All page number references are to the casebook Employment Law: Private Ordering and Its Limitations, by Timothy P. Glynn, Rachel S. Arnow-Richman, and Charles A. Sullivan (Aspen 2007). Other course material, apart from the Gorden paperback in 1.D below, is posted on the course website.

Introduction (xxv-xxxviii)

PART ONE: THE BENEFITS AND BURDENS OF EMPLOYMENT

Chapter 1: The Stakes of “Employment”

A. Distinguishing “Employee” from “Independent Contractor”
   Introductory Note (5-6)
   McCary v. Wade (6-9)
   Fitzgerald v. Mobil Oil Corp.; Notes (9-16)
   Natkin v. Winfrey; Notes (16-25)

B. Distinguishing “Employer” from “Employee”
   Introductory Note (26)
   Clackamas Gastroenterology Associates v. Wells; Notes (26-33)
   Yates v. Hendon; Notes (33-37)

C. The Rise of “Contingent” Labor as a Challenge to Traditional Categories
   Introductory Note (37-39)
   Ansoumana v. Gristede’s Operating Corp.; Notes (39-49)
   Vizcaino v. Microsoft Corp.; Notes (49-61)

D. The Workplace Project
   Jennifer Gordon, Suburban Sweatshops, Introduction, Chs. 2-4, and Conclusion

PART TWO: PRIVATE ORDERING AND DEFAULT TERMS

Chapter 2: The “At-Will” Default Rule and Its Limits

Introductory Note (65-66)

A. Job Security and the Principle of At-Will Employment
   Hanson v. Central Show Printing Co., Inc.; Notes (66-70)
   Greene v. Oliver Realty, Inc.; Notes (70-77)
B. Oral and Implied Contract Rights to Job Security
   Introductory Note (77-78)
   1. Reliance on Offers of Employment
      Introductory Note (78)
   2. Assurances of Continued Employment
      Shebar v. Sanyo Business Systems Corp.; Notes (88-93)
      Pugh v. See’s Candies, Inc.; Notes (94-100)
   3. Written Employment Manuals and Policies
      Introductory Note (102)
      Wooley v. Hoffmann-LaRoche, Inc.; Notes (102-10)
      Conner v. City of Forest Acres; Notes (110-14)

Chapter 3: Written Contracts and Expressly Negotiated Terms of Employment
   Introductory Note (159-61)

   A. Interpreting Express Compensation Agreements
      Nadherny v. Roseland Property Co., Inc.; Notes (161-66)

   B. The Implied Duty of Good Faith and Fair Dealing
      Fortune v. National Cash Register Co.; Notes (166-71)

PART THREE: TORT-BASED PROTECTIONS FOR WORKERS

Chapter 4: The Public Policy Exception to the “At-Will Rule”
   Introductory Note (175-76)

   A. The Common-Law Public Policy Exception
      Introductory Note (176-78)
      Fitzgerald v. Salsbury Chemical, Inc.; Notes (178-90)
      Note on Attorneys and the Public Policy Tort (190-91)
      Rackley v. Fairview Care Centers, Inc.; Notes (191-97)
      Reviewing the Scope of the Public Policy Exception (197-99)
      Note on Free Speech and the Public Policy Tort (200)

   B. Statutes Creating Public Policy Causes of Action
      Introductory Note (202-03)
      1. State Approaches
         Introductory Note (203)
         Conscientious Employee Protection Act; Notes (204-07)
Chapter 5: Traditional Torts in the Employment Relationship

A. Defamation
   Introductory Note (238-39)
   Government Micro Resources, Inc, v. Jackson; Notes (239-49)
   Shannon v. Taylor AMC/Jeep, Inc.; Notes (249-53)

B. Intentional Infliction of Emotional Distress
   Subbe-Hirt v. Baccigalupi; Notes (253-61)

C. Limitations on Tort Actions
   Introductory Note (265)
   1. Workers’ Compensation (265-68)
   2. Federal Preemption (268-70)

PART FOUR: PROTECTING WORKER AUTONOMY

Chapter 6: Workplace Privacy Protections

Introductory Note (273-75)

A. Sources of Privacy Protection
   1. Constitutional Protections (276-84)
   2. Tort-Based Protections
      Borse v. Piece Goods Shop, Inc.; Notes (284-94)
   3. Statutory Protections
      a. Federal Law (294-95)
      b. State Law (295-96)
   4. Contractual Privacy Protections
      Rulon-Miller v. International Business Machines Corp.; Notes (296-302)

B. “Balancing” Employee and Employer Interests
   Introductory Note (303)
   National Treasury Employees Union v. Von Raab (303-12)
   Soroka v. Dayton Hudson Corp.; Notes (312-24)
   Note on Off-Site Activities Including Blogging and Internet Use (324-27)
   Note on Employee Dress and Appearance (327-28)
C. Private Ordering: Consent and the Limits of Reasonable Expectations  
   Introductory Note (328)  
   United States v. Simons (328-33)  
   Feminist Women’s Health Center v. Superior Court; Notes (333-42)

Chapter 7: Workplace Speech and Association Protections  
   Introductory Note (343-44)

A. The Public Workplace  
   Connick v. Myers; Notes (344-53)  
   Garcetti v. Ceballos; Notes (353-68)  
   City of San Diego v. Roe; Notes (368-74)

B. The Private Workplace  
   Introductory Note (376-78)  

PART FIVE: WORKPLACE PROPERTY RIGHTS AND RELATED INTERESTS

Chapter 8: Competition, Employee Loyalty, and the Allocation of Workplace Property Interests  
   Introductory Note (393-94)

A. Fiduciary Duties of Current Employers  
   Scanwell Freight Express STL, Inc. v. Chan; Notes (395-400)

B. Post-Employment Restraints on Competition  
   1. Disputes over Skills and Training  
      Rem Metals Corp. v. Logan; Notes (401-08)  
   2. Disputes over Information  
      CTI, Inc. v. Software Artisans, Inc.; Notes (408-15)  
      Note on Injunctive Relief and the Doctrine of Inevitable Disclosure (416-18)  
      EarthWeb, Inc. v. Schlack; Notes (418-26)  
      Note on Employee Creative Works and Inventions (427-30)  
   3. Disputes over Customers and Co-Workers  
      Hopper v. All Pet Animal Clinic, Inc.; Notes (430-39)  
      Outsourse International, Inc. v. Barton; Notes (440-50)

C. New Frontiers in Noncompetition and Private Ordering (450-53)

D. Policy Analysis  
   David Autor, *Why Do Temporary Help Firms Provide Free General Skills Training*?
PART SIX: STATUTORY PROTECTIONS FOR EMPLOYEES

Chapter 9: Antidiscrimination

A. The Policy Bases for Antidiscrimination Law (457-60)

B. Individual Disparate Treatment Discrimination
   1. Introduction
      Introductory Note (460-61)
      Slack v. Havens; Notes (461-69)
      Christine Jolls and Cass R. Sunstein, The Law of Implicit Bias
   2. Proving Discrimination: The Traditional Framework
      a. The Plaintiff’s Prima Facie Case
         McDonnell Douglas Corp. v. Green; Notes (469-76)
         Note on Age Discrimination Variations on the Individual Disparate
         Treatment Theme (476-78)
         Note on “Reverse” Discrimination (478-79)
      b. Defendant’s Rebuttal and Plaintiff’s Proof of Pretext
         Introductory Note (479-84)
         Reeves v. Sanderson Plumbing Products, Inc.; Notes (484-92)
   3. Proving Discrimination: Mixed Motive Analysis
      Price Waterhouse v. Hopkins; Notes (492-505)
      Desert Palace, Inc. v. Costa; Notes (505-15)

C. Affirmative Action and Systemic Discrimination
   1. Voluntary Affirmative Action (527-31)
   2. Systemic Disparate Impact Discrimination
      Introductory Note (531-32)
      Griggs v. Duke Power Co.; Notes (532-37)
      a. Plaintiff’s Proof of a Prima Facie Case (537-40)
      b. Defendant’s Rebuttal (540-43)
      c. Alternative Employment Practices (543-44)
      Note on Impact Analysis under the ADEA (544)

D. Sexual and Other Discriminatory Harrassment
   Introductory Note (545-46)
   Oncale v. Sundowner Offshore Services, Inc.; Notes (546-53)
   Harris v. Forklift Systems, Inc.; Notes (553-61)
   Note on Grooming and Dress Codes (561-63)
   Note on Discrimination on the Basis of Sexual Orientation (563-65)

E. Retaliation
   Clark Country School District v. Breeden; Notes (565-70)
   Burlington Northern & Santa Fe Railway Co. v. White; Notes (570-77)

F. Disability Discrimination
   Introductory Note (577-78)
1. The Meaning of “Disability”
   Introductory Note (578-79)
   a. Actual Impairment
      Introductory Note (579-80)
      Toyota Motor Manufacturing, Kentucky, Inc. v. Williams; Notes (580-87)
      Note on Controllable or Correctable Conditions (587-89)
      Tangires v. Johns Hopkins Hospital; Notes (589-93)
      Note on Deference to the EEOC (593-94)
   b. “Record of Such an Impairment” (595-96)
   c. Regarded as Having Such an Impairment
      Introductory Note (596)
      Sutton v. United Air Lines, Inc.; Notes (596-601)
2. The Meaning of “Qualified Individual with a Disability”
   Introductory Note (601)
   Deane v. Pocono Medical Center; Notes (601-10)
3. The Duty of Reasonable Accommodation (610)
4. Discriminatory Qualification Standards
   Introductory Note (610-11)
   a. Direct Threat (611-13)
   b. Job Related and Consistent with Business Necessity (613)
   c. Disparate Impact (613-15)
   Note on a Rock and a Hard Place (615)

Chapter 10: Accommodating Workers’ Lives

Introductory Note (625-27)

A. Accommodations under Title VII and the Americans with Disabilities Act
   Introductory Note (627)
   1. The Duty to Accommodate Religious Beliefs (627-29)
   2. The Duty to Accommodate Disabilities
      Introductory Note (629-30)
      US Airways, Inc. v. Barnett; Notes (631-43)
      Note on “Undue Hardship” as a Limit on Reasonable Accommodation (645-46)

B. Antidiscrimination, Accommodation, and the Problem of Work/Family Balance
   Introductory Note (647)
   1. Pregnancy under Title VII: The Limits of Formal Equality
      Introductory Note (647-49)
      Troupe v. May Department Stores Co.; Notes (649-54)
      Walsh v. National Computer Systems; Notes (654-61)
   2. The Family and Medical Leave Act
      Introductory Note (661-64)
      Nevada Department of Human Resources v. Hibbs; Notes (664-75)
      Russell v. North Broward Hospital; Notes (675-86)
Chapter 11: Wages and Benefits

Introductory Note (689)

A. Wage Protections
   Introductory Note (690-91)
   1. The FLSA
      Introductory Note (691-92)
      a. Scope of Coverage
         i. Employee and Employer (692-94)
         ii. Exemptions (694-97)
      b. FLSA Application Problems
         Introductory Note (724-25)
         Pabst v. Oklahoma Gas & Electric Co.; Notes (725-31)
   2. Other Wage Protections (739-40)

B. Fringe Benefit Protections
   Introductory Note (740-41)
   1. ERISA
      Introductory Note (741-42)
      a. Coverage
         Introductory Note (742-43)
         i. Employee Welfare Benefit Plans (743)
         ii. Employee Pension Benefit Rights (743-45)
      b. The Statutory Structure (745-49)
      c. The Relationship Between the Tax Code and ERISA
         Introductory Note (749-50)
         i. Coverage Discrimination (750)
         ii. Benefit Discrimination (750-51)
      d. Health Insurance as an Employee Welfare Plan (752-53)
      e. ERISA Preemption
         Introductory Note (754)
         i. “Field” Preemption
            Introductory Note (754-55)
            New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins., Inc.; Notes (755-65)
         ii. “Conflict” Preemption
            Introductory Note (765)
            Aetna Health, Inc. v. Davila; Notes (765-76)
      f. Enforcing ERISA
         Inter-Model Rail Employees Ass’n v. Atchison, Topeka & Santa Fe Railway Co.; Notes (789-93)
   2. Employment-Related Benefits Not Governed by ERISA (793-94)
Chapter 12: Worker Safety and Health

Introductory Note (795-97)

A. Workers’ Compensation
   1. The History of Workers’ Compensation (797-99)
   2. The Basic Structure of Workers’ Compensation Statutes (799-802)
   3. Coverage and Compensable Injuries
      Introductory Note (802)
      a. Injuries Sustained “In the Course of Employment”
         Introductory Note (802-03)
         Kindel v. Ferco Rental, Inc. (803-09)
         Clodgo v. Rentavision, Inc.; Notes (809-14)
      b. “Arises out of” Employment
         Odyssey/Americare of Oklahoma v. Worden (814-16)
      Note on Compensability of “Mental Injuries” (824-25)
      Note on Exclusivity (825)

B. OSHA
   Introductory Note (825)
   1. A Glance at OSHA’s History and Structure
      Introductory Note (826)
      a. Safety Standards
         Introductory Note (826-28)
         Public Citizen Research Health Group v. Chao; Notes (828-38)
      b. Enforcement (838-39)
   2. OSHA’s Troubled Past and Present, and Its Uncertain Future
      Introductory Note (839)
      Lobel, Interlocking Regulatory and Industrial Relations: The Governance of Workplace Safety; Notes (840-48)
      Case Study: The Horrors of McWane; Notes (848-59)

PART SEVEN: RISK MANAGEMENT

Chapter 13: Managing the Risk and Costs of Liability in Employment Disputes

Introductory Note (863-65)

A. Preventative Measures and Corrective Actions
   Introductory Note (865-69)
   Williams v. Partan Communications (879-83)

B. Conducting Layoffs and Obtaining Release Agreements
   Introductory Note (897-98)
   Williams v. Phillips Petroleum Co.; Notes (898-906)
C. Managing Unfavorable Fora and Adverse Law
   Introductory Note (912)
   1. Pre-Dispute Arbitration Agreements
      Introductory Note (912-15)
      Circuit City Stores, Inc. v. Adams (915-18)
      Martindale v. Sandvick, Inc.; Notes (918-27)
   2. Forum Selection and Choice of Law
      Advanced Bionics Corp. v. Medtronic, Inc.; Notes (928-36)
   3. Liquidated Damages Clauses
      Smelkinson SYSCO v. Harrell; Notes (936-45)