



PROGRAM : LLB/BA (LAW)/BCOM (LAW)
SUBJECT : **LAW OF PERSONS AND THE FAMILY**
CODE : PER0000/LPF41YO
DATE : 4 JUNE TEST 2021
DURATION : THREE HOURS
WEIGHT : 50:100 (of first semester mark)
TOTAL MARKS : 50

EXAMINER : PROF. A.E. BONIFACE AND DR. W. ROSENBERG
MODERATOR : PROF. M. WATNEY
NUMBER OF PAGES : 5 PAGES

INSTRUCTIONS : QUESTION PAPERS MUST BE HANDED IN
REQUIREMENTS : EXAM ANSWER SHEET

INSTRUCTIONS TO CANDIDATES:

1. PLEASE ANSWER ALL THE QUESTIONS.
2. You have to write in full sentences and paragraphs. Marks will be deducted if you fail to do so.
3. Provide relevant authority (case law and/or legislation) where applicable.
4. Where applicable, provide reasons for your answers.
5. Keep your answers brief and to the point. Marks will be deducted if you fail to do so.
6. You may not seek assistance of a fellow student or the tutor. You may not use any part of another students answers to complete this assessment. You are reminded that all relevant rules and policies of the University and the Faculty applies to this test. In regard to the assessment, the normal academic integrity rules apply. For example, this means

that you cannot cut-and-paste material other than your own work as answers for this assessment. By undertaking this online assessment, you will be deemed to have made the following declaration:

“I certify that my submitted answers are entirely my own work and that I have neither given nor received any unauthorized assistance in this assessment item”.

QUESTION ONE

1. The following statements regarding capacity to act are true:
 - a. Capacity to act refers to the capacity to perform valid juristic acts.
 - b. The *infans* has no capacity to act on his/her own.
 - c. There is usually a correlation between capacity to act and capacity to litigate.
 - d. a and b.
 - e. a, b and c.

2. Regarding the requirement that birth must be completed before legal subjectivity commences, in our law there is a rule that:
 - a. Completion of the birth cannot take place under any circumstances if the mother dies prior to the birth.
 - b. The umbilical cord must be cut.
 - c. Completion of birth is always dependent on the application of medical procedures.
 - d. There should be complete separation of the foetus from the mother's body, even though the umbilical cord has not been cut.
 - e. a and c.

3. The quote “ [W]e are concerned with the crash of an aircraft and the evidence is that the aircraft ... was extensively damaged... . It seems to me in such circumstances the probabilities are overwhelming that the passengers did, in fact, die simultaneously and consequently any presumptions that there may be are excluded” comes from the following case:
 - a. *Ex Parte Pieters* 1993 3 SA 379 (D).
 - b. *Smith v Smith* 1962 3 SA 930 (FC).
 - c. *Ex Parte Graham* 1963 4 SA 145 (D).
 - d. *Dickens v Daley* 1956 2 SA 11 (N).
 - e. *Ex Parte Oppel* 2002 5 SA 125 (C).

4. Which one of the following statements is correct? The two most important rules of domicile are that:
 - a. No person can be without a domicile at any time and no person can have more than one domicile at any time.
 - b. The *lex loci domicilli* of the husband and the *lex loci domicilli* of the wife are always the same.
 - c. Prisoners can never have a domicile of any kind.

- d. Lawful presence is not a requirement for domicile.
 - e. c and d.
5. According to section 19(1) of the Children's Act 38 of 2005, if the mother of a child is herself a minor, then care of the mother's child generally rests with:
- a. The mother's guardian.
 - b. The aunt or uncle of the child.
 - c. The mother.
 - d. a and b.
 - e. None of the above.
6. The following statement(s) regarding the emancipated minor are correct:
- a. The emancipated minor has full capacity to act in all matters.
 - b. The emancipated minor is a major for all purposes.
 - c. An emancipated minor can sell or burden his immovable property independently.
 - d. a and c are correct.
 - e. None of the above statements are correct.
7. *Restitutio in integrum* can be used by:
- a. The minor who contracted without the required consent.
 - b. The minor who contracted with the required consent.
 - c. A prodigal who received a donation.
 - d. a and b.
 - e. a, b and c.
8. The following statement/s regarding the requirement for evidence in respect of child murder or concealment of birth, found in section 239 of the Criminal Procedure Act 51 of 1977, are correct:
- a. Such child shall be deemed to have been born alive if the child is proved to have breathed.
 - b. It does not matter whether or not the child had independent circulation.
 - c. It is not necessary to prove that the child was entirely separated from the body of its mother.
 - d. b and c are correct.
 - e. a, b and c are correct.
9. Children born due to artificial fertilisation can be classified as AID or AIH children. "AID" means:
- a. Children that are conceived with the gametes of the mother's spouse.
 - b. Children that are conceived with the gametes of a third party.
 - c. Children that are conceived out of wedlock.
 - d. Children that are conceived only with the gamete of the mother.
 - e. None of the above.

10. The following factors are considered by the court during an application for an order of presumption of death according to the common law:
 - a. Circumstances under which the person disappeared.
 - b. Period of time that the person has been missing.
 - c. Age of the missing person.
 - d. a and b.
 - e. a, b and c.

11. The case of Eilon v Eilon 1965 1 SA 705 (A) illustrates that:
 - a. In order to establish a domicile of choice the intention must be to settle for an indefinite period.
 - b. The presence at a specific place must be subsequent to a divorce order.
 - c. A child's mother must always give permission for the adoption of the child.
 - d. Only the woman's consent is needed to terminate her pregnancy.
 - e. c and d.

12. The following remarks regarding the prodigal's capacity to act are true:
 - a. A prodigal may enter into a contract with permission from his or her curator.
 - b. The curator may enter into a contract on behalf of the minor.
 - c. A prodigal may receive a donation.
 - d. a and b.
 - e. a, b and c.

13. An insolvent is defined as:
 - a. De minimus non curat lex.
 - b. A person who is unable to settle all of his or her debts because of the fact that his or her liabilities exceed his or her assets.
 - c. A minor who has been emancipated.
 - d. Contracts that bind a legal subject.
 - e. None of the above.

14. From the 13th week until the 20th week of the gestation period the pregnancy may be terminated:
 - a. Whenever the woman requests it.
 - b. Where it would endanger the woman's life.
 - c. Where it would pose a risk of injury to the foetus.
 - d. b and c.
 - e. None of the above.

15. The following persons do not have legal capacity in terms of South African law:
 - a. A new-born baby.
 - b. A mentally ill person.
 - c. A minor, aged 8.

d. a and b.

e. None of the above.

[15]

QUESTION TWO

Thobia was admitted to a mental health institution on the 12th of May 2021 and certified mentally ill on the 18th of May 2021. On the 11th of May 2021 Thobia got married to Jude. Would the marriage be valid? In your answer discuss how the court determines whether someone is mentally ill, that is what is the test used for mental illness by the court? Also explain what the effect is when someone is certified mentally ill and specify how mental illness affects the status of a person in the eyes of the law. (8)

The marriage could be void¹

IF it was proven that Thobia was mentally ill at the time of the marriage.¹

Test is can they distinguish right from wrong¹

And act accordingly¹

And not motivated by delusions caused by mental illness.¹

Effect of certification is that it is rebuttably presumed that the person is mentally ill (from time of certification)¹

And whoever alleges otherwise must prove so¹

The status is similar to that of an infans/ no capacity to act or litigate¹
(or similar)

QUESTION THREE

Summarise the AB case (AB and Another v Minister of Social Development (CCT155/15) [2016] ZACC 43; 2017 (3) BCLR 267 (CC); 2017 (3) SA 570 (CC)• (29 November 2016)) and explain its significance for the South African Law of Persons. Also briefly indicate whether you agree with the decision of the Constitutional court and why or why not. (9)

Facts: Applicant cannot conceive a child naturally/ ivf has failed multiple times. Wants to make use of a surrogate and used double donor gametes. ¹

Legal question: Is the requirement that one of the gametes be genetically related to the mother or her husband constitutional? ¹

High court: said it is unconstitutional ¹

Decision: The CC court found that the genetic link requirement is constitutional ¹

Reason: In the best interests of the child/similar ¹

Significance: eg. Must have one related gamete donor or anything similar ¹

Agree/not: ¹

Reason: eg. Ivf can use double donors or not sufficient reasons given by the court or similar reasoning ¹

QUESTION FOUR

Briefly compare the effects of insolvency; prodigality and mental illness on a person's status.
(8)

	Mentally ill	Prodigal	Insolvent
Legal Capacity	Yes limited	Yes limited	Yes limited
Capacity to act	Yes limited	Yes limited	Yes limited
Capacity to litigate	Yes limited	Yes limited	Yes limited

(1 MARK EACH, ANY 8 MARKS)

QUESTION FIVE

5.1 Name any two duties of a curator. (2)

Manage affairs of person in careful manner

Provide security

Lodge an inventory to the Master of the High Court

Avoid conflict between own affairs and those of the person under curatorship

Assist in legal proceedings

Provide annual report

(ANY 2, TOTAL 2 MARKS)

5.2 Name any two consequences of death that set in by operation of the law. (2)

The deceased's marriage is dissolved

Policies are paid out

No longer holds any office

No longer taxable

Criminal actions lapse

Private law actions lapse unless litis contestation was reached.

(ANY TWO, TOTAL 2 MARKS)

5.3 Where is the domicile of an adopted child? (2)

The place where the parents are situated or where the child is most closely connected.(2)

5.4 Which presumption applies to prove paternity of a child born to a married woman? (2)

Pater es quem nuptial demonstrant (2)

5.5 Name the section in the Constitution pertaining to the best interests of children and briefly explain what it says. (2)

Section 28 the best interests of the child are of paramount importance in every matter concerning the child.

[10]

TOTAL: 50 MARKS
