

CHAPTER 2

LAW OF PERSON

Introduction

Law of person is a body of rule concerned with the legal position of the human person comprising their rights, capacities, and duties. It pertained to various aspects of a person status as an individual to conclude a contract, conclude marriage, establish business etc. It determines the requirements and qualifications for legal subjectivity and the rights and responsibilities that attached to it. Thus, this unit devotes to discussions of the concept of personality, attributes of personality, capacity, and incapacity of individual persons.

2.1. The concept of legal personality

Law is an instrument that regulates the relation of persons. By determining the respective rights and duties of persons, law helps to create smooth relations in the life of the society. In the language of the law, the term “person” is not used in its literally or usual meaning.

The words ‘person’ in its usual meaning refer to anyone who is member of humankind and it is interchangeably used with the word ‘human being’.

In law, a person possesses certain rights and owes certain duties.

Contemporary legal systems around the world recognize two categories of persons as follow: i. **1. Natural persons**

Natural persons also known as physical or real persons, refers to human beings. Non-human creatures are not legal persons and do not have the full range of rights and duties which a human being acquires. In the earlier times where there was the slave owning practice, not all human beings were considered as persons by law. Slaves, which were persons in the strict sense of the term, were not considered as persons by law. They were considered as property of their masters and they used to have no rights and duties under the law. Now a day the dichotomy of human beings in to slave and freeman has disappeared and all human beings are considered as person by law and are subjects of it. So, every human being acquires rights and duties at some point in his life and losses them upon death.

2. Artificial persons

Legal personality is not restricted to human beings. Artificial person’s also known as fictitious persons or legal persons are non-human entities, which are recognized by law as persons and given certain rights and duties and are, treated more or less like human beings for the sake of convenience in control. Artificial persons can be an association, an organization, a company, a group of person, state etc. If they are given personality by law, these entities are persons and can have legal relations with each other or with natural person.

2.2. Commencement and Termination of Artificial Personality

The way in which artificial personality commences depends on the type of the artificial person itself. There is no uniform rule concerning the acquisition of artificial personality. There are different mechanisms through which artificial persons will begin to have legal life. Of these mechanisms, the famous ones are issuance of a specific legislation, effecting registration and requirements of publicity. For instance, public enterprises will start to have personality upon the enactment of establishment regulations with no other conditions attached to it. On the other hand, private business organizations need to be registered with a competent public authority in order to acquire legal personality. They should also comply with publicity requirements. So, acquisition of personality by business organizations is realized by meeting the requirements of both registration and publicity, and only as a consequence of such they can validly undertake acts of civil life.

The same way personality begins it will mostly end. That is to say, just like artificial personality commences through issuance of statutes or effecting registration and publicity, it ends through the enactment of dissolving law or the striking out of name of the entity from the public registry. To terminate the legal personality of a public enterprise, regulations would be issued and these would serve the purpose of ending the legal life of the enterprise. Ordinary business organizations would cease to have legal life when they are cancelled from the registry and/or through the revocation of the license issued to them as evidence of personality. Artificial personality may also end as a matter of fact where the object for which the entity is established becomes impossible to achieve or where that organization is dissolved because of bankruptcy. In all the above cases, the fictitious beings would die out and they can no more be parties to transactions having effect at law. Any act done by these beings after their personality has terminated is deemed never to have happened for all legal purposes.

2.3. Attributes of legal personality

As discussed above, legal personality is a particular device by which the law creates or recognizes units to which it ascribes certain power and capacities. Under the law, persons possess certain capacities and these capacities are called attributes of personality. The followings are some of attributes of legal personality.

a) Having name; every person, physical or artificial is identified by name and necessary need to have name.

b) The ability to sue or be sued in its own name: Once an individual human being or an artificial person acquired personality after fulfilling certain requirement, it can bring an action against others. Similarly, others can institute an action against it. For instance, Samson, yohannes and Asamn establish a company. After a company has satisfied the legal requirements for the acquisition of legal personality (after it has become a legal person), it brings legal suits against other in the name of the company, not in the name of

Samson, Yohannes and Asamn. Consequently, there is a distinction between the liability of the company and the liability of individual persons forming it.

c) The ability to own and administer property: Only a person can own and administer property. Property belonging to a legal person is different from that of individuals who own the legal person. For instance in the example cited above, property belonging to Samson, yohannes and Asamn is completely different from property belonging to the legal person (i.e. the company). As well, property belonging to the company is distinct from the property belonging to its owner.

d) The ability to enter in to contracts: once a human being or an entity acquired personality, it can enter in to contracts and acquire rights and duties for itself. For instance, Niyala Insurance Company may conclude a contract with National Bank of Ethiopia. The rights acquired and the liabilities incurred, as the result of the contract, remains the right and liabilities of the company. It is the company, not the individual owners, that is either a creditor or the debtor.

e) The obligation to pay taxes: a legal person may own property or carry business in its own name, in the same way that a physical person pay tax on his or her income, a legal person is also required to pay tax on any income it derives.

2.4. Commencement of Natural personality

The personality of natural persons begins through a couple of ways. As of a rule, birth is regarded as the starting point of personality and as an exception; there is anticipated personality in which personality also commences.

2.4.1. Birth Most legal systems accept birth as a time when personality of a human being begins. Similarly, Art.1 of the Ethiopian Civil Code provides.

“The human person is the subject of rights from its birth to its death”.

So, in this respect the beginning of physical and legal existence are simultaneous. Birth refers to the complete extrusion of the baby from its mother's womb either in a natural way or by a medical operation.

Birth alone is a sufficient condition to confer personality under the Ethiopian law, and no other requirements are attached to it.

2.4.2. Anticipated personality

As stipulated under Art 1 of the civil code, personality begins at birth as a matter of principle. As per this provision, an unborn child is not a person in the eyes of the law and can have no rights. However, this general rule has an exception in that personality may be granted to a merely conceived baby without waiting for its birth for some purposes. Art 2 of the Ethiopian Civil Code states that,

“A child merely conceived is considered as though born where its interest so requires provided it is born alive and viable.

” Thus, as per this provision personality is granted to unborn child if the following three cumulative requirements are met;

i. **The interest of the child must require:**

The exception of granting personality for fetus generally revolves around the interest of the unborn child. This exception is based on the justification that a child who has already lost his father while being in its mother's womb should not be subjected to further pain of losing a benefit which it would have secured had it been born before its father's death. In most cases, the interest of the unborn baby comes into the fore where a father dies before the birth of the child leaving behind property. If a baby has to wait until birth to acquire personality, i.e. if Art 1 of the Civil Code is strictly applied, it will definitely lose the succession to its father's property because succession constitutes a juristic act and being a beneficiary when it opens necessarily requires personality. Opening of succession is legally made at the death of the father and the property would devolve upon those having the capacity and the right to succeed at such time. Therefore, when there is an interest of the baby at stake, the unborn baby in the womb should be regarded as already born and should be allowed to take advantage of the interest.

ii. **The child must be born alive In order to be considered as a person,**

The baby must be born alive so much so that, for instance, personality will never be granted if the fetus is aborted.

iii. **The child born must be viable**

Viability refers to the ability to live or the potential of surviving. This is to exclude from the ambit of personality impotent newly born babies or those incapable of surviving because of some congenital factors. The law takes certain presumptions to settle questions of what baby is viable and what is not. The law irrebuttably presumes that a child that lives for 48 hours after its birth is viable, so that no contrary evidence can be admitted to disprove this presumption. The law also provides for another presumption in the negative that a child that dies before 48 hours after its birth is deemed to be not viable. However, this presumption is rebuttable in that it can be shown to the contrary by proving the child was viable.

Does the child is still not viable if the child dies before 48 hour owing to artificial causes? That is to say, if the child dies for instance owing to mishandling by the nurse?

External factors that may have caused the death of the child before 48 hours can be used to disprove the presumption of non-viability. If, for instance, the baby dies on the 43rd hour after its birth because of mishandling by nurses or by hunger or due to a car accident can be employed to challenge the above presumption by proving that the baby would not have died had it not been for the extraneous factors..

2.4. Capacity and incapacity of Physical Persons

Enjoyment and exercise of rights are not the same. To enjoy rights means to have or to hold rights. A physical person enjoys rights, holds rights or is the subject of rights starting from the time of birth. This means that all persons enjoy rights without exception up on birth; however, not all persons have the same capacity to exercise rights. Some persons are incapable of exercising rights.

Capacity in its legal sense is the ability of physical persons to exercise their rights and discharge their duties by themselves. The law presumes capacity. In all acts of civil life, physical persons may be assumed that they are dealing with equals who not only hold but also exercise the same rights and duties as theirs. In this regard, Article 192 of the civil code states that:

Every physical person is capable of performing all the acts of civil life unless he is declared incapable by law.

Even if personality is a necessary condition for capacity, it is not a sufficient one to enable one to personally carry out juridical acts and certain conditions may incapacitate an individual still possessing personality. In certain circumstances, the law may explicitly declare that person is considered incapable to exercise rights and duties. Let us now see in brief some of legally prescribed conditions of incapacity recognized under Ethiopia legal system.

a) Minority

Minority in civil law is an incapacitating condition that occurs because of age. Article 215 of the revised Federal Family Code defines persons regarded as minor. It states:

“A minor is a person of either sex who has not attained the full age of eighteen years”

Thus, a person below the age of 18 years is called a minor and is incapable of exercising rights and duties by him/herself. The law intends that these persons have immature intellectual faculty and lack the proper degree of appreciation when they transact acts of civil life. The law interferes to protect minors from exploitation by others. Accordingly, any civil act undertaken by the minor without authority is subject to invalidation. A minor may, however, validly perform acts of daily life,

i.e. simple and small matters that are quite frequently done and that do not significantly affect the legal position of the minor.

There are two institutions of representation recognized by the law to exercise rights and duties on the behalf of the minor. These are guardianship and tutorship.

- **Guardianship:** guardian of the minor is entrusted with the task of running the personality affairs of the minor (i.e. keep the physical and psychological well-being of the minor). Personal interests include food, clothing, shelter, and schooling. The guardian thus, is responsible for such interests of the child.

- Tutorship: tutor is answerable for the protection and management of the minor's economic (pecuniary) interests such as securing income, investing same, running business, administering property and the like.

The incapacity arising because of minority may terminate through the following couple of ways. **Majority:** A minor assumes capacity to exercise rights and duties him/herself when he/she attains the age of majority (18 years).

Emancipation: The incapacity of a minor may also come to an end through emancipation even if the person is still below the age of eighteen. A minor may conclude marriage in exceptional circumstances approved by the appropriate public body, and we call this situation emancipation.

b) Judicial Interdiction

The court may sometimes interdict a certain categories of individuals due to their mental problem. These individuals do not understand the consequences of their action due to their mental condition. Therefore, the law steps in to protect the interests of persons with mental problem because of insanity, infirmity, senility and the like. Insane persons are believed to be unable to understand the nature and consequences of their actions because they have got a mental problem. Infirm persons are those with serious physical deformities so that such deformities will have the ultimate substantial reduction in mental functioning. For example, if a person is simultaneously deaf-mute and blind, he/she is deemed infirm. Senility is deterioration in mental faculty because of old age. The court can declare the interdiction of the above persons with mental deficiencies. Any interested party may apply to the court for the interdiction. Judicially interdicted persons will lose the authority to exercise rights and duties as of the date of their interdiction. But they, just like minors, exercise rights and duties they hold through guardians if the interest pertains to the personality of the incapable person and through tutors where the interest is a proprietary one.

c) Legal interdiction

This is an incapacity imposed by the law. A person will be legally interdicted because of the pronouncement of a legally prescribed punishment for the violation of criminal law. The prescribed sentence will deny the person the capacity to carry out economic affairs. A legally interdicted person retains capacity over his personality interests and thus no guardian is necessary. A tutor may represent the legally interdicted person to exercise the latter's pecuniary rights/duties. The assumption of the office of tutorship is, unlike that of minority or judicial interdiction, voluntary. The evident reason is that a person who lost his privilege because of commission of a crime should not be favored by compelling others to assume the role of tutorship on his behalf.

2.5. Termination of Physical Personality

The Ethiopian civil code deals with grounds, which terminates the personality of human beings. These grounds are death and declaration of absence.

a) Death

Article 1 of the Ethiopian Civil Code provides for the way personality of individuals ends through death. It states that;

“Human person is the subject of rights from birth to death...”

b) Declaration of absence

The other mechanism where personality of human persons comes to an end is the declaration of absence. If a certain person is disappeared and no news of him has heard for two years, any interested party may apply to the court for the declaration of absence. If once the court declares that the person is absent, the absentee is considered dead. And death is considered as the ground to end the personality of the absentee.