

FEMINIST LEGAL THEORY
Professor Laura T. Kessler
Fall 2004

Tuesday, 4:40 - 6:40 p.m., Room 108

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Office Hours: By appointment

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COURSE DESCRIPTION

This course explores a type of legal scholarship known as “feminist legal theory” or “feminist jurisprudence,” one of the most important movements in legal scholarship today. Feminist legal theory draws from the experiences of women and from critical perspectives within other disciplines such as sociology, psychology, philosophy, and literary criticism to analyze the relationship between law and gender and understand the limits of, and opportunities for, legal reform. Historically, its essential concern was with the treatment of women by the legal system. Over the past three decades, it has developed into a general critique of the nature of law and the role of law in maintaining and perpetuating social hierarchies, with its own set of canons, methodologies, and internal critiques. The course will be organized around the various schools of feminist thought, including formal equality, substantive equality, nonsubordination, cultural feminism, and antiessentialism. During the semester, we will explore these strands of feminist legal theory from a philosophical perspective, as well as apply them to concrete areas of law such as employment law, family law, violence against women, and reproductive freedom.

Each student will be responsible for leading two class discussions. The final product of the class will be a paper of ten pages in length, exclusive of footnotes. It will be due on Monday, December 20, 2004, the final day of the exam period. In the paper, you will answer a question or series of questions which I will distribute the last day of class.

COURSE MATERIALS

Bartlett, Harris, and Rhode, *GENDER AND LAW: THEORY, DOCTRINE, COMMENTARY* (3d ed. 2002).

Cases and other materials to be distributed in class, as noted below.

COURSE WEB SITE

I have set up a course web site using Westlaw's TWEN service. On the web site, you will find the course syllabus, a "news" page on which I may post relevant news articles during the semester, a sign-up sheet for class discussion leaders, and notable schedule changes if they arise. In order to access the TWEN web page, you will need to register as a course participant over Westlaw. To do so, go to www.lawschool.westlaw.com over the Internet, click the TWEN link, fill in the requested information for first-time TWEN users, sign onto Westlaw using your password, choose Utah Law School from the pull-down list of law schools, and choose Feminist Legal Theory. If you have any technical difficulties accessing the TWEN course page, you can receive technical assistance by calling 1-800-Westlaw.

SUMMARY: COURSE REQUIREMENTS

(1) **Class Attendance.** Because we have a small group this semester, class attendance is of utmost importance. If you feel that you will have a problem with regular class attendance, I would strongly advise that you not take this class.

(2) **Preparation for and participation in classroom discussion.** The course materials stress the presentation of different perspectives and may evoke vigorous debate. I encourage you to express your views, however unpopular the perspective or sensitive the topic, so long as you do so in a respectful, professional manner. You also are encouraged to frame arguments from a perspective with which you don't necessarily agree. A student's semester grade may be raised or lowered by one-half grade based on class participation.

(3) **Leading two class discussions.** Each student will be assigned as the discussion leader for two classes, based on student interest in the various topics. The TWEN course page contains a sign up sheet for discussion leaders. Please choose two classes and add your name to the list by the second class.

(4) **Course paper.** The final product of the class will be a paper of ten pages in length, exclusive of footnotes. The paper will be due on Monday, December 20, the final day of the exam period. In the paper, you will answer a question or series of questions which I will distribute the last day of class. Final course papers must be emailed to me by 4:30 p.m. Failure without previous excuse to miss this deadline will result in automatic reduction of one full grade in the overall grade for each day late.

Note: In accordance with law school policy, a student may be denied credit for a course on the basis of excessive unexcused absences from class.

READING ASSIGNMENTS: A list of the reading assignments for the semester follows. We will cover approximately 20-35 pages per class hour. Estimated durations for each segment of the course are listed below. Each entry corresponds with one class session unless otherwise noted. Presentation of the material will be paced to accommodate class discussion and interest, therefore, don't read too far ahead! All page references are to the casebook unless otherwise noted.

Introduction: The History of Women's Subordination (2.5 class periods)

1. Case Book Preface, xxxiii-xxxv
Women, Labor, and Property (pp. 11-44)

Please prepare the assignment with the following questions in mind:

- a) In what ways did the practices described subordinate women.
- b) To what extent did these practices differentiate among women, and along what lines?
- c) How did the law contribute to and/or offer a challenge to subordination?

2. Marriage and the Emancipation from Slavery (pp. 59-66)
Gender, Political Rights, and Citizenship (pp. 76-95)

(Again, please prepare the assignment with the questions *supra* in mind.)

Second Hour: We will hold a mock women's rights convention in the nineteenth century. It is 1848. You will be divided into caucuses of young, unmarried white women, married white women, and African American "free women of color". Come to class prepared to answer the following questions:

- a) What kinds of demands should be on the table, and what should take first priority? The vote? The abolition of slavery? Stronger married women's property acts?
- b) What legal mechanisms would achieve the goals you seek? What non-legal means might be worth pursuing? (cooperative housekeeping? free love?)
- c) What kinds of rhetoric will be helpful to make your case to the men?
- d) What kinds of obstacles would you expect, from women and from men?

3. History of Feminist Legal Movement (pp. 95-116)
(**Note:** The assignment for week three is continued on the next page).

Chapter 2: Formal Equality (2.5 class periods)

3. (cont.) The Constitutional Right to Equal Protection Under Law (pp. 117-49)
Prepare problem 2-1
4. Formal Equality in Employment: Equal Pay Act and Appearance Standards (pp. 149-181)
5. Formal Equality in Employment: Subjective Employee Evaluation Standards (pp. 181-212)
Prepare problem 2-16

Chapter 3: Substantive Equality (2 class periods)

6. Substantive Equality in Employment: Pregnancy and Family Obligations (pp.320-64), *Nevada Dep't of Human Resources v. Hibbs*, 531 U.S. 731 (2003) (to be distributed in class)
Prepare problem 3-3
7. Substantive Equality in the Family (pp. 432-96) (we will spend more time on the divorce than the child custody materials)
Prepare problem 3-8

Chapter 5: Women's "Different" Voice(s) (2 class periods)

8. The "Connection Thesis" and Its Legal Implications (pp. 805-51)
9. Women and the Legal Profession (pp. 851-885)
First Half Hour: Film, "Fashioning Women in Law"

Chapter 4: Nonsubordination (3 class periods)

10. Heterosexism: Subordination by Legal Definition?
Lawrence v. Texas, 539 U.S. 558 (2003), casebook pp. 731-34, *Goodridge v. Dep't of Health*, 798 N.E.2d 941 (Mass. 2003), casebook pp. 749-770

Note: Please read the materials in this order; non-casebook materials will be distributed in class.
11. Sexual Harassment at Work (pp. 540-78)
Sexual Harassment in Educational Institutions and Acquaintance Rape (pp. 597-612, 993-1005)
Prepare problem 4-8
12. Domestic Violence (pp. 613-75, 691 (bottom)-698)
Prepare problem 4-8

Chapter 7: Anti-Essentialism (1 class period)

13. Last class! Critiques of Single-Axis Feminist Analysis, Feminism and Men, Critiquing Biological Definitions of Women, Postmodern Feminist Theory, Antiessentialist Methodology (pp. 1193-1214, 1235-50, 1255-83)

Final Papers/Take Home Exam Due December 20. Papers must be emailed to me at kesslerl@law.utah.edu by 4:30 p.m.

AMERICANS WITH DISABILITIES ACT ACCOMMODATIONS NOTICE

The University of Utah seeks to provide equal access to its programs, services and activities for people with disabilities. If you will need accommodations in this class, reasonable prior notice needs to be given to Barbara Dickey, Associate Dean of Student Affairs, and to the Center for Disability Services (CDS), to make arrangements for accommodations. CDS is located at 200 S Central Campus Drive (Union Building), Rm. 162, or you can call (801) 581-5020.

All written information in this course can be made available in alternative format with prior notification.