

LAW OF PERSONS

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2. INTRODUCTION

Dear distance learner, the concept of personality is a fundamental issue that you must understand in order to pave the way for the next chapters. In the day to day activities of individuals, the legal relationships such as contract, employment, sale or any other transactions involve interaction among persons. Thus, in this chapter, we will discuss about the meaning of the term ‘person’ followed by an explanation on the concept of ‘personality’. In this particular part, the following general issues will be discussed. These are: types of persons and beginning of personality, attributes of personality and capacity, and of course we will deal about the end personality. All the emphasis is on natural persons because juridical persons will be an issue in another chapter.

Learning objectives:

After completing this chapter, you will be able to:

- Explain the concept of person and personality
- Explain the acquisition of personality
- Identify capable and incapable persons
- Describe the beginning and end of legal personality of natural persons

2.1 The Concept of Personality

What is personality? Why is the concept so important in the study of the law?

The word "person" has a different meaning in law than the ordinary connotation of the word "human being". "Person" is a legal concept and we need to study the law of persons in order to answer the basic questions, who are the subjects of the law? In the legal sense of the term, only subjects of the law can enjoy rights and duties that the law confers and imposes upon them respectively. This is because it is only persons who can have a right and assume a legal obligation. Personality in law refers to **the authority which is given by law to be considered as a person and hence to have a right and assume an obligation**. In other words, humans and fictitious entities cannot perform juridical acts without being recognized as persons before the law. In order to obtain rights and bear duties that are enforceable by law enforcing institutions, one needs to have personality first. It is only beings that are persons in the eyes of the law who can conduct legally binding transactions.

So who are persons in law? There are two kinds of persons. **The term person in its normal sense refers to human beings**. So human beings are the first group of entities that are considered as a person. **However it is not only individual human beings that have personality upon completion of certain given requirements, but also artificial creations of the law are** also endowed legal personality.

Personality is an essential concept in law because no transactions of legal significance would produce effects without being recognized as a person. It answers the basic question that who the subjects of the law are. **Only subjects of the law can enjoy the rights that the law confers upon them and only they can discharge the duties** it imposes upon them. Thus, the normal effect of

personality is the ability to be a party to legal transactions and perform various juridical acts. As we discussed Personality is granted to two categories of beings. One is physical or natural personality that is possessed by human beings. In the past, not all human beings were subjects of the law. For instance, slaves were regarded as mere chattels of their masters and did not have any rights or duties of their own. They were objects of legal transactions rather than subjects of the law. So, during those times, personality was conferred upon non-slaves. But these days, with the elimination of slavery and its strict prohibition, virtually all human beings enjoy personality and involve in juridical acts.

The second type of personality is given to the entities. These entities are alternatively called artificial persons or legal persons or juristic persons. All entities recognized by law as capable of being parties to a legal relationship are legal persons. Thus, a legal person can be an association, an organization, a company, group of persons etc. The state is recognized by law as a person. Provided that they are given personality by law, these entities are persons and can have legal relations with each other. These legal persons are exclusive creation of the law and they are accordingly given personality because of the necessities of modern complex legal transactions. Thus, unless otherwise determined by the context, the term person means both human beings and legal persons.

2.2. Attributes of personality

What are the attributes of personality?

Legal personality, then, refers to a particular device by which the law creates or recognizes units to which it ascribes certain powers and capacities. Under the law, persons possess certain capacities. These capacities are called attributes of personality.

A) **Having a name:**

Names affect the legal position of a person. Names are mechanisms of identifying the civil identity of a specific person in the society and of the legal status. Furthermore, since use of a name can modify the legal status of a person, the law provides for protective mechanisms against

abuse and usurpation of the name by others. Generally, it is through name as an expression of civil identity that a person in the eyes of the law can become a party to juridical acts, and thus it is a fundamental attribute of personality.

B) A person may sue or be sued in its name:

To sue is to bring a legal action against another, and, on the contrary, to be sued is to defend a legal case brought against oneself by another. If three people Kaleab, Henok and Selam form 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 actions (legal suits) against others in the name of the company, not in the name of Kaleab, Henok and Selam. This is because legal persons have independent legal existence and their liability is separated from the shareholders liability.

C) A person may administer and own a Property

Only persons can own property. Both legal and physical persons can own and administer property. Non person entities cannot own property. Property belonging to a legal person is different from that of individuals who establish the legal person. And there is a maxim that no person can own another person. This is because every person has an independent legal existence. The human beings who establish a company are not the owners of that company but the law calls them a members or share holders.

A legal person administers its own property. It is clear that a legal person acts through human agents. A legal person acquires rights and incurs liabilities through the acts of its human agents (representatives) in accordance with the provisions governing agency.

Article 216(1) of the Commercial Code,

A business organization acquires rights and incurs liabilities by its agents in accordance with the provisions governing agency.

Article 2189(1) of the Civil Code

Contracts made by an agent in the name of another within the scope of his authority (power) shall be deemed to have been made directly by the principal.

Hence the legal persons own and administer a property through an agent.

D) A person can enter in to a contract

It is only a person who can conclude a contract. Contract is a source of obligation and the parties need to be a person in order to be legally bound by it. Legal persons can enter into various contracts in their own name. A company can conclude a contract with another company or with a human being, and the benefits obtained as well as the liabilities assumed because of the contract belong to the company itself, and not to the members. So the capacity to conclude a contract is one attribute of personality.

E) Obligation to pay taxes

The entities which are recognized as a person before the law have also obligations. A legal person as well as a physical person is liable to pay taxes on taxable benefits and gains. Hence from every taxable income or benefit that they earn, legal persons have the duty to pay tax.

2.3. Personality of Physical Persons

2.3.1. Acquisition of Physical Personality

How does a human person acquire personality?

In ancient times, not all human beings were recognized as person. In the history of human society, there were times when slaves were considered as mere property. Today, all human beings are considered as equal and the principle of personality has already changed. All legal systems grant legal personality to all human beings. Every legal jurisdiction tries to answer when is the personality of human beings begin.

The first four articles of the Ethiopian civil code deals with this matter.

Article 1, Principle

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

Article 2, Child merely conceived.

A child merely conceived shall be considered born whenever his interest so demands, provided he is born alive and viable.

Article 4, **Viable or not viable child**

(1) A child shall be deemed to be viable where he lives for forty eight hours after his birth, notwithstanding any provision to the contrary.

(2) A child shall be deemed to be not viable where he dies less than forty-eight hours after his birth.

(3) The presumption laid down in sub-article (2) may be rebutted by proving that the death of the child is due to a cause other than a deficiency in his constitution.

So one can realize that there is a rule which is generally considered as the initial point of personality, and there is also an exception to such rule where personality starts. So first we discuss the principle and then the exceptional circumstances where personality can also be granted to a merely conceived child.

I. The Principle.

The Ethiopian Civil Code sets the principle when the personality of human beings commences. As clearly stated, it begins at birth. Article 1 of the Civil Code states: the human person is the subject of rights from its birth to its death. When the article provides that the human person is the "subject of rights", it means that human beings enjoy, or hold rights starting from the time of birth. In principle, therefore, the personality of natural persons begins at birth and ends at death. Hence, there is no personality before birth or after death. Birth means a complete extrusion of the child from its mother's womb. Whether the extrusion is natural or by an operation, it makes no difference. Under the Ethiopian law, birth is sufficient in itself to confer personality. No other conditions are laid down in this respect. Once a human baby is born, it is a person. Besides since rights and duties are the two faces of the same coin, the duties of a human person also begin at birth.

II. The Exception

Exceptionally however a child merely conceived may also be considered born and get physical personality. As stated in Art.2 of the Civil Code,

A child merely conceived shall be considered born whenever his interests so demands, provided he is born alive and viable.

Because personality begins at birth as a matter of principle (as per art. 1), an unborn body is not a person in the eyes of the law and can have no rights. But this general rule is excepted in that personality may be granted to a merely conceived baby without waiting for its birth for some purposes. As an exception, personality of a fetus should be restrictively construed and it is applicable only in certain circumstances. The circumstance generally revolves around the interest of the unborn child. The law has invented this fiction only for the purpose of enabling the child (if it is born) to take a benefit in all matters affecting its interest. But three requirements must be fulfilled, according to art. 2. of the civil code, to grant personality to a merely conceived child. These are:

1. The conceived child interest shall demand this recognition
2. The conceived child must be born alive and
3. The conceived child must be viable.

The merely conceived baby will be given personality (before birth) only for the purpose of the particular interest that necessitates the grant. Ordinarily, the interest of a merely conceived child exists where a father dies before the birth of the child. This conception is based on the reason that a child who has already lost its father while being in its mother's womb should not be exposed to further ache of losing advantage which it would have gained had it been born before its father's death. So, 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 if the second requirement is fulfilled.

The second and the third requirement is that the baby must be born alive and viable respectively. For instance, personality will never be granted if the fetus is aborted. So the child must be born alive and becomes viable. Viability is capacity to live. Under Article 4(1), a child shall be deemed to be viable if it lives for forty-eight hours after birth. A child who lives for the next forty-eight hours after birth is presumed to be a person from the moment of conception onwards. If for example, a mother gives birth to a healthy baby three months after the death of her husband, and the baby lives for forty-eight hours, the baby is considered as though it was born at the time of his father's death. It is considered as if the baby was a "person" when his father died. This presumption is irrebuttable. Irrebuttable presumption is a presumption which cannot be

challenged in the court of law for whatsoever reason.

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. But this presumption is rebuttable in that it can be shown to the contrary by proving the child was viable. That is to say, if a child dies before 48 hours following its birth due to a disease he caught in its mother's womb or due to other congenital biological deficiencies, it will be conclusively deemed not viable. However, 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 24th hour after its birth because of mishandling by nurses or by hunger or due to a car accident that occurred while it was being taken home from hospital, all such can be employed to rebut the above presumption by proving that the baby would not have died had it not been for the external factors. Therefore the child is considered viable even though he doesn't live for forty eight hours due to an external factor.

Generally if the merely conceived child is born alive and viable, whenever his interests so demands may be considered born and granted personality according to article 2 and article 4 of the Ethiopian Civil Code.

2.3.2. Capacity of Physical Person

What is capacity? How do you understand the term?

Enjoyment and exercise of rights are not the same. To enjoy rights means to have, to hold rights. A physical person enjoys rights, holds rights or is the subject of rights starting from the time of birth. And the law presumes capacity. Article 192 of the Civil Code states that:

Art. 192. - Rule of capacity

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

So the law presumes that every physical person is capable of exercising a right. In other words Capacity is the rule even in the case of exercising rights and duties a physical person holds.

Since holding (enjoying) rights and duties is meaningless without the authority to exercise same, the full exercise of rights and duties in principle coincides with their holding. Capacity is the ability to make or exercise a juridical act. Juridical acts are acts which are legally binding and enforceable by law. This means that all persons enjoy rights without exception, but all persons do not have the same capacity to exercise rights. Some persons have limited or restricted capacity. Some persons are incapable of exercising rights. The law calls these persons incapable persons.

2.3.3. Incapacity of Physical Persons

In the Ethiopian Civil Code there are a certain categories of person incapable to exercise legal right. Do you understand by the term incapacity? Do you know the reason behind such incapacity?

Incapacity of physical person is an exception to the rule that every physical person is presumed to be capable of exercising a civil acts. In certain circumstances the law may explicitly declare that certain categories of persons are considered incapable to exercise rights and duties. Since capacity is presumed in the exercise of rights and duties (incapacity is very exceptional), the burden of proving the existence of incapacity falls on the party who claims the incapacity. This principle is stated in the Civil Code.

Art.196-Proof of disability

- (1) capacity is presumed
- (2) Any person who alleges the disability of a physical person shall prove that such person is under a disability

In the Ethiopian Civil Code there are two kinds of incapacity: general incapacity and special incapacity.

General incapacity is based on the age or mental condition of persons or on sentence passed upon them; and special incapacity which is based on nationality. General incapacity, therefore, includes minors, insane and infirm persons, judicially interdicted and legally interdicted persons. These persons are declared incapable in order to protect the interest of themselves from persons who would take advantage as a result of their mental enrichment or retardation except for legally interdicted persons who is declared incapable in order to protect the society from his criminal activities.

A/ Minors

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 physical persons under the age of 18 are minors. It is pointed out that minors are taken as incapable to engage in juridical acts.

Although the minor is incapable for entering into contracts for most of activities of human life, certain contracts may be regarded as binding upon the minor. Since this issue is to be discussed in the Law of Contract part, here we consider only two of these contracts:

Contracts for the performance of acts of everyday life: these contracts are valid if contracted by the minor. Although what constitutes an act of everyday life may be different from state to state (states have the power to issue such laws since the matter falls under family law which in turn falls under the jurisdiction of states), we can generally say that buying a soft drink or buying a book worth 100 Birr may be considered as an act of everyday life depending upon the age and mental maturity of the minor. What matters is whether the legal representatives we said have authorized (allowed) the minor to act or not.

Contract for employment: A minor who has attained 14 years of age may enter into a contract of employment to work and earn money. Why do you think is the age reduced? This is a provision given under labor law. The main reasons seem to enable the minor acquire experience for his physical and mental maturity, and no less important, help himself and family, if any, by earning some income.

On the basis of juridical acts to be performed, person that may assist or represent the minor are categorized into two. These are guardians and tutors. Guardians represent the minor in respect to his personal matters, Article 216 (1) of the Revised Family Code provides: “A minor as regards the proper care of his person, shall be placed under the authority of a guardian.” What do you understand from the expression? “Proper care of his person,” that is to say, in matters concerning personal interests like contracting marriage, education, medication, determining residence, shaping social contact and correspondence or any other acts or contracts other than economic interest (property relations) of the minor will be under the authority of the guardian.

In matters concerning the financial (economic) interests, the minor is represented by tutor. Article 216(2) of the Revised Family Code states: “In matters concerning his pecuniary interest” means an economic interest in all matters relating to economy the minor has to be represented by the tutor. Thus, you should notice that in relation to economic matters the minor has to be represented by the tutor. The tutor may purchase things for the minor, may sell or enter in to contractual engagements for the minor.

According to Article 36 of the FDRE constitution, every decision relating to the child must be done by taking into account the best interest of the child. If the minor concludes a contract beyond his authority, the transaction may be invalidated at the request of the minor, his heirs or representatives (Article 300 of the Revised Family Code). Article 299 of the Revised Family Code States: “The juridical acts performed by the minor in excess of his power shall be of no effect.” The expression,” no effect” is used here to mean the transaction cannot be enforced against the interest of the minor.

The minor may acquire capacity in two ways: attainment of a majority and emancipation. When a physical person attains 18 years of age, he is no more a minor and afterwards he is fully capable of entering into a contract. The other case, which is rare, is emancipation, which refers to the granting of capacity to the minor before he attains 18 years of age. Emancipation may be ordered by a court of law or by authorized members of the family. In addition, the minor may be emancipated if he enters into lawful marriage which is authorized by the public authority. A marriage which is concluded without the authorization of the court is illegal. Hence at the age of 16 years, interested party may apply to the public authority to engage in marriage if it is the best

interest of the child.

B/ Insane and Infirm Persons

Insane persons as defined under Art. 339 of the Civil Code are persons who are not capable to understand the importance of their actions as a consequence of their insufficient mental development, mental disease or senility. Whereas, infirmity includes feeble-minded, drunkards or habitually intoxicated persons and prodigals shall be assimilated to such persons in appropriate cases. Insane persons may be of notorious or non notorious. Notorious insane persons are persons who are an inmate of a hospital or of an institution for insane persons or of a nursing home as a result of his mental condition for the time for which he remains an inmate. In addition the insanity of a person shall be deemed where he lives in a community whose number is below two thousand inhabitants and when his movement is restricted by those who are around him as required by his mental conditions. Juridical acts performed by such notorious insane persons may be impugned by the insane person himself, his representatives or his heirs. The juridical acts of an infirm person may also be impugned when his infirmity is apparent.

C/Judicially Interdicted Persons

In situations where there is no hospital or institution for insane persons or when the community is more than two thousand and in case of permanent infirmity when he is unable to administer his estate or to govern himself, an application could be made to the court of law for judicial interdiction.

The court may sometimes interdict certain categories of individuals due to their mental or physical problem. These individuals don't understand the consequences of their action due to their mental condition. So the law steps in to protect the interests of persons with mental problem as a consequence of insanity, infirmity, senility and the like. As discussed so far, 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 is deemed to be 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.

D) Legal interdiction

This kind of incapacity emanates from the law due to the commission of a certain crime. A person will be legally interdicted as a result 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.

2.3.4. The End of Incapacity of Physical Persons

The **incapacity arising as a result of minority may terminate through a couple of ways**. A minor obviously assumes capacity to exercise rights and duties himself when he attains the age of majority (18 years). 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**. This phenomenon suffices to end the incapacity of the minor and releases him from the authorities of the guardian and the tutor.

A judicially interdicted person may be free from the interdictions **where the court, that has interdicted the person, withdraws the interdiction**. If the grounds that affected the mental faculty of the person are no more exist, the interdicted person or any interested person may apply for withdrawal of the interdiction. The court examining the state of mind of the person may make him free from the interdiction.

A person interdicted by law due to the commission of a crime may also be capable in two ways: the first is **when the criminal serves the sentence and the second is when the government grants a pardon as per the law**.

2.4. End of Physical Personality

How is personality come to an end?

The Ethiopian civil code deals with the mechanisms which brings the personality of human beings to an end. The **first ground is death**. Article 1 of the Ethiopian Civil Code also provides for the way personality of individuals ends through death. It states that human person is the subject of rights from birth to death, meaning personality ends at death.

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.

2.5. Acquisition of Artificial Personality

How do artificial persons acquire legal personality? Give the answer on the following blank space.

Legal personality is an artificial or fictitious creation of law. These artificial persons acquire legal personality in different mechanisms. These mechanisms include issuance of a particular legislation, carrying out registration and conditions of publicity. **For instance, public offices will start to have personality upon the enactment of establishment proclamation or regulation with no other conditions attached to it. On the other hand, private business organizations have 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 effected by meeting the requirements of both registration and publicity, and

only as a result of such they can validly start acts of civil life.

Once the entities get legal personality they are recognized as equal before the law with the human person. Physical person can perform juridical acts, bears a right and assume an obligation like the physical persons. Legal (Juristic person) do have their own names and separate legal existence. Juristic persons enjoy effects of personality by the help of physical persons that act through a representative capacity.

Summary

Dear students I hope you understand the law that governs the law of persons. The concept of personality is the fundamental concept under the law. Under any legal system, it is only persons that are the subjects of rights and duties. Only persons enjoy rights. The word “person” is broader than we ordinarily know. The word person refers to both human beings and other entities recognized by law as persons. Person is a legal concept. Personality is grant on people by law. The law may accord personality to anything like the corporations, associations, business organizations, religious organizations, etc. As long as these entities have personality by law they are considered as a person. Hence they acquire personality.

Human persons begin to enjoy personality since birth. Birth is a condition to grant personality to human beings. However as long as the interests of the conceived child necessitates, the law may sometimes grant personality to the conceived child, provided that the child is born alive and viable.

Enjoyment of rights is different from the exercise of rights. All physical persons enjoy rights without exception. But all physical persons do not have the same capacity to exercise rights. There are a certain categories of persons who are incapable to exercise a juridical act.

The personality of human beings comes to an end when the person dies or declared absent. Legal personality ends when the artificial person dissolves by the parties or by the operation of the law.