

created so that students may be made aware of what and why a particular action was taken or not taken.

American law schools have come a long way since the time when women were not even allowed to attend. However, the latest research suggests that high levels of gender hostility continue to pervade this nation's law school classrooms. Consequently, women law students are subjected to unequal educational opportunities.

Teaching torts – gender matters – teaching a reasonable woman standard in personal injury law

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45 *St Louis L J*, pp 769-778

'Reasonable care' is, of course, a concept central to any torts class. But what is it? One very standard doctrinal move is to conceptualise reasonable care as that care shown by a 'reasonable person' under like circumstances. The next step, logically, is to visualise this reasonable person. Visualisation requires some important choices. For example, is the reasonable person old or young? Disabled or not? But, oddly, no casebook deals with the trait that nearly invariably figures in our description of people: sex.

If the casebooks are silent, however, the cases and commentary are not. Judicial opinions frequently used to refer to the 'reasonable man' rather than the reasonable person. Feminism has not let the masculine origin of the reasonable person go unremarked. Feminist scholars have argued that tort law used to evaluate care against a standard that was not just linguistically but substantively masculine – that the reasonable man is the mascot of tort law's oppression and exclusion of women. The interaction of gender norms and the law are key to any adequate presentation of sexual harassment, negligent infliction of emotional distress and damages, but gender is relevant to other topics as well.

The first and most sustained discussion of gender difference and what the law might do about it occurs quite early in

the class, when the author asks her students to consider what tort law might look like if it treated a defendant's or plaintiff's gender as relevant to jury assessment of due care. What, that is, would it mean for the law to talk about reasonable women as well as men?

For many scholars and activists, a central question for legal feminist theory is whether women's equality and welfare is best fostered by insisting on adherence to universal legal standards or on recognition and even privileging of women's difference from men.

The author tries to vary her pedagogical approach in *Torts*, to accommodate students' different learning styles. Several of the cases studied by her students, which come from the 19th century and involve women driving carriages, introduce concretely the idea of gendered standards of care, highlighting that reference to a person's sex in defining the care required of her necessarily rests on some presumption of sex difference. Students are asked to accept for the sake of argument that, on average but not for all people, this difference was, in the mid-19th century, real. The author also asks them to assume that equality of men and women is an important (if not necessarily trumping) value. This last assumption is important for teaching purposes, because an attempt is made to focus the conversation on the complex conceptual and implementation problems raised by a norm of equality – not on the issue of whether sex equality is politically appropriate on its own merits.

The idea is for the class discussion to develop the implications of each option. The author elicits from some students the point that holding women to a masculine standard seems unfairly punitive. Others counter that perhaps the higher standard pushes women to eliminate their driving deficit. If, however, the difference is not something easily eliminated, the result of a masculine standard is a disincentive for women to drive. With some guidance, the topic then opens up into debate about the potential for either tort judgments or judicial reasoning to influence behaviour. The students are encouraged to move from

speculation about the possible incentive effects of tort judgments to normative discussion of whether law should simply reflect, or rather mould, a community's ideological commitments.

Those students who think it appropriate for common law rules to shape society typically argue that holding men and women alike to a universalised standard has the advantage of not reifying gender inequality and perhaps even of making perceived feminine driving inadequacies less salient to observers of court cases. But they are forced by others to concede that the 'universal' standard has a disparate impact on women, and is at least problematic for this reason. The author further challenges those who are moved by economic arguments, asking whether it is socially optimal for the law to require women to live up to a masculine standard, given that achieving a certain level of safety is typically more 'costly' (if not monetarily then in terms of effort) for women than for men.

The class on 'reasonable women' gives students a chance to explore the interaction of law and social norms in a doctrinal context that grips them more directly than many. It reveals that doctrinal implementation of an ideal of equality between the sexes is more complicated than most of them would have thought. The author hopes that it helps to counter the alienation some law students report is caused by law school classes' facade of 'perspectivelessness,' by authorising students to attend to both male and female perspectives, for the day and thereafter. And it reinforces the value of close attention to judicial language.

LEGAL ETHICS

Challenges to the academy: reflections on the teaching of legal ethics in Australia

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12 *Legal Educ Rev* 1-2, 2001, pp 81-104

Approaches to teaching legal ethics have varied considerably over the years in Australia. Inquiries undertaken by the Law Council of Australia in 1988 indicated that