

Carleton University Department of Law and Legal Studies

COURSE OUTLINE

Laws 2201T Late Summer 2017

PERSONS AND PROPERTY

Term: Late Summer (July-August 2017)

Prerequisites: Laws 1000

Instructor Professor T. Brettel Dawson

Office: Loeb D497

Office Hours: By appointment (and may include meeting by Skype).

Email: brettel.dawson@carleton.ca

Email is an excellent way to contact me (or our TAs). Turnaround normally within 24 hours. (Note: do not expect a reply on weekends or evenings!)

TAs: **Names and contact info to be posted on cuLearn.** TAs are your first point of contact and will also mark your work using the professor's marking rubric.

cuLearn: **cuLearn**, is an essential part of this course. Lecture slides, course information, lecture slides, assignments, discussion boards are available only through this modality.

Lectures: The 2017 Summer Session LAWS 2201V is a rebroadcast of lectures recorded by Professor Dawson during the Fall 2015 term.

First Lecture is broadcast July 6, 2017 (Thursday 20.30-23.30). Shown again Sunday at 8.30-11.30)

Second lecture is broadcast July 10, 2107 (Monday at 20.30-23.30). Shown again on Wednesday at 23.30 – 02.30)

This pattern continues through the term with 'odd numbered' classes on Thursday and 'even numbered classes the following Monday.

Note: Assignment dates are built from initial showing of course content.

Students may access the course lectures on-line by one of the following ways.

- Watch the lectures as they are streamed on the CUOL Web Channel: <https://vod.cuol.ca/stream/web-channel>.
- Subscribe to the optional Video-on-Demand (VOD) service for this course by registering in section TOD (CRN 20964) \$40 fee applies.
- Watch the VOD lectures on campus at the CUOL Student Centre in room D299 Loeb Building 24/7 at no charge.

More information is available from the CUOL website.
<http://carleton.ca/cuol/access-courses/>

Note: **Feedback Questions/Slides in Lectures:** During the Fall 2015 offering, I experimented with 'feedback 'clicker style' questions. Students completed these through culearn. I showed the (often interesting) results in class. No longer live content – you don't have to do anything with this in summer 2017!

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

We 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. I 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

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

- explain how the legal concepts of property and legal personhood constitute a framework by which law approaches disputes over ownership and decision-making.

- critically assess the concepts of the legal person and property (e.g., how they mobilize legal ideologies; how they (historically and currently) advance certain interests and exclude others?); and
- apply the concepts to explaining and resolving past and contemporary case studies.

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 describing cases to placing them within the context of theoretical concepts and policy ideas and contemporary social and legal debates.

More detailed learning objectives for each section of the course are stated in the relevant Part Introductions in the Course Text.

SLIDES AND REQUIRED READINGS

Class Slides: PowerPoint slides are posted on cuLearn. I have updated some slide decks in light of developments since the lectures were originally created.

Text: 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.

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

EVALUATION

Two Short Answer Assignments during term and one Essay Assignment during the examination period. You do not have to do additional research for the assignments but, instead, use course readings and lecture material. You will be able to post questions and seek clarifications through the FAQ Assignment boards for each assignment on the cuLearn page. Check if your question has been asked and answered before you post.

- You must complete all assignments to obtain a passing mark in the course.
- All assignments must be done as individual work.

Online Modality

- We do everything to do with assignments on cuLearn. You receive through cuLearn and 'hand-in' assignment by attaching/ posting to cuLearn Assignments section for Laws 2201A/T. I return a marking sheet to you (TAs) through cuLearn.
- You can confirm how the submission process works by completing the Test Assignment (which requires you to attach a document and use the 'assignment dropbox'. Nothing you post will be

read and there is no grade value – simply a chance to know how things work before the crunch time of a real assignment.

- The TAs 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!)

Extensions and Late Work:

- **Do not submit your work late!** I apply a strict 'on time' requirement with heavy penalties for submitting your work late. For Assignments 1 and 2, you will lose 10% per day (starting 12.01AM on day after Due Date). Work handed in more than 10 days late counts to course completion receives ZERO.
- You may request an extension from me for Assignment 1 and 2 only. Contact me (by email and as early as possible). I grant extensions only for documented, serious health conditions and emergency situations affecting immediate family members.
- **Students seeking an extension must complete an Extension Application form (posted on cuLearn) which includes a signed declaration by the student.**
- I do not grant extensions for computer crashes, schedule conflicts with paid or volunteer work or minor illnesses such as a cold etc. Start your work early; plan to finish it early and back up your work frequently!
- You may not request an extension for Assignment 3. It is classified as an examination. Late work cannot and will not be accepted for grading. If you cannot complete and submit on time, you **MUST** seek formal deferral through the Office of the Registrar.

ASSIGNMENT 1: VALUE: 20% OF YOUR FINAL MARK IN THE COURSE

Short Answers: 20% of your final mark (1250 words)

- Available July 18, 2017
- **DUE: July 25, 2017** by 11.55PM on cuLearn
- Grade Returned: August 04, (tentative)

ASSIGNMENT 2: VALUE 35% OF YOUR FINAL MARK

Short Answers: 35% of your final mark (1750 words)

- Available: August 07, 2017
- **DUE: August 16, 2017 (by 11.55PM on** cuLearn
- Grade returned: August 25 (tentative)

ASSIGNMENT 3 (TAKE HOME EXAMINATION): VALUE 45% OF YOUR FINAL GRADE

Write one essay: Choice of two topics: 45% of your final mark (2000 words)

- Available: August 14
- **DUE: August 25 (last day of examination period). Late work is not marked.**
- Grade returned, after FGR has been submitted to the Dean's Office (around September 8, 2017, tentative).

Grades and Grading

- It is very difficult in the compressed summer course format to get marks back to you before you're into the next assignment. We will endeavour to meet the tentative return dates, especially for Assignment 1 so you have some feedback before later assignments.
- 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.

Note: NO Class Participation grade. Disregard any and all references in lectures or slides.

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.

SCHEDULE AND READINGS

The topics and readings for each class are set out in the table that follows.

Note: As I taught the original Fall 2015 Course, I changed the planned order - you may see slides and hear references to an updated order. For Summer 2017, I combed through the lectures/schedule to line everything up with how it was actually offered. **Accordingly, don't worry about there being any 'shifts' that you hear in lectures = WYSIWYG!**

The assigned readings form the basis for the lecture each week. 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.

I recommend that you read constantly through the compressed summer term so you can keep up. If possible, scan the assigned material prior to the broadcast lecture and then read/review more fully after each broadcast, highlighting the key ideas discussed in the lecture.

The key points of some of the readings might take some gleaning – remember one of the skills you are developing is how to read academic material and case law in light of themes. Sorry I can't make this easier for you by including only the absolute minimum, 'totally on point' extracts. As I re-read and re-teach even familiar material, I find new ideas and insights emerge -- so there isn't an unshifting, reducible core in the material.

2201V LATE SUMMER 2017 CLASS SCHEDULE		
Class	Topic	Readings ¹
1 JULY 6	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)	<i>Required: 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 JULY 10	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, The Atlantic 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 Required: <i>Nakhuda v Story Book Farm Primate Sanctuary</i> , 2013 ONSC 5761 (posted on

¹ Chapters refer to Course book. If listed, readings are required. Access by provided link. If no link is given, the material will be posted in cuLearn. This list may be updated during the term and references will be included in the PowerPoint slides. b

		cuLearn)
4	<p>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?)</p>	<p>Chapter 4</p> <p>Stealin’ the Holes: (Audio played in class, text available at: https://web.archive.org/web/20130624041142/http://www.pigeoninlet.com/stealin.htm</p> <p>Boston Parking Spaces: http://www.washingtonpost.com/wp-dyn/articles/A39654-2004Dec31.html (Boston 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>
5	<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</p>	<p>Chapter 11</p> <p>Also of interest – and covered in Lecture 6</p>

	<p>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 LECTURE 6</p>	<ul style="list-style-type: none"> • Nancy Macdonald, "is privatizing water the right thing to do?" Macleans, September 3, 2009 at http://www.macleans.ca/society/life/the-market-solution/ • "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/ • Age of the Water Wars: http://www.theglobeandmail.com/globe-debate/age-of-the-water-wars/article14748112/ <p>On climate change, see:</p> <ul style="list-style-type: none"> • 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>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: 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/Tuu_tohuWhakatupuaFinalSigned.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</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: scope and limitations of state control.</p>	<p>Chapter 7</p> <p>Also of interest: “The Judge Behind the (Right to Die) Ruling at Trial” on CBC Radio “Sunday Edition), November 01, 2015: 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>
10	<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 Private law and public policy in regulating surrogacy; ethics of markets and the body (Michael Sandel)</p>	<p>Chapter 8A Children and Medical Decision-Making</p> <p>Begin Chapter 10 (Surrogacy)</p> <p>Required 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):</p>

		<p>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>
11	<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 (posted on 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>
12	<p><i>Terra nullus?</i> The Body - Revisited</p>	<p>TISSUE</p> <p>Chapter 9B</p> <p>And:</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” <i>Globe and Mail</i>, June 20, 2014 (culearn)</p> <p>ORGANS</p> <p>Micheal Friscolanti, “Will sell organs for cash” <i>Macleans</i> 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>
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APPENDIX: FAQ

What are 'Take Homes'?

The Take Home Assignments during the term and the 'final', in this course probe your understanding of course material and concepts. Unlike a test or exam, you are given about a week to answer and they are open book – you can refer to all course material in completing your answers. You can prepare your work /study in an informed and focused manner – with the questions in front of you. I want them to be less stressful for you! But, I do not want you to give me descriptive answers and I am not looking for regurgitation of slides or quotes from course readings, but rather, analysis and assessment. You must use your own words to show that you have understood the material. I don't require extra research but I do require you to thoroughly read the assigned material and use it in shaping your answers.

**The required the level of self-direction and self-motivation may be a change for you.
Don't procrastinate!**

How should you manage Take Homes?

The course goes by 'in a flash'. I give you the dates early and expect you to organize your and be able 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 cuLearn) that everyone plans to work until the last minute and submit right on the button. OK BUT.... Do NOT plan to start and complete the assignment on the day of submission! This approach simply recreates that terrors of a scheduled examination and leaves you little time for revision and reflection. **Schedule work on assignments in a much less stressful manner!** It's summer after all: get your work done and then enjoy the good weather!

Download the assignment as soon as it is posted and read it over. Then create 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'); 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.

Why am I so tough on lateness?

I organize the marking schedule 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. Late assignments can get missed or create other administrative headaches – which has an impact on you (and us!). This can be avoided by 'on time delivery'.

Why do I Assign Take Homes?

As this is a foundational second year course and the course materials include a rich tapestry of case studies and scholarly literature, I have adopted a comprehensive system of assessment through the Take Homes. I want you to be able to showcase how well you have understood and engaged with course material and course themes. I think this makes the assignments more relevant and interesting. 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

Why isn't there a research essay option?

In my view, the range of material that you need to cover before undertaking a research essay – along with the short time frame (especially short in a summer course!) – precludes assigning a research essay option within my assessment objectives. That said, I hope you will be able to pursue research in areas of particular interest stimulated by this course in your in related 3000 and 4000 level courses.

There is a practical reason too: because the class is large and supported by TA(s), it is difficult to assign research essay questions. I am very committed to ensuring consistent, high quality marking in the course and provide a detailed marking rubric for the TAs to follow. This level of TQM would not be possible with research essays.