**Chapter 1**

**Legal Heritage and the Digital Age**

**Answer to Critical Legal Thinking Case**

**1.1 Fairness of the Law**

Many students will react that the statute is unfair as it does not afford women equal status in the workplace. In light of today’s standards, that position is well founded. However, it is a useful exercise to consider arguments for the opposite position in the context of the time period. In enacting such a statute, the legislature presumably entertained the view that women had special needs, were subject to certain weaknesses, and therefore the demands made on them had to be accommodated in the workplace. That these premises, i.e., special needs and presumed weaknesses, might be false does not necessarily preclude one from acting morally. Moralists might label this ignorance as excusable in that it is “invincible,” i.e., an ignorance that cannot be destroyed or offers no moral reason for doing so. Of course, modern experience and knowledge require that we question these premises. It almost certainly would not be lawful today. Not only have the items relevant to the test of equal protection broadened under present constitutional interpretations, but also Title VII of the Civil Rights Act of 1964 prohibits any discrimination on the basis of sex in the “terms, conditions and benefits of employment.” *W. C. Ritchie & Co. v. Wayman, Attorney for Cook Country, Illinois*, 91 N.E. 695, 1910 Ill. Lexis 1958 (Supreme Court of Illinois)

**Answers to Ethics Cases**

**1.2** **Ethics Case**

Yes, the hunting, fishing, and gathering rights granted to the Mille Lacs Band of the Ojibwe Indians by the federal government in the 1837 treaty are valid and enforceable. The U.S. Supreme Court held that these rights were not extinguished when the state of Minnesota was admitted as a state in 1858. The state of Minnesota argued that the Ojibwe’s rights under the treaty were extinguished when Minnesota was admitted to the Union. There is no clear evidence of federal congressional intent to extinguish the treaty rights of the Ojibwe Indians when Minnesota was admitted as a state in 1858. The language admitting Minnesota as a state made no mention of Indian treaty rights. It was illegal for the state of Minnesota to try to extinguish clearly delineated legal rights granted to the Ojibwe Native Americans more than 150 years before. The hunting, fishing, and gathering rights guaranteed to the Ojibwe Indians in the 1837 treaty are still valid and enforceable.

The state of Minnesota did not ethically when it tried to abolish the hunting, fishing, and gathering rights guaranteed to the Ojibwe Indians by treaty. The Ojibwe relied on the promises of the treaty, which must be kept by the government. *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 119 S.Ct. 1187, 1999 U.S. Lexis 2190 (Supreme Court of the United States)

**1.3** **Ethics Case**

The better case is made by the dissent. The law has not been progressive in this instance. It is likely that legislators entertained an unconscious premise that women should not be required to fight a war. This speculation might be supported by the fact that the majority of the Supreme Court summoned a technical legal point to justify their ruling. The Court held that Congress was the proper party to articulate the public policy that women should not fight at the front, thereby removing themselves from any further consideration of the substantive issue, i.e., whether equality was being served as a matter of fairness. *Rostker, Director of the Selective Service v. Goldberg*, 453 U.S. 57, 101 S.Ct. 2646, 1981 U.S. Lexis 126 (Supreme Court of the United States)