

**University of Washington School of Law**

**Spring, 2019**

**Race and the Law, E572**

**(4 credits)**

**Class meets T Th/10:30 a.m. - 12:30 p.m.\*, Room 207**

\*NOTE: due to the compressed spring quarter, class lasts a full two hours.

Prof. Kim Ambrose

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## **SYLLABUS**

### **Class Description**

This course will examine how law has been used as a tool to both maintain and diminish racial injustice in the United States from the colonial period to the present day.

### **Learning Objectives**

The goals of the course are to:

1. Understand how courts and legislatures have dealt with issues of race in various social contexts over time.
2. Understand how white supremacy and privilege have shaped the law.
3. Analyze and critique the law as a tool for social change in the area of racial justice in the United States.
4. Gain skills in discussing issues of race and equity, articulating legal and non-legal arguments and listening to others' viewpoints.

### **Textbook**

**Required Text:** RACE LAW, Cases, Commentary and Questions (Fourth Edition), F. Michael Higginbotham

Additional readings and videos will be posted on CANVAS in the syllabus or in Modules. When a case is listed, you will be expected to read it in its entirety, including the dissent unless instructed otherwise. A pdf copy of the opinion can be found on CANVAS.

*Optional Resources:* The CANVAS website will also have modules with optional resources, mostly non-law related, for those who wish to explore more deeply issues of race, oppression and intersectionality.

## **Grading**

**Final Grades** will be based on class participation (25%); 4 Reflection Journals (25%) and a final paper (50%).

## **Final Paper**

**Final Paper:** You will be given topics to choose from, or you may choose your own, for a 15 page double spaced paper uploaded on CANVAS by **May 31, 2019 at 5 p.m.** Details for the paper will be discussed in class.

## **Class Participation**

You should be in class on time and prepared to discuss the readings. Be forewarned, reading assignments are long, but hopefully interesting. I understand that unexpected things happen like illness, etc., so please let me know if you are unable to attend class. The UW Law School adheres to a mandatory attendance policy, which requires 80% attendance to receive credit.

Discussion about issues of race can be uncomfortable, but thoughtful engagement on these issues will be required to receive participation credit. You may be called on in class, not to make you uncomfortable but to ensure everyone has the opportunity to actively participate and to recognize every student has something important to contribute. You may also be assigned to do team work. Students are also encouraged to participate on the CANVAS discussion board, recognizing that some students may find written participation a useful supplement to class discussion. An average student attends class and appears engaged. Above average participation means you can comment thoughtfully on the material, you listen carefully to others and engage in responsive discussion. It also means you are not distracted by your laptop or other technology. Excellent participation means that you can acknowledge different viewpoints, connect what you are learning over the course of the quarter by referencing back to earlier topics or to relevant topics and contribute thoughtfully and respectfully to the course discussion board.

### *A Note on Class Material:*

Many of the cases that you will read for class will include language, which has been used to oppress generations of people. You may feel angry. Anger is human and is often an appropriate response. Anger can also be a trigger for those who experience anger as a negative, even dangerous emotion, one which should be moved away from. For example, some of us may have been raised in environments where we were exposed to anger coupled with violence. We should take care as we experience various emotions in the classroom, recognizing that we are all different and may

need different types of spaces at different times in order to learn. My goal is that we work together to create a community where we all can learn from each other.

*Extra Credit Participation: **Haiku Friday.*** You have the option of posting a Haiku poem (5-7-5) on Fridays on the CANVAS discussion board that reflects on the week's topic or a contemporary race topic.

*Reflection Journals:* You will submit 4 3-page Reflection Journals over the course of the quarter on CANVAS. Reflection is a critical professional skill for lawyers. Your "job" in class is to understand the substantive topics/materials AND to contribute to the learning environment through discussion. Reflection Journals should reflect on the class discussion of your choice during the preceding weeks – not just on the material itself but also on your own ability to understand the material and the quality of your participation in the classroom discussion. An excellent Reflection Journal will not just repeat what was said in class or the readings, but will demonstrate that the student gained a deeper or new understanding of an issue and will apply this knowledge to future classroom discussions, and/or their professional and/or personal identities. An excellent Reflection Journal may also reflect on the skills the student utilized in the classroom discussion (e.g., listening, presenting different viewpoints, etc.) and whether they were effective and how they might be improved upon.

### **Law School Attendance Policy**

Under changes to ABA Accreditation Standard 304, adopted in August 2004, a law school shall require regular and punctual class attendance.

At any time after the fifth week of a course (halfway through a summer session course), a student who has been determined by the instructor to have attended fewer than 80 percent of the class sessions in any course will be required to drop the course from his or her registration upon the instructor's so indicating to the Academic Services Office.

An instructor may also impose stricter attendance standards or other sanctions for nonattendance, including lowering of a grade, provided that students are informed at the start of the course of the instructor's attendance rules and possible sanctions.

### **Access and Accommodation**

Your experience in this class is important to me. If you have already established accommodations with Disability Resources for Students (DRS), please communicate your approved accommodations to me at your earliest convenience so we can discuss your needs in this course.

If you have not yet established services through DRS, but have a temporary health condition or permanent disability that requires accommodations (conditions include but not limited to; mental health, attention-related, learning, vision, hearing, physical or health impacts), you are welcome to contact DRS at 206-543-8924 or

[uwdrs@uw.edu](mailto:uwdrs@uw.edu) or [disability.uw.edu](http://disability.uw.edu). DRS offers resources and coordinates reasonable accommodations for students with disabilities and/or temporary health conditions.

Reasonable accommodations are established through an interactive process between you, your instructor(s) and DRS. It is the policy and practice of the University of Washington to create inclusive and accessible learning environments consistent with federal and state law.

## **Class Meetings**

### **CLASS 1 – Tuesday, April 2**

#### **Topic: Race Classification and Citizenship**

##### Analytical Framework and Race Classification

**Read:** To begin, as we think about our own classroom space, read this brief opinion piece by psychology professor Lisa Feldman Barrett: [When is Speech Violence?](#), NYT, July 14, 2017. Some of you might find law school to fit what Prof. Feldman Barrett discusses as an unhealthy:

*What's bad for your nervous system, in contrast, are long stretches of simmering stress. If you spend a lot of time in a harsh environment worrying about your safety, that's the kind of stress that brings on illness and remodels your brain. That's also true of a political climate in which groups of people endlessly hurl hateful words at one another, and of rampant bullying in school or on social media. A culture of constant, casual brutality is toxic to the body, and we suffer for it.*

Whether or not this is the case for you, let us strive toward creating a healthy class environment even as we discuss offensive and/or difficult material.

**Talking about race:** We come to the classroom with a variety of experiences. Some of you are more comfortable than others talking about race. Some of you have more or different language around how to talk about race. Sometimes we make assumptions about what certain terms mean or how people use them. This interactive piece by the Seattle Times, [Under Our Skin](#), highlights some of these challenges and exposes you to a diverse group of individuals from the Seattle area and their take on various terms. Watch the introduction and explore as much of the site as you find helpful. Note: you can explore the site by different terms and by the stories of the people who are featured.

**Skim:** This class focuses on Race and Law in the U.S. Legal System; but studying how law has evolved in the U.S. requires us to acknowledge centuries of migration, settler colonialism, war. We come with different backgrounds and knowledge of history. Please browse [A Different Asian American Timeline](#) – you need not read

everything – but read the introduction and skim through the timeline concentrating on time-periods and groups that you may not be familiar with. Despite the title that emphasizes Asian American history, it is not so limited.

**Read:** Race Law pp. 1-66;

*Loving v. Virginia*, 388 U.S. 1 (1967) (pay attention to where the court references “white supremacy”)

Watch: [Report on Loving Case 1967](#) (4 minutes 2 seconds)

## **CLASS 2 - Thursday April 4**

**Topic: Race Classification and Citizenship**

Race, Citizenship and Sovereignty

**Read:** Race Law pp. 255-298

*Dow v. U.S.*, 226 F. 145 (1915)(Are Syrians White?)

*Trump v. Hawaii* (excerpt on CANVAS)

American Indians and Sovereignty

**Read:** Race Law pp. 306-334 (Section discussing *Cherokee Nation v. State of Georgia*)

[Census Statistics on American Indians and Alaska Natives](#)

## **CLASS 3 - Tuesday, April 9**

**Topic: Slavery and Reconstruction**

Slavery, Free Blacks and the U.S. Supreme Court

**Read:** Race Law pp. 113-180

## **CLASS 4 - Thursday, April 11**

**Topic: Slavery and Reconstruction**

The Betrayal of Reconstruction

**Read:** Race Law pp. 181-183, The Emancipation Proclamation, The Freedmen’s Bureau, Race Law pp. 759-761 (all)

**Everyone skim, Assigned groups read:**

p. 202-215 *Slaughterhouse Cases*: **Butchers and Louisiana**

**Group 1:** TBD

p. 215-237 *Cruikshank*: **Prosecutors and Defenders**

**Group 2:** TBD

p. 237-254 Civil Rights Cases: **Inn Owners and Chivalrous Trainriders**

**Group 3:** TBD

**CLASS 5 - Tuesday, April 16**

**Topic: Segregation**

**Read:** Race Law pp. 335-71, 402-419

**CLASS 6 - Thursday, April 18**

**Topic: Segregation**

**The End of State-Mandated Segregation?**

**Read:** Race Law 438-462; 473-495

Watch: [Keep Your Eyes on the Prize Part 2](#) (54 minutes)(Perhaps you had to watch this

**CLASS 7 - Tuesday, April 23**

**Topic: Attempts to Eradicate Inequality; Implementing Race Conscious Policies**

**Read:** Race Law pp. 496-540

[Seattle schools have biggest white-black achievement gap in state](#), May 9, 2016  
Seattle Times

**Watch:**

[Subconscious racial bias in Children](#) (3:53)

[A Look at Race Relations through a Child's Eyes](#) (9:29)

[Kids Speak Their Mind About Race](#) (6:25)

**Listen:** [The Problem We All Live With Part One](#), Nikole Hannah-Jones, This American Life, July 31, 2015 (30 minutes).

## **CLASS 8 - Thursday, April 25**

**Topic: Race in Higher Education, the U.S. Supreme Court and Citizens' Response to Affirmative Action**

**Read:** Race Law pp. 540-570, pp. 640-648 (Point/Counterpoint)

**Read or Listen:** [\*The Rise and Fall of Affirmative Action: With a lawsuit against Harvard, Asian-American activists have formed an alliance with a white conservative to change higher education.\*](#) By Hua Hsu, The New Yorker, October 15, 2018.

[How Minorities Have Fared in States With Affirmative Action Bans](#), The New York Times.

A Discussion on Affirmative Action – Roles to Be Assigned.

## **CLASS 9 - Tuesday, April 30**

**Topic: Segregation and Housing**

**Read:** Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc., 576 U. S. \_\_\_\_ (2015)(Excerpt on CANVAS in Modules/Readings)

[Is the Fight for Fair Housing Over?](#), Kriston Capps, Citylab, August 22, 2018.

**Review:** [Mapping Race in Seattle/King County 1920-2010](#), Civil Rights & Labor History Consortium, University of Washington

**Review Infographic on King County demographics and equity:** [Building Equity and Opportunity](#) (April 2015)

## **CLASS 10 - Thursday, May 2**

Discussion on Reparations: Roles to be Assigned

**Read:** Race Law pp. 184-194

[The Case for Reparations](#), by Ta-nahesi Coates, The Atlantic, June 2014

[The Case for Reparations](#), by David Brooks, NYT, March 7, 2019

[Embrace of reparations highlights pivotal Dem contest for black voters](#), The Hill, 2/26/2019

For Hawaiians- Group 1 Pro and Group 2 Con

For the Japanese Internment Group 3 Pro Group 4 Con

For Slavery – Group 5 Pro and Group 6 Con

**CLASS 11 - Tuesday, May 7**

**Topic: Race and Employment**

**Read:** Race Law pp. 570-575, 628-648

[Segregated Valley: the ugly truth about Google and diversity in tech](#), Julia Carrie Wong, The Guardian, 8/7/2017

**CLASS 12 - Thursday, May 9**

**Topic: Race and Voting**

**Read:** Race Law 599-628

**Listen if you want an easy explanation of Voting Rights Act:** [Who's Allowed to Vote in Georgia?](#) The Daily, NYT, October 22, 2018 (25:15)

[A Vision for Black Lives: Policy Demands for Black Power, Freedom, & Justice](#), Full Access, Guarantees, and Protections of the Right to Vote for All People Through Universal Voter Registration....

**Race and the Criminal Legal System**

**CLASS 13 - Tuesday, May 14**

**Topic: Race and Policing**

**Read:** Race Law, p. 695-702 (OJ & Rodney King), 708-709 (Jordan Davis)

**Skim:** [Investigation of Chicago Police Department](#), USDOJ, January 13, 2017  
[Supreme Court denies bid to resentence Jason Van Dyke in Laquan McDonald murder](#), Chicago Sun Times, March 19, 2019.

[We Can End Police Violence in America](#), Campaign Zero

[Freedom to Thrive: Reimagining Safety & Security in Our Communities](#) – Law 4 Black Lives, The Center for Popular Democracy, Black Youth Project 100 (2017)

Guest Speaker: TBD

**Listen:** [This American Life, Episode 547: Cops See It Differently, Part One](#), February 6, 2015 (59 min)

**CLASS 14 - Thursday, May 16**

**Topic: Race and Policing**

Race and the Criminal Legal System in Washington State

Death Penalty

**Read:** [State v. Gregory](#), 192 Wn.2d 1, 427 P.3d 621, 2018 Wash. LEXIS 696, 192 Wn.2d 1, 427 P.3d 621, 2018 Wash. LEXIS 696

Race, Juries and Cross-Witness Identification

*State v. Allen*, 176 Wash. 2d 611 (2013)

[State v. Saintcalle](#) (2013)

Washington State Courts [General Rule 37](#): Jury Selection

Sentencing Reforms

**CLASS 15 - Tuesday, May 21**

**Topic: Race and Judges**

**Read:** Race Law pp. 641-683

**CLASS 16 - Thursday, May 23**

**Topic: TBD**