

Carleton University Department of Law and Legal Studies
COURSE OUTLINE

Laws 2201T
PERSONS AND PROPERTY

Term:	Summer I 2013
Instructor	Professor T. Brettel Dawson
Prerequisites:	Laws 1000
Lecture	There are no live lectures for this course. Lectures from Fall 2012 form the basis for the course and will be broadcast as set out below.
Broadcast	First class Monday, May 6, Last class Monday June 17. Note: No broadcast Victoria Day, May 20. Rogers, Channel 243: Mondays <u>AND</u> Fridays, 2.00PM – 5.00PM Note: Lectures are also viewable via: CUTV Webcast; Video-On-Demand (VOD) online streaming - (fee applies) and at the CUTV Student Centre . See the CUTV website for more information. KEEP UP! Find a regular time in your weekly schedule to watch the lectures each week.
Contact:	Office: Loeb D497 Email: Please email me through MyCarleton Portal (Connect) – the link is available inside cuLearn for this course.
Office Hours:	With Professor by appointment. Contact me by email. With the TA: We will set up a timeslot when the TA will be available by Chat or Big Blue Button (link within cuLearn) as weekly ‘virtual office hours’ and discussion group (optional).
cuLearn	cuLearn is essential for this course. Lecture slides, course information, lecture slides, discussion boards are available <u>only</u> through this modality. Please 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.
TA:	We have one TA in this class. Contact information will be provided early in the term.

Email Etiquette

While, email is a good way to be in touch with both me and your TA, we will not reply instantly; rather, we aim to respond within 36 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 36 hours (and read over the feedback a couple of times) before emailing about it. Always think through your inquiry before emailing. 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.

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

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.

LEARNING OBJECTIVES

At the end of this course, students should be able to

- Summarize and analyze case law in the area of persons and property. In particular,
 - Distil relevant facts and issues in cases discussed,
 - outline judicial reasoning (both majority and dissenting opinions),
 - accurately state results in cases and
 - identify and assess the policy elements and debates in legal decision-making.
- Locate cases in their historical (economic and social) contexts
- Identify theoretical positions and arguments advanced by scholars in relation to course themes to move from descriptive understanding towards critical assessment of legal principles.

Note:

- I am not seeking to ‘teach you the law’ of persons and property in any detail (although you will, of course, learn current legal principles in a number of areas). Rather, I am exploring the role of law in constituting our understanding and responses to a range of (often contentious) social and relations touching upon our persons and our property.

REQUIRED READING

The following casebook, available for purchase in the University Bookstore, is required for this class:

- T. Brettel Dawson, *Persons and Property in Private Law* (North York, Captus Press, 2011).

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

Slides for each lecture will be released on the cuLearn site at the beginning of each week (for each of the two broadcasts). These are based on the lectures in the Fall Semester. Some decks contain more information than covered in the lecture. You are only responsible for material covered in the lecture (but may find the other material interesting!)

ADAPTATIONS FROM FALL BROADCAST (MOSTLY “WHAT WE AREN’T DOING IN THE SUMMER!”)

e-Timeslot

In the Fall, we piloted an e-timeslot to facilitate student interaction while watching classes. We are not doing this over the Summer term – disregard any references that may remain in the lectures.

e-Groups	In the Fall, due to the size of the enrollment, I divide the class into 4 smaller groups each looked after by a TA. We are not doing this over the Summer – so, again, please disregard any remaining references to this component.
e-participation	In the Fall 2012 offering, there was a class participation element – this is not part of this compressed summer offering of the course. We also had clickers (accessed by SMS texting or web). These were fun and you'll see the slides and responses from the Fall class but the polls won't be live in the summer.
Essay	The Fall class had a research essay on topics in Class 5. Disregard references to this essay as it is not part of the Summer evaluation scheme.

EVALUATION

See further information on “Managing Assignments” at the end of this Outline

We move quickly in a summer course. You will have about a week to complete assignments 1 and 2 and you may not get weekend time to do them! We will try to get your marks to you in about a week (if the class is larger than anticipated, it may take a bit longer to complete the marking. The TA and I work through the marking guide to be sure that marking is consistent with my expectations and this may also add a little time into how long it takes us to work on the marking.

	Value	Available on cuLearn	Due	Marking Targets (tentative)
Assignment 1 Persons Classes 1-2	20%	After class 2 May 11, 2013	IN: May 19 at 4.00pm Designed to get you reading, watching and writing early and give some feedback.	Marks returned by May 27
Assignment 2 Classes 3, 4 & 5	30%	After class 6 May 28, 2013	IN June 5 at 4.00pm	Marks returned by June 13
Assignment 3 Property Classes 6-12	50%	After class 12 June 18, 2013	IN: End of Examination Period anticipated as June 27 (tbc)	Marks returned with FGR (approx. July 3)

Assignment Rules

- All components of evaluation must be completed to receive a passing grade in the course.
- Online Submission and Return: information below.
- Late penalties will be given for work that is submitted after due date and time (see information below). Work handed in more that 7 days late counts to completion but receives ZERO marks.
- Extensions can only be granted by Professor Dawson and only for Assignment 1. You must request ahead of due date and you must provide official supporting documentation.

Extensions are not granted for computer problems, schedule or work conflicts, or general illness. If you are too sick to complete your work – see a doctor and get a medical note.

- Individual, original work on all assignments. 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.
- Keep a copy of all assignments and examinations as submitted until your final grade is confirmed. We may contact you for an additional copy if something goes wrong in submission

CLASS SCHEDULE

Overview of Material Covered

We examine the distinction between legal personhood and property (opening with a short case study on slavery from Africa to the New World). 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 engaging questions related to the scope of control over one's body and notions of autonomy and choice. We will also review these questions in relation to pregnant women.

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.

We then 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 the legal division is that the body (or the legal person) cannot be property at all. We will examine some case studies: What is 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. 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?

- Secondly, we will reverse the question and probe the dividing lines between property and person. We will ask whether there are some resources (or things) that should be outside of the private-public property system and regarded as common property. These are elements of life (for humans and all other species) such as air, water, wilderness and habitat. Private property ‘encloses’ resources: Are there some things that should not be subject to enclosure. We will also ask whether the legal concept of personhood would be a viable (or at least provocative) alternative: should trees be (legal) persons with their own legal identity and capacity to consent (or not) to certain uses?

Schedule

Class	Topic	Readings and Resources ¹
1 May 6	<p>Introduction</p> <p>Organization 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)
PART I: PERSONS		
2 May 10	<p>The Legal Person:</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: One of the readings by Davies and Naffine 2A(b) is covered in a <u>later</u> class and is <u>not</u> part of the readings for this class or assignments based on this class).
3 May 13	<p>Women as Legal Persons</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 May 17	<p>Corporations as Legal Persons</p> <p>The creation of the corporation as a legal person; economic and social significance;</p>	Chapters 4A and 4B

¹ References to Chapters relate to Casebook; other resources given will be accessed in class with links or details provided in slides.

	Case Study: economic action (immunity) and political action by corporations.	
5 May 24	<p>The Contingent or Conditional Legal Person</p> <p>a) Children b) Persons with Developmental Disabilities c) The Pregnant Woman</p> <p>Right to refuse medical treatment (or not); right of others to consent on your behalf (or not). Legal relationships (mapped and unmapped) between pregnant woman and fetus.</p>	<p>Chapter 5A and 5B Chapter 6A</p> <p>We will mention the two recent Supreme Court decisions in this class: <i>Carter</i> (right to die) and <i>Mabior</i> (HIV disclosure)</p>
PART II: PROPERTY		
6 May 27	<p>Property Law: Concept and Functions</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>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>
7 May 31	<p>Property and the Public-Private Divide I</p> <p>Justifications for private property (and their limitations)</p> <p>Public access to private property; private access to public property</p>	<p>Chapter 9A a) Ziff</p> <p>Audio: DeSoto</p> <p>Cases:</p> <ul style="list-style-type: none"> • Chapter 9B: Harrison, Dieleman and Adams • Chapter 9A: INS and Murdoch
8 June 3	<p>Property and the Public-Private Divide II</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 10</p> <ul style="list-style-type: none"> • KVP; Hickey, Palmer, Spraytech <p>Chapter 10(e) Karp</p>

PART III: BOUNDARIES OF PERSON AND PROPERTY: THE HUMAN BODY AND THE MARKET		
9 June 7	<p>Legal Status of the Human Body: Person, Property, Other</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 June 10	<p>Legal Status of Reproduction and Recycling of the Body</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>
PART IV: BOUNDARIES OF PROPERTY AND PERSON: WILDERNESS AND WATER		
11 June 14	<p>(Land and) Water: Who Owns It (if Anyone?)</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 http://www.sciencemag.org/content/162/3859/1243.full</p>
12 June 17	<p>Conclusion Reimagining Persons and Property</p> <p>Might Trees or Rivers Be(come) legal persons?</p>	<p>Chapter 12</p> <p>http://www.wrmtb.co.nz/ (Scroll to agreement: http://www.wrmtb.co.nz/new_updates/TuutohuWhakatupuaFinalSigned.pdf)</p> <p>http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10830586</p>

Learning Points

As we move through the lectures, we will address a number of concepts and themes covering a number of learning points as we move along. In particular, by 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 analyse 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.

MANAGING THE ASSIGNMENTS: INFORMATION YOU NEED TO KNOW

Online Modality

Everything is done online at cuLearn. I post the assignments there, you download them there and you post (submit) them there – follow the instructions on the assignment sheet. You can only submit/send to marking ONCE.

We mark them online and return them to you, also via cuLearn. We input your marks into Grades on cuLearn. I will put up a test assignment for you to practice this process (optional) before the first assignment is due.

On Time Expectation and (Ruthless) Late Penalties

I have noticed a worrying trend towards lots of late assignments. In my view, it is almost NEVER worth taking the little bit of extra time to work on the finer touches of an assignment to get extra marks. Your performance won’t be enhanced by the last minute adrenaline rush of meeting the deadline either. I know the sun will be shining and it will seem like so much more fun to be relaxing outside. Resist! Get it IN! On Time! (and then relax outside in the sunshine!)

More practically speaking, late assignments create a significant administrative burden across the team of people who work with me on the course. There is a significantly higher risk of assignments going astray in the pile as well.

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

- Late work will be penalized as follows: 5% off if you hand any work in on the due date after the deadline but before midnight. If you hand it in the 'next day' anytime before midnight you will lose a further 5% marks. Any further days late (counted from stroke of midnight) including weekend days, you lose a further 10% per day. If you hand in your work more than seven days late, I will accept it towards course completion but it will receive zero marks.

What are 'Take Homes' and Why do I assign 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.

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.

There is a practical reason too: many students take this class as a distance course; take homes avoid having to get people in an examination room!

Managing Take Homes

Take homes are not easier and they aren't shorter than essays and exams. Just because you get to have all your notes and materials doesn't mean you don't need to study! Here is my best advice:

- Download the assignments as soon as they are posted and review them.
- Read the questions and figure out what you have to do and where you have a choice, which questions interest you the most.
- Create time estimates for each element and make 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');
 - 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 and examples 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 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.