UNIVERSITY OF JOHANNESBURG

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| **PROGRAM** | : | LLB/BA (LAW)/BCOM (LAW) |
| **SUBJECT** | : | **LAW OF PERSONS AND THE FAMILY** |
| **CODE** | : | PER0000/LPF41YO |
| **DATE** | : | TEST 5 JUNE 2020 |
| **DURATION** | : | THREE HOURS |
| **WEIGHT** | : | 50:100 (of first semester mark) |
| **TOTAL MARKS** | : | 50 |

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| **EXAMINER** | : | DR. AE BONIFACE AND MRS. W ROSENBERG |
| **MODERATOR** | : | PROF. M. WATNEY |
| **NUMBER OF PAGES** | : | 5 PAGES |

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**INSTRUCTIONS TO CANDIDATES:**

1. **Answer all the questions on the answer paper (document). Provide relevant authority (case law and/or legislation) where applicable. Provide reasons for your answers.**
2. **Please write your surname, initials and student number on the answer paper.**
3. **Your answer paper must be loaded onto Blackboard under the "assignment" section.**
4. You will have 3 hours to complete the test, and your answers must be submitted within the allocated timeframe.
5. 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. 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.

2. 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.

3. 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.

4. 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.

5. *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.

6. 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. *Ex Parte Graham* 1963 4 SA 145 (D).
   c. *Smith v Smith* 1962 3 SA 930 (FC).
   d. *Dickens v Daley* 1956 2 SA 11 (N).
   e. *Ex Parte Oppel* 2002 5 SA 125 (C).

7. 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.

8. 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.

9. 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.

10. Human tissues and human organs may be legally used for the following purposes:
   a. Medical research.
   b. Organ donation.
   c. Sold to a needy recipient.
   d. a and b are correct.
   e. a and c are correct.

11. The effect of an order of presumption of death is that:
    a. The person is regarded as being alive for legal purposes.
    b. There is a rebuttable presumption that the person is dead.
    c. There is an irrebuttable presumption that the person is dead.
    d. There is an irrebuttable presumption that the person was not found.
    e. a and d.

12. The following entities are juristic persons in South African law:
    a. Absa bank
    b. The University of Johannesburg
    c. Eskom
    d. a. and c
    e. a, b and c.

13. A person has disappeared. The following statement/s regarding an application for presumption of death in terms of the common law are true:
    a. The application can be brought by any interested party.
    b. The standard of proof required is "beyond a reasonable doubt".
    c. The marriage does not dissolve automatically.
    d. a and b are correct.
    e. a and c are correct.

14. In AB and Another v Minister of Social Development (CCT155/15) [2016] ZACC 43; 2017 (3) BCLR 267 (CC) the court held that:
    a. The order of constitutional invalidity in respect of Section 294 of the Children's Act 38 of 2005 made by the High Court of South Africa is not confirmed.
    b. The appeal by the respondent is upheld.
    c. The respondent is ordered to pay the applicants' costs.
    d. a and b are correct.
    e. a, b and c are correct.

15. The term "legal subject" means:

    a. The place that the law assigns to one at birth.
    b. An entity that has economic value but cannot participate in legal or commercial traffic.
    c. An entity that can have rights, duties and responsibilities.
    d. The nasciturus fiction.
    e. Domicile at the place of origin.

**[15]**

## QUESTION TWO

Compare and explain the legal status of a prodigal with that of a mentally ill person, an *infans* a major, an insolvent and a minor. You may answer in a table format or write (type) out the answer. (15)

## QUESTION THREE

Read the set of facts and answer the questions that follow.

Mr. Dlamini entered into a contract to purchase 5000 hamburgers a week from Hamburger-2-go company. Two weeks after the conclusion of the contract the company has received no payment from Mr. Dlamini. The company finds out from Mr. Dlamini's neighbour that Mr. Dlamini is in a mental institution and that he went to book himself in there a week ago as the "excessive demands of the voices" became too much for him to handle.

3.1. Briefly explain how mental illness affects a person's status in South African law. (3)

3.2. Briefly discuss what the onus of proof is in this scenario and who bears the onus and why. (7)

## QUESTION FOUR

4.1. Briefly describe what is meant by 'domicile of choice'. In your discussion include the definition and the requirements that are necessary for a person to acquire a domicile of choice. (4)

4.2. Name the common law requirements for the application of the *nasciturus* adage and name the applicable case. (4)

4.3. Alice is eight months pregnant. Alice wants to terminate her pregnancy as she says that she "cannot afford" to have a child as she is unemployed. Will Alice be able to lawfully terminate her pregnancy? Explain briefly, refer to legislation in your answer. (2)

**TOTAL: 50 MARKS**

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