
TABLE OF CONTENTS

PREFACE TO THE THIRD EDITION	v
INTRODUCTION	vii
ACKNOWLEDGMENTS.....	ix
PERMISSIONS.....	xiii
TABLE OF CASES.....	xliii

PART I. FOUNDATIONS

CHAPTER 1. EQUALITY.....	3
I. EQUALITY THEORY AND U.S. LAW.....	4
A. The Aristotelian Approach.....	5
B. The United States Constitution	13
C. Title VII of the Civil Rights Act of 1964	19
II. SEX INEQUALITY UNDER LAW.....	22
III. COMPARATIVE LEGAL EQUALITY APPROACHES.....	28
A. A Canadian Alternative.....	28
B. South African Developments	41
C. Emerging European Law	45
IV. SEX EQUALITY UNDER INTERNATIONAL LAW	48
CHAPTER 2. RACE AND RACISM	61
I. EARLY PRECEDENTS	68
A. Facial Discrimination: <i>Plessy v. Ferguson</i>	68
B. Disparate Impact: <i>Yick Wo v. Hopkins</i>	80
C. Strict Scrutiny: <i>Korematsu v. United States</i>	83
D. Public and Private: <i>Shelley v. Kraemer</i>	94
II. CONTEMPORARY DEVELOPMENTS	100
A. Facial Discrimination: <i>Brown v. Board</i>	100
B. Disparate Impact: <i>Griggs v. Duke Power Co.</i>	110
C. Discriminatory Intent: <i>Washington v. Davis</i>	122
D. Affirmative Action: <i>Grutter v. Bollinger</i>	132
E. Racist Hate Speech: <i>R. v. Keegstra</i>	155
CHAPTER 3. SEX AND SEXISM	169
3.1 WORK.....	170
I. WOMEN'S ECONOMIC REALITY.....	171
II. WORK IN LAW: <i>BRADWELL V. ILLINOIS</i>	182
III. SEX STEREOTYPING AT WORK	191
A. Sex Stereotyping in Society	191
B. Individual Sex Discrimination: <i>Price Waterhouse v. Hopkins</i>	198
C. Transgender Discrimination as Sex Discrimination: <i>Schroer v. Billington</i>	211

IV. STATUTORY EQUAL EMPLOYMENT	226
A. Group Workplace Inequality: <i>Wal-Mart v. Dukes</i> and <i>EEOC v. Sears</i>	230
B. Comparable Worth	253
C. Part-Time Work.....	270
3.2 SEX CLASSIFICATIONS, CONSTITUTIONAL.....	272
I. SEX EQUALITY RECOGNIZED.....	279
A. Rational Relation: <i>Reed v. Reed</i>	280
B. Intermediate Scrutiny: <i>Craig v. Boren</i>	284
C. Strict Scrutiny: <i>Frontiero v. Richardson</i>	292
D. The Difference Gender Makes: <i>J.E.B. v. Alabama</i>	299
II. SEX EQUALITY DENIED	310
A. Difference: <i>Geduldig v. Aiello</i> and <i>Rostker v. Goldberg</i>	311
B. Intent: <i>Massachusetts v. Feeney</i>	332
3.3 PERMITTED VS. PROHIBITED DISTINCTIONS.....	342
I. “OTHER” AND “DIFFERENT”	346
II. BENIGN VS. INVIDIOUS	349
A. Invidious in Benign Garb? : <i>Muller v. Oregon</i>	349
B. Sex Specificity and Gender Neutrality: <i>Kahn v. Shevin</i> and <i>Weinberger v. Wiesenfeld</i>	356
C. Accuracy and Dependency: <i>Goldfarb</i> and <i>Webster</i>	365
D. Sex Specificity.....	378
1. Affirmative Action: <i>Johnson v. Santa Clara</i>	378
2. Deadly Force: <i>Wanrow</i>	390
3. Citizenship: <i>Nguyen v. INS</i>	394
3.4 EDUCATION AND ATHLETICS	400
I. ACADEMICS	403
A. Sex Separation: <i>Vorcheimer v. Philadelphia</i>	403
B. Sex Integration: <i>Mississippi University for Women v. Hogan</i> and <i>United States v. Virginia</i>	408
II. ATHLETICS	441
A. The Law of Sex Equality in Athletics	445
B. Athletics as a Gendered Social Institution	454
C. Delivering Equality: <i>Cohen v. Brown University</i>	457
3.5 PREGNANCY	466
I. PREGNANCY DISCRIMINATION AS NOT SEX DISCRIMINATION <i>General Electric v. Gilbert</i>	472
II. PREGNANCY DISCRIMINATION AS SEX DISCRIMINATION <i>California Federal Savings & Loan Ass'n. v. Guerra</i>	484
CHAPTER 4. SEX, RACE, AND NATION	497
I. RACE AND SEX MERGED: <i>LOVING v. VIRGINIA</i>	502
II. RACE AND SEX DISTINGUISHED: THE <i>BAKKE</i> CASE	508
III. RACE AND SEX INTERSECT: THE <i>JEFFERIES</i> CASE.....	518
IV. SEX AND NATION IN CONFLICT	526
A. Sovereignty Versus Equality: <i>Martinez v. Santa Clara Pueblo</i> ..	526
B. Cultural Relativism: <i>Kasindja</i> and <i>Dogru</i>	547

CHAPTER 5. BURDENS OF PROOF 567

I. Disparate Treatment Burdens of Proof.....	571
A. Order and Allocation of Proof: <i>McDonnell Douglas Corp. v. Green</i>	573
B. Defendant's Rebuttal Burden: <i>Furnco to Burdine</i>	576
1. "Legitimate Nondiscriminatory Reason": <i>Furnco Construction v. Waters</i>	577
2. Lightening the Defendant's Rebuttal Burden: <i>Keene State v. Sweeney</i>	580
3. Lightening the Defendant's Rebuttal Burden Further? <i>Burdine</i>	583
C. Pretext Burden: <i>St. Mary's Honor Ctr. v. Hicks</i>	590
D. Burden for Pregnancy Discrimination: <i>Young v. UPS</i>	607
E. Mixed Motive: <i>Desert Palace v. Costa</i>	614
II. Disparate Impact Burdens of Proof.....	619
A. Disparate Impact Cases.....	620
B. Standards of Proof: <i>Wards Cove</i>	623

PART II. APPLICATIONS

CHAPTER 6. FAMILY 641

I. THE ECONOMIC FAMILY.....	658
A. Spousal Support: <i>Orr and Moge</i>	662
B. Family Property Division: <i>Kirchberg v. Feenstra</i>	687
II. THE REPRODUCTIVE FAMILY	690
A. The "Illegitimate" Family: <i>Stanley and Caban</i>	693
B. The "Legitimate" Family: <i>Parris, Burchard, David & Margaret M., Linda R.</i>	724
III. THE SEXUAL FAMILY: CORBETT, GARDINER, AND SINGER.....	752
IV. THE VIOLENT FAMILY	772
A. Challenges to Legal Indifference: <i>Bruno v. Codd and Thurman v. Torrington</i>	783
B. Domestic Inaction and International Action: <i>DeShaney, Gonzales, and Opuz</i>	801
C. Killing Batterers in Self-Defense: <i>Norman and Lavallée</i>	838

CHAPTER 7. SEXUAL SUBORDINATION 861

7.1. RAPE.....	872
I. SEXUAL ASSAULT AS SEX INEQUALITY.....	880
A. Rape as Gender Based in Life	880
B. Rape as Gender Based Law	906
1. "Womanhood": <i>Dothard v. Rawlinson</i>	907
2. Vulnerability: <i>Michael M. v. Superior Court</i>	915
3. Intimacy: The <i>Libertá</i> Case	933
4. International Law of Rape.....	947

II. THE CRIMINAL LAW OF RAPE.....	956
A. Force: <i>Akayesu and Berkowitz</i>	959
B. Consent: <i>M.T.S.</i> and the Antioch College Policy	978
7.2. SEXUAL HARASSMENT	1002
I. SEXUAL HARASSMENT AT WORK	1010
A. The Experience	1010
B. “Based on Sex”: <i>Barnes, Oncale</i> , and <i>Nelson</i>	1024
C. Types of Sexual Harassment	1050
1. Quid Pro Quo.....	1052
2. Hostile Environment.....	1057
D. Unwelcomeness	1074
E. Employer Liability: <i>Faragher v. Boca Raton</i>	1088
F. Retaliation: <i>University of Texas Southwestern Medical Center v. Nassar</i>	1102
II. SEXUAL HARASSMENT IN EDUCATION	1102
A. The Experience	1105
1. Student-Student (Peer) Sexual Harassment.....	1106
2. Teacher-Student Sexual Harassment.....	1116
B. The Legal Claim.....	1126
1. Teacher-Student Harassment: <i>Alexander v. Yale</i>	1126
2. Student-Student Sexual Harassment: <i>Brzonkala, Nabozny, Mary Washington Administrative Complaint</i>	1139
C. Institutional Liability: <i>Franklin, Gebser, & Davis</i>	1160
D. Policy & Procedure: Dear Colleague Letter, Campus Save Act, and Missoula Findings & Resolution	1181
CHAPTER 8. LESBIAN AND GAY RIGHTS	1209
<hr/>	
I. LANGUAGE AND POLITICS	1220
II. PRIVACY: <i>LAWRENCE V. TEXAS</i>.....	1232
III. SAME-SEX EQUALITY: <i>WINDSOR, OBERGEFELL, AND M&H</i>	1258
IV. SAME-SEX SEX EQUALITY: <i>BAEHR V. LEWIN, PERRY, BALDWIN, AND ARGUMENT</i>	1310
CHAPTER 9. REPRODUCTIVE CONTROL	1361
<hr/>	
I. STERILIZATION ABUSE: <i>MADRIGAL V. QUILLIGAN</i>.....	1371
II. ABORTION	1386
A. Privacy: <i>Griswold, Roe</i> , and <i>Casey</i>	1392
B. Sex Equality: <i>McRae, Johnson, Bray</i> , and <i>Gonzales</i>	1421
III. THE MATERNAL-FETAL RELATION: <i>DOBSON, WHITNER, DAVIS</i> and <i>A.C.</i>	1469
IV. SURROGACY	1493
A. Surrogacy Theorized	1498
B. Surrogacy Under Law	1513

CHAPTER 10. SEX TRAFFICKING	1533
10.1 PROSTITUTION	1549
I. CONDITIONS AND PRECONDITIONS OF PROSTITUTION.....	1560
II. PROSECUTING PROSTITUTION.....	1608
A. Sex Trafficking: <i>Todd</i> and <i>Rantsev</i>	1608
B. Sexual Slavery: <i>Pierce v. United States</i>	1622
C. Military Prostitution: “Comfort Women” Case	1635
III. SEX EQUALITY CHALLENGES TO PROSTITUTION	1646
A. Unequal Enforcement of Prostitution Laws: <i>Hartway</i> , <i>In re P.</i> , and <i>Jordan</i>	1647
B. Civil Remedies for Prostitution	1672
C. The Nordic Model.....	1683
10.2 PORNOGRAPHY	1687
I. DEFINING PORNOGRAPHY.....	1695
A. From Obscenity to Equality	1695
B. Pornography as Prostitution: <i>Fixler</i> , <i>Freeman</i> , and the Nude Dancing Cases.....	1704
II. THE HARM OF PORNOGRAPHY	1716
A. Production Harms	1721
B. Consumption Harms	1728
III. PORNOGRAPHY AS SEX INEQUALITY	1750
A. Pornography as Speech: <i>Hudnut</i> , <i>Butler</i> , and <i>R.A.V.</i>	1750
B. Pornography as Sexual Harassment: The <i>Robinson</i> and <i>Johnson</i> Cases.....	1822
INDEX	IND-1