

Course Outline

COURSE:	LAWS 2201A/T
TERM:	FALL 2019
PREREQUISITES:	LAWS 1000/LAWS 1001 & 1002
CLASS:	Day & Time: Tuesdays, 2.35-5.25PM Room: Please check with Carleton Central for current room location Laws 2201T: Live Stream (See more options below) CRN for section TOD (optional Video On Demand service): 33631 First class: September 10, 2019 Last class: December 03, 2019
INSTRUCTOR:	Professor Brettel Dawson
TEACHING ASSISTANTS	TAs and contact emails will be posted on cuLearn page for this course.
CONTACT:	Office: D497 Loeb Building Office Hrs: Wednesday 9.30AM - 11.30AM Telephone: 613-520-2600 Ext. 3670 Email: Brettel.dawson@carleton.ca Turnaround time is normally within 24 hours but do not expect a reply on weekends or overnight.

CALENDAR COURSE DESCRIPTION

Origins and scope of the concept of person in law and how concepts of legal personality change over time. Origins and scope of the concept of property and how concepts of property change over time.

COURSE DESCRIPTION

We examine the fundamental conceptual building blocks and organization of private law – its legal subject, the person; and its legal object, property. We explore questions including: what is the ‘legal person’ and why does this construct matter (and to whom)? What is property as a legal construct of what can be owned, by whom and on what terms? Who has or has not been a legal person (over time), seen as capable of autonomous legal action and ownership? The personhood of women, slaves, children and corporations is studied along with origin stories, purposes and types of property in Canada. By interweaving themes of indigenous experience, ecology, and power the book traces a narrative arc from the classic taxonomy of private law categories - Blackstone’s Commentaries – to newer ways to order person and property integrating contemporary ideas of reconciliation and earth jurisprudence - Cullinans’ ‘Wild’ Law and Berry’s ‘great work’.

This course is located within the broad boundaries of private law which as been defined as “the law of horizontal relationships (between legal persons” permitting “a wide variety of ‘frameworks for interdependent interpersonal relationships that allow us to form and lead [our own] conception of our lives.’ Private law is generally distinguished from “public law, the law of vertical state/individual relations.”¹

Current private law (and in particular, the law of persons and property) ‘legalized’/translated into legal principles and rules the social, economic and political conditions (and preferences) which emerged from the Enlightenment and described by CB MacPherson, a noted political philosopher, in the following way:

Society bec[a]me a lot of free individuals related to each other as proprietors of their own capacities and of what they have acquired by their exercise (property). Society consists of relations of exchange between proprietors. Political society [law] bec[a]me a calculated device for the protection of this property and for the maintenance of an orderly relation of exchange.”²

Those relations of exchange (contract law), protection from violations of person or property (tort law) and the boundaries of permissible behaviour in exchange relations (fiduciary relationships, conscionability and good faith) are covered in the companion course Laws 2202 Obligations.

LEARNING OBJECTIVES

By the end of this course you should be able to:

- explain how the legal concepts of legal personhood and property law constitute a framework by which law approaches ownership and decision-making related to resources and our own bodies.
- critically assess the concepts of the legal person and property (e.g., how they mobilize legal ideologies; how they have historically and currently advanced certain interests and excluded others); and
- apply the concepts to explaining and resolving past and contemporary social and economic developments.

This course is designed to contribute towards your intellectual development within the law program by assisting you to become better able to:

- read and analyze case law (ancient and modern);
- understand the role of judicial decisions in shaping common law rules;
- move from being able to describe cases to being able to place them within the context of theoretical concepts and policy ideas; and,
- be able to apply (and extend) legal concepts (and precedents) to contemporary social and legal debates.

More detailed learning objectives for each section of the course are stated in the relevant Part Introductions in the Casebook (see Required Readings/Assigned Text).

¹ Hanoch Dagan & Avihay Dorfmann, “Just Relationships” (2016) 116 Columbia Law Review 1395. A quite different view about private law and public law is expressed by Horwitz who noted that “the embedding of the public/private distinction cast private law as a “neutral system for facilitating voluntary market transactions and vindicating injuries to private rights... [advancing] the view that state regulation of private relations was a dangerous and unnatural public intrusion into a system based on private rights.” In his view, this public/private distinction has an ideological function that permits and obscures particular (unequal) distributions of power through property rights. See Morton J. Horwitz, “The History of The Public/Private Distinction” (1982) 130 University of Pennsylvania Law Review 1423.

² See Davies and Naffine in Casebook 31.

CULEARN:

cuLearn, is an essential part of this course. Lecture slides, course information, lecture slides, assignments, discussion boards are available only through this modality. Get into the habit of going to the course culearn page a couple of times a week. The evaluation structure (for both online and on campus students) has been designed to encourage you to engage with activities on cuLearn and, in so doing, create a richer, extended learning community.

REQUIRED TEXTS

T. Brettel Dawson, *Persons and Property in Private Law*, **THIRD EDITION** (North York, Captus Press, 2019).

This text (which I refer to as the Casebook) has been prepared for my sections of the course. It is required reading. WE USE THE CASEBOOK EXTENSIVELY. Accordingly, plan to purchase the book. This new, third Edition will be 'hot off the press' and available from the University Bookstore (or will be available early in the term).³

Please read the assigned material before each lecture and review it again after each lecture. I will ask you to respond to questions about the material and to discuss it in lectures. Be an active learner (and keep up with the material so you don't have to cram (and panic) as various evaluation elements unfold during the semester!!!

NOTE - DO NOT ACQUIRE EITHER OF THE FOLLOWING BOOKS:

- Earlier editions of the required Dawson text. The third edition is an extensive revision and reframing of our subject. It contains substantially different readings and organization.
- Sargent and Atkinson, *Just Between the Law and Us*. This book not used in this course and there is little overlap with our required text

SUPPLEMENTARY TEXTS

Additional readings may be posted on cuLearn during the term. Check-in!

LECTURES⁴

In Person: Every student (both section A and T) is welcome to attend class! Please come to class even if you are able to view lectures online. I thrive on the company! More importantly, discussion is part of our class time and you'll have a chance to share views with other members of the class.

Web-streamed: Live: Check it out at <https://vod.cuol.ca/stream>

Online Access: You may access the course lectures on-line by one of the following ways:

- Subscribe to the optional Video-on-Demand (VOD) service for this course by registering in section TOD (**33631**). Fee applies.
- Pay per view is also available for individual lectures. You can [rent individual lectures online](#) if you

³ I will post readings for Lectures 1 and 2 on cuLearn in case the Casebook is delayed in arriving at the Bookstore.

⁴ PowerPoint slides will normally be posted on cuLearn day of (morning) each lecture.

miss a class.

- Watch the VOD lectures on campus at the CUOL Student Centre in room D299 Loeb Building 24/7 at no charge.

EVALUATION

(All components must be completed in order to get a passing grade)

Note: 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.

	What	Weight	Timing/Notes
1.	Mid-term Multiple-Choice Exam	25%	Week of Covers Classes 1-5 Scheduled During Week of October 29; (NOT held in class time; most likely days - Friday evening or Saturday morning Nov 1 st or 2 nd .)
2.	Essay	35%	Due December 6 (last day of classes) No additional research required: prepared using course materials.
3.	Final Multiple-Choice Exam	35%	Scheduled Examination Period: December 9-21 Covers Classes 6-12 Scheduled between Dec 9-21 (see Examination Services)
4.	Class participation	5%	Post on/engage with cuLearn discussion boards/forums including posting an Introduction. Each posting counts for 0.5 marks. <u>Governing Rules:</u> <ul style="list-style-type: none"> • No more than two postings can made be after November 30. • Postings will not be counted if made after December 04. • Postings will not be counted if made more than two weeks after the associated topic/activity was created on cuLearn. • Excludes postings on FAQ (exams or essay); and technical postings.

SCHEDULE

The general plan is to work with one chapter of the Casebook per week. Students are responsible for all assigned readings. Lecture content may focus on a limited number of these readings.

Lecture/Date		Topic	Readings
			Casebook, 3 rd edition:
1	Sept 10	<p>Introduction: Persons, Property and Legal Ordering</p> <p>We will start by discussing (reacting) to some opening examples (Ch 1A)</p> <p>This lecture also includes an overview of the course/logistics etc.</p>	<p>Ch 1A Starting Points Ch 1B (initial review)</p> <p>Ch 1 of Casebook will be posted on cuLearn in case of delay in delivery to Univ Bookstore</p>
2	Sept 17	<p>The Legal Person Constructed</p> <p>Foundational Categories Legal Personification in Theory and Practice</p> <p>We will discuss the history of 'the legal person' concept and various definitions.</p> <p>The case study (Ch 2B) considers legal cases where legal personality was in issue in relation to African slaves in the 'New World'.</p>	<p>Ch 2A Ch 2B Ch 1B (reprise)</p> <p>Chapter 2 of Casebook will be posted on cuLearn in case of delay in delivery to Univ Bookstore.</p>
3	Sept 24	Women: Property, Person and Place	Ch 3A Ch 3B
4	Oct 1	<p>Legal Person/Human Body Possessing the body in law</p> <p>The case study (Ch 4B) considers the role of 'legal personhood' in relation to bodies, in particular, in relation to (coerced) sterilization.</p>	Ch 4A Ch 4B
5	Oct 8	Legal Personality and Decision-Making: Beginnings (Children) and Endings (Death)	Ch 5A Cha 5B
6	Oct 15	<p>Beyond the Human Being: Legal Personality and Inanimate Entities</p> <p>This lecture focuses on the legal status of the corporation (history, theory, critique)</p>	Ch 6 Ch 1A (reprise)
-	Break	NO CLASS – FALL READING WEEK	
7	Oct 29	<p>The Idea of Property</p> <p>Starting Points (posted on culearn ahead of the lecture)</p>	Ch 7A Ch 7B

		Concept, Rationales, Definitions Case Study: Property and Power	
	TBA	MID-TERM MULTIPLE CHOICE EXAM	COVERS CLASSES 1-5
8	Nov 5	Private Property (Mainly) Origin Stories I: Private Property Case Study: Becoming Property (or Not)	Ch 8A Ch 8B
9	Nov 12	Troubling the Boundaries of Private Property The Commons Property and Conservation	Ch 9A Ch 9B
10	Nov 19	Public Property/Indigenous Land: Parks and Wilderness Origin Stories II: Public (Crown) land in Canada Case Study: Non-Ownership/Co- Governance	Ch 10A Ch 10B
11	Nov 26	Eco Systems and Categories Property or Person?	Ch 11
12	Dec 03	Conclusion: From Blackstone to Berry – Revising Categories (Taxonomies) of Person and Property	Ch 12
	Dec 06	Essay Due (via cuLearn Assignments Tab)	
	Dec 9-21	Final Exam (MCQ) Scheduled Examination	

SEE OVER FOR INFORMATION ON POLICIES AND ACCOMODATION

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: Please contact 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:

<https://carleton.ca/equity/accommodation/academic/students/>

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: <https://carleton.ca/equity/accommodation/academic/students/>

Academic Accommodations for Students with Disabilities: If you have a documented disability requiring academic accommodations in this course, please contact The Paul Menton Centre (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 as soon as possible to ensure accommodation arrangements are made. Please consult the PMC Website for their deadline to request accommodations for the formally-scheduled exam (if applicable).

<https://carleton.ca/pmc/students/accommodations/>

Survivors of Sexual Violence

As a community, Carleton University is committed to maintaining a positive learning, working and living environment where sexual violence will not be tolerated, and survivors are supported through academic accommodations as per Carleton's Sexual Violence Policy. For more information about the services available at the university and to obtain information about sexual violence and/or support, visit:

<https://carleton.ca/sexual-violence-support/>

Accommodation for Student Activities

Carleton University recognizes the substantial benefits, both to the individual student and for the university, that result from a student participating in activities beyond the classroom experience. Reasonable accommodation must be provided to students who compete or perform at the national or international level. Please contact your instructor 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. <https://carleton.ca/senate/wp-content/uploads/Accommodation-for-Student-Activities-1.pdf>

For more information on academic accommodation, please contact the departmental administrator or visit: <https://carleton.ca/equity/accommodation/academic/>

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:

<https://carleton.ca/registrar/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://carleton.ca/law/current-students/>