Law of persons

CHAPTER 4
RIGHTS *HELD BY PHYSICAL PERSONS*

Introduction

- Black's law dictionary defines right as *"**a legally enforceable claim** that another will do or will not do a given act or*
  - ✓ a recognized and protected interest, the violation of which is wrong.
- The phrase *"legally enforceable claim" indicates that there should be a claim or legal guarantee that is enforceable by the law and law enforcement organs.*
- The legal guarantee may require another person **'not to do a given act' (i.e. negative rights***)* or,
- it may require '***a duty to do a given act' (i.e. positive rights***)*

Introduction con't

- ***Positive rights*** *involve duty to act, and a* ***negative right*** *requires the duty to forbearance.*
- Social, economic and cultural rights require the duty to act towards making the rights available.
  - ✓ They are thus positive rights.
- Civil and political rights are negative rights and the law guarantees non-intervention when a person exercises these rights.

Q) What is the status of Rights of personality?

- The rights *of personality are civil right* that are naturally acquired by mere fact of birth

  i.e Rights of personality are *held* as of birth (Art. 1),

Introduction con’t

- Holding of right are different form exercising it so,
- For some categories of person legally binding acts (like contracts) are *exercised* through a person who is in charge of administering the property of the person with lessened capacity (192-393).
- *holding* rights refers to entitlement which may at times require *exercising* it through a guardian or a tutor.
- The embodiment of rights of personality in civil law facilitates the implementation of these rights which are also enshrined in constitutional law and other laws.
- Articles 8 to 31 of the Civil Code deal with *rights of personality;*

Rights of personality under FRDE constitution

- Article 25 of the Constitution articulates the principle of equality before the law and entitlement without any discrimination to equal protection of the law.
- This principle includes foreigners because they are not precluded from this *principle of equality* in all matters (389/1).

Q) Does foreigners enjoy equal rights with national in all aspects?

- foreigners are not capable of exercising few specifically identified juridical acts such as participation in gov't (389/2) and ownership of immovable property without gov't permit (390).
- chapter three of the constitution entitled "Fundamental Rights and Freedoms " has two parts,

Rights of personality … con’t

- Part one (art 14-28) deals with Human Rights whereas part two (art 29-44) deals with democratic Rights.

Q) What is the d/c b/n Human Rights and Democratic Rights?

- The were two arguments in favor and against these classification During the deliberation of the constitution,
- The first argument was proposed by the then president Meles Zenawi and says
- “Democratic Rights are Citizens Right and Human Rights are every persons rights” and
- He said Art 10 of the const. show the extent of protection given for these two categories of rights.

Rights of personality … con’t

- Art 10/1 “human rights and freedoms, enumerating from the nature of human kind, are **inviolable and inalienable**
- Art 10/2 “human and democratic rights of citizens and people shall be **respected**
- Kifle Wadajo (chair person of the drafting committee) on the other hand said
- “there is no need to classify rights as Human and democratic and all rights should be protected equally.” and
- sighted Vienna declaration and program of action 1993 paragraph 5 which says “all rights are interdependent, interrelated and indivisible”

Suspension of and limitation on

- Suspension of and limitation on fundamental rights and freedoms are justified violation of constitutional rights.
- Temporary suspension of some fundamental rights and freedoms can be made on the ground of a state of emergency.
- Since most constitutional rights are not absolute, they can be limited on the bases of national security, public safety, public moral, public order, public health, and similar grounds.
- But the have to comply with the requirements of **necessity** and **proportionality.**
- Art. 93/4 (c) of the Const. enumerates the provisions that can not be suspended nor restricted even at times of a state of emergency and These provisions are art 1, 18, 25, 39/1 and 2.

Rights of personality under International Human Right instruments

- Art 9/4 of const. recognizes all international agreements ratified by Ethiopia as “an integral part of law of the land” and
- Art 13/2 further provide that “the fundamental rights and freedoms specified in chapter III shall be interpreted in the manner conforming to the principle of UDHR, ICCPR And international instruments adopted by Ethiopia”
- in addition to our domestic laws and the Constitution, international instruments ratified by Ethiopia shall be relevant with regard to rights of personality
- The ICCPR has many provisions relevant to rights of personality. Particularly Part III of the Covenant (Art. 6 to 27)

. . . International Human Right instruments

- Art4/1 of ICCPR allows derogation of of rights to the extent **strictly required by the exigencies of the situation** and it should not involve discriminations solely on the ground of race, color, sex, language, religion or social groups.
- However, art 4/2 prohibits “derogation from Articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18”

Q) what if the constitution and international human right documents contradict?

- Q)How do you solve the Issues pertaining to the inconsistency between the Constitution and the ICCPR with regard to the list of non-derogable rights ?

Rights of personality under the Civil Code

- The general principles of rights of personalities are provided under Article 8, 9 and 10, and these articles are applicable to the individual rights stipulated under Articles 11 to 31.
- Article 8 provide the **effect of personality** and it says
  - ✓ Every physical person shall enjoy the rights of personality and the liberties guaranteed by the Constitution without any discrimination as to the race, color, religion or sax of persons.
- Article 9 define **the main characteristic of individual rights**.
  - ✓ Rights of personality and constitutional liberties are ***extra-commercium***; i.e. - they are not subject to legal transactions &
  - ✓ **voluntary limitation** imposed on the exercise of such rights and liberties shall be of no effect unless it is justified by a *legitimate interest.*

Rights of personality

- Once a person is entitled to rights and duties upon birth, he is bound to accept them and not free to abandon them
- unless the law or the public order allow to do so or unless he cease to be person through death.
- Art 10 provide **the remedies** in case of violation of these rights.
  - ✓ A person may demand the cessation of any unlawful molestation and is entitled to seek damages under extra-contractual liability
- Rights of personalities (11-31) may be classified in to three.

1. Rights concerning the body (Articles 18-22, 25, 26)
2. Rights concerning privacy (Articles 11, 13, 27 to 31
3. Freedom of action and thought (Art 11, 12, 14 to 17, 23, 24)

I. Rights concerning the body

- These right protect the integrity of human body during human's life time (both against himself and against others) and also safeguard the body after death.
- Art 18, a person is prevented from disposing of the whole or a part of his body where,
- ✓ The act of disposition is to be executed **before the death** of that person and such act **causes *a serious injury*** to the integrity of the human body. i.e., its cumulative requirement

Q) Can a person enter in to a contract with eye bank to donate his eyes? Why? Can he donate his blood to blood bank? Why?

- The court will not enforce an agreements which does not fulfill the condition under art 18. Its of no effect

Q) Does 3rd party require for the invalidation of such agreements?

Rights concerning the body , con’t

- The exception to these principle is the case where the act of disposition is justified by the rules of medical practice, even though it causes *a serious injury to the body integrity.* Art 19/2
- Therefore, a person is free to enter in to an agreement which results to serious injury, if justified by the rules of medical practice, or for disposition of part of his body after his death.

Q) Can a person unilaterally invalidate/revoke such agreement. ?

- A promise for disposition of one’s body in a whole or in a part before or after death is revocable. Art 19/1.
- But such person may required to indemnify the other contracting party for expenses which he has incurred on the bases of these agreement.

Rights concerning the body , con’t

- As a principle person may refuse to submit himself to a **medical or surgical examination or treatment** as per art 20/1 but there are two exceptions to these principle

1)Public interest:- Laws or regulations providing for physical examinations, compulsory vaccination or similar measures in the public interest. Art 20/2

2)The power of the guardian to submit a minor or interdicted person to an examination or treatment beneficial to the incapacitated person’s health. Art 20/3

Q) What is the effect of Refusing to submit to examination and treatment that do not involve any abnormal or serious risk?

- The effect of refusing to submit to examination or treatment that do not involve any abnormal or serious risk is:-

Rights concerning the body , con’t

1) The person “forfeits the right to avail himself of the illness or infirmity which the treatment could have prevented, eliminated or lessened.” art 21, e.g., work injury
2) The court may consider as established the facts which the examination was meant to ascertain. Art 22,
   - ✓ e.g,. If, a person charged of knowingly transmitting AIDS refuse, then …+ve

- A person who has the capacity to make a will (including minor over 15 yrs) has the right to prescribe the conditions of his funeral such as appointing a person for….art, 25
- however, if the deceased has left no prescriptions, the spouse or relatives may prescribe conditions of the funeral (Art. 26)

Rights concerning privacy

- Rights of privacy protect persons against illegal searches and secure the inviolability of a person's dwelling place and correspondence.
- It also protect a person's rights against public exhibition, reproduction and sale of his photograph or image.

1 ***The right against illegal searches:-*** no person shall be subjected to search except as provided by law. Art 11

- Thus searches are not forbidden, so long as it takes place in accordance with the law.
- Articles 32 and 33 of the Criminal Procedure Code regulate searches on the person himself or his premises.

II. Rights concerning privacy

2. ***The inviolability of domicile :-*** The domicile of a physical person is inviolable. Art 14/1 and

- No one may enter the domicile of another against the will of such person, neither may a search be effected therein, except in the cases provided by law., art 14/2
- Violation of privacy of domicile is a crime punishable up to 3 or 5 yrs imprisonment. Art 604 and 605 of Cr.C. (trespass)
- The term “domicile” should impliedly include residence.

3. ***Inviolability of correspondence:-*** *in principle,* the contents of a *confidential* letter shall not be divulged without the consent of the author, art 31/1, but it has two exceptions

a) it may be produced in judicial proceedings or
b) it can be produced where the addressee has legitimate interest

Rights concerning privacy con’t

Q) What does confidential letter mean.

- The term “confidential” seems to include all letters that are in closed envelope even if they are not marked confidential.
- the act of deliberately opening a closed letter is punishable under Art 606 of the Criminal Code

4.Inviolability of a person’s image:- *a special protection is given to the image of a person under art 27-30., Q) what is image?*

- Image may be defined as artificial representation of external form of a person
- Art. 27 stipulates that “The photograph or image of a person may not be ***exhibited*** *in a public place,* ***reproduced****, nor* ***offered for sa****le* without the consent of such person”

Rights concerning privacy con’t

- In principle exhibition, reproduction or offering for sale requires consent of the person, but as exception, Consent of the person is not required if **reproduction** is justified by
- ✓ notoriety of such person,
- ✓ public office which he occupies,
- ✓ requirements of justice or the police, or,
- ✓ facts, events or ceremonies (that are) of public interest or which have taken place in public. Art 28

Q) Does these exception apply for exhibition and sale as well? \

- Article 29/1 avails sanctions against the **exhibition or sale** of image without consent except in the exceptions referred to in Article 28, so art 28 may also work for sale and exhibition

Rights concerning privacy con’t

Sanctions against exhibition or sale without consent , art 29

- Except for the exceptions allowed under Article 28, a person whose image is exhibited or offered for sale without his consent may demand that such acts be stopped (**injection**)
- Material Damages may be awarded (art 29/2) .
- And moral damages may also be awarded if the act doesn’t cease immediately when cessation is demanded, art 29/3.
- The spouse, or in default, the relatives stated in Art 30/2 can invoke the sanctions under Art 29 if the exhibition or offer for sale of image is prejudicial to the honour and reputation of a deceased person.

Q) What about reproduction of image?

III. Rights concerning Freedom of action

- Every person is free to exercise any activity which he deems proper to his calling provided that the **rights of others** , **morality** and **the law** are respected (Art. 16). See art 645/2
- The law put limitations on freedom of action for two reason.
- ✓ The first one is to protect the society against the possible abuse of individual and
- ✓ The other is to protect the individual against himself and his total freedom of action.
- Freedom of action is limited by the rights of others, public morality and by the law.
- Articles 16 and 11 serve as a general framework for freedom of action, thought, religion etc that are embodied under Articles 12, 14, 15, 17, 23 and 24

… Freedom of action con't

1) ***Freedom of residence*** The right to freely establish one's residence wherever it is suitable and change the place of such residence provided under art 12/1

- Any undertaking to reside in a particular place is void (12/2).
- the undertaking of a person not to reside in or not to go to a particular place shall be of no effect unless it is justified by legitimate interest art 12/3. e.g.,

2) ***Freedom of thought :-*** Article 14 stipulates the *freedom to think and express ideas* (14/1)

- subject to the restrictions in respect for *the rights of others, morality and the law* (14/2)

Q) Is it possible to limit the freedom to think? May be when it manifested

… Freedom of action con't

3) Freedom of religion :-

- The exercise of religion is respected (15) provided that such rites are not utilized for **political purposes** or (are) not prejudicial **to public order or morality**.

4) Marriage and divorce

- The undertaking not to marry, not to remarry, to divorce or not to divorce is void art,17
- and this provision aims at protecting a person against his own acts that unduly restrict his rights.

Q) What about the undertaking of a person not to marry a specific women?

- art See 917

… Freedom of action con't

5) The Right to keep silent:-

- "Any admission or manifestation of the will obtained by methods causing *molestation to the personality* shall be of no effect" art 23
- The Amharic version uses the words "*physical pressure"* instead of "molestation of personality" which narrows its scope
- Because the phrase "*molestation of personality"* in the English version apparently accommodates moral pressures as well .

… Freedom of action con't

6) Professional secrecy:-

- The right to professional secrecy is respected (24/1) if revealing such facts is betrayal of the confidence placed in a person by virtue of his profession
- However, professional secrecy cannot be invoked against the duty to report offences against the State and the Armed Forces as required under Articles 254 and 335 of the Criminal Code