**CRITICAL LEGAL THEORY**  
Spring 2012  
Monday/Wednesday, 1:30-2:45  
Law Center 203

**Professor Robert Rubinson**  
40 West Chase Street (the Clinical Law Offices), Room 208  
410-837-4094  
**E-mail:** rrubinson@ubalt.edu  
**Office Hours:** Unless otherwise announced, office hours will be held at 40 West Chase Street on Mondays from noon to 11:45-1:15. My preference is for students to advise me if they intend to come to office hours.

**REQUIRED TEXT**


**GOALS FOR THE COURSE:**

1. Survey conventions of and critiques of legal analysis.
2. Take an “outsider” perspective on law and reading cases beyond conventional legal analysis.
3. Assess critiques of critiques
4. Explore the development of law in light of historical, political, and economic contexts.
5. Assess whether “classic” critiques need to be reformulated in the 21st century.
6. Consider the application of critical theory to the practice of law.

**GRADES:** 75% of your grade will be based on an in class examination.  
25% of your grade will be based on an in-class midterm consisting of an essay question.

Additional grading adjustments:

*Preparation and participation* are essential to your success in the course. I retain the discretion to reward strong class participation by raising your grade one-half step if your point total is approaching the next highest grade and by lowering your grade by one-half step for lack of preparation. Please note that the most important factor is assessing class participation is quality, not quantity.

*Attendance* in class is crucial. I will distribute an attendance sheet each class. ONLY THE LISTED STUDENT MAY SIGN THE ATTENDANCE SHEET. Apart from exceptional circumstances, I will deem all absences unexcused unless I receive notice by email, telephone, or some other means prior to or within twenty-four hours after an absence. I retain the discretion to reduce your grade by one-half step in light of excessive unexcused absences and/or excessive tardiness. This is separate from other consequences recommended or mandated by School of Law attendance policies.
Laptops in class are to be used solely for note taking or access to class materials that are being discussed. Use of laptops for other purposes is unprofessional, disrespectful, and distracting to other students. A violation or violations of this rule may result in prohibiting the use of the laptop and a reduction of your grade by one-half step.

TWEN PAGE: This course has a TWEN page through Westlaw. The page will include this syllabus and future revised syllabi, readings, and other materials. The site will also facilitate e-mail communications, including messages about the substance of the course and, if necessary, announcements about class cancellations or make-up classes.

ATTENDANCE AT THE CONFERENCE ON APPLIED FEMINISM: Attendance at a portion of the annual Conference on Applied Feminism is required. Attendance takes the place of one class. More information will be distributed during the semester.

CLASS SCHEDULE AND ASSIGNMENTS

I. FORMALISM AND REALISM

1/9 Introduction: Of Logic, Morality, and “Social Facts”

DeShaney v. Winnebago County Department of Social Services, 489 U.S. 189 (1989) (TWEN)

1/11 Formalism

Burt Neuborne, Of Sausage Factories and Syllogism Machines: Formalism, Realism, and Exclusionary Selection Techniques (TWEN)

Riggs v. Palmer, 115 N.Y. 506 (1889) (TWEN)

1/18 Introduction to Realism


Oliver Wendell Holmes, The Path of the Law (TWEN)


1/23 Realism and Judging: What Does “Experience” Mean?

Gerald F. Uelman, Justice Thurgood Marshall and the Death Penalty: A Former Criminal Defense Lawyer on the Supreme Court (TWEN)

Oliver Wendell Homes, HOLMES-POLLACK LETTERS, Letter dated May 26, 1919 (TWEN)

1/25 Law in Fact: What’s “Law” Got To Do With It?

Felix Cohen, Transcendental Nonsense and the Functional Approach (TWEN)

Tracey E. George, et. al, The New Old Legal Realism (TWEN)

II. CURRENT FORMULATIONS: OF FORMALISM AND PRAGMATISM

1/30 Modern Formalism

Antonin Scalia, Assorted Canards of Contemporary Legal Analysis (TWEN)

2/1 Richard Posner and Pragmatism

Richard Posner, Pragmatic Adjudication (TWEN)
III. CRITICAL THEORIES OF RACE AND GENDER

2/6  Critical Race Theory: What Is Race and Racism?
Charles Lawrence, *The Ego, the Id, and Equal Protection: Reckoning with Unconscious Racism* (TWEN)
W. Haywood Burns, *Law and Race in Early American*, Kairys, pp. 279-283

2/8  Critical Race Theory: Images and Stories

2/13 Feminism and Law: Then and Now

2/15 Domestic Violence
Guest Lecturer: Professor Leigh Goodmark
Readings to be announced

IV. THE SOCIOECONOMIC CRITIQUE

2/20 Poverty and Law

2/22 Law “On the Ground” and Economics
David K. Shipler, *A Poor Cousin of the Middle Class*, N.Y. Times, January 18, 2004 (TWEN)

2/27 Intersectionality: Race, Gender, Socioeconomics, and Everything Else
Peggy McIntosh, *White Privilege and Male Privilege: A Personal Account of Coming To See Correspondences through Work in Women’s Studies* (TWEN)

2/29 Midsemester Overview and Midterm Review

3/5 Midterm

3/7 Legal Needs and the Distribution of Legal Services in Civil Cases - 12
Derek C. Bok, *A Flawed System of Law Practice and Training* (TWEN)
V. CIVIL PROCEDURE

3/12  Civil Procedure: Process or Substance?
       Martha Minow, Politics and Procedure, in Kairys, pp. 77-94
       Robert Rubinson, A Theory of Access to Justice (TWEN)

VI. INTERNATIONAL LAW

3/14  Critical Theory and International law
       Guest Lecturer: Professor Nienke Grossman
       Readings to be announced

3/19-3/23: NO CLASSES - SPRING BREAK

VII. CRIMINAL LAW

3/26  Criminal Law: Conceptions of Criminality and Sentencing
       Elliott Currie, Crime and Punishment in the United States: Myths, Realities, and
       Possibilities, Kairys, pp. 381-405
       State v. Russell, 477 N.W.2d 886 (Minn. 1991) (TWEN)

3/28  Criminal Law “In Fact”: Criminal Defense
       Tippins v. Walker, 77 F.3d 682 (2d. Cir. 1996) (TWEN)

VIII: CONSTITUTIONAL LAW

4/2   The First Amendment
       David Kairys, Freedom of Speech, in Kairys, pp. 190-203, 208-211,

4/4   Positive and Negative Rights
       Rhonda Copelon, The Indivisible Framework of Human Rights:
       Bringing It Home, in Kairys, pp. 216-225
       Frank I. Michelman, Socioeconomic Rights in Constitutional Law:
       Explaining American Away (TWEN)

IX. CRITIQUES OF LEGAL EDUCATION

4/9   Duncan Kennedy’s Critique of Legal Education
       Duncan Kennedy, Legal Education as Training for Hierarchy, in Kairys, pp. 54-75

4/11  Legal Education: Critique and Reform
       Jerome Frank, Why Not a Clinical Law School? (TWEN)
       Roy Stuckey et al., BEST PRACTICES IN LEGAL EDUCATION (2007) (TWEN)
X. THE LEGAL PROFESSION

4/16 Critical Legal Theory and the Practice of Law: A Changing Profession?
Robert Dinerstein, Client-Centered Counseling: Reappraisal and Refinement (TWEN)
Robert Rubinson, The Model Rules of Professional Conduct and Serving the Non-Legal Needs of Clients: Professional Regulation in a Time of Change (TWEN)

XI. CONCLUSION AND REVIEW

4/18 Exam Review