# RACE IN PLACE

# SPRING 2021

**PROFESSOR MICHAEL ALLAN WOLF**

**LAW 6930: CLASS 29442 (ONLINE)**

**3 CREDIT HOURS**

***SYLLABUS AND CLASS PROCEDURES***

OUR CLASS WILL MEET ONLINE ON TUESDAYS AND THURSDAYS FROM 10:30-11:55 AM.

*My email address is* wolfm@law.ufl.edu*, and my phone number is 352-273-0934. I have an open-door policy, so if you would like to schedule a Zoom meeting, please send me an email message.*

**IN ADDITION TO THE CASES AND OTHER MATERIALS DISTRIBUTED ELECTRONICALLY, THERE ARE FOUR REQUIRED TEXTS FOR THIS CLASS:**

Richard Rothstein, The Color of Law: A Forgotten History of How Our Government Segregated America (2017)

Paige Glotzer, How the Suburbs Were Segregated: Developers and the Business of Exclusionary Housing, 1890-1960 (2020)

Lorraine Hansberry, Raisin in the Sun (1959)

N.D.B. Connolly, A World More Concrete: Real Estate and the Remaking of Jim Crow Florida (2014)

Jeffrey D. Gonda, Unjust Deeds: The Restrictive Covenant Cases and the Making of the Civil Rights Movement (2015)

**COURSE DESCRIPTION:** This course will explore the ways in which American property law has contributed to and reflects structural racism against African Americans and other minorities. Topics include slavery and common-law doctrines, eminent domain abuse, redlining, urban renewal, exclusionary zoning, and racially restrictive covenants.

**COURSE GOALS AND/OR OBJECTIVES:** By the end of this course, it is my hope that students will:

* gain an understanding of how the American common, statutory, and constitutional law of land is affected by, and in turn affects, structural racism,
* perceive the social impacts of seemingly objective and innocuous legal doctrines,
* write well-organized answers to essay questions that spot issues, relate the relevant law to the pertinent facts, and resolve those issues,
* write papers that rely on legal and extralegal primary and secondary sources.

COURSE POLICIES:

**ATTENDANCE POLICY:** The law school’s policy on attendance can be found at: <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#3>. Each student is permitted five absences during the semester. Within one week of missing class, you are responsible for reporting to me via email that you missed class. There is no need to explain your absence, as I do not differentiate between excused and non-excused absences. I reserve the right to reduce the grade for a student with excessive absences and to bar the student from taking the final exam.

**INTERNET USE IN THE CLASSROOM:** *I expect that during each class all students will be prepared to conduct research on the internet using a laptop, tablet, or other means. Of course, students are not to use these devices (including smart phones) for any non-pedagogical purposes.*

**PHOTOS AND VIDEOS:** *Students may not take, circulate, or post photos or videos of classroom discussions, whether they are in-person, hybrid, or completely online. Students failing to follow this rule will be referred to the College of Law Honor Code Council and the University’s Office of Student Conduct and Conflict Resolution.*

**ACADEMIC HONESTY:** *Academic honesty and integrity are fundamental values of the University community. Students should be sure that they understand the UF Student Honor Code at* [http://www.dso.ufl.edu/students.php.](http://www.dso.ufl.edu/students.php)

GRADING POLICIES:

*I expect that students will have done the assigned readings for each class. I will rely on student participation to facilitate the learning of challenging concepts. Students who participate at a consistently high level may be rewarded by a one-half grade bump (e.g., from B+ to A-). I reserve the right to lower the grades of students disrupt the learning environment by a one-half grade bump.*

THERE WILL BE ONE GRADED TEST AND ONE GRADES PAPER DURING THE SEMESTER: The only graded test will be an unlimited-source, open-book final examination. You will be able to choose the day during the exam period on which to take your exam. The exam score will comprise 60% of your grade. The 5-7 page paper will comprise 40% of your grade.

**GRADING SCALE:** *The Levin College of Law’s mean and mandatory distributions are posted on the College’s website and this class adheres to that posted grading policy. The following chart describes the specific letter grade/grade point equivalent in place:*

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| Letter Grade | Point Equivalent |
| A (Excellent) | 4.0 |
| A- | 3.67 |
| B+ | 3.33 |
| B | 3.0 |
| B- | 2.67 |
| C+ | 2.33 |
| C (Satisfactory) | 2.0 |
| C- | 1.67 |
| D+ | 1.33 |
| D (Poor) | 1.0 |
| D- | 0.67 |

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| --- | --- |
| E (Failure) | 0.0 |

The law school grading policy is available at: [http://www.law.ufl.edu/student-](http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9) [affairs/current-students/academic-policies#9](http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9).

WORKLOAD/CLASS PREPARATION:

*It is anticipated that you will spend approximately 2 hours out of class reading and/or preparing for in class assignments for every 1 hour in class.*

ACCOMMODATIONS:

Students requesting accommodation for disabilities must first register with the Disability Resource Center (<http://www.dso.ufl.edu/drc/>). Once registered, students will receive an accommodation letter which must be presented to the Assistant Dean for Student Affairs (Dean Mitchell) when requesting accommodation. Students with disabilities should follow this procedure as early as possible in the semester.

ONLINE COURSE EVALUATION PROCESS:

Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Guidance on how to give feedback in a professional and respectful manner is available at https://gatorevals.aa.ufl.edu/students/. Students will be notified when the evaluation period opens and can complete evaluations through the email they receive from GatorEvals in their Canvas course menu under GatorEvals or via <https://ufl.bluera.com/ufl/>. Summaries of course evaluation results are available to students at <https://gatorevals.aa.ufl.edu/public-results/>.

CLASS READINGS:

You will find below a list of the readings we will cover during the semester, along with a rough estimate of how many classes per topic. In the event we are moving more slowly than anticipated, I will not speed up to cover all of these readings. Instead, I will make cuts in the assignments.

Background reading for first class: Neil Bhutta et al., *Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances*, Board of Governors of the Federal Reserve System, Sept. 28, 2020, <https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.htm>

**5 classes:**

*How the institution of slavery contributed to and benefited from the early American common law of property (adverse possession, mortgages, present estates, wills and trusts, and future interests), and how modern courts have responded to property owners' attempts to accomplish racially discriminatory purposes:*

*Queen v. Hepburn*, 11 U.S. 290 (1813) (hearsay)

*Williams v. Ash*, 42 U.S. 1 (1842) (will interpretation)

*Ham v. Ham*, 21 N.C. 598 (1837) (rule in Shelley's case)

*Riegel v. Lyerly*, 143 S.E.2d 65 (N.C. 1965) (citing *Ham*)

*Robinson v. McDonald*, 2 Ga. 116 (1847) (rule against perpetuities)

*Murphy v. Johnsto*n, 8 S.E.2d 23 (Ga. 1940) (citing *Robinson*)

*Nelson v. Nelson*, 41 N.C. 409 (1849) (increase rules applied to slave children)

*Wachovia Bank & Trust Co. v. Dodson*, 131 S.E.2d 875 (N.C. 1963) (citing *Nelson*)

*McLeod v. Dell*, 9 Fla. 451 (1861) (nuncupative wills)

*In re Davis's Will*, 79 N.W. 761 (Wis. 1899) (citing *McLeod*)

*Shelby v. Guy*, 24 U.S. 361 (1826) (adverse possession)

*Toltec Ranch Co. v. Cook*, 191 U.S. 532 (1903) (citing *Shelby*)

*Jamieson v. Bruce*, 6 G. & J. 72, 1834 Md. LEXIS 2, 1834 WL 1257 (Md. 1834) (mortgages)

*Windsor Const. Corp. v. Kolker*, 23 A.2d 29 (Md. 1941) (citing *Jamieson*)

Edward E. Baptist, *Toxic Debt, Liar Loans, and Securitized Human Beings: The Panic of 1837 and the Fate of Slavery*, Common Place, available at <http://commonplace.online/article/toxic-debt-liar-loans/>

Bonnie Martin, *Slavery's Invisible Engine: Mortgaging Human Property*, 76 J. Southern Hist. 817 (2010), *available at* <https://www-jstor-org.lp.hscl.ufl.edu/stable/27919281?seq=1#metadata_info_tab_contents> (pages 817-26, 859-66, only—you must sign on through UF to get access to this article)

Justin Simard, *Citing Slavery*, 72 Stan. L. Rev. 79 (2020), *available at* <https://review.law.stanford.edu/wp-content/uploads/sites/3/2020/01/Simard-72-Stan.-L.-Rev.-79.pdf>

*Charlotte Park & Recreation Com. v. Barringer*, 88 S.E.2d 114 (N.C. 1955) (racial restriction interpreted as fee simple determinable)

*Hermitage Methodist Homes, Inc. v. Dominion Trust Co.*, 387 S.E.2d 740 (Va. 1990) (racially discriminatory trust provision)

*Capitol Federal Sav. & Loan Asso. v. Smith*, 316 P.2d 252 (Colo. 1957) (disallowing forfeiture for breach of racial restriction)

**5 classes:**

*Excluding African Americans and other "non-whites" from residential communities and public property using racial zoning, restrictive covenants, blockbusting, violence, and intimidation*

***Excerpts from Glotzer, Rothstein, Gonda, Connolly, and Hansbery***

*Buchanan v. Warley*, 245 U.S. 60 (1918) (racial zoning)

*Corrigan v. Buckley*, 271 U.S. 323 (1926) (restrictive covenants)

*Hansberry v. Lee*, 311 U.S. 32 (1940) (restrictive covenants)

*Shelley v. Kraemer*, 334 U.S. 1 (1948) (restrictive covenants)

*Hurd v. Hodge*, 334 U.S. 24 (1948) (restrictive covenants)

*Barrows v. Jackson*, 346 U.S. 249 (restrictive covenants)

*Organization for a Better Austin v. Keefe*, 402 U.S. 415 (1971) (blockbusting)

*Linmark Associates, Inc. v. Willingboro*, 431 U.S. 85 (1977) (for sale signs)

*Mason v. Adams Cty. Recorder*, 901 F.3d 753 (6th Cir. 2018) (effort to stop recording of racially restrictive covenants)

<https://www.gainesville.com/news/20180526/remembering-rosewood>

<https://eatonvillefl.wordpress.com/history/>

<https://www.nytimes.com/2008/09/29/us/29florida.html>

<https://www.nps.gov/timu/learn/historyculture/ambch_history.htm> (click on the links under History of American Beach)

**4 classes:**

*Destroying African American ownership: eminent domain, urban renewal, highway construction, heirs' property*

***Excerpts from Connolly****,* ***Rothstein*, *Glotzer***

*United States v. Timmons*, 672 F.2d 1373 (11th Cir. 1982) (Harris Neck eminent domain)

*Nashville 1-40 Steering Committee v. Ellington*, 387 F.2d 179 (6th Cir. 1967) (highway construction)

*Hodel v. Irving*, 481 U.S. 704 (1987) (fractionalization on Native American reservations)

Thomas W. Mitchell, *Historic Partition Law Reform: A Game Changer for Heirs’ Property Owners*, in Heirs’ Property and Land Fractionation: Fostering Stable Ownership to Prevent Land Loss and Abandonment 65 (Cassandra Johnson Gaither et al. eds. 2019), *available at* <https://scholarship.law.tamu.edu/cgi/viewcontent.cgi?article=2313&amp;context=facscholar>

**4 classes:**

*Excluding African Americans from using federal housing and related programs, creating segregated public housing*

***Excerpts from Connolly, Rothstein, Glotzer***

*Gautreaux v. Chicago Housing Authority*, 296 F. Supp. 907 (N.D. Ill. 1969)

*Gautreaux v. Chi. Hous. Auth.*, 491 F.3d 649 (7th Cir. 2007) (attorneys' fees for longstanding housing discrimination suit)

*Spallone v. United States*, 493 U.S. 265 (1990) (contempt sanctions on city and officials)

*Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmtys. Project, Inc.*, 576 U.S. 519 (2015) (intent test for FHA)

**3 classes:**

*Exclusionary zoning as a form of environmental racism*

***Rothstein***

*S. Burlington County NAACP v. Mt. Laurel*, 336 A.2d 713 (N.J. 1975) (exclusionary zoning)

*Warth v. Seldin*, 422 U.S. 490 (1975) (standing)

*Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252 (1977) (intent under 14th Amendment)

*United States v. City of Black Jack*, 508 F.2d 1179 (8th Cir. 1974) (zoning violated FHA)

*Park View Heights Corp. v. Black Jack*, 605 F.2d 1033 (8th Cir. 1979) (remedy for continued obstruction)

*In re Decl. Judgment Actions.*, 152 A.3d 915 (N.J. 2017) (fair share obligation)

**2 classes:**

*The (brief) revolution in landlord-tenant law*

*Javins v. First Nat'l Realty Corp.*, 428 F.2d 1071 (D.C. Cir. 1970)

Edward H. Rabin, *The Revolution in Landlord-Tenant Law: Causes and Consequences*, 69 Cornell L. Rev. 517 (1984)

*Lindsey v. Normet*, 405 U.S. 56 (1972) (double bond requirement for evictions)

**2 classes:**

*Solutions and cures: unrecording covenants, partition reform for owners of heirs' property, community land trusts, effective tenant representation, enhancing just compensation, inclusionary zoning*

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|  | FINAL EXAMINATION: |

*The two-hour, unlimited source, open-book exam will be administered on a flexible basis, meaning that you can choose the time during the final examination period (April 23-May 6) during which to take the test. The law school policy on exam delays and accommodations can be found* [*here*](https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/forms-applications/exam-delays-accommodations-form)*.*

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|  | HEALTH AND WELLNESS RESOURCES: |

*Law school can be difficult; sometimes our personal lives can be stressful. Contact information for the Counseling and Wellness Center:*

[*http://www.counseling.ufl.edu/cwc/Default.aspx,*](http://www.counseling.ufl.edu/cwc/Default.aspx) *392-1575. If there is an emergency, you can also contact the University Police Department: 392-1111 or 9-1-1. Other resources include:*

*U Matter, We Care: If you or someone you know is in distress, please contact umatter@ufl.edu, 352-392-1575, or visit U Matter, We Care website to refer or report a concern and a team member will reach out to the student in distress.*

*Student Health Care Center: Call 352-392-1161 for 24/7 information to help you find the care you need, or visit the Student Health Care Center website.*

*UF Health Shands Emergency Room / Trauma Center: For immediate medical care call 352-733-0111 or go to the emergency room at 1515 SW Archer Road, Gainesville, FL 32608; Visit the UF Health Emergency Room and Trauma Center website.*

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|  | CLASS DEMEANOR: |

*Students are expected to arrive to class on time (for online students, this means with your video on and your sound muted) and behave in a manner that is respectful to the instructor and to fellow students. Please avoid the use of cell phones except for Zoom purposes.*