



RHODES UNIVERSITY
FACULTY OF LAW

Law of Persons

Course Outline
2022



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Ms Ndamase
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1. Introduction

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 2 major in the Faculty of Humanities, Sciences and Commerce.

Purpose of this course

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 this course is:

- to provide students with insight into the content, development, and scope of the Law of Persons;
- to familiarize students with the concept of legal personality, how it begins and ends, what it entails, and the rights and duties associated with legal personality;
- to introduce students to the legal principles that affect legal status, such as domicile, age and insanity etc
- to examine the influence and impact of the Constitution of the Republic of South Africa, 1996 has on the Law of Persons;
- to introduce students to the sources of the 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.

How to use this document

This outline is meant to guide you through the course content and the various sources that you will work with. In order to keep track of what is discussed in class and also to plan ahead for the semester, you are expected to first read this outline at least twice, and to refer to this outline throughout the semester. You can expect to find the following in this document: course outcomes, administrative information, description of teaching methods, and list of prescribed material.

Read all your prescribed cases and know the relevant legislative provisions that are covered in class.

Credit Value

This course is worth 10 credits, which translates to 10 hours must be spent on this course per week, including the time spent in lectures.

Lecturer's contact details

	Name	Room no. and Building	email address
Lecturer	Ms Ndamase	2nd Floor Office S2 Law	y.ndamase@ru.ac.za
Please allow the lecturer 24 hours to respond to your email with confirmation of the appointment date and time. Lecturer's availability may be affected by administrative meetings.			

2. 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;
- access resources, especially the library and electronic resources;
- apply legal problem-solving techniques;
- follow appropriate legal referencing conventions in written work.

3. Critical Outcomes

Apart from the knowledge and skills that relate directly to Law of Persons, the following skills are central to the study and practice of law which the course intends to enhance. It is intended that students will be able to:

- a) identify and solve legal problems
- b) organize and manage themselves effectively
- c) collect, analyse and evaluate information
- d) communicate effectively, both in class and in written work
- e) develop independent research skills, including the use of technology for legal research
- f) recognize problem solving contexts involving Law of Persons
- g) participate as a responsible citizen
- h) be culturally and aesthetically sensitive

4. Specific outcomes

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

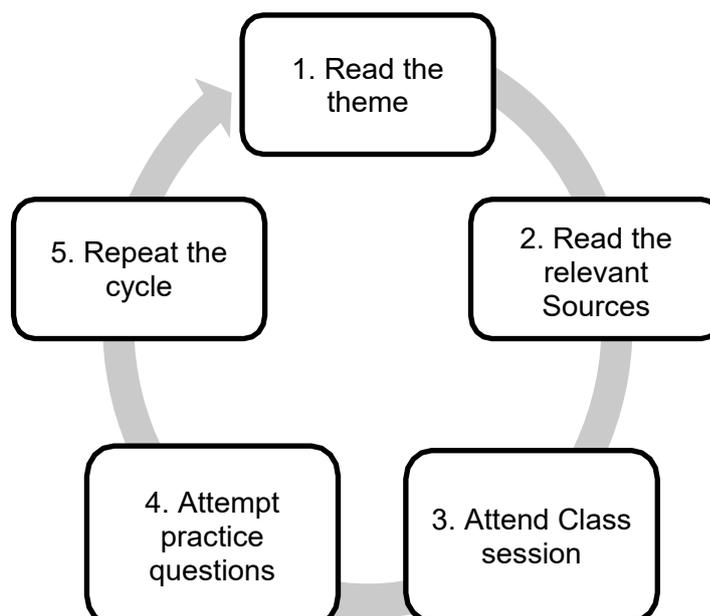
- Show an in-depth understanding of the basic principles that underlie the Law of Persons, such as the beginning and end of legal subjectivity, the implications of various factors affecting a legal subject's status;
- understand and appreciate the influence of Constitutional principles on the Law of Persons, and how the courts have harmonized these 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

5. Teaching methods and learning responsibility of students

As a point of departure, the course will be taught by way of a discussion and critical analysis of legal rules and principles as contained in the prescribed textbooks. Students are expected to actively participate in class and tutorial discussions. In order to be able to participate, students are advised to prepare for each lecture in advance. In both the class sessions and tutorial sessions, hypothetical scenarios will be used to explain and assess student learning in this course. Students are highly encouraged to use both classes and tutorials to enrich their understanding of the course content and also explore how other areas of law may be influenced by the Law of Persons.

Various methodologies of teaching and teaching tools will be used throughout the semester. Amongst others, PowerPoint slides, peer assessment, group discussion and other academic technologies will be employed to accommodate different learning preferences.

Study the course content using the following cycle:

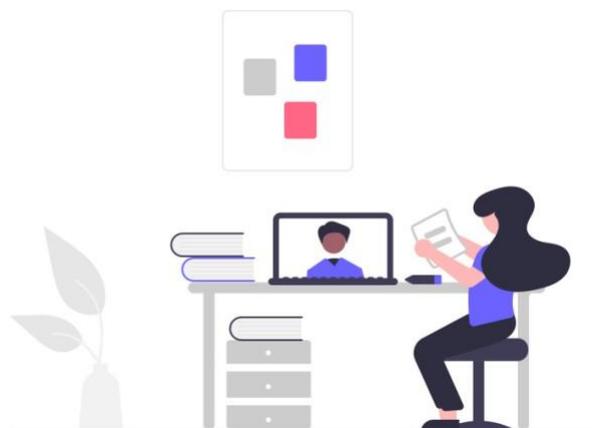


6. Student assessment

	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 underlies the Law of Persons.	Identify, explain and critically analyse the basic principles of the Law of Persons.	Class discussion Problem and theory questions in class work and examination
2	Understand and appreciate the influence of the Constitution on the Law of Persons	Identify 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 Problem and theory questions in class work and examination
3	Explain the utility of the Law of Persons	Identify the role of Law of Persons and explain its importance in everyday life	Class discussion 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	Class discussion 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 Problem and theory questions in class work and examination

7. Assessment strategy

You will be assessed by means of four (4) tasks and an examination to be written in November. You are encouraged to make proper use of all these assessment opportunities as each will contribute to your final mark. Please consult RUconnected for relevant dates.



Assessment	Weighting	Purpose of task	Format
Test	20%	Check whether you grasped the fundamental concepts of this course	Sit down test
Assignment	20%	Assess ability to critically reflect on the legal principles	Written (typed) legal opinion
TWO Tutorial Assignments	10% (5% each)	Assess cumulative learning and detect challenges	Written Task
Total Semester Mark	50%		
Examination	50%		
	100%		

8. Study Material

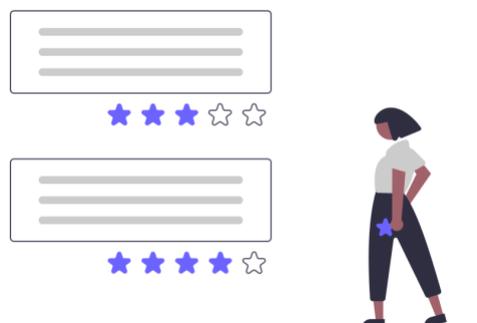


Several study materials can be used to broaden and sharpen your understanding of the Law of Persons. The following are recommended sources.

- T Boezaart, *Law of Persons* 6th ed (2017) Claremont: Juta & Co Ltd
- J Heaton, *The South African Law of Persons* 5th ed (2017) Durban: LexisNexis
- H Kruger & A Skelton (eds), *The Law of Persons in South Africa* (2018) Cape Town: Oxford University Press

9. Student Feedback / Course evaluation

The way students experience the course, the lecturer's approach to the course and assessments tasks is an important part of teaching and learning. As a result, students will be required to participate in a course evaluation at the end of the 3rd term. The purpose of this evaluation is to give students a platform to express and reflect on how they experience the course as a whole and provide suggestions for improvement. It is important for this evaluation to take place in the middle of the semester to promptly address any legitimate concerns that students may have about the course. At the end of the 4th term, students will be requested to complete an evaluation questionnaire in which they reflect on how the course has evolved since the first evaluation. Students are highly encouraged to use these two platforms to express their concerns, and even suggest ways in which the course can improve.



10. Course Content

Theme 1: Introduction

Topics

- a) Defining Law of Persons
- b) Legal subjects and legal objects
- c) Different kinds of legal subjects
- d) Law of Persons, statutory interpretation, the Constitution, and transformative constitutionalism

Books:

- Boezaart p 1-6 & p9
- Heaton p 1-6
- Kruger & Skelton p1-17



Theme 2: Beginning and End of legal personality

Topics

- a) The Beginning of Legal Personality
- b) Notice/Registration of Birth - *Births and Deaths Registration Act 51 of 1992*
- c) The interests of the Unborn
- d) Application of the Nasciturus Fiction
- e) Termination of Pregnancy
- f) The End of Legal Personality – *National Health Act 61 of 2003*
- g) Presumption of Death – *Inquests Act 58 of 1959*
- h) Registration of Death
- i) Duty to Bury the Deceased

Sources of reference:

- Boezaart p12-31 & p161-177
- Heaton p 7-33
- Kruger & Skelton p21-56

Case law:

- *Ex Parte Boedel Steenkamp* 1962 (3) SA 954 (O)
- *Shields v Shields* 1946 CPD 242
- *Chrsiholm v East Propriety Mines Ltd* 1909 TH 297
- *Pinchin v Santam* 1963 (2) SA 254 (W)



- *Road Accident Fund v Mtati* 2005 (6) SA 215 (SCA)
- *Friedman v Glicksman* 1996 (1) SA 1134 (W)
- *Christian Lawyers Association of South Africa v The Minister of Health* 1998 (4) SA 1113 (T)
- *Christian Lawyers Association of South Africa v The minister of Health* 2005 (1) SA 509 (T)
- *Ex Parte James* 1947 (2) SA 1125 (T)
- *Ex Parte Govender* 1993 (3) SA 721 (D)
- *Ex Parte Rungasamy* 1958 (4) SA 688 (D)
- *Ex Parte Verster* 1956 (1) SA 409

Theme 3: Status

Topics

- a) Legal capacity
- b) Capacity to act
- c) Capacity to litigate
- d) Capacity to be held accountable

Sources of reference:

Boezaart p7-8

Heaton p 35-37

Kruger & Skelton p57-65



Theme 4: Domicile

Topics

- a) Domicile - *Domicile Act 3 of 1992*
- b) General principles governing domicile
- c) Kinds of domicile

Sources of reference:

- Boezaart p32-48
- Heaton p 39-46
- Kruger & Skelton p67-77

Case law

- *Frankel's Estate v The Master* 1950 (1) SA 220 (A)
- *Grindal v Grindal* 1997 (4) SA 137 (C) Recommended
- *Sukovs en 'n ander v Van der Walt* [1998] 3 All SA 664 (O) Recommended
- *AV v VW* [2017] ZAGPPHC 324 (case no 5881/17) (GDP)



Theme 5: Children of unmarried

Topics

- a) *Children's Act 38 of 2005*
- b) Definition of "children born of unmarried parents"
- c) Categories of children born of unmarried parents
- d) Artificial fertilization and surrogacy
- e) Proof of parentage
- f) The legal relationship between a child and his or her unmarried parents
- g) Changing the status of a child born of unmarried parents through subsequent marriage, adoption or an order of authorities

Sources of reference:

Boezaart p97-124

Heaton p 47-77

Kruger & Skelton p85-111



Case law

- *J v Director General, Department of Home Affairs* 2003 (5) BCLR 463 (CC)
- *M v V* [2011] JOL 27045 (WCC)
- *Ex Parte HPP and Others; Ex Parte DME and Others* [2017] 2 All SA 171 (GP)
- *LF v TV* [2020] 3 ECL 29 (GJ) Recommended for rights of grandparents
- *M v Cummins SA (Pty) Ltd* [2020] 7 ECL 65 (GJ) Recommended for application of the best interests of the child
- *B v B* [2020] 8 ECL 57 (FB) Recommended for family advocate and upper guardian as a principle
- *QG and Another v CS and Another* (32200/2020) [2021] ZAGPPHC 366 (14 April 2021)

Theme 6: Minority

Topics

- a) *Children's Act 38 of 2005*
- b) *Child Justice Amendment Act 28 of 2019*
- c) Legal status of an infant
- d) Legal status of a minor – Consumer Protection Act 68 of 2008
- e) Termination of minority

Sources of reference:

Boezaart p49-96

Heaton p 79-111

Kruger & Skelton p114-149

Case law

- *Louw v MJ & H Trust* 1975 (4) SA 268 (T)
- *Edelstein v Edelstein* 1952 (3) SA 1 (A)
- *Malcolm v Premier, Western Cape Government* [2014] 2 All SA 251 (SCA)
- *Marshall v National Wool Industries Ltd* 1924 OPD 238
- *Wood v Davies* 1934 CPD 250
- *Du Toit v Lotriet* 1918 OPD 99

Theme 7: Other factors affecting status

Topics

- a) Definition of factors
- b) Impact of factor on legal capacity, capacity to act, to litigate and to be held accountable for delicts and crimes
- c) Constitutional implications for each factor
- d) Rehabilitation
- e) Curators

Unit 1: Mental Illness

Mental Health Care Act 17 of 2002
Consumer Protection Act 68 of 2008

Books:

- Boezaart p125-134
- Heaton p 113-125
- Kruger & Skelton p163-178

Case law:

- *Lange v Lange* 1945 AD 332
- *Theron v AA Life Assurance Association Ltd* 1995 (4) SA 361 (A)

Unit 2: Curators

Books:

- Boezaart p135-138
- Heaton p 127-130
- Kruger & Skelton p182
- Boezaart p 152-158
- Kruger & Skelton p151-154

Case law:

- *Ex Parte Wilson: In re Morison* 1991 (4) SA 774 (T)



Unit 3: Influence of alcohol and drugs

Books:

- Boezaart p149-151
- Heaton p 131
- Kruger & Skelton p169-181

Case law:

- *Van Metzinger v Badenhorst* 1953 (3) SA 291 (T)

Unit 4: Prodigality

Books:

Boezaart p139-143
Heaton p 133-138
Kruger & Skelton p154-158

Case law:

- *Phil Morkel Bpk v Niemand* 1970 (3) SA 455 (C)

Unit 5: Insolvency

Books:

Boezaart p144-148
Heaton p 139-142
Kruger & Skelton p158-162

Case law:

- *Ex parte Klopper: In re Klopper* 1961 (3) SA 803 (T)

11. How to approach problem questions

- You are advised to follow a structure when you answer questions. Structure usually assists you to build a coherent, clear and logical argument. A succinct introduction is also important to lay a foundation for your answer.
- Proposed structure: **(iPAC)**
Introduction that sets foundation of your argument
Identify the legal Problem
State and Apply the relevant law for the legal problem
Conclude

Example of iPAC structure:

I: “The nasciturus fiction may be applied in the field of delict where a delictual claim for damages may be sought.”

P: “ The legal problem deals with the application of the nasciturus fiction to a claim for damages of pre-natal injuries”

A: Discuss relevant legislation or case law in relation to the set of facts

C: Here you answer the question and direct whether a claim for damages for the pre-natal injuries may be successful or not (and why).