CHAPTER THREE
TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

I. STATUTE
   a. Unlawful employment practices under Title VII
   b. Cannot discriminate against an individual with respect to terms and conditions of employment BECAUSE of
      i. Race
      ii. Color
      iii. Religion
      iv. National Origin
      v. Gender

II. “HISTORIC RIGHTS ACT”
   a. Purpose of Civil Rights Act of 1964
      i. 99 years after end of slavery: segregation ended
      ii. Legislative result of the Civil Rights Movement: “equal opportunity”
      iii. Purpose of Title VII’s protection of “equal employment opportunity.”
         1. Pres. Kennedy’s statement in 1963
            a. Comparison to Civil Rights Act of 1866
               and Lincoln’s statement regarding necessity of protection of former slaves’ right to enter “contracts.”
            iv. The changing face of the U.S. workplace
   b. The reason “gender” was added to Title VII
   c. Civil Rights Act of 1991
      i. Jury trials, compensatory and punitive damages added to “make-whole relief” and injunctive relief
   d. Equal Employment Opportunity Commission (EEOC)
      i. Regulations and guidelines
e. The Big Picture"

III. STRUCTURE OF TITLE VII
a. Employment actions prohibited by Title VII
b. Employers covered by Title VII: Who Must Comply
   i. Private sector employers whose business “affects interstate commerce” and who employ 15 or more employees
   ii. Federal, state, and local government employers
   iii. Unions
   iv. Employment agencies (make hiring referrals)
   v. Exemption for Native American reservations
      1. Dawavendewa case (p. 87)
   vi. Religious institutions and associations
      1. may consider religion as an employer
c. Employees protected under Title VII: Who is Covered
   i. All levels and types of employees of covered employers
   ii. U.S. citizens employed outside U.S. for U.S. companies
   iii. Undocumented workers: [but cannot get backpay as remedy]
d. Filing Claims Under Title VII
   i. 180 days
   ii. workplace harassment: behavior outside that timeframe may be considered if it is part of the same pattern of conduct that triggered the claim
   iii. Retaliation protection under Title VII.
iv. EEOC’s role:
1. mediation [vs. arbitration]
2. investigation and finding
3. conciliation
4. “right to sue” letter
   a. trial court not bound by EEOC determination of “no reasonable cause”
5. EEOC may sue on behalf of individuals
   a. Not bound by individual arbitration agreements

e. Remedies
   i. Back pay
   ii. Front pay
   iii. Promotion, reinstatement, etc.
   iv. “make-whole” relief
   v. injunctive relief
   vi. Compensatory and punitive damages

IV. THEORETICAL BASES FOR TITLE VII LAWSUITS
a. Disparate Treatment
   i. Intentional discrimination
   ii. Circumstantial evidence of discriminatory intent allowed
   iii. Prima facie case
      1. *McDonnell Douglas* p. 95
iv. Defenses to Disparate Treatment
   1. Valid Business Reason defense
      a. Employment decision was not based on prohibited factors.
         i. Ali (p. 109)
   2. BFOQ (Bona Fide Occupational Qualification)
      a. Employer’s “discrimination” was reasonably necessary for the business.
      b. Wilson (p. 98)

b. Disparate Impact
   i. “unintentional discrimination”
   ii. employer’s “facially neutral” policy has an adverse impact on an entire group protected under Title VII
   iii. four-fifths rule and the prima facie case
   iv. pre-employment interviews and employment applications
   v. business necessity defense

V. MANAGEMENT TIPS