Exceptions to “at will”: Discrimination

• Several federal statutes prohibit discrimination in employment.
  – Civil War Reconstruction Statutes.
  – Americans with Disabilities Act of 1990 (ADA).
Exceptions to “at will”: Discrimination

• Statutes bar discrimination on the basis of:
  – Race
  – National origin
  – Ethnicity
  – Religion
  – Gender
  – Age
  – Disability
Exceptions to “at will”: Discrimination

1. “Individual discriminatory treatment”

Case #1: Sven the Dane

Sven, a mechanic for Boeing, gets laid off. He thinks he was laid off because he was Danish. He reapplyes for the job. He thinks he’ll get it because he is qualified. He doesn’t get it. The job remains open. Boeing hires Ole, a Norwegian.
Exceptions to “at will”: Discrimination

1. “Individual discriminatory treatment”

   Case #1: Sven the Dane

Sven sues Boeing. He claims he was passed over because of his ethnicity. Boeing claims it didn’t hire Sven because of his criminal record of stealing from employers. Sven thinks this reason is a pretext.
Exceptions to “at will”: Discrimination

1. “Individual discriminatory treatment”

Case #1: Sven the Dane

• Must show he was passed over and was qualified.
• Employer can respond with other reason.
• Sven can then prove pretext.
  – “You dumb dirty Dane.”
Exceptions to “at will”: Discrimination

2. “Systemic Disparate Impact.”

• When an employer has a policy in place that, while looking neutral on its face, has a **disparate impact** on races, genders, or religious persons.
Exceptions to “at will”: Discrimination

2. Systemic Disparate Impact.

Case #2: The Degree Requirement

Seattle City Light has huge crews of people who dig ditches. The only real requirement for this job is to be good with a shovel. But Seattle City Light requires ditch-diggers to have a college degree, even though it is unrelated to ditch-digging. This results in only Norwegians working on these crews and no Danes.
Exceptions to “at will”: Discrimination

• Systemic Disparate Impact.

The Danes sue. Seattle City Light says it’s always had this requirement and certainly doesn’t have it in place to discriminate against Danes.

• What result?
Exceptions to “at will”: Discrimination

2. Systemic Disparate Impact
     – Doesn’t matter what company’s intent was.
     – If you have a test or other requirement that creates a disparate impact, you have to have a business necessity for doing so.
     – The test must be related to the job.
     – Degree requirement not related to ditch-digging.
Exceptions to “at will”: Discrimination

3. Sexual harassment and sex discrimination

   Case #3: Quid Pro Quo

Elle Woods works at a law firm. The partner who runs the firm makes unwelcome sexual advances to Elle. He tells her she will be promoted if she has sex with him, and he’ll fire her if she doesn’t have sex with him.

• Can he do that?
• No.
Exceptions to “at will”: Discrimination

3. Sexual Harassment.

Later, Elle Woods is at work at the law firm, and many of the men are being gross. They aren’t coming onto her or demanding sexual favors. But they are making a lot of horrible remarks, telling terrible jokes about women, and being very graphic in talking about sex and women they’d like to “score” with.

• Is this sex discrimination that Elle can sue over?
• Yes.
Employment law review problem

Tiger Woods and his ex-wife, Elin Woods, have separated and divorced after revelations of Tiger’s infidelity. Elin has moved to Seattle and gotten a job as a server at Top Pot donuts, the greatest restaurant in the history of the world. She did not agree upon any specified amount of time in accepting the job. Her manager, a deeply moral person who doesn’t believe in divorce, learns that Elin is a divorcee. She immediately fires Elin. Can she do that?

• Yes.
Employment Law Review problem

Tiger had an endorsement deal with Dick’s hamburgers to serve as spokesperson. The deal was set for $1 million per year for four years. The contract allowed Dick’s to end the agreement unilaterally “for cause” but did not explain what circumstances could count as “cause.” After Tiger’s many sexual affairs were revealed publicly, Dick’s ended the agreement in the second year, claiming it ended the contract “for cause.” Dick’s would have owed Tiger $2 million for the next two years.

- Does Tiger’s personal infidelity count as “cause” for firing?
- Should Dick’s have to “buyout” Tiger’s contract?
Employment law review problem

Tiger decides to take a year off from golf and work as an instructor at the Green Lake Pitch and Putt. He applies for the job. He is, quite obviously, very qualified to be a golf instructor. He is passed over for the job, and the course hires Annika Sorenstam, a famous female golfer, instead. Tiger has a hunch that he was passed over because he’s a man, but he has no proof. The golf course says it hired Annika because she has a better short game and is thus more qualified.

• If Tiger has no other proof, can he win his case for sex discrimination?
• What if he finds out that only women work at the course?
• What if he finds out that the female manager runs a sexist blog that includes crude epithets against men?
Employment law review problem

After being fired from Top Pot, Elin decides to try her hand at being a bouncer. She applies to be a bouncer with the company that owns several bars in Seattle, including the Little Red Hen. Upon filling out the application, she finds a job requirement that “all applicants be at least 6’ 3” tall.” She does her research and finds that, because of this height requirement, all the company’s bouncers are men. The company claims it has no bias against women, it just wants tall people as bouncers.

• Can she sue for disparate impact sex discrimination?