

**Carleton University Department of Law and Legal Studies  
COURSE OUTLINE**

**Laws 2201 D  
PERSONS AND PROPERTY**

**Current as of August 13, 2012  
Subject to revision until September 11, 2012**

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**COURSE:** LAWS 2201 PERSONS AND PROPERTY

**TERM:** Fall 2012

**PREREQUISITES:** LAWS 1000

**CLASS** THURS 6:05 – 8:55pm  
Please check with Carleton Central for current room location.

**INSTRUCTOR:** JENNIFER BARRIGAR

**CONTACT:** Email through cuLEARN

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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). For Religious and Pregnancy accommodations, please contact Equity Services, x. 5622 or their website: [www.carleton.ca/equity](http://www.carleton.ca/equity)

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### **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.

## **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.

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.

## **EVALUATION**

### **Components**

- 1. Attendance/Class Participation: 10%**
- 2. Lecture Preparation Exercises: 10%**
- 3. Mid-term Assignment: 40%**
- 4. Take Home Examination Assignment: Value 40%**

### **Notes on Components**

#### **ATTENDANCE/PARTICIPATION**

- Students will be expected to participate in discussions online and in class.
- Attendance will be taken randomly

#### **LECTURE PREPARATION**

- At the beginning of the semester, students will be asked to sign up for five (5) of the nine (9) lecture classes. Sign-up will be done online. Only a certain number of students will be able to select any given class, so students are encouraged to sign up as soon as possible.
- Lecture prep exercises will be submitted by 5pm on the Tuesday 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

#### **ASSIGNMENTS**

- Both assignments will consist of short answer questions and short essay questions.
- 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 review class lectures slides.
- I may include a problem question/essay in each assignment which requires you to apply principles and arguments to providing an answer. Such questions will require you to do a small amount of research (1-2 sources).
- 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.

**SCHEDULE**

<b>Class</b>	<b>Topic</b>	<b>Readings and Resources (Chapters in Class Text) (Other resources given will be accessed in class)</b>
1 Sep 6	<p><b>Introduction</b></p> <p><b>Organization</b> 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)
<b>PART I: PERSONS</b>		
2 Sep13	<p><b>The Legal Person:</b></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>	Chapter 2A and 2B  (Note: 2A(b) is covered in a later class)
3 Sep20	<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>	Chapter 3A and 3B
4 Sep27	<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>	Chapters 4A and 4B
5 Oct 4	<p><b>Children and Persons with Developmental Disabilities as Partial Legal Persons</b></p>	Chapter 5A and 5B

	Right to refuse medical treatment (or not); right of others to consent on your behalf (or not).	
6 Oct11	<b>Pregnant Women as Legal Persons</b>  The legal person and self-ownership: case study on legal relationships between pregnant woman and fetus.	Chapter 6A
<b>PART II: PROPERTY</b>		
7 Oct18	<b>Property Law: Concept and Functions</b>  Resolving issues of allocation, access and control of assets through law of property.  Different kinds of property: private, public, collective, common.  Scope and justification of private property; distinction with public property.  Case Study: Collective or Private Property for First Nations Land	Chapter 2A(b) Davies  Chapter 9A (b,c): Edwards v Sims  Chapter 9A(f) Discussion Problem  Audio: Stealin' the Holes  Chapter 8 (a, b,c)  Audio: DeSoto  Chapter 8(d)
8 Oct25	<b>Property and the Public-Private Divide</b>  Justifications for private property (and their limitations)  Public access to private property; private access to public property  Protections for private property interests and tensions with the public interest and public policy; other users of resources  Reimagining private property?	Chapter 9A a) Ziff  Cases: <ul style="list-style-type: none"> <li>• Chapter 9B: Harrison, Dieleman and Adams</li> <li>• Chapter 9A: INS and Murdoch</li> </ul> Chapter 10 <ul style="list-style-type: none"> <li>• KVP; Hickey, Palmer, Spraytech</li> </ul> Chapter 10(e) Karp
<b>PART III: BOUNDARIES OF PERSON AND PROPERTY: THE HUMAN BODY AND THE MARKET</b>		
9 Nov1	<b>Legal Status of the Human Body: Person, Property, Other</b>	Chapter 7A and 7B

	<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>Footnote: time permitted we may consider patenting life forms; human embryos and matrimonial property.</p>
10 Nov8	<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>
<p><b>PART IV: BOUNDARIES OF PROPERTY AND PERSON: WILDERNESS AND WATER</b></p>		
11 Nov15	<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 Nov22	<p><b>Conclusion</b></p> <p><b>Reimagining Persons and Property</b></p> <p>Can Trees be(come) legal persons?</p>	<p>Chapter 12</p>

### The “Rules”

- You must complete all components of evaluation 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 must submit your work on time or you will be subject to heavy late penalties.
- 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.