COURSE STUDY GUIDE

SELECTED TOPICS IN AUSTRALIAN-UNITED STATES COMPARATIVE LAW

COMPARATIVE RACE LAW

LAWS2257

Summer, 2015

THIS GUIDE CONTAINS IMPORTANT INFORMATION ABOUT THE COURSE.

PLEASE READ IT CAREFULLY.
1. Contact Information

Role: Course Convenor /Lecturer
Name: Anne Macduff
Room: 162
Telephone: 6125 6085
Email: anne.macduff@anu.edu.au
Consultation times: TBA

Role: Lecturer
Name: Professor Bryan Fair
Room: TBA
Telephone: TBA
Email: bfair@law.ua.edu
Consultation times: TBA

2. Class Schedule

This intensive course will run from Monday 6 January to Thursday February 5, 2015 (inclusive). Classes will be held between Tuesday January 6 and conclude on to Thursday February 5, 2015. Classes will be held in the afternoons on Tuesdays, Wednesdays and Thursdays from 3 until 6pm. There will be no classes on Fridays - Mondays. All classes will be held at the University of Alabama law school.

Classes will be delivered in a seminar format. Small class numbers will allow extensive in-class discussion of issues. There will be a number of activities conducted during class time, including a group research activity and a group student presentation. There will be no tutorials in the course, but there may be occasional guest lectures and/or field trips or excursions.

3. Texts and Materials

There is no prescribed text for this course. Materials will be distributed in class and/or posted to the course website or a shared drop box. Students will also be encouraged to find their own materials which are relevant to their group discussion topic and research projects.

4. Preliminary Activity/ Reading

Pre- course activity:

Before the first class, please talk with your family or friends about how race has impacted on their lives. Ask them what ‘race’ means to them. Do they identify as having a particular ‘race’? If so, which one/s? What impacts (if any) has ‘race’ and racial identification had on their life experiences?

Pre- course reading

There is no pre-course reading. However, a recommended reading guide will be provided to students to assist with their research and other group work. If you would like to commence this reading before class, you are welcome to do so.
5. Course Description and Rationale

This later year law elective is taught as part of the ANU – University of Alabama (UA) exchange. In addition to ANU students, participants in the course also include UA law students. While there are no prerequisites for this course, this comparative course aims to build upon a student’s developing knowledge of legal systems generally and provide an opportunity to examine a particular legal area in more depth through comparison with laws from the US jurisdiction.

Each year, the course has a number of broad objectives. First, the course is designed to give students a broad understanding of key features of the Australian and US legal systems in comparative perspective by focussing on a selected area of law. Second, the course is designed to give ANU students a cross-cultural experience, by providing an opportunity to engage with law students from the US. Third, this course provides students with an opportunity to undertake an in-depth research essay, developing skills in question setting, independent research, and undertaking a longer written argument than what is usually offered in other law subjects. As such, this course may be helpful preparation for those students interested in enrolling in Honours.

In 2015, the selected area of law will be comparative race law. This course will aim, in addition to the general objectives, to provide an opportunity to develop students’ critical and theoretical perspectives on the law, and to consider the issue of race and the law in more depth through a trans-historical and transnational perspective. As such, it may appeal to students interested in social change and law reform, indigenous peoples and the law, multiculturalism and critical legal studies.

6. Course Objectives and Expected Learning Outcomes

On the successful completion of this course students should be able to:

1. In relation to a selected topic, identify and critically analyse the similarities and differences between Australian and US law.
2. Identify, and use a variety of legal research sources in both the US and Australian jurisdictions to research a comparative legal issue or question.
3. Design, plan and execute a substantial legal research project or essay, with intellectual independence.
4. Apply appropriate legal citation conventions in the course of legal writing.
5. Discuss and critically debate knowledge and ideas effectively in a cross-cultural context.
6. Identify and appraise different comparative law methodologies that could be applied to compare and evaluate aspects of US and Australian law.

7. Course Content

Knowledge

Through an analysis of key legal decisions, this course will examine the issue of race. These cases will be drawn from US law and Australia law, and will be drawn from different points in time. The course will consider how race is articulated in a number of different areas of law,
including constitutional law, property law, criminal law, immigration law, citizenship law, human rights and discrimination law. A comparison between these areas of law and key issues in race relations in the Australian and the US contexts will be made, noting similarities, differences, as well as emerging and re-emerging themes over time. Alternatives and options for legal change and reform in these areas will be identified and considered.

### Class Outline

<table>
<thead>
<tr>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Week beginning</strong></td>
</tr>
<tr>
<td><strong>January 5, 2015</strong></td>
</tr>
<tr>
<td><strong>Tuesday 6 January 3-6 BF and AM</strong></td>
</tr>
<tr>
<td>Opening conversation:</td>
</tr>
<tr>
<td>Who are we? Why are we here? What experiences bring us to studying comparative race law and equality at the ANU?</td>
</tr>
<tr>
<td>Introductory exercise: Looking at privilege.</td>
</tr>
<tr>
<td>Life on the colour line- examining our personal narratives about race.</td>
</tr>
<tr>
<td>Introductory exercise: Looking at identity</td>
</tr>
<tr>
<td><strong>Wednesday 7 January 3-6 AM</strong></td>
</tr>
<tr>
<td>What is Race? Legal Definitions of Race in Australia</td>
</tr>
<tr>
<td><strong>Thursday 8 January 3-6 BF</strong></td>
</tr>
<tr>
<td>What is Race? Legal Definitions of Race in the US</td>
</tr>
<tr>
<td><strong>Tuesday 13 January 3-6 AM</strong></td>
</tr>
<tr>
<td>The construction of national identity: Law colonisation, citizenship and immigration</td>
</tr>
<tr>
<td><strong>Wednesday 14 January 3-6 BF</strong></td>
</tr>
<tr>
<td>The construction of national identity: Law colonisation, citizenship and immigration</td>
</tr>
<tr>
<td><strong>Thursday 15 January 3-6 AM</strong></td>
</tr>
<tr>
<td>What is Equality in Australia</td>
</tr>
<tr>
<td><strong>Tuesday 20 January 3-6 AM</strong></td>
</tr>
<tr>
<td>What is the impact of Australian anti-discrimination law?</td>
</tr>
<tr>
<td><strong>Wednesday 21 January 3-6 BF</strong></td>
</tr>
<tr>
<td>What is Equality in the US?</td>
</tr>
<tr>
<td><strong>Thursday 22 January 3-6 BF</strong></td>
</tr>
<tr>
<td>What is the impact of US anti-discrimination law?</td>
</tr>
<tr>
<td><strong>Tuesday 27 January 3-6 AM and BF</strong></td>
</tr>
<tr>
<td>Emerging comparative themes and Issues</td>
</tr>
<tr>
<td>Comparative methodologies</td>
</tr>
<tr>
<td>Review of group discussion topics</td>
</tr>
<tr>
<td>Begin group work- Preparation for group presentation</td>
</tr>
<tr>
<td><strong>Wednesday 28 January 3-6 AM and BF</strong></td>
</tr>
<tr>
<td>Preparation for group presentation</td>
</tr>
<tr>
<td><strong>Thursday 29 January 3-6 AM and BF</strong></td>
</tr>
<tr>
<td>Preparation for group presentation</td>
</tr>
<tr>
<td><strong>Tuesday 3 February 3-6 AM and BF</strong></td>
</tr>
<tr>
<td>Group presentations</td>
</tr>
<tr>
<td><strong>Wednesday 4 February 3-6 AM and BF</strong></td>
</tr>
<tr>
<td>Group presentations</td>
</tr>
<tr>
<td><strong>Thursday 5 February 3-6 AM and BF</strong></td>
</tr>
<tr>
<td>Group presentations</td>
</tr>
<tr>
<td>Student presentations of proposals for research essays</td>
</tr>
<tr>
<td>Concluding discussion</td>
</tr>
<tr>
<td><strong>Social event evening</strong></td>
</tr>
<tr>
<td>Course dinner: TBC</td>
</tr>
</tbody>
</table>
Skills/ Other Graduate Attributes

- Creative and reflective thinking
- Originality and risk taking
- Giving and receiving positive feedback
- Working as part of a team
- Impact of the law, social justice and law reform
- Respect and Compassion

8. Teaching and Learning Approach and Activities

Due to the intensive, interactive, and cross cultural nature of this course, attendance and engagement in all classes is compulsory. While no course mark will be awarded for attendance and participation, you will be penalised if you are absent without a reasonable excuse. (Please see assessment for more details.) Moreover, the course will not be digitally recorded. If you miss a class for an acceptable reason (see ANU College of Law policy) the lecturers will endeavour to assist you to catch up.

Creative, critical and original insights are valued and encouraged. Students will be supported to engage in class discussion and group work. Students are invited throughout the course to develop their opinions and their persuasive capacities through respectfully engaging with, debating, disagreeing and negotiating with the lecturer/s and each other. Students will be assisted to achieve high standards of written communication through prompt, specific and thorough feedback on their research work.

Seminars

The first 10 classes will be run in a seminar format. This means that while the lecturers will introduce you to material about the issue and in the area of law, the lecturers will be continuing to engage in class conversation. They will be using discussion points to develop students thinking on the topic. The more willing and often students are to ask questions and respond to questions, the more students will gain from the course.

Online Activities

There will be a wattle site for the course. This site will have links to any materials distributed and required or recommended reading or other resources. Course announcements will be made using the wattle site. A discussion forum will be made available for students to use and discuss issues during, but particularly after the course concludes in Alabama.

Other Activities

There will be a number of activities conducted during class. There will be an opportunity to undertake a comparative research task in groups in the second week of class.
9. Study requirements and expectations

It is expected that students will engage with the course content through active participation in class discussion and other class activities. The highest standard of mutual respect and professionalism in communication is expected from all participants in the course. As a cross-cultural experience, students should demonstrate their skills in cross-cultural communication. This includes an ability to listen carefully, to debate respectfully, and at times, to agree to disagree.

Given the intensive nature of the course, the required reading has been carefully identified. It is understood that students will have limited opportunity to read at the same time as the classes are being conducted. Therefore, if required reading or other activities have been identified this reading is essential to consider BEFORE the class in order to facilitate class discussion. It is anticipated that during the course, students will not need to read more than approximately 6 hours per week outside class time. (2 hours of reading preparation for each 2 hour class.)

Once classes have finished, it is expected that students will read the relevant recommended readings and go beyond the materials listed in the study guide for the comparative research essay. This will of course take time and students will be expected to work independently. However, the lecturer/s will be available for consultation by appointment. A high level of research skills, written expression and analysis is expected to be demonstrated in the research essay as this is a later year law elective.

10. Assessment

The ANU is using Turnitin to enhance student citation and referencing techniques and to assess assignment submissions as a component of the University's approach to managing Academic Integrity. For additional information regarding Turnitin please visit the ANU Online website http://online.anu.edu.au/turnitin.

Students may choose not to submit assessment items through Turnitin. In this instance you will be required to submit, alongside the assessment item itself, copies of all references included in the assessment item.

Assessment Summary:

The scheme of assessment comprises two compulsory and non-redeemable parts: participation in discussion and exercises during the course (worth 20%), and a substantive research essay (worth 80%) completed after return to Australia.

Each part will provide students with an opportunity to demonstrate whether or not they have addressed the learning objectives and outcomes listed in the course outline above. The consequences of non-completion of each of these three parts are explained below.

**Part A: Attendance and participation (20%)**

*Attendance*

This is an intensive, cross-cultural and interactive course. While there are no positive marks for class attendance, failure to attend 75% of classes will result in a NCN result.
Participation in a group presentation (20%)

This activity will take place from **Tuesday 27th January 2015 to Thursday 5th February**. For this task, students will be assigned into groups. Each group will be assigned a topic. The topic will require comparative legal research on an area of race and equality law. The group will then prepare a seminar with a maximum duration of 45 minutes. Each student must speak for at least 5 minutes, The group presentation as a total cannot exceed 30 minutes as there must be at least 15 minutes for class discussion and questions. The presentations will be scheduled on either Tuesday 3rd, Wednesday 4th or Thursday 5th February.

Part B Research Essay of 4000 words (80%)

Completion of the research essay will require satisfactory performance at each of 5 different stages. These 5 stages simulate best-practice process for writing a substantial piece of research and each step is compulsory. Failure to complete any of the stages to a satisfactory standard as identified by the lecturer in accordance with the marking criteria will require resubmission of that work. If resubmitted work for any of the stages is still assessed as unsatisfactory, then this will result in an NCN for the whole course. While there is some flexibility for extension in stages 1, 2 and 5 of the assessment, there is no flexibility for stages 3 and 4. For this reason, unless special circumstances apply, failure to meet stages 3 and 4 by the due date will result in an NCN for the course.

1. Oral presentation of research proposal to the class (**Thursday 5th February**)
2. A written outline of research proposal submitted (**Friday 6th March midnight**)
3. A draft of the research essay for review plus a self evaluation against a rubric posted on ANU course Wattle site (**Friday 17th April midnight**).
4. Verbal feedback to 2 other students on their drafts (engaging in review) given during a meeting to be arranged at some point in the two week period from **Monday 20th April- Friday 1st May**.
5. Final research essay submitted on ANU course Wattle site (**Friday May 15th, midnight**.)

Further details of the assessment and the marking criteria are set out below.

Assessment details:

A) Attendance and participation:

Students are expected to attend and actively participate in all classes and class activities.

Failure to attend class- penalties

Failure to attend at least 75% of total class time will result in an NCN grade, except in exceptional circumstances as determined by the lecturer/s. Students are advised to consult the ANU College of Law LLB and JD Handbook concerning special consideration which may be applicable where the student is experiencing difficulty completing assessment tasks for recognised, serious reasons.

This assessment addresses learning outcomes 1, 2, 5 and 6.
B) Group presentation (worth 20% of the total mark for the course)

On **Tuesday 27 January**, students will be assigned a small group to work with (2-3 students). Wherever possible and depending on class numbers, the small groups will include students from both the University of Alabama and the ANU.

Each group will be assigned a topic. Topics will be proposed by the lecturers, although there will be some flexibility to suggest, modify and/or develop topics through negotiation. It is hoped that groups will be able to have some choice about the topic that they will research and present. (A list of proposed topics is included below.)

Each group will prepare a presentation that addresses their topic. This presentation will be given to the class on either **Tuesday 3rd or Wednesday 4th or Thursday 5th February** as advised by the lecturer/s.

In preparation for the group presentation, each group will be expected to:

- Undertake some comparative legal and social research. (Some class time will be allocated for this purpose. See below.)
- Identify and consider some key cases and examples that are relevant to their topic in both the US and Australian legal systems. Assistance in identifying relevant cases will be provided by the lecturers.

The presentation should:

- be engaging and interesting. While a group may prepare a speech, simply reading aloud your notes should be avoided. Engagement of the audience will be an important dimension to your presentation.
- last approximately 45 mins (or as advised by the lecturer/s). Each member of the team will speak for a minimum of 5 minutes. The group should also allow at least 15 minutes for general class discussion and debate.
- address the following points:
  - explain how the presentation addresses the topic,
  - focus on and explain 1-3 key cases and/or examples that address the topic from each jurisdiction,
  - discuss the significant similarities and differences in the approaches to the topic between the 2 jurisdictions,
  - evaluate the approaches of both jurisdictions, including benefits, limitations, specific contextual factors other unique issues, etc,
  - offer a proposal about how to resolve the topic; including but not limited to an evaluation of the current approaches, the creation of an alternative 3rd approach (i.e. an approach not evidenced in either jurisdiction), an assessment of which approach would be most advantageous and why, and/or practical legal solutions and/or reforms.

A total of 6 hours of class time on the 28th and 29th January will be allocated to researching and preparing the presentation in your allocated group. During this time, the lecturer/s will be available for assistance, support and advice.

**Marking Criteria for Group presentation**

Each student will be assessed individually. Each student will be assessed on the quality of the content, the quality of the delivery, and the overall persuasiveness of the case they are responsible for presenting.
Indicators of Quality of Content:

- Is the topic and how it will be addressed clearly identified?
- Relevance of the chosen legal cases or examples and the clarity with which this relevance is explained. (It isn’t necessary to present an analysis of a large number of cases – even 1-2 cases from each jurisdiction may be sufficient depending on the topic. Students should seek advice from the lecturer/s if they have any questions.)
- Clarity and accuracy of the explanation of the legal cases or other resources (including empirical research).
- An appropriate balance of both US and Australian legal examples.
- Depth with which the team investigates the topic.
- Identification of a list of similarities and differences which is supported by evidence.
- A conclusion drawn from the comparative analysis which is linked to the evidence presented in the presentation.
- A well-supported proposal/ recommendation/ argument which furthers thinking on the topic.

Indicators of quality of delivery

- Extent to which the speakers speak clearly and appropriately
- Extent to which the speakers engage the audience
- Extent to which the presentation is persuasive
- Extent to which the group engages with the questions and debate with the class

Indicators of teamwork

- Logical structure for presentation, for example is there a natural flow between all the speakers?
- Extent to which the group addresses the criteria as a whole.
- Degree to which the team makes a persuasive overall case and draws upon the presentations by each speaker.

Self-Assessment and reflection on experience

Each individual will be assessed according to their performance against the marking criteria above. In addition, at the end of the group presentations, each student will be invited to provide further information about the experience of the group activity from their perspective, in the form of a self-assessment. This will involve making some observations about their own performance according to a group work rubric.

This assessment will address learning outcomes 1, 2, 5 and 6 of the course.

c) Comparative Research Essay (worth 80% of total course mark)

Students will be required to research and write a substantial comparative research essay on a topic of their choice, as agreed with the lecturer/s. Students are encouraged to pursue their individual interests. The essay will constitute a substantial piece of independent research work. There are 5 stages to this piece of assessment. Each stage is compulsory. If the work
at any stage is unsatisfactory according to the marking criteria, then students will have an opportunity to resubmit the work for that stage. If the work is still unsatisfactory, then this will result in an NCN for the course. More detail about each of the stages and the marking criteria are included below.

a) Oral presentation of proposal for comparative research essay: due Thursday 5 February

To assist in developing a suitable topic for the research essay, students must give a short presentation about their project in the last week of class or as otherwise arranged.

The presentation will be given to the class on Thursday 5th February, or as otherwise advised. This will apply to both UA and ANU students. The presentation will be in the format of a “work-in-progress” report and will be about 10 minutes in duration.

The presentation should do the following:

- outline the legal issue or problem that the student wishes to research and why,
- explain why the issue is interesting and important in both the US and Australian jurisdictions,
- identify at least 3 main theorists or resources (cases, legislation or empirical research) which the student anticipates drawing upon to discuss or analyse the issue, and explain the relevance of these sources,
- identify early questions/ concerns or problems encountered with the research undertaken to that point.

The presentation will also provide students with an opportunity to ask questions of the lecturer/s, discuss problems, and receive feedback.

There will be no mark given to the presentation. You will be informed only whether the presentation is unsatisfactory or satisfactory. A presentation that addresses the above dots points will be satisfactory. The assessment of your presentation will be communicated to you either verbally, or by student email.

If your presentation is unsatisfactory, then it will be possible to do another presentation for the lecturer alone, at a mutually convenient time. Any second attempt must be made within the following weeks and no later than Tuesday 3rd March.

If the second attempt is also unsatisfactory, this will result in an NCN for the course (unless special circumstances apply).

b) Written outline of your comparative research essay proposal due Friday 6th March

The outline will be approximately 800 words. The outline will be due one month after the presentation on Friday 6th March.

The outline should;

- include an outline of the legal issue or problem that the student wishes to research,
- explain why the issue is interesting and important in both the US and Australian jurisdictions,
identify the main theorists and/or resources (cases, legislation or empirical research) which the student anticipates drawing upon to discuss or analyse the issue, and explain the relevance of these sources.

The outline may also include:

- a proposed outline of how the essay will be written (ie sections)
- a summary of the arguments that will be developed

There will be no marks given to the written outline of the research essay, only an indication of whether it is satisfactory or unsatisfactory. If it addresses the above dot points, it will be considered satisfactory. The assessment of your outline will be communicated to you either verbally, or by student email.

If your outline of your proposal for the research essay is assessed as not satisfactory, further negotiations with the lecturer will be necessary. You will be notified if your proposal is not suitable by student email by Friday 13th March. Any modifications to a research essay outline must be incorporated into the proposal and resubmitted to the lecturer, or as negotiated with the lecturer. If re-submission of the proposal is required, the date for resubmission will be Friday 20th March. Approval will be communicated to students in a manner advised by the lecturers by Friday 27th March.

A student whose research project is not approved after re-submission will not be able to submit the research essay. This will result in an NCN for the course (unless special circumstances apply).

c) Submission of a developed draft of the comparative research essay within small student groups, accompanied by a self-assessment by Friday 17th April.

The lecturer will place the ANU students into small groups using the wattle course site. The selection of the groups will be based largely on numbers and areas of interest. You will be asked to post two documents to this group by Friday 17th April. First, you will need to post a developed draft of your comparative research essay. Second, you will include a completed self-assessment of your draft research essay. A rubric identifying in some detail the criteria for self-assessment will be supplied to students for this self-assessment purpose.

Due to the tight time frames involved, extensions will not be possible. If you fail to submit both documents to your group on wattle by the due date, this will result in an NCN for the course (unless special circumstances apply).

d) Verbal and written feedback to 2 other students’ essays addressing the marking criteria in the period between Monday 20th April and Friday 1st May.

Each student must then read at least two other draft essays. They must provide constructive feedback on each draft verbally in a meeting of the students and the lecturer. Principles and guidelines will be provided to all students to assist them to do this in a professional manner. The feedback meeting will be arranged at a mutually suitable time, but will be held in the period between 20th April and 1st May.

Due to the tight time frames involved, extensions will not possible. If you fail to submit either set of feedback on your peers’ drafts by the due date, this will result in an NCN for the course (unless special circumstances apply).
e) Research Essay (worth 80% of the mark for the course): Friday 15th May

The format for the essay will be consistent with a refereed journal. The word length for the research essay will be 4000 words, 12-point font and double-spaced. The word count will be determined by electronic calculation as applied to the body of the essay excluding footnotes and bibliography. Footnotes will be for citation and technical elaboration only, and not for extended discussion. Word limit and lateness penalties as set out in the ANU College of Law LLB and JD Handbook will apply. Extensions for the due date of the research essay may be sought in special circumstances. Any extensions must be approved by the lecturer.

The essay will be submitted via the Turnitin assignment dropbox in the ANU course wattle site.

Marking Criteria for Research Essay

1. **Analysis** - Your ability to fully analyse and evaluate the problem(s) presented in a critical and original manner. Your knowledge of applicable legal rules and your ability to discuss those rules. As this is a comparative course, students will also be assessed on their ability to engage with both Australian and US legal sources (and may also consider other jurisdictions if relevant). For Australian and US law, ability to understand the similarities and differences of the legal systems within which the laws operate is essential. Creative analysis of important and/or interesting issues is encouraged. An appropriate comparative methodology should be selected and used.

2. **Research** - You are expected to conduct independent research (i.e. beyond the materials identified by the lecturer) which should be evident in the text and references of your essay. You should go beyond the resources drawn upon in the course and course outline. Appropriate use of primary and secondary authority is important. A bibliography, which will not count towards the word limit, must be included. The difficulty of the research topic and extensiveness of the research undertaken will be considered and weighted appropriately.

3. **Structure** - The essay must follow a logical structure. Your essay should have an introduction in which the approach to the assignment topic is set out and in which key parts of the assignment are flagged for the reader. Each section of the essay should lead logically to the next. Use of subheadings is advisable. The essay should lead to clear and well-supported conclusions.

**Literacy** - The assignment should demonstrate the writing and literacy skills appropriate for submission to a refereed law journal. Typographical errors, spelling mistakes and the like reduce the quality of written work and will lead to a lower mark. Appropriate citation conventions should be used (ie the Australian Guide to Legal Citation, third edition, 2010).

Date for return of marked essays: Monday 1 June 2015.

This assessment will assess learning outcomes 1, 2, 3, 4, 5 and 6.

**General statement on assessment**

All classes (but particularly tutorials and seminars) are intended to give students the opportunity to undertake tasks and to engage in discussion in ways that are directly relevant to the various assessment tasks that they will be required to undertake in the course. Responses from tutors, teachers and class-mates should be regarded as valuable feedback to students about their understanding of and progress in the course.

Students will be advised that their marked work is ready for collection via the Services Office web page at [http://anulaw.anu.edu.au/servicesoffice/undergraduate-assessment](http://anulaw.anu.edu.au/servicesoffice/undergraduate-assessment). Please do not go to the Services Office for your work until this notification has been posted.
In accordance with the University's Principles for Determination of Systems of Assessment the course coordinator or lecturer will discuss with and explain to students the assessment system in classes during the first two weeks of the semester.

Information about the College’s rules and policies about assessment—including special consideration and special and supplementary examinations, penalties associated with exceeding word lengths and lateness—is contained in the LLB &JD Handbook – available in hard copy from the Student Administration Office or online at http://anulaw.anu.edu.au/llb/llb-handbook. Links to this information will be available on the course WATTLE site. Unless otherwise specified in the assessment scheme detailed above, the policies, procedures and penalties specified in the LLB & JD Handbook will apply to all assessment in this course.

11. Feedback and Evaluation

Feedback about the course is welcome. If students have feedback they can contact the lecturer/s via email and speak to them during class.

While the selected topics in US-Australian comparative law course is run each year, the specific course on comparative race and equality law is a once-off offering.

To that end, course evaluation will be conducted informally. Student feedback will be asked for anonymously at the completion of the course.

12. Further Information about the Course

Not applicable.

13. General Information

College of Law Rules and Policies

Further information about the College’s Rules and Policies may be found in the LLB & JD Handbook which is available in hard copy from the Law School Office or online at http://law.anu.edu.au/llb/llb-handbook. The ANU policies and legislation for students can be found at https://policies.anu.edu.au/ppl/index.htm and http://about.anu.edu.au/governance-structure/legislation/

Academic Honesty and Plagiarism

Students are reminded to familiarise themselves with the University policies and procedures on academic honesty and plagiarism which can be accessed at http://academichonesty.anu.edu.au/

Library

Information about the Law Library, including opening hours, can be found at http://anulib.anu.edu.au/subjects/law/

Academic and Personal Support

Students experiencing academic or personal problems are welcome to discuss these with any member of the academic staff, the Sub Dean (make an appointment at the Law School Office), or to utilise the ANU’s student support services, links to which can be found at
CLASS OUTLINE

CLASS 1: B FAIR/ A MACDUFF STARTING OUR CONVERSATION:

WHO ARE WE?

Outline of Class
We hope to begin this class with a conversation about: who we are, why are we here and what experiences do we bring to this course? We will also run through a ‘life experience’ activity developed by academic and activist, Peggy McIntosh. We will then have the opportunity to discuss what ‘race’ means to us and the people around us. This class aims to develop a supportive and engaged environment for dialogue. The conversations should also equip students to consider issues such as:

- the standpoint from which they approach the subject-matter of the course,
- the intersections between ‘race’ and other life advantages and disadvantages,
- different theoretical understandings about identity

Required preparation
Please talk with your family or friends about how race has impacted on their lives. Ask them what ‘race’ means to them. Do they identify as having a particular ‘race’? If so, which one? What impacts if any has this had on their life experiences?

Instructions for the Peggy McIntosh exercise will be distributed at the beginning of the class.

Issues for Consideration
To what extent is ‘race’ a marker of social privilege or disadvantage? How accurate a marker is it? What other factors contribute to social privilege and disadvantage? What standpoint does the law take on these? To what extent are identity categories (including racial identities) fixed and immutable, or fluid and constructed?

Further reading:

CLASS 2 AND 3: B FAIR / ANNE MACDUFF

WHAT IS RACE?

Outline of Class
This class will examine how ‘races’ are defined in the present United States and Australia, whether these definitions reflect particular historical factors, and what role law has played in constructing those definitions.

How has your racial identification developed? How have others marked this identity? How do you self identify? How did that happen? Why?
Required Reading (excerpts to be provided)

- *Plessy v Ferguson (US)*
- *Korematsu (US)*
- Statutory definitions of race (US)
- *Shaw v Wolf (Aus) (1998) 83 FCR 113, 115-128 per Merkel J.*
- *Jiro Muramats v Commonwealth Electoral Officer for WA (1923) 32 CLR 500*
- *Ofu-Koloi v The Queen (1956) 96 CLR 172*
- *Stevenson v Yasso (2006) 163 A Crim R 1, 5-18 per McMurdo P J*

Issues for Consideration

Are ‘races’ defined the same way in Australia and the United States? What historical and cultural factors frame debate about ‘race relations’ in the United States? In Australia? Why? Who determines the definitions of ‘race’ today? In what contexts? Are they the same or different in Australia and the US? What is meant by ‘new racism’? What role has law played in either creating, or affirming, racial identities?

Further reading

- John McCorquodale “Legal Classification of Race” (1986) 10(1) *Aboriginal History*, 7-24
- John Gardiner-Garden “The Definition of Aboriginality” *Research Note* 18-2000-02 (available freely online)

CLASS 4: A MACDUFF

CONSTRUCTING NATIONAL IDENTITIES:

COLONISATION, CITIZENSHIP AND IMMIGRATION

Outline of Class

This class will consider the legal frameworks which facilitated the creation of an Australian ‘nation’. First, the class will consider the colonisation of non-European indigenous populations, and the developments in the law and Aboriginal policy in Australia. It will then discuss the Federation of Australia and the creation of an “Australian” nation and its national identity. It will consider the different ways that Australian citizenship, naturalisation and immigration laws have formed a particular national identity through the affirmation of national borders and populations.

Required Reading (excerpts to be provided)

- *R v Murrell (1836) 1 Legge 72*
- *Cooper v Stuart (1889) 14 App Cas 286*
- *Mabo v Commonwealth (No2) (1992) 175 CLR 1 (excerpts)*
- *Wik Peoples v Queensland (1996) 187 CLR 1 (excerpts)*
- Excerpts from *Naturalization Act 1901* (Cth)
- *Robtelmes v Brenan (1906) 4 CLR 395, esp 399-407-* per Griffiths CJ
Issues for Consideration
What, if any, role did the ‘racial’ identity of indigenous people play in their colonisation? Were there different rules for colonised and other subjects? Does colonisation have contemporary legacies? If so, what are they?

What colour would Australians be had there never been a White Australia policy? What was the relationship between Australian citizenship and the right to vote? What is likely to have been the impact on Australian politics? What might explain the Australian obsession with “border protection”? Is Australia open to new migrants? To refugees? Is immigration detention justified? If so, in what circumstances? Is Australia becoming less ‘white’? Or are migrants of colour acquiring ‘whiteness’ by other means? Is Australia now a ‘multicultural’ nation? What does it mean to say that Australia is a ‘multicultural’ nation? What are the limits to the recognition of cultural difference?

Further reading

CLASS 5: B FAIR

CONSTRUCTING NATIONAL IDENTITIES:

COLONISATION, CITIZENSHIP AND IMMIGRATION

Outline of Class
This class will consider the origin and development of ‘federal Indian law’ in the United States, the history of federal Indian policy, and contemporary litigation relating to past administration of Indian ‘tribes’ affairs by the Bureau of Indian Affairs. This class will then explore the contribution of US migration controls and citizenship statutes to the ‘whiteness’ of the US population.

Required Reading (excerpts to be provided)
- Dred Scott
- Johnson v MacIntosh
Issues for Consideration

Why did the United States Supreme Court develop the doctrine of Indian tribes as ‘domestic dependent nations’ in a ‘trust’ relationship with the federal government? Could this doctrine have developed in Australia? How independent were Indian ‘tribes’ in the 20\textsuperscript{th} century? What prospects are there for tribes’ present economic development?

Is the United States a true ‘melting pot’? What colour would ‘Americans’ be had these controls not been imposed? Did ‘white’ have a stable statutory meaning over time? What factors influenced this term’s interpretation in the courts? Why

CLASS 6 + 7: A MACDUFF

RACIAL EQUALITY AND THE IMPACT OF ANTI-DISCRIMINATION LAW

Outline of Class

This class will consider the different concepts of ‘equality’ and how these concepts have been drawn upon by the law. The class will examine the extent to which the Australian Constitution has been a ‘raced’ document. It will consider the impact of the 1967 referendum and recent debates about constitutional recognition of indigenous Australians. It will then consider remedial impact of Australian racial discrimination legislation.

Required Reading (excerpts to be provided)

- Kruger v Commonwealth (1997) 190 CLR 1
- Sharma v Legal Aid (Qld) [2002] FCAFC 196

Issues for Consideration

Does Australian law ensure equality? What does equality mean in Australian law? Does the Australian Constitution allow racial discrimination? What gaps are there in the protections afforded by the Racial Discrimination Act 1975 (Cth)? Does the RDA protect native title from discriminatory extinguishment? Does it correct injustices which occurred before its commencement? How has the RDA come into play in relation to the NT Intervention? Has the RDA been a useful tool in preventing race discrimination in an ‘age of terror’? Has it been useful in reducing racial violence in Australia? Has it been useful to prevent racial vilification, or ‘hate speech’? Does Australia have a ‘race problem’?

Further reading)

CLASS 8 +9: B FAIR

RACIAL EQUALITY AND THE IMPACT OF ANTI-DISCRIMINATION LAW

Outline of Class
This class will consider constitutional and statutory attempts to proscribe racial discrimination and bring about equality before the law of ‘racial’ groups in the United States, examining whether these laws are successes or failures, both in their own terms and when assessed against broader social objectives.

Required Reading (excerpts to be provided)

- 14th Amendment- US Constitution
- Brown v Board of Education
- Parents Involved v Seattle School District
- Grutter
- US v Arizona

Issues for Consideration
Is US law now ‘colour-blind’? When did African-Americans, indigenous Americans and other minorities achieve ‘equal protection of the laws’? How do the courts tell what a ‘racial’ group is? What did Brown v Board of Education achieve? Is discrimination easy to prove? Does the law care about all forms of discrimination and inequality? What kinds of discrimination and inequality are undetectable, even with ‘strict judicial scrutiny’?

CLASS 10: B FAIR AND A MACDUFF

Class outline
Discuss the comparative links between the Australia and US. There will also be an opportunity to discuss and develop the topics for the group discussion exercise.

CLASS 11-12 GROUP WORK

Class outline
These 2 classes have been set aside as time for groups to prepare a presentation. Some topics for the presentation are suggested below. Groups are invited to select one of these topics, or, discuss alternatives with the lecturers. The lecturers will be available to consult with students about their presentation during class time.

Some possible topics for group presentations:-

1. Is affirmative action a remedy for inequality?
2. Is ‘voting rights’ legislation effective in ensuring racial equality? Why or why not?
3. Should the law punish ‘race hate speech’? If so, how?
4. Is ‘racial profiling’ a contemporary problem? Can it/ should it be stopped? If so, how?
5. Should Australians ‘delete’ the race power from their Constitution?
6. In what ways do the current legal systems of US and Australia recognise indigenous peoples? Is this sufficient? If not, what more could be done? (This could be narrowed
7. What are the current legacies of segregation in Australia and the US? Choose one context to examine for the group presentation. Can the legal system address this legacy adequately? If so, how?

8. In what ways have race and labour laws been linked in Australia and the US? Is this a contemporary issue in either society today?

9. What laws have the US and Australian used to change/expand their territorial borders? Were these exercises in territorial expansion ‘ raced’? How does the legacy of these territorial expansions manifest themselves today?

10. Are the US and Australia racially segregated societies? In what ways does each society inhibit ‘freedom of residence’. What laws and practices create or perpetuate segregation?

11. Are crime and criminal justice in the US and Australia ‘ raced’?

CLASS 13-14 GROUP PRESENTATIONS

Class outline
The presentation of the group discussion will occur during these two classes. The schedule for presentations will be decided by the lecturer/s, in negotiation with the students.

CLASS 15 : INDIVIDUAL PRESENTATIONS

Class outline:
During this class each student will have the opportunity to present and receive feedback on their proposal for their research essay. If time allows, a general discussion of the comparative themes in the course will be had.

To conclude: Course Dinner. Details to be advised