

Carleton University Department of Law and Legal Studies

FINAL COURSE OUTLINE

Final Course Outline be provided through cuLearn by September 09, 2015

FIRST CLASS: SEPTEMBER 2, 2015

**Laws 2201A/T
PERSONS AND PROPERTY**

Term: Fall 2015

Prerequisites: Laws 1000

Instructor Professor T. Brettel Dawson

Office: Loeb D497

Office Hours: Tuesdays: 9.30-11.00AM, or by appointment.

Email: brettel.dawson@carleton.ca

Email is an excellent way to contact me (or your TA) where a personal discussion isn't needed. I may not reply for 36 hours especially if I am working towards a deadline of my own! In general, do not expect a reply on weekends or evenings.

TAs: TAs will mark your work and be a point of first contact for questions and feedback. Each student will be assigned to a TA for the course. I will post information on cuLearn when available.

Lecture Laws 2201A: Wednesday 8.30AM-11.30AM
Check Carleton Central to confirm location (currently: SA 624)

Laws 2201T This is a recorded version of Laws 2201A (on campus).

Course is live-streamed at <http://carleton.ca/cuol/access-courses/live-stream-cuol-classrooms/>; connect to the stream for SA 624. Students in Laws 2201T are welcome to attend the on-campus section

Optional Video on Demand service available for \$50 charge by adding CRN 33293 to course registration.

First class: September 02, 2015

- (Read Coursebook Chapter 1 ahead).
- If you miss this class, you can view it at the cuOL centre: LoebD299.

No Class:

- October 28 (Fall Break)
- November 11

Last Class: December 02, 2015

cuLearn

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

Evaluation Dates:

Assignment 1:

- Available via cuLearn by October 08, 2015
- Due: October 19, 2015 (via cuLearn)
- Returned (approximate): November 03, 2015

Assignment 2 (Take Home Examination)

- Available: December 7, 2015
- Due: December 21, 2015 (via cuLearn). No extensions

Final Date for Class Participation Activity: December 02, 2015

Final Grade Available: First week of January after approval by Dean's Office.

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

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. I explore how law has responded to social and economic change and the role of legal concepts (and taxonomies) in shaping how we think about and respond to changes and challenges. Two key concepts are the legal person (centering the individual) and property (centered on ownership by persons and exchange between them). These reflect 'liberal legalism'; we probe their potential and their limitations.

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 (e.g., 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.

REQUIRED READINGS

The following course book 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.

In addition, the course schedule includes a number of additional readings – some are links to relevant websites and others are to articles or cases posted on cuLearn.

Notes:

- We use the course text extensively. It is available in the Bookstore (and likely second hand).
- Purchase the current SECOND edition: it contains new material and quite significantly reorganizes material from the 1st edition.
- Do NOT purchase Sargent and Atkinson, *Just Between the Law and Us* in any iteration (this text has been divided into two volumes). Our course uses quite different material.

Class Slides

PowerPoint slides are posted on cuLearn before each lecture to assist you in preparing for class and taking notes. The slides are not a replacement for viewing the lectures and doing the readings!

EVALUATION

There are TWO written take home assignments in the class. Both must be completed to receive a passing grade in the course. Final Grades are not confirmed until approved by the Office of the Dean.

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

Assignment 1: Covers Lectures 1-6 and related readings.

35%/35 marks. Short answer questions (variable length and value per question) and choice of essay question. Total permitted word count likely to be around 2500 words.

Late Penalties: 10% per day (starting 12.01AM on Due Date October 9) and thereafter at stroke of midnight. Work handed in more than 7 days late counts to completion but receives ZERO marks. **Do not submit your work late!**

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. **BACK UP YOUR WORK! START EARLY!**

Assignment 2 (Take Home Examination): Covers Lectures 7-12 and related readings.

55%/55 marks: Short answers and two essays. Total word count likely to be around 4000 words.

Late work: Will not be accepted for grading. There are NO extensions because this is classified as an examination. If you cannot complete and submit on time, you **MUST** seek formal deferral through the Office of the Registrar.

Class Participation

10%/10 marks. Will be completed through cuOL (online). In class participation will also be considered in assigning the final grade for this component. To earn marks, you can complete the following activities (each counts for 1 mark)

- Post an introduction
- Create (or respond thoughtfully to) a debate posting
- Respond to a discussion forum (there will be 5 of these – look for them under the class schedule)
- Respond to 'feedback' choice questions for some weeks (generally posted ahead of class).

Online Modality

We do everything to do with assignments on cuLearn. Thus you 'hand-in' by assignment by attaching/posting to cuLearn Assignments section for Laws 2201A/T. I return them to you (with a marking sheet) through cuLearn.

The TAs and I will be hovering during assignment crunch times and try to problem solve quickly – but we aren't on the boards in the middle of the night (really!).

Grades and Grading

Your grades will be posted on the 'My Grades' link on cuLearn. Wait 24 hours before emailing the TA if you want more information on your mark. Please provide detailed points about where you would like a reconsideration. If the matter is not resolved with your TA marker, the matter can be taken up with me.

When you get a mark back, wait 36 hours (and read over the feedback a couple of times) before emailing about it. You should provide detailed questions rather than "I don't like my mark". Always think through your inquiry before emailing.

SCHEDULE WITH READINGS¹

Subject to change.

Class	Topic	Readings ²
1 Sept 2	Conceptual and Historical Introduction to Persons and Property in Private Law (taxonomy of private law, change from feudal to market structure)	Chapter 1
	Case Study (Slavery)	<i>Required: Legacies of British Slavery: Online Database</i> http://www.ucl.ac.uk/lbs See also: Marcel Trudel, <i>Canada's Forgotten Slaves: Two Hundred Years of Bondage</i> . Review by Lawrence Hill at http://reviewcanada.ca/magazine/2014/05/chains-uneearthed/
2 Sept 9	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.	Chapter 2
	Case Study (Segregated Property)	See also: Ta-Nehisi Coates, "The Case for Reparations" May 21, 2014, <i>The Atlantic</i> at http://www.theatlantic.com/features/archive/2014/05/the-case-for-reparations/361631/
3 Sept 16	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 Required: <i>Nakhuda v Story Book Farm Primate Sanctuary</i> , 2013 ONSC 5761 (posted on

¹ NOTE: READINGS AND LINKS

The assigned readings form the basis for the lecture each week. Please also read the links to online readings or resources that provided in various chapters. They are an integral part of the course material. I recommend that you read the material BEFORE class (and that you review it again after class, highlighting the key ideas discussed in the lecture.

² Chapters refer to Course book. If listed, readings are required. Access by provided link. If no link is given, the material will be posted in cuLearn. This list may be updated during the term and references will be included in the PowerPoint slides. b

		cuLearn)
<p>4 Sept 23</p>	<p>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?)</p>	<p>Chapter 4</p> <p>Stealin’ the Holes: (Audio played in class, text available at: http://www.pigeoninlet.com/stealin.htm).</p> <p>Boston Parking Spaces: http://www.washingtonpost.com/wp-dyn/articles/A39654-2004Dec31.html (Boston Fights Winter Parking Tradition)</p> <p>See also (for interest): https://www.wbur.org/2015/01/28/space-savers-boston (Four things to know about space savers in Boston)</p> <p>http://www.boston.com/cars/news-and-reviews/2015/01/22/boston-space-saving-tradition-explained/DVrAKS9BJGBk3QCHgx12FK/story.html (Boston’s Space Saving Tradition Explained)</p> <p>Also see: recent Dow Jones “hot news” case: http://gigaom.com/2014/01/09/nice-try-dow-jones-but-your-hot-news-case-is-doomed-the-news-is-everywhere-now/ OR http://www.ahbj.org/story/business-journalism-and-the-hot-news-doctrine/</p> <p>Matthew Ingram, “Nice try, Dow Jones, but your ‘hot news’ case is doomed – the news is everywhere now” Gigaom.com. new lawsuit similar to that of INS discussed in article. http://www.ahbj.org/story/business-journalism-and-the-hot-news-doctrine/</p>
<p>5 Sept 30</p>	<p>Legal Persons I: Corporations Legal identity of a corporation, historical development and current debates related to limited liability and corporate power.</p>	<p>Chapter 5</p>

6 Oct 7	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
7 Oct 14	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
8 Oct 21	Persons Paternal II: Children and People with Diminished Mental Capacity Medical decision-making; capacity, concept and scope of legal personality.	Chapter 8: <i>Required: NHS Trust v DE [2013] EWHC 2562 (posted cuLEARN): Required reading</i> Background/Overview: http://www.theguardian.com/law/2013/aug/16/court-sterilisation-man-learning-difficulties
Oct 28	NO CLASS: FALL BREAK	
9 Nov 4	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 Required: Tim Caulfield, "Who owns your tissue? You'd be surprised" <i>Globe and Mail</i> , June 20, 2014 (culearn) <i>Takamore v Clarke</i> [2012] NZSC 116 (posted on cuLearn). Background on <i>Takamore</i> : You may read about the case at: http://ip34.publications.lawcom.govt.nz/Chapter+14+-+New+Zealand+law+on+care+and+custody+of+the+body/Takamore+v+Clarke
Nov 11	No Class. No office hours this week.	
10 Nov 18	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) Note: this is a short broadcast as it was not a full topic in Fall 2013.	Chapter 10 SURROGACY Read Michael J. Sandel, " What money shouldn't buy ", The Hedgehog Review . 5.2 (Summer 2003) p77. • Posted on cuLearn – first 10 pages are

		<p>most relevant</p> <p>Also of interest: http://bigthink.com/videos/the-moral-limits-of-markets-live-interview-with-michael-sandel Contrast: http://bostonreview.net/welch-morals-markets</p> <p>Of interest: Sandel online at: http://www.theglobeandmail.com/video/video-ted-ideas-lab-michael-sandel-on-why-we-shouldnt-trust-markets-with-our-civic-life/article17370045/ http://www.justiceharvard.org/2011/02/episode-05/#watch http://careforhealthypregnancy.com/ethics-of-outsourcing-pregnancy-to-india-michael-sandel/</p> <p>ORGANS</p> <p>Micheal Friscolanti, “Will sell organs for cash” Macleans Oct 17, 2012 at http://www.macleans.ca/news/canada/how-much-is-that-kidney-in-your-body/</p> <p>Michael's Essay: Paying for Organs The Sunday Edition with Michael Enright CBC Radio: http://www.cbc.ca/thesundayedition/essays/2014/02/16/michaels-essay-paying-for-organs/</p> <p>Search Ottawa Citizen in this area – they ran various stories in July 2015 prompted by the transplant for Senators’ owner Eugene Melnyk</p>
<p>11 Nov 25</p>	<p>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;</p>	<p>Chapter 11</p> <p>Also:</p> <ul style="list-style-type: none"> • Nancy Macdonald, “is privatizing water the right thing to do?” Macleans, September 3, 2009 at

	international law.	http://www.macleans.ca/society/life/the-market-solution/
12 Dec 2	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 REQUIRED: Cormac Cullinan, "Do Humans Have Standing to Deny Trees Rights", 11 <i>Barry L. Rev.</i> 11 (2008) [posted on cuLearn]. Rebecca Tuhus-Dubrow, "Sued by the Forest: Should nature be able to take you to court?" Boston Globe, July 19, 2009: http://www.boston.com/bostonglobe/ideas/articles/2009/07/19/should_nature_be_able_to_take_you_to_court/ Whanganui River Agreement: http://www.wrmtb.co.nz/new_updates/TuutohuWhakatupuaFinalSigned.pdf Also of interest: <i>Reece v Edmonton (City)</i> , 2011 ABCA 238; 335 D.L.R. (4th) 600 (Lucy)

Appendix: FAQ

What are 'Take Homes'? The Take Home Assignments in this course are structured essays requiring you to use course materials to answer questions given. In this sense it is akin to an examination of your understanding of course material and concepts. However, it is open book – you can refer to all course material in completing your answers. You can prepare your work /study in an informed and focused manner – with the questions in front of you. You get an extended period to work on the assignment. Thus a Take Home is not like a 3-hour examination. I do not want you to give me descriptive answers - I am not looking for regurgitation (memory tests) but rather, analysis and assessment. Of course, there is still a deadline to get you motivated. The required level of self-direction and self-motivation may be a change for you. Don't procrastinate!

Why do I Assign Take Homes? As this is a foundational second year course and the course materials include a rich tapestry of case studies and scholarly literature, I have adopted a comprehensive system of assessment through the Take Homes. You do get some choices in some sections. Generally, I want you to be able to showcase how well you have understood and engaged with course material and course themes. I think this makes the assignments more relevant and interesting. I also want them to be less stressful than an exam (but this will only be the case if you start early!) You can plan your own work schedule rather than conforming to a set date for a test or examination. 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 on an assigned day

In my view, the range of material that you need to cover before undertaking a research essay – along with the short time frame - precludes a research essay option within my assessment objectives. I hope you will be able to pursue research in areas of particular interest stimulated by this course in your related 3000 and 4000 level courses. There is a practical reason too: because the class is large and supported by TA(s), it is difficult to assign research essay questions. I am very committed to ensuring consistent, high quality marking in the course and provide a detailed marking rubric for the TAs to follow. This level of TQM would not be possible with research essays.

How should you manage Take Homes? **Here is my best advice: don't leave them to the last minute!**

Download the assignment as soon as it is posted and read it over. Then create a plan so that you can do a good job on the assignment. 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.

What Do I Need to Do to Do Well in the Course? 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.

Why am I so tough on lateness? The course goes by 'in a flash'. And, the second assignment is governed by strict university rules that do not allow late submission of a final take home assignment. I give you the dates early and expect you to organize your and be able to adjust to an unanticipated work deadline or shift change, a child's illness (or your own) on 'the day' (or the day or two before). I also know (from watching the inbox) that everyone plans to work until the last minute and submit right on the button. This makes no sense if you are also planning to complete much of the assignment on the day of submission! Rather, it recreates that terrors of a scheduled examination and leaves you little time for revision and reflection. I want to encourage you to schedule work on assignments in a much less stressful manner!

Again, there are practical reasons: I organize the marking schedule around these deadlines. You want to get your work marked and returned as quickly as possible so getting it in on time is part of the bargain. Late assignments can get missed or create other administrative headaches – which has an impact on you (and us!). This can be avoided by 'on time delivery'.

What is the source of that lingering accent? I was born and raised in New Zealand. I received my LLB and call to the Bar in New Zealand before coming to Canada in 1983. I forgot to 'go home' (appointed at Carleton in 1986). Love living in Canada and being a Canadian. Go Sens Go (quite partial to Ottawa too!)