UNIT 1
With Thanks to Vivienne De Vos.

INTRODUCTION TO THE LAW OF PERSONS

NO CASES PRESCRIBED
Pg 13 Guide

1.1 INTRODUCTION

What is the Law of Persons?

Definition of the Law of Persons: (Text Book Pg 1) “the law of persons is that part of private law which determines which entities are

1. legal subjects
2. where legal personality begins, and
3. ends,
4. what legal status involves, and
5. what effect various factors have on a person’s legal status.”

The Law of Person therefore determines:

a. Which beings are legal subjects;
b. How a legal subject originates;
c. How a legal subject comes to an end;
d. What legal status involves;
e. What effect various factors have on a person’s legal status

Firstly let us look at the other categories of South African Law:

1. Public Law - is that part of the law in which the State plays a part in its capacity as the sovereign power. Therefore if the State enters into an
ordinary contract with an individual i.e. buys or sells immovable property, the law involved is Private Law and not Public Law.

2. **Constitutional Law** - deals with the structure of the State and of its various organs, their functions and powers, and also how the State treats individuals. It also governs how individuals treat each other.

3. **Administrative Law** – is that part of Public Law which deals with the powers of the Administrative branch of the State, its organs and officials, over private persons and in general with the relationship between the State and its subjects.

4. **Criminal Law** - deals with the prohibition by the State of certain actions and the punishment which by the State imposes on persons for such prohibitions.

5. **Private Law** - deals with the rights and duties and capacities of persons, which may include the State, but not in its capacity as a sovereign or superior power. Private Law is that sphere of the law which governs a person’s relationships with fellow human beings, for example, if A enters into a contract with B it is governed by the Law of Contract, which is a subsection of Private Law. However, if A commits a crime the State will prosecute and punish A for the contravention of the Law and because we are not here dealing with the relationship between persons but rather between the State, who will prosecute and punish the perpetrator the procedure will be governed by the Rules of Criminal Law, which forms part of Public Law.

**Law Governs relations between Legal Subjects and also between legal subjects and legal objects**, and is therefore a manner in which society is managed. Members of the community, whose relationships are governed by the Law, are legal subject to whom the Law applies and it is for these legal subjects that the benefit of the Law exists. A legal order without
subjects is unthinkable, as well as “legal” subjects without the Law or a legal order as this would amount to absolute chaos in society. In the same manner that participants in a game of rugby must obey the rules of the game, so we too as legal subjects must obey the rules of the legal order. In the same way that if a rule of rugby is transgressed or disobeyed by one of the players, who will then be penalized by the referee, the same principle applies to all legal subjects and the law.

Who is a legal subject?

A legal subject is any person, or legal entity, who is the bearer of rights, duties and capacities. The legal subject can therefore own property, enter into contracts, may inherit or marry, must comply with the rules of the State, for example by paying taxes, may not commit a crime etc. The bearer of these rights, duties and capacities is known as a legal subject, i.e. a persona iuris.

What is a legal object?

A legal object is any object which has economic value.

e.g. corporeal things
    intellectual / immaterial property e.g. copyright rights, or the rights to the fruits of your labours.
    personality property e.g. right to your good name.
    performance (right to performance)
System of Norms of Conduct or Rules
Imposed by COMPETENT bodies to regulate the relations between members of the community in a peaceful and just manner. This is Law in the OBJECTIVE sense e.g.
a) One should fulfill ones contracts.
b) One should not cause damage to another person.
c) One must comply with the requirement of possessing a driver’s license if one wishes to drive a motor vehicle on a public road etc. etc.

Another view is that it is not norms of conduct or rules that are at issue, but rather a number of legal relationships between legal subjects. We are then concerned with rights or law in the SUBJECTIVE sense e.g.
a) if I own a motor vehicle, I have a right to that motor vehicle which implies that all other legal subjects must respect e.g. you may not steal my motor vehicle.
b) if I conclude a contract with somebody I have the right to the fulfillment of the contractual obligations which that other person has undertaken to perform.

When we are dealing with rights we are therefore concerned with a dual relationship:

A. The legal relationship between the bearer of the right and other legal subjects.
   This is the SUBJECT-SUBJECT relationship.
   The context of this relationship is a RIGHT and there is a corresponding obligation.
   The bearer of the right is entitled to the right as against other legal subjects, the other legal subjects must respect the bearer of the right.

B. The legal relationship between the bearer and the object of his rights.
   This is the SUBJECT-OBJECT relationship.
   A right can only exist if it relates to an object e.g. the right that one has to one’s motor vehicle. If X has made defamatory remarks about me, the object of the right which has been infringed is my right to my good name.
right’s right.

The law determines how far the powers of the bearer of the right will extend.

As the owner of the immovable property I may use and enjoy my property as I deem fit. I may chop down the trees which are growing in my garden, I may dig a trench right across my front lawn if I wish to do so, however the Law does recognize the difference between exercising a right, and stepping outside the bounds of the exercising of that right. As the owner of my property and the bearer of the right to my property I may entertain friends at home. However, if I have wild parties at my home every Friday and Saturday night, which causes a disturbance and a nuisance to my neighbours, I would no longer be exercising my rights of ownership, but will be infringing on my neighbour’s rights of ownership in that they are also entitled to peaceful and undisturbed ownership of their own properties. Therefore we can see that the law will prescribe the limits and bounds of our rights.

1.3 DIFFERENT KINDS OF LEGAL SUBJECTS

Only legal subjects have legal personality. South African Law recognizes two types of legal subjects:

1. Natural persons

2. Juristic Persons

Because legal systems of different countries differ from each other, some countries may recognize as legal persons entities which are not recognized as such in other countries.

Because the law is not static and is continuously developing, it is possible that different categories of legal personalities will emerge and be recognized by law.
However, it is important for students to know that in South African law at present we have only two categories of legal subjects i.e. natural persons and juristic persons.

### 1.4.1 THE NATURAL PERSON

All human beings are recognized as legal subjects. A legal subject is known as a *persona iuris*. It is irrelevant what their age is, their mental capacities, their intellectual abilities. Therefore every human being has rights, duties and capacities, however the CONTENT of these rights duties and capacities can vary depending on various factors such as the person’s:

| MENTAL CAPACITY | AND | AGE |

A *persona iuris* can be either

| Natural Person | Juristic Person |

In modern society all human beings are recognized as legal subjects but this was not always the case. In Roman and Germanic law, slaves, although obviously human beings were regarded not as legal subjects but rather as legal objects in the same manner as animals or furniture and therefore they did not have rights, duties or capacities. This had the implication that owners could deal with their slaves as any other object, they were even entitled to kill them.

Slavery existed in the Cape until it was abolished in 1834.

In Roman and Roman-Dutch law children who were born seriously deformed were also not, as with slaves, regarded as legal subjects. These seriously deformed children were called *monstrae*. They were not
regarded as being of human descent and they could be killed provided permission had been granted by a magistrate. The judge of appeal Van Den Heever has stated that a monstrum in the Roman sense is a physical impossibility. (- *Tjollo Atteljee vs Small*)

In modern South African law all beings of human descent, irrespective of how severely malformed or deformed they may be, are regarded as legal subjects, and as such are the bearer of rights, duties and obligations although they will of course be limited in various ways.

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**1.4.2 THE JURISTIC PERSON**

This is the second type of legal subject which is recognized by South African Law

Legal personality can also be conferred upon certain associations which are made up of natural persons. These associations are well-known in modern society, which include companies and close corporations and *universitates*. Although such associations cannot perform acts on their own, but do so via the organs which are made up of natural persons, the association itself is a new legal subject, separate from the natural persons who perform the legal acts on behalf of the association. This association is called a juristic person.

A juristic person, as a legal subject, has a legal existence which is independent from that of its members or the natural persons who created the association.
i.e. the directors of a company act on behalf of the company when purchasing immovable property, or entering into a business deal. It is the association, the juristic person, which obtains the rights, duties and capacities and not the functionaries (the directors) themselves in their personal capacities.

A juristic person can be the owner, the lessor, or lessee of things, it can commit delicts and it can commit certain crimes. It may also sue persons who owe it money (its debtors), it may be sued by persons to who it owes money (its creditors). Clearly there are certain acts which a juristic person cannot perform i.e. it cannot commit a murder.

The following entities are recognized as juristic persons in South African law:

A. Associations incorporated in terms of general enabling legislation,
   - companies
   - banks
   - close corporations
   - cooperatives

B. Associations especially created and recognized as juristic persons in separate legislation. e.g. Universities, semi-State organizations (organizations which are partly owned by the State) and public corporations such as;
   - Eskom
   - SABC

C. Associations which comply with the common law requirements for the recognition of legal personality of a juristic persons. At common law these juristic persons are know as universititates. However, such an association must meet the following requirements before it can be recognized as a juristic person.
1. The association must have a continuous existence irrespective that its MEMBERS may vary;
2. The association must have rights, duties and capacities
3. Its object must NOT be the acquisition of gain.

The Courts have held that the following associates have legal personality

- CHURCH
- POLITICAL PARTY
- TRADE UNION

The implications of this are, as we now understand, that these associations have rights, duties and capacities separate from the legal persons that either perform the act on behalf of the associations, or are the members thereof.

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<th>CHURCH</th>
<th>POLITICAL PARTY</th>
<th>TRADE UNION</th>
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e.g. If I am a member of a particular church, and that church buys a new building in which to hold its church services, I myself, as a member of the congregation, am not an owner of the building. Similarly, if the church does not pay its debts, I, as a member of the congregation am not liable for those debts.

1.4.3 THE FOLLOWING ARE NOT REGARDED AS JURISTIC PERSONS: (No formal requirements)

- A TRUST
- A PARTNERSHIP

Test the definition of a universitas against the definition of a trust or a partnership. i.e. I does a trust / partnership have:

- Continuous existence independent of its members – YES
• Rights, duties and capacities – YES
• Are they incorporated not for gain? NO.

THEREFORE THEY DO NOT MEET THE TEST FOR A UNIVERSITAS AND ACCORDINGLY CANNOT BE REGARDED AS AN INDEPENDENT PERSON.

□ This means that for example the individual partners of a partnership will be responsible for the partnership debts out of their own private funds. If the partnership has become insolvent, the individual partners’ property may be attached and sold in order to satisfy the partnership debts. If the same were to happen with regard to a close corporation the members’ properties would not be subject to attachment to settle the close corporation debts.

FN 41: Certain acts do however confer legal personality on Trusts for specific purposes i.e. the Income Tax Act.

FN 42: The law also recognizes exceptions to the rule that a partnership is not a separate legal entity and allows a partnership to sue and be sued in its own name and not in the name of all the individual members.

• Students are to memorize the entities which are recognized in our law as juristic persons.

• Students should also learn all definitions off by heart.

THE END