UNIVERSITY OF PENNSYLVANIA THE WHARTON SCHOOL

SPRING SEMESTER

2020

SYLLABUS

DIVERSITY LAW

PROFESSOR JOSE’ F. ANDERSON
COURSE DETAILS

Professor: Jose’ F. Anderson
Time: Monday 3pm-6pm
Course Category: Lecture
Office Hours: Monday 12:30 pm-3pm (Huntsman Hall room 653)
University of Pennsylvania Law School
Room 653 phone: 215 898-3020 (Monday only)
Phone: 410-837-4398 (Baltimore)
E-mail: jfa2@wharton.upenn.edu
Secretary: Deborah Thompson 410 837-4635 (Baltimore)
Office: University of Baltimore School of Law
Room Angelos Law Center LC 1107

Texts:

Required:

Recommended for Research Papers:


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


**COURSE REQUIREMENTS**

Race Law is a one-credit course. Class attendance is mandatory. Students who miss more than two class sessions unexcused, may not be permitted to submit a paper. I need to stay informed if you have issues that prevent your attendance. 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 on 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 in the creation and maintenance of systems of racial injustice; and, as a corollary, to examine the potential and limits of the use of law (especially litigation) as a tool for social change.

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:

\begin{quote}
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)
\end{quote}

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 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-xlvi, 3-4, 771-780. Pp. 756-757 (The Fugitive Slave Act (1793)). (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. 26-53)

People v. Hall (1854)
(Race Law pp. 72-99) (read carefully pp. 53-66)

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. 754-755)

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)

*Hudgins v. Wrights* (1806)
(Race Law pp. 102-107)

*Souther v. The Commonwealth* (1851)
(Race Law pp. 107-117)

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

*United States v. The Amistad* (1840)
(Race Law pp. 117-126)

*Prigg v. The Commonwealth of Pennsylvania* (1842)
(Race Law pp. 126-140)

*Dred Scott v. Sandford* (1857)
(Race Law pp. 140-173)

Northwest Ordinance (1787)
(Race Law pp. 754-755)

Fugitive Slave Act (1793)
(Race Law pp. 756-757)

The Missouri Compromise (1820)
(Race Law pp. 757-758)

The Fugitive Slave Act (1850)
(Race Law pp. 758-760)

THE BEGINNING OF THE END OF SLAVERY

*The Case of John Brown* (1859) Race Law 173-180
PART THREE — RECONSTRUCTION, CITIZENSHIP, AND SOVEREIGNTY

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

The Emancipation Proclamation (1863)  
(Race Law pp. 759-760)

The Freedmen’s Bureau (1865)  
(Race Law pp. 760-761)

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

The Slaughterhouse Cases (1873)  
(Race Law pp. 202-233)

United States v. Cruikshank (1875)  
(Race Law pp. 233-259)

The Black Code (1865)  
(Race Law pp. 761-764)

The Civil Rights Cases (1883)  
(Race Law pp. 238-259)

Session #7:  RACE AND CITIZENSHIP

Ozawa v. United States (1922)  
(Race Law pp. 259-264)

United States v. Bhagat Singh Thind (1923)  
(Race Law pp. 264-270)

People v. De La Guerra (1870)  
(Race Law pp. 270--276)

Chae Chan Ping v. United States (1889)  
(Race Law pp. 272-276)

United States v. Wong Kim Ark (1898)  
(Race Law pp. 276-280)

Korematsu v. United States (1944)  
(Race Law pp. 280-300)
RACE, AMERICAN INDIANS, AND SOVEREIGNTY

Johnson and Graham’s Lessee v. McIntosh (1823)
(Race Law pp. 300-306)

Indian Removal Act (1830)
(Race Law pp. 764-765)

The Cherokee Nation v. The State of Georgia (1831)
(Race Law pp. 306-319)

Elkins v. Wilkins, (Race Law 319-334).

PART FOUR — SEGREGATION

Session #8: CREATING THE SEPARATE BUT EQUAL DOCTRINE

Strauder v. West Virginia (1880)
(Race Law pp. 335-340) (read carefully pp. 335-339)

Plessy v. Ferguson (1896)
(Race Law pp. 340-358) (read carefully pp. 344-355)

EXPANDING THE SEPARATE BUT EQUAL DOCTRINE

Berea College v. Commonwealth of Kentucky (1908)
(Race Law pp. 359-371) (read carefully pp. 359-362)

Session #9: LIMITING THE SEPARATE BUT EQUAL DOCTRINE: RACIAL SEGREGATION AND HOUSING

Buchanan v. Warley (1917)
(Race Law pp. 372-385) (read carefully pp. 378-385)

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

Morgan v. Commonwealth of Virginia (1946)
(Race Law pp. 385-395)
LIMITING THE SEPARATE BUT EQUAL DOCTRINE: RACIAL SEGREGATION AND STATE ACTION

*Shelley v. Kraemer* (1948)
(Race Law pp. 395-402)

INTERPRETING THE SEPARATE BUT EQUAL DOCTRINE

*Cumming v. County Board of Education* (1899)
(Race Law pp. 406-415)

*Gong Lum v. Rice* (1927)
(Race Law pp. 415-419)

*Hernandez v. Texas* (1954)
(Race Law 420-439)

Session #10: APPLYING THE SEPARATE BUT EQUAL DOCTRINE

*Missouri ex rel. Gaines v. Canada* (1938)
(Race Law pp. 438-445)

*McLaurin v. Oklahoma State Regents for Higher Education* (1950)
(Race Law pp. 445-448)

*Sweatt v. Painter* (1950)
(Race Law pp. 448-453)

ENDING STATE-MANDATED SEGREGATION

*Brown v. Board of Education (Brown I)* (1954)
(Race Law pp. 453-463)

APPLYING THE *BROWN* RATIONALE

*Loving v. Virginia* (1966)
(Race Law pp. 463-471)

PART FIVE — ATTEMPTED ERADICATION OF INEQUALITY

Session #11: RACE-CONSCIOUS REMEDIES
Executive Order 8802 (1941)
(Race Law pp. 765-766)

*Brown v. Board of Education (Brown II)* (1955)
(Race Law pp. 473-482)

(Race Law pp. 482-495)

Civil Rights Act (1964) (Public Accommodations)
(Race Law p. 766)

Civil Rights Act (1964) (Federally Assisted Programs)
(Race Law p. 766)

Fair Housing Act (1968) (Housing)
(Race Law pp. 767-768)

(Race Law pp. 499-508)

(Race Law pp. 508-527)

*Parents Involved in Community Schools v. Seattle School District Number 1*
(2007)
(Race Law pp. 527-541)


*Schutte v. Coalition to Defend Affirmative Action* (2014) (pp. 548-570)

**Session #12: MAINTAINING RACIAL INEQUITY**

*Washington v. Davis* (1976)
(Race Law pp. 570-575)

(Race Law pp. 577-583)

(Race Law pp. 583-589)

Voting Rights Act (1965)
(Race Law pp. 767)
Shaw v. Reno (1993)
(Race Law pp. 599-609)


Ricci v. DeStefano (2009)
(Race Law pp. 628-648)

PART SIX — SUPREME COURT CONFIRMATION CONTROVERSIES

Session #13: RACE, VALUES, AND JUSTICE THOMAS

The Jurisprudence of Justice Clarence Thomas
(Race Law pp. 649-679)

RACE, VALUES, AND JUSTICE ALITO

The Jurisprudence of Justice Samuel Alito
(Race Law pp. 679-688)

RACE, VALUES, AND JUSTICE SOTOMAYOR

The Jurisprudence of Justice Sonia Sotomayor
(Race Law pp. 688-691)

PART SEVEN - RACE AND THE ADMINISTRATION OF JUSTICE

Arrests, Trials, and Beatings
(Race Law pp. 693-727)