

PRELIMINARY COURSE OUTLINE
(as of June 21, 2019; subject to change)

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| COURSE: | LAWS 2201V – Persons and Property |
| TERM: | Late Summer 12 Lectures between July 03- August 12, 2019 |
| PREREQUISITES: | LAWS 1001 and LAWS 1002 (Formerly LAWS 1000) |
| CLASS: | Day & Time: Broadcast Online/Streamed. See below for times and options. |
| INSTRUCTOR: | Room: N/A Professor Brettel Dawson |
| CONTACT: | Office: D497 Loeb Building Office Hrs: By Appointment Telephone: x. 3670 Email: brettel.dawson@carleton.ca Email is the best way to contact me, or our TA(s). Turnaround time is normally within 24 hours but do not expect a reply on weekends or overnight. |

Key Dates

First lecture **Wednesday, July 3, 2019** (rebroadcast July 6, 2019).

- Prepare by reading Chapter 1 of the Coursebook (Dawson, Persons and Property in Private Law, 2nd edition) and Additional Readings set out in the document Plus_Read L1 2201 S19 on cuLearn.

Scheduled Mid-term Multiple Choice Answer Exam (50%) **SATURDAY July 26, 2019** 10.00AM-11.30AM. Note campus location TBC¹

Last lecture: **Friday August 9th** (rebroadcast August 12, 2019); Take Home Instructions/Questions available on cuLearn.

Take Home Final Exam (Essay and Short Answers) (50%) due **August 23, 2019 by NOON** via cuLearn,

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.

This course is located within the broad boundaries of private law which has been defined as “the law of horizontal relationships (between legal persons” that “permits 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

¹ Distance students will be contacted by cuOL to make mid-term location arrangements.

distinguished from “public law, the law of vertical state/individual relations.”²

This private law (and in particular the law of persons and property) ‘legalized’ 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] becomes a calculated device for the protection of this property and for the maintenance of an orderly relation of exchange.”³

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

In this course, **Laws 2201**, we focus on the foundational categories in the law of persons and property: the subjects and objects of exchange relations in private law. Who and what can be a legal person (and why does that matter)? Who or what can be an owner of property (with what rights)? What has been and is (and may be) regarded as property and who decides? What different types of property are there and why does this matter (and to whom?)

Our topics include:

- Legal personhood (or not) and property-owning capacity (or not) of women, slaves, corporations, inanimate entities (robots, idols)
- Self-governance by legal persons: capacity for (medical decision-making) of women, children, developmentally disabled persons
- Governance of property by legal persons: definition and rationales of property law systems; types of property (private, public, common); justifications for (private) property
- Emerging issues through the lens of legal personhood and property: bio-medicine; environmental challenges.

LEARNING OBJECTIVES

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

- define the legal concepts of legal personhood and property
- explain how legal personhood and property law constitute a framework through which law approaches ownership and decision-making in private law.
- critically assess how legal personhood and property law reflect and mobilize legal ideologies; and how they have historically and currently advanced certain interests and excluded others); and
- apply these concepts and critiques to how past and contemporary social and economic developments have been addressed in private law.

² Hanoch Dagan & Avihay Dorfmann, “Just Relationships” (2016) 116 Columbia Law Review 1395 (Discussed in lecture 2). 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.

³ See Davies and Naffine in Casebook at 32.

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

- read, state outcome and link cases (ancient and modern) to course themes;
- analyze how judicial decision-making shapes common law rules in course areas
- place cases and scholars addressed in the course, within their historical context and identify their impacts on the law of person and property
- apply (and extend) legal concepts and case precedents to contemporary social and legal debates in the areas of person, property.
- Critically assess the taxonomy of persons and property (who and what it prioritizes) in relation to bio-medical and environmental developments.

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 2019 Summer Session LAWS 2201V Lectures are a rebroadcast of lectures recorded by Professor Dawson during the Fall 2017 term with minor tidying up. There are 12 lectures. There are TWO lectures per week (each 2 hours 45 mins).

Lectures are web-streamed as follows (subject to change; accurate as of June 01, 2019)

- **Lecture A** is broadcast **Wednesdays** 5.00PM to 7.45PM and again *Saturdays* 1.15AM to 4.00AM
- **Lecture B** is broadcast **Fridays** 7.45PM to 10.30PM and again *Mondays* 11.30AM to 2.15PM

DISREGARD ANY AND ALL REFERENCES TO ADMINISTRATION AND EVALUATION IN FALL 2019.

Access the course lectures as follows:

- 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 20944) \$40 fee applies (Pay per view is also available for individual lectures,
- Watch the VOD lectures on campus at the CUOL Student Centre in room D299 Loeb Building 24/7 at no charge.

Note: After the first four or five lectures, we normally release the remaining lectures.

LECTURE SLIDES:

- PowerPoint slides are posted on cuLearn.
- I have edited some slides for the Summer offering. For example, I used 'polling clickers' during the Fall; these are not live in the Summer, but I have posted the 'responses' from Fall students in the slide decks.
- And, obviously, disregard anything concerning evaluation or class participation from Fall 2018!

REQUIRED TEXTS/READING

The following casebook 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.⁴

ADDITIONAL READINGS:

There are additional readings for each week (except Lecture 4). They are contained in a document posted by associated lecture with file called L15_Plus_Read. I use these sources in lectures so each Plus_Read provides you with access to the material I have drawn upon. Often full text is provided making these documents quite long! I don't expect you to read them meticulously so don't get overwhelmed! But please do refer to them in your study.

EVALUATION

1. ONE Multiple-choice Examination (MCQ) 1.5 hours; worth 50% including material up to and including Lecture 6; **tentatively scheduled for SATURDAY July 27, 2019 10.00 – 11.30AM** campus/distance locations to be confirmed.
2. Take Home Exam Short Answers and Essay: Worth: 50%. **Due on August 23, 2019.** Submitted ONLINE through cuLearn (Assignments section). This Exam covers material from lectures 8-12 inclusive (there is a choice of essay topic as between lectures 9 & 10 Bio-medicine and Lectures 11 & 12 Ecology – don't choose your topic until you've watched lectures 9-12! **Available on or before August 9, 2019 through cuLearn.**

Extensions, Deferrals and Late Work:

- You may request a **Deferral** on the mid-term examination or a very short **extension** from me for the Final Take Home (which is treated as an examination).
- Deferred mid-terms will be scheduled through the Law/Legal Studies office only in the week following the original date for students writing in Ottawa. For out of Ottawa students CUOL examinations will handle all details. For PMC students, PMC organizes deferred writing.
- **Students seeking a deferral or an extension must complete, sign and email to me an Extension Application Form (blank form is posted on cuLearn). You MUST sign a declaration that the reason you provide is truthful.** Contact me (by email and as early as possible and always before the due date).
- I grant deferrals **only** for documented, serious health conditions and emergency situations affecting immediate family members. Not for minor illnesses such as a cold etc. Not for wrong text book, computer crashes, schedule conflicts with paid or volunteer work or sports commitments below national level.

Notes

- You must complete both evaluation components to obtain a passing mark in the course.
- **All assignments and examinations must be done as individual work** and be fully original work completed by you.
- The University Policy on Plagiarism applies fully to this course.
- See Policies appended to this Outline.

4 NOTE: Do NOT acquire the book *Just Between the Law and Us* Persons and Property (any edition) as it is not used in this course and contains different material. [Be careful – the cover/colours are very similar]

5 (per applicable lecture)

COURSE STANDING

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.

SUMMARY SCHEDULE (SEE SEPARATE DOCUMENT POSTED ON CULEARN FOR FULL DETAILS)

| Topics/Themes/Questions | |
|--------------------------------|---|
| 1 | Introduction <ul style="list-style-type: none"> • Ways to see the world; legal categories and conceptual maps. • Private Law/Public Interest • Race and Ownership |
| 2 | Worlds of Person and Property in Private Law What does the terrain look like and how did we get (t)here? <ul style="list-style-type: none"> • Categories, Taxonomies • Private law Core course concepts: <ul style="list-style-type: none"> • Possessing (governing) the self • Possessing (controlling) property |
| 3 | The Legal Person: <ul style="list-style-type: none"> • Who (or What) is a Legal Person (When) and Why Does it Matter? • “P1, P2, P3” • Discussion examples: • Slavery, Persons, Property |
| 4 | Which Self – Whose Property? Women <ul style="list-style-type: none"> • Property and Legal Existence • Legal personhood and Legal Inclusion |
| 5 | Which Self – Whose Body and Who Gets to Decide What Happens to it? <ul style="list-style-type: none"> • Adults • Developmentally disabled persons • Colonized bodies • Children |
| 6 | Beyond the Human Self <ul style="list-style-type: none"> • Inanimate entities • Corporations |
| 7 | PROPERTY CONCEPTS/ALLOCATION <ul style="list-style-type: none"> • Introduction • Origin Stories: When and why was (private) property invented? • Concept of a Property System • Types of property (central organizing ideas) • Origin Stories and Taxonomies • Private property and public interests |

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| 8 | <p>PROPERTY AND PRIVATE PROPERTY/JUSTIFICATIONS AND DEFINITIONS</p> <ul style="list-style-type: none"> • Justifications for private property • Definitions and Debates: Private Property • Private Property Reprise (what about things?) |
| Case Study Lectures 9 & 10: Bio-Medicine – Persons and Property | |
| 9 | <p>Precursors and the Present</p> <ul style="list-style-type: none"> • Bio-Medicine (What is it) • Legal Claims <hr/> <p>Settled Law: The Body and its Parts (The Story so Far anyhow)</p> <ul style="list-style-type: none"> • Body parts • Bodies and Executors • Bodies and Wills • Tissue • When is a body not a body? ummarized and Unsettled? |
| 10 | <p>New Questions (and the legal void)</p> <ul style="list-style-type: none"> • The cases (ctd) • The academic debate <p>Conclusions?</p> |
| Case Study Lectures 11 & 12: Ecology, Property Law and Legal Personhood | |
| 11 | <p>Challenges: Environmental Concerns</p> <hr/> <p>Property Law and Conservation (Public/Private/ Commons)</p> |
| | <p>Solutions?</p> <p>Private Property</p> |
| 12 | <p>Legal Personhood</p> |
| | <p>Re-creating the Commons/ Indigenous Protected Areas: Canada's Wilderness?</p> |
| | <p>Conclusions: A call to a new jurisprudence/ the "Great Work"?</p> |

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*). **Requests made within two weeks will be reviewed on a case-by-case basis.** After requesting accommodation from PMC, meet with me to ensure accommodation arrangements are made. Please consult the PMC website (www.carleton.ca/pmc) for the deadline to request accommodations for the formally-scheduled exam (*if applicable*).

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/>

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: 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.c/senate/wp-content/uploads/Accommodation-for-Student-Activities-1.pdf>

For more information on academic accommodation, please contact the departmental administrator or visit: students.carleton.ca/course-outline

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.⁶

More information on the University's **Academic Integrity Policy** can be found at:

<http://carleton.ca/studentaffairs/academic-integrity/>

Student Services: The Centre for Student Academic Support (CSAS) is a centralized collection of learning support services designed to help students achieve their goals and improve their learning both inside and outside the classroom. CSAS offers academic assistance with course content, academic writing and skills development. Visit CSAS on the 4th floor of MacOdrum Library or online at carleton.ca/csas

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/>

⁶ 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 'reusing and re-cycling' which is strictly prohibited.