

## CRITICAL LEGAL THEORY

### **Professor Gilda Daniels**

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**Office Hours:** Tuesdays and Thursdays, 5:30 to 6:30 p.m. or by appointment.

*Please read this syllabus carefully, before the first class, to understand the course requirements. Prepare DQ Assignment 1 **before** the first class.*

### **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 various 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, and identify possible race, gender, socioeconomic implications that may present themselves in various hypotheticals or fact patterns. I will use a number of teaching methods, such as group activities and simulations to assist in learning the material. Written discussion questions, a midterm and final exam will provide the basis for your final grade in this course.

Additionally, this course will assist in developing many measureable core competencies, such as:

#### **JUSTICE, PROFESSIONALISM, AND ETHICS**

Development of professional values, including judgment, reflectiveness, and decision-making; professional interpersonal skills, and cultural sensitivity.

## SUBSTANTIVE KNOWLEDGE

Knowledge of doctrinal law, including its history, theory, policy, and context.

## FUNDAMENTAL LAWYERING SKILLS

Critical thinking, including critical analysis of law; problem solving, persuasion, and rhetoric.

## Reading Materials

**Required Text.** Students are *required* to bring the following text to each class:

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

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 textbook will appear in the “Course Materials” page. You’ll first need to register your password, by going to [www.lawschool.westlaw.com](http://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

This course is subject to the mandatory first year grading curve. I will base your final grade on completion of the Discussion Questions (10 points), a midterm (20 points) and a final exam (70 points) for a total of 100 points.

Midterm and Final Exams. The primary method of grading will involve a midterm and a final exam. The midterm exam is tentatively set for **September 24, 2015** and worth twenty (20) points. The final exam is comprehensive and worth seventy (70) points. I have placed sample exam questions and answers on TWEN.

Discussion Questions. Most classes have a corresponding set of Discussion Questions on TWEN. You are required to complete and submit answers to the Discussion Questions for five (5) classes, one set per unit. (See the Syllabus below.) You should submit your answers to the *Assignment Drop Box* on this course’s TWEN site. *Everyone is required to submit the Discussion Questions for the first two classes. They will not, however, count towards your five required submissions.* Your DQs are due by 7 p.m. for the corresponding class in the

*Assignment Drop Box* on TWEN. The DQs are worth a total of ten (10) points toward your final grade.

## **Attendance**

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.

## **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.

Leaving class, no re-entry. If you leave class early without permission or without a genuine emergency, you may be counted absent. In addition, you may not reenter the room until class is over.

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.

## 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.

<b>Class</b>	<b>Subject</b>	<b>Reading Assignment</b> (Discussion Questions on TWEN)
<b>UNIT I</b>	<b>Critical Observations: Introduction to Critical Legal Theory</b>	Kairys, pp. 1-17  “Can ‘robe-itis’ be prevented?” by Danny Jacobs, Daily Record Legal Affairs Writer, October 24, 2014, found at: <a href="http://thedailyrecord.com/2014/10/24/can-robe-itis-be-prevented/#ixzz3JyZ5TKc6">http://thedailyrecord.com/2014/10/24/can-robe-itis-be-prevented/#ixzz3JyZ5TKc6</a>  <b>DQ Assignment 1</b>
	Introduction to Judicial Approaches	<i>DeShaney v. Winnebago County Department of Social Services</i> (TWEN) Article: <i>A Second Chance for Joshua</i> (TWEN) <b>DQ Assignment 2</b>
	A. <u>Legal Formalism: Its Norms and Process of Analysis</u>	Scalia, <i>Common Law Courts in a Civil Law System</i> (TWEN, pp. 79-88) Neuborne, <i>Of Sausage Factories and Syllogism Machines</i> (TWEN) <i>Riggs v. Palmer</i> (TWEN)  <b>DQ Assignment 3</b>
	B. <u>The Legal Realist Critique of Formalism</u>	Kairys, pp. 23-48 <i>Jones v. Barnes</i> (TWEN) Thurgood Marshall’s Bicentennial Speech (TWEN)

		<b>DQ Assignment 4</b>
	C. <u>Law and Morality</u>	Ronald Dworkin, <i>Lord Patrick Devlin, The Enforcement of Morals</i> , Yale Law Journal (1966) (TWEN)  Excerpt from <i>Bowers v. Hardwick</i> (TWEN)  Excerpt from <i>Lawrence v. Texas</i> (TWEN)  <b>DQ Assignment 5</b>
<b>Unit Review</b>	D. <u>Examining Judicial Opinions Through a Different Lens</u>	<i>Ledbetter v. Goodyear Tire &amp; Rubber Co.</i> , 550 US 618 (2007)(TWEN)  “Obama Makes Empathy a Requirement for Court,” <i>The Washington Post</i> , May 13, 2009 (TWEN) <b>DQ Assignment 6</b> Unit Review_Hypo_Judicial Approaches (TWEN)
<b>UNIT II</b>	<b>CRITICAL RACE THEORY</b>  <u>Introduction to Critical Race Theory</u>	Kairys , 279-84; 285-311 Roy Brooks, <i>Critical Race Theory: A Proposed Structure and Application to Federal Pleading</i> (TWEN) Derrick Bell, <i>The Chronicle of the Constitutional Contradiction</i> (TWEN)  <b>DQ Assignment 7</b>
	A. Race: The Power of an Illusion	<i>Doe v. Louisiana</i> <i>People v. Hall</i> Race _The Power of an Illusion  <b>DQ Assignment 8</b>

	B. Critical Race Theory: Methods	Critical Race Theory_ Themes, excerpt from <i>Critical Race Theory: An Introduction</i> , Delgado and Stefancic Charles R. Lawrence III, <i>The Id, The Ego, and Equal Protection: Reckoning with Unconscious Racism</i>  <b>DQ Assignment 9</b>
	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>  Critical Race Theory_ Storytelling, excerpt from <i>Critical Race Theory: An Introduction</i> , Delgado and Stefancic. (TWEN)  <b>DQ Assignment 10</b>
<b>Unit Review</b>	<b>Critical Race Theory</b>	Unit Review_Hypo_Critical Race Theory (TWEN)
<b>UNIT III</b>	<b>FEMINIST LEGAL THEORY</b>  <u>Introduction to Feminist Legal Theory</u>	Feminist Legal Theory _An Introduction Feminist Legal Theories (TWEN) Ginsburg article on TWEN  <b>DQ Assignment 11</b>
		Kairys, pp. 329-351 Feminist Legal Methods (on TWEN)

	A. Feminist Theories and Methods	<i>United States v. Virginia</i> (on TWEN)  <b>DQ Assignment 12</b>
	B. Feminist and Intersectionality	Kairys, pp. 356-364, 374-75. Intersectionality (on TWEN) <i>Moore v. National Association of Securities Dealers</i> (on TWEN)  <b>DQ Assignment 13</b>
<b>UNIT REVIEW</b>	C. Feminist Legal Theories, continued	Unit Review_Hypo_Feminist Legal Theory (TWEN)
<b>UNIT IV</b>	<b>SOCIOECONOMICS</b>  A. <u>Socioeconomics and the Development of Law</u>	Kairys, pp. 569-580 <i>Wyman v. James</i> (on TWEN)  <b>DQ Assignment 14</b>
	B. <u>Critiques of the Delivery of Legal Services</u>	David K. Shipler, <i>A Poor Cousin of the Middle Class</i> , NY Times, January 18, 2004 (on TWEN)

		<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><b>DQ Assignment 15</b></p>
	C. <u>Alternative Dispute Resolution</u>	<p>Menkel-Meadow, Carrie, "The Trouble with the Adversary System in a Postmodern, Multicultural World," 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><b>DQ Assignment 16</b></p>
	D. ADR Role Play	ADR Role Play (TWEN)
<b>UNIT REVIEW</b>	E. Socioeconomics, continued	Unit Review_Hypo_Socioeconomics
<b>UNIT V</b>	<p><b>CRITICAL THEORIES: COURSES/SUBSTANTIVE AREAS</b></p> <p>A. <u>Constitutional Law</u></p>	<p>Kairys, <i>Freedom of Speech</i>, pp. 190-203, 208-211</p> <p><i>Citizens United v. Federal Election Commission</i> (on TWEN)</p> <p><i>Snyder v. Phelps</i> (on TWEN)</p> <p><b>DQ Assignment 17</b></p>

	B. <u>Civil Procedure</u>	<p>Kairys, <i>Politics and Procedure</i>, pp. 79 – 94;  <i>Walker v. Birmingham</i>, 388 US 207 (1967)(on TWEN);  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>, (excerpt on TWEN.)</p> <p><b>DQ Assignment 18</b></p>
	C. <u>Property</u>	<p>KAIRYS, <i>Property</i>, pp. 240-41; 254-257  <i>Kelo v. City of New London</i>, 125 S. CT. 2655 (2005)(on TWEN)</p> <p><b>DQ Assignment 19</b></p>
	D. <u>Criminal Law</u>	<p>Kairys, pp. 381-388, 393-402  Kairys, pp. 410-418,424-429  <i>State v. Russell</i></p> <p><b>DQ Assignment 20</b></p>
	E. <u>Voting Rights</u>	<p><i>The Modern Day Literacy Test?: Felon Disenfranchisement and Race Discrimination</i>, 57 Stan.L.Rev. 611 (2004)  The Democracy Restoration Act of 2014 (TWEN)</p> <p><b>DQ Assignment 21</b></p>
	Review Session	Practice Final Exam