

# The Concept of Legal Personality

## DEFINITION

- ❖ The law of persons is that part of objective law (national law) which regulates the coming into being, private legal status and the coming to an end of a natural person or legal status.

## ELEMENTS

1. **Coming into being** (birth)
2. **Legal status and factors affecting status** (domicile, age, capacity to act & litigate, duties of a minor, termination of minority, emancipation, parental power, proof of paternity, artificial insemination, mental illness, guardianship)
3. **Coming to an end** (death and presumptions of death)

## IMPORTANCE OF HAVING LEGAL PERSONALITY

- It regulates the relationship with others in legal terms, such as by allowing an individual to enter into contracts
- Bestows duties and rights upon all individuals

## Basic Concepts

### OBJECTIVE LAW versus SUBJECTIVE LAW

#### Objective Law

- ❖ Objective law is the rules or norms of conduct that regulate the legal relationship between the state and individuals, and individuals themselves
- Rules allocate judicial capacities, such as to act or to litigate, to members of society
- Judicial capacities are of interest to an individual as they determine their status in legal intercourse
- Example: Driver's licence: the judicial capacities are that a person must be at least 18 years to attain a licence, the rules that a driver must follow on the road and the caution to not damage property, if in possession of a licence.

#### Subjective Law

- ❖ Subjective law is the rules or norms of conduct primarily concerned with the regular relationship between individuals.
- Example: Right to ownership of a vehicle.

Two relationships are created, called dual relationships:

### DUAL RELATIONSHIPS: Subject-Subject And Subject-Object

#### Subject-Subject Relationship

- ❖ This is a relationship between the bearer of the rights and all other legal subjects
- There is a right and an obligation
- RATQ: There is no sense in having rights if they cannot operate against another person

#### Subject-Object Relationship

- ❖ This is the relationship between the bearer of the rights and the object of his right.
- RATQ: There is no sense in having a right against all others if that right does not pertain to any particular object.

### LAW versus RIGHT

- ❖ Law determines the content and limit of every right; hence the law may limit or extend the right to ownership.

- Example: If a man (subject) owns a car (object), that man is limited to the age limit for a driver's licence and the rules of the road.

## LEGAL SUBJECT versus LEGAL OBJECT

### Legal Subject

- ❖ A legal subject is the bearer of judicial capacities, subjective rights and entitlement, as well as legal duties.
- Therefore, a legal subject is an entity upon which legal personality is conferred/ given.
- In most instances, a legal subject is a person.

### Legal Object

- ❖ A legal object is any object that can have economic value, and the law does not confer legal capacity on legal objects.
- RATO: Humans can act therefore they can give rise to legal consequences
- In most cases, a legal object is a thing or an animal. However, animals do not always have economic value but are of sentimental value.

*People are subjects of legal rights and the things over which they have control are the legal objects.*

## CATEGORIES OF LEGAL PERSONS

### Natural Persons

- ❖ Every person to whom the law will attach rights and duties, irrespective of age, mental capacity and intellectual ability, is a natural person.

### Juristic Persons

- ❖ A juristic person is a non-human entity (such as a company) on which the law confers rights and duties and to which legal personality is granted.

### Characteristics of a Juristic Person

1. Needs legal existence independent of its members
2. Acts through functionaries (directors of companies)
3. It is the company, not the functionaries, that will incur debt or acquire the rights and duties

### Juristic Persons can be given rights in these ways:

1. Through an act of parliament / enabling legislation or through registration (banks and companies)
2. Through an act of parliament for a class: associations are created with permission from government, such as universities, Eskom etc (public installations)
3. Common law: this means that the organization does not have to register but it must meet certain requirements, namely:
  - ✓ Continuous existence without members
  - ✓ Should not exist solely to make profit (example: churches). If the organization's main aim is to make profit then it must fall under an act of parliament.
  - ✓ Entity must be a bearer of rights and duties irrespective of the rights of its members
  - ✓ Must be capable of suing and being sued in his/her own name.

## CATEGORIES OF LEGAL OBJECTS

### Corporeal things

- ❖ An object that is prone to human control and which is of value to people (Cronjé & Heaton). The physical contents can be perceived through senses
- Subjective right: Real right

- Example: Right to ownership or property

### **Performance**

- ❖ This is any human act by which something is given, done or not done.
- Subjective right: Personal right
- Example: Right to claim payment or the right to specific performance

### **Personality Property**

- ❖ Personality property relates to all the aspects of a person's personality (Cronjé & Heaton), such as good name, reputation, honour and dignity
- Subjective right: Personality right
- Examples: Right not to be defamed or wrongfully accused

### **Immaterial Object (intellectual property)**

- ❖ This is a product of which the human mind is externalised.
- Subjective right: Immaterial property right
- Examples: Respect of copyright, such as an artist's right to his painting or an author's right to his book.

*The primary task of private law is to demarcate and to counter balance the subjective rights of individuals to ensure a peacefully regulated society.*