

Carleton University Department of Law and Legal Studies
COURSE OUTLINE

Laws 2201A/T
PERSONS AND PROPERTY

Note! First assignment due October 03.

First lecture viewable free on VOD link

(all lectures available to view in CUOL student Centre Loeb Building)

Term:	Fall 2013
Instructor	Professor T. Brettel Dawson
TAs:	We will have several TAs in this class. I will provide contact information early in term. They will mark your work and be a point of first contact for questions and feedback.
Prerequisites:	Laws 1000
Lecture	Fridays 8.30 – 11.30AM (Check room on Carleton Central) First class: September 06, 2013; Last Class: December 6 th , 2013 No class: September 20 or November 01, 2013 (Fall Break)
Broadcast	(Rogers, Channel 243) Sundays 4.30 – 7.30PM First broadcast September 08, 2013. No Broadcasts on September 22 or November 03, 2013 A word of advice for broadcast (T) section students: KEEP UP! Find a regular time in your schedule to watch the lectures each week.
Options	Video on Demand is available for this course (additional payment). This allows you to watch or re-watch lectures on your own schedule. A link to more information is provided on the cuLearn Page. Note: Lectures are also viewable via: CUTV Webcast; and at the CUOL Student Centre . See the CUOL website for more information. Come to class! Broadcast section students (T) are also welcome to attend class.
Contact:	Office: Loeb D497
Office Hours:	Wednesdays 4.00 – 5.00pm or by appointment.

For some weeks I will hold office hours on Thursday. Currently: Sept 26, October 24 and Nov 28. Email to confirm.

Email: Email is an excellent way to contact me (or your TA) where a personal discussion isn't needed. Please email me through **MyCarleton Portal** (Connect) via cuLearn. I may not reply for 36 hours especially if I am working towards a deadline of my own! The TAs and I 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

cuLearn **cuLearn**, is an essential part of this course. Lecture slides, course information, lecture slides, assignments, discussion boards are available only through this modality.

Note: Discussion boards and FAQ boards will be set up to encourage interaction during the course, especially for students who are enrolled in the T (or broadcast) section. Individual work is required for all assignments so while study groups are a good idea, sharing ideas on assignments or FAQs is not. Note as well: While vigorous debate and inquiry is encourage, personal criticism is not: create a respectful learning environment in your interactions with other students, your TAs and with me (and we will reciprocate of course!)

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/>.

LAWS 2201 A/T

COURSE DESCRIPTION

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. See the Schedule and Statement on Course Content later in this outline to get a better sense of what we will be studying.

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* SECOND EDITION (North York, Captus Press, 2013). Available for purchase in the University Bookstore.

Notes:

- We use the course text extensively. You should obtain a copy early in the term. It is in production in August 2013 and will be available in the Bookstore early in September.
- The new edition of our course text includes new material and quite significantly reorganizes material from the earlier edition. As such, the older edition would not be a good choice for purchase.
- 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 use PowerPoint during lectures. I post these slides before each lecture to assist you in preparing for class and taking notes.

EVALUATION

Online Modality

Assignments are handled electronically rather than in hard copy through cuLearn Assignments. You will attach a file to your submission containing your answers. Generally, you will have 10 days to complete each assignment after it is posted on the cuLearn site for the course.

Grades and Grading

We endeavour to get marks back to you about 14 days after submission. I provide a marking rubric to your TA and we spend time together sample marking to ensure consistency between TAs and with the marking guide.

We will include a feedback chart in your returned assignment. Your grades will be posted on the 'My Grades' link on cuLearn. Wait 36 hours before emailing your TA if you want him or her to review your mark. Please provide detailed points about where you would like a reconsideration. If the matter is not resolved with you and your TA, the matter can be taken up with me.

Individual Work Only

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. 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.

Components

All components of written evaluation must be completed to receive a passing grade in the course. Work handed in more than 7 days late counts to completion but receives ZERO marks.

There are three (3) written take home assignments in the class. Word counts are to be finalized.

Assignment 1: Covers Chapters 1-2.

15%. Short answer questions. Total word count +/- 1500 words.

- Due: October 03, 2013

Assignment 2: Covers Chapters 3, 4, 5 and 6

30%: Short Essays (complete two). Total word count +/- 3000 words.

- Due: October, 20, 2013

Assignment 3: Covers Chapters 7-12.

45%: Short essay questions (complete three) and/and short answer questions (to be confirmed). Total word count +/- 4000 words.

- Due: December 21 or 22 (last day of examination period, to be announced)

Notes:

Assignment 1 and 2: Instructions will be posted about 10 days before due date and you will receive your mark about 14 days after submission.

Assignment 3: is formally a take home and is posted on the last day of Fall term classes, December 09, 2013. It is due on the final day of the Fall Examination Period (to be confirmed) but no later than December 22, 2013. Your marks will not be released until the first week of January in concert with the final grade submission.

Class Participation:

10%. In addition and to encourage you to engage consistently with the course material and one another, part of your grade is made up of class participation for both in-class and broadcast students.

- You should have at least 10 substantive contributions to the 'life of the class' through some combination of posting on topical discussion boards and commenting on readings (whichever ones you want to comment on) throughout the term. Posting up an introduction about yourself on the General Introduction Board will count as ONE contribution. Questions on Assignment FAQ and administrative questions do not count.

Students who attend and contribute to class discussions may balance this with their online contributions but online presence is still required to achieve full class participation marks.

Please note: Standing in the course is determined by me but is subject to approval of the Faculty Dean. This means that grades submitted by me (on the FGR report) may be subject to revision. No grades are final until they have been approved by the Dean.

Extensions, On Time Expectation and (Draconian) Late Penalties

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

Extensions can only be granted by me, the Professor. I grant extensions only for documented, serious health conditions and emergency situations affecting immediate family members. I do not grant extensions for computer crashes, schedules with paid or volunteer employment, minor illnesses such as a cold etc.

Assignment Style: Take Home Assignments

What are 'Take Homes': Take Home Assignments require you to think about the material we have covered and prepare short answers or essays which analyze and discuss course material. My take homes are open book and you have quite a long period of time to prepare your answers. They are certainly not like a 3-hour examination that you cram for and spit out!

Why do I Assign Them: I organize my Assignments to allow you to showcase how well you have understood and engaged with course material and course themes and concepts in the course. I am not

looking for yes/no/descriptive answers (regurgitation) but analysis and assessment. They combine the 'test' element with an 'essay' element. I think this makes them more relevant and interesting

I hope that take home assignments better match your lifestyles: you get to plan your own work schedule rather than conforming to a set date for a test or examination. This should lower your stress levels – an unanticipated work deadline or shift change, a child's illness (or your own) on 'the day'. You can study in an informed and focused manner – with the questions in front of you. Of course, there is still a deadline (see above) to get you motivated. But the level of self-direction and self-motivation may be a change for you. Don't procrastinate! Another practical reason is that many of you take this class as a distance course (even in other countries) and the take home format avoids having to get everyone into 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 have 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. I absolutely frown upon simply regurgitating course slides though – you must use your own words to show that you have understood the material. I don't require extra research (although you can certainly do some to deepen your answers and understanding) but I do require you to thoroughly read the assigned material and use it in shaping your answers.

LAWS 2201 PERSONS AND PROPERTY FALL 2013: COURSE CONTENT AND SCHEDULE

The concepts of 'legal persons' and property and the concept of the possessive (and autonomous) individual in private law are introduced in our first 2 classes. Of particular interest is the role that private law has played in reinforcing certain social and economic 'imperatives' on behalf of those with power and preferences. In classes 3-4 we examine the concept and functions of a property system. After outlining the main property systems (private property, public property and common property), we examine various justifications for each and their relative scope and interaction. We then move, in classes 5-6, to study Persons (and the concept of legal personality) in more depth. We examine the process (and legal debates) through which corporations and later, women came to be recognized in law as "legal persons". We situate this study in broader economic and social contexts having a bearing on this legal change. Indeed, the legal status of corporations as legal persons is currently being questioned in the United States in the aftermath of the *Citizens United* case in particular. Some of the questions explored are: How can a human being not be a legal person? How can a non-human aggregation of capital be regarded as a legal person? How can some legal persons have restricted legal capacities for decision-making? How was the 'private-public' distinction created and enforced in law?

After laying these foundations we move to more specialized examination of Property and Persons in later classes. In classes 7-8 we study the legal capacities of legal persons (who are human beings) with respect to their own bodies. This includes children and persons with developmental disabilities. We will also study some efforts made to control the behaviour of pregnant women. We will observe a strong paternal concern by law for vulnerable persons or those considered to be in need of protection whether because of conclusions of incompetence or incomplete decision-making capacity. This series of case studies allows us to highlight (and interrogate) a central tenet of liberalism: the autonomous individual. In classes 9-10 our focus turns to relations of exchange between persons and property – with a twist. We will ask whether people can own their bodies (or body parts) and thus, whether they can (or should be able to) sell them in the market. In class 9 we examine the impact of death on legal personhood and the historical legal status of the body before turning to a series of cases where ownership and possession of human body parts and tissue have arisen as a result of advances in medical science which have made its preservation and propagation possible. In class 10 we will consider surrogacy arrangements (and new transactions emerging concerning 'left over' fertilized embryos. Where should the law go in these areas and how should it be guided by ideas underlying legal and human personhood and the scope of property rights and the market?

In our final section of the course, we ask whether what is now considered actual or potential property and thus subject to exchange by legal persons (including corporations) could be recast as juristic entities – or as legal persons. We will look at resources such as air, water, wilderness and natural eco-systems in particular. In class 11, we will study the famous parable by Gareth Hardin known as the Tragedy of the Commons and then examine critiques of the oft-stated conclusion that only private property or central regulation can prevent environmental degradation. In class 12, we will revisit another famous article, this one by Christopher Stone, "Should Trees Have Standing" in which he argued that if the law could give corporations status as legal persons, why not consider doing the same for constituent elements of the natural world. As we will see, there are contemporary debates and legal developments about this direction. Should we reset our reference point from 'the market' to the 'eco-system'? What benefits (and risks) might such a change effect? Is the idea even thinkable?

LEARNING OBJECTIVES

In general terms, you will learn about the legal concepts of property and personality (legal identity and capacity). You will be able to identify how they constitute the framework for how law approaches disputes over ownership and decision-making. You will be able to critically assess these concepts (eg., do they mobilize legal ideologies? Do they advance certain interests and exclude others?) You will be able to apply the concepts in examining case studies.

In terms of your intellectual development within the law program, you will be better able to analyze case law (ancient and modern), understand the role of cases in shaping common law rules and see how scholars weave case law, legislation, policy and social debate into shaping critical argumentation on legal themes.

Specific learning objectives for each section of the course are stated in the relevant Part Introductions in the Course Text. For example:

After completing Chapter 1, readers should be able to:

- State the basic taxonomy of the common law crafted by Blackstone
- Explain the significance of Maine's asserted movement from status to contract
- Give the reasoning and results in *Sommersett's Case*, *Dred Scott* and *Gregson v Gilbert* in relation to the characterization of the legal status of enslaved humans and
- Contextualize these cases in relation to ideals espoused by Blackstone and economic contexts.

After completing Chapter 2, readers should be able to:

- Define the concept of the legal person using several different jurisprudential framings giving an account of its historical origins and evolution over time
- Explain the concept of 'the possessive individual' linking the concept of persons and property
- Give the reasoning and results in cases such as *Shelley v Kramer*, *Noble Wolf*, *Quong Wing* and *Christie v York Corporation*
- Contextualize and analyze these cases in relation the contestation in law about the property (or business) rights of certain legal persons.

READINGS AND LINKS

The assigned readings for the basis for the lecture each week. Depending on our pace through the topics, readings may be adjusted from time to time. I will post a discussion question each week related to at least one reading. I encourage you to post your comments (substantive postings – addressing content, issues etc) will count as a contribution to class participation.

Because the course text is arriving in the Bookstore in early September, I will post the readings from Chapters 1 and 2 so you can get into the habit of reading early (and often!). These chapters are also used in Assignment 1.

Please read the links to online readings or resources that provided in various chapters. They are an integral part of the course material.

ANTICIPATED SCHEDULE

Week Due	Class	Topic	Readings
Sept 06/08	1	Conceptual and Historical Introduction to Persons and Property in Private Law (taxonomy of private law, change from feudal to market structure) Case Study (Slavery)	Chapter 1 Readings Available on cuLearn
Sept 13/15	2	Legal Constructions of Persons and Property Key concepts including ‘possessive individual’, legal effect of being (or not being) a legal person; connections between persons and property. Case Study (Segregated Property)	Chapter 2 Readings available on cuLearn
Sept 20/22	-	No Class Assignment 1 Posted September 22nd	
Sept 27/29 Assig #1 Due Oct 3	3	Concept and Functions of a Property System Legal definition of property, purposes of property law system; different types of property including private, public and common property)	Chapter 3
October 4/6	4	Private Property: Justifications and Scope Arguments supporting private property – and their limitations; interaction of private property with public interest and policy; a modern vision of private property?)	Chapter 4
October 11/13	5	Legal Persons I: Corporations Legal identity of a corporation, historical development and current debates related to limited liability and corporate power.	Chapter 5
October 18/20	6	Legal Persons II: Women Historical exclusion of women from legal personality and capacity in relation to property and public roles; social and political context; legal change (and legacies)	Chapter 6
October 25/27	7	Persons Paternal I: The Adult Self The right of legal persons to control their bodies (and decision-making with respect to them). Decision-making by pregnant women: scope and limitations of state control.	Chapter 7 Note: we may also move to Ch 8 in this class, tbc

November 1/3 Assign #2 Due Oct 31	-	No Class Finalize and submit Assignment 2	
November 8/10	8	Persons Paternal II: Children and People with Diminished Mental Capacity Medical decision-making; capacity, concept and scope of legal personality.	Chapter 8 See also: http://www.theguardian.com/law/2013/aug/16/court-sterilisation-man-learning-difficulties
November 15/17	9	Markets, Exchange and the Person I: The Dead Body and Living Tissue Legal status of the body; legal effect of death (person and property); interests in human tissue and body parts.	Chapter 9
November 22/24	10	Markets, Exchange and the Person II: Surrogacy in Law and Life Private law and public policy in regulating surrogacy; ethics of markets and the body (Michael Sandel)	Chapter 10 See also: http://www.justiceharvard.org/2011/02/episode-05/#watch http://careforhealthypregnancy.com/ethics-of-outsourcing-pregnancy-to-india-michael-sandel/
Nov_Dec 29/1	11	Markets Exchange and Property I: Preserving Common Property (Nature) Common pool resources and commercial exploitation (private property), regulatory regimes - Garret Hardin's Tragedy; Elinor Ostrom's hope; failures and potential of private property; international law.	Chapter 11
December 6/8	12	Markets Exchange and Property II: A Legal Person (Eco-System) Sierra Club v Morton; Christopher Stone; contemporary applications; assessment of concepts of persons and property.	Chapter 12
December 20-22 Assignment #3 Take Home Exam Due: Dec 21 or 22 tbc			