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Women's Rights,
Equality, and Justice**

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International Women's Rights, Equality, and Justice

A Context and Practice Casebook

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To Anré, Clea, William, Emma, Eli and Drew— with my love always

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Series Editor's Preface

Welcome to a new type of casebook. Designed by leading experts in law school teaching and learning, Context and Practice casebooks assist law professors and their students to work together to learn, minimize stress, and prepare for the rigors and joys of practicing law. **Student learning and preparation for law practice are the guiding ethics of these books.**

Why would we depart from the tried and true? Why have we abandoned the legal education model by which we were trained? Because legal education can and must improve.

In Spring 2007, the Carnegie Foundation published *Educating Lawyers: Preparation for the Practice of Law* and the Clinical Legal Education Association published *Best Practices for Legal Education*. Both works reflect in-depth efforts to assess the effectiveness of modern legal education, and both conclude that legal education, as presently practiced, falls quite short of what it can and should be. Both works criticize law professors' rigid adherence to a single teaching technique, the inadequacies of law school assessment mechanisms, and the dearth of law school instruction aimed at teaching law practice skills and inculcating professional values. Finally, the authors of both books express concern that legal education may be harming law students. Recent studies show that law students, in comparison to all other graduate students, have the highest levels of depression, anxiety and substance abuse.

The problems with traditional law school instruction begin with the textbooks law teachers use. Law professors cannot implement *Educating Lawyers* and *Best Practices* using texts designed for the traditional model of legal education. Moreover, even though our understanding of how people learn has grown exponentially in the past 100 years, no law school text to date even purports to have been designed with educational research in mind.

The Context and Practice Series is an effort to offer a genuine alternative. Grounded in learning theory and instructional design and written with *Educating Lawyers* and *Best Practices* in mind, Context and Practice casebooks make it easy for law professors to change.

I welcome reactions, criticisms, and suggestions; my e-mail address is michael.schwartz@washburn.edu. Knowing the author(s) of these books, I know they, too, would appreciate your input; we share a common commitment to student learning. In fact, students, if your professor cares enough about your learning to have adopted this book, I bet s/he would welcome your input, too!

Professor Michael Hunter Schwartz, Series Designer and Editor
Co-Director, Institute for Law Teaching and Learning
Associate Dean for Faculty and Academic Development

Preface and Acknowledgments

As the Carnegie¹ and Stuckey² reports have pointed out, law schools are not doing an optimal job in preparing students for the practice of law. Among the deficiencies created by the traditional law school curriculum and teaching methods, are that students fail to fully comprehend the “rich complexity of actual situations that involve full-dimensional people.”³ Students also do not fully appreciate the “social consequences or ethical aspects”⁴ of any legal conclusions that they might draw about the situations confronting those people. This book aims to expose students to that “rich complexity” and those consequences.

It also aims to expose students to different forms of advocacy and skills, and different research sources, aside from the traditional ones. Many of the problems illustrated in this book cannot be redressed by litigation alone. Advocacy must often take the form of education, activism, and negotiation, and the use of multi-faceted lawyering skills. Today’s law students must also educate themselves broadly by looking beyond traditional legal research. Although, like any other traditional casebook, this book contains many cases, treaties and statutes, it also contains testimony from Senate hearings, reports of NGOs and international committees, and excerpts from briefs and newspaper articles. Law students need to learn that not all battles for justice and equality are conducted in courtrooms, and that sometimes working on a political, economic, and social level may be as, if not more, effective than litigation.

Women’s International Rights — Course Objectives

This book has been designed to help students develop knowledge and skills in five areas:

1. To foster general knowledge about the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and how that Convention works to implement equality and non discrimination.
2. To foster general knowledge about how the international legal system of treaty enforcement, the treaty reporting systems, and the complaint and investigation systems, all function.
3. To foster awareness about how women’s rights fit within the general framework of international human rights.

1. William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond & Lee S. Schulman, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007) (Hereafter CARNEGIE)

2. Roy Stuckey and Others, BEST PRACTICES FOR LEGAL EDUCATION (2007)

3. CARNEGIE fn 1 *supra* at p6.

4. *Id.*

4. To foster awareness about specific rights violations in particular areas of the world.
5. To expose students to the consequences for women when those rights are violated, and the various means of obtaining redress—including litigation, political advocacy, education, and working through NGOs.

Objectives Related to Expert Learning Skills

By the end of this text, students confronted with a particular context and issue involving women's rights, should be able to identify the particular treaties (both international and regional) that might regulate that context, as well as any jurisprudence (in the form of case law, Declarations, or Recommendations) from the treaty bodies that might be applicable. Students should also be able to identify any domestic or international government regulatory agencies that might be interested in the issue, as well as identify domestic law that might be relevant. Students should also be able to conduct research to establish whether any NGOs have conducted studies or issued reports in this area, that might be relied on to redress the situation. Students should also be able to assess the impact of their advocacy, whichever form it takes. They should be able to determine the likely consequences for the women involved, depending on the form of advocacy taken. They should also be able to identify who might oppose their efforts and why, and how to best accomplish the goals of equality and non discrimination.

Organization of the Text and of Each Chapter

The text begins with a brief history of women's rights and briefly traces the development of international human rights and regional human rights, post World War II. Thereafter, each chapter traces an important theme as it impacts women, and explores what the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) has to say on that topic, as well as what both international and domestic case legislation and law has to teach us. Many chapters also contain excerpts from reports of NGOs, as well as newspapers or other sources that pertain to the topic.

Each chapter begins with a problem that poses a hypothetical situation that students should be able to address after completing the chapter readings, and pondering the questions that are interspersed throughout the chapter.

Most of the cases are excerpts, but links to the full cases are provided. In some of the cases, particularly those from Africa, some of the punctuation has been changed to conform to U.S. conventions. These changes are purely cosmetic, and have not altered the meaning in any way.

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Introduction

Consider this:

- Women make up about 70% of the world's poor
- More women than men are illiterate; many more girls than boys are denied access to education merely because of their gender
- In many countries, women are denied access to economic resources
- In parts of Africa, women are not permitted to own land
- On average, women in the workforce earn 85% of men's salaries
- In some countries in Africa, women are not considered full legal adults, no matter their age
- An estimated 100–140 million women worldwide have undergone Female Genital Mutilation (FGM)
- Between 15% and 71% of women have reported physical or sexual violence by a husband or partner
- Many women said that their first sexual experience was not consensual (24% in rural Peru, 28% in Tanzania, 30% in rural Bangladesh, and 40% in South Africa)
- Worldwide, between 4% and 12% of women reported being physically abused during pregnancy
- Every year, about 5,000 women are murdered by family members in the name of honor
- Trafficking of women and girls for forced labor and sex is widespread, and often affects the most vulnerable
- Forced marriages and child marriages violate the human rights of women and girls, yet they are widely practiced in many countries in Asia, the Middle East, and sub-Saharan Africa

In 1979, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was enacted, with the purpose of ending discrimination against women, as its title suggests. It entered into force in 1981. To date, 183 countries are parties to the Convention. Yet thirty years after CEDAW, rampant discrimination against women still persists. This book will explore the evolution of women's rights, the options available for victims of discrimination, and the impact of CEDAW on the lives and concerns of women.