**HANDOUT EIGHT**

**UNIT EIGHT: JURIDICAL ACTS**

* 8.1) DEFINITION AND IMPORTANCE OF JURIDICAL ACTS
* [Konard Zweigert and Hein Kotz, INTRODUCTION TO COMPARATIVE LAW(SECOND Revised Edition), Clarendon Press, Oxford,(1992), page 348]  Juristic act- is defined as “as act that is intended to create, transfer, or extinguish a right and that is effective in law for that purpose.” [Garner; 2004: 26]. It is also explained as “the exercise of legal power” [Garner; 2004: 26].  Yiannopoulos noted that according to the contemporary civilian analysis, the most important of the events by which legal relations are formed, transferred, altered or terminated are lawful volitional acts are called “juridical acts”. A juridical act is ordinarily defined as a declaration of will by a private person directed to the creation of intended legal consequences. The term juridical act thus is broader than contract or even agreement. It includes, for example, a demand to vacate the premises to a lessee, a declaration by which a party wishes to avoid a contract on the ground of fraud, the grant of authority to an agent, and the making of a testament.

The essential element in every juridical act is the declaration of will. Sometimes the juridical act consists of nothing else but the declaration of will as in the case of a testament. Sometimes, however, the declaration of will must be accompanied by another act of one or several of the parties.

It is characteristic of juridical acts that the legal result to which the declaration of will is directed be intended. This distinguishes juridical acts from another category of lawful volitional acts, which result in legal consequences by the operation of law, regardless of the intention of the maker. For example, a demand of rent due may bring about the quite unintended result of putting the lessee in default as to his obligations deriving from the contract of lease. These acts, termed quasi-juridical acts, are in principle subject to the same rules governing juridical acts applied by analogy.

Juridical and quasi-juridical acts are distinguishable from a third category of lawful volitional acts termed material acts. These consist in some action or physical relationship to which the law attributes certain consequences. Such is the specification, i.e., the acquisition of the ownership of a moveable by what is styled in the Louisiana Civil Code as the “right of accession” (Article 526). Material acts are also: the occupancy of a res nullius, the finding of a treasure or of lost things, and the writings or composition of a literary work. The rules governing juridical acts have no application to material acts.

Events other than lawful volitional acts (i.e., juridical acts, quasi juridical acts and material acts) by which legal relations are formed, transferred, altered, or terminated are unlawful acts (i.e., offences and quasi offences), physical facts (i.e., the birth or death of human being, an earthquake or a fire), and the acquisition of a certain personal status (i.e., minority, majority, or citizenship). These various events are subject to special rules, materially different from those applicable to juridical acts.

LAWYERS on the Continent, particularly in Germany, are familiar with the notion of juristic act (Rechtsgeschaft). The expression ‘Rechtsgeschaft’ (juristic act) is quite recent and developed by scholars in Germany. The French legal regime also incorporates the doctrine of juridical acts. In Italy, the doctrine of juristic act is incorporated in the Civil Code. The common law legal system accepts the continental doctrine of juridical acts. Thus SALMOND deals with juristic acts and distinguishes between those ‘vestitive acts’ which are ‘voluntary’ and those which are ‘involuntary’; the Realakte of German doctrine he calls ‘acts of the law’ while Rechtsgeshafte are called acts of the party’ or acts in the law (see jurisprudence (1oth edn., 1947) 345 ff.). So also when HOLLAND speaks of ‘juristic act’ he is referring to the rechtsgeschaft of German doctrine (see Jurisprudence (13th edn..., 1947) [Konard and Hein; 1992: 348].

8.2) GENERAL THEORY AND CLASSIFICATION OF JURIDICAL ACTS

[Planiol, Traite elementaire de droit civil, Vol. 1, part 1, 187-90 (translation by the Luisiana State Law Institute, 1959].

Most of the legal relations which exist among men spring from juridical acts. Those acts, which are performed solely in order to bring about one or several legal effects, are called juridical acts. They are said to be juridical on account of the nature of their effects.

Juridical acts, their forms, their conditions and their effects constitute in themselves alone, the principal subjects of the science of the law. They are most diversified. The rules especially applicable to each category will be explained in the appropriate place. But there are a few elementary rules common to all juridical acts, or which suffer but infrequent modifications. It was formerly customary to set forth these common rules, without order or method, whenever they arose in connection with a given act. They thus lost something of their identity and importance. Their generality and their value were not perceived. It is worthwhile grouping them by themselves in order to make them stand out.

A) The number of wills uniting in the act: To perform a juridical act, there must be, in principle, at least two persons. The reason for this is that most juridical acts are contracts, that is to say, a meeting of minds between two or more persons. In this case, those who figure in the juridical act as its authors or makers are called “the parties to the act” or more briefly “the parties.” The term “consent” is applied to the conformity of the will of each of the parties to that of the others. It denotes that concordance of wills which collaborate in the formation of the act.

The number of persons who may be parties to an act is not limited. It may attain any figure. Example: the founding of a big company, made up of shares, may bring together several thousands and even several hundreds of thousands of shareholders.

It is possible that a juridical act will be performed by a single person acting alone; that it be the work of a single will. Examples: the drafting of testament; an offer to sell, to buy, etc: the acceptance or repudiation of succession.

In these examples, the singleness of the will is but apparent or it may even be temporary. Thus, the testament, or the offer of sale, can of themselves and by themselves have no effect. It is necessary that later on another will be found to join the first. Moreover, it is only then that the juridical effect takes place by the acceptance of the legacy, or of the offer. Even in the case of succession ab intestato this meeting of wills is discernible. The offer of the succession is made by the lawmaker, who often confines himself to presuming the probable will of the deceased. He does so when he attributes a succession to this or that relative. When, nevertheless, the whole act is divided into two parts, an offer followed by an acceptance, as each of the party’s acts separately and is governed by rules appropriate to his act; each may be considered to be an isolated juridical act, accomplished in each instance by a single will.

B) Classification Juridical acts are distinguished into unilateral and bilateral; those addressed to a particular person and those addressed to anyone; intervivos and mortis causa; onerous and gratuitous; obligatory and real; promissory and dispositive; causal and abstract.

Unilateral juridical acts are those completed by the declaration of will of only one person or by identical declarations of several persons acting in the pursuit of a common interest. For example, the notice of termination of a contract, the promise of a reward, and the execution of a testament are unilateral juridical acts. Juridical acts, which require several identical declarations of, will, not complementary to each other, as where several parties meet to form an association or where co-lessees give notice of termination of the lease, are specifically called joint juridical acts. Bilateral juridical acts are those completed by corresponding declarations of will of several persons acting independently and in the pursuit of individual interests. According to this definition, all contracts are bilateral juridical acts.

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In general, a unilateral act is one in which the will of only one party is operative: a testamentary disposition is the best example here. A bilateral act, on the other hand, is the result of an agreement between two or more parties [Paton; 1967: 282].

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Juridical acts are distinguished, in the second place, according to whether the declaration of will contained therein is addressed to a particular person or anyone. Offers, an acceptance, the rescission of a contract, the revocation of donation, and the acceptance or renunciation of a legacy are examples of juridical acts addressed to a particular person. The promises of a reward, the execution of a testament, and the acceptance or renunciation of a succession are examples of juridical acts not addressed to any particular person. Juridical acts of the first kind are complete and effective only after communication to the addressee whereas juridical acts of the second kind are complete and effective merely upon objective manifestation of the declaration. The distinction thus has practical consequences and bears, particularly, upon the maker’s power to revoke his declaration of will: upon the completion of a juridical act and its becoming effective revocation is excluded unless the law provides otherwise, as it does for example in the matters of mandate, emancipation of a minor, and mortis causa dispositions.

In the third place, juridical acts are distinguished into inter vivos and mortis causa. Inter vivos juridical acts are those designed to produce effects while the person who declares his/her will is still living. Mortis causa juridical acts are those designed to produce effects only after the death of the person who declares his/her will

Juridical acts, “considered in relation to the motive for making them, are either gratuitous or onerous”. This fourth division of juridical acts rests on the motive causa of the maker which can be either gratuitous (causa lucrativa) or onerous (causa onerosa). According to Article 1773 of the Civil Code of 1870, “to be gratuitous, the object of [the juridical] act must be to benefit the person with whom it is made, without any profit or advantage received or promised as a consideration of it”. A pure and simple donation, the institution of an heir, the giving of a legacy, and the contracts of mandate and loan for use are examples of gratuitous juridical acts. On the other hand, “anything given or promised as a consideration for the engagement or gift, any service, interest or condition, imposed on what is given or promised, although unequal to its value, makes [a jurisdiction act] onerous in its nature”. All reciprocal and all communicative contracts are, by definition, onerous contracts.

The fifth division of juridical acts is into obligatory and real. Obligatory juridical acts are those creating, transferring, altering or terminating obligatory rights where as real juridical acts are those creating transferring altering and terminating real rights. This division, resting on the nature of rights affected by a particular juridical act, may be fully comprehended only in the light of the general theory of rights. Quite frequently, both kinds of juridical acts are combined in a single transaction. The sale of property, for example, involves an obligatory juridical act (i.e., the promise to transfer ownership) and a real juridical act (i.e., the delivery or transfer of possession).

In the sixth place, juridical acts are distinguished into promissory and dispositive. Promissory is one involving an obligation to make a performance, i.e., one containing merely the promise of a performance. The contracts of mandate, of lease, and of loan, and the unilateral juridical acts of the promise of a reward and of a legacy are examples of promissory juridical acts. Dispostive juridical acts, on the other hand, are those by which rights are transferred, altered, encumbered, or terminated, i.e., those containing a disposition. The term is of great importance in continental legal terminology. The creation of a mortgage is a dispositive juridical act because the right of ownership is there by encumbered. The concept of obligatory juridical acts is broader than that of dispositive juridical acts. Indeed, an obligatory juridical act may involve the transfer of termination of an obligation, i.e., a disposition, as in the case of the remission of a debt.

Lastly, juridical acts may be distinguished according to contemporary civilian theory into causal and abstract. This distinction will be fully understood in the light of the theory of cause.... It suffices to state for our present purposes that, ordinarily, juridical acts are made by parties having a definite purpose or cause in mind. There are three kinds of causal acts: the causa solvendi (discharge of an obligation), the causa donandi (conferment of a liberality), and the causa adquirendi (acquisition of something). Existence and law fullness of cause are prerequisites for the validity of obligations in Louisiana. Indeed, according to Article 1893 of the Civil Code of Louisiana “an obligation without a cause, or with a false of unlawful cause, or with a false or unlawful cause, can have no effect.”

The relation between a juridical act and its underlying cause may be one of identity and complete interdependence. Indeed, the cause may be so closely interwoven with the content of the juridical act that the validity of latter may depend entirely on the existence and lawfulness of the former. In this case the juridical act is termed causal. On the other hand, juridical act and underlying cause may not so closely interwoven and the validity of the juridical act may be quit independent of the existence and law fullness of the underlying cause. In this case, the juridical act is termed abstract

In civil law systems, and indeed in all western legal systems, causal juridical acts constitute the rule. This is particularly so in the case of the so called nominate contracts which, like sale, lease, mandate loan, are subject to detailed regulation in the various civil codes. A case is inherent in the nature of these contracts. Abstract judicial acts are recognized as valid only in exceptional cases for the purpose of facilitating commerce and securing certainty of transaction and acquisition. In addition, even when recognized as valid, abstract judicial acts are looked upon with a measure of suspicion as they may well conceal the absence of unlawfulness of underlying cause.

In the framework of the central European legal systems, the abstract juridical acts are quite numerous though still only exceptionally recognized by the law. The transfer of movables, the remission of a debt, the ratification, the assignment, the novation, the acknowledgment of a debt and the procreation are examples of juridical acts of the civil law, which are abstract in character. Certain juridical acts of the commercial law, such as promissory notes, letters of exchange and cheques may also be added to this.

In the framework of the French legal system, the notion and the function of abstract juridical acts have been controversial matters. Article 1132 of the French Civil Code, corresponding to Article 1894 of the Louisiana Civil Code 1870, provides that “an agreement is nonetheless valid, through the cause be not expressed. It has been suggested in France rather unsuccessfully, that the purpose of this article is to permit the creation of abstract juridical acts by the parties and to attribute to these acts a function corresponding to that of similar acts in central European system, i.e., to secure the effectiveness of abstract juridical acts even where there is proof of absence or of unlawfulness of the underlying cause. According to the prevailing view, the purpose of this article is merely to enable the creditor of an abstract title (billet non-cause) to bring action with out having to prove the underlying cause and to recover on the basis of document, unless the debtor proves the absence or unlawfulness of the underlying cause.

8.3) RULES COMMON TO ALL TYPES OF JURIDICAL ACTS 7.3)1. PRE-REQUISITES FOR THE VALIDITY OF JURIDICAL ACTS

[Notes taken from Sockrider, The Concept of Juridical Acts and Its Embodiment in the Louisiana Civil Code, a term paper presented in the course on foreign and Comparative Law, 1962].

There are six pre-requisites for the validity of juridical acts:

A) General legal capacity Under the Louisiana Civil Code, there are two types of persons: individuals, and corporations. Individuals are given general legal capacity to receive and transmit legal rights, without distinction being made between males and females. The code further, indicates that all persons, even incompetents, may transmit and receive property ab intesttao, though they may not have the specific capacity to make a judicial act. Specifically, minors and idiots are seized of successions. Further, all persons may dispose of or receive by donation, except those specifically declared incapable. Lastly, the general capacity of individuals to contract is found in Article 1782 of the Louisiana Civil Code.

Corporations are granted the same general legal capacity to be subject of rights as individuals, except for certain limitations imposed on them by their nature or by law. Art. 440. For example a corporation cannot administer a trust, be imprisoned, or bring an action for assault and battery.

B) Specific legal capacity The Louisiana Civil Code contains detailed provisions concerning what can be classified as the specific legal capacity to make juridical acts. Treatment of these provisions will be subdivided for purposes of clarity into the following types of incapacities: insanity; minority, civil death; married women; and special incapacities.

Insanity- under the Louisiana Code, insane person cannot give their consent freely; hence, they cannot make juridical acts. Proof of interdictions is considered sufficient to establish that a person is without capacity to make juridical acts after his/her interdiction, but not prior to interdiction. Where insanity is alleged to avoid a gratuitous contract, it is unnecessary to show the insanity was generally known; however, to invalidate an onerous contract, it is necessary to private person seeking avoidance knew or should have known of the insanity. Further, if the insane person is seeking avoidance, and the defence is that the juridical act occurred during a lucid interval, the party seeking to prove validity of the act has the burden of proving the lucid interval.

The Code further provides that a person who is not insane, but is suffering from temporary mental derangement, such as drug addiction or drunkenness, lacks capacity to make a juridical act during this period of time if his situation and incapacity are apparent.

In addition, the Louisiana Code restricts the formation of juridical acts by providing that one who is incapable of contracting obligations, such as an interdict, cannot accept an inheritance; but his curator can accept by pursuing certain formalities. Since only one who has the capacity to alienate can renounce a succession, an interdict cannot validly renounce without the judge’s or his curator consent.

An insane person, according to Art. 339 of the Ethiopian Civil Code, is one who, as a result of insufficient development of mind, or mental disease or senility, is not capable to understand the consequences of his/her action. Persons who are feeble minded, drunkards or habitually intoxicated persons who are prodigals are in appropriate cases assimilated to insane persons.

Minority-The Louisiana Code provides that age forms a distinction between those who do and do not have enough reason and experience to govern themselves, (Art. 34) and determines the ages at which minors may perform certain juridical acts. Article 26 indicates that children are subject to potential authority, but article 35 allows them to be emancipated from that authority without disturbing those effects derived from natural right.

A minor under sixteen cannot dispose of property inter vivos or mortis causa; if over sixteen, however, s/he can dispose mortis causa but not in favour of his/her tutor or instructor. However, if the minor’s contracts are made with the consent of his/her tutor and the assent of a family meeting, the contracts are valid. Further, a minor’s contracts or quasi-contracts for necessities or an education are valid.

A minor of fifteen may be emancipated by his/her parents, or of eighteen, by a judge. In these two emancipation situations, the minor acquires the capacity to administer his/her estate, but cannot obligate him/herself for a sum exceeding one year of his/her income, alienate or mortgage his/her immovable without court consent, or dispose of his property

by donation inter vivos except by marriage contract. Yet, if the emancipated minor is engaged in a trade, all his acts relating to the trade are valid.

Minors may also be emancipated by marriage. If under eighteen, they acquire the same capacities bestowed on minors emancipated by parental or court consent; if eighteen, they have the same capacity as majors.

All emancipated minors may sue for the partition of their estates, but apparently can neither accept nor renounce a succession falling in their favour. Lastly, emancipation by parental or court consent may be revoked if the minor contracts contrary to his authority; but if emancipated by marriage, the emancipation is irrevocable.

Comong to Ethiopia, pursuant to Article 215 of the Revised Family Code, a person who does not attain eighteen years of age is called a minor. A minor has no legal capacities. Consequently, a minor “shall not perform juridical acts except in the cases provided by law” (Art. 216(3) of the Revised Family Code). A minor is not allowed to exercise the functions of guardian or tutor because s/he is incapable. However, a minor can exercise the functions of a guardian over his/her child(ren), (Art. 242 R.F.C.).

In Ethiopia, a minor is not allowed to make a Will. However, s/he can make a Will where s/he attains the age of sixteen years (Art 295(2) of the R.F.C). The Will made by a minor before attaining sixteen years of age must be of no effect, even though the minor attains the age of sixteen years after s/he made the Will (Art. 295(3) of the R.F.C).

A minor may be authorized by the tutor to conclude only contracts pertaining to acts of everyday life. The authorization may be implied (tacit) (Art. 292 of the R.F.C). A juridical act which requires the authorization of the court is excluded from the ambit of acts of everyday life. In addition, a juridical act that entails an expense or obligations the value of which is more than three hundred Ethiopian Birr is not an act of everyday life (Art. 293 of the R.F.C). For example, a minor cannot donate a property the value of which is more than three hundred Birr, say Birr 320.

According to Article 310 of R.F.C. disability of a minor must cease at the time when a minor attains majority, i.e. the age of eighteen; or where s/he is emancipated. An emancipation of a minor may result from two reasons: first, a minor will emancipate where s/he concludes a marriage before 18 years of age but after 16 years of age (Art 311 of R.F.C); secondly, a court may decided on the emancipation of a minor who attains fourteen years of age for the best interest of the minor (Art. 312 of the R.F.C). For example, a court may decide a minor to emancipate so as to be employed on the application of his/her tutor, guardian or any interested person (Art 312 R.F.C)

Civil death- what is civil death? Though at early civil law there existed incapacity called “civil death” depriving convicts of the capacity to make juridical acts, this does not exist in Louisiana today. The Code merely provides that persons interdicted for crimes have the capacity to contract with anyone other than persons having power over them during their confinement. In Ethiopia the criminal court may decide an accused not to exercise his/her rights, like to be a witness, or to carry out trade and profession (Art. 123 Of the Criminal Code).

Married women- Pursuant to Art. 34 of the Constitution of the Federal Democratic Republic of Ethiopia, women are equal with men at the time of entering into, during marriage and at the time of divorce. What is more, no woman is allowed to conclude a marriage before attaining eighteen years of age (Art. 7(1) of the R.F.C). In all respect, women are equal with men. Therefore, married women can make juridical acts so long as they are capable in other respects.

B) Declaration of will- The second pre-requisite for the validity of juridical acts is that the actor must declare his/her will that is directed towards the creation of legal consequences. The declaration may be either express (verbally or in writing), or implied (by action, inaction, or silence).

The Louisiana Civil Code provides generally that one’s intention to make a juridical act must be evidenced in some manner that causes it to be understood by the other parties to the act. Specifically, the Code allows the declaration to be either express or implied, but article 1766 indicates that in bilateral contracts the declaration must be express, but that in unilateral contracts it may be implied. In certain situations, the declaration may be expressed by silence or inaction.

A problem is the time at which the declaration of will would be regarded as completed. Three general approaches have been taken for a solution to this problem, namely: the expression theory, the receipt theory, and the knowledge theory. Under the expression theory, the declaration is considered completed as soon as expressed. Under the receipt theory, the declaration is not completed until the party to whom the juridical act is addressed receives it, whether or not he understands the declaration. Lastly, under the knowledge theory, the declaration is completed only upon its receipt and an understanding of it by the party to whom it was directed. The knowledge theory is used by most civilian jurisdictions.

C) Correspondence between declaration and will- The third general pre-requests for the validity of a juridical act is that there must be a similarity between that manifested and that intended. If there is no correspondence between these elements, there are conflicting views as to the consequence. One view, the theory of the will, takes a subjective approach by saying the controlling factor is what was actually intended. Another view, known as the Manifestation Theory takes an objective approach, and concludes that what is actually expressed controls.

The problem of correspondence between declaration and will arises in two contexts: where there is an intentional difference between the two; and where the difference is unintentional. Intentional differences may result from one or both parties’ mental reservations or the use of words which would usually amount to a juristic act, but with an obvious lack of intention that they should have that effect. Unintentional differences may be the result of “essential” errors. It has been said that the prevalent view is that a lack of correspondence between the declaration and will is a ground of nullity except in the case of intentional differences.

Under the Louisiana Civil Code, article 1815 sets forth the basic premise that in order for a juridical act to be valid, the declaration of intention should be serious. In the case of “simulation” which is intentional differences, the transaction is considered valid as between the parties, such as creditors, bonafide purchasers and forced heirs. Where property sold remains in the vendor’s possession or control, Article 2480 establishes a presumption of simulation. On the other hand, the Code provides that where immovable property is involved, third parties are bound by the recorded manifestation, regardless of the parties’ actual intention.

Unintentional differences occur between the manifestation of intention when there exists either an error of law or fact. The Louisiana Civil Code contains detailed provisions dealing with both errors of law and errors of fact. Errors of law are defined as erroneous legal conclusions based upon the particular facts involved. An error of law which relates to the principal cause of the juridical act invalidates the act, except where one undertakes to perform a moral obligation under the conception that it is also a legal obligation, to perform a juridical act in avoidance of litigation, to invoke error of law as a means of acquisition, or to invoke error for the invalidation of a judicial confession.

The Louisiana Code provides that errors of fact may proceed either from ignorance or a mistaken belief as to any circumstance relating to juridical acts, but that only those errors relating to the “principal cause” for making the act will be grounds for invalidating the act. Errors of fact are divided into errors in the motive, as to the person, and as to the nature and object of the juridical act. Error in the motive is defined as “that consideration without which the contract would not have been made” (Art. 1825 of the Louisiana Code). It is only where the errors in the motive is as to the principal cause for making the act and that motive is apparent to the other party to the act, that the act is considered voidable. Error as to the person with whom the act is made will also be grounds for invalidating the contract, but again, only if the consideration of that person was the “principal cause” of the juridical act. In onerous juridical acts, except for certain exceptions, the consideration of the person is presumed not to be the principal cause of the act; in gratuitous acts, however, it is presumed the principal cause. Error as to the nature or object of the juridical act renders the act voidable only if it bears upon the substantial quality of nature of object. The substantial quality is defined as that quality giving the juridical act’s object its greatest value. If the error is as to a quality other than the substantial quality, the act is voidable only if the qualities were the principal cause of making the act.

Coming to our country, pursuant to Article 1680(1) of the Ethiopian Civil Code, the declaration must conform to the will, i.e. all the points of the subject of contract. It is only where there is agreement between the minds of parties that consent is said to be give.

D) Will (consent) free from vice- The fourth pre-requisite for the validity of juridical acts is that the will must be free from vice. Put another way, the manifestor’s consent must not have been procured through fraud, violence, or threats.

Under the Louisiana Civil Code, fraud vitiates the will. Fraud is defined as an inducement of error bearing on the material part of the juridical act, created or continued by artifice with the desire to obtain an unlawful advantage or to cause loss or inconvenience. An important distinction arises from this definition: error producing fraud need only relate to a material part of the juridical act, not to the principal cause, as is the case in simple error. An artifice is defined as an assertion of falsehood or suppression of truth. If there is a false assertion as to the value of the juridical act’s object, fraud exists if the fraud was detectable only by an expert or through difficulty or inconvenience, but not if an ordinary, reasonable man could have detected it. The loss or advantage need not be suffered; it is sufficient that a party is precluded from obtaining a gain or advantage. However, if there is no adverse effect whatsoever caused by the artifice, there is no fraud.

If the fraud is caused by one not a party to the juridical act, without knowledge of the party who would benefit thereby, the juridical act is not invalidated, but the aggrieved party may recover damages from the perpetrator of the fraud. According to Article 1696 of the Ethiopian Civil Code , the consent must be given free from vices.

E) Form – In principle there is no general requirement of form for the validity of juridical acts: however, form is considered necessary in some cases. Three reasons may be advanced for requiring form: (1) in the interest of the parties it allows an opportunity for serious thought before entering a juridical act; (2) in the interest of legal order, it enables one to distinguish between final legal documents and mere proposed drafts thereof; and (3) it facilitates proof of juridical acts in that formal written instruments are more reliable than parole evidence.

Thus, the law may provide that a will must be expressed in a formal way and where the parties failed to comply with it the juridical act will have no legal effect. A juridical act may be required to be reduced into writing and be signed by two witnesses [Paton; 1967:279-80].

Sometimes the law strictly laid down the form of a certain juridical act to be followed in order that clear evidence may be available with regard to the act, and to make forgery more difficult [Paton; 1967: 280].

What are the effects of formality?

The effects of formality are two; constitutive and evidentiary. If it is constitutive, a certain form must be used or the juridical act is void. An example is a donation of immovable property which is void even as between the parties, but it may cause it to be ineffective as to third parties. If the effect is evidentiary it merely means that the form facilitates proof of the juridical act.

Several provisions of the Louisiana Civil Code pertain to the requisite form of juridical acts. If a transfer of immovable property is not in writing, it is ineffective as to third parties, but is effective as against the parties to the transfer provided delivery has been made. All juridical acts relative to movable property and for the payment of money, in which the value exceeds five hundred dollars, must be in writing, and if contested, must be proved by at least one credible witness plus other corroborating circumstances; if the value is less than five hundred dollars, normal proof suffices.

According to Article 1719 of the Ethiopian Civil Code, generally, there is freedom of formality in relation to contracts. What matters is the consent of the parties. However, when the law requires form, such formality must be complied with by the parties.

Article 1725 of the Civil Code provides that some contracts must be made in writing. According to Article 1727 of the Civil Code written contract shall be of no effect unless it is attested by two witnesses.

Pursuant to Article 1728 of the Civil Code signature is required. Here hand written signature is important. In accordance with sub 3 of Article 1728 of the Civil Code, the signature or thumb mark of the illiterate person must be made in front of notary public to bind him/her. The law gives a special protection to him/her. However, one would wonder how this is done in practice.

F) Lawful content- The sixth and last pre-requisite for the validity of judicial acts is that their content must be a lawful one. The law usually prohibits juridical acts that would tend to bring about an immoral result, limit freedom of will or limit one’s civil and economic liberties.

Under the Louisiana Civil Code, Article 11 indicates that an individual cannot derogate from the force of laws made for good morals or public order, but one can renounce what the law has established in his/her favour, provided such does not infringe on the rights of others. Then, Article 12 states the general principle that any judicial act in contravention of a prohibrtory law is void even though the nullity is not specifically provided for by law. Specific provisions are modern regard to certain juridical acts. Conditions in donations inter vivos and mortis causa, which are contrary to law or morals, are regarded as not written. A specific requisite to the validity of a contract is “a law full purpose.” Further, all contracts having objects forbidden by law or contrary to morals are considered void.

The civilian tradition considers juridical acts whose content is contrary to good morals as absolutely void. However, since only “causal” juridical acts could show on their face the immoral purpose, and “abstract” juridical acts would not , it would seem only the former would be absolutely void, and the latter, only voidable by the parties to the act. Juridical acts whose purpose is evasion of the law are also considered as void, but whether they may be attacked by third parties may also be subject to the same difficulty as acts contrary to good morals. Still another problem arises as to promises of unlawful performances. Remembering the distinction between “promissory” and “dispositive” juridical acts, it is possible to have a lawful promise to make an unlawful disposition. When the promise alone is valid, the question arises whether the promisor may be compelled to pay damages for non-delivery. Under the Louisiana Civil Code, factual and legal impossibilities are considered the same, and their Code seems to imply that impossible promises are void; however, Louisianan courts have yet to pass upon the issue.

According to Article 1716 of the Civil Code of Ethiopia, the object must be lawful. In addition, the content of a contract should not contravene the morality of the society.

8.4) RELATIVE EFFECT OF JURIDICAL ACTS

[Taken from Planiol, Traite elementaire de droit civil, vol.1 part 1, part 1, 203-208 (translation by the Louisiana state law Institute, 1959)].

In principle, acts produce no effects except for those persons who perform them. Those who remain strangers to them, and who are called third parties, neither profit by nor suffer on account of them. This is what the Latin maxim expresses when it says that: “Res inter alios acta allis neque prodesse necque nocere potest”. This rule is mainly applied to contracts and to judgments. The effects produced by them are merely relative.

In order to determine exactly this relativity of the effects of juridical acts, a distinction must first be drawn between the authors of the act or the parties, on the one hand, and third parties, on the other. If an act emanates from a single person, s/he is called the author of the act. If the act has several authors, as is the case when there is a participation and collaboration of several persons, each of them is party to the act.

It is not the signature that designates who is a party. An act may be signed by persons who are not parties to it, as for example, by the public officer before whom it is passed and by the witnesses who are present. The terms “signatory” and “party” are thus in no sense synonymous. A party, on the other hand, may not have signed the act and may not have figured in it. This takes place when a party to an act is represented by another person...

To be assimilated to parties are: 1st those represented in the act; and 2nd successors, who stand in the shoes of the parties. Therefore, to know who are third parties, account must be taken of two important conceptions, that of representation and that of succession. In short, juridical acts produce rights and obligations only upon parties, and not third parties.

Of representation in juridical acts: A juridical act is often performed by someone other than the person interested. This replacement of a person by another may be necessary in two cases. They are: (1) when it is impossible for the interested person to go to the place where the act should be performed, because s/he is travelling, sick, or in prison, etc; and (2) when the interested person is not able to comprehend what is done. Examples are the case of a very young child, or a lunatic or an old person whose faculties are impaired. This representation of a person by another may be convenient and advantageous sometimes, without being necessary.

This use of someone other than the person interested is generally allowed. There are in French law but two acts, which must necessarily be carried out by the person him/herself. They are marriage and the making of a will. There were more such instances in Roman law. But, acts which were essentially personal at all times formed the exception.

There is considerable difference in regard to acts performed by the intermediary of another between the Roman epoch and the present. This is due to the introduction of a new idea, that of representation in juridical acts. This concept has transformed many theories.

The person represented drew directly from it neither profit nor burden because s/he remained a stranger to it. It was thus the tutor, the manager, the mandatary who became owner, creditor or debtor as a result of the act performed. In other words, the juridical effects pertain to the person who is represented by another.

In modern terminology, that the third party employed to perform the act (mandatary, agent, tutor, administrator, etc,) represents another person (his principal, his ward, etc.). At present the term “to represent” designates the intervention of a person acting for another without being him/herself affected by the juridical effects of the act, which s/he performs.

Under the Ethiopian law, juridical acts (including contract), are binding as between the parties as though they are laws [Art. 1731(1) Civ. C. Cum Art 1677(1) of the same]. This makes clear that the person who represented another will not be affected by his/her act.

8.5) RIGHTS AND DUTIES

The term “right” is defined as “something that is due to a person by just claim, legal guarantee, or moral principle (the right of liberty).” It includes a “power, privilege, or immunity secured to a person by law (the right to dispose of one’s estate)” Further the term is defined as a “legally enforceable claim that another will do or will not do a given act; a recognized and protected interest the violation of which is a wrong (a breach of duty that infringes one’s right)” [Garner; 2004: 1347].

Right is a correlative to duty; where there is no duty there can be no right. But the converse is not necessarily true. There may be duties without rights. In order for a duty to create a right, it must be a duty to act or forbear. Thus, among those duties which have rights corresponding to them do not give raise the duties, if such there be which call for an inward state of mind, as distinguished from external acts or forbearances. It is only to acts and forbearances that others have a right. It may be our duty to love our neighbour, but s/he has no right to our love [John Chipman Gray, in Black’s; 2004: 1347].

The term “duty” is defined as follows: “a legal obligation that is owed or due to another and that needs to be satisfied; an obligation for which somebody else has a corresponding right” [Garner; 2004: 543].

A legal right – what is a legal right? The test for a legal right is –is the right recognized and protected by the legal system itself? Thus, a person may have a legal right to do an act, which is unethical and opposed to the standards of positive morality. However, this does not mean that the law is unreceptive to the general conception of right, which exists in a community, for the ethical views and positive morality of a given community naturally influence the law in its determination of the conduct, which it will protect, and of the actions, which it will prohibit. ‘Rights spring from right. Principles of liability, in the last analysis, must be derived from the moral sense of the community.’ [Paton; 1967: 248].

The term ‘right-duty’ covers several legal relations, each with its distinct characteristics. However, it would be sufficient to emphasize that there are four elements in every legal right: (1) the holder of the right; (2) the act or forbearance to which the right relates; (3) the res concerned (the object of the right); (4) the person bound by the duty. Every right, therefore involves a relationship between two or more legal persons, and only legal persons can be bound by duties or be the holders of legal rights. Rights and duties are correlations, that is, we cannot have a right without a corresponding duty or a duty without a corresponding right. When speak of a right we are really referring to a right- duty relationship between two persons, and to suppose that one can exist without the other is just as meaningless as to suppose that a relationship can exist between father and son unless both father and son have existed [Paton; 1967: 249].

In the definition of legal rights, it is essential to consider the following three elements. A right is legal because it is protected (or at least recognized) by a legal system-hence the criterion of enforceability must be considered. The holder of right exercises his/her will in a certain way, and that will is directed to the satisfaction of a certain interest. Each of these elements- protection, will and interest-is important to a true description of a right, but many disputes have arisen because of a false emphasis either on the will, which is exercised, or on the interest desired [Paton; 1967: 250].

A) The protection afforded by the state

In case of a right, which is recognized only by morality or ethics, the law will grant no remedy. Enforceability by legal process has, therefore, sometimes been said to be the sine qua non of a legal right. Three qualifications must, however, be made to this statement, for enforceability is only the most obvious mark of recognition [Paton; 1967: 250].

Firstly, the law will not always enforce a right, but may grant the injured party only a remedy in damages.

Secondly, there are certain rights, some times called imperfect rights, which the law recognizes but will not enforce directly. Thus, a statute-barred debt cannot be recovered in a court of law, but for certain purposes, the existence of the debit has legal significance. If the debtor pays the money, s/he cannot later sue to recover it as money paid without consideration; and the imperfect right has the faculty of becoming perfect if the debtor makes an acknowledgement of the debt from which there can be inferred a promise to pay..[ Paton; 1967: 250].

Thirdly, in some systems courts of justice do not control adequate machinery for enforcement. Thus, in international law there is no power in the court to enforce its decree. Hence, ultimately, the answer to the question whether the essence of a legal right lies in its enforceability will depend on our definition of law...[ Paton; 1967: 251].

B) The Element of Will

Proponents of the doctrine of natural rights uphold the will theory on the ground that the very purpose of the law is to grant the widest possible means of self-expression-the maker of individual self-assertion. Rights, therefore, are inherent attributes of the human will. However, this is based on a confusion of what is and what ought to be.

It is true that person can realize an effective life only in a society, but that does not mean more than that his rights must be adjusted to those of his/her fellows. The individual will may be directed to social or anti-social ends, but the will is the ‘mainspring’ of the individual personality, and for the law to attempt to create a system, which ignored the wills of individuals, would be futile. The aim of the law is not primarily to create a new life for society and new desires for persons, but rather to regulate such life and such desires as already exist. Will may be an essential element in many attempts to analyse the conception of legal right, but it is not the only element [Paton; 1967: 252-53].

C) The Element of Interest

There is a debate that interest is essential, not a will as the basis legal rights. The main argument of those who hold that interest and not will is the fundamental basis of right is that persons may have rights, although they have no wills: a baby one day old, an irrational idiot, a corporation, or a foundation cannot be regarded as having wills, but undoubtedly the law grants to such persons legal rights, for the law sets up a guardian to protect the rights of the child,... and it imputes to the corporation or foundation the acts of human beings to whom power to bind the artificial entity has been granted [ Paton; 1967: 253].

Ihering attacked the will theory because he thought that the purpose of law was not to protect individual assertion but certain interests. He therefore defined rights as legally protected interests. These interests or values are not created by the state for they already exist in the life of the community, and the State merely chooses such as it will protect [Paton; 1967: 253].

It is true it is an exaggeration to set interest and will too much in opposition to each other. ‘The essence of legal right seems ... to be not legally guaranteed neither power by itself, nor legally protected interest by itself but the legally guaranteed power to realize an interest’. The human will does not operate in vacuum but desires certain ends, and interests are but objects of human desire. An interest is a claim or want of an individual or a group of individuals which that individual or group wishes to satisfy. The law grants rights not to the human will as an end in itself, but to a human will that is pursuing ends of which the legal system approves. There is danger in assuming that the law can in every case dictate to man wherein his interests lie [Paton; 1967: 253-54].

CONCLUSION

We have seen that a juridical act is a declaration of will of a person with the intention to create legal consequences. A juridical act has the power to create legal relations, alter or terminate the same.

Juridical acts are distinguished from material acts in that the latter consist in some action of physical relationship, such as claims for compensation for a literary work. Juridical acts, as we have discussed, are categorized into unilateral and bilateral, those addressed to a particular person and to anyone, intervivos and mortis causa, onerous and gratuitous, obligatory and real, promissory and dispositive, causual and abstract.

We have learnt that some essential elements must be fulfilled for a valid juridical actsto exist. First and for most, we have seen that legal capacity is important: persons must be capable in the eyes of the law to perform legally binding juridical acts. In addition, a person should have a specific legal capacity that means s/he/it should have sane mind; attain the age of majority; and so on. Secondly, the actor must declare his/her/its will to create the legal consequences to have valid juridical acts. The declaration, as we have seen, may be either express or implied. The third pre-requisite for validity of a juridical act is that there must be concordance between what is manifested (or declared) and that is intended. Further, in order to have a valid juridical act, the declaration of intention should be serious. In accordance with the fourth pre-requisite for a valid juridical act, the will should be declared free from vices. Accordingly, the person is required to declare his/her its will without fraud, violence or threats. The fifth pre-requisite for valid juridical acts, as we discussed, is that the juridical acts must comply with the formality, particularly where the law provides the form. Further more, we have learnt that, the contents of juridical acts must be lawful. Thus, according to Article 1678 of the Ethiopian Civil Code, a contract (and a juridical act) must have lawful purpose and need not contravene the morality of the society.

We have also discussed the effects of juridical acts. The basic principle is that juridical acts create rights and obligations only as between persons who perform them. Thus, the rights and obligations of third parties may not be affected by juridical acts. This clearly shows the relative effect of juridical acts. Juridical acts performed by some one else representing another person will produce effects to the person for whose favour (name) they are performed.