

TABLE OF CONTENTS

Autobiography of the author	IX
List of abbreviations	XI
Foreword	XIII
Acknowledgment	XV

1. Introduction

2. What does it mean to be a person under the law?

2.1	How can a person be approached in terms of methodology?	9
2.2	A priori concept of “person” and its historical development	11
2.2.1	Mediaeval concept of “ <i>corpus mysticum</i> ”	15
2.2.2	Modern concept of “ <i>persona moralis</i> ”	18
2.2.2.1	Samuel Pufendorf	18
2.2.2.2	Christian Wolff	23
2.2.2.3	Daniel Nettelblatt	25
2.2.3	Modern conception of a person as a “ <i>causa finalis</i> ”	27

3. Concept of person in civil law and in Anglo-American law

3.1	Concept of “person” in European codifications	34
3.1.1	Natural person	34
3.1.2	Moral person in the ABGB	36
3.2	Concept of “person” in Anglo-American law	37
3.3	Relation to property as an a priori basis of legal personhood?	40
3.4	Human being and person	46

4. Person as a “point of imputation”

4.1	Imputability	49
4.2	What is a “person” from static and dynamic perspectives	53
4.2.1	What is the last and ultimate reason for a duty to arise?	55
4.2.2	Contract as a ground for a heteronomously imposed duty	57
4.3	Imputation of will and reason	62

5. Theories of juristic persons

5.1	Theory of fiction	67
5.1.1	Friedrich Carl von Savigny	67
5.1.1.1	Legal-ethical background for F. C. Savigny’s work	68
5.1.1.2	Types of juristic persons	69

5.1.1.3	Joint-stock company as an association agreement (<i>societas iuris civilis</i>)	71
5.1.1.4	Creation and termination of juristic persons under private law?	74
5.1.1.5	Formation of will of juristic persons	75
5.1.1.6	Importance of Savigny’s theory for present times	77
5.1.2	Person as the bearer of “volitional power”	78
5.2	Organic theory	84
5.2.1	” <i>Gennossenschaft</i> ” as a spiritual organism	85
5.2.2	Social law vs. individual law	90
5.2.3	Bodies (organs) of a juristic person	91
5.2.4	Social organism vs. joint and several association (” <i>Gesamthandgesellschaft</i> ”)	93
5.2.5	Critique and evaluation of the organic theory	95
5.2.6	Contemporary follow-up theories	99
5.2.6.1	Fritz Rittner.	99
5.2.6.2	Thomas Raiser	104
5.2.6.3	Günther Teubner	106
5.3	Theory of interest	110
5.4	Combined theories of juristic persons	113
5.4.1	Rolf Ostheim	116
5.5	Significance of the theories of juristic persons	119
5.6	Person in law from the viewpoint of pure theory of law	121
5.6.1	Kelsen’s conception of a person under the law	122
5.6.2	Subjective right as a legal rule	124
5.6.3	Weyr’s conception of a person at law	126
5.6.4	Slezák’s theory of a person as a “norm-making unit”	128
5.6.4.1	Dynamic view.	128
5.6.4.2	Static view	131
5.6.4.3	Natural and juristic persons	133
5.7	Critique of pure theory of law—constant recurrence of natural law	135
5.8	Person from the linguistic and postmodern viewpoints	139
5.8.1	Jerzy Wróblewski and linguistic approach to a person	140
5.9	Person from the postmodern viewpoint	146
6.	Legal personhood of a juristic person	152
6.1	What is legal personhood?	152
6.2	Person as the subject of an “obligation” and a “right”.	157
6.3	Person as a “law-making entity”	162
6.4	Private-law and public-law personhood.	163
6.4.1	“Private” and “public” administration	165
6.4.2	Public-law personhood of a juristic person	167

7. Legal capacity of a juristic person	
7.1 What is legal capacity?	171
7.2 Can a juristic person have legal capacity?	174
7.3 What are the reason and will of a juristic person?	176
7.4 How does a juristic person act through “its” bodies?	179
8. Capacity of juristic persons to bear legal responsibility (liability)	
8.1 No-fault liability of juristic persons	189
8.2 Fault-based liability of juristic persons	191
8.3 Delictual capacity of juristic persons	194
9. Defining elements of a juristic person	
9.1 Difference between a “legal entity” and a “juristic person”	198
9.2 Defining elements of a juristic person	200
9.2.1 Identification	200
9.2.2 Independent legal personhood	200
9.2.3 Public-law form of establishment	201
9.2.4 Capacity to engage in legal conduct	203
9.2.5 Capacity to bear legal responsibility (liability)	206
9.3 What is the difference between juristic persons under private and public law?	208
9.3.1 Public-law corporation	210
9.3.2 Public institution	211
10. Conclusion	
10.1 General	215
10.2 What does it mean to be a person under the law?	215
10.3 Concept of “person” in civil law and in Anglo-American law	217
10.4 Person as a “point of imputation”	219
10.5 Theories of juristic persons	220
10.5.1 Theory of fiction	221
10.5.2 Organic theory	222
10.5.3 Theory of interest	224
10.5.4 Combined theories	224
10.5.5 Pure theory of law	225
10.5.6 Person from the linguistic and postmodern viewpoints	226
10.6 Legal personhood of a juristic person	228
10.7 Legal capacity of a juristic person	229
10.8 Capacity of a juristic person to be liable for a wrong	231
10.9 Defining elements of a juristic person	232

TABLE OF CONTENTS

Summary 235
Bibliography 237
List of case law 247
Index 249