

SYLLABUS

RACE AND THE LAW

Room 240A

Fall 2009

Saturdays, 1:15-3:15

Professor Robin K. Magee

As revised in assignments

by Professor Mary Jane Morrison

[this revision date October 12, 2009]

In this seminar, we will examine questions suggested at the intersection of race and law. This course is not, however, simply a class on civil rights law or employment discrimination, although many of the insights that we develop in this course may have some significance to these areas of practice. In this course, we seek out all the locations of race in the law, understanding that race may exist within the law without being explicitly identified as such.

We also attempt in this course to identify, evaluate and develop appropriate legal reactions to these "racialized" places in law. In this way, this course is a course on jurisprudence. We interrogate the underlying assumptions and overt constructions that have influenced how the law and legal actors relate to race.

We will review a variety of materials for this class. Most of these materials will be provided to you in handouts, and made available to you on the assignment shelf on the first floor of the law school. The subject of each class discussion has been noted on your syllabus.

Each student is required to prepare a research paper for this class. Seventy percent of the course grade will be based on the research paper. The other thirty percent will be based on your class participation. You should make every effort to be prepared and attend each class. Absences and a failure to prepare will be considered in determining your final grade in this class. You must restrict your computer use to matters related to the class. An observed or reported non-class-related surfing will garner my attention, and possible grade impact.

Each student will be required to present an outline, draft and final version of the student's research paper. No final version of the research paper will be accepted without a prior draft having been submitted. The draft will not be

graded. Each topic must be pre-approved, and cannot be on a topic discussed extensively in class.

In your papers, you must discuss an issue or issues relevant to race and the law. You may discuss a case or cases, a doctrinal line, statute, or underlying rationales of these "legal incidents." You should take special care to expressly identify the issue(s) of race that you believe are being raised in the "the law." That is, you must answer how it is that the case or doctrinal line presents an issue of race.

You will also need to consider the court's analysis to determine whether the court reached an appropriate decision given the race issue(s) involved. In examining the same, you will need to explore whether the court appropriately identified and applied legal precedent. In conducting this exploration, you must determine whether the court identified and applied the correct precedent or followed the correct doctrinal line. You must, therefore, consider whether a different line of cases might have been more appropriately followed given the nature of the dispute, the presence of the racial issue, etc., and whether the court's application of that particular line of cases was indeed the product of a race-neutral determination. You must also ask whether the court appropriately considered race in analyzing the legal precedent to be employed or in applying the same facts. In addition, you must discuss whether the law is hostile, accepting, or indifferent to racial differences, and how. Finally, you must present a prescriptive for change in the law or in the way the law was applied which might make for a more appropriate decision given the racial issues raised by the decision.

Outlines will be due in September. Drafts will be due in October. The last third of class will be dedicated to student paper presentations. Each student is required to present her or his paper to class in a 45 minute presentation. The presentation will be considered in deciding final grades.

Respect is required in this class. Challenge is necessary. Race can be a difficult topic for some students to discuss. Some students may perceive themselves as living a constant "racialized" existence. Others may perceive themselves as having never experienced "race." For most, this class may present the first class in which they have been invited to scrutinize race and racism-and not merely to react to the concepts emotionally.

The primary text for this class is Juan F. Perea, Richard Delgado, Angela P. Harris, and Jean Stefancic, [Race and Races, Cases and Resources for a Diverse America, 2nd Edition](#) (American Casebook 2007.) Other materials also have been and will be assigned.

I am pleased to have you in class. I hope you enjoy your semester.

ASSIGNMENTS

Seminar in Race and the Law, Fall 2009

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Revised syllabus [mjm's 2d revision, dated 10/12/09]

Reading assignments refer to the casebook for this seminar. Following the discussion at the first class I handled for this seminar—when the syllabus said we were to cover Chapters 4 and 5, but the class had not finished Chapter 2 and not begun chapter 3—and consequent upon the plea from seminar students that we not rush through the reading on the pace Professor Magee originally designated, I have made further revisions to the syllabus to spread out the reading assignments. The syllabus otherwise remains as Professor Magee set it, with the addition of a due date for final drafts of seminar papers: noon, Sunday, December 18, 2009, to the Registrar, with time stamp.

class # 1, AUGUST 15

Identifying Racial Incidents.

Questions for discussion: Are the legal or government-produced incidents appearing in the assigned readings "racial? Do they represent racial incidents of law or as we prefer to call them in this class, "race cases?" In identifying the racial incidents, be mindful and prepared to discuss your operating definition(s) of race? Related, what must be the circumstances of a racial appearance for its appearance in law to qualify the legal incident as a race case?

Retrieve and read Fisher v. Carrousel Motors Hotel, Inc., 424 S.W.2d 627 (1967), Employment Div., Dept. of Human Res. V. Smith, 494 U.S. 872 (1990), St. Francis College v. Al-Khazraji, 481 U.S. 604, 55USLW 4626 (1987) Pierson v. Post, 3 Caines 175 (N.Y. Sup. Ct.1805). Also, read the U.S. Constitution and the Declaration of Independence. Finally, examine the dollar bill.

class #2, AUGUST 22

What is "race?"

Pre-class exercise: In a paragraph identify your race and on what do you rely in identifying your race. Be prepared to share this with the class and hand in at the end of class.

Read R&R, Chapter 1, Section 2.

Read Mahmoud El-Kati, Myth of Race: the Reality of Racism. (Handout.)

class #3, AUGUST 29

What is "racism?" What is its relation to "prejudice" and "invidious racial discrimination?"

Read, R&R, Chapter 1, Section 1.

Also, read the Executive Summary of the Minnesota Supreme Court Task Force on Racial Bias in the Judicial System, 16 HamLR 488 (1993) (approx .29 pages)

[Labor Day break]

class #4, SEPTEMBER 12—PAPER TOPIC DUE

Exercise/Discussion: Identify the distinguishing characteristics of "racial groups" featured in the assigned reading.

Read R&R, Chapters 2 and 3.

class #5, SEPTEMBER 19

Research and identify the standards of discrimination under Title IX, the American with Disabilities Act, and for gender discrimination under Title VII. Compare, contrast and be prepared to discuss. [WE CAUGHT UP]

class #6, SEPTEMBER 26

Read R&R Chapter 4, Latinos/as

class #7, OCTOBER 3-- PAPER OUTLINES ARE DUE THIS WEEK.

Read Chapter 5, Asian Americans

class #8, OCTOBER 10

White privilege and Supremacy?

Read Chapter 6

OCTOBER 17—FALL BREAK

DRAFTS ARE DUE OCTOBER 22. SEND BY EMAIL AND HARD COPY IN MY MAILBOX BY NOON.

class #9, OCTOBER 24

EQUALITY?

Question: What are the racial aspirations—the driving considerations relating to law and race? Is racial equality an aspiration? If so, what changes, declarations, if any, would be required to achieve such racial equality?

Read Chapter 7

SEND DRAFTS TO CLASS MEMBERS THE WEEK BEFORE YOUR PRESENTATION.

PREPARE TWO QUESTIONS FOR EACH PRESENTER.

class #10, OCTOBER 31

The seminar will not meet formally this week. Instead, I will meet with seminar members individually, by appointment.

class #11, November 7

RACIAL HARMONY? Read Chapter 14

Question: Is racial harmony, rather, the legal aspiration for race? If so, what changes, declarations, if any, would be required to achieve such racial harmony?

30 minute presentation by _____ Ms. Knutson_____

class #12, November 14

30 minute presentation by _____ Mr. FitzGerald_____

30 minute presentation by _____ Ms. Hudock_____

30 minute presentation by _____ Ms. Pearson_____

class #13, November 21

30 minute presentation by _____ Mr. Mesa_____

30 minute presentation by _____ Ms. Ahmed-Osman_____

30 minute presentation by _____ Mr. Emro_____

FINAL DRAFTS DUE BY EMAIL AND HARD COPY IN MY MAILBOX (LAW 206W) NOT LATER THAN NOON, DECEMBER 18, 2009.