

LEGAL ISSUES SURROUNDING THE “METOO” MOVEMENT

Professor L. Camille Hébert
Office: Room 200
(614) 292-0190
hebert.2@osu.edu

Spring 2019
5:00 to 6:50 p.m. Th
Room 245

Course Materials

Hébert, Materials on Legal Issues Surrounding the “MeToo” Movement (Spring 2019).

Course Information

This course will address some of the legal issues surrounding the “MeToo” movement, including the prohibitions of sexual harassment in Title VII of the Civil Rights Act and Title IX of the Education Amendments of 1972. The course will address the legal conception of sexual harassment as a form of sex discrimination and the prohibitions on retaliation against those who report sexual harassment. The course will also discuss the legal issues involved when employers and universities investigate allegations of sexual harassment and take action against those accused of sexual harassment and other forms of sexual misconduct. The course will introduce concepts from feminist legal theory and indicate how those concepts shape the understanding of sexual harassment and other forms of sexual misconduct.

Learning Goals

1. Students will demonstrate an understanding of the basic legal issues surrounding sexual harassment and other forms of sexual misconduct in the workplace and in academia.
2. Students will gain an understanding of how feminist legal theory and cultural events do and might shape the law.

Course Grading

The course will be graded on a satisfactory/unsatisfactory basis. Students will be evaluated based on their participation in class discussions and their short (1-3 pages) papers or journal entries required to be turned in before each class session. **Unless otherwise indicated, journal entries should be emailed to me at hebert.2@osu.edu by 9:00 p.m. the Wednesday before each class session.** In conformity with College Rule 9.08 and ABA Standard 308, I expect you to be in class and to be prepared every day. Failure to attend class on a regular basis or to be prepared for class is likely to result in a grade of unsatisfactory.

Academic Misconduct

Academic integrity is essential to maintaining an environment that fosters excellence in teaching, research, and other educational and scholarly activities. Thus, The Ohio State University and the College of Law expect that all students have read and understand the Moritz College of Law Honor Code (https://moritzlaw.osu.edu/registrar/docs/honor_code.pdf), and that all students will complete all academic and scholarly assignments and examinations with fairness and honesty. Students must recognize that failure to follow the rules and guidelines established in the Honor Code and this syllabus may constitute academic misconduct as defined in Article IV.B of the Honor Code. Examples of academic misconduct include, but are not limited to, plagiarism, unauthorized collaboration, copying the work of another student, and possession or use of unauthorized materials during an examination. Ignorance of the Honor Code is never considered an excuse for academic misconduct. If I suspect that a student has committed academic misconduct in this course, I am obligated by College rules to report my suspicions to the College Administration. The sanctions for the misconduct could include a failing grade in this course, suspension or dismissal from the College and University, and a report to the relevant bar authorities. If you have any questions about the above policy or what constitutes academic misconduct in this course, please contact me for clarification.

Disability Accommodations

The College of Law is committed to providing an environment that ensures that no individual is discriminated against on the basis of disability. Students with disabilities who may need special academic accommodations should notify the Assistant Dean for Students as soon as possible. The Assistant Dean will work with the student, the University Office of Disability Services, and with me to coordinate reasonable accommodations for students with documented disabilities. The University Office of Disability Services is located in 98 Baker Hall, 113 West 12th Avenue; telephone 292-3307, TDD 292-0901; <http://www.ods.ohio-state.edu/>

Syllabus

Class 1: Introduction to the “MeToo” Movement

The purpose of this session is to introduce students to the “MeToo” Campaign as a movement, rather than focus on the legal issues surrounding the movement. The readings for this week are a series of popular accounts of the movement, both in the United States and across the world more generally, so that students may understand the scope of the movement.

Readings: Materials 1-22. “metoo” is raising awareness, but taking sexual abuse to court is a minefield, *The Guardian*, October 20, 2017; #MeToo Campaign Showed the Misogyny is a Deeply Cultural Issue. Here’s Why It Was Sorely Needed, *The Wire*, October 27, 2017; Time’s Person of the Year: ‘The Silence Breakers’ for speaking out against sexual harassment, *The Washington*

Post, December 6, 2017; The Rising Pressure of the #MeToo Backlash, *The New Yorker*, January 24, 2018.

Journal Entry Questions: What are your impressions of the #MeToo movement? Do you think that it will have lasting effects, either positive or negative? What are the risks of backlash from the movement?

Class 2: Workplace Sexual Harassment under Title VII

In this session, we will discuss the legal definition of sexual harassment in the workplace under Title VII of the Civil Rights Act of 1964, as reflected in several cases decided by the United States Supreme Court.

Readings: Materials 23-34. *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986); *Harris v. Forklift Systems, Inc.*, 510 U.S. 17 (1993), and *Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75 (1998).

Journal Entry Questions: As reflected in the readings, what are the principal legal requirements for a claim of workplace sexual harassment? What are the effects of these requirements? Do you believe that these requirements are generally appropriate and, if not, how might you recommend that they be changed?

Class 3: Challenges in Asserting Sexual Harassment Claims

In this class session, we will discuss some of the challenges faced by individuals who report sexual harassment in the context of the workplace, including legal issues concerning retaliation and establishing employer liability.

Readings: Materials 35-49. *Clark County School District v. Breeden*, 532 U.S. 268 (2001); *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998).

Journal Entry Questions: Under what circumstances are employees who report sexual harassment protected from retaliation? Are these limitations appropriate? Under what circumstances will employers be liable for harassment that occurs in the workplace? Are these rules appropriate?

Class 4: Different Conceptualizations of Sexual Harassment

In this class session, we will discuss the different ways that the law of sexual harassment might have been conceptualized and developed under Title VII of the Civil Rights Act of 1964 if the law had been influenced by feminist legal theory.

Readings: Materials 50-74. Commentary on and re-write of the *Meritor Savings Bank v. Vinson* decision from FEMINIST JUDGMENTS: REWRITTEN OPINIONS OF THE UNITED STATES SUPREME COURT (Cambridge University Press 2016).

Journal Entry Questions: What is your reaction to the re-written *Meritor* decision? How does the approach of feminist legal theory lead to the reasoning and result of the re-written decision? Does reading the re-written decision make you think about the original decision in a different way and, if so, how?

Class 5: Sexual Harassment and Misconduct under Title IX

In this class session, we will discuss the legal definition of sexual harassment and other forms of sexual misconduct in the context of education under Title IX of the Education Amendments of 1972.

Readings: Materials 75-115. Revised Sexual Harassment Guidance issued by the Office for Civil Rights of the Department of Education (January 2001).

Journal Entry Questions: How are issues of sexual harassment the same or different in the educational rather than the workplace setting? How should the law take these differences into account?

Class 6: Enforcement Issues under Title IX

In this class session, we will discuss the various ways in which Title IX has been interpreted to apply to sexual harassment and other forms of sexual misconduct, including sexual assault, occurring in the academic setting and on college campuses and how issues of enforcement have been treated by different administrations.

Readings: Materials 116-141. “Dear Colleague” letter issued by the Department of Education under the Obama Administration (April 4, 2011); Q&A on Campus Sexual Misconduct issued by the Department of Education under the Trump Administration (September 2017).

Journal Entry Questions: How do the approaches of the Department of Education under the Obama and Trump Administrations differ with respect to issues of sexual misconduct and sexual assault? What are the advantages and disadvantages of each approach?

Class 7: How the “MeToo” Movement Might Influence the Law

In this class session, we will return to the “MeToo” movement and discuss the ways in which that movement might influence the legal issues concerning sexual harassment and other forms of sexual misconduct. We will discuss some recent events, including the steps taken by Congress in response to sexual harassment complaints against legislators and the move of some

states to restrict or regulate the use of non-disclosure agreements with respect to complaints of sexual harassment and sexual misconduct.

Readings and Journal Entry Questions: Each student should locate and read a recent news article or news story concerning the “MeToo” movement and its potential effect on the law. Your journal entry should discuss that article or story and provide your perspective on the advantages or disadvantages of that potential effect. Please include a link to the article with your journal entry.