4 Basic Legal Concepts

4.1 Introductory Matters

Law is about rights and duties, usually in relation to property of some kind. The only entities which have the capacity of exercising rights or undertaking duties are those which the law recognises as having personality. All human beings have personality in the eyes of English law, but so have certain other entities known as corporations. These are persons created under the law, in other words, artificial persons. Human beings are, of course, natural persons.

The above statement contains a number of key legal concepts: rights, duties, capacity, persons, corporations, property. These concepts, and some others, namely, obligation, liability, personalty, realty, possession and ownership occur frequently in textbooks, reports and legal discussion.

The purpose of this chapter is to consider the meaning of these basic concepts so as to clear the way forward in the study of law.

4.2 Persons

(a) Definition

A person in law is an entity which is capable of enjoying rights and undertaking duties. In contra-distinction, a thing is the subject of rights and duties. Personality is the characteristic of a legal person for rights and duties can exist only in relation to persons.

Persons may be either natural or artificial. A natural person is a human being. An artificial person is a corporation created under the law.

(b) Corporations

A corporation has a personality distinct and separate from those natural persons who, from time to time, constitute it. A corporation sole is formed by a succession of solitary natural persons, for example the Bishop of London. The present Bishop is in law the same person as all his predecessors when acting in his official capacity. Perhaps the best example of a corporation sole is the Crown. A corporation sole is capable of perpetual existence.

Corporations aggregate are classified according to their mode of creation, namely, (1) by charter, (2) by statute and (3) by registration.
under the Companies Acts. Chartered corporations are the creation of
the Royal Prerogative and are only rarely formed in modern times.
Statutory corporations are created by Act of Parliament. It is an
expensive process to form a corporation by private Act of Parliament as
compared with the simple process of registration according to the
requirements of the Companies Acts. Most statutory corporations
formed in recent times are those created by Public Acts for the purpose
of running nationalised industries. With regard to registered companies,
the requirements for registration vary according to whether the company
in question is a private or a public limited company.

All corporations aggregate are capable of perpetual existence as the
membership changes from time to time, always with the possibility of
new members joining as others leave.

A corporation of any kind may be called by its ancient description – a
body politic.

(c) Capacity
Capacity is an incident of personality. It denotes the extent of a person’s
capability of being subject to duties and obligations, on the one hand,
and of enjoying rights and benefits, on the other. In contract law, for
example, all natural persons who are sane and sober have full contractual
capacity, while minors, insane and drunken persons have only a limited
contractual capacity.

The contractual capacity of a corporation stems from the manner of its
creation (Chapter 12.4(g)). A chartered corporation has virtually the
same full capacity as a natural person, while statutory and registered
companies are restricted by the terms of the creating statute or the
Memorandum of Association, respectively.

(d) Unincorporated associations
People group themselves together otherwise than by the formation of
corporations for many various purposes in life. The main examples of
unincorporated associations are trade unions and employers’ associa-
tions, partnerships and clubs. In none of these cases does the group of
people – the association – enjoy the advantages which derive from a
separate legal identity. This advantage is enjoyed only by corporations.

(i) Trade unions
Although trade unions may not be incorporated, they have many
advantages over most other kinds of unincorporated associations.

Thus a trade union is capable of making contracts, union property is
vested in trustees for the union, and, subject to limited trade union
immunity to actions in tort, a trade union is capable of suing and of being
sued in its own name in proceedings relating to any kind of cause of
action.

A judgement against a trade union is enforceable against the assets of
that trade union.