Course Description

Law and business are being transformed as legal, economic and political events re-shape crucial issues in global business. The syllabus is an outline of the major topics we will discuss during the semester and is not a substitute for knowing the material we cover and discuss in class - do not rely solely upon the syllabus for your exam preparation. Students are responsible for knowing what is covered and discussed in class and for reading the assigned readings and for any additional assignments given in class and/or communicated via the course site.

Course Goals

The goal of the course is to provide you with knowledge regarding important topics in
global business and law that are vital for you whether as owners, employees, directors, officers, investors, regulators or managers. The course will cover significant areas such as the United States legal system (focusing on Federal courts); U.S. Federal law on sexual harassment/hostile work environment; corporate governance, FCPA anti-bribery law; ESG/ethics/corporate liability for violations of international law; implications of China's rise and the strategic rivalry with the U.S. on law and business focusing on national security and emerging technologies and national security in trade and investment.

Grading

A final exam will determine your grade. I will provide sample exam questions in class throughout the semester. The exam may consist of a variety of multiple-choice, short-answers, fill-ins and essays. The exam will be based on the material covered in this particular course.

Reading List

Readings: Reading assignments are listed in the syllabus and may be supplemented in-class or through the course website. Students are responsible for knowing what is discussed in class including any additional materials that may be presented in class. I also may scale back readings and/or topics to be covered depending upon time limitations and this too will be communicated in class or the course site.

Class Format: Students are expected to complete the assigned reading every week which will serve as the basis of our class discussions. Students should regularly check the course site for supplemental readings. I will frequently refer to and incorporate new developments in law and business, important developments, new decisions, etc. Students are responsible for knowing what we discuss in class and to read anything added in class or through the course site. All questions are welcome and I encourage participation. If you prefer to ask me questions outside of class time that is fine.

Availability: I am generally available after class. You can also email me any questions.

Week 1

Introduction, global business trends and a discussion of rampant misconduct

The Revolving Door

Reading: Joel Slawotsky, Reining in Recidivist Financial Institutions

Week 2

Litigation in United States Courts

A. Civil Litigation
B. The U.S. Federal court system
C. Complaints
D. Jurisdiction (personal and subject matter)
E. Presumption Against Extraterritorial Jurisdiction
F. Discovery (depositions, interrogatories)
G. Motions (pre-trial, trial, post-trial)
H. Jury selection
I. Jury Trials versus Settlements
J. Damages (compensatory and punitive)
K. Appeals
L. CGL insurance policies

Bieber deposition
https://www.youtube.com/watch?v=jGuuEHa1J2k

Attorney bickering
https://www.youtube.com/watch?v=ZIxmrvbMeKc

I don't recall
https://www.youtube.com/watch?v=pNy2A4IDgHc

Basic terms:
Complaint: Is the initial document filed with the court by a person or entity claiming rights (the plaintiff) against another person or entity (defendant).

Answer: A defendant's first document in a case, which addresses the dispute on the merits and states any defenses and counterclaims such as lack of jurisdiction (personal or subject matter) and/or counter-claims.

Discovery is a pre-trial procedure in a lawsuit in which each party can obtain evidence from the other party or parties by means of discovery devices such as a request for answers to interrogatories, request for production of documents, depositions, etc. Discovery is very important because based upon the evidence, most cases will settle depending upon the discovery. Types of discovery are varied and include:
Interrogatories are written questions propounded by one litigant and required to be answered by an adversary in order to clarify matters of fact. A deposition is sworn out-of-court testimony by a party or witness used to gather information as part of the discovery process and, in limited circumstances, may be used at trial. Depositions usually do not directly involve the court but sometimes the attorneys do involve the Judge.

Motions are requests to the judge to rulings. Motions may be made at any point - pre-trial, in trial or post-trial - although that right is regulated by court rules which vary among jurisdictions. Complaints/Answers or parts of them can be dismissed based upon a motion before trial. Evidence can be excluded, verdicts can be reduced, etc. A summary judgment (judgment as a matter of law) is a judgment entered by a court for one party and against another party summarily, i.e., without a full trial. Such a judgment may be issued on the merits of an entire case, or on discrete issues in that case.

Trial courts (not appellate) are presided over by Judge who decides questions of law. Juries decide questions of fact. The vast majority of claims are settled before trial.

Jury selection many methods used to choose the people who will serve on a jury.
Generally, the jury pool is selected from among the community using a reasonably random method. Jurors can be excluded if they are biased and attorneys ask questions of prospective jurors.

Judgment or orders are decisions regarding the rights and liabilities of parties in a legal action or proceeding. Judgments also generally provide the court's explanation of why it has chosen to make a particular court order.

Appeals are the process in which cases are reviewed, where parties request a formal change to an official decision. Appeals function both as a process for error correction as well as a process of clarifying and interpreting law. Appellate courts generally (but not always) give discretion on findings of fact to the trial court and will more often reverse a trial court ruling or judgment based upon an error in applying the law.

Week 3

Title VII Workplace Sexual Harassment/Hostile Environment


Title VII of the Civil Rights Act of 1964 is a federal statute that applies to all employers whose workforce exceeds fifteen people. The text of Title VII says that

(a) it shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or natural origin.
At common law—where judges decide cases without reference to statutory guidance—employers were generally free to hire and fire on any basis they might choose, and employees were generally free to work for an employer or quit an employer on any basis they might choose (unless the employer and the employee had a contract). This rule has been called “employment at will.” State and federal statutes that prohibit discrimination on any basis (such as the prohibitions on discrimination because of race, color, religion, sex, or national origin in Title VII) are essentially legislative exceptions to the common-law employment-at-will rule.

In the 1970s, many female employees began to claim a certain kind of sex discrimination: sexual harassment. Some women were being asked to give sexual favors in exchange for continued employment or promotion (quid pro quo sexual harassment) or found themselves in a working environment that put their chances for continued employment or promotion at risk. This form of sexual discrimination came to be called “hostile working environment” sexual harassment.

Notice that the statute itself says nothing about sexual harassment but speaks only in broad terms about discrimination “because of” sex (and four other factors). Having set the broad policy, Congress left it to employees, employers, and the courts to fashion more specific rules through the process of civil litigation.

This is a case from our federal court system, which has a trial or hearing in the federal district court, an appeal to the Sixth Circuit Court of Appeals, and a final appeal to the US Supreme Court. Teresa Harris, having lost at both the district court and the Sixth Circuit Court of Appeals, here has petitioned for a writ of certiorari (asking the court to issue an order to bring the case to the Supreme Court), a petition that is granted less than one out of every fifty times. The Supreme Court, in other words, chooses its cases carefully. Here, the court wanted to resolve a difference of opinion among the various circuit courts of appeal as to whether or not a plaintiff in a hostile-working-environment claim could recover damages without showing “severe psychological injury.”

Harris v. Forklift Systems 510 U.S. 17 (U.S. Supreme Court 1992)

JUDGES: O’CONNOR, J., delivered the opinion for a unanimous Court. SCALIA, J., and GINSBURG, J., filed concurring opinions.

JUSTICE O’CONNOR delivered the opinion of the Court.


Teresa Harris worked as a manager at Forklift Systems, Inc., an equipment rental company, from April 1985 until October 1987. Charles Hardy was Forklift's president.
The Magistrate found that, throughout Harris' time at Forklift, Hardy often insulted her because of her gender and often made her the target of unwanted sexual innuendoes. Hardy told Harris on several occasions, in the presence of other employees, "You're a woman, what do you know" and "We need a man as the rental manager"; at least once, he told her she was "a dumbass woman." Again in front of others, he suggested that the two of them "go to the Holiday Inn to negotiate [Harris's] raise." Hardy occasionally asked Harris and other female employees to get coins from his front pants pocket. He threw objects on the ground in front of Harris and other women, and asked them to pick the objects up. He made sexual innuendoes about Harris' and other women's clothing.

In mid-August 1987, Harris complained to Hardy about his conduct. Hardy said he was surprised that Harris was offended, claimed he was only joking, and apologized. He also promised he would stop, and based on this assurance Harris stayed on the job. But in early September, Hardy began anew: While Harris was arranging a deal with one of Forklift's customers, he asked her, again in front of other employees, "What did you do, promise the guy...some [sex] Saturday night?" On October 1, Harris collected her paycheck and quit.

Harris then sued Forklift, claiming that Hardy's conduct had created an abusive work environment for her because of her gender. The United States District Court for the Middle District of Tennessee, adopting the report and recommendation of the Magistrate, found this to be "a close case," but held that Hardy's conduct did not create an abusive environment. The court found that some of Hardy's comments "offended [Harris], and would offend the reasonable woman," but that they were not "so severe as to be expected to seriously affect [Harris's] psychological well-being. A reasonable woman manager under like circumstances would have been offended by Hardy, but his conduct would not have risen to the level of interfering with that person's work performance.

"Neither do I believe that [Harris] was subjectively so offended that she suffered injury....Although Hardy may at times have genuinely offended [Harris], I do not believe that he created a working environment so poisoned as to be intimidating or abusive to [Harris]."


We granted certiorari, 507 U.S. 959 (1993), to resolve a conflict among the Circuits on whether conduct, to be actionable as "abusive work environment" harassment (no quid pro quo harassment issue is present here), must "seriously affect [an employee's] psychological well-being" or lead the plaintiff to "suffer injury." Compare Rabidue (requiring serious effect on psychological well-being); Vance v. Southern Bell Telephone & Telegraph Co., 863 F.2d 1503, 1510 (CA11 1989) (same); and Downes v. FAA, 775 F.2d 288, 292 (CA Fed. 1985) (same), with Ellison v. Brady, 924 F.2d 872, 877–878 (CA9 1991) (rejecting such a requirement).
Title VII of the Civil Rights Act of 1964 makes it “an unlawful employment practice for an employer...to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin.” 42 U.S.C. § 2000e-2(a)(1). As we made clear in Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57 (1986), this language “is not limited to ‘economic’ or ‘tangible’ discrimination. The phrase ‘terms, conditions, or privileges of employment’ evinces a congressional intent ‘to strike at the entire spectrum of disparate treatment of men and women in employment,’ which includes requiring people to work in a discriminatorily hostile or abusive environment. Id., at 64, quoting Los Angeles Dept. of Water and Power v. Manhart, 435 U.S. 702, 707, n.13, 55 L. Ed. 2d 657, 98 S. Ct. 1370 (1978). When the workplace is permeated with “discriminatory intimidation, ridicule, and insult,” 477 U.S. at 65, that is “sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment,” Title VII is violated.

This standard, which we reaffirm today, takes a middle path between making actionable any conduct that is merely offensive and requiring the conduct to cause a tangible psychological injury. As we pointed out in Meritor, “mere utterance of an...epithet which engenders offensive feelings in an employee,” does not sufficiently affect the conditions of employment to implicate Title VII. Conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment—an environment that a reasonable person would find hostile or abusive—is beyond Title VII's purview. Likewise, if the victim does not subjectively perceive the environment to be abusive, the conduct has not actually altered the conditions of the victim's employment, and there is no Title VII violation.

But Title VII comes into play before the harassing conduct leads to a nervous breakdown. A discriminatorily abusive work environment, even one that does not seriously affect employees' psychological well-being, can and often will detract from employees' job performance, discourage employees from remaining on the job, or keep them from advancing in their careers. Moreover, even without regard to these tangible effects, the very fact that the discriminatory conduct was so severe or pervasive that it created a work environment abusive to employees because of their race, gender, religion, or national origin offends Title VII's broad rule of workplace equality. The appalling conduct alleged in Meritor, and the reference in that case to environments “‘so heavily polluted with discrimination as to destroy completely the emotional and psychological stability of minority group workers,'” Id., at 66, quoting Rogers v. EEOC, 454 F.2d 234, 238 (CA5 1971), cert. denied, 406 U.S. 957, 32 L. Ed. 2d 343, 92 S. Ct. 2058 (1972), merely present some especially egregious examples of harassment. They do not mark the boundary of what is actionable.

We therefore believe the District Court erred in relying on whether the conduct “seriously affected plaintiff's psychological well-being” or led her to “suffer injury.” Such an inquiry may needlessly focus the fact finder's attention on concrete psychological harm, an element Title VII does not require. Certainly Title VII bars conduct that would seriously affect a reasonable person's psychological well-being, but the statute is not
limited to such conduct. So long as the environment would reasonably be perceived, and is perceived, as hostile or abusive, Meritor, supra, at 67, there is no need for it also to be psychologically injurious.

This is not, and by its nature cannot be, a mathematically precise test. We need not answer today all the potential questions it raises, nor specifically address the Equal Employment Opportunity Commission’s new regulations on this subject, see 58 Fed. Reg. 51266 (1993) (proposed 29 CFR §§ 1609.1, 1609.2); see also 29 CFR § 1604.11 (1993). But we can say that whether an environment is “hostile” or “abusive” can be determined only by looking at all the circumstances. These may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee’s work performance. The effect on the employee’s psychological well-being is, of course, relevant to determining whether the plaintiff actually found the environment abusive. But while psychological harm, like any other relevant factor, may be taken into account, no single factor is required.

III

Forklift, while conceding that a requirement that the conduct seriously affect psychological well-being is unfounded, argues that the District Court nonetheless correctly applied the Meritor standard. We disagree. Though the District Court did conclude that the work environment was not “intimidating or abusive to [Harris],” it did so only after finding that the conduct was not “so severe as to be expected to seriously affect plaintiff’s psychological well-being,” and that Harris was not “subjectively so offended that she suffered injury,” ibid. The District Court’s application of these incorrect standards may well have influenced its ultimate conclusion, especially given that the court found this to be a “close case.”

We therefore reverse the judgment of the Court of Appeals, and remand the case for further proceedings consistent with this opinion. So ordered.

In 2020 the Supreme Court resolved various circuit splits and extended Title VII claims on the basis of orientation and/or transgender status.

Factors for assessing a “hostile” or “abusive” workplace

1. frequency of the discriminatory conduct
2. severity of the discriminatory conduct
3. whether it is physically threatening or humiliating
4. whether it unreasonably interferes with an employee’s work performance
5. effect on the employee’s psychological well being
Corporate Governance Models: shareholder, stakeholder and enlightened shareholder, conflicts of interest in dispersed shareholder contexts (management-agency) and controlling owners contexts (control-agency)

http://www.sec.gov/Archives/edgar/data/864264/000092189506001187/0000921895-06-001187.txt

Disney Case

825 A.2d 275 (Delaware 2003)
Court of Chancery of Delaware,
New Castle County.
In re THE WALT DISNEY COMPANY DERIVATIVE LITIGATION
C.A. No. 15452.
MEMORANDUM OPINION
CHANDLER, Chancellor.

The Decision to Hire Ovitz

Michael Eisner is the chief executive officer ("CEO") of the Walt Disney Company. In 1994, Eisner's second-in-command, Frank Wells, died in a helicopter crash. Two other key executives-Jeffrey Katzenberg and Richard Frank-left Disney shortly thereafter, allegedly because of Eisner's management style. Eisner began looking for a new president for Disney and chose Michael Ovitz. Ovitz was founder and head of CAA, a talent agency; he had never been an executive for a publicly owned entertainment company. He had, however, been Eisner's close friend for over twenty-five years. Eisner decided unilaterally to hire Ovitz. On August 13, 1995, he informed three Old Board members-Stephen Bollenbach, Sanford Litvack, and Irwin Russell (Eisner's personal attorney)-of that fact. All three protested Eisner's decision to hire Ovitz. Nevertheless, Eisner persisted, sending Ovitz a letter on August 14, 1995, that set forth certain material terms of his prospective employment. Before this, neither the Old Board nor the compensation committee had ever discussed hiring Ovitz as president of Disney. No discussions or presentations were made to the compensation committee or to the Old Board regarding Ovitz's hiring as president of Walt Disney until September 26, 1995.
Ovitz's Performance as Disney's President

Ovitz began serving as president of Disney on October 1, 1995, and became a Disney director in January 1996. Ovitz's tenure as Disney's president proved unsuccessful. Ovitz was not a good second-in-command, and he and Eisner were both aware of that fact. Eisner told defendant Watson, via memorandum, that he (Eisner) "had made an error in judgment in who I brought into the company." Other company executives were reported in the December 14, 1996 edition of the New York Times as saying that Ovitz had an excessively lavish office, an imperious management style, and had started a feud with NBC during his tenure. Even Ovitz admitted, during a September 30, 1996 interview on "Larry King Live," that he knew "about 1% of what I need to know."

Even though admitting that he did not know his job, Ovitz studiously avoided attempts to be educated. Eisner instructed Ovitz to meet weekly with Disney's chief financial officer, defendant Bollenbach. The meetings were scheduled to occur each Monday at 2 p.m., but every week Ovitz cancelled at the last minute. Bollenbach was quoted in a December 1996 issue of Vanity Fair as saying that Ovitz failed to meet with him at all, "didn't understand the duties of an executive at a public company[,] and he didn't want to learn."

Instead of working to learn his duties as Disney's president, Ovitz began seeking alternative employment. He consulted Eisner to ensure that no action would be taken against him by Disney if he sought employment elsewhere.

Eisner agreed that the best thing for Disney, Eisner, and Ovitz was for Ovitz to gain employment elsewhere. Eisner wrote to the chairman of Sony Japan that Ovitz could negotiate with Sony without any repercussions from Disney. Ovitz and Sony began negotiations for Ovitz to become head of Sony's entertainment business, but the negotiations ultimately failed. With the possibility of having another company absorb the cost of Ovitz's departure now gone, Eisner and Ovitz began in earnest to discuss a non-fault termination.

Ovitz wanted to leave Disney, but could only terminate his employment if one of three events occurred: (1) he was not elected or retained as president and a director of Disney; (2) he was assigned duties materially inconsistent with his role as president; or (3) Disney reduced his annual salary or failed to grant his stock options, pay him discretionary bonuses, or make any required compensation payment. None of these three events occurred. If Ovitz resigned outright, he might have been liable to Disney for damages and would not have received the benefits of the non-fault termination. He also desired to protect his reputation when exiting from his position with Disney. Eisner agreed to help Ovitz depart Disney without sacrificing any of his benefits.

Eisner and Ovitz worked together as close personal friends to have Ovitz receive a non-fault termination. Eisner stated in a letter to Ovitz that: "I agree with you that we must work together to assure a smooth transition and deal with the public relations brilliantly."
I am committed to make this a win-win situation, to keep our friendship intact, to be positive, to say and write only glowing things... Nobody ever needs to know anything other than positive things from either of us. This can all work out!"

Joel Slawotsky and Jon Truby, The Director Duty of Care in Qatar
Duke Journal of Comparative and International Law (2016)
http://scholarship.law.duke.edu/djcil/vol26/iss2/2/
pp 351-358 text only (no need to read footnotes).

Joel Slawotsky, The Virtues of Shareholder Value Driven Activism: Avoiding Governance Pitfalls
https://repository.uchastings.edu/hastings_business_law_journal/vol12/iss3/4/
pp 542-547 text only (no need to read footnotes).

Week 5

Delaware U.S.A. Delaware/Officer Fiduciary Obligations
Business Judgement Rule

In class presentation: the three fiduciary duties of Delaware directors/officers
Care, loyalty and good-faith.

Business Judgement Rule
Van Gorkom, 488 A.2d 858 (Del.1985)
https://h2o.law.harvard.edu/collages/3179
pp 863-884

Joel Slawotsky and Jon Truby, The Director Duty of Care in Qatar
Duke Journal of Comparative and International Law (2016)
Week 6

Japan: business and corporate governance

Japan's stock market


Former PM Abe has admitted that poor governance is holding back Japan's economy. Japan's governance is characterized by a board dominated by insiders who are fiercely loyal internally, a lack of independent directors, and a diminishing yet still existing web of inter-locking ownership known as Keiretsu. While Japan's governance is “stakeholder” essentially the only real stakeholders are insider directors/officers. Japan has also had a series of high profile accounting scandals at large corporations including: Olympus, Toshiba and Nissan. Japan's shareholding structures and overall governance present significant hurdles for shareholder activists.

Japan's traditional system of corporate governance based on keiretsu networks of cross-shareholdings, bank-centered finance, and life-long employment has attracted significant scholarly attention. Insulated from foreign influence, levels of foreign direct investment (FDI) in the country are extraordinarily low, and so is the incidence of foreign acquisitions. Remarkably, Japan is the only developed economy that has yet to witness its first successful hostile takeover in the postwar era.


Readings:


Carlo Osi, Board Reforms with a Japanese Twist: Reviewing the Japanese Board of Directors with a Delaware Lens (2009) http://brooklynworks.brooklaw.edu/cgi/viewcontent.cgi?article=1143&context=bjcfcl

pp 330-340 text only (no need to read footnotes).
General

https://www.youtube.com/watch?v=SSzUcqAq-FA
https://www.youtube.com/watch?v=tQq_MdYkRhU&t=93s

Olympus Scandal

https://www.youtube.com/watch?v=6EY1CTbO7Uo
https://www.youtube.com/watch?v=FPZdn5N3ipo

Toshiba

https://www.youtube.com/watch?v=fWOPuca6UjE

Nissan

https://www.youtube.com/watch?v=zHRg0_nUIUY

Changes?


Weeks 7 and 8

The US FCPA and Extraterritorial Reach of U.S. Courts

U.S. FCPA (bribery)

Chapter 2

U.S. FCPA (record keeping)

Chapter 3

Extraterritoriality

http://www.tsinghuachinalawreview.org/articles/1202_Slawotsky.htm

Press on the bottom of the page Download Full Article PDF (no need to read footnotes)

http://www.gjl.org/ Go to IN PRINT

Volume 52 Number 2 (2021)

Joel Slawotsky, U.S. Extraterritorial Jurisdiction in an Age of International Economic Strategic Competition (no need to read footnotes)

Weeks 9 and 10

ESG, Business Ethics, and Human Rights


https://www.bigghgg.cn/commentaries

Click on Number 8 Joel Slawotsky, Safeguarding the Human Right of Informed Consent: Corporate Accountability in State-Private Partnerships and Responsibility for Violations of International Law,
Corporate Accountability for Violations of International Law

Alien Tort Statute

Joel Slawotsky, Corporate liability for violating international law under The Alien Tort Statute: The corporation through the lens of globalization and privatization

Qatar University Law Journal


Pages 2–24 text only (no need to read footnotes).

Weeks 11 and 12

The Hegemonic Rivalry – Impacts on Investment and Trade

China's Economic Rise

https://academic.oup.com/cjcl/article/6/2/228/5265145?searchresult=1

Press PDF option to see pages
Read pages 239–249 (no need to read footnotes)

Central Bank Digital Currencies


https://ir.lawnet.fordham.edu/ilj/vol44/iss1/4/

Press Download
Read pages 41–64 and 84–99 (no need to read footnotes)


https://academic.oup.com/chinesejil/article/20/1/3/6277710?login=true

Press PDF

Read paras 1–37, paras 49–60 and paras 86–101
(no need to read footnotes)

Joel Slawotsky, National Security Exception in an Era of Hegemonic Rivalry: Emerging
Impacts on Trade and Investment


Press download right after Abstract and Key Words

Pages 6-33 (no need to read footnotes).

Week 13

Review of semester, latest developments and preparation for exam