



UNISA

PVL101-Q

May/June 2001

## LAW OF PERSONS

Duration : 2 Hours

100 Marks

**EXAMINERS :**

FIRST :

MR P BAKKER

MRS JM KRUGER

SECOND :

PROF J HEATON

This paper consists of 5 pages.

**PLEASE ANSWER ALL THE QUESTIONS.**

**QUESTION 1**

Answer this question by writing in each case only the number of the correct answer in your answer script, for example: (a)[1].

**PLEASE DO NOT MARK THE CORRECT ANSWER ON THE EXAMINATION PAPER AND ATTACH IT TO YOUR ANSWER SCRIPT AS IT MAY GET LOST.**

(a) Indicate which **one** of the following statements is **incorrect**:

- [1] A natural person's legal personality begins at birth.
- [2] For birth to be completed it is required that there must be a complete separation between the fetus and the body of the mother.
- [3] For birth to be completed it is required that the umbilical cord be severed.
- [4] Legal personality is not obtained by a stillborn fetus. (2)

(b) Indicate in which **one** of the following cases the court decided that the mother of an unborn child could not enter into an agreement on behalf of her child that the father of the child would not be responsible for paying maintenance for the child after the child's birth:

- [1] *Pinchin v Santam Insurance Co* 1963 (2) SA 254 (W)
- [2] *Shields v Shields* 1946 CPD 242
- [3] *Ex parte Boedel Steenkamp* 1962 (3) SA 954 (O)
- [4] *Chisholm v ERPM* 1909 TH 297 (2)

**[TURN OVER]**

(c) Indicate which **one** of the following statements is **correct**:

- [1] The *lex loci domicilii* of a woman at the time of her marriage determines what the matrimonial property regime of the marriage will be.
- [2] Children below the age of 18 follow the domicile of their father.
- [3] If a person has relinquished his or her previous domicile but has not yet acquired a new domicile, the person's domicile of origin will revive.
- [4] The *animus* requirement for domicile of choice refers to the intention to settle at a particular place for an indefinite period. (2)

(d) In which **one** of the following decisions did the court decide that it was **not** within its inherent jurisdiction to compel a child to undergo blood tests in order to determine the child's paternity?

- [1] *Seetal v Pravitha* 1983 (3) SA 827 (D)
- [2] *M v R* 1989 (1) SA 416 (O)
- [3] *S v L* 1992 (3) SA 713 (E)
- [4] *O v O* 1992 (4) SA 137 (C) (2)

(e) Indicate which **one** of the following contracts is **valid**:

- [1] Lindiwe is six years old. She herself, without any assistance, buys a tricycle from a dealer.
- [2] Lindiwe, with her father's assistance, buys a tricycle from a dealer.
- [3] Lindiwe's father, on her behalf, buys a tricycle from a dealer.
- [4] Lindiwe's uncle gives her a tricycle as a gift. She accepts the donation herself, without any assistance. (2)

(f) Indicate which **one** of the following contracts is **unenforceable**:

- [1] Temba, who is 16 years old buys a motor car from a car dealer, without any assistance.
- [2] Vusi, who is 16 years old, receives a motor car from his uncle as a gift. He accepts the donation, without any assistance.
- [3] Mike is 18 years old. He takes out a life insurance policy, without any assistance.
- [4] John, who is 16 years old, opens an account at a mutual bank, without any assistance. (2)

(g) Indicate which **one** of the following statements is **correct**:

- [1] If a minor has concluded a contract with the consent of his or her guardian, the minor's guardian will incur personal (contractual) liability for the minor's contract.
- [2] An antenuptial contract concluded by a minor without assistance, can be ratified by the minor after the marriage has taken place.
- [3] A minor's guardian will incur personal (contractual) liability for a contract concluded by the minor if the minor has acted as the guardian's agent.
- [4] A real agreement by which a minor attempts to transfer a right to another without his or her guardian's assistance, is valid. (2)

[TURN OVER]

(h) Indicate which **one** of the following four statements is **incorrect**:

- [1] The capacity to act of a prodigal is similar to that of a minor.
- [2] A juristic act entered into by a mentally ill person during a *lucidum intervallum* (lucid interval) is valid.
- [3] Intoxication affects a person's capacity to act only for as long as the intoxication lasts.
- [4] A blind person has no capacity to act whatsoever.

(2)

**[16]**

## **QUESTION 2**

Indicate whether the following statements are true or false:

- (a) A trade union is a juristic person. (1)
- (b) In *Christian Lawyers Association of South Africa v The Minister of Health* 1998 (4) SA 1113 (T) the High Court decided that the Choice on Termination of Pregnancy Act 92 of 1996 infringes the unborn child's right to life. (1)
- (c) According to the supporters of the *nasciturus* fiction legal subjectivity begins at birth. (1)
- (d) A presumption of death expressed in terms of common law automatically dissolves the marriage of the missing person. (1)
- (e) Legal capacity refers to the capacity to perform valid juristic acts. (1)
- (f) A married woman follows her husband's domicile. (1)
- (g) The presumption of paternity will not be rebutted if the man proves that he used contraceptives when he had sexual intercourse with the child's mother. (1)
- (h) An *infans* has the capacity to accept a donation with the assistance of his or her guardian. (1)
- (i) A sixteen-year old minor can open an account at a mutual bank without the assistance of his or her guardian. (1)
- (j) A minor's guardian will incur personal (contractual) liability for the minor's contract if the guardian guaranteed performance by the minor. (1)
- (k) A real agreement in terms of which a right is transferred to a minor who is not assisted by his or her guardian, is valid. (1)
- (l) The age of majority in South African law is 18 years. (1)
- (m) Tacit emancipation terminates minority for all purposes. (1)
- (n) A prodigal may marry without the consent of his or her curator. (1)

**[14]****[TURN OVER]**

**QUESTION 3**

(a) A's will contains the following clause:

My daughter B inherits R60 000 and her children who are alive at the date of my death, each inherits R20 000." A dies on 10 September 2000. B's third child, Z, is born on 10 October 2000. B has two other children, X and Y. Who is entitled to inherit from A's estate? Discuss with reference to authority. (10)

(b) List the requirements for the operation of the *nasciturus* fiction. (2)

(c) Mr X has been missing for 20 years. An inquest is held by a magistrate and a finding is made in terms of section 18 of the Inquests Act 58 of 1959. This finding is confirmed by the High Court. Mrs X now wishes to get married. Advise her as to whether such a marriage would be valid. Explain your answer with reference to authority. (3)  
[15]

**QUESTION 4**

(a) Define the concept "domicile". (4)

(b) Mr and Mrs Nkosi are married. During their marriage, Mrs Nkosi has an affair with Mr Skosana as a result of which a child is born. With reference to authority, advise Mr Nkosi fully on how he should go about to rebut the presumption *pater est quem nuptiae demonstrant*. (16)  
[20]

**QUESTION 5**

(a) What do you understand by the following concepts?:

- (i) agreement (2)
- (ii) unilateral contract (Also give an example of a unilateral contract.) (2)
- (iii) undue enrichment (2)

(b) Fill in the missing word(s):

- (i) The general rule is that minors between the ages of seven and 21 have ..... contractual capacity. (1)
- (ii) The benefit theory was introduced into South African law in the ..... case, but in ..... the Supreme Court of Appeal decided that this theory no longer forms part of South African law. (2)
- (iii) If a child in the absence of his or her parents incurs expenses by purchasing necessities like food, the other party may hold the parents liable on the basis of ..... (two words). (1)

[TURN OVER]

- (c) Chris, a minor, buys a second-hand motor cycle from Ben for R3 000, without his guardian's consent or assistance. They do not agree on when they must perform. Without paying the purchase price of the motor cycle, Chris sues Ben for delivery of the motor cycle. Will Chris succeed with his claim? Discuss. (9)
- (d) (i) What do you understand by the concept *restitutio in integrum*? (1)
- (ii) List the two requirements for the application of *restitutio in integrum*. (2)
- (e) List the two forms the guardian's assistance to the minor's contract may take. After that, indicate in one sentence the effect of such assistance. (3)
- [25]**

### **QUESTION 6**

- (a) Distinguish between *venia aetatis* and release from tutelage. (2)
- (b) What do you understand by the concept "emancipation"? (2)
- (c) What is the effect of declaration of majority in terms of the Age of Majority Act 57 of 1972 on the minor's private-law status? (2)
- (d) How does physical inability, for example blindness, affect a person's capacity to act? Explain briefly. (4)
- [10]**

**Total: [100]**