

Legal Theory 2

Law of Persons 2015

Course outline



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1. Acknowledgement

My deepest thanks to Ms Brahmi Padayachi for the use of her course outline and experience in preparing this course outline.

2. Overview

The Law of Persons is a stand-alone semester course that counts as a credit in the Faculty of Law for LLB2, as well as comprising one of the six component courses for the Legal Theory 3 major in the Faculties of Humanities, Science and Commerce. Due to a reshuffling of courses, the Law of Persons will also be taught as part of the Legal Theory 2 course in 2015.

The Law of Persons forms part of private law, and is concerned with the determination of legal subjectivity, the rights and duties associated with legal personality, and issues of legal status. Therefore, the purpose of the course is:

- To provide students with an insight into the content, development and scope of the Law of Persons;
- To familiarise students with the concept of legal personality, how this begins and ends, what it entails, and the rights and duties associated with it;
- To introduce students to the legal principles that affect legal status, such as domicile, age, insanity etc.
- To examine the influence and impact that the Constitution of the Republic of South Africa, 1996 has on the Law of Persons;
- To introduce students to the sources of the current Law of Persons and to assist students in extracting principles from these sources;
- To assist students with the legal concepts and terminology commonly encountered in the Law of Persons.

3. Credit value

10 credits. This translates to 10 hours to be spent on this course per week, including the time spent at lectures.

4. Assumptions of prior learning

In order to successfully complete this course, students should:

- Be capable of communicating competently in written and spoken English;
- Be able to work/study independently by reading, extracting, and analysing relevant information from various sources of law;
- Be able to access resources, especially the library and electronic resources;
- Be able to apply legal problem-solving techniques;
- Be able to follow appropriate legal referencing conventions in written work.

5. Outcomes

5.1. Critical outcomes

It is intended that students will be able to:

- organise and manage themselves effectively;
- collect, understand and analyse information from various sources of law, in addition to information conveyed in the lecture room;
- recognise problem-solving contexts involving the Law of Persons;
- identify and solve problems;

- communicate effectively, both in class and through written work;
- develop independent research skills, including the use of technology for legal research.

5.2. Specific outcomes

It is intended that by the end of the course, students will be able to:

- Show an in-depth understanding of the basic principles that underlie the Law of Persons, such as the beginning and the end of legal subjectivity, and the implications of various factors affecting a legal subject's status;
- Understand and appreciate the influence of Constitutional principles on the Law of Persons, and how the courts have harmonised these with common law principles;
- Explain the utility of the Law of Persons as a basis for creating rights and obligations ;
- Evaluate the laws governing the Law of Persons;
- Apply the knowledge gained during the course to solve practical problems arising from personality rights.

6. Teaching method

This course will be taught by **Ms Tayla Waterworth**. It has been divided into specific topics which will be covered in the form of *viva voce* lectures. These lectures will consist of a discussion of the law as contained in textbooks, case law and legislation. Students will be expected to read ahead of each lecture so that they may participate in the lecture and solve legal problems either individually or in groups.

There is no comprehensive handout for the course and as such, students will be expected to take their own notes during lectures and to supplement these notes with readings provided in the course outline. It is expected that students assume responsibility for their own learning by independent study according to guidance from the reading list below. Students are referred to the Faculty's 'Law Student's Survival Guide' in respect of DP requirements for attendance of lectures. Students are welcome to discuss problems with the lecturers.

7. Course content

1. Introduction of Law of Persons: scope and method
2. Legal Personality: basic concepts
3. The Beginning of Legal Personality: birth
4. The End of legal Personality: death
5. Status and Capacity
6. Domicile
7. The Effect of Age on Status: Minority
8. Status of children born of unmarried parents
9. Mentally and Physically Incapacitated Persons
10. Change of sex

8. Resources

In order to assist your preparation for lectures, the following resources should be considered. It is recommended that you read more widely than the given readings not only for a greater understanding of the subject, but also because many of the existing texts on the Law of Persons are outdated. You will find the leading judgments on aspects of the Law of Persons in the Law Reports, which may be accessed in the Law Library in both paper and electronic form.

Recommended Textbooks

Lecture notes will be drawn from all the following textbooks. No single textbook will be closely followed. Please ensure that you are using the latest editions.

- J Heaton *The South African Law of Persons* (2012) 4th edition, LexisNexis Butterworths: Durban.
- J Heaton *Casebook on the South African Law of Persons* (2012) 4th edition, LexisNexis Butterworths: Durban.
- A Barratt *Law of Persons and the Family* (2012) Pearson: Cape Town.
- H Kruger and A Skelton (eds) *The Law of Persons in South Africa* (2010) OUP: Cape Town.
- T Boezaart *Law of Persons* (2010) 5th edition, Juta: Cape Town
- JA Robinson *et al. Introduction to the South African Law of Persons* (2008) 2nd edition, Printing Things: Potchefstroom.
- B van Heerden *et al. Boberg's The Law of Persons and the Family* (1999) 2nd edition, Juta & Co: Cape Town.

Further reading

These texts may be referred to during the course. Please note that this list is not necessarily exhaustive, and further readings may be given in lectures. Once again, **please ensure that you are using the latest editions.**

- T Boezaart (ed) *Child Law in South Africa* (2009) Juta: Cape Town.
- JA Robinson *et al. The Law of Children and Young Persons in South Africa* (1997) Butterworths: Durban (available on RU Library electronic resources)
- B Clark (ed) *Family Law Service* (1998) Butterworths: Durban (available on RU Library electronic resources)
- CJ Davel and AM Skelton (ed) *Commentary on the Children's Act* (2007) Juta: Cape Town.
- L Schafer *The Law of Access to Children* (2007) LexisNexis: Durban.

Students may also occasionally be referred to journal articles on aspects of the course content. Such readings may be found in the library, or in electronic form where indicated. Students are encouraged to read extensively, and to familiarise themselves with the available texts by browsing through the library and visiting electronic journals.

9. Student assessment

Specific outcomes	Assessment criteria	Assessment tasks
<i>Students are expected to develop:</i>	<i>Students must provide evidence of competency in the following ways:</i>	<i>Students may be expected to:</i>
1. Show an in-depth understanding of the basic principles that underlie the Law of Persons.	Identify, explain and critically analyse the basic principles of the Law of Persons.	Class discussion and questioning. Problem and theory questions in class work and examination.
2. Understand and appreciate the influence of the Constitution on the Law of Persons	Identify the key constitutional provisions that affect the Law of Persons. Explain the implications and effects of these provisions. Analyse current constitutional reforms in the Law of Persons.	Class discussion and questioning. Problem and theory questions in class work and examination.
3. Explain the utility of Law of Persons.	Identify the role of the Law of Persons, and explain its importance in everyday life.	Class discussion and questioning. Problem and theory questions in class work and examination.
4. Evaluate the laws governing the Law of Persons.	Identify and find relevant texts, judicial decisions, journal writings and other resources relevant to the Law of Persons. Explain these laws and analyse their adequacy. Identify shortfalls and make suggestions for law reform.	Class discussion and questioning. Problem and theory questions in class work and examination.
5. Apply the knowledge gained during the course to solve practical problems arising from personality rights.	Synthesise and integrate the knowledge gained in order to propose practical solutions to problems associated with the Law of Persons, and advise accordingly.	Class discussion and questioning. Problem and theory questions in class work and examination.

Assessment strategy

The final mark for the course is comprised of the following components:

Class work	:	30 marks
Examination	:	70 marks
Total	:	100 marks

Class test and assignment dates will be given in class.

Students are assessed for the class work component on the basis of two pieces of work. The first piece of work is an assignment which counts 15%. The second piece of work is a test which counts 15%. Please note that late assignments will receive 0% unless the student has a valid Leave of Absence (LOA). Where a student hands in an LOA, he or she is obliged to contact the lecturer as soon as is reasonably possible to negotiate a hand-in date for the assignment.

The assignment topic and assessment criteria (which will be discussed in class) have been specifically drafted with the intention of promoting and developing research and analytical skills. Please read the Law Faculty Plagiarism Policy, as it will be strictly enforced in this course.

The test may contain:

- Problem questions which require the application of statutes and common law to solve practical issues;
- Case notes;
- Theory-type questions, in which student are required to describe, explain and critically evaluate the current law.

Students who have a valid LOA for the class test must complete a make-up test at a time to be arranged by the lecturer.

The failure to complete a minimum of two pieces of work on time will be considered a failure to satisfactorily perform the work of the class. This may result in taking away of a student's DP for the course by the Dean.

Please take the class work component of the course seriously. Given the high percentage of the course work mark, this is an excellent opportunity to increase your final semester mark prior to the examination in November.

Examination

The November examination for this course will comprise a two hour long paper. Students can expect both problem and theory-type questions in this exam. The mark obtained in the exam will count 70% towards the final semester mark. The exam is compulsory. An external examiner will assess the quality of both the exam paper and the students' answers.

10. Evaluation

Students may be required to complete evaluation questionnaires on the course content and the lecturer style according to the Law Faculty's evaluation cycle. Answers and comments are then compiled by the Centre for Higher Education Research, Teaching and Learning (CHERTL), who

in turn writes an evaluation report. Please feel free to make suggestions for improvements to the teaching and learning experience – all constructive criticism is welcome!