reasonable accommodations).

Grading Criteria: See Memorandum Evaluation form (**Attachment A**) for specific factors used in evaluating your memorandum.

Due Date: *[Instructor]*

Policy on Late Work: *[Instructor]*

Attachment "A"

Memorandum Evaluation

Student: _____

Possible	Score	
		Facts
5		Relevant summary of facts used throughout analysis
		Analysis
10		Demonstrated understanding of McDonnell Douglass application
5		Demonstrated understanding of Regarded as Test and pretext
5		Demonstrated understanding of the impact of the ADAAA on the dispute
5		Used case law to support points
5		Offered a tenable non-judicial solution
		Writing style
10		Sentences were direct, clear and concise with appropriate syntax and legal expression
5		Paper format and appearance
		Comments:
		Total
50		

Business Law Simulation Exercise for Managers: Employment Discrimination
Assignment Sheet (Format E)
Discussion Questions

Introduction: In this simulation, students prepare for a question and answer session based on issues presented by the *Stipulated Facts* in the *Falstaff v. Revere* case.

Assignment:

- Review the *Concept Summaries* and your notes from chapter 13 in this textbook.
- Study the *Stipulated Facts*, statutory excerpt and the case law in Parts 1 and 2 of the Simulation Exercise.
- Be prepared to discuss the following questions:

Questions:

- 1) **Coverage:** Is Revere within the jurisdiction of the ADA? Why?
- 2) **Theory of discrimination:** What theory of discrimination under the ADA is Falstaff alleging?
- 3) **McDonnell-Douglass test:** What is necessary to make out an ADA claim under McDonnell-Douglass? Does Falstaff meet all four prongs of the test?
- 4) **Qualified disability:** Under the current case law in the 14th circuit, is Falstaff's condition a qualified disability? How does the *Adams* case support Falstaff's claims? How is the *Adams* case different from Falstaff's? How does the fact that Falstaff's obesity may be related to his lower back injury impact your analysis? In what way does Falstaff's disability interfere with the life activity requirements as described in the ADA?
- 5) **ADAAA:** How does the passage of the ADAAA impact Revere's liability under the ADA for Falstaff's disability? What parts of the statute are applicable to the *Falstaff v. Revere* matter?
- 6) **Reasonable accommodations.** Did Revere take steps to accommodate Falstaff? If not, what accommodations would be reasonable?
- 7) **"Regarded as" test:** Is there some indication in the Stipulated Facts that Revere supervisors believed that Falstaff could not perform his job tasks even with accommodation? How does the ADAAA impact the "regarded as" analysis.
- 8) **Pretext:** Is there any indication that Revere's reasons for terminating Falstaff were pre-textual? Is Falstaff's misconduct at issue?
- 9) **Business necessity:** What business necessity defense could Revere articulate for requirements related to Falstaff's position?

Teaching Tip:

Students sometimes benefit from being assigned to either advocate one side or the other, or to provide a neutral analysis. Depending on time constraints, instructors may wish to assign only questions dealing with the ADA Disparate Treatment factors [3-5].

SAMPLE ANSWERS AND REFERENCES FOR DISCUSSION QUESTIONS (Format E)

Question 1:

Revere, the employer, is covered by the ADA because the Act requires employers with 15 or more employees to make reasonable accommodations for a disabled employee. Revere has 800 employees [Stip. Fact 1].

Question 2:

Falstaff is alleging that he was terminated due to his disability (overt discrimination), so the theory of discrimination is **disparate treatment**. Falstaff could also allege that his termination were a combination of legitimate motives (cutting costs) with illegitimate motives (disability) under a **mixed motives** theory.

Question 3:

According to *Grindle v. Watkins*, courts use the McDonnell Douglas test to analyze an ADA claim. The four prongs are:

- Employer covered by ADA
- Plaintiff is disabled within the meaning of the ADA
- Plaintiff could have performed the job with reasonable accommodations
- Plaintiff was subject to adverse employment action due to the disability

While the first prong is easily met, the second is more problematic. In *Grindle*, the 14th Circuit specifically held that obesity was not a covered disability. However, after the passage of the ADAAA, the Act's focus is not on specific conditions, but rather on whether or not the disability "substantially limits a major life activity."

Questions 4 and 5:

In *Grindle*, the 14th Circuit specifically held that obesity was not a covered disability. However, after the passage of the ADAAA, the Act's focus is not on specific conditions, but rather on whether or not the disability "substantially limits a major life activity." The ADAAA covers certain disabilities that substantially limit one or more major life activities (impairment). The *Adams* case supports Falstaff's claim by expanding the definitional framework of the ADA. The ADAAA specifically adds the several activities that had not been previously recognized [Adams, Point b]. On the other hand, *Adams* involves a diabetes patient that required insulin and meals on a set schedule. No such burden is placed on Falstaff. Falstaff's condition, though, clearly affect his life activities such as sitting or standing for extended periods [Stip. Fact 5 and 6]. Although some may

point to the “exclusion” in Section 5 of the ADAAA, it is important to realize that this only applies to ADA claims related to the “regarded as” test. There is also a causation issue: Did the back injury cause the obesity or did the obesity cause the back injury? Further, Section 6 makes clear the legislative intent to favor broad coverage of the Act. This favors Falstaff’s claim.

Question 6

Falstaff’s position would be that they did not reasonably accommodate his disability. In Stip. Fact #13, he makes clear that his management duties could be carried out so long as he is not required to do any heavy lifting. Stip. Fact 7 indicates that Revere did give Falstaff light duty, but this was temporary and they made no further effort to accommodate him (e.g., arranging lighter duties and administrative tasks).

Question 7

The ADA covers an employee even in cases where the employer **regards the employee as disabled** (“Regarded as” test). Stip. Fact 13 indicates that Falstaff’s manager, after reviewing Dr. King’s report, expressed concern that the employee may “not be able to fully perform the duties required.” This is evidence that, even if Falstaff was not classified as “disabled,” his employer regarded him as disabled. This fact strengthens Falstaff’s position under the “regarded as” theory. According to *Adams*, the regarded as standards were expanded by the ADAAA and the evidence of the employer’s actions are similar to the Falstaff/Revere case [Point c].

Question 8

Stip. Fact 9 provides evidence that the employer’s reasons were not pre-textual because they began to document his unsatisfactory performance at least 3 months ahead of the termination and that poor performance was a primary motive in terminating Falstaff. However, Falstaff would argue that this poor performance stemmed from his disability and that Revere’s failure to accommodate him caused his performance to deteriorate to the point of termination.

The timeline from the stipulated facts is important:

July 2008 to May 2009	June 2009	July 2009	July, Aug. 2009	Sept. 1, 2009	October 2009	December 2009
Favorable reviews	Back injury- six consecutive sick days	Diagnosed with mild sprain and given temporary accommodation of “light duty.”	Arriving late for work. Complaints of back pain. Unable to arrange	Falstaff give Correction Action letter documenting poor performance.	Second doctor: Obesity is significant factor in Falstaff’s health.	Falstaff terminated by Revere citing poor performance and cost cutting.

			displays etc.			
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Question 9

Business necessity is used by an employer as a defense to discrimination on the basis that it is legitimately necessary to the business operations of the company. It is typically used as a defense in a disparate impact claim, but in this context Revere would likely argue that certain physical requirement were a business necessity. The physical requirements of the position were set out in the job posting [Stip. Facts: Exhibit A]. The posting makes clear that long periods of standing and lifting were a requirement for the job.

Business Law Simulation Exercise for Managers: Employment Discrimination
Assignment Sheet (Format F)
Comparative Research Grid

Introduction: In this simulation, students learn the fundamentals of legal research and then apply those skills to develop a grid/chart that compares the enforceability tests, legal standards and requirements under federal anti-discrimination statutes and case law to the state anti-discrimination protections in a particular jurisdiction.

Assignment:

- Review chapter 13, then read the *Stipulated Facts*, statutory excerpt, and case law in Parts 1 and 2 in this Simulation Exercise.
- Read Appendix A of your textbook: “A Business Student’s Guide to Understanding Cases and Finding the Law.” [**alternative:** Your instructor may also provide you with a brief tutorial on the use of various databases such as Lexis/Nexus® or Westlaw® available at your institution] for performing basic legal research.
- Prepare a grid that compares the federal antidiscrimination laws with the law in your own state. Be sure to name the cases or statutes that you use as a reference to complete the grid.
- The grid should be prepared as follows:

<i>Federal Anti-discrimination Law</i>	<i>Your State (Name)</i>	<i>Similarities</i>	<i>Distinctions</i>
Title VII: Protected classes: Race, Color National Origin, Gender, Religion and Pregnancy)			
Age Discrimination in Employment Act (ADEA)			
American with Disabilities Act (as amended by the ADAAA of 2008)			
Business necessity defense			
BFOQ defense			

Due Date: [Instructor]

Policy on late work: [Instructor]

Teaching Tips:

- ⇒ For Graduate students or courses that have a more international law focus, the assignment may be modified to include a comparative law grid with a foreign country. Germany, Great Britain, Japan, and the United Arab Emirates all have a solid body of law covering discrimination in the workplace and each has a distinct cultural flavor to their rules. Appendix A in Chapter 1 of the textbook: “**A Business Student’s Guide to Understanding Cases and Finding the Law**” provides several high-quality, free Web sites for legal research.
- ⇒ Instructors in certain classroom settings may wish to consider combining this format with one of the writing formats over a period of several weeks.