

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

LAW OF PERSONS  
LPR 113E

MAIN DEGREE EXAMINATION  
JUNE 2023

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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. The *actio legis aquiliae* can be used to claim damages for non-patrimonial loss.
- 1.2. The *actio iniuriarum* can be used to claim damages for the infringement of personality rights.
- 1.3. If a person dies intestate it means that they have left a valid will, and their estate will be devolved according to the wishes contained therein.
- 1.4. Personality rights operate only against the person who owes the bearer of the right a specific performance.
- 1.5. Capacity to litigate refers to the capacity to bring a lawsuit, either as a plaintiff or a defendant.

### **QUESTION 2 [25 Marks]**

“The law does not directly acknowledge the belief that life begins at conception. The law does however recognise that there are some instances in which a foetus should be regarded as a potential legal person. This is accomplished by using the *nasciturus* fiction.” With reference to case law, discuss how this fiction operates, and its applicability in the law of delict.

### **QUESTION 3 [25 Marks]**

Jason was born in South Africa, but he was never registered at birth. In 2001 Jason was convicted for rape and was sentenced to 15 years in prison. Through an online dating site, Jason started dating Sarah who had just finished her medical studies and was looking for love. Sarah was not aware that her one true love was a convicted criminal, who was at that time in jail. 5 years into their relationship, Jason suggested to Sarah that they should elope. They arranged that they would meet in Australia to get married and after their honeymoon, go to Mozambique where the couple had bought a mansion with the intention of starting their life there.

The couple met in Sydney and got married as planned. However, while out shopping, Sarah saw Jason's face on the news with the headline that he was a wanted criminal

and had recently escaped from prison in South Africa. Scared, Sarah flees to Zimbabwe and immediately filed for divorce.

With reference to relevant cases, discuss the applicable legal principle regarding domicile. In your answer address the following aspects:

- i) Whether X has domicile, if so in which country
- ii) Y's domicile
- iii) Which country has jurisdiction to preside over the divorce case.
- iv) Requirements for domicile of choice

**QUESTION 4 [25 Marks]**

Sipho is an 18-year-old aspiring actor. From a young age Sipho has always felt different, he has never felt comfortable in his body and he feels as though he should have been born a girl, as this is how he identifies. Sipho has just completed grade 12 and has been considering sexual realignment/reassignment surgery, in order to be more comfortable and confident to be able to pursue his acting career. Advise Sipho as to the legal position prior to and after the Alteration of Sex Description and Sex Status Act 49 of 2003, of people who have had sexual realignment surgery. In your answer refer to relevant case law.

**QUESTION 5 [15 Marks]**

With reference to relevant legislation, discuss how insolvency affects an individual's capacity to act.

**TOTAL 100 MARKS**