
COURSE OUTLINE

Course: LAWS 2201T *Persons and Property*

Term: Summer 2016

Prerequisite: LAWS1000 (Introduction to Legal Studies)

Instructor: Stephen Tasson

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Office Hours: By appointment

Lectures: The Summer session of LAWS 2201T will be a repeat of lectures recorded during the Winter term. Students may access the course lectures on-line through one of the following means:

- Subscribe to the optional Video-on-Demand (VOD) service for this course by registering in section TOD (CRN 20964) (additional fee applies)
- Watch the VOD lectures on campus at the CUOL Student Centre in room D299 Loeb Building 24/7 at no charge.
- Watch the lectures as they are streamed on the CUOL Web Channel: <https://vod.cuol.ca/stream/web-channel/> “.
- More information is available from the CUOL website. <http://carleton.ca/cuol/access-courses/>

Important Notes about Rebroadcast:

Because this course is a rebroadcast of previously delivered lectures, some IMPORTANT aspects of the course differ from what is discussed in the recorded lectures:

- ❖ The most obvious difference is that I (Steve) am not actually delivering the lectures (Professor Dawson is)!
- ❖ The assignment structure differs in that the **two** assignments discussed in the course have been divided into **four**.
- ❖ There are **NO participation grades** in this course (though Prof. Dawson mentions this in some lectures). She also uses “feedback slides” which we are not able to do in this session so these elements can be disregarded.
- ❖ There may be references made to schedule changes as the Winter course had schedule changes along the way. These changes have been accounted for so references to such changes should be disregarded.

Please note any other differences by looking carefully at this course outline and by keeping abreast of any announcements made on cuLearn. It is ultimately ***your*** responsibility to know and meet the requirements of ***this*** 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://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://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://carleton.ca/pmc/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://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://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://carleton.ca/law/current-students/>

Course Introduction

The course examines 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. We explore how law has responded to social and economic change and the role of legal concepts (and taxonomies) in shaping how we think about and respond to changes and challenges. Two key concepts are the legal person (centering the individual) and property (centered on ownership by persons and exchange between them). These reflect ‘liberal legalism’; we probe their potential and their limitations.

Learning Objectives

As you learn about the legal concepts of property and personality, you should begin to be able to identify and critically assess how these constitute the frameworks for disputes over ownership and decision-making (e.g., do they mobilize legal ideologies? Do they advance certain interests and exclude others?) Finally, you will be able to apply the concepts to other case studies.

The course is designed to enable you to be better able to read and analyze case law (ancient and modern), understand the role of judicial decisions in shaping common law rules, and move from describing cases to placing them within the context of theoretical and policy ideas and contemporary social and legal debates. Specific learning objectives for each section of the course are stated in the relevant *Part Introductions* in the Course Text.

Required Text/ Materials

T. Brettel Dawson, *Persons and Property in Private Law* SECOND EDITION (North York, Captus Press, 2013). (Available for purchase in the University Bookstore)

In addition, the course schedule includes a number of additional readings – some are links to relevant websites and others are to articles or cases posted on cuLearn.

PLEASE Note: We use the course text extensively. It is available in the Bookstore (and likely second hand). Purchase the current SECOND edition. Do NOT purchase Sargent and Atkinson, *Just Between the Law and Us* in any iteration (this text has been divided into two volumes).

cuLearn

The lecture slides used in the lectures will be posted on the course’s cuLearn page along with course announcements, grades, and other materials. **It is imperative that you have access to the course’s cuLearn page and that you keep apprised of any changes or announcements made there regarding the course.**

Assessment

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.

The term work is divided into four assignments to balance your workload over the semester. You **must** complete **ALL four assignments** to obtain a passing mark in the course. All assignments must be done as individual work. You may post questions and seek clarifications through cuLearn or via email.

Assignment 1: Short Answers,

20% of your final grade (approx. 1250 words)

Available May 9th, **DUE MAY 18th** (we hope to return to you by May 26 but this is tentative)

Assignment 2: Short Essay

Value: 25% of your final grade (approx. 1500 words)

Available May 19, **DUE May 30th** (we hope to return by June 8, but this is tentative)

Assignment 3: Short Answers

Value: 30% of your final grade (approx. 1750 words)

Available May 31, **DUE June 10th** (we hope to return by June 20th, before Assignment 4 is due but this is tentative)

Assignment 4: Short Essay

Value: 25% of your final grade (approx. 1500 words)

Available June 14, **DUE June 23** (last day of Summer I Examination Period). Grade available after FGR submitted to the Dean's Office (around July 5, tentative)

IMPORTANT "Terms and Conditions" re: Assessment

Late Penalties: 10% per day (starting 12.01AM on day after Due Date). Work handed in more than 7 days late counts to completion but receives ZERO marks.

Do not submit your work late!

Extensions (Assignments 1, 2, 3): 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.

BACK UP YOUR WORK! START EARLY!

NO EXTENSIONS ASSIGNMENT 4: Late work will not be accepted for grading. There are NO extensions because this is classified as an examination. If you cannot complete and submit on time, you MUST seek formal deferral through the Office of the Registrar.

Grades and Grading (and Regrading)

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 your TA, the matter can be taken up with me.

INDIVIDUAL WORK ONLY

As noted above, 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.

Reading Schedule

The assigned readings form the basis for the lecture each week. It is recommend that you read the material BEFORE class (and that you review it again after class, highlighting the key ideas discussed in the lecture.

Please also read the links to online readings or resources that provided in various chapters. They are an integral part of the course material. This area has a surprising amount of current developments – as you'll see working through the lectures.

During the Winter session of the course, the anticipated schedule was changed (you may see slides and hear references to the updated order). For Summer 2016 the lectures/schedule should line up with how it was actually offered.

The key points of some of the readings might take some work – remember one of the skills you are developing is how to read academic material and case law in light of themes. This is not always easy. There is no "absolute minimum" or "core" that one should take from a source. As one re-reads even very familiar material, new ideas and insights will emerge -- so there isn't an unshifting, reducible core of a text.

2201T SUMMER I 2016 CLASS SCHEDULE		
Class	Topic	Readings
1	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)	Required: <i>Legacies of British Slavery: Online Database</i> http://www.ucl.ac.uk/lbs See also: 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-unearthed/
2	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)	See also: Ta-Nehisi Coates, "The Case for Reparations" May 21, 2014, <i>The Atlantic</i> at http://www.theatlantic.com/features/archive/2014/05/the-case-for-reparations/361631/
3	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 and... Required: <i>Nakhuda v Story Book Farm Primate Sanctuary</i> , 2013 ONSC 5761 (posted on cuLearn)
4	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 and... Stealin' the Holes: (Audio played in class, text available at: https://web.archive.org/web/20130624041142/http://www.pigeoninlet.com/stealin.htm) Boston Parking Spaces: http://www.washingtonpost.com/wp-dyn/articles/A39654-2004Dec31.html (Boston

		<p>Fights Winter Parking Tradition)</p> <p>See also (for interest): https://www.wbur.org/2015/01/28/space-savers-boston (Four things to know about space savers in Boston)</p> <p>http://www.boston.com/cars/news-and-reviews/2015/01/22/boston-space-saving-tradition-explained/DVrAKS9BJGBk3QCHgx12FK/story.html (Boston’s Space Saving Tradition Explained)</p> <p>Also see: 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. http://www.ahbj.org/story/business-journalism-and-the-hot-news-doctrine/</p>
<p>5</p>	<p>Markets Exchange and Property I: Preserving Common Property (Nature)</p> <p>The commons and justifications for protection (and regulation) of the commons (common pool resources); focus on commodification of some 'commons' including water. Review of legal regimes in response to environmental challenges - including private property, government regulation, revised private property (stewardship) and commons regulation. Material includes Garret Hardin’s Tragedy of the Commons; James Karp on A Duty of Stewardship; Nobel prize winner, Elinor Ostrom’s on Common Pool Resources and Civil Society (and hope); failures and potential of private property.</p> <p>NOTE – THE WATER CASE STUDY CONTINUES INTO THE FIRST PART OF</p>	<p>Chapter 11 and...</p> <p>Also of interest – and covered in Lecture 6</p> <p>Nancy Macdonald, “is privatizing water the right thing to do?” Macleans, September 3, 2009 at http://www.macleans.ca/society/life/the-market-solution/</p> <p>“It’s time to break the silence on selling Canada’s water”, BARRIE McKENNA, Globe and Mail, September 21, 2015: http://www.theglobeandmail.com/report-on-business/industry-news/energy-and-resources/its-time-canada-reassessed-its-stance-on-selling-water/article26448144/</p> <p>Age of the Water Wars: http://www.theglobeandmail.com/globe-debate/age-of-the-water-wars/article14748112/</p>

	<p>LECTURE 6</p>	<p>On climate change, see: E. A. G. Schuur A. D. McGuire, C. Schaëdel,, “Climate change and the permafrost carbon feedback” (2015) 520 <i>Nature</i> 171 (April 9, 2015).</p> <p>Elinor Ostrom, Nobel Lecture (watch 15.00-45.00 min points: https://www.youtube.com/watch?v=T6OgRki5SgM</p>
6	<p>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.</p>	<p>Chapter 12 and...</p> <p>Required:</p> <p>Cormac Cullinan, “Do Humans Have Standing to Deny Trees Rights”, 11 <i>Barry L. Rev.</i> 11 (2008) [posted on cuLearn].</p> <p>Rebecca Tuhus-Dubrow, “Sued by the Forest: Should nature be able to take you to court?” Boston Globe, July 19, 2009: Posted cuLearn</p> <p>Whanganui River Agreement: http://www.wrmtb.co.nz/new_updates/TuutohuWhakatupuaFinalSigned.pdf</p> <p>Also of interest: <i>Reece v Edmonton (City)</i>, 2011 ABCA 238; 335 D.L.R. (4th) 600 (Lucy)</p>
7	<p>Legal Persons I: Corporations Legal identity of a corporation, historical development and current debates related to limited liability and corporate power.</p>	<p>Chapter 5 and...</p> <p>Of interest: Heroic Commerce: Review of Stephen R. Bown <i>Merchant Kings: When Companies Ruled the World, 1600-1900</i>, Posted on cuLearn.</p>
8	<p>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)</p>	<p>Chapter 6</p>
9	<p>The Possessive Individual and the Body: Autonomy and Choice I</p> <p>The right of legal persons to control their bodies (and decision-making with respect to them). Decision-making by pregnant women:</p>	<p>Chapter 7 and...</p> <p>Also of interest: “The Judge Behind the (Right to Die) Ruling at Trial” on CBC Radio “Sunday Edition), November 01, 2015:</p>

	<p>scope and limitations of state control.</p>	<p>http://www.cbc.ca/radio/thesundayedition/tim-flannery-on-climate-change-in-praise-of-the-humble-donkey-tribute-to-leon-bibb-justice-lynn-smith-1.3296242/meet-the-judge-behind-the-ruling-that-gave-gloria-taylor-the-right-to-die-1.3296691 (to 5.00 min)</p>
<p>10</p>	<p>The Body, Autonomy and Choice II: Decisions and Deals</p> <p>Medical decision-making; capacity, concept and scope of legal personality.</p> <p>Markets, Exchange and the Person I: Surrogacy in Law and Life</p> <p>Private law and public policy in regulating surrogacy; ethics of markets and the body (Michael Sandel)</p> <p>Note: this is a short broadcast as it was not a full topic in Fall 2013.</p>	<p>Chapter 8A Children and Medical Decision-Making</p> <p>Begin Chapter 10 (Surrogacy)</p> <p>Required:</p> <p>Sandel Michael J. Sandel, “What money shouldn't buy”, The Hedgehog Review. 5.2 (Summer 2003) p77 at http://iasc-culture.org/THR/archives/Commodification/5.2HSandel.pdf</p> <p>Link to video shown (Sandel): http://www.justiceharvard.org/2011/02/episode-05/#watch</p> <p>Also of interest: http://bigthink.com/videos/the-moral-limits-of-markets-live-interview-with-michael-sandel</p> <p>Contrast: http://bostonreview.net/welch-morals-markets</p> <p>Also of interest: 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/</p> <p>Note: We do not cover Chapter 8B in the summer.</p>
<p>11</p>	<p>Persons, Property and the Mortal Body</p> <p>Legal status of the body; legal effect of death (person and property); interests in human tissue and body parts.</p>	<p>Chapter 9A</p> <p>Required:</p> <p><i>Takamore v Clarke</i> [2012] NZSC 116 (cuLearn).</p> <ul style="list-style-type: none"> Background on <i>Takamore</i>: 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

		<p><i>Peleg Case</i>, Supreme court of Israel (on cuLearn).</p> <p>Of interest: <i>Doodewood v Spence</i> 1908 (on culearn)</p>
<p>12</p>	<p><i>Terra nullus?</i> The Body - Revisited</p>	<p>TISSUE</p> <p>Chapter 9B and...</p> <p>Required:</p> <p><i>Piljak v Abraham</i> 2014 ONSC 2893 (on cuLearn). Note – this case is covered in class briefly. It is not a strong precedent on the point about legal status of tissue but it IS the case referred to by Caulfield, below.</p> <p>Tim Caulfield, “Who owns your tissue? You’d be surprised” Globe and Mail, June 20, 2014(cuLearn)</p> <p>ORGANS</p> <p>Micheal Friscolanti, “Will sell organs for cash” Macleans Oct 17, 2012 at http://www.macleans.ca/news/canada/how-much-is-that-kidney-in-your-body/</p> <p>Michael's Essay: Paying for Organs The Sunday Edition with Michael Enright CBC Radio: http://www.cbc.ca/thesundayedition/essays/2014/02/16/michaels-essay-paying-for-organs/</p> <p>Search Ottawa Citizen in this area – they ran various stories in July 2015 prompted by the transplant for Senators’ owner Eugene Melnyk</p>