

Carleton University  
Department of Law and Legal Studies  
COURSE OUTLINE

Laws 2201 B  
Persons and Property

<b>Term:</b>	Fall 2013
<b>Instructor</b>	Dr. Jennifer Barrigar
<b>Prerequisites:</b>	LAWS 1000
<b>Lecture</b>	6:05pm – 8:55pm Wednesday
<b>Contact:</b>	jennifer_barrigar@carleton.ca
<b>Office Hours:</b>	<b>virtual office hours weekly, in person by appointment.</b>
<b>TAs:</b>	Contact information will be provided early in the term.

### 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](mailto: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.

More specifically, 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 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 will 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 OBJECTIVES**

At 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 analyze 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.

## **REQUIRED TEXTS**

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). You should, however, always come to class to get the latest greatest information!

## **EVALUATION**

### **Components**

1. **Participation & Lecture Preparation Exercises: 10%**

2. **Assignment #1 Persons: 30%**
3. **Assignment #2 Problematizing Persons and Property: 30%**
4. **Assignment #3 Property and Boundaries (Take-Home Exam): 30%**

### Notes on Components

**PLEASE NOTE: FAILURE TO COMPLETE ALL EVALUATION COMPONENTS WILL RESULT IN A FAILURE FOR THE ENTIRE COURSE**

### Participation / Lecture Preparation Exercises

- In-class participation and quality of participation
- Students are also asked to complete and submit **three (3)** of the lecture prep exercises.
- Lecture prep exercises will be submitted by noon on the Monday preceding class. Lecture preparation exercises will NOT be marked substantively. Exercises will be reviewed by the professor and/or TAs but marks will be determined by (1) submission on time and (2) students fulfilling their required 5 exercises
- Students must create/post on e-Group discussion boards on substantive topics at least twice (2x) times over the semester.

#### **Assignment 1: Persons**

Value: 30%

Covers: classes 1-4

Available: Posted on cuLearn on 2 October

Due: Submitted via cuLearn on or before 15 October

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

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

#### **Assignment 2: Problematizing Persons & Property**

Value: 30%

Covers: Topics will be drawn from material covered in classes 5,6,10

Available: Posted on cuLearn on 13 Nov

Due: submitted via cuLearn on 26 Nov

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

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

#### **Assignment 3: Property and its Boundaries (Take Home Examination)**

Value 30%

Covers: Classes 7-12

Available: Last day of classes: 9 December 2013

Due: Last day of the examination period: 22 December 2013

Extensions: NONE. If you cannot submit before due date and time, you must seek a formal deferral from the Registrar's Office.

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

### Notes on Assignments and Essay

- You will be required to 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 attend the lectures. The slides provide an extensive backbone of the lectures in terms of your own note-taking.
- These are not 'quick tests' or 'yes/no' answers but 'mini-essays' which require you to think about the material we have covered. You will be given sufficient time to complete each assignment taking into account the fact that there are several steps involved: 1) on the day posted, download and read the assignment. 2) Review your notes, the slides and readings related to the questions (study time); 3) draft your answers; 4) read them over (and revise) before 5) submitting. So, you do need to devote time to the assignments.

### Online Submission and Return

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. They are marked online and feedback/your paper is returned to you online.

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.

### On Time Expectation

The due dates for all work are identified in this Outline. You have at least 10 days to complete all work assigned.

I expect you to make a note of these dates NOW and plan your semester around timely completion. Look at your schedule as a whole for the semester – if one week looks like it's particularly heavy – BOOK IT OFF NOW (BOOK OFF WORK, DON'T ACCEPT INVITATIONS THAT WEEK ETC).

I expect you to submit your work ON TIME. Subject to a very modest grace period for unforeseen, very short term situations at my discretion, I impose heavy penalties for work which is submitted late without an extension as set out below:

## Late Penalties

- You will lose 5% off if you hand any work in on the due date after the deadline but before midnight.
- You will lose a further 5% if you hand it in the 'next day' any time before midnight
- You will lose additional marks at the rate of 10% per extra day (counted from stroke of midnight and including weekend days) if you hand the paper in then.
- You will receive ZERO if you hand in your work more than seven days late although I will accept it towards course completion.

## Extensions:

ONLY the Professor can grant extensions and ONLY for Assignments 1 & 2. If you are unable to submit a Take Home Assignment 3 in the Examination Period you MUST seek a formal deferral through the Office of the Registrar.

In term extensions should be requested in advance of the due date. They will only be approved after supporting documentation has been reviewed and accepted. Circumstances warranting a request for an extension include: serious illness requiring medical attention that requires you to be 'off school or emergency circumstances in your immediate family (such as a death of a close relative or medical care required for children or elderly dependents).

Extensions will not be granted for computer problems, work schedule conflicts or academic overloads (except in exceptional circumstances). Extensions will not be granted for mild illnesses (eg., a cold, a tummy bug). If you are too sick to complete your work, you need to see a doctor – and get a medical note!

## Back Up Your Work!

It is your responsibility to create back-up copies of your work to prevent losing the work at the last minute due to computer problems on your own or university equipment.

I recommend the following back up strategies: upload drafts to the cloud, email a draft to yourself whenever you finish a segment of work on it or your work session, copy it to a USB thumb-drive or an external hard drive.

## 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 class slides provide an extensive backbone and guide to the lectures to assist you in note-taking.

### **Individual Work Only and Academic Integrity**

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.

### **SCHEDULE**

Class	Topic	Readings and Resources (Chapters in Class Text) (Other resources given will be accessed in class)
1 11 Sept	<b>Introduction</b>  <b>Organization</b> of “the laws of England” (Blackstone) and taxonomy in private law (Waddams).  Case Study on Slavery: The Distinction Between Persons and Property and the Role of Law	Chapter 1 A and B (all)
<b>PART I: PERSONS</b>		
2 18 Sept	<b>The Legal Person:</b>  Key concepts of the legal person and legal personality; concept of the possessive individual; history and legal incidents of legal	Chapter 2A and 2B  (Note: 2A(b) is covered in a later class)

	<p>personality.</p> <p>Case Study: The Possessive Individual: Private Law, Property and Racialized Persons</p>	
<p>3 25 Sept</p>	<p><b>Women as Legal Persons</b></p> <p>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).</p>	<p>Chapter 3A and 3B</p>
<p>4 2 Oct</p>	<p><b>Corporations as Legal Persons</b></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>	<p>Chapters 4A and 4B</p>
<p>5 9 Oct</p>	<p><b>Children and Persons with Developmental Disabilities as Partial Legal Persons</b></p> <p>Right to refuse medical treatment (or not); right of others to consent on your behalf (or not).</p>	<p>Chapter 5A and 5B</p>
<p>6 16 Oct</p>	<p><b>Pregnant Women as Legal Persons</b></p> <p>The legal person and self-ownership: case study on legal relationships between pregnant woman and fetus.</p> <p>MIDTERM ASSIGNMENT AVAILABLE</p>	<p>Chapter 6A</p>
<b>PART II: PROPERTY</b>		
<p>7 23 October</p>	<p><b>Property Law: Concept and Functions</b></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>Case Study: Collective or Private Property for</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> <p>Audio: DeSoto</p>



	First Nations Land	Chapter 8(d)
8 6 Nov	<p><b>Property and the Public-Private Divide</b></p> <p>Justifications for private property (and their limitations)</p> <p>Public access to private property; private access to public property</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 9A a) Ziff</p> <p>Cases:</p> <ul style="list-style-type: none"> <li>• Chapter 9B: Harrison, Dieleman and Adams</li> <li>• Chapter 9A: INS and Murdoch</li> </ul> <p>Chapter 10</p> <ul style="list-style-type: none"> <li>• KVP; Hickey, Palmer, Spraytech</li> </ul> <p>Chapter 10(e) Karp</p>
<b>PART III: BOUNDARIES OF PERSON AND PROPERTY: THE HUMAN BODY AND THE MARKET</b>		
9 13 Nov	<p><b>Legal Status of the Human Body: Person, Property, Other</b></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 20 Nov	<p><b>Legal Status of Reproduction and Recycling of the Body</b></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>
<b>PART IV: BOUNDARIES OF PROPERTY AND PERSON: WILDERNESS AND WATER</b>		
11 27 Nov	<p><b>(Land and) Water: Who Owns It (if Anyone?)</b></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 <a href="http://www.sciencemag.org/content/162/3859/1243.full">http://www.sciencemag.org/content/162/3859/1243.full</a></p>
12 4 Dec	<p><b>Conclusion</b></p> <p><b>Reimagining Persons and Property</b></p>	<p>Chapter 12</p> <p><a href="http://www.omg-facts.com/Science//54258?id=5">http://www.omg-facts.com/Science//54258?id=5</a></p>

	Can Trees be(come) legal persons?	<a href="#">4258&amp;c_val=1</a>
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## MORE INFORMATION ON HOW THE COURSE WILL RUN

**cuLearn**                      **cuLearn**, the new Carleton Learning Management System is essential for this course. Lecture slides, course information, lecture slides, discussion boards are available only through this modality.

Please post an introduction to yourself in the first two weeks of class and post on topics you find interesting (or where current examples relate to course material). There will also be an FAQ for Assignments.

**e-engagement**                      I want you to stay in the course and succeed in this course. I welcome you to office hours and I will be 'online' on chat during my scheduled Office Hours if you want to 'pop-in' virtually to ask a question.

Your TA will also be available to answer your emails each week.

Please post an introduction on the cuLearn page: say where they are studying from and maybe plan to link up for a coffee once or twice a term through social media.

Expect to hear from us during the term if you have been keeping a low profile!

**Email and Etiquette**                      Email is a great way to be in touch with me and your TA. However, don't expect us to reply instantly. We aim to respond within 48 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.

When you get a mark back, wait 48 hours (and read over the feedback a couple of times) before emailing about it. Always think through your inquiry before emailing.

For all activities, individual work is required so while study groups are a good idea, sharing ideas on assignments is not. Vigorous debate and inquiry is encouraged but not personal criticism.

**Take Home Format**                      **What are They? Why do I Use 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

regurgitate! 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.

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.