

Carleton University Department of Law and Legal Studies

**COURSE OUTLINE**

**Laws 2201T  
PERSONS AND PROPERTY**

<b>Term:</b>	<b>Summer I 2014</b>
<b>Instructor</b>	Professor T. Brettel Dawson
<b>TAs:</b>	We will have a TA in this class. I will provide contact information early in term. Our TA will mark your work and be a point of first contact for questions and feedback.
<b>Prerequisites:</b>	Laws 1000
<b>Lecture</b>	<p>Broadcast (Rogers, Channel 243) Twice a Week as follows Mondays and Fridays, 2.00PM -5.00PM</p> <p>First class: May 05, 2014</p> <ul style="list-style-type: none"><li>• No class: May 19, 2014</li></ul> <p>Last Class: June 16, 2014</p> <ul style="list-style-type: none"><li>• Final Assignment (Take Home Examination) Due: June 26, 2014</li></ul> <p><b>Options:</b> Video on Demand is available for this course (additional payment). This allows you to watch or re-watch lectures on your own schedule. A link to more information is provided on the cuLearn Page.</p> <p>Note: Lectures are also viewable on CD at the <a href="#">CUOL Student Centre</a>. See the CUOL website for more information.</p>
<b>Contact:</b>	Office: Loeb D497
<b>Office Hours:</b>	By appointment.
<b>Email:</b>	Email is an excellent way to contact me (or your TA) where a personal discussion isn't needed. Please email me through <b>MyCarleton Portal</b> (Connect) via cuLearn. I may not reply for 36 hours especially if I am working towards a deadline of my own! The TA 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!). 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.
<b>cuLearn</b>	<b>cuLearn</b> , is an essential part of this course. Lecture slides, course information, lecture slides, assignments, discussion boards are available <u>only</u> through this modality.

## Participation

Although this is a broadcast course, I encourage you to get involved in the discussion online. There is a class participation grade. I will put up some discussion questions and debates. There will also be FAQ boards for the assignments.

Individual work is required for all assignments so while study groups are a good idea, sharing ideas on assignments or FAQs is not. Note as well: While vigorous debate and inquiry is encouraged, 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 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

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. 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).
- The current edition includes new material and quite significantly reorganizes material from the earlier edition. As such, I recommend AGAINST you purchasing the older edition even if you can get it cheap!
- 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 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 viewing the lectures and doing the reading!

### **EVALUATION**

#### **Online Modality**

Assignments are handed-in electronically. You submit them (by attaching a file) through the Assignments link on the cuLearn page for the course. I return them to you by cuLearn with any comments and a marking sheet. [Thus, you don't hand in/pick-up a printed version at the Law Office]

#### **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 the TA, the matter can be taken up with me.

#### **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

All components of written evaluation must be completed to receive a passing grade in the course. There are TWO written take home assignments in the class. There is also a class participation requirement. 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

35%/35marks. Short answer questions (variable length and value per question). Total word count +/- 3000 words (to be confirmed).

- Available: after class 4 (May 16)
- Due: May 26
- Target for Assignment to be Marked and returned (via cuLearn): June 6<sup>th</sup>

**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

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

- Available: Exam period (I will plan to post June 16, tbc)
- Due: last day of summer I examination period (June 26, if the university sets a different date, it will govern and I will post this information.)
- Marked and returned as part of Final Grade Reports.

**Late work:** will not 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.

Note: Assignment 2: is formally a take home examination. It is posted on the last day of Summer I term classes. It is due on the final day of the Summer I Examination Period.

### **Class Participation:**

There is a class participation grade of 5%. You gain 1 mark for each substantive posting on discussion boards – including the Introductions discussion board but excluding Assignment FAQ or technical queries. There are references in the lectures to the different schema in the Fall but please take to heart the need to post on the boards this summer. It will ensure that you build a connection to the course and to your peers in the course.

## **LAWS 2201 PERSONS AND PROPERTY FALL 2013: COURSE CONTENT AND SCHEDULE**

The concepts of 'legal persons' and property and the concept of the possessive (and autonomous) individual in private law are introduced in our first 2 classes. Of particular interest is the role that private law has played in reinforcing certain social and economic 'imperatives' on behalf of those with power and preferences. 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 and interaction. We then move, in classes 5-6, to study Persons (and the concept of legal personality) in more depth. 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 broader economic and social contexts having a bearing on this legal change. Indeed, the legal status of corporations as legal persons is currently being questioned in the United States in the aftermath of the *Citizens United* case in particular. Some of the questions explored are: 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?

After laying these foundations we move to more specialized examination of Property and Persons in later classes. In classes 7-8 we study the legal capacities of legal persons (who are human beings) with respect to their own bodies. This includes children and persons with developmental disabilities. We will also study some efforts made to control 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 conclusions of incompetence or incomplete decision-making capacity. This series of case studies allows us to highlight (and interrogate) a central tenet of liberalism: the autonomous 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. Where should the law go in these areas and how should it be guided by ideas underlying legal and human personhood and the scope of property rights and the market?

In our final section of the course, we go forth into 'uncharted territories' (or *terra nullus*) whether neither concept (persons or property) has yet been recognized – first in relation to the body and secondly, in relation to the environment. We ask whether nature should be regarded as a legal person and whether our body parts or tissue should be regarded as property. As we will see, there are contemporary debates and legal developments about this direction. Should we reset our reference point from 'the market' to the 'eco-system'? 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.

## READINGS AND LINKS

The assigned readings for the basis for the lecture each week. I will post a discussion question each week related to at least one reading. I encourage you to post your comments and create a conversation with your fellow summer 2201T'ers.

Please read the links to online readings or resources that provided in various chapters. They are an integral part of the course material.

## SCHEDULE

Class	Topic	Readings
<b>1</b> May 5	<b>Conceptual and Historical Introduction to Persons and Property in Private Law</b> (taxonomy of private law, change from feudal to market structure)  Case Study (Slavery)	Chapter 1
<b>2</b> May 9	<b>Legal Constructions of Persons and Property</b> Key concepts including 'possessive individual', legal effect of being (or not being) a legal person; connections between persons and property.  Case Study (Segregated Property)	Chapter 2
<b>3</b> May 12	<b>Concept and Functions of a Property System</b> Legal definition of property, purposes of property law system; different types of property including private, public and common property)	Chapter 3
<b>4</b> May 16	<b>Private Property: Justifications and Scope</b> Arguments supporting private property – and their limitations; interaction of private property with public interest and policy; a modern vision of private property?)	Chapter 4
<b>May 19</b>	<b>Victoria Day – No Class</b>	
<b>5</b> May 23	<b>Legal Persons I: Corporations</b> Legal identity of a corporation, historical development and current debates related to limited liability and corporate power.	Chapter 5

<b>6</b> <b>May 26</b>	<b>Legal Persons II: Women</b> 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 <b>ASSIGNMENT ONE DUE</b>
<b>7</b> <b>May 30</b>	<b>Persons Paternal I: The Adult Self</b> 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
<b>8</b> <b>June 2</b>	<b>Persons Paternal II: Children and People with Diminished Mental Capacity</b> Medical decision-making; capacity, concept and scope of legal personality.	Chapter 8: also <a href="http://www.theguardian.com/law/2013/aug/16/court-sterilisation-man-learning-difficulties">http://www.theguardian.com/law/2013/aug/16/court-sterilisation-man-learning-difficulties</a>
<b>9</b> <b>June 6</b>	<b>Markets, Exchange and the Person I: The Dead Body and Living Tissue</b> Legal status of the body; legal effect of death (person and property); interests in human tissue and body parts.	Chapter 9
<b>10</b> <b>June 9</b>	<b>Markets, Exchange and the Person II: Surrogacy in Law and Life</b> 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 See also: <a href="http://www.justiceharvard.org/2011/02/episode-05/#watch">http://www.justiceharvard.org/2011/02/episode-05/#watch</a>  <a href="http://careforhealthypregnancy.com/ethics-of-outsourcing-pregnancy-to-india-michael-sandel/">http://careforhealthypregnancy.com/ethics-of-outsourcing-pregnancy-to-india-michael-sandel/</a>
<b>11</b> <b>June 13</b>	<b>Markets Exchange and Property I: Preserving Common Property (Nature)</b> Common pool resources and commercial exploitation (private property), regulatory regimes - Garret Hardin's Tragedy; Elinor Ostrom's Hope; failures and potential of private property; international law.	Chapter 11 You must read the links addressed/provided in class slides both class 11 and class 12. See also the (posted) document called 'Updated Links'
<b>12</b> <b>June 16</b>	<b>Markets Exchange and Property II: A Legal Person (Eco-System)</b> 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 Barry L. Rev. 11 (2008) [posted on cuLearn].
<b>June 25</b>	<b>End of examination period Summer I:</b>	<b>Take Home Examination (Assignment 2 DUE)</b>

## Appendix: Notes on Assignment Style

What are 'Take Homes': Take Home Assignments are open book examinations. You can refer to all course material in completing your answers. Accordingly, they do not ask for descriptive answers but require you to think about the material and themes. I am not looking for regurgitation (memory tests) but analysis and assessment. You need to work on the assignment throughout the allotted period – it is not like a 3-hour examination but much more like an essay assignment. You can study in an informed and focused manner – with the questions in front of you. 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: I use the Take Homes to make sure that you have grasped the basic concepts in the course and can link them to the material covered. 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 them 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 plan to manage them? Here is my best advice: 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.

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 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 sense – if you want to revise your work but not if you plan to actually work on it in the day or so beforehand and thus are at risk of all the same terrors of a scheduled examination. I want to encourage you to schedule work on assignments in a much less stressful manner! More pragmatically, I organize my own marking schedule and that of the TA(s) 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. I have also noticed that despite all due care, late assignments can get missed or other administrative headaches arise – which has an impact on you (and us!)