

# **LAW OF PERSONS**

## **1. 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.

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.

## **2. Credit Value**

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

## **3. 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.

## **4. Outcomes**

### **4.1 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.

## 4.2 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;
- 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 Method

The course is taught by **Ms Brahma Padayachi**. It has been divided into specific topics which will be covered in the form of *viva voce* lectures. These lectures will comprise of a discussion of the law as contained in textbooks, case law and legislation. Students are expected to read ahead of the next lecture so that they may participate in the lecture and solve legal problems either individually or in groups. There will also be voluntary seminars every three weeks during the semester for revision, problem scenarios and preparation of exams and tests. Annexure B sets out common problem scenarios (old exam questions) which may be referred to in both lectures and these seminars. 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 the guidance provided by the detailed course outline. Feedback for assignments and tests will usually be given at the voluntary seminars. 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.

## 6. Course Content (see reading list below)

1. Introduction to 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. Status of children born of unmarried parents
8. The Effect of Age on Status: Minority
9. Mentally and Physically Incapacitated Persons
10. Change of Sex

## 7. Resources

In order to assist your preparation for lectures, a course outline listing the core readings is provided. Annexure A of the course outline also sets out excerpts of the most relevant provisions in legislation for the Law of Persons. However, it is recommended that you read more widely than the readings listed not only for a greater understanding of the subject, but also because many of the existing texts on the law of persons are outdated (the law of persons is an ever-evolving area of the law!). 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, both in paper and electronic form. The following texts are recommended reading:

Recommended Textbooks: **BUY LATEST EDITIONS**

- J Heaton *The South African Law of Persons* (2008), 3<sup>rd</sup> edition, LexisNexis Butterworths: Durban.
- H Kruger and A Skelton (eds) *The Law of Persons in South Africa* (2010) OUP: Cape Town.
- J Heaton *Casebook on the South African Law of Persons* (2008), 3<sup>rd</sup> edition, LexisNexis Butterworths: Durban.
- T Boezaart *Law of Persons* (2010) 5<sup>th</sup> edition, Juta: Cape Town.
- JA Robinson *et al Introduction to the South African Law of Persons* (2008), 2<sup>nd</sup> edition, Printing Things: Potchefstroom.
- B van Heerden *et al Boberg's The Law of Persons and the Family* (1999), 2<sup>nd</sup> edition, Juta & Co: Cape Town<sup>1</sup>

Other Texts:

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. Be careful of using outdated texts for general work. :

- 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 & AM Skelton (ed) *Commentary on the Children's Act* (2007), Juta: Cape Town<sup>2</sup>
- L Schafer *The Law of Access to Children* (2007) LexisNexis: Durban

On occasion, students may also be referred to journal articles on aspects of the course content. These may be found in the library (where indicated, students will be able to access journal articles electronically). Students are encouraged to utilise all the available library resources and to familiarise themselves with the relevant texts on the Law of Persons by browsing through the shelves in the library and visiting electronic resources such as Hein-on-Line and JSTOR.

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<sup>1</sup> This is a very expensive and voluminous book, so you are not expected to buy it. However, this text forms essential reading for this course, and you will be required to demonstrate a familiarity with its content.

<sup>2</sup> This is a very useful loose-leaf commentary on the Children's Act which is available on shortloan in the Rhodes Law Library.

## 8. 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.	<ul style="list-style-type: none"> <li>Identify, explain and critically analyse the basic principles of the Law of Persons.</li> </ul>	<ul style="list-style-type: none"> <li>Class discussion and questioning.</li> <li>Problem and theory questions in class work and examination.</li> </ul>
2. Understand and appreciate the influence of the Constitution on the Law of Persons	<ul style="list-style-type: none"> <li>Identify the key constitutional provisions that affect the Law of Persons.</li> <li>Explain the implications and effects of these provisions.</li> <li>Analyse current constitutional reforms in the Law of Persons.</li> </ul>	<ul style="list-style-type: none"> <li>Class discussion and questioning.</li> <li>Problem and theory questions in class work and examination.</li> </ul>
3. Explain the utility of Law of Persons.	<ul style="list-style-type: none"> <li>Identify the role of the Law of Persons, and explain its importance in everyday life.</li> </ul>	<ul style="list-style-type: none"> <li>Class discussion and questioning.</li> <li>Problem and theory questions in class work and examination.</li> </ul>
4. Evaluate the laws governing the Law of Persons.	<ul style="list-style-type: none"> <li>Identify and find relevant texts, judicial decisions, journal writings and other resources relevant to the Law of Persons.</li> <li>Explain these laws and analyse their adequacy.</li> <li>Identify shortfalls and make suggestions for law reform.</li> </ul>	<ul style="list-style-type: none"> <li>Class discussion and questioning.</li> <li>Problem and theory questions in class work and examination.</li> </ul>
5. Apply the knowledge gained during the course to solve practical problems arising from personality rights.	<ul style="list-style-type: none"> <li>Synthesise and integrate the knowledge gained in order to propose practical solutions to problems associated with the Law of Persons, and advise accordingly.</li> </ul>	<ul style="list-style-type: none"> <li>Class discussion and questioning.</li> <li>Problem and theory questions in class work and examination.</li> </ul>

### Assessment Strategy

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

Class Work: out of 30 marks

Examination: out of 70 marks

**Total: 100 marks**

### Class Work

Students are assessed for the class work component on the basis of the two pieces of work. The first piece of work is an assignment which counts 20%. The second piece of work will be a test which counts 10%. Please note that no late assignments will be accepted for marking. 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 (details to follow) have been specifically drafted with the intention of promoting and developing research and analytical skills.

The test may contain:

- Problems questions which require the application of status and common law to solve practical issues;
- Case notes;
- Theory-type questions in which students 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 the taking away of a student's DP for the course by the Dean.

Please take this class work seriously. Given the high percentage of the class mark (30%), this is a wonderful opportunity to increase your marks prior to the examination in May/June.

### Examination

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

## **9. Evaluation**

Students may be required to complete evaluation questionnaires on the course content and 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 on the outcomes.