

RMM LAW COLLEGE SAHARSA

JURISPRUDENCE

Part I

Paper -1

Topic- Legal Rights and Duties

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Ownership

Salmond on Ownership

Ownership denotes the relationship between a person and an object forming the subject-matter of his ownership. It consists in a complex of rights, all of which are rights in rem, being good against the entire world and not merely against specific persons.

Incidence of Ownership

1. The owner has the right to possess things that he owns.

2. The owner normally has a right to use or enjoy the thing owned, the right to manage it, the right to decide how it shall be used and the right of income from it. However, Right to possess is not a right *strictu sensu* because such rights are in fact liberties as the owner has no duty towards others and he can use it in any way he likes and nobody can interfere with the enjoyment of his ownership.

3. The owner has the right to consume, destroy or alienate the things. The right to consume and destroy are again straight forward liberties. The right to alienate i.e. the right to transfer the existing rights involves the existence of power.

4. Ownership has the characteristic of being '**indeterminate in duration**' and Ownership has a **residuary character**. Salmond contrasted the rights of the owner with the lesser rights of the possessor and encumbrancer by stating that "*the owner's rights are indeterminate and residuary in a way in which these other rights are not*".

Austin's Concept of Ownership

Ownership or Property may be described accurately enough, in the following manner: '*the right to use or deal with some given subject, in a manner, or to an extent, which, though is not unlimited, is indefinite*'.

Now in this description it is necessarily implied, that the law will protect or relieve the owner against every disturbance of his right on the part of any other person. Changing the expression, all other persons are bound to **forbear** from acts which would prevent or hinder the enjoyment or exercise of the right.

Austin further said that “**Ownership or Property, is, therefore, a species of *Jus in rem*. For ownership is a right residing in a person, over or to a person or thing, and availing against other persons universally or generally. It is a right implying and exclusively resting upon obligations which are at once universal and negative**”.

Dias on Ownership

After referring to the views of Salmond and other Jurists, Dias came to the conclusion that **a person is owner of a thing when his interest will outlast the interests of other persons in the same thing**. This is substantially the conclusion reached by many modern writers, who have variously described ownership as the ‘residuary’, the ‘ultimate’, or ‘the most enduring interest’.

According to Dias, an owner may be divested of his claims, etc., to such an extent that he may be left with no immediate practical benefit. **He remains owner nonetheless**. This is because his interest in the thing, which is ownership, will outlast that of other persons, or if he is not presently exercising any of his claims, etc., these will revive as soon as those vested in other persons have come to an end.

In the case of land and chattels, if the owner is not in possession, **ownership amounts to a better right to obtain the possession than that of the defendant**. It is 'better' in that it lasts longer. It is apparent that the above view of Dias substantially agrees with that of Salmond. According to Dias it is the outlasting interest and according to Salmond, ownership has the characteristic of being indeterminate in duration and residuary in nature.

Types of Ownership

Corporeal Ownership	Incorporeal Ownership
<ol style="list-style-type: none"> 1. Corporeal Ownership signifies ownership in a physical object. 2. Corporeal things are things which can be perceived by senses. 	<ol style="list-style-type: none"> 1. Incorporeal Ownership is a right or an interest. 2. Incorporeal things cannot be perceived by senses and are in tangible.
Sole Ownership	Co-Ownership
When an individual owns, it is sole ownership	When there is more than one person who owns the property
Trust Ownership	Beneficial Ownership
<ol style="list-style-type: none"> 1. There is no co-ownership. 	<ol style="list-style-type: none"> 1. There can be co-ownership.

<p>2. The person on whom the responsibility lies for the benefit of the others is called the Trustee.</p> <p>3. The trustee has no right to the beneficial enjoyment of the property.</p> <p>4. Ownership is limited. A trustee is merely an agent upon whom the law has conferred the duty of administration of property.</p> <p>5. Trusteeship may change hands.</p>	<p>2. The person for whom the trust is created is called the Beneficiary.</p> <p>3. The Beneficiary has the full rights to enjoy the property.</p> <p>4. Ownership is complete.</p> <p>5. Beneficial Owners remain the same.</p>
<p>Legal Ownership</p>	<p>Equitable Ownership</p>
<p>Legal ownership is that ownership which has its basis in common law.</p>	<p>Equitable ownership comes from equity divergence of common law. Thus, distinction between legal and equitable ownership is very thin.</p>
<p>Vested Ownership</p>	<p>Contingent Ownership</p>
<p>1. Ownership is vested when the title is perfect.</p> <p>2. Vested ownership is absolute.</p>	<p>1. Ownership is contingent when it is capable of being perfect after fulfilment of certain condition.</p> <p>2. Contingent ownership becomes vested when the conditions are fulfilled.</p>

Absolute Ownership	Limited Ownership
Ownership is absolute when possession, enjoyment, disposal are complete and vested without restrictions save as restriction imposed by law.	Limited Ownership is subjected to the limitations of use, disposal or duration.