

CRITICAL LEGAL THEORY

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Office Hours:

Course Description

Critical legal theory seeks, *inter alia*, to demonstrate the indeterminacy of legal doctrine and show how any given set of legal principles can be used to yield competing or contradictory results. This course will examine the complexities of law thru various lenses. It offers a critical view of how law is made and what influences law. The course is divided into units that include: judicial approaches, critical race theory, feminist legal theory, socioeconomics, and an application of these theories to various substantive areas. It encourages students to think with clarity, depth and provides the ability to critically analyze law through different perspectives.

Course Objectives

In this class, you will learn to identify different interpretive methods and judicial theories, develop an appreciation for other perspectives, apply a historical, socioeconomic analysis to various fact patterns, develop coherent theory to explain and justify rules of law, identify the larger jurisprudential or philosophical framework of substantive areas, develop critical thinking, including critical analysis of law; problem solving, persuasion, and rhetoric, and identify possible race, gender, socioeconomic implications that may present themselves in various hypotheticals or fact patterns. Additionally, you will develop and improve judgment, reflectiveness, decision-making; professional interpersonal skills, and cultural sensitivity.

I will use a number of teaching methods, such as lecture, group activities, and simulations to assist in learning the material. A midterm and a final exam will provide the basis for your final grade in this course.

Reading Materials

Required:

David Kairys, *THE POLITICS OF LAW* (3d. ed. 1997);

Richard Delgado and Jean Stefancic, *Critical Race Theory: An Introduction* (3d. ed. 2017);

The readings in this course will come primarily from the text and documents placed on the TWEN site. Reading assignments in addition to those from the required textbooks will appear in the “Course Materials” page. You’ll first need to register your password, by going to www.lawschool.westlaw.com, and then clicking “TWEN” at the top of the page. It will then ask you to enter your Westlaw password. When you register, please be sure to include your University of Baltimore email address. This is the address I will use for any announcements, and you should regularly check that account. If you’re having trouble registering or adding this course on TWEN, you should contact Westlaw for help. If the trouble persists, please let me know.

Exams and Grading

I will base your final grade on a midterm (20 points), and a final exam (80 points) for a total of 100 points.

Midterm Exam. Your midterm exam will consist of one essay question worth twenty (20) points. The midterm is scheduled for Monday, February 24, 2020.

Final Exam. The primary method of grading will involve a comprehensive final exam, worth eighty (80) points. I have placed sample exam questions and answers on TWEN.

Course Expectations

American Bar Association Accreditation Standards establish guidelines for the amount of work students should expect to complete for each credit earned. Students should expect approximately one hour of classroom instruction and two hours of out-of-class work per week for each credit earned in a class, or an equivalent amount of work for other academic activities, such as simulations, externships, clinical supervision, co-curricular activities, and other academic work leading to the award of credit hours.

Classroom Policies

Preparation and Participation. It is imperative that students learn to think on their feet and clearly articulate their views. Explaining your perspective is a valuable way to better understand the material. Accordingly, I will call on students throughout the semester. This is not intended to frighten or embarrass you, but instead to help you improve your communication skills and make sure that everyone in the class participates in discussions. If you are called upon, you are expected to answer. Please come prepared to discuss the cases and materials that have been assigned. Volunteers are welcome. I will, however, randomly call on students to ensure that everyone participates and develops the reasoning and oral presentation skills that are essential to lawyering.

Laptop Use. Laptop use is permitted in class on the condition that it is confined to course-related functions only. If evidence of abuse emerges, internet access in the classroom will be discontinued. I also reserve the ability to call for “laptop free” days.

Attendance. Class attendance is a primary obligation of each student whose right to continued enrollment in the course and to take the examination is conditioned upon a record of attendance satisfactory to the professor. A student who exceeds the maximum allowed absences (generally 20% of class sessions) as illustrated below may be compelled to withdraw from the course, or may be barred from sitting for the final exam. Students who are forced to withdraw for exceeding the allowed absences may receive a grade of FA (failure due to excessive absence). This policy is consistent with American Bar Association Standards for Law Schools.

Regular Semester Hours		
Credit Hours	Meetings Per Week	
	1	2
2	2 absences	5 absences
3	2 absences	5 absences
4	--	5 absences

Class attendance is mandatory. I expect everyone to attend class each day and to arrive on time. Walking in after class has begun is disrespectful to your fellow students. Attendance is recorded on a sign-in sheet that is circulated at the beginning of each class. It is your responsibility to ensure that your attendance is properly recorded.

Excessive absences. The University of Baltimore School of Law allows a maximum of five (5) absences. Absences due to observance of religious holidays are not included in this policy. ***If you are deemed absent from class more than five times, you will be dropped from the course with a failing grade, and will not be allowed to take the final exam.***

If you contact me to tell me that you are ill, your car broke down, or a loved one had surgery, I always like to hear from you. Please do not hesitate. However, I do not have the authority to excuse an absence—whether for the above-listed or any other reasons—and I have no discretion in this regard. It is your responsibility to monitor your absences, and if you anticipate missing more than five classes, you are strongly advised to contact Dean Sloan regarding the possibility of withdrawal before it is too late to do so.

Class Cancellation. If I must cancel a class, notices will be sent to students via TWEN and posted on the classroom door. If there is inclement weather, students should visit the University of Baltimore web site or call the University's

Snow Closing Line at (410) 837-4201. If the University is open, students should presume that classes are running on the normal schedule.

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 the School of Law. Violations of academic integrity include, but are not limited to: cheating; plagiarism; misuse of library materials; use of another's book or study materials without consent; unapproved multiple submissions; material misrepresentation of one's academic history or standing; misrepresentation of any academic matter; intentionally giving another student false or inaccurate information about class requirements; inappropriate discussion of exams; and misrepresenting or falsifying class attendance reports. [Reference to School of Law Honor Code, https://law.ubalt.edu/academics/policiesandprocedures/honor_code/index.cfm]

Course Evaluations

It is a requirement of this course that students complete a course evaluation. The evaluation will be available later in the semester and is entirely anonymous. Faculty members will not have access to the feedback provided on course evaluations until after all grades are submitted.

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 accommodation for academic programs, exams, or access to the University's facilities, please contact the Office of Academic Affairs, at ublacadaff@ubalt.edu or (410) 837-4468.

Syllabus

This syllabus is tentative. The reading assignments for each day will depend on how quickly we get through the material, and I may adjust readings on a particular topic. I will occasionally post additional readings and updates on the Westlaw/TWEN website. As a legal professional, I expect you to be prepared every day – your future clients and judges will expect no less.

Class	Subject	Reading Assignment (Discussion Questions on TWEN)
UNIT I January 13	Critical Observations: Introduction to Critical Legal Theory	David Kairys, <i>Introduction</i> , Kairys, pp. 1-17 “Can ‘robe-itis’ be prevented?” by Danny Jacobs, Daily Record Legal Affairs Writer, October 24, 2014, found at: http://thedailyrecord.com/2014/10/24/can-robe-itis-be-prevented/#ixzz3JyZ5TKc6 Discussion Questions (DQ) 1
January 15	Introduction to Judicial Approaches	<i>DeShaney v. Winnebago County Department of Social Services</i> (TWEN) Article: <i>A Second Chance for Joshua</i> (TWEN) Benjamin H. Barton, <i>An Empirical Study of Supreme Court Justice Pre-Appointment Experience</i> (TWEN) DQ 2
January 22	A. <u>Legal Formalism: Its Norms and Process of Analysis</u>	Antonin Scalia, <i>Common Law Courts in a Civil Law System</i> (TWEN, pp. 79-88) Richard Posner, <i>The Incoherence of Antonin Scalia</i> found on TWEN and at https://newrepublic.com/article/106441/scalia-garner-reading-the-law-textual-originalism (TWEN) Burt Neuborne, <i>Of Sausage Factories and Syllogism Machines: Formalism, Realism, and Exclusionary Selection Techniques</i> (TWEN) <i>Riggs v. Palmer</i> (TWEN) DQ 3

<p>January 27</p>	<p>B. <u>The Legal Realist Critique of Formalism</u></p>	<p>Elizabeth Mensch, <i>The History of Mainstream Legal Thought</i>, Kairys, pp. 23-48.</p> <p>Jerome N. Frank, <i>Why Not a Clinical Lawyer-School?</i>, 81 Penn.L.Rev.907 (1932)(TWEN)</p> <p><i>Jones v. Barnes</i> (TWEN)</p> <p>DQ 4</p>
<p>January 29</p>	<p>C. <u>Law and Morality</u></p>	<p>Ronald Dworkin, <i>Lord Patrick Devlin, The Enforcement of Morals</i>, Yale Law Journal (1966) (TWEN)</p> <p>Excerpt from <i>Bowers v. Hardwick</i> (TWEN)</p> <p>Excerpt from <i>Lawrence v. Texas</i> (TWEN)</p> <p>DQ 5</p>
<p>February 3</p> <p>UNIT REVIEW</p>	<p>D. <u>Examining Judicial Opinions Through a Different Lens</u></p>	<p><i>Obama Makes Empathy a Requirement for Court</i>, <i>The Washington Post</i>, May 13, 2009 (TWEN)</p> <p><i>Donald Trump Releases List of Possible Supreme Court Picks</i>, <i>The New York Times</i>, May 18, 2016</p> <p>http://www.nytimes.com/2016/05/19/us/politics/donald-trump-supreme-court-nominees.html?_r=0</p> <p><i>Ledbetter v. Goodyear Tire & Rubber Co.</i>, 550 US 618 (2007)(TWEN)(optional)</p> <p>DQ 6</p>

		Unit Review_Hypo_Judicial Approaches (TWEN)
February 5 UNIT II	CRITICAL RACE THEORY <u>Introduction to Critical Race Theory</u>	Chapter I: <i>Introduction</i> , Critical Race Theory (CRT) Chapter II: <i>Themes</i> (CRT) Roy Brooks, <i>Critical Race Theory: A Proposed Structure and Application to Federal Pleading</i> (TWEN) DQ 7
February 10	A. Race: The Power of an Illusion	<i>Doe v. Louisiana</i> <i>People v Hall</i> Race_The Power of an Illusion Ta-Nahesi Coates, http://www.theatlantic.com/politics/archives/2016/02/why-we-write/459909/ DQ 8
February 12	B. Critical Race Theories	Charles R. Lawrence III, <i>The Id, The Ego, and Equal Protection: Reckoning with Unconscious Racism</i> Complete "Implicit Assumption Test": https://implicit.harvard.edu/implicit/demo/ DQ 9
February 17	C. Critical Race Methods	<i>Brown v. Board of Education</i> , 347 US 483 (1954) Derrick Bell, <i>Brown v. Board of Education and the Interest-Convergence Dilemma</i> (TWEN) Chapter III: <i>Storytelling</i> (CRT) DQ 10

<p>February 19</p> <p><i>UNIT REVIEW</i></p>	<p>Critical Race Theory</p>	<p>Derrick Bell, <i>The Chronicle of the Constitutional Contradiction</i> (TWEN)</p> <p>Unit Review_Hypo_Critical Race Theory (TWEN)</p>
<p>February 24</p>	<p>Midterm Exam</p>	
<p>February 26</p> <p><i>UNIT III</i></p>	<p>FEMINIST LEGAL THEORY & SOCIAL ECONOMICS</p> <p><u>Introduction to Feminist Legal Theory</u></p>	<p>Nadine Taub and Elizabeth M. Schneider, <i>Women’s Subordination and the Role of Law</i>, Kairys, pp. 329-351</p> <p>Ginsburg article on TWEN</p> <p><i>United States v. Virginia</i> (TWEN)</p> <p>DQs 11 & 12</p>
<p>March 2</p>	<p>A. Feminist and Intersectionality</p>	<p>Kimberle Crenshaw, <i>A Black Feminist Critique of Antidiscrimination Law</i>, Kairys, pp. 356-364, 374-75.</p> <p><i>Moore v. National Association of Securities Dealers</i> (on TWEN)</p> <p>Intersectionality, the Washington Post, found on TWEN and here: https://www.washingtonpost.com/news/in-theory/wp/2015/09/21/intersectionality-a-primer/?postshare=8111480624826882&tid=ss_mail&utm_term=.da8222ac2c79</p>

		<p>https://www.washingtonpost.com/news/in-theory/wp/2015/09/24/why-intersectionality-cant-wait/?postshare=9391480624950800&tid=ss_mail&utm_term=.5c010a30c7f</p> <p>DQ Assignment 13</p>
March 4		<p>Hanna Rosin, <i>The End of Men</i> (on TWEN and available at http://www.theatlantic.com/magazine/archive/2010/07/the-end-of-men/8135/)</p> <p>Other readings (TWEN)</p>
March 9	<p>SOCIOECONOMICS</p> <p>A. <u>Socioeconomics and the Development of Law</u></p>	<p>Lucy Williams, <i>Welfare and Legal Entitlements: The Social Roots of Poverty</i>, Kairys, pp. 569-580 <i>Wyman v. James</i> (on TWEN)</p> <p>DQ Assignment 14</p>
March 11	<p>B. <u>Critiques of the Delivery of Legal Services</u></p>	<p>David K. Shipler, <i>A Poor Cousin of the Middle Class</i>, NY Times, January 18, 2004 (on TWEN)</p> <p>Legal Needs and Civil Justice: A Survey of Americans, American Bar Association (1994) (excerpt available on TWEN)</p> <p>Derek C. Bok, <i>A Flawed System of Law Practice and Training</i>, 33 <i>Journal of Legal Education</i> 570, 571-74, 577-80 (1983) (on TWEN)</p> <p>DQ Assignment 15</p>

<p>March 23</p> <p>(March 25- No Class)</p>	<p>C. <u>Alternative Dispute Resolution</u></p>	<p>Menkel-Meadow, Carrie, “<i>The Trouble with the Adversary System in a Postmodern, Multicultural World,</i>” 38 <i>William and Mary Law Review</i> 5, 6-10 (1996)(on TWEN);</p> <p>Ohio Jurisprudence, Third Addition, <i>Appropriateness of Mediation</i> (on TWEN)</p> <p>Owen Fiss, <i>Against Settlement</i>, 93 <i>Yale Law Journal</i> 1073 (1984) (excerpts on TWEN).</p> <p>DQ 16</p>
<p>March 30</p> <p>UNIT REVIEW</p>	<p>D. Feminist Legal Theory & Socioeconomics,</p>	<p>Unit Review_Hypo_Feminist Legal Theory & Socioeconomics</p>
<p>April 1</p> <p>UNIT IV</p>	<p>CRITICAL THEORIES: COURSES/SUBSTANTIVE AREAS</p> <p>A. <u>Constitutional Law</u></p>	<p>David Kairys, <i>Freedom of Speech</i>, Kairys, pp. 190-203, 208-211</p> <p><i>Citizens United v. Federal Election Commission</i> (on TWEN)</p> <p>DQ 17</p>
<p>April 6</p>	<p>B. <u>Civil Procedure</u></p>	<p>Martha Minow, <i>Politics and Procedure</i>, Kairys, pp. 79 – 94;</p> <p><i>Walker v. Birmingham</i>, 388 US 207 (1967)(TWEN);</p> <p>Optional: <i>Letter from a Birmingham Jail</i>, Dr. Martin Luther King, Jr; Kevin R. Johnson, <i>Integrating Racial Justice Into the Civil Procedure Survey Course</i>, (TWEN.)</p> <p>DQ 18</p>

April 8	C. <u>Property</u>	DQ 19
April 13 April 15	D. <u>Criminal Law</u>	Elliott Currie, <i>Crime and Punishment in the United States: Myths, Realities, and Possibilities</i> Kairys, pp. 381-405 David Cole, <i>Two Systems of Criminal Justice</i> , Kairys, pp. 410-418,424-429 DQ 20
April 20	E. <u>Voting Rights</u>	<i>The Modern Day Literacy Test?: Felon Disenfranchisement and Race Discrimination</i> , 57 Stan.L.Rev. 611 (2004) Additional Materials(TWEN) DQ 21
April 22	Topic: TBD	TBD
April 27	Review Session	Practice Final Exam Question(s)