

Droit des personnes et de la famille

Partie 1: Les personnes

Le droit pr est la branche du droit qui concerne les rapports entre les particuliers, cependant la personne intéressée aussi d'autre discipline que le droit (l'anthropologie, la soci, la médecine, la psycho).

Le droit n'est pas resté indifférent à la notion de personne mais il l'appréhende sous un angle particulier et original. En effet à travers des éléments qui confère à la personne son existence il va définir pour elle un statut, une identité, des droits et des obligations dans la société.

Le droit va donc ainsi déterminer les conditions dans lesquelles le commencement ou la fin de la vie produisent des effets juridiques sur le statut de la personne mais aussi sur son corps.

Depuis Rome on considère que le droit civil connaît une summa divisio entre es choses et les personnes. Cette division est essentiel dans la mesure où elle opère un partage fondamental entre les personnes et les choses (ainsi le livre 1 du Code Civil va traiter des personnes tandis que le 2 va traiter des choses)

1. Définition de la personne

Selon le vocabulaire Cornu, la personne est défini comme un sujet jouissant de la personnalité juridique (elle se définit par laitude à être titulaire de droits et à être assujetti à des obligations qui appartiennent à tt les personnes). Le droit distingue les personnes des animaux.

Cette définition de la personne tend cependant à réduire celle-ci à un sujet désincarnée. Aussi le droit reconnaît il la personnalité juridique à tout les êtres humains mais aussi à des entités abstraites qui n'ont pas de réalité biologique (à des fictions, ex tt les sociétés commerciales qui sont des personnes morales)

Le droit opère une distinction entre les êtres

En effet il ne reconnaît pas la qualité de personne ni à l'animal ni à l'enfant conçu

Ces 10 dernières années le droit a occupé des animaux et depuis une loi du 16 février 2015, l'art L 515-14 du Code Civil prévoit que les animaux sont reconnus comme étant des êtres vivants doués de sensibilité. La conséquence directe est que le législateur est venu prendre des dispositions en faveur du bien être animal. De la mm façon l'art L 214-1 du code rural et de la pêche maritime définit donc les animaux comme des êtres sensibles.

Et les grandes entreprises sont désormais contrainte dans leurs déclaration de performance extra-financière d'avoir un paragraphe sur le bien être animal.

Néanmoins les animaux, reste soumis au droit des biens et donc l'art 515-14 du CV précise que sous réserve des lois qui les protège, les animaux sont soumis au régime des biens.

Le droit opère une distinction entre les personnes physiques et morales

Nous sommes des êtres de chair et de sang dotés d'un esprit, d'une intelligence et pour certains d'une âme, d'organes vitaux et on éprouve des émotions et des sentiments.

Cette personnalité reconnue à la personne humaine lui est attaché de sa naissance à sa mort et la personnalité juridique qui est une notion abstraite qui permet d'acquérir des droits mais aussi d'être soumise à des obligations. Mais en réalité cette personnalité juridique n'est qu'une fiction, par le passé on pourrait retirer cette personnalité à des êtres humains (les esclaves= biens).

Comme c'est une fiction, le droit a pu ainsi doté de la personnalité juridique des groupements qui ne sont pas des personnes physiques et qu'on appelle les personnes morales.

Ainsi les attributs fondamentaux attachés à la personne sont le patrimoine, l'identification (nom, domicile, prénom), les droits de la personnalité (afin de protéger l'intégrité physique et morale de la personne).

2. Les fonctions du droit des personnes

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Jin-Ying Zhang



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