

Carleton University Department of Law and Legal Studies
COURSE OUTLINE

LAWS 2201D
PERSONS AND PROPERTY

Term:	Winter 2015
Instructor	Dr. Jennifer Barrigar
Prerequisites:	LAWS 1000
Lecture	2:35pm – 5:25pm Monday Please check with Carleton Central for current room location
Contact:	jennifer_barrigar@carleton.ca
Office Hours:	by appointment. Office B442 Loeb
TA:	Contact information will be provided early in the term.
Email:	Email is an excellent way to contact me (or your TA) where a personal discussion isn't needed.
cuLearn	cuLearn , is an essential part of this course. Lecture slides, course information, lecture slides, assignments, discussion boards are available <u>only</u> through this modality. Note: Discussion boards and FAQ boards will be set up to encourage interaction during the course. Individual work is required for all assignments so sharing ideas on assignments or FAQs is not appropriate. 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 Accommodations

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/>

Plagiarism

Plagiarism is presenting, whether intentional or not, the ideas, expression of ideas or work of others as one's own. Plagiarism includes reproducing or paraphrasing portions of someone else's published or unpublished material, regardless of the source, and presenting these as one's own without proper citation or reference to the original source. Examples of sources from which the ideas, expressions of ideas or works of others may be drawn from include but are not limited to: books, articles, papers, literary compositions and phrases, performance compositions, chemical compounds, art works, laboratory reports, research results, calculations and the results of calculations, diagrams, constructions, computer reports, computer code/software, and material on the Internet. Plagiarism is a serious offence.

More information on the University's **Academic Integrity Policy** can be found at: <http://www.carleton.ca/studentaffairs/academic-integrity/>

Department Policy

The Department of Law and Legal Studies operates in association with certain policies and procedures. Please review these documents to ensure that your practices meet our Department's expectations.

<http://www.carleton.ca/law/student-resources/department-policies/>

COURSE DESCRIPTION

In general terms we will examine the origins and scope of the concept of the 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 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.

Notes:

- We use the course text extensively. Available in the Bookstore (and likely second hand).
- Purchase the current edition.
- Do NOT purchase/use Sargent and Atkinson, *Just Between the Law and Us* in any iteration (this text was recently divided into two volumes). This course uses different material.

Class Slides

I use PowerPoint during lectures. These slides are posted on cuLearn before each lecture to assist you in preparing for class and taking notes. They are extensive but they are not a replacement for the lectures and doing the reading!

EVALUATION

Standing in a course is determined by the course instructor subject to the approval of the Department and of the Faculty Dean. This means that grades submitted by the instructor may be subject to revision. No grades are final until they have been approved by the Department and 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

General

All components of written evaluation must be completed to receive a passing grade in the course. I am planning on assigning two take home assignments in the class. Final Grades are not confirmed until approved by the Office of the Dean. Please see the Appendix for Notes on Assignment style.

Assignment 1: Covers Chapters 1-4 and additional required reading.

30%. Short answer questions (variable length and value per question). Total word count +/- 3000 words.

- Available: 26 January
- Due: 9 February

Late Penalties: 10% per day except for due date where there is a 5% penalty for submission after due time and before midnight and a further 5% off if you submit any time the next day. Thereafter, at stroke of midnight you lose a further 10%. Work handed in more than 7 days late counts to completion but receives ZERO marks.

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 2 (Take Home Examination): Covers Chapters 5-12 and additional required reading

60%: Short Essays each worth 20 marks. Total word count +/- 5250 words (or maximum of 1750 words per essay).

- Available: 11 April 2015
- Due: April 23 at 4.00PM

Late work: because this is formally a take home examination, late work cannot be accepted for grading. There are NO extensions. If you cannot complete and submit on time, you MUST seek formal deferral through the Office of the Registrar.

Class Participation:

There is a class participation grade of 10%. You gain 1 mark for each substantive posting including the Introductions discussion board but excluding Assignment FAQ or technical queries). **The last day for posting for credit is 8 April 2015.**

I will post discussion questions on some readings during the term and a number of 'debate' topics – related to issues covered in the course. You can create your own discussion threads too on questions raised by the course. Posting will help you to engage with course concepts and also help you to connect to your peers in the course.

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.

COURSE CONTENT

The concepts of 'legal persons' and property and the concept of the possessive (and autonomous) individual in private law are introduced in classes 1-2. Of particular interest is the role that private law has played in creating and sustaining certain social and economic conditions, generally reflecting the preferences and benefitting those in positions of power and authority. 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.

We then move, in classes 5-6, to a more in-depth study Persons (and the concept of legal personality). 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 the broader economic and social contexts influencing this legal change. Some of the questions we explore include: 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? In classes 7-8 we study the legal capacities of legal persons (who are human beings) with respect to their bodies. We examine the ability of children to refuse medical treatment and the role that law has played in questions of sterilization of persons with developmental disabilities or in controlling 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 incompetence or limited decision-making capacity. This series of case studies allows us to highlight (and interrogate) a central tenet of liberalism: the autonomous possessive 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. What legal principles should guide this area? How do the legal concepts personhood and the nature and scope of property rights inform how we think about this development? Should we permit a market that allows persons to exchange property in relation to the human body?

In our final section of the course, classes 11-12 we go forth into ‘uncharted territories’ (or *terra nullus*) whether neither concept (persons or property) has yet been recognized. We will examine the status of ‘common pool resources’ in the environment including water and wilderness. Is nature properly characterized as a legal person or as property? Should another regime (such as the Commons) govern? Should a governance structure rooted in local communities and civil society manage rather than ‘the state’? As we will see, there are contemporary debates and legal developments in these areas. Should we reset our reference point in the law away from ‘the market’ and replace it with the ‘eco-system’ as base? 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 (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.

SCHEDULE¹

Class	Topic	Readings ²
1 Jan 5	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>Legacies of British Slavery: Online Database</i> http://www.ucl.ac.uk/lbs 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 Jan 12	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)	Ta-Nehisi Coates, "The Case for Reparations" May 21, 2014, The Atlantic at http://www.theatlantic.com/features/archive/2014/05/the-case-for-reparations/361631/
3 Jan 19	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 Also read: <i>Nakhuda v Story Book Farm Primate</i>

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

		<p><i>Sanctuary</i>, 2014 ONSC 296, [2014] O.J. No. 280, per M.E. Vallee J. (cuLearn)</p> <p>Also: 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.</p> <ul style="list-style-type: none"> o http://www.ahbj.org/story/business-journalism-and-the-hot-news-doctrine/
4 Jan 26	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
	ASSIGNMENT 1 POSTED CuLEARN	
5 Feb 2	Legal Persons I: Corporations Legal identity of a corporation, historical development and current debates related to limited liability and corporate power.	Chapter 5
6 Feb 9	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 Also see: “The incorporated woman: Who owns your personal data?” The Economist June 27, 2014 : http://www.economist.com/blogs/schumpeter/2014/06/who-owns-your-personal-data
	ASSIGNMENT ONE DUE cuLEARN BY 4.00PM	
Feb 16	NO CLASS – READING WEEK	
7 Feb 23	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 Mar 2	Persons Paternal II: Children and People with Diminished Mental Capacity Medical decision-making; capacity, concept and scope of legal personality.	Chapter 8: <i>NHS Trust v DE</i> [2013] EWHC 2562 http://www.theguardian.com/law/2013/aug/16/court-sterilisation-man-learning-difficulties
9 Mar 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 Also: Tim Caulfield, “Who owns your tissue? You’d be surprised” <i>Globe and Mail</i> , June 20, 2014 (culearn) We will cover the NZ case of <i>Takamore</i> in class. 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
10 Mar 16	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 Also read: Michael Sandel et al, “Should you be able to pay extra fees for better public services” <i>Globe and Mail</i> March 17, 2014 (cuLearn). View 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/ Micheal Friscolanti, “Will see organs for cash” <i>Macleans</i> Oct 17, 2012 at http://www.macleans.ca/news/canada/how-much-is-that-kidney-in-your-body/ See also: http://www.justiceharvard.org/2011/02/episode-05/#watch http://careforhealthypregnancy.com/ethics-of-outsourcing-pregnancy-to-india-michael-sandel/
11 Mar 23	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;	Chapter 11 Also: <ul style="list-style-type: none"> Nancy Macdonald, “is privatizing water the right thing to do?” <i>Macleans</i>,

	failures and potential of private property; international law.	September 3, 2009 at http://www.macleans.ca/society/life/the-market-solution/
12 Mar 30	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 You must also read 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/Tuu-tohuWhakatupuaFinalSigned.pdf
April 11	Take Home Assignment Posted on cuLearn	
April 23	End of examination period	Take Home Examination DUE

Appendix: Notes on Assignment Style

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 (10+ day) period to work on the assignment – thus, it 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 Them? Generally, I also 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.

How should you manage them? 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? Because of the extended timeline for completion, you should have time 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! This 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!