

Laws 2201* D, Persons and Property

Prof. Neil Sargent

A. INSTRUCTIONS

1. **Value:** This assignment is worth 40 percent of the course grade
2. **Due Date: Wednesday, November 10, 2009.** The assignment must be handed in to the department of law before the end of office hours on November 10. Papers may be sent by mail or courier, but may **not** be submitted by email. Extensions will not be given except for compelling personal reasons. You have over three weeks in which to complete the assignment so plan your time accordingly.
3. **Late assignments:** Late assignments will be penalized by one letter grade per day, e.g., from B- to C+. It is not worth losing marks in this way. So once again, plan your time accordingly.
4. **Length:** This is a research assignment. This means that the work you put in prior to writing the assignment will count every bit as much as the writing itself. I expect assignments to be no more than 10-12 double-spaced typed pages, including all footnotes and bibliography. I put a premium on the way you organize your material, rather than on length.
5. **Format:** The format should be type-written, double-spaced on $\frac{1}{2}$ x 11 paper, using a single side only.

Please leave wide margins to allow room for comments.

Attach a **cover sheet** that includes your name, student number, course and section number, the professor's name, date of submission and the title of your paper.

Staple your paper in the top left hand corner. **DO NOT USE PAPER CLIPS OR PLASTIC COVERS, WHICH CAN EASILY FALL OFF.**

Use correct citation for materials referred to in your paper. Guidance for citation can be obtained from Northey, **Making Sense in the Social Sciences**. (Toronto: Oxford University Press, 1983). For legal citation rules you should refer to the most recent edition of the **Canadian Guide to Uniform Legal Citation**, published by Carswell.

In your written work you should always be careful to use gender-appropriate, inclusive and non-sexist language. For example, this would include attention to the use of female and male pronouns and the use of language that is free of stereotypic, pejorative and derogatory terms. For further reference, and for resources on the use of non-sexist language, see the materials referred to in the course outline.

6. **Originality:** Each student is responsible for submitting an original essay, which has not been submitted for any other course, or which utilizes material that has been previously submitted in any other course, or from any other paper. Students whose work is not original, or which plagiarizes from any other person's work, may be found to have committed the academic offence of plagiarism, which may have very serious consequences. If you have any questions about plagiarism or originality, or academic citation rules, please contact me either in person, or by email or by phone. It is always better to be sure than to be sorry after the event.

B. OBJECTIVES OF THE ASSIGNMENT

The aim of the assignment is to require you to select a topic that is relevant to the issues of private law discussed throughout the course so far, and to explore it **through your own research** as well as through our discussions in class and the course materials. In researching and writing the assignment I expect you to explore and discuss a number of issues arising out of the topic selected. I have deliberately given you open-ended topics to research, which involve not only research into what the legal rules or categories governing the issues under discussion may be, but also often a debate over what the legal rules or categories or policy governing these issues **should** be. In other words, there is a policy dimension to each of these topics that I expect you to uncover and discuss in your essays. We spend much of our time in class exploring these kinds of issues and debates in relation to particular topics. I expect you to do no less, and indeed, to do more, since I expect you to do further research beyond the class discussions and the course materials into these topics.

In your research essays, you may choose whether to remain objective and neutral with regard to the topics under discussion, or to enter into the debate by offering your own point of view. For myself, I prefer the second approach, because it leads you into discussing the relative strengths and weaknesses of the various positions in each debate, which is one of the primary objectives of this research essay assignment. However, if you do take a position in any debate, make sure that you do not address the issue in a one-sided way. A good debate or policy discussion involves looking at the arguments on all sides of a debate. Too one-sided a view of any issue tends to dismiss or undervalue the strengths of the arguments that may be made on the other side. Part of the purpose of the research process is to encourage you to discover this for yourselves. In reaching your own conclusion, therefore, make sure you have adequately addressed the arguments that may be presented against this position. In so far as you do so, your own argument will be strengthened, since the reader (myself) will be aware that you are familiar with the various positions in the debate, and can respond to countervailing arguments against your position rather than simply dismissing them or, worse, ignoring them. In this sense, I will be evaluating your essays on the quality of the arguments and discussion you present with respect to the topic you choose, rather than whether I happen to agree with your position or not.

C. SUGGESTED TOPICS

1. In his article, "Should Trees Have Standing? Towards Legal Rights for Natural Objects", Christopher Stone makes the argument that the concept of legal personality is not restricted to human beings, and could be extended to protect the natural environment, in much the same way as corporations are regarded as separate legal persons in law. What would be the implications of extending the scope of legal personality to include the natural environment, such as trees, rivers, watersheds, or animals? Are there any obvious reasons why the environment should not be treated as a legal person, akin to a corporation, or to the protected legal status of a child? On the other hand, are there any arguments for restricting the scope of legal personality to human beings and to man-made organizations, such as corporations? Discuss the implications of Stone's argument. Are there any reasons why Stone's environmental rights argument should be preferred to more conventional legal approaches to protecting the environment through legislation that requires public consultation or government planning approval before permitting development in environmentally sensitive areas?
2. At various points throughout the term we have discussed the differences between the **concept of legal autonomy**, as it is expressed in the legal rules governing the requirement of consent for medical treatment, for example, and the **concept of legal dependency**, as this applies to children under the age of consent or persons with limited mental (or physical) capacity. Why is it that the legal system places constraints on the legal capacity of certain categories of persons to make their own autonomous choices about matters affecting their health or bodily integrity, or even over personal matters such as where or with whom they should live, whether they should attend educational institutions, or what kinds of legal relationships they can enter into? If the legal system does place limitations on the legal capacity of certain categories of persons to make autonomous choices for themselves, who should be given legal authority to make decisions on their behalf, and for whose benefit and using what kinds of criteria, should such substituted decision-making authority be exercised? To what extent is it possible for the child or person of limited legal capacity to challenge the decisions of those who are delegated legal authority to make decisions on their behalf?

Discuss the implications of these questions in relation to your external research and to some of the cases we have discussed this term, such as *Malette v. Shulman*, *Re Eve*, *B (R) v. Children's Aid Society of Metropolitan Toronto*, *Winnipeg Child and Family Services v. G*; and *Dobson v. Dobson*.

3. To what extent should the discoverer of a new cell line, or the scientific inventor of a process for genetically modifying the molecular structure of animals or plants, be entitled to claim exclusive private property rights over the cell line or over the animals or plants that have been genetically modified through the new process, or by obtaining patents on these processes or discoveries? On the other hand, are there any ethical or public interest concerns raised with allocating exclusive intellectual property rights to the inventor of a new biotechnological process, or the scientist who isolates a formerly unknown cell line in a person, or in an animal or plant species? Discuss these issues in relation to your external legal research and to some of the materials we have discussed this term, such as *Moore v. Regents of the University of California*; *Harvard College v. Canada*; *Monsanto v. Schneider*, and the U. N. Declaration on the Human Genome and Human Rights