

**Antidiscrimination Law Seminar**  
University of Houston Law Center ★ LAW 7314  
Professor Brad Areheart, Fall 2024

**COURSE DESCRIPTION AND LEARNING OUTCOMES**

Antidiscrimination law has expanded dramatically over the past several decades. There has been a push to expand beyond traditionally protected classes – e.g., race, sex, and religion – to protect people on the basis of a wide range of traits, including (but not limited to) weight, criminal records, credit histories, sexual orientation, prior salaries, genetics, disability, and appearance. In addition, some laws protect only some groups within a band of identity (e.g., the ADEA protects only workers over the age of 40 and the ADA protects only persons with disabilities) while some laws protect all persons on the basis of a particular trait (e.g., Title VII protects all people on the basis of both race and sex). The push to expand discrimination law and the legislative choices made to protect some groups, but not others, leads to a fundamental and somewhat rudimentary set of questions: What is discrimination? When is it wrong? And should the law do anything about it?

This seminar will explore these questions and others. We will consider questions, such as:

- *Is everyone biased? Can we do anything about it?*
- *What about appearance discrimination?*
- *What should we do when there's a collision between religious freedom and secular policies, such as nondiscrimination mandates?*
- *Is there a relationship between poverty and discrimination?*
- *What, if anything, can or should be done about housing and educational segregation?*
- *Affirmative action: necessary or unjust?*
- *And are there creative approaches outside of the law to achieve equality?*

The readings and discussions, taken together, will provide you with a foundation on which to build and revise your paper, which should fit generally within the ambit of antidiscrimination law or theory. This seminar is intended to provoke you to think long and deeply about the project of antidiscrimination.

**CONTACT INFORMATION**

Professor Brad Areheart, <https://law.utk.edu/directory/brad-areheart/>

E-mail: [baarehea@cougarnet.uh.edu](mailto:baarehea@cougarnet.uh.edu)

Cell: 865.299.2822. You are welcome to call or text with any questions or concerns.

Zoom: <https://tennessee.zoom.us/j/5139764757>

**CLASS MEETINGS**

This class will be offered synchronously on Zoom, on Mondays and Wednesdays from 9:00-10:20 AM (CDT). The link for those meetings is here: <https://tennessee.zoom.us/j/5139764757>  
Regular attendance is expected. You must have your camera ON.

There are some exceptions, where we will not meet, or will do so asynchronously. For your sake,

please do not show up to class on those days. ☺

### **REQUIRED COURSE MATERIALS**

There is nothing for you to purchase. I have assembled the assigned readings for class and will post all of them to Canvas. Even those below that have a URL will be posted to Canvas.

### **GROUND RULES**

The ground rules of this seminar are fairly simple. Attendance at all seminar meetings is expected. In the event of an absence, students must notify me via email (preferably before the seminar has met). Unexcused absences may result in a lowered final grade.

### **FINAL GRADE**

This is a writing course. As such, students will be evaluated primarily on a research paper on a topic in antidiscrimination law. Course participation (of all types) *may* improve a student's final grade by one-third of a letter grade (*e.g.*, B+ to A-). It is also possible – though never my desire – for a student's grade to be reduced for failure to participate. Please just participate. **My design for the presentation is that it is informal, seeking feedback; it is not graded.**

Students will meet with me to discuss paper topics and must receive my approval. Students must also meet with me subsequently, during the appropriate weeks, to provide an update on the paper's progress. The final paper must be no shorter than 25 double-spaced typewritten pages and no longer than 35 double-spaced typewritten pages. Papers should be formatted in Times New Roman font, size 12 for the text and size 10 for the footnotes (*i.e.*, not endnotes), with a one-inch margin on all sides. (The paper must also be, per UH's Upper Level Writing Requirement, at least 10,000 words, including footnotes.)

### **ADDITIONAL POLICIES**

#### **Mental Health and Wellness Resources**

The University of Houston has a number of resources to support students' mental health and overall wellness, including CoogsCARE and the UH Go App. UH Counseling and Psychological Services (CAPS) offers 24/7 mental health support for all students, addressing various concerns like stress, college adjustment and sadness. CAPS provides individual and couples counseling, group therapy, workshops and connections to other support services on and off-campus. For assistance visit [uh.edu/caps](http://uh.edu/caps), call 713-743-5454, or visit a Let's Talk location in-person or virtually. Let's Talk are daily, informal confidential consultations with CAPS therapists where no appointment or paperwork is needed.

The Student Health Center offers a Psychiatry Clinic for enrolled UH students. Call 713-743-5149 during clinic hours, Monday through Friday 8 a.m. - 4:30 p.m. to schedule an appointment. The A.D. Bruce Religion Center offers spiritual support and a variety of programs centered on well-being.

Need Support Now? - If you or someone you know is struggling or in crisis, help is available. Call CAPS crisis support 24/7 at 713-743-5454, or the National Suicide and Crisis Lifeline: call or text 988, or chat 988lifeline.org.

### **Title IX/Sexual Misconduct**

Per the UHS Sexual Misconduct Policy, your instructor is a “responsible employee” for reporting purposes under Title IX regulations and state law and must report incidents of sexual misconduct (sexual harassment, non-consensual sexual contact, sexual assault, sexual exploitation, sexual intimidation, intimate partner violence, or stalking) about which they become aware to the Title IX office. Please know there are places on campus where you can make a report in confidence. You can find more information about resources on the Title IX website at <https://uh.edu/equal-opportunity/title-ix-sexual-misconduct/resources/>.

### **Reasonable Academic Adjustments/Auxiliary Aids**

The University of Houston is committed to providing an academic environment and educational programs that are accessible for its students. Any student with a disability who is experiencing barriers to learning, assessment or participation is encouraged to contact the Justin Dart, Jr. Student Accessibility Center (Dart Center) to learn more about academic accommodations and support that may be available to them. Students seeking academic accommodations will need to register with the Dart Center as soon as possible to ensure timely implementation of approved accommodations. Please contact the Dart Center by visiting the website: <https://uh.edu/accessibility/> calling (713) 743-5400, or emailing [jdcenter@Central.UH.EDU](mailto:jdcenter@Central.UH.EDU).

### **Recording of Class**

Students may not record all or part of class, livestream all or part of class, or make/distribute screen captures, without advanced written consent of the instructor. If you have or think you may have a disability such that you need to record class-related activities, please contact the Justin Dart, Jr. Student Accessibility Center. If you have an accommodation to record class-related activities, those recordings may not be shared with any other student, whether in this course or not, or with any other person or on any other platform. Classes may be recorded by the instructor. Students may use instructor’s recordings for their own studying and notetaking. Instructor’s recordings are not authorized to be shared with anyone without the prior written approval of the instructor. Failure to comply with requirements regarding recordings will result in a disciplinary referral to the Dean of Students Office and may result in disciplinary action.

### **Honor Code**

The UHLC Honor Code applies to all aspects of this course. You are responsible for knowing all Honor Code provisions and for complying with the Honor Code. Please inquire if you have any questions regarding how the Honor Code’s provisions apply to specific activities or situations related to this course. Your continuing enrollment in this course is deemed to be a pledge by you under the Honor Code to comply with the Honor Code in relation to this course and to comply with the instructions in the course syllabus.

### **AI Generated Text**

The software technology known as artificial intelligence has recently expanded its capability to generate text (AI Generated Text). Examples of the technology include what are known as “generative” large language models (LLMs), and a specific implementation what is well known in the general public is ChatGPT. These systems can generate text in response to prompts and/or input of

other text/documents/code/images. The output, the AI Generated Text, appears to have human-mimicking “intelligence” and is thus potentially usable as a substitute for written work product one might generate themselves. AI Generated Text can include computer code or programs as well as human language content.

Your continuing enrollment in this course is deemed to be a pledge by you under the Honor Code to not prompt, generate, obtain, read, or use any AI Generated Text in relation to any activity or assessment in this course. This applies to AI Generated Text from yourself or others. This pledge includes that your assessment work product in the course is without any contribution from AI Generated Text. This specifically extends to the plagiarism policy and unauthorized aid/materials parts of the Honor Code: AI Generated Text will be treated as from another/other in applying the plagiarism policy to this course. The term “assessment” means any work product generated for this course that is submitted to the instructor or presented in a class session, regardless whether it is graded content or not. Assessments include mid-terms and final exams. AI Generated Text may not be used in the development or drafting of any assessments created by you in a non-proctored environment, such as a “take-home” final examination unless specified as an exception below.

### **Resources for Online Learning**

The University of Houston is committed to student success, and provides information to optimize the online learning experience through our Power-On website (<https://uh.edu/power-on/learning/>). Please visit this website for a comprehensive set of resources, tools, and tips including: obtaining access to the internet, AccessUH, Blackboard, and Canvas; using your smartphone as a webcam; and downloading Microsoft Office 365 at no cost. For questions or assistance contact [UHOnline@uh.edu](mailto:UHOnline@uh.edu).

### **UH Email**

Please check and use your CougarNet email for communications related to this course. Faculty use the CougarNet email to respond to course-related inquiries such as grade queries or progress reports for reasons of FERPA. To access your CougarNet email, login to your Microsoft 365 account with your CougarNet credentials. Visit University Information Technology (UIT) for instructions on how to connect your CougarNet e-mail on a mobile device.

### **Webcams**

Access to a webcam is required for students participating remotely in this course. Webcams must be turned on (state when webcams are required to be on and the academic basis for requiring them to be on). (Example: Webcams must be turned on during exams to ensure the academic integrity of exam administration.)

### **Security Escorts and Cougar Ride**

UHPD continually works with the University community to make the campus a safe place to learn, work, and live. The security escort service is designed for the community members who have safety concerns and would like to have a Security Officer walk with them, for their safety, as they make their way across campus. Based on availability either a UHPD Security Officer or Police Officer will escort students, faculty, and staff to locations beginning and ending on campus. If you feel that you need a Security Officer to walk with you for your safety, please call 713-743-3333. Arrangements may be made for special needs.

Parking and Transportation Services also offers a late-night, on-demand shuttle service called “Cougar Ride” that provides rides to and from all on-campus shuttle stops, as well as the MD Anderson Library, Cougar Village/Moody Towers and the UH Technology Bridge. Rides can be requested through the UH Go app. Days and hours of operation can be found at <https://uh.edu/af-university-services/parking/cougar-ride/>.

### Syllabus Changes

Please note that I may need to make modifications to the course syllabus. Notice of such changes will be announced as quickly as possible by email.

## ★ Assignments ★

### Class 1 (August 19, 2024):

#### *An Introduction*

watch “How to Write a Law School Seminar Paper or Law Review Student Note -- A Ten Step Process,” <https://www.youtube.com/watch?v=AETHV7IciDE> (19 min. video)

watch “Five Approaches to a Law School Paper or a Law Review Student Note,”

<https://www.youtube.com/watch?v=2Pz4PGM4qK4> (14 min. video)

No Reading Assignment

### Class 2 (August 21, 2024):

#### *How do we design laws to address discrimination?*

Generally: Bradley A. Areheart, *The Symmetry Principle*, 58 B.C. L. REV. 1085 (2017)

A specific example: Bradley A. Areheart, *Accommodating Pregnancy*, 67 ALA. L. REV. 1125 (2016)

### Class 3 (August 26, 2024):

#### *Is equal opportunity possible? Is equality possible?*

4 problems: JOSEPH FISHKIN, BOTTLENECKS: A NEW THEORY OF EQUAL OPPORTUNITY (2014), pp. 48-82

### Class 4 (August 28, 2024):

#### *What about appearance discrimination specifically? Is it unjust? Can the law do anything about it?*

DEBORAH L. RHODE, THE BEAUTY BIAS: THE INJUSTICE OF APPEARANCE IN LIFE AND LAW (2010), pp. 1-22, 91-116, 154-161

#### *Moving Forward in the Course: Clear Thinking on Hard Issues*

PETER H. SCHUCK, ONE NATION UNDECIDED: CLEAR THINKING ABOUT FIVE HARD ISSUES THAT DIVIDE US (2017), pp. 1-15

*The Confirmation Bias: Why People See What They Want to See,*  
<https://effectiviology.com/confirmation-bias/>

**September 2, 2024: Labor Day, No Class**

### Class 5 (September 4, 2024)

We will not meet in person this day. Instead, I would like you to watch one of the following 8 movies, all of which feature whistleblowing: *All the President's Men* (1976) (\$3.99 on Apple+/Prime), *The Insider* (1999) (\$3.99 on Apple+/Prime), *Erin Brockovich* (2000) (Tubi & TruTV), *Michael Clayton* (2007) (\$3.99 on Apple+/Prime), *Snowden* (2016) (\$3.79 on Apple+/Prime), *Dark Waters* (2019) (\$3.79 on Apple+/Prime), *Official Secrets* (2019) (Hulu) or *The Report* (2019) (free on Prime). After you have watched one or more of these movies, please compose a post on what you learned about whistleblowing from the movie you watched in the Discussions Section of Canvas labeled "Whistleblower Movie Discussion."

**September 9-13, 2024: During this week, I will meet with each of you to discuss topic area and/or possible theses.**

### Class 6 (September 16, 2024):

*Is Age Discrimination a Problem?*

Sharona Hoffman, *Cognitive Decline in the Workplace*, 57 WAKE FOREST L. REV. 115 (2022)

Alexander A. Boni-Saenz, *Age, Time, and Discrimination*, 53 GA. L. REV. 845 (2019)

### Class 7 (September 18, 2024):

**Skim the content below. We will talk about it in class.**

- PETER H. SCHUCK, ONE NATION UNDECIDED: CLEAR THINKING ABOUT FIVE HARD ISSUES THAT DIVIDE US (2017), pp. 316-363 (on religious exceptions to secular policies)
- Andrew Koppelman, *How Shall I Praise Thee?: Brian Leiter on Respect for Religion*, 47 SAN DIEGO L. REV. 961 (2010). Read p.960-971 & 978-986.
- Kelsey Dallas, *The Supreme Court came together on religion this term. Then, it fell apart*. DESERET NEWS, <https://www.deseret.com/faith/2022/7/4/23170208/the-supreme-court-came-together-on-religion-this-term-then-fell-apart-abortion-ruling-school-prayer> (July 4, 2022)
- Ariane de Vogue & Tierney Sneed, Supreme court revives case brought by postal worker seeking religious accommodations, CNN, <https://www.cnn.com/2023/06/29/politics/supreme-court-groff-dejoy-postal-worker/index.html> (June 29, 2023)
- watch Justice Alito speak on religious liberty (July 28, 2022): <https://www.youtube.com/watch?v=uci4uni608E> (making the case for religious liberty). I would encourage you to watch the entire thing, but you should focus on 26:50-38:00.
- watch "why tolerate religion?" – Brian Leiter (Chicago) and David Skeel (Penn) (Oct. 2, 2014): <https://www.youtube.com/watch?v=8d5dtDm7sCA> (a conversation on religious exemptions). Again, the entire thing is good. But I would encourage you to focus on the first 25 minutes.

### Class 8 (September 23, 2024):

*What should we do about disability and genetic discrimination?*

Bradley A. Areheart & Jessica L. Roberts, *GINA, Big Data, and the Future of Employee Privacy*, 128 YALE LAW JOURNAL 710 (2019)

Jasmine E. Harris, *The Aesthetics of Disability*, 119 COLUM. L. REV. 895 (2019)  
JESSICA L. ROBERTS & ELIZABETH WEEKS, HEALTHISM: HEALTH-STATUS DISCRIMINATION AND THE LAW (2018), pp. 1-22

**Class 9 (September 25, 2024):**

*How should we understand housing and educational discrimination?*

- Jennifer L. EBERHARDT, BIASED: UNCOVERING THE HIDDEN PREJUDICE THAT SHAPES WHAT WE SEE, THINK, AND DO (2019), pp. 155-225 (on housing and educational discrimination)
- Emily Badger, *Housing Segregation is Holding Back the Promise of Brown v. Board of Education*, WASH. POST, <https://www.washingtonpost.com/news/wonk/wp/2014/05/15/housing-segregation-is-holding-back-the-promise-of-brown-v-board-of-education/> (May 15, 2014)
- PJ Randhawa, *Why housing discrimination is worse today than it was in the 1960s*, <https://www.king5.com/article/news/community/facing-race/black-homeownership-washington-state-racism/281-b12a3eb0-d907-4a51-b686-6ac3f462ab86> (Nov. 16, 2022)
- Candace Jackson, *What is Redlining?*, NEW YORK TIMES (Aug. 17, 2021)

**Class 10 (September 30, 2024):**

*Is there a relationship between poverty and discrimination?*

- *On poverty and racism: Social Watch: Poverty Eradication and Gender Justice, Poverty and Racism Inextricably Linked, Says UN Expert*, <https://www.socialwatch.org/node/16324> (Dec. 11, 2013)
- *Favoring reparations: Rashawn Ray & Andrew M. Perry, Why We Need Reparations for Black Americans*, BROOKINGS, <https://www.brookings.edu/policy2020/bigideas/why-we-need-reparations-for-black-americans/> (April 15, 2020)
- *Challenging reparations: David Frum, The Impossibility of Reparations*, ATLANTIC, <https://www.theatlantic.com/business/archive/2014/06/the-impossibility-of-reparations/372041/> (June 3, 2014)

**Class 11 (October 2, 2024):**

*Are we all biased? Can we do anything about it?*

JENNIFER L. EBERHARDT, BIASED: UNCOVERING THE HIDDEN PREJUDICE THAT SHAPES WHAT WE SEE, THINK, AND DO (2019), pp. 11-43 (on “seeing” people and stereotyping)  
Samuel R. Bagenstos, *Implicit Bias’s Failure*, 39 BERK. J. EMP. & LAB. L. 37 (2018)

**October 7-11, 2024: During this week, I will meet with each of you to refine your thesis and discuss your outline.**

**Class 12 (October 14, 2024):**

*Can the law adequately address discrimination?*

Katie R. Eyer, *That’s Not Discrimination: American Beliefs and the Limits of Anti-Discrimination Law*, 96 MINN. L. REV. 1275 (2012)  
Jessica A. Clarke, *Protected Class Gatekeeping*, 92 N.Y.U. L. REV. 101 (2017)

**Class 13 (October 16, 2024):**

*Are there approaches outside of the law to effectively achieving antidiscrimination?*

Bradley A. Areheart, *Organizational Justice and Antidiscrimination*, 104 MINN. L. REV. 1921 (2020)

Jessica L. Roberts, *Protecting Privacy to Prevent Discrimination*, 56 WM. & MARY L. REV. 2097 (2015)

**Class 14 (October 21, 2024):**

*Where has the law left affirmative action?*

- Will Baude, *The Unsurprising Affirmative Action Decision in Students for Fair Admissions v. Harvard*, <https://reason.com/volokh/2023/06/29/the-unsurprising-affirmative-action-decision-in-students-for-fair-admissions-v-harvard/>, REASON (June, 29, 2023)
- Monica Potts, *Most Americans Wanted The Supreme Court to End Affirmative Action – Kind of*, FIVE THIRTY EIGHT, <https://fivethirtyeight.com/features/american-opinion-affirmative-action/> (June 29, 2023)
- TERESA Watanabe & Howard Blume, *A lot of what you've heard about affirmative action is wrong*, L.A. TIMES, <https://www.latimes.com/california/story/2023-06-29/affirmative-action-supreme-court-decision-college-admissions-misconceptions> (June 29, 2023)
- ILYA Somin, *"Diversity" House of Cards Collapses*, WASH. EXAMINER, <https://www.washingtonexaminer.com/policy/courts/diversity-house-cards-collapses-supreme-court-harvard-unc> (July 7, 2023)
- EMMA Camp, *Killing the SAT to Help Underprivileged Students Actually Benefits Rich Kids*, REASON, <https://reason.com/2023/07/25/rich-kids-will-benefit-the-most-from-eliminating-standardized-tests-for-college-admissions/> (July, 25, 2023)
- AUDRA D.S. Burch, *One Black Family, One Affirmative Action Ruling, and Lots of Thoughts*, N.Y. TIMES, <https://www.nytimes.com/2023/07/02/us/affirmative-action-black-family.html> (July 2, 2023)
- ILYA Somin, *What It Will Take to Make Government Color-Blind*, REASON, <https://reason.com/volokh/2023/07/06/how-to-make-government-color-blind/> (July 6, 2023)

**Class 15 (October 23, 2024):**

*Should we add protected classes to the law?*

JOSEPH FISHKIN, *BOTTLENECKS: A NEW THEORY OF EQUAL OPPORTUNITY* (2014), pp. 10-23, 231-244

RICHARD THOMPSON FORD, *THE RACE CARD: HOW BLUFFING ABOUT BIAS MAKES RACE RELATIONS WORSE* (2008), pp. 93-106, 174-177

**Class 16 (October 28, 2024):**

**We will not meet this day. Instead, I would like you to watch/read the content below.**

Watch "How to Tell When You Need to Do More Research for Your Law School Seminar Paper or Law Review Note," <https://www.youtube.com/watch?v=xyk2iR4DZIE> (5 min. video)

Watch "Publishing Your Law School Paper: One Easy Thing You Can Do Now to Save Time Later," <https://www.youtube.com/watch?v=PnspzUhZ1fQ> (5 min. video)

Skim Jonathan Borwein & Michael Rose, *Clearing Up Confusion Between Correlation and Causation*, <https://theconversation.com/clearing-up-confusion-between-correlation-and-causation-30761> (Sept. 22, 2014)

Skim Nick Barrowman, *Correlation, Causation, and Confusion*, THE NEW ATLANTIS, <https://www.thenewatlantis.com/publications/correlation-causation-and-confusion> (2014)

**October 30-November 12, 2024: Please provide to me whatever you have down on paper no later than COB Friday, November 1. I will review whatever you have written to this point and send you a few thoughts no later than COB on Friday, November 8. That will give those of you presenting as early as November 13 the opportunity to incorporate any feedback.**

**Class 17 (November 13, 2024):**

*\*\* These are not graded. I repeat: they are not graded. These are to help you receive input (from me and from classmates) that you can use in finalizing your papers. \*\**

Paper Presentations, Part I

*For these I anticipate 10-15 minute presentations with a draft circulated to classmates in advance.*

**Class 18 (November 18, 2024):**

Paper Presentations, Part II

*For these I anticipate 10-15 minute presentations with a draft circulated to classmates in advance.*

**November 22-24, 2023: Happy Thanksgiving!**

**Class 19 (November 20, 2024):**

Paper Presentations, Part III

*For these I anticipate 10-15 minute presentations with a draft circulated to classmates in advance.*

**After our last meeting, students will have exactly THREE weeks to complete their papers. I will meet with students as needed to assist with that.**

**Final papers are due to me by COB Wednesday, December 11, 2024.**