UNIVERSITY OF PENNSYLVANIA THE WHARTON SCHOOL

SPRING SEMESTER

2014

SYLLABUS

DIVERSITY LAW

PROFESSOR JOSE’ F. ANDERSON
COURSE DETAILS

Professor: Jose’ F. Anderson

Time: Monday 3pm-6pm

Course Category: Lecture

Classroom: Huntsman Hall

Office Hours: Monday 12:30 pm-3pm

Office: University of Baltimore School of Law
Angelos Law Center Room 1107

University of Pennsylvania Law School
Room 600 (Monday only)

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Secretary: Gloria Joy

Office: University of Baltimore School of Law
Room LC 410

Facsimile: 410-837-4492

Texts:

Required:


Recommended for Research Papers:


Orlando Patterson, Slavery and Social Death (Cambridge: Harvard University Press, 1982).


**COURSE REQUIREMENTS**

Race Law is a three-credit Course. Class attendance is mandatory. Students who miss more than two class sessions, excused or unexcused, will not be permitted submit a paper. Students are required to write a research paper in partial fulfillment of the course requirements. The paper must have a length of not less than 20 pages plus endnotes and must be typed and double-spaced. Students may use endnotes or footnotes, whichever they prefer. Those using footnotes should take this into consideration in satisfying suggested page-length guidelines for their papers.

Students may write on any topic of their choice as long as it is within the scope of the subject matter of the course. Students must discuss their research topics with and get approval for them from Professor Anderson. Individual topic discussion meetings may be arranged and a list of possible topics will be made available. Students are strongly encouraged to develop their own topic or a diversity issue. Topics selected from this list receive automatic approval without request. By the first month of class paper due dates will be established. The date is usually the Friday after the last class session by 3:00 p.m. Late papers will be accepted but will be reduced by one full letter-grade.

Generally, the assigned materials will be read by the entire class. Each student will take part in a case presentation group which will be part of their class participation grade.

**COURSE DESCRIPTION**

The course will examine the use of the law both to perpetuate and eradicate racial injustice in the United States from the inception and rise of slavery during the colonial period through the racial desegregation decision of the United States Supreme Court in *Brown v. Board of Education* in 1954 to the present. The goals of the course are to achieve an understanding of the role of law in its social context, especially with regard to the use of legal institutions and law
The course will begin with an examination of the analytical framework for the study of race and the law. Two subjects will be covered; racial prejudice and race classification.

The course will then focus on the role of law in the introduction and development of the slave system. The subsequent expansion and entrenchment of the institution of slavery in the new nation will be examined next through a case and statutory study of antebellum slavery law. Several cases from various northern courts will be studied as well. The major institutions focused upon will be the state courts and the state legislatures with regard to their role in the preclusion or allowance of traditional family relations, educational options, due process in the courts, and other "rights" for slaves and free blacks.

We will also explore the political debates and the handling of the slavery issue in the formulation of those documents central to the federal government, e.g., the Declaration of Independence, the Articles of Confederation, and the Constitution. In addition, we will look at the federal judiciary's treatment of slavery and the status of blacks.

The foci will not be limited merely to the rules of law adopted by the courts or the legislatures. A major issue for exploration will be the values and priorities of the individuals in power and a probing of how these values and principles affected their choice of options and the rules of law adopted. We will analyze the "prejudices which judges share" as suggested by Oliver Wendell Holmes when he wrote:

> The life of the law has not been logic: it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed. (Emphasis added)

During the latter-half of the course, we will follow the role of American law in the attempted eradication of racial segregation and discrimination against African Americans, Asian Americans, Latinos/as, and American Indians, concentrating predominantly on their treatment by the Congress and the Supreme Court. Thus, the inquiry will focus on the successes as well as the failures of American legal institutions during the nineteenth and twentieth centuries and includes examination of the passage and subsequent judicial interpretation of the Thirteenth and Fourteenth Amendments. Subjects covered include citizenship, sovereignty, transportation, housing, education, marriage, employment, business, voting, and the criminal justice system. By applying our understanding of the magnitude and nature of slavery gained from earlier study, students may better comprehend what the amendments were designed to eliminate and evaluate the nature and extent of the legal system's endeavors in this regard.

Next, the course will examine Supreme Court confirmation controversies involving race. The course will also examine ongoing controversies involving race with specific focus on the
administration of justice, critical race theory, hate speech, and the Official English Movement.

The course will conclude with an examination of Getting to the Promised Land, a discussion of “hot topics,” and a summary session on race and the future of America.


SCHEDULE OF CLASSES

Session #1: **OVERVIEW**: Discussion of the course subject-matter and requirements
(Syllabus pp. 1-20; Race Law (Dedication, Foreword, Preface, History Timeline, and Introduction), pp. v-vi, xxxi-xliv, 3-4, 775-783. Please read this material prior to the initial session)

**PART ONE — ANALYSIS AND FRAMEWORK**

**THE RACIAL PREJUDICES THAT JUDGES SHARE**

*State v. Mann* (1829)
(Race Law pp. 4-26) (read carefully pp. 5-7) (please read this material prior to the initial session)

Session #2: **RACE CLASSIFICATION**

The Nature of Race, Definitions of Race, and Myths of Racial Purity
(Race Law pp. 26-71)

*People v. Hall* (1854)
(Race Law pp. 72-99) (read carefully pp. 75-78)

**PART TWO — SLAVERY**

Session #3: **THE COLONIAL EXPERIENCE WITH SLAVERY AND FREE BLACKS**

The Earliest Protest Against Slavery (1688)
(Race Law pp. 751-752)

**SLAVERY, FREE BLACKS, AND THE AMERICAN REVOLUTION**

Declaration of the Causes and Necessity of Taking Up Arms (1775)
(Race Law pp. 752-753)

Declaration of Independence (1776)
(Race Law pp. 753-756)

**SLAVERY, FREE BLACKS, AND THE CONSTITUTION**

The Articles of Confederation (1781)
(Race Law pp. 756-757)

The Constitution (1789)
(Race Law pp. 101-114, 736-737, 740, 743) (read carefully pp. 102-106)
Session #4:  THE NORTHERN APPROACH TO FREE BLACKS (Connecticut and Massachusetts)

*Crandall v. The State of Connecticut* (1834)
(Race Law pp. 114-129, 743) (read carefully pp. 120-129)

*Roberts v. The City of Boston* (1850)
(Race Law pp. 129-136) (read carefully pp. 133-135)

THE SOUTHERN APPROACH TO SLAVERY AND FREE BLACKS (Virginia)

In The Matter of Color
(Chapter 2, pp. 40-50, 58-60)

*Hudgins v. Wrights* (1806)
(Race Law pp. 136-141; 146-148) (read carefully pp. 138-140)

*Souther v. The Commonwealth* (1851)
(Race Law pp. 141-145) (read carefully pp. 142-144)

Slave Auction Handbill (1852)
(Race Law pp. 145-146)

Session #5:  SLAVERY, FREE BLACKS, AND THE UNITED STATES SUPREME COURT

*United States v. The Amistad* (1840)
(Race Law pp. 149-157) (read carefully pp. 154-157)

*Prigg v. The Commonwealth of Pennsylvania* (1842)
(Race Law pp. 157-175, 203-205) (read carefully pp. 162-165)

*Dred Scott v. Sandford* (1857)
(Race Law pp. 175-209) (read carefully pp. 180-192)

Northwest Ordinance (1787)
(Race Law pp. 757-759)

Fugitive Slave Act (1793)
(Race Law pp. 759-760)

The Missouri Compromise (1820)
(Race Law pp. 760-761)

The Fugitive Slave Act (1850)
THE BEGINNING OF THE END OF SLAVERY

The Case of John Brown (1859)
(Race Law pp. 209-216)

PART THREE — RECONSTRUCTION, CITIZENSHIP, AND SOVEREIGNTY

Session #6: THE SUPREME COURT’S BETRAYAL OF RECONSTRUCTION

The Emancipation Proclamation (1863)
(Race Law pp. 762-763)

The Freedmen’s Bureau (1865)
(Race Law pp. 763-764)

Apology for Slavery (2009)
(Race Law pp. 771-773)

The Slaughterhouse Cases (1873)
(Race Law pp. 217-252) (read carefully pp. 238-246)

United States v. Cruikshank (1875)
(Race Law pp. 252-274) (read carefully pp. 270-272)

The Black Code (1865)
(Race Law pp. 764-767)

The Civil Rights Cases (1883)
(Race Law pp. 274-291) (read carefully pp. 274-282)

Session #7: RACE AND CITIZENSHIP

Ozawa v. United States (1922)
(Race Law pp. 291-300) (read carefully pp. 296-300)

United States v. Bhagat Singh Thind (1923)
(Race Law pp. 300-305) (read carefully pp. 301-304)

People v. De La Guerra (1870)
(Race Law pp. 305-308)

Elk v. Wilkins (1884)
(Race Law pp. 308-318) (read carefully pp. 310-315)
Chae Chan Ping v. United States (1889)
(Race Law pp. 318-322) (read carefully pp. 319-321)

United States v. Wong Kim Ark (1898)
(Race Law pp. 322-326) (read carefully pp. 323-325)

Korematsu v. United States (1944)
(Race Law pp. 322-326) (read carefully pp. 327-330)

Restitution For Internment (1988)
(Race Law p. 771)

RACE, AMERICAN INDIANS, AND SOVEREIGNTY

Johnson and Graham’s Lessee v. McIntosh (1823)
(Race Law pp. 336-344) (read carefully pp. 339-343)

Indian Removal Act (1830)
(Race Law pp. 767-768)

The Cherokee Nation v. The State of Georgia (1831)
(Race Law pp. 344-363) (read carefully pp. 345-347)

PART FOUR — SEGREGATION

Session #8: CREATING THE SEPARATE BUT EQUAL DOCTRINE

Strauder v. West Virginia (1880)
(Race Law pp. 365-370) (read carefully pp. 366-369)

Plessy v. Ferguson (1896)
(Race Law pp. 371-386) (read carefully pp. 374-379)

EXPANDING THE SEPARATE BUT EQUAL DOCTRINE

Berea College v. Commonwealth of Kentucky (1908)
(Race Law pp. 386-402) (read carefully pp. 389-391)

Session #9: LIMITING THE SEPARATE BUT EQUAL DOCTRINE: RACIAL SEGREGATION AND HOUSING
Buchanan v. Warley (1917)
(Race Law pp. 402-415) (read carefully pp. 410-413)

LIMITING THE SEPARATE BUT EQUAL DOCTRINE: RACIAL SEGREGATION AND INTERSTATE COMMERCE

Morgan v. Commonwealth of Virginia (1946)
(Race Law pp. 415-425) (read carefully pp. 416-421)

LIMITING THE SEPARATE BUT EQUAL DOCTRINE: RACIAL SEGREGATION AND STATE ACTION

Shelley v. Kraemer (1948)
(Race Law pp. 425-432) (read carefully pp. 427-431)

INTERPRETING THE SEPARATE BUT EQUAL DOCTRINE

Cumming v. County Board of Education (1899)

Gong Lum v. Rice (1927)
(Race Law pp. 445-450, 452-453) (read carefully pp. 447-449)

Hernandez v. Texas (1954)
(Race Law 450-452)

Session #10: APPLYING THE SEPARATE BUT EQUAL DOCTRINE

Missouri ex rel. Gaines v. Canada (1938)
(Race Law pp. 464-476) (read carefully pp. 471-473)

McLaurin v. Oklahoma State Regents for Higher Education (1950)
(Race Law pp. 476-478)

Sweatt v. Painter (1950)
(Race Law pp. 478-481)

ENDING STATE-MANDATED SEGREGATION

(Race Law pp. 482-494) (read carefully pp. 486-490)
APPLYING THE *BROWN* RATIONALE

*Loving v. Virginia* (1966)
(Race Law pp. 494-503) (read carefully pp. 497-500)

PART FIVE — ATTEMPTED ERADICATION OF INEQUALITY

Session #11: RACE-CONSCIOUS REMEDIES

Shades of Freedom
(Chapter 2, pp. 7-17)

Executive Order 8802 (1941)
(Race Law pp. 768-769)

*Brown v. Board of Education (Brown II)* (1955)
(Race Law pp. 505-511) (read carefully pp. 507-508)

(Race Law pp. 511-528) (read carefully pp. 519-522)

Civil Rights Act (1964) (Public Accommodations)
(Race Law p. 769)

Civil Rights Act (1964) (Federally Assisted Programs)
(Race Law p. 769)

Fair Housing Act (1968) (Housing)
(Race Law pp. 770)

(Race Law pp. 528-540) (read carefully pp. 533-536)

(Race Law pp. 540-559) (read carefully pp. 543-554)

(Race Law pp. 560-582) (read carefully pp. 560-565)

Session #12: MAINTAINING RACIAL INEQUITY

*Washington v. Davis* (1976)
(Race Law pp. 582-586)

(Race Law pp. 587-594) (read carefully pp. 588-592)

(Race Law pp. 594-610) (read carefully pp. 554-560)

Voting Rights Act (1965)
(Race Law pp. 769-770)

*Shaw v. Reno* (1993)
(Race Law pp. 610-620) (read carefully pp. 612-615)

(Race Law pp. 620-640) (read carefully pp. 621-630)

PART SIX — SUPREME COURT CONFIRMATION CONTROVERSIES

Session #13: **RACE, VALUES, AND JUSTICE THOMAS**

The Jurisprudence of Justice Clarence Thomas
(Race Law pp. 641-671)

**RACE, VALUES, AND JUSTICE ALITO**

The Jurisprudence of Justice Samuel Alito
(Race Law pp. 671-680)

**RACE, VALUES, AND JUSTICE SOTOMAYOR**

The Jurisprudence of Justice Sonia Sotomayor
(Race Law pp. 680-683)

**RACE AND THE ADMINISTRATION OF JUSTICE**

Arrests, Trials, and Beatings
(Race Law pp. 685-695)