Introduction

Fifty years ago, President John F. Kennedy signed the Equal Pay Act. This landmark law was intended to address the “unconscionable practice of paying female employees less”¹ than their male counterparts. At that time, women earned only 60 cents to every dollar earned by a man.² Pay equity was not only essential to women’s equality, the President noted—as vital as the right to vote—but also was key to the nation’s prosperity: “Our economy today depends upon women in the labor force.”³

² Id.
³ Id.
Notwithstanding the importance of pay equality to our democracy and our economy and laws outlawing discrimination in this area, the gap between men and women persists. To be sure, it has closed to about 77 cents; however, women’s economic security remains precarious, particularly for low income and women of color: Black and Latina women earn 64 and 55 cents, respectively, to every dollar a white man earns.

What does this have to do with gender? More importantly, what’s law got to do with it?

In this class, we will seek to answer those questions, among others. Our method will be to examine cases and legal theories that have developed to address gender-based discrimination. And, in so doing, we will examine how the law both reflects and contributes to the construction of gender in society.

This semester, we’ll do this within the backdrop of ongoing efforts by national feminist legal organizations working under the auspices of the Ford Foundation. Specifically, through Ford, several national women’s legal advocates have joined forces to develop strategies for securing economic justice for low-income women and women of color in the U.S. On the 50th anniversary of the Equal Pay Act, these groups launched a state-based campaign designed to raise awareness about the wage gap and promote advocacy to eliminate it. The writing assignments this semester will revolve around issues relating to this campaign – but more on that later.

To prepare you for those assignments, this course takes a practical and theoretical approach to examining the law that applies to sex discrimination in a variety of contexts, including employment and education. In addition to reviewing doctrine and commentary on gender and the law, students will engage in problem-solving exercises to enhance their understanding of the law and develop the analytical skills necessary to practice in this or any other area of the law. This course also requires students to exercise those skills by writing short papers.

**Course Objectives**

By the end of this semester, students should have achieved the following:

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5 The groups include the following: the National Women’s Law Center, the National Partnership for Women and Families, Legal Momentum, and the ACLU Women’s Rights Project.
• A basic understanding of the constitutional and federal law governing sex discrimination;

• A basic knowledge of various feminist legal theories;

• The capacity to analyze, apply, and critique feminist legal theories in varied contexts;

• Greater appreciation for diverse methods of engaging in legal advocacy; and

• Improved facility in research, writing, and oral presentation.

Course Requirements

The Text


Recommended texts:

• Levit and Verchick, Feminist Legal Theory: A Primer (2006 NYU Press)

TWEN Registration:

I communicate through TWEN, the West Education Network. Assignments and announcements, such as class cancellations or syllabus revisions, will come to you through TWEN. To access the site, go to www.lawschool.westlaw.com and click the link for TWEN.

Participation and Attendance:

Discussing the materials assigned for a given class is a key part of the course. Students should be prepared to answer questions based on the reading in every class. In addition, at different times in the course, students may be required to lead class discussion and/or submit questions for the class to consider. In all cases, participation will be evaluated based on its quality of engagement with the assigned material, as explained in greater detail below.
To that end, regular attendance is mandatory. If you must miss class, please inform me ahead of time if possible by e-mail. Chronic absences and/or unpreparedness will result in a failing grade.

Similarly, if you will be more than five minutes late for class, please refrain from coming. The class is small; random entrances and exits are distracting to your colleagues. Habitual lateness will result in a lowered grade.

Written assignments:

Students must write one essay and three short papers over the course of the semester. “Short” means between 5 - 7 pages in length. The assignments likely will be varied and range from research memos to drafting fact sheets, letters, or testimony, for example.

As the registration materials indicate, laptops are prohibited in this class.

Grades

I will base your grade upon the papers and your participation in class. I will calculate grades as follows:

- Written Assignments: 50% of your grade
- Class attendance and participation: 50% of your grade

How will papers be graded? Papers at the top of the curve will have the following attributes:

- **Well organized:** there should be an introduction with a short road map of what the reader can expect, a coherent argument that is appropriately supported, and a conclusion.
- **Accurate:** if you are not sure, double check the cases, articles, or other sources. Don’t guess at what the doctrine is.
- **Support for propositions:** There should be citations to the sources upon which you relied in writing the paper.
- **Proper citation:** In this class, I expect you to refer to and use THE BLUEBOOK (19th Edition). If you need help finding or using this resource, contact our excellent librarians. Papers that do not follow this format will penalized.
- **Informative and persuasive:** Most, if not all of these assignments will require you to be advocates. That means your work will be to present the necessary information in a manner calculated to spur action to benefit your client, issue, or cause.
• Clear and easy to read: The best writing is the clearest writing. Say what you have to say without resorting to legalistic or academic jargon.
• Proofread and reasonably free of typographical and/or grammatical errors: Before you turn in your final version, PRINT and READ it to make certain that there are no glaring mistakes. No one is perfect, but papers that are rife with errors send the message that the writer is inattentive to detail and, worse, doesn’t have command of the subject matter. Get in the habit now of proofing your work.

Tentative Subject Matter and Due dates for Papers

<table>
<thead>
<tr>
<th>Short Paper #1</th>
<th>September 16, 2013</th>
<th>Letter to the governor of Ohio, Indiana, or Kentucky about the wage gap in that state, urging that a particular action be taken</th>
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</thead>
<tbody>
<tr>
<td>Short Paper #2</td>
<td>October 14, 2013</td>
<td>Fact sheet on pregnancy discrimination</td>
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<tr>
<td>Short Paper #3</td>
<td>November 25, 2013</td>
<td>Op-ed about the relationship between contraceptive coverage to women’s economic security</td>
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We will discuss these topics in greater details over the course of the semester.

Each paper must be submitted in final form by 5 p.m. via email to everyone in our class. The next class meeting will be spent discussing the papers in greater detail.

How will class participation be assessed? In this class, quality matters, not quantity. Students who participate substantively can expect to be rewarded.

What is “substantive” class participation?

Comments that, for example:

• Contribute to our understanding of the assigned material – e.g., how a particular case relates to other assigned materials.
• Clarify ambiguities or inconsistencies in the doctrine, reasoning of the court, or theoretical construct applied.
• Place the cases or theories in context – e.g., consider whether a particular feminist theory is effective in promoting change.
• Identify ongoing themes in cases or feminist legal theorizing, such as how law contributes to our understanding of what it means to be “female.”

**How to Contact Me**

Office hours: Mondays and Thursdays: 2:00 – 3:00 pm

I also am available by appointment. You may contact me either via email or phone at the email address and phone number on the first page of this syllabus.

**Assignments for Day One**

Before you come to the first class:

• **Register** on TWEN.
• **Complete** the short written assignment awaiting you on the TWEN site. **That assignment is due by 5 p.m. on August 18, 2013.**
• **Read and complete** the assignment for our first class, which appears on the next page (“CB” = Casebook).
<table>
<thead>
<tr>
<th>Date</th>
<th>Assignment</th>
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<tbody>
<tr>
<td>1. August 20</td>
<td>Formal Equality/Equal Protection: CB 1-15; 21-32</td>
</tr>
<tr>
<td>2. August 22</td>
<td><strong>No Class:</strong> Write a 300-500 word essay in response to Problem 1-4. Turn in to <a href="mailto:lori.strait@uc.edu">lori.strait@uc.edu</a> by 5 p.m. on 8/22/13. Make sure to put your name on your papers.</td>
</tr>
<tr>
<td>3. August 27</td>
<td>Right to Equal Group Treatment/Indirect Discrimination: CB 32-49</td>
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<td><em>Problem 1-9</em></td>
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<tr>
<td></td>
<td><em>Problems 1-11; 1-12</em></td>
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<tr>
<td>5. September 3</td>
<td>Limits of Formal Equality: What is “Because of Sex”? CB 64-90</td>
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<tr>
<td></td>
<td><em>Problem 1-15</em></td>
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<tr>
<td>6. September 5</td>
<td>Appearance Regulation: CB 90 – 108</td>
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<td></td>
<td><em>Problem 1-16</em></td>
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<tr>
<td>7. September 10</td>
<td>BFOQ: CB 108-127</td>
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<td></td>
<td><em>Problem 1-24</em></td>
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<tr>
<td>8. September 12</td>
<td><strong>NO CLASS:</strong> work on paper</td>
</tr>
<tr>
<td>September 16</td>
<td>Short Paper 1 is due by 5 pm to <a href="mailto:lori.strait@uc.edu">lori.strait@uc.edu</a>.</td>
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<tr>
<td>9. September 17</td>
<td>Discuss Papers in class: Student Volunteers Needed</td>
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