

**UNIVERSITY OF BALTIMORE SCHOOL OF LAW**

**SPRING SEMESTER**

**2019**

**SYLLABUS**

**RACE AND THE LAW**

**LAW 823-511 (2210)**

**MICHAEL HIGGINBOTHAM**

## COURSE DETAILS

Professor: Michael Higginbotham

Time: Designated Tuesdays (see schedule of classes)  
9:00 – 11:45 am

Course Category: Upper-Level Limited Enrollment Elective

Classroom: University of Baltimore School of Law Angelos Law Center (ALC) 607

Office Hours: Tuesdays Noon – 1:00 pm and 3:30 – 4:30 pm  
Thursdays 3:30 – 4:30 pm (or by appointment)

Office: University of Baltimore School of Law Angelos Law Center (ALC) 1115

Phone: 410-837-4649

E-mail: [higginbotham@ubalt.edu](mailto:higginbotham@ubalt.edu)

Facsimile: 410-837-4492

Twitter: @professorhigg

Website: [fmichaelhigginbotham.org](http://fmichaelhigginbotham.org)

Assistant: Gloria Joy

Office: University of Baltimore School of Law Angelos Law Center (ALC) 518

Phone: 410-837-4631

E-mail: [gpjoy@ubalt.edu](mailto:gpjoy@ubalt.edu)

TWEN/Web: Syllabus, distributed materials, announcements, and assignments available on TWEN or <http://law.ubalt.edu/academics/Semester.cfm>

### **Texts:**

### **Required:**

A. Leon Higginbotham, Jr., *In the Matter of Color: Race and the American Legal Process, The Colonial Period* (New York: Oxford University Press, 1978). Available in hardback or paperback.

A. Leon Higginbotham, Jr., *Shades of Freedom: Racial Politics and Presumptions of the American Legal Process* (New York: Oxford University Press, 1996). Available in hardback or paperback.

F. Michael Higginbotham, *RACE LAW: Cases, Commentary, and Questions* (Fourth Edition) (Durham: Carolina Academic Press, 2015). Available in hardback.

F. Michael Higginbotham, *Ghosts of Jim Crow: Ending Racism in Post-Racial America* (New York: New York University Press, 2013). Available in hardback or paperback.

### **Recommended:**

Jill Abramson and Jane Mayer, *Strange Justice: The Selling of Clarence Thomas* (New York: Houghton Mifflin Company, 1994).

Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: The New Press, 2010).

Edward Baptist, *The Half Has Never Been Told: Slavery and the Making of American Capitalism* (New York: Basic Books, 2014).

Jack Bass, *Unlikely Heroes* (New York: Simon and Schuster, 1981).

Derrick Bell, *Faces At the Bottom of the Well: The Permanence of Racism* (New York: Basic Books, 1992).

Mary Frances Berry, *Black Resistance/White Law* (New York: Appleton-Century-Crofts, 1971).

Douglas Blackmon, *Slavery By Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II* (New York: Doubleday, 2008).

John W. Blassingame, *The Slave Community* (New York: Oxford University Press, 1979).

Stephen Breyer, *Making Our Democracy Work: A Judge's View* (New York: Vintage Books, Random House, 2010).

Paul Butler, *Let's Get Free: A Hip-Hop Theory of Justice* (New York: The New Press, 2009).

Sheryll Cashin, *The Failures of Integration: How Race and Class are Undermining the American Dream* (New York: Public Affairs, 2004).

Sheryll Cashin, *Interracial Intimacy In America and the Threat To White Supremacy* (Boston: Beacon Press, 2017).

Ta-Nehisi Coates, *Between the World and Me* (New York: Spiegel & Grau, Random House, 2015).

Robert Cover, *Justice Accused: Antislavery and the Judicial Process* (New Haven: Yale University Press, 1975).

- Mark Curriden and Leroy Phillips, *Contempt of Court: The Turn-of-the-Century Lynching That Launched A Hundred Years of Federalism* (New York: Anchor Books, Random House, 2001).
- David Brion Davis, *The Problem of Slavery in the Age of Revolution* (Ithaca: Cornell University Press, 1975).
- Frederick Douglass, *The Life and Times of Frederick Douglass* (New York: Wordsworth Publishing Company, 1996).
- W.E.B. Du Bois, *John Brown* (New York: Random House, 2001).
- W.E.B. Du Bois, *The Suppression of the African Slave-Trade* (New York: Literary Classics of the United States, 1986).
- Christopher Edley, *Not All Black and White: Affirmative Action and American Values* (New York: Hill and Wang, 1996).
- Mark Elliott, *Color-Blind Justice: Albion Tourgee and the Quest for Racial Equality from the Civil War to Plessy v. Ferguson* (New York: Oxford University Press, 2006).
- Max Farrand, *The Framing of the Constitution* (New Haven: Yale University Press, 1966).
- Max Farrand, *The Records of the Federal Convention of 1787* (New Haven: Yale University Press, 1966).
- Don E. Fehrenbacher, *The Dred Scott Case, Its Significance In American Law and Politics* (New York: Oxford University Press, 1978).
- Paul Finkelman, *Supreme Injustice: Slavery in the Nation's Highest Court* (Boston: Harvard University Press, 2017).
- Henry Flores, *Latinos and the Voting Rights Act: The Search for Racial Purpose* (Blue Ridge Summit: Lexington Books, 2015).
- Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (New York: Harper & Row, 1988).
- John Hope Franklin and Loren Schweninger, *Runaway Slaves: Rebels on the Plantation* (New York: Vintage Books, Random House, 1999).
- George Fredrickson, *The Black Image in the White Mind* (New York: Harper & Row, 1971).
- Eugene Genovese, *Roll, Jordan, Roll: The World the Slaveholders Made* (New York: Vintage Books, Random House, 1975).
- Annette Gordon-Reed, *The Hemingses of Monticello: An American Family* (New York: W.W. Norton and Company, 2008).
- Joseph Graves, *The Emperor's New Clothes: Biological Theories of Race at the Millennium* (New Brunswick: Rutgers University Press, 2002).
- Christina M. Greer, *Black Ethnics: Race, Immigration, and the Pursuit of the American Dream* (New York: Oxford University Press, 2013).

- Ariela Gross, *What Blood Won't Tell: A History of Race on Trial in America* (Boston: Harvard University Press, 2010).
- Lani Guinier, *The Tyranny of the Majority: Fundamental Fairness In Representative Democracy* (New York: The Free Press, 1994).
- Sora Han, *Letters of the Law: Race and the Fantasy of Colorblindness In American Law* (Stanford: Stanford University Press, 2017).
- Morton Horwitz, *The Warren Court and the Pursuit of Justice* (New York: Hill and Wang, 1998).
- Gerald David Jaynes and Robin M. Williams, Jr., eds., *A Common Destiny: Blacks and American Society* (Washington D.C.: National Academy Press, 1989).
- Kevin Johnson, *Mixed Race America and the Law* (New York: New York University Press, 2002).
- Donald Marvin Jones, *Dangerous Spaces: Beyond the Racial Profile* (Santa Barbara: Praeger, 2016).
- Howard Jones, *Mutiny on the Amistad* (New York: Vintage Books, Random House, 1987).
- Winthrop Jordan, *White Over Black: American Attitudes Toward the Negro, 1550-1812* (Chapel Hill: University of North Carolina Press, 1968).
- Robert Kaczorowski, *The Politics of Judicial Interpretation: The Federal Courts, Department of Justice and Civil Rights, 1866-1876* (Philadelphia: University of Pennsylvania Press, 1985).
- Randall Kennedy, *For Discrimination: Race, Affirmative Action, and the Law* (New York: Random House, 2013).
- Randall Kennedy, *Race, Crime, and the Law* (New York: Pantheon Books, Random House, 1997).
- Nazli Kibria, Cara Bowman, and Megan O'Leary, *Race and Immigration* (New York: Polity Books, 2013).
- Michael Klarman, *Unfinished Business: Racial Equality in American History* (New York: Oxford University Press, 2007).
- Richard Kluger, *Simple Justice* (New York: Vintage Books, Random House, 1977).
- Charles Lane, *The Day Freedom Died: The Colfax Massacre, The Supreme Court, and the Betrayal of Reconstruction* (New York: Henry Holt and Company, 2008).
- Erika Lee, *At America's Gates: Chinese Immigration During the Exclusion Era, 1882-1943* (Chapel Hill: University of North Carolina Press, 2003).
- Leon Litwack, *North of Slavery* (Chicago: University of Chicago Press, 1961).
- James Loewen, *Lies My Teacher Told Me: Everything Your American History Textbook Got Wrong* (New York: Touchstone Books, Simon and Schuster, 2007).

- James Loewen, *Sundown Towns: A Hidden Dimension of American Racism* (New York: Touchstone Books, Simon and Schuster, 2008).
- Rayford Logan, *The Betrayal of the Negro From Rutherford B. Hayes To Woodrow Wilson* (New York: MacMillan, 1970).
- Ian Haney Lopez, *Dog Whistle Politics: How Coded Racial Appeals Have Reinvented Racism & Wrecked the Middle Class* (New York: Oxford University Press, 2014).
- Ian Haney Lopez, *White By Law: The Legal Construction of Race* (New York: New York University Press, 1996).
- Gerard Magliocca, *American Founding Son: John Bingham and the Invention of the Fourteenth Amendment* (New York: New York University Press, 2013).
- Hazel Markus and Paula Moya, eds., *Doing Race: 21 Essays for the 21st Century* (New York: W.W. Norton and Company, 2010).
- Genna Rae McNeil, *Groundwork: Charles Hamilton Houston and the Struggle for Civil Rights* (Philadelphia: University of Pennsylvania Press, 1983).
- Jan Miles, *The Post-Racial Negro Green Book* (New Orleans: Brown Bird Books, 2017).
- Loren Miller, *The Petitioners* (New York: Pantheon Books, 1966).
- Ronald L. Mize and Grace Pena Delgado, *Latino Immigrants in the United States* (New York: Polity Books, 2012).
- Rachel Moran, *Interracial Intimacy: The Regulation of Race and Romance* (Chicago: University of Chicago Press, 2001).
- Edmund S. Morgan, *American Slavery, American Freedom: The Ordeal of Colonial Virginia* (New York: W.W. Norton and Company, 1975).
- Toni Morrison and Claudia Lacour, eds., *Birth of a Nationhood: Gaze, Script, and Spectacle in the O.J. Simpson Case* (New York: Pantheon Books, 1997).
- Gunnar Myrdal, *An American Dilemma* (New York: Pantheon Books, 1975).
- David Oshinsky, *Worse Than Slavery: Parchman Farm and the Ordeal of Jim Crow Justice* (New York: Free Press Paperbacks, 1996).
- Nell Painter, *The History of White People* (New York: W.W. Norton and Company, 2010).
- James Patterson, *Brown v. Board of Education: A Civil Rights Milestone and Its Troubled Legacy* (New York: Oxford University Press, 2001).
- Orlando Patterson, *Slavery and Social Death* (Cambridge: Harvard University Press, 1982).
- Orlando Patterson, *Freedom in the Making of Western Culture* (New York: Basic Books, 1991).
- Randall Robinson, *The Debt: What America Owes To Blacks* (New York: Penguin Putnam, 2000).

- Luis Rodriguez, *Always Running: Gang Days In L.A.* (New York: Touchstone Books, Simon and Schuster, 2005).
- J.A. Rogers, *Sex and Race: A History of White, Negro, and Indian Miscegenation in the Two Americas* (St. Petersburg: Helga M. Rogers, 1989).
- Daria Roithmayr, *Reproducing Racism: How Everyday Choices Lock In White Advantage* (New York: New York University Press, 2014).
- Ediberto Roman, *Those Damned Immigrants: America's Hysteria Over Undocumented Immigration* (New York: New York University Press, 2013).
- Sonia Sotomayor, *My Beloved Country* (New York: Alfred A. Knopf, 2013).
- Kenneth Stampp, *The Peculiar Institution: Slavery in the Ante-Bellum South* (New York: Alfred A. Knopf, 1967).
- Patricia Sullivan, *Lift Every Voice: The NAACP and the Making of the Civil Rights Movement* (New York: The New Press, 2009).
- Frank Tannenbaum, *Slave and Citizen: The Negro in the Americas* (New York: Vintage Books, Random House, 1946).
- Clarence Thomas, *My Grandfather's Son: A Memoir* (New York: Harper Collins, 2007).
- Mark Tushnet, *The American Law of Slavery 1810-1860: Considerations of Humanity and Interest* (Princeton: Princeton University Press, 1981).
- Jody Vallejo, *Barrios To Burbs: The Making of the Mexican American Middle Class* (Stanford: Stanford University Press, 2013).
- Nicole Van Cleve, *Crook County: Racism and Injustice In America's Largest Criminal Court* (Stanford: Stanford University Press, 2016).
- Gilbert Ware, *William Hastie, Grace Under Pressure* (New York: Oxford University Press, 1984).
- Gilbert Ware, ed., *From the Black Bar: Voices For Equal Justice* (New York: Capricorn Books, G.P. Putnam & Sons, 1976).
- Robert Weaver, *The Negro Ghetto* (New York: Russell & Russell, 1967).
- Isabel Wilkerson, *The Warmth of Other Suns: The Epic Story of America's Great Migration* (New York: Penguin, Random House, 2010).
- David Wilkins, *American Indian Sovereignty and the United States Supreme Court: The Masking of Justice* (Austin: University of Texas Press, 1997).
- William Julius Wilson, *The Declining Significance of Race* (Chicago: University of Chicago Press, 1978).
- William Julius Wilson, *The Truly Disadvantaged: The Inner City, The Underclass and Public Policy* (Chicago: University of Chicago Press, 1987).
- William Julius Wilson, *When Work Disappears: The World of the New Urban Poor* (New York: Vintage Books, 1997).

Tim Wise, *Colorblind: The Rise of Post-Racial Politics and the Retreat from Racial Equality* (San Francisco: City Lights Publishers, 2010).

C. Vann Woodward, *The Strange Career of Jim Crow* (New York: Oxford University Press, 1982).

Frank H. Wu, *Yellow: Race In America Beyond Black And White* (New York: Basic Books, 2001).

*Both required and recommended reading materials will be placed on reserve in the law library.*

## **COURSE REQUIREMENTS**

Race Law is a three-credit Limited Enrollment Elective Course. Class attendance is mandatory. Students who miss more than two class sessions, excused or unexcused, excluding sessions missed due to religious holidays or when an accommodation has been approved by the Associate Dean, will have their final grade lowered a half level. Students who miss more than three class sessions, excused or unexcused, excluding sessions missed due to religious holidays or when an accommodation has been approved by the Associate Dean, will not be permitted to submit a paper. Students are responsible for ensuring that they sign the attendance sheet before the end of each class session. A student's signature is the only accepted indicator of attendance.

Students are required to write a research paper in partial fulfillment of the course requirements. The paper must have a minimum length of not less than 20 pages plus endnotes and must be typed and double-spaced. There is no maximum length limitation. Students, who so desire, may submit a substantial (15 pages typed and double-spaced plus endnotes) first draft for review. 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.

Student presentations (ten minute oral summaries of paper topics including a question and answer portion) will take place at the beginning of the last four class sessions. Presentations will not be graded.

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 from Professor Higginbotham. Individual topic discussion meetings may be arranged and a list of possible topics will be made available. Topics selected from this list receive automatic approval without request. Optional first drafts of papers are due March 12, 2019. Mandatory final papers are due May 9, 2019. Please submit first drafts of papers in hard copy form to Professor Higginbotham. Please submit final papers via TWEN in the assignment drop box. Late final papers will be accepted up until May 27, 2019 but will be reduced by one full letter-grade. There are no exceptions to these rules without the Associate Dean's authorization.

Generally, the assigned materials will be read by the entire class. Assigned readings are based on the expectation that students will devote at least two hours of work outside of the classroom in preparation for every one hour spent within the classroom. However, for some specialized and more detailed inquiry, the class will be divided into four law firms. On various

days the members of each firm will represent a particular client or will comment on additional readings and their relevance to the materials being studied by the entire class. All students are required to thoroughly read the assigned materials for each class and are encouraged to read the supplemental materials. At least one member of each law firm should be prepared to discuss the assigned material for the firm. Such preparation will facilitate discussion and encourage the exchange of ideas. A list of the firm members will be distributed during the second week of class. During class sessions students are encouraged to sit with members of their law firms. Class discussion provides an opportunity to express your own views on issues, but you may also include comments which reflect the perspective held by political leaders, judges, or scholars.

The law firms will be as follows:

Firm A: The John Newton Firm

Firm B: The Harriet Tubman Firm

Firm C: The Daniel Inouye Firm

Firm D: The Lloyd Gaines Firm

Final grades will be based primarily on the quality of the research paper; however, class participation will be considered as well. Your final paper will count as 66 percent of the final grade. Class participation will count as 34 percent of the final 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 principles of the individuals in power and a probing of how these priorities 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, immigration, and politics.

The course will conclude with student presentations on race, an examination of race and the future of America, and a summary on current race relations.

The rationale for this course was developed by the late Judge A. Leon Higginbotham, Jr., Chief Judge of the United States Court of Appeals for the Third Circuit, in his books, *IN THE MATTER OF COLOR and SHADES OF FREEDOM*, and in the following articles: "Racism and the Early American Legal Process, 1619-1896," 407 *ANNALS* (May 1973), 1-17; Book Review of *Race, Racism and American Law*, by Derrick A. Bell, Jr., in the *University of Pennsylvania Law Review*, Vol. 122, No. 4 (April 1974); "The Impact of the Declaration of Independence," *Crisis Magazine* (Winter 1975), 82; "To the Scale and Standing of Men," *The Journal of Negro History*, Volume LX, No. 3 (July 1975), 347; "From Racism to Affirmative Action--Will Universities Span the Gap?," *Black Law Journal*, Vol. 4, No. 2 (1975), 230; "Dream of

Freedom," *Journal of Human Relations* 13 (1965), 166-77; "From Presidential Fact Finding Commissions to Justice for Blacks - Can We Bridge the Gap?," *Pursuit of a Culture and Human Dignity*, Scholars/Statesmen Lecture Series, No. 2, Dillard University, 1970-71; "What Kind of Vaccine?," *American Journal of Pharmacy* 143 (1971), 78-80; "As If Bound With Them," *The Hourglass* 4 (1971); "The Black Prisoner, America's Caged Canary," contained in *Violence: The Crisis of American Confidence*, edited by Hugh Davis Graham (Baltimore: Johns Hopkins Press, 1971): 103-125; "Channel Change Through Law - Reason," *Texas Southern University Law Review* 2 (1971), 180-186; "Racism and the American Legal Process: Many Deeds Cry Out to be Done," *Progress in Africa and America*, Scholars/Statesmen Lecture Series, No. 3, Dillard University, 1971-72; "Dream Deferred," *Crime and Delinquency* 18 (1972), 30-34; "The Priority of Human Rights in Court Reform," address delivered at the National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice, St. Paul, Minnesota, April 7-9, 1976, contained in *Federal Rules Decisions* 70, 134-58; "The Relevance of Slavery: Race and the American Legal Process," *Notre Dame Lawyer* 54 (1978), 171-80; "Is Slavery Relevant to Corrections Today?," *Corrections Today* 41 (1979), 8; Foreword to "Roles of the Black Lawyer: A Symposium," *Black Law Journal* 7 (1981), 1-4; Foreword to *Blacks in the Law: Philadelphia and the Nation*, by Geraldine Segal (Philadelphia: University of Pennsylvania Press, 1983); and Foreword to *Groundwork: Charles Hamilton Houston and the Struggle for Civil Rights*, by Genna Rae McNeil (Philadelphia: University of Pennsylvania Press, 1983).

Critical reviews of *GHOSTS OF JIM CROW* appear in: Nonfiction Book Review, Ghosts of Jim Crow, Publishers Weekly, [www.publishersweekly.com](http://www.publishersweekly.com), January 14, 2013; Clippings, A vision of enhancing racial equality- or simply lessening racial inequality – in America, Kirkus Reviews, [www.kirkusreviews.com](http://www.kirkusreviews.com), January 15, 2013; Booklist Online, Ghosts of Jim Crow, <http://booklistonline.com>, January 18, 2013; Hoffman, Review of Ghosts of Jim Crow, Patrice's Reading Corner, <http://triceunikki.blogspot.com>, March 20, 2013; Tousignant, "Ghosts" writer UB Law's Higginbotham takes on the lingering effects of Jim Crow, *The Daily Record*, April 8, 2013; Booker, Higginbotham's new book argues America is still far from post-racial, *The Philadelphia Tribune*, June 28, 2013, p.2B; "Ghosts" tracks racial evolution of America, *The Decatur Daily*, [www.decaturdaily.com](http://www.decaturdaily.com), July 14, 2013; Kamisugi and Elgart, Ghosts of Jim Crow, *California Lawyer*, September 2013; Exorcizing our racial ghosts, *National Catholic Reporter*, October 30, 2013; and, Ghosts of Jim Crow, *The Journal of African American History*, Summer 2016, pp. 384-386.

## LEARNING OUTCOMES

The course has three primary goals: First, the course is designed to teach students about substantive state and federal constitutional laws and principles dealing with race. By the end of the course, students should be able to demonstrate knowledge of doctrinal law dealing with race and the principles underlying that law. Knowledge of the underlying principles will help students understand how different rules and doctrines fit together and how to resolve various conflicts.

Second, the course is designed to improve the legal analysis skills of students. By the end of the course, students should be able to demonstrate legal analysis skills such as the capacity to pay careful attention to details, to recognize and utilize legal terminology, and to use case law and principles to analyze new fact patterns.

Third, the course is designed to improve the legal research skills of students. By the end of the course, students should be able to demonstrate legal research skills such as the ability to identify and locate original source materials dealing with race and to select language from those materials that reflects or embraces racial bias or prejudice.

### **ACADEMIC INTEGRITY**

Students are obligated to refrain from acts that they know or, under the circumstances, have reason to know will impair the academic integrity of the University and/or School of Law. Violations of academic integrity include, but are not limited to: cheating, plagiarism, misuse of materials, inappropriate communication about exams, use of unauthorized materials and technology, misrepresentation of any academic matter, including attendance, and impeding the Honor Code process. The school of Law Honor Code and information about the process is available at [http://law.ubalt.edu/academics/policiesandprocedures/honor\\_code/](http://law.ubalt.edu/academics/policiesandprocedures/honor_code/).

### **TITLE IX SEXUAL MISCONDUCT AND NONDISCRIMINATION POLICY**

The University of Baltimore's Sexual Misconduct and nondiscrimination policy is compliant with federal laws prohibiting discrimination. Title IX requires that faculty, student employees and staff members report to the university any known, learned or rumored incidents of sex discrimination, including sexual harassment, sexual misconduct, stalking on the basis of sex, dating/intimate partner violence or sexual exploitation and/or related experiences or incidents. Policies and procedures related to Title IX and UB's nondiscrimination policies can be found at: <http://www.ubalt.edu/titleix>.

### **DISABILITY POLICY**

If you are a student with a documented disability who requires an academic accommodation, please contact Karyn Schulz, Director, Center of Educational Access, Office of Disability and Access Services, at 410-837-4141 or [kschulz@ubalt.edu](mailto:kschulz@ubalt.edu).

### **SCHEDULE OF CLASSES**

**Session #1: OVERVIEW:** Discussion of the course subject-matter and requirements  
**Jan. 8** (Syllabus pp. 1-24; Race Law (Dedication, Foreword, Preface, History Timeline, and Introduction) pp. v, xxxiii-xlvi, 3-4, 771-780; Ghosts of Jim Crow (Preface) pp. 14-23. 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)

Point/Counterpoint  
(Race Law p. 113)

Supplemental Readings:  
Robert Cover, *Justice Accused*

## **RACE CLASSIFICATION**

The Nature, Definitions, and Myths of Race  
(Race Law pp. 26-50) (read carefully pp. 43-48)

*People v. Hall* (1854)  
(Race Law pp. 50-66) (read carefully pp. 54-57) (please read this material prior to the initial session)

Point / Counterpoint  
(Race Law pp. 58-66)

Supplemental Readings:  
Joseph Graves, *The Emperor's New Clothes*  
Ariela Gross, *What Blood Won't Tell*  
Kevin Johnson, *Mixed Race America*  
Nell Painter, *The History of White People*  
J.A. Rogers, *Sex and Race*

## **PART TWO — SLAVERY**

### **Session #2: THE COLONIAL EXPERIENCE WITH SLAVERY AND FREE BLACKS Jan. 15**

Ghosts of Jim Crow  
(Chapter 1, pp. 47-48)

The Earliest Protest Against Slavery (1688)  
(Race Law pp. 748-749 or In The Matter of Color p. 267)

In The Matter of Color  
(Chapter 2, pp. 22-30) (read carefully pp. 23-24, 28-29)

In The Matter of Color  
(Chapters 3, 4, 6, and 7)

Firm A: Massachusetts (Chapter 3) (pp. 89-98)  
Firm B: Pennsylvania (Chapter 7) (pp. 299-305)

Firm C: Georgia (Chapter 6) (pp. 216-218, 252-256)  
Firm D: New York (Chapter 4) (pp. 100-109)

Supplemental Readings:

Mary Frances Berry, *Black Resistance/White Law*  
Winthrop Jordan, *White Over Black*  
Orlando Patterson, *Slavery and Social Death*  
Orlando Patterson, *Freedom In The Making*

**THE ENGLISH EXPERIENCE WITH SLAVERY AND FREE BLACKS**

In The Matter of Color  
(Chapters 8 and 9) (read carefully pp. 320-329, 351-355)

Supplemental Readings:

Eugene Genovese, *Roll, Jordan, Roll*

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

In The Matter of Color  
(Chapter 11) (pp. 375-383)

Declaration of the Causes and Necessity of Taking Up Arms (1775)  
(Race Law pp. 749-750)

Declaration of Independence (1776)  
(Race Law pp. 750-753)

Supplemental Readings:

David Brion Davis, *The Problem of Slavery in the Age of Revolution*  
Edmund Morgan, *American Slavery, American Freedom*

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

The Articles of Confederation (1781)  
(Race Law pp. 754-755)

The Constitution (1789)  
(Race Law pp. 68-72, 78-80, 734, 737, 740)

Supplemental Readings:

Edward Baptist, *The Half Has Never Been Told*  
Max Farrand, *The Framing of the Constitution*  
Max Farrand, *The Records of the Federal Convention*  
Frank Tannenbaum, *Slave and Citizen*

**Session #3: THE NORTHERN APPROACH TO FREE BLACKS (Connecticut and  
Jan. 22 Massachusetts)**

*Crandall v. The State of Connecticut* (1834)  
(Race Law pp. 80-95, 740) (read carefully pp. 81-91)

*Roberts v. The City of Boston* (1850)  
(Race Law pp. 95-102) (read carefully pp. 98-100)

Supplemental Readings:  
Leon Litwack, *North of Slavery*

**THE SOUTHERN APPROACH TO SLAVERY AND FREE BLACKS  
(Virginia)**

*Hudgins v. Wrights* (1806)  
(Race Law pp. 101-106; 110-112) (read carefully pp. 107-109)

Ghosts of Jim Crow  
(Chapter 1, pp. 50-53)

*Souther v. The Commonwealth* (1851)  
(Race Law pp. 106-110) (read carefully pp. 107-109)

Ghosts of Jim Crow  
(Chapter 1, pp. 55-57)

Slave Auction Handbill (1852)  
(Race Law pp. 112-113)

Supplemental Readings:  
John W. Blassingame, *The Slave Community*  
Annette Gordon-Reed, *The Hemingses of Monticello*  
Kenneth Stampp, *The Peculiar Institution*  
Mark Tushnet, *The American Law of Slavery*

**Session #4: SLAVERY, FREE BLACKS, AND THE UNITED STATES SUPREME  
Jan. 29 COURT**

*United States v. The Amistad* (1840)  
(Race Law pp. 113-122) (read carefully pp. 119-121) (Firms A and B)

*Prigg v. The Commonwealth of Pennsylvania* (1842)  
(Race Law pp. 122-140, 167-169) (read carefully pp. 126-129) (Firms C and D)

Ghosts of Jim Crow  
(Chapter 1, pp. 54-55)

*Dred Scott v. Sandford* (1857)  
(Race Law pp. 140-167, 169-173) (read carefully pp. 144-156)

Northwest Ordinance (1787)  
(Race Law pp. 755-756)

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. 758-759)

Shades of Freedom  
(Chapter 5, pp. 61-67)

Ghosts of Jim Crow  
(Chapter 1, pp. 57-59)

Supplemental Readings:

Don Fehrenbacher, *The Dred Scott Case*

Paul Finkelman, *Supreme Injustice*

John Hope Franklin, *Runaway Slaves*

Howard Jones, *Mutiny on the Amistad*

W.E.B. DuBois, *The Suppression of the African Slave-Trade*

**THE BEGINNING OF THE END OF SLAVERY**

*The Case of John Brown* (1859)  
(Race Law pp. 173-180)

Supplemental Readings:

Frederick Douglass, *The Life and Times of Frederick Douglass*

W.E.B. DuBois, *John Brown*

## PART THREE — RECONSTRUCTION, CITIZENSHIP, AND SOVEREIGNTY

### Session #5: THE SUPREME COURT'S BETRAYAL OF RECONSTRUCTION Feb. 5

Ghosts of Jim Crow  
(Chapter 1, pp. 59-61)

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. 768-770)

Ghosts of Jim Crow  
(Chapter 2, pp. 63-67)

*The Slaughterhouse Cases* (1873)  
(Race Law pp. 181-215) (read carefully pp. 202-209) (Firms A and B)

*United States v. Cruikshank* (1875)  
(Race Law pp. 215-237) (read carefully pp. 233-236) (Firms C and D)

Ghosts of Jim Crow  
(Chapter 2, pp. 67-72)

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

*The Civil Rights Cases* (1883)  
(Race Law pp. 237-254) (read carefully pp. 238-245)

Shades of Freedom  
(Chapter 8, pp. 104-107)

Ghosts of Jim Crow  
(Chapter 2, pp. 72-84)

#### Supplemental Readings:

Mark Curriden and Leroy Phillips, *Contempt of Court*

Mark Elliott, *Color-Blind Justice*

Eric Foner, *Reconstruction: America's Unfinished Revolution*

Robert Kaczorowski, *The Politics of Judicial Interpretation*

Charles Lane, *The Day Freedom Died*  
Gerard Magliocca, *American Founding Son*  
Randall Robinson, *The Debt*

**Session #6: RACE AND CITIZENSHIP**  
**Feb. 12**

*Ozawa v. United States* (1922)  
(Race Law pp. 255-263) (read carefully pp. 260-263) (Firms A and B)

*United States v. Thind* (1923)  
(Race Law pp. 263-268) (read carefully pp. 264-267) (Firms C and D)

*People v. De La Guerra* (1870)  
(Race Law pp. 268-272)

*Ping v. United States* (1889)  
(Race Law pp. 272-276) (read carefully pp. 273-275) (Firms A and B)

*United States v. Ark* (1898)  
(Race Law pp. 276-280) (read carefully pp. 276-278) (Firms C and D)

*Korematsu v. United States* (1944)  
(Race Law pp. 280-298) (read carefully pp. 281-284)

Restitution For Internment (1988)  
(Race Law p. 768)

Supplemental Readings:

Erika Lee, *At America's Gates*  
Ian Haney Lopez, *White By Law*  
Frank Wu, *Yellow*

**RACE, AMERICAN INDIANS, AND SOVEREIGNTY**

*Johnson and Graham's Lessee v. M'Intosh* (1823)  
(Race Law pp. 298-306) (read carefully pp. 301-305) (Firms A and B)

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

*The Cherokee Nation v. The State of Georgia* (1831)  
(Race Law pp. 306-318) (read carefully pp. 306-309) (Firms C and D)

Making Our Democracy Work  
(Chapter 3, pp. 22-31) (to be distributed)

*Elk v. Wilkins* (1884)  
(Race Law pp. 318-334) (read carefully pp. 320-325)

Supplemental Readings:  
David Wilkins, *American Indian Sovereignty*

## **PART FOUR — SEGREGATION**

### **Session #7: CREATING THE SEPARATE BUT EQUAL DOCTRINE**

**Feb. 19** *Strauder v. West Virginia* (1880)  
(Race Law pp. 335-340) (read carefully pp. 336-339)

*Plessy v. Ferguson* (1896)  
(Race Law pp. 340-356) (read carefully pp. 344-348)

Shades of Freedom  
(Chapter 9, pp. 108-115, 117-118)

Ghosts of Jim Crow  
(Chapter 3, pp. 85-92)

Supplemental Readings:  
C. Vann Woodward, *The Strange Career of Jim Crow*

### **EXPANDING THE SEPARATE BUT EQUAL DOCTRINE**

*Berea College v. Commonwealth of Kentucky* (1908)  
(Race Law pp. 356-371) (read carefully pp. 359-360)

Supplemental Readings:  
Rayford Logan, *The Betrayal of the Negro*

### **Session #8: LIMITING THE SEPARATE BUT EQUAL DOCTRINE: RACIAL SEGREGATION AND HOUSING**

**Feb. 26**

Ghosts of Jim Crow  
(Chapter 3, pp. 92-96, 98-109)

*Buchanan v. Warley* (1917)  
(Race Law pp. 372-385) (read carefully pp. 380-383)

Shades of Freedom  
(Chapter 10, pp. 119-126)

Supplemental Readings:

Douglas Blackmon, *Slavery By Another Name*  
James Loewen, *Sundown Towns*  
David Oshinsky, *Worse Than Slavery*  
Robert Weaver, *The Negro Ghetto*  
Isabel Wilkerson, *The Warmth of Other Suns*

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

*Morgan v. Commonwealth of Virginia* (1946)  
(Race Law pp. 385-395) (read carefully pp. 386-390) (Firms A and B)

Supplemental Readings:

Genna McNeil, *Groundwork*  
Gilbert Ware, *Grace Under Pressure*

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

*Shelley v. Kraemer* (1948)  
(Race Law pp. 395-402) (read carefully pp. 396-401) (Firms C and D)

Supplemental Readings:

Loren Miller, *The Petitioners*

**INTERPRETING THE SEPARATE BUT EQUAL DOCTRINE**

*Cumming v. County Board of Education* (1899)  
(Race Law pp. 402-414, 422-434) (read carefully pp. 408-409) (Firms A and B)

*Lum v. Rice* (1927)  
(Race Law pp. 414-419, 422) (read carefully pp. 417-419) (Firms C and D)

Shades of Freedom  
(Chapter 9, pp. 115-117)

*Hernandez v. Texas* (1954)  
(Race Law pp.420-422)

Ghosts of Jim Crow  
(Chapter 3, pp. 109-111, 112-116)

Supplemental Readings:

George Fredrickson, *The Black Image In The White Mind*  
Ronald Mize and Grace Delgado, *Latino Immigrants in the United States*

**Session #9: APPLYING THE SEPARATE BUT EQUAL DOCTRINE**  
**Mar. 5**

*Missouri ex rel. Gaines v. Canada* (1938)  
(Race Law pp. 438-445) (read carefully pp. 440-442)

Executive Order 8802 (1941)  
(Race Law pp. 765-766)

Executive Order 9981 (1948)  
(Race Law p. 776)

*McLaurin v. Oklahoma State Regents for Higher Education* (1950)  
(Race Law pp. 445-447)

*Sweatt v. Painter* (1950)  
(Race Law pp. 448-450)

Shades of Freedom  
(Chapter 12, pp. 164-166)

Ghosts of Jim Crow  
(Chapter 3, pp. 97, 111-112)

Supplemental Readings:

Patricia Sullivan, *Lift Every Voice*  
Gilbert Ware, *From the Black Bar*

**ENDING STATE-MANDATED SEGREGATION**

*Brown v. Board of Education (Brown I)* (1954)  
(Race Law pp. 450-462) (read carefully pp. 454-457)

Supplemental Readings:

Morton Horowitz, *The Warren Court*  
Richard Kluger, *Simple Justice*  
Gunnar Myrdal, *An American Dilemma*

**APPLYING THE BROWN RATIONALE**

*Loving v. Virginia* (1966)  
(Race Law pp. 463-471) (read carefully pp. 466-468)

Shades of Freedom  
(Chapter 4, pp. 44-45)

Supplemental Readings:  
Sheryll Cashin, *Loving*  
Rachel Moran, *Interracial Intimacy*

## **PART FIVE — ATTEMPTED ERADICATION OF INEQUALITY**

### **Session #10: RACE-CONSCIOUS REMEDIES**

**Mar. 12**

Student Presentations

*Brown v. Board of Education (Brown II)* (1955)  
(Race Law pp. 473-479) (read carefully pp. 475-476) (Firms A and B)

Ghosts of Jim Crow  
(Chapter 4, pp. 119-134)  
*Milliken v. Bradley* (1974)  
(Race Law pp. 479-495) (read carefully pp. 486-489) (Firms C and D)

Ghosts of Jim Crow  
(Chapter 4, pp. 134-139)

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

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

Civil Rights Act (1964) (Employment)  
(Race Law p. 777)

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

*Adarand Constructors Company v. Pena* (1995)  
(Race Law pp. 496-508) (read carefully pp. 500-504) (Firms A and B)

*Grutter v. Bollinger* (2003)  
(Race Law pp. 508-527) (read carefully pp. 511-521) (Firms C and D)

*Parents Involved in Community Schools v. Seattle School District Number 1*  
(2007)  
(Race Law pp. 527-540) (read carefully pp. 528-532) (Firms A and B)

*Fisher v. University of Texas* (2013)  
(Race Law pp. 540-547) (read carefully pp. 543-546) (Firms C and D)

*Schuette v. Coalition To Defend Affirmative Action* (2014)  
(Race Law pp. 547-570) (read carefully pp. 549-556)

Ghosts of Jim Crow  
(Chapter 7, pp. 215-218)

Supplemental Readings:

Jack Bass, *Unlikely Heroes*

Derrick Bell, *Faces At The Bottom of the Well*

Sheryl Cashin, *The Failures of Integration*

Christopher Edley, *Not All Black and White*

Gerald Jaynes and Robin Williams, *A Common Destiny*

Randall Kennedy, *For Discrimination*

James Patterson, *Brown v. Board of Education*

William Julius Wilson, *Declining Significance of Race*

William Julius Wilson, *The Truly Disadvantaged*

William Julius Wilson, *When Work Disappears*

**Session #11: MAINTAINING RACIAL INEQUITY**  
**Mar. 26**

Student Presentations

*Washington v. Davis* (1976)  
(Race Law pp. 570-575) (Firms A and B)

Shades of Freedom  
(Chapter 12, pp. 159-164)

*McCleskey v. Kemp* (1987)  
(Race Law pp. 583-598) (read carefully pp. 584-591)

Shades of Freedom  
(Chapter 13, pp. 178-182)

Voting Rights Act (1965)  
(Race Law p. 767)

*Shaw v. Reno* (1993)  
(Race Law pp. 599-608) (read carefully pp. 601-603) (Firms C and D)

Ghosts of Jim Crow  
(Chapter 5, pp. 170-174)

*Shelby County v. Holder* (2013)  
(Race Law pp. 608-620, 646-648) (read carefully pp. 613-618)

*Ricci v. DeStefano* (2009)  
(Race Law pp. 628-640, 646-648)(read carefully pp. 633-637)

Supplemental Readings:

Henry Flores, *Latinos and the Voting Rights Act*  
Lani Guinier, *The Tyranny of the Majority*  
Sora Han, *Letters of the Law*  
Randall Kennedy, *Race, Crime, and the Law*  
Jan Miles, *The Post-Racial Negro Green Book*  
Daria Roithmayr, *Reproducing Racism*

**PART SIX — SUPREME COURT CONFIRMATION CONTROVERSIES**

**Session #12: RACE, VALUES, AND JUSTICE THOMAS**  
**Apr. 2**

Student Presentations

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

Supplemental Readings:

Jill Abramson, *Strange Justice*  
Clarence Thomas, *My Grandfather's Son*

**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)

Supplemental Readings:

Sonia Sotomayor, *My Beloved World*

**PART SEVEN — ONGOING CONTROVERSIES**

**RACE AND THE ADMINISTRATION OF JUSTICE**

Arrests, Trials, and Beatings  
(Race Law pp. 693-710)

Supplemental Readings:

Michelle Alexander, *The New Jim Crow*

Paul Butler, *Let's Get Free*

Ta-Nehisi Coates, *Between the World and Me*

Donald Marvin Jones, *Dangerous Spaces*

Toni Morrison, *Birth of a Nationhood*

Nicole Van Cleve, *Crook County*

**RACE AND IMMIGRATION**

History and Current Approach

(Race Law pp. 710-720)

Supplemental Readings:

Christina Greer, *Black Ethnics*

Nazli Kibria, et al, *Race and Immigration*

Ediberto Roman, *Those Damned Immigrants*

**RACE AND POLITICS**

History and Current Approach

(Race Law pp. 720-727)

Supplemental Readings:

Ian Haney Lopez, *Dog Whistle Politics*

**PART EIGHT — APPENDIX**

**Session #13: RACE AND THE FUTURE**

**Apr. 9**

Student Presentations

Always Running

(Chapter 1, pp. 14-25, Chapter 3, pp. 62-67, Chapter 4, pp. 83-84, Chapter 6, pp. 139-146, Chapter 10, pp. 235-246, and Epilogue, pp. 247-251) (to be distributed)

Ghosts of Jim Crow

(Preface, pp. 1-14, Introduction Chapter, pp. 25-42, Chapters 5, 6 and 7, pp. 175-177, 181-215, 219-221)

Supplemental Readings:

Hazel Markus, *Doing Race*

Luis Rodriguez, *Always Running*

Jody Vallejo, *Barrios To Burbs*

Tim Wise, *Colorblind*

**SUMMARY LECTURE:** What have we learned and where do we go from here?

Shades of Freedom  
(Introduction Chapter, pp. xxiii-xxxii)

Conclusion  
(Race Law pp. 729-734)

Supplemental Readings:  
Michael Klarman, *Unfinished Business*

**Session #14: MAKE-UP SESSION (IF NEEDED)**  
**Apr. 16**