

UNIVERSITY OF FORT HARE
NELSON R MANDELA SCHOOL OF LAW
(East London Campus)

LAW OF PERSONS
LPR 113E

SUPPLEMENTARY EXAMINATION
JUNE 2023

.....

Time: 3 hours
Subject: LAW OF PERSONS (LPR 113E)
Marks: 100

This paper consists of 3 pages including the
cover page

Internal Examiners

Ms V Tatchell
Mr J Mahler-Coetzee

INSTRUCTIONS

1. Answer ALL (5) questions.
2. Refer to legislative provisions, case law, and/or any relevant authority, where applicable.
3. Pay careful attention to marks allocated.
4. WRITE LEGIBLY.



QUESTION 1 [10 Marks]

State whether each of the following statements is true or false. Where a statement is false, provide the correct statement.

- 1.1. An irrebuttable presumption is one that can be disproven by adducing evidence.
- 1.2. The *actio iniuriarum* can be used to claim damages for the infringement of personality rights.
- 1.3. In *Baddeley v Clarke* the court did not reduce the claim for unjustified enrichment because no benefit had been derived from the use of the car.
- 1.4. Personality rights operate only against the person who owes the bearer of the right a specific performance.
- 1.5. The *restitutio in integrum* places the parties to a contract in the position they were in prior to the conclusion of the contract.

QUESTION 2 [25 Marks]

Discuss how intoxication affects an individual's capacity. In your answer refer to case law and legislation.

QUESTION 3 [25 Marks]

With reference to case law, discuss how the courts have applied the rule relating to the granting of a presumption of death order.

QUESTION 4 [25 Marks]

Lindy and Tembisa are sisters. Lindy is 6 and Tembisa is 16. Their grandmother gave them each R200 to buy birthday presents. Their parents suggested that they walk down to the shop to spend the money. The sisters walked down to the shopping centre where they both had unfortunate experiences when they got there.

Lindy went into Toys4us and chose a tricycle, she paid for it and rode it out of the shop into the parking lot, where she scrapped the side of Mr Grey's BMW. Lindy was not injured but the tricycle was destroyed and the side of Mr Grey's BMW was badly

scratched. Lindy went back into the shop and demanded her money back. Toys4us refused to return the money.

Tembisa went into a sporting goods shop and chose a skateboard, he went to try it out and unfortunately also collided with Mr Grey's car with similar results to her sister. Her skateboard badly damaged, as well as Mr Grey's car. Tembisa went back to the sporting goods shop and demanded her money back. The shop assistant refused to return the money.

- 4.1. Can Lindy and Tembisa get their money back? [15]
- 4.2. Does Mr Grey have delictual claims against the girls for the damage to his car? [10]

QUESTION 5 [15 Marks]

It is a general rule that a *foetus* is not a legal subject (does not have rights, duties, and capacities). The South African law applies the *Nasciturus fiction* as a legal exception to this rule.

Discuss the application of the *Nasciturus fiction* in delict law, in the light of *Road Accident Fund v Mtati* 2005 (6) SA 215 (SCA) / [also reported as *Road Accident Fund v Mobo M* [2005] 3 All SA 340 (SCA)].

TOTAL 100 MARKS

Handwritten calculations and notes:

44
30+14
8+20+10+6
40
60
25+15
30+10
40
100