

Carleton University Department of Law and Legal Studies
COURSE OUTLINE

Laws 2201A/T
PERSONS AND PROPERTY

Current as of August 23, 2012
Subject to revision until September 11, 2012

Term:	Fall 2012
Instructor	Professor T. Brettel Dawson
Prerequisites:	Laws 1000
Lecture	<p>Tuesdays 2.30PM – 5.30PM Check location through Carleton Central.</p> <p>Please read the assigned readings before class. Students in the online section are welcome to come to the class on campus.</p>
Broadcast	<p>Rogers, Channel 243 Wednesdays 11.00AM – 2.00PM</p> <p>Note: Lectures are also viewable via: CUTV Webcast; Video-On-Demand (VOD) online streaming- (fee applies) and at the CUTV Student Centre. See the CUTV website for more information.</p>
e-Timeslot	<p>If you taking the course 'online' or via VOD, schedule a recurring timeslot in your week to view the lectures and cover the readings – it will help you keep up. Please go to this weblink and enter your timeslot: http://whenisgood.net/j2b3kxe. This will collate everyone's choices. If a number of students are sharing a similar time slot, we will experiment with opening up a chat room on a utility called Big Blue Button (link on cuLearn page) at those times so you can interact with other students while you are watching the lecture. We will also open the BBB chat tool during the scheduled broadcast time.</p>
cuLearn	<p>cuLearn, the new Carleton Learning Management System is essential for this course. Lecture slides, course information, lecture slides, discussion boards are available <u>only</u> through this modality.</p> <p>I will ask you to introduce yourself, post up on topics you find interesting (or where current examples relate to course material). There will also be an FAQ for Assignments. We may try various other technology-enabled elements in the course.</p>

- e-Groups** Early in the term, I will divide the class into three smaller “e-groups” and assign one TA to each group. This TA will become ‘your TA’. They will mark your work and be your main point of contact during the class. Some discussion boards will be open only to your own small group.
- Contact:** Office: Loeb D497
Email: Please email me through **MyCarleton Portal** (Connect) – the link is available inside cuLearn for this course.
- Office Hours:** Tuesday 1.00PM– 2.30PM (before class) or by appointment.
- e-office Hours:** We may use the “Big Blue Button” on cuLearn to hold e-office hours (led by TAs) particularly around assignment times. Watch for announcements.
- TAs:** We will have several TAs in this class. Contact information will be provided early in the term.
- Cellphones:** Surprise! I want you to bring your 3G phone, tablet, laptop to class. I am not sure of a wi-fi link in the classroom but am hopeful – we will be using some texting and posting technology for some parts of some classes.
- Email and Etiquette** While, email is a good way to be in touch with both me and your TA, don't expect us to reply instantly; we aim to respond within 36 hours. We hover during assignment crunch times and try to problem solve quickly – but we aren't on the boards in the middle of the night (really!). When you get a mark back, wait 36 hours (and read over the feedback a couple of times) before emailing about it. Always think through your inquiry before emailing. Individual work is required so while study groups are a good idea, sharing ideas on assignments is not. Vigorous debate and inquiry is encouraged by not personal criticism.

ACADEMIC ACCOMMODATION

You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows:

Pregnancy obligation: write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details visit the Equity Services website: <http://www2.carleton.ca/equity/>

Religious obligation: write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details visit the Equity Services website: <http://www2.carleton.ca/equity/>

Academic Accommodations for Students with Disabilities: The **Paul Menton Centre** for Students with Disabilities (PMC) provides services to students with Learning Disabilities (LD), psychiatric/mental health disabilities, Attention Deficit Hyperactivity Disorder (ADHD), Autism Spectrum Disorders (ASD), chronic medical conditions, and impairments in mobility, hearing, and vision. If you have a disability requiring academic accommodations in this course, please contact PMC at 613-520-6608 or pmc@carleton.ca for a formal evaluation.

If you are already registered with the PMC, contact your PMC coordinator to send me your **Letter of Accommodation** at the beginning of the term, and no later than two weeks before the first in-class scheduled test or exam requiring accommodation (*if applicable*). After requesting accommodation from PMC, meet with me to ensure accommodation arrangements are made. Please consult the PMC website for the deadline to request accommodations for the formally-scheduled exam (*if applicable*) at <http://www2.carleton.ca/pmc/new-and-current-students/dates-and-deadlines/>

You can visit the Equity Services website to view the policies and to obtain more detailed information on academic accommodation at <http://www2.carleton.ca/equity/>

COURSE DESCRIPTION

This course examines two fundamental concepts in private law: 1) ascription of legal personhood (or legal personality) through which a person can acquire legal existence and capacity to exercise property rights and 2) the legal concept of property – what it is that legal persons (as possessive individuals) can own, control and exchange. We are primarily concerned with interactions between legal individuals rather than with the state (through public or criminal law).

In general terms we will examine the origins and scope of the concept of person in law and how concepts of legal personality change over time and the origins and scope of the concept of property and how concepts of property change over time.

LEARNING OBJECTIVES

At the end of this course, students should be able to

- Summarize and analyze case law in the area of persons and property. In particular,
 - Distil relevant facts and issues in cases discussed,
 - outline judicial reasoning (both majority and dissenting opinions),
 - accurately state results in cases and
 - identify and assess the policy elements and debates in legal decision-making.
- Locate cases in their historical (economic and social) contexts
- Identify theoretical positions and arguments advanced by scholars in relation to course themes to move from descriptive understanding towards critical assessment of legal principles.

Note:

I am not seeking to 'teach you the law' of persons and property in any detail (although you will, of course, learn current legal principles in a number of areas). Rather, I am exploring the role of law in constituting our understanding and responses to a range of (often contentious) social and relations touching upon our persons and our property.

REQUIRED READING

The following casebook has been prepared for this section of the course and is required reading:

T. Brettel Dawson, *Persons and Property in Private Law* (North York, Captus Press, 2011).

Available for purchase in the University Bookstore.

- Note: Do NOT purchase Sargent and Atkinson, *Just Between the Law and Us* in any iteration (this text was recently divided into two volumes). This course uses quite different material.

CLASS SLIDES

I will post slides for each lecture (before class so you can download and use to assist you in note-taking). Slide decks are named by class number. Slides may be updated after the lecture. If so, a revised deck will be posted (and named to indicate that it is a revision).

EVALUATION

Components

There will be 3 (take home) assignments in the course. In addition, 10% of course marks are allocated to class participation (see below).

Online Modality

Assignments are handled electronically rather than in hard copy through cuLearn Assignments. You receive the assignment via cuLearn (download and read it on the date posted please). You attach your assignment as a file which you upload and submit for marking through cuLearn. We mark them online and return feedback to you online. You can submit ONLY ONCE (that is, you can't take back and edit later). We request that you follow naming conventions indicated on the assignment sheets so we can keep track of your work and allocate correctly to your e-group and TA.

On Time Expectation and (Draconian) Late Penalties for Mid-Term Assignment

I have noticed a worrying trend towards lots of late assignments. In my view, it is almost NEVER worth taking the little bit of extra time to work on the finer touches of an assignment to get extra marks, so: Get it IN! On Time!

More practically speaking, late assignments create a significant administrative burden across the team of people who work with me on the course. There is a significantly higher risk of assignments going astray in the pile as well.

Accordingly, I expect you to submit your work ON TIME and, subject to a very modest grace period for unforeseen, very short term situations, I will impose heavy penalties for work which is submitted late without an extension.

- Late work will be penalized as follows: 5% off if you hand any work in on the due date after the deadline but before midnight. If you hand it in the 'next day' anytime before midnight you will lose a further 5% marks. Any further days late (counted from stroke of midnight) including weekend days, you lose a further 10% per day. If you hand in your work more than seven days late, I will accept it towards course completion but it will receive zero marks.

Assignment Rules

- All components of evaluation must be completed to receive a passing grade in the course.
- You must follow the University's policies on academic integrity available at <http://www2.carleton.ca/studentaffairs/academic-integrity/>. You must complete all work individually and it must be fully original. In the essay in particular, you must not rely excessively on quotations as this will not count as being your own work. Do not plagiarize (copy and paste without attribution) from published, unpublished or internet sources. Attribute all sources you have used directly or indirectly (paraphrased) and indicate this by using appropriate citation format. Do not share draft (or final) work with others in the class. Do not share your electronic files with other students as they may copy your work and you will be equally subject to academic investigation.
 - I reserve the right to compare all files with other submissions in this course and other offerings of the course. I rigorously pursue suspicion of plagiarism and, without exception, refer to the Office of the Dean. Further if 'off topic' work is submitted, I reserve the right to consult with your other instructors to confirm that you are not 're-using and re-cycling' which is strictly prohibited.
- You will be subject to heavy late penalties for work that is submitted after due date and time.
- You should keep a copy of all assignments and examinations until your final grade is confirmed. We may contact you for an additional copy if something goes wrong in submission.

Assignment Details

Class Participation

Value: 10%

Assessed based on 1) postings by students to cuLearn on specified course reading exercises over the semester (will be set up in cuLearn); 2) participation in course discussion boards including introductions and current issues, optional test assignment; etc; 3) overall quality of engagement with course 'points of contact' (lectures, e-office hours/Big Blue Button, email)

Assignment 1: Persons

Value: 30%

Covers: Classes 1-4

Available: Posted on cuLearn on October 3rd by 4.00pm

Due: Submitted via cuLearn on or before October 12 at 4.00pm

Extensions: possible in restricted circumstances with supporting documentation (see notes that follow)

Marks: We will aim to return marks by October 24, 2012.

Style: Short answers and short essay(s). No additional research required.

Assignment 2: Essay on Persons and Property

Value: 20%

Covers: Topics will be linked to material covered in class 5.

Available: October 25, 2012 or before

Due: November 15, 2012

Extensions: possible in restricted circumstances with supporting documentation (see notes that follow)

Marks: We will aim to return the marks by November 27 (last class).

Style: Short research essay; choice of topics as provided; essays will be about 2000 words (8-10 pages; to be confirmed).

Assignment 3: Property and its Boundaries

Value 40%

Covers: Classes 6-12

Available: Last day of classes for Fall term: December 03

Due: Last day of the examination period for Fall term: December 20, 2012

Extensions: NONE. This assignment is formally, a take home examination. If you cannot submit before due date and time, you must seek a formal deferral from the Registrar's Office.

Marks: returned in conjunction with finalization of Final Grade Reports; available very early January 2013.

Style: Short answers and short essay(s). No additional research required.

Notes: What are 'take homes' and why do I assign them?

A Take Home Assignment requires you to think about the material we have covered and prepare short essays which analyze and discuss course material. It is open book and you have quite a long period of time to prepare your answers. It is certainly not a 3-hour examination that you cram for and spit out! I am not looking for yes/no/descriptive answers but analysis and assessment. I hope (and organize) that Assignments will allow you to showcase how well you have understood and engaged with course material and course themes and concepts in the course.

There is a practical reason too: many students take this class as a distance course; take homes avoid having to get people in an examination room!

Managing take homes: You should download the assignments as soon as they are posted and review them. Then create a plan so that you can do a good job on the Assignment: read the questions and figure out which ones interest you the most where you have a choice. Set aside blocks of time to review your notes, the slides and readings related to the questions (think of this as focused study time when you know what's 'on the exam'); then draft your answers. Be sure to read them over (and revise) before submitting to make sure you have said what you think you've said and that you've answered the questions asked and referred to course material specifically.

Doing Well

I will expect you to prepare answers in which you analyze materials covered in class and readings answering specific questions about cases (principles and reasoning) or literature (arguments and propositions).

To do well you will have to read the material in the casebook and watched the lectures in relation to concepts and themes discussed in class. The slides will provide an extensive backbone and guide to the lectures to assist you in note-taking.

CLASS SCHEDULE

Overview of Material Covered

We will examine the distinction between legal personhood and property (opening with a short case study on slavery by colonial powers). We will examine the dual feats of the legal imagination in simultaneously denying legal personhood to (married) women and granting it to aggregations of capital in the form of corporations. We will study the restricted legal status of children and people with developmental disabilities focusing on their capacity to consent (or not) to medical treatment which directly engages the scope of control over one's body and notions of autonomy and choice.

We then go on to focus on concepts of property law as the way in which law has established systems of access to, allocation of and control over assets or resources. We will explore the notion that rights to property are really relationships between legal persons with respect to 'resources' to which we ascribe value and allow exchange through markets. We will examine the justifications for private property, the system which is holds the ideological centre in our economy and social organization. We will examine interactions between state and market, public and private and individual and collective rights; private property, public property and common property, and the scope of property rights.

We then take our study in two directions: first we will probe the dividing lines between person and property (and indeed limitations in the conceptual separation itself), A key concept underlying our study is that the body (or the legal person) cannot be property. We will explore the legal relationship (if any) between a pregnant woman and her fetus? When (if ever) should a woman be able to contract to become pregnant and transfer a baby to other people through surrogacy? What is the legal status of public spaces? We will examine the legal status of the dead body as neither person or property and go on to ask whether body parts may ever become the subject of property rights. Secondly, we will ask whether there are some resources (or things) that should be outside of the private-public property system – things that are so fundamental to our lives as persons (and all other species) that they should not be subject to enclosure? Here we will focus on water and wilderness areas. We will return to the concept of 'personhood' to ask whether rather than being objects of (potential) exchange, wilderness might have its own legal identity and capacity to consent (or not) to certain uses. Our work will cumulate in case studies examining the interaction of private law concepts of personhood and property: relation to the environment (land and water).

Learning Points

As we move through the lectures, we will address a number of concepts and themes covering a number of learning points as we move along. In particular, by the end of this course, students should be able to:

- Provide definitions of 'personhood' and 'property' in private law
- Trace how concepts such as individualism, autonomy and choice influence into how courts analyze and resolve conflicts involving persons and property

- Explain the reasoning used to justify women not having legal personhood (in relation to their personal capacities and choice of occupation and property) and reasoning used to extend legal personality to them.
- State the legal status of corporations as 'quintessential economic persons' and link the emergence of legal personality to emergence of the modern capitalism
- Outline how the law has deployed and restricted concepts of the legal person when resolving conflicts over medical treatment of children, intellectually challenged persons and pregnant women
- Differentiate between types of property in law and critically assess arguments in favour of private property
- Assess the interaction of private property with public interest concerns in relation to expression of public protest and environmental protection
- Critically analyse legal (and ethical) arguments for and against creating markets (exchange relations between persons with respect to property) for "products" derived from the human body.
- Critically analyze legal (and ethical) arguments for and against creating markets (exchange relations between persons with respect to property) for "products" derived from water and wilderness.

**Weekly Schedule
(Subject to revision)**

Class	Topic	Readings and Resources¹
1 Sep11	<p>Introduction</p> <p>Organization of "the laws of England" (Blackstone) and taxonomy in private law (Waddams).</p> <p>Case Study on Slavery: The Distinction Between Persons and Property and the Role of Law</p>	Chapter 1 A and B (all)
PART I: PERSONS		
2 Sep18	<p>The Legal Person:</p> <p>Key concepts of the legal person and legal personality; concept of the possessive individual; history and legal incidents of legal personality.</p> <p>Case Study: The Possessive Individual: Private Law, Property and Racialized Persons</p>	<p>Chapter 2A and 2B</p> <p>(Note: 2A(b) is covered in a later class)</p>
3 Sep25	Women as Legal Persons	Chapter 3A and 3B

¹ References to Chapters relate to Casebook; other resources given will be accessed in class with links or details provided in slides.

	Historical denial of legal personhood to women; analyzed in relation to public rights (eg. Voting, public office), and private rights (ownership of property after marriage).	
4 Oct02	<p>Corporations as Legal Persons</p> <p>The creation of the corporation as a legal person; economic and social significance;</p> <p>Case Study: economic action (immunity) and political action by corporations.</p>	Chapters 4A and 4B
5 Oct09	<p>The Contingent or Conditional Legal Person</p> <p>a) Children b) Persons with Developmental Disabilities c) The Pregnant Woman</p> <p>Right to refuse medical treatment (or not); right of others to consent on your behalf (or not). Legal relationships (mapped and unmapped) between pregnant woman and fetus.</p>	<p>Chapter 5A and 5B Chapter 6A</p> <p>We may consider the recent <i>Carter</i> case from BC SC on right to die (link to be provided)</p>
PART II: PROPERTY		
6 Oct16	<p>Property Law: Concept and Functions</p> <p>Resolving issues of allocation, access and control of assets through law of property.</p> <p>Different kinds of property: private, public, collective, common.</p> <p>Scope and justification of private property; distinction with public property.</p>	<p>Chapter 2A(b) Davies</p> <p>Chapter 9A (b,c): Edwards v Sims</p> <p>Chapter 9A(f) Discussion Problem</p> <p>Audio: Stealin' the Holes</p> <p>Chapter 8 (a, b,c)</p>
7 O23	<p>Property and the Public-Private Divide I</p> <p>Justifications for private property (and their limitations)</p> <p>Public access to private property; private access to public property</p> <p>Case Study: Collective or Private Property for First Nations Land</p>	<p>Chapter 9A a) Ziff</p> <p>Audio: DeSoto</p> <p>Cases:</p> <ul style="list-style-type: none"> • Chapter 9B: Harrison, Dieleman and Adams • Chapter 9A: INS and Murdoch

		Chapter 8(d)
8 O30	<p>Property and the Public-Private Divide II</p> <p>Protections for private property interests and tensions with the public interest and public policy; other users of resources</p> <p>Reimagining private property?</p>	<p>Chapter 10</p> <ul style="list-style-type: none"> KVP; Hickey, Palmer, Spraytech <p>Chapter 10(e) Karp</p>
PART III: BOUNDARIES OF PERSON AND PROPERTY: THE HUMAN BODY AND THE MARKET		
9 Nov06	<p>Legal Status of the Human Body: Person, Property, Other</p> <p>Legal status of the corpse (with an historical diversion into entrepreneurialism and bad endings: Burke and Hare)</p> <p>Legal status of body tissue and body parts in the new era of bio-technology</p>	<p>Chapter 7A and 7B</p> <p>Footnote: time permitted we may consider patenting life forms; human embryos and matrimonial property.</p>
10 Nov13	<p>Legal Status of Reproduction and Recycling of the Body</p> <p>A market for organs and gametes?</p> <p>A market for babies? Surrogacy arrangements and the parameters of persons and property.</p>	<p>Chapter 6B</p> <p>Audio: Sandel</p>
PART IV: BOUNDARIES OF PROPERTY AND PERSON: WILDERNESS AND WATER		
11 Nov20	<p>(Land and) Water: Who Owns It (if Anyone?)</p> <p>Concept of the Commons and common resources. Review of the Parable of the Tragedy of the Commons.</p>	<p>Chapter 11 a) b) c) d) e)</p> <p>Read Hardin, Tragedy of the Commons at http://www.sciencemag.org/content/162/3859/1243.full</p>
12 Nov27	<p>Conclusion</p> <p>Reimagining Persons and Property</p> <p>Can Trees be(come) legal persons?</p>	Chapter 12