

# LAW OF PERSONS

## Legal Theory 2

2023



**RHODES UNIVERSITY**

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# 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

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.

## Lecturers Details

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Law  
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**Please allow the lecturer 24 hours to respond to your email with a confirmation of the appointment date and time. The lecturer's availability may be affected by administrative meetings.**

## 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.

## 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:

- Identify and solve legal problems
- Collect, analyse and evaluate information
- communicate effectively, both in class and written work
- develop independent research skills, including the use of technology research
- recognise problem-solving contexts involving the law of persons
- participate in a responsible citizen
- be culturally sensitive

## 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

## TEACHING METHODS AND LEARNING RESPONSIBILITY OF STUDENTS

Teaching 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 participate in class and tutorial discussions actively. In order to be able to participate, students are advised to prepare for each lecture in advance. The Law of Persons may influence both the class sessions and tutorial areas of law.

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 MATERIAL

## Prescribed Textbook

J Heaton, *The South African Law of Persons* 5th ed (2017) Durban: LexisNexis

## Recommended Textbook

T Boezaart, *Law of Persons* 6th ed (2017) Claremont: Juta & Co Ltd

H Kruger & A Skelton (eds), *The Law of Persons in South Africa* (2018) Cape Town: Oxford University Press

## STUDENT FEEDBACK

The way students experience the course, the lecturer's approach to the course and assessment tasks are important parts of teaching and learning. As a result, students will be required to participate in a course evaluation at the end of the semester. This evaluation aims to give students a platform to express and reflect on how they experience the course as a whole and provide suggestions for improvement.

## 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.

## COURSE CONTENT

### THEME 1: INTRODUCTION

Defining law of persons

Legal subjects and legal objects

Different kinds of legal subjects

law of Persons, statutory interpretation, the Constitution, and transformative constitutionalism

## THEME 2: BEGINNING AND END OF LEGAL PERSONALITY

The Beginning of Legal Personality

Notice/Registration of Birth - *Births and Deaths Registration Act 51 of 1992*

The Interests of the Unborn

Application of the Nasciturus Fiction

Termination of Pregnancy

The End of Legal Personality - National Health Act 61 of 2003

Presumption of Death - *Inquests Act 58 of 1959*

Registration of Death

Duty to Bury the Deceased

### 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

Legal capacity

Capacity to act

Capacity to litigate

Capacity to be held accountable

## THEME 4: DOMICILE

Domicile - Domicile Act 3 of 1992

General principles governing domicile

Kinds of domicile

### 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

Children's Act 38 of 2005

Definition of "children born of unmarried parents"

Categories of children born of unmarried parents

Artificial fertilization and surrogacy

Proof of parentage

The legal relationship between a child and his or her unmarried parents

Changing the status of a child born of unmarried parents through subsequent marriage, adoption or an order of authorities

### 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

Children's Act 38 of 2005

Child Justice Amendment Act 28 of 2019

Legal status of an infant

Legal status of a minor – Consumer Protection

Termination of minority

### 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

Definition of factors

Impact of factor on legal capacity, capacity to act, to litigate and to be held accountable for delicts and crimes

Constitutional implications for each factor

Rehabilitation

Curators

### Unit 1: Mental Illness

Mental Health Care Act 17 of 2002

Consumer Protection Act 68 of 2008

#### **Case law:**

Lange v Lange 1945 AD 332

Theron v AA Life Assurance Association Ltd 1995 (4) SA 361 (A)

### Unit 2: Curators

#### **Case law:**

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

### Unit 3: Influence of alcohol and drugs

#### **Case law:**

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

### Unit 4: Prodigality

#### **Case law:**

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

### Unit 5: Insolvency

#### **Case law:**

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

## HOW TO APPROACH PROBLEM QUESTIONS

o 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.

o Proposed structure: (iPAC)

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).