

THE LAW OF SEX DISCRIMINATION

FOURTH EDITION

J. Ralph Lindgren
Nadine Taub
Beth Anne Wolfson
Carla M. Palumbo



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J. RALPH LINDGREN

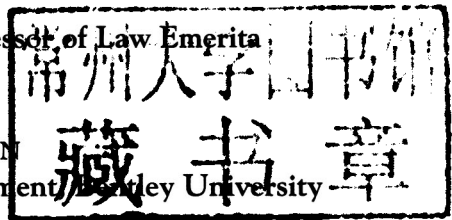
Lehigh University, Clara H. Stewardson Professor Emeritus of Philosophy

NADINE TAUB

Rutgers University, S.I. Newhouse Professor of Law Emerita

BETH ANNE WOLFSON

Law, Taxation and Financial Planning Department, Bentley University



CARLA M. PALUMBO

Legal Aid Society of Rochester, New York



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PREFACE

THIS BOOK is designed for use as an undergraduate textbook for courses on women and the law, gender and the law, and sex discrimination law in the United States. When we published the third edition, it was in response to both our and others' concerns that a college course concerning such contemporary issues had to keep current with events in society as well as developments in the law. The fourth edition reflects our continuing goal to provide students and professors with a textbook that presents the historical background for understanding the development of sex discrimination law and discusses changes in the law that mirror the ever-changing mores of our society and the manner in which it treats women and gender issues.

The study of women, sex discrimination, and gender issues fosters debate and discussion on contemporary policy and the future direction of society, as well as the historical development of the feminist movement. This book looks at how the law has responded to women's status, to gender issues, and to discrimination on the basis of sex. It also considers how the feminist movement has been used as a means of raising feminist consciousness.

Since the publication of the third edition there has been major social movement in the area of gender, gender equality, and discrimination. This new edition addresses the legal issues and discussions that flow from some of our most cutting-edge societal events involving gender and sex discrimination. As you will see from the chapter outline, the fourth edition focuses not only on the historical perspective but also on the debates emanating from today's current events. Modern legal issues involving abortion and reproduction, rights of same-sex couples, domestic violence, single-sex education, and issues of workplace discrimination, which are the focus of current societal debate, are featured prominently in this book.

The legal materials are presented in formats that are accessible and understandable for college students who have had no formal legal training or who have little experience in working with court opinions. Cases are abridged to retain the human drama, focus attention on key rulings, and emphasize crucial factors motivating the decisions. Law review articles, essays, and topical book chapters have been excerpted to provide background information, as well as insight into key points of view and the larger significance of legal events. The narrative highlights the relationships between cases and identifies central themes. Each article or case is followed by study questions to help students better understand the material and to foster discussion. Each chapter contains suggested on-line resources. Other study aids found at the end of the book include a review of the court system, selected amendments to the U.S. Constitution, directions on how to outline cases, a glossary of legal and technical terms, a table of abbreviations, and an index.

CHANGES TO THE FOURTH EDITION

This edition expands on the work of the original authors, Nadine Taub and Ralph Lindgren, as well as on newer material introduced in the third edition by authors Beth Anne Wolfson and Carla M. Palumbo. In the fourth edition, chapters are updated, infused with new material,

ACKNOWLEDGMENTS

This fourth edition marks the continued collaboration of authors, Professor Beth Anne Wolfson and Attorney Carla M. Palumbo. Both would like to thank the original authors, Nadine Taub and Ralph Lindgren, for their solid development of the materials on which subsequent editions have been built. Both deeply appreciate the support and assistance of their colleagues at Bentley University and the Legal Aid Society of Rochester. They particularly wish to thank Joseph Levens and Patty Harris, who provided invaluable technical assistance; and the following reviewers for their comments and suggestions: Susan Patnode, Esq., Director, Rural Law Center of New York, Inc. and Adjunct Faculty, SUNY Plattsburgh; Ann Lucas, San Jose State University, Justice Studies Department; and Patricia Boling, Purdue University, Political Science Department and Women's Studies Program.

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CHAPTER 1



THE HISTORICAL CONTEXT

THE CHOICE OF a characteristic such as gender, race, or age as the basis of laws and doctrines has long been the determining factor of rights afforded to segments of our society. The use of gender as the basis for determining policy, law, and custom, as well as its application to women, is the focus of this book. This book will help sort out the evolution of laws affecting women—what the laws were and how they have changed. In so doing we also examine where women are today and where issues of women's rights are going or should go. Are we on the right track? Is society best served by a legal system that attempts to treat women and men as individuals, or by one that acknowledges differences while seeking to eliminate hierarchical distinctions based upon them? Is it possible to construct a system whereby the needs of both sexes are met equally?

From the first women's movement in the United States, led by several notable women of colonial times, to the women's movement of the 1960s, and to what is being called the "third wave of feminism" of the twenty-first century, women have struggled for equality in all aspects of their lives. This book will look at the changing laws that affect women—the changing perception of gender as a basis for including or excluding a person from a right or obligation.

This first chapter provides the backdrop for the legal changes that occur as we journey through 200 years of legal decisions from the 1800s to the 2000s. The selected court decisions reflect the relevant moments that bring to light the thinking and analysis used in early colonial times and provide an historical context for more recent legal developments. The decisions highlighted in this chapter show how societal norms and the legal status of women have changed through history, and also set the stage for the legal challenges to come.

I. THE PATRIARCHAL TRADITION

Social systems that treat people differently because of their sex are of ancient origin. Although evidence exists of even earlier matriarchal practices, patriarchal patterns have dominated Western cultures for several millennia. Historian Gerda Lerner dates the rise of patriarchy as the period between 3100 and 600 b.c.e. She identifies the central features of this tradition as follows:

Patriarchy . . . means the manifestation and institutionalization of male dominance over women and children in the family and the extension of male dominance over women in