

RMM LAW COLLEGE SAHARSA

JURISPRUDENCE

Part I

Paper -1

Topic- Ownership

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Legal experts have defined ownership in different ways.

All of them accept the right of ownership as the complete or supreme right that can be exercised over anything.

According to Hibbert ownership includes four kinds of rights within itself.

- Right to use a thing
- Right to exclude others from using the thing
- Disposing of the thing

- Right to destroy it.
- Indefinite User
- Unrestricted Disposition
- Unlimited Duration
- Possession
- Enjoyment
- Disposition
- Ownership is a relation between a person and the right that is vested in him
- Ownership is incorporeal body or form

Absolute: when ownership is acquired by over previously ownerless object.

Extinctive: which is where there is extinctive of previous ownership by an independence adverse act on the part of the acquiring. This is how the right of easement is acquiring after the passage of time prescribed by law.

Accessory: that is when requisition of ownership is the result of accession. For example, if three fruits, the produce belongs to the owner unless he has parted with to the same. When

ownership is derived from the previous version of law then it is called derivate acquisition. That is derived mode takes place from the title of the prior owner. It is derived either by purchase, exchange, will, gift etc.

Trust and Beneficial Ownership:

There is no distinction between legal and equitable estates in India. Under the Indian Trusts Act, a trustee is the legal owner of the trust property and the beneficiary has no direct interest in the trust property itself. However, he has a right against the trustees to compel them to carry out the provisions of the trust.

- Right to possession
- Right to enjoy the property
- Right to dispose

Austin's definition:

Austin while defining ownership has focused on the three main attributes of ownership, namely, indefinite user, unrestricted disposition and unlimited duration.

The state can interfere in the ownership. The abolition of Zamindari system in India, the abolition of privy purses, Nationalization of Bank and Companies, etc. are some example of the fact that the ownership can be cut short by the state for a public purpose and its duration is not unlimited.

Austin's definition has been followed by Holland. He defines ownership as plenary control over an object. According to him, an owner has three rights on the subject owned.

Planetary control over an object implies complete control unrestricted by any law or fact. Thus, the criticism levelled against Austin's definition would apply to that given by Holland in so far as the implication of the term "plenary control" goes.

Salmond's Definition:

According to the Salmond - ownership vests in the complex of rights which he exercises to the exclusive of all others. For Salmond what constitutes ownership is a bundle of rights which inhere resides in an individual. Salmond's definition thus points out two attributes of ownership:

MODERN LAW AND OWNERSHIP:

Under modern law there are the following modes of acquiring ownership which may be broadly classed under two heads, viz:

1. Original mode:

2. Derivative mode:

Original mode:

The original mode is the result of some independence personal act of acquiring himself. The mode of acquisition maybe three kinds.

Indian Transferee Acts of property rules for the transfer of immovable property, Sale of goods Acts for the transfer of property of the firm and the companies Act for the transfer of company property.

SUBJECT MATTER OF OWNERSHIP

Normally ownership implies the following:

- The right to manage
- The right to possess
- The right to capital
- The right to the income

CHARACTERISTICS OF OWNERSHIP

An analysis of the concept of ownership, it would show that it has the following characteristics:

- **Ownership may either be absolute or restricted**, that is, it may be exclusive or limited. Ownership can be limited by agreements or by operation of law. The right of ownership can be restricted in time of emergency. An owner is not allowed to use his land or property in a manner that it is injurious to others. His right of ownership is not unrestricted. The owner has a right to possess the thing that he owns. It is immaterial whether he has actual possession of it or not. The most common example of this is that an owner leasing his house to a tenant. Law does not confer ownership on an unborn child or an insane person because they are incapable of conceiving the nature and consequences of their acts.
- **Ownership is residuary in character:** The right to ownership does not end with the death of the owner; instead, it is transferred to his heirs. Restrictions may also be imposed by law on the owner's right of disposal of the thing owned. Any alienation of property made with the intent to defeat or delay the claims of creditors can be set aside.

Kinds of Ownership

There are many kinds of ownership and some of them are corporeal and incorporeal ownership, sole ownership and co-ownership, legal and equitable ownership, vested and contingent ownership, trust and beneficial ownership, co-ownership and joint ownership and absolute and limited ownership.

Ownership may be classified under the following heads :

- I. Corporeal and incorporeal ownership;
2. Sole ownership and co-ownership;
3. Legal and equitable ownership;
4. Trust and beneficial ownership;
5. Vested and contingent ownership; and
6. Absolute and limited ownership;

Corporeal and Incorporeal Ownership

Corporeal ownership is the ownership of a material object and incorporeal ownership is the ownership of a right. Ownership of a house, a table or a machine is corporeal ownership. Ownership of a copyright, a patent or a trademark is incorporeal ownership. The distinction between corporeal and incorporeal ownership is connected with the distinction between corporeal and incorporeal things.

Incorporeal ownership is described as ownership over tangible things. Corporeal things are those which can be perceived and felt by the senses and which are intangible.

Incorporeal ownership includes ownership over intellectual objects and encumbrances.

Trust ownership is an instance of duplicate ownership. Trust property is that which is owned by two persons at the same time. **The relation between the two owners is such that one of them is under an obligation to use his ownership for the benefit of the other.** The ownership is called beneficial ownership. The ownership of a trustee is nominal and not real, but in the eye of law the trustee represents his beneficiary.

In a trust, the relationship between the **two owners** (one is trustee owner and another is beneficiary owner) is such that one of them is under an obligation to use his ownership for the benefit of the other. The former is called the trustee and his ownership is trust ownership. The latter is called the beneficiary and his ownership is called beneficial ownership.

In simple terms, A trust is an instance of duplicate ownership namely, trust ownership and beneficial ownership. In a trust certain property is given in trust or confidence to a person or a definite group of persons to be held under an obligation for the benefit of some other persons or group of persons.

Trust is defined as an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or (b) declared and accepted by him for the benefit of the other.

Legal and Equitable Ownership

Legal ownership is that which has its origin in the rules of common law and equitable ownership is that which proceeds from the rules of equity. In many cases, equity recognizes ownership where law does not recognize ownership owing to some legal defect.

Legal rights may be enforced in rem but equitable rights are enforced in personam as equity acts in personam. One person may be the legal owner and another person the equitable owner of the same thing or right at the same time.

The equitable ownership of a legal right is different from the ownership of an equitable right.
The ownership of an equitable mortgage is different from the equitable ownership of a legal mortgage.

For information, but in English law recognises two forms of ownership—legal and equitable. In England before the passage of Judicature Acts of 1873, and 1875 there existed two kinds of Courts with two quite distinct jurisdictions. These two Courts were known as the Common Law Courts and the Equity Courts.

The rights recognised and protected by the Common Law Courts were called legal or Common Law Rights and the rights enforced by Equity Courts were known as equitable rights.

Legal ownership is, therefore, that ownership which was or recognised by the rules of Common Law, while equitable ownership is that which originated from the rules of equity.

Equitable ownership was thus not recognised by the Common Law Courts. The Chancery or Equity Courts recognised legal ownership as well as the equitable ownership.

Keeton says, *“This quality of legal and equitable ownership arises, whenever one person holds the legal title to property, the beneficial enjoyment of which is vested in another. Thus the legal owner is he whom the Common law could designate as the owner ; the Equitable owner is that person whom the Court of Chancery would formerly have protected in the enjoyment of a thing.”*

Vested and Contingent Ownership

Ownership is either vested or contingent. It is vested ownership when the title of the owner is already perfect. It is contingent ownership when the title of the owner is yet imperfect but is capable of becoming perfect on the fulfilment of some condition.

In the case of vested ownership, ownership is absolute. In the case of contingent ownership it is conditional.

For instance, a testator may leave property to his wife for her life and on her death to A, if he is then alive, but if A is dead to B. Here A and B are both owners of the property in question, but their ownership is merely contingent. It must, however, be stated that contingent ownership of a thing is something more than a simple chance or possibility of becoming an owner. It is more than a mere *spes acquisitionis*. Contingent ownership is based upon the mere possibility of a future acquisition, but it is based upon the present existence of an inchoate or incomplete title.

It is vested when the owner's title is already perfect; it is contingent when his title is as yet imperfect, but is capable of becoming perfect on the fulfilment of some condition or contingency. Vested ownership is absolute, contingent ownership is conditional. It is subject to conditions and it may be made to commence or cease upon the ascertainment that a certain fact does not exist.

Thus, I may be the owner of a piece of land on condition of paying a certain fixed sum of money annually to the State. My ownership is thus conditional on the annual payment of the money.

Contingent ownership is not *spes acquisitionis*—Simple chance or mere possibility of becoming owners—but more than that. It is more than a mere future possibility but the existence of an inchoate or incomplete title in the present, capable of achieving completion and perfection on the happening of a given contingency in future.

The conditions on which ownership depends may be either 'condition precedent' or 'condition subsequent'. A condition precedent is one by the fulfilment of which a title is completed; a condition subsequent is one on the fulfilment of which a title already completed is extinguished. In the former case ownership which was formerly conditional becomes absolute. In the latter, case the ownership which is already lost conditionally, is lost absolutely. In case of a condition,

subsequent ownership is not contingent but vested. For the condition attached to the ownership it is not with regard to commencement of ownership but with regard to continuance of it.

Sole Ownership and Co-ownership

Ownership may be either sole or duplicate. When it is vested in one person it is called sole ownership; when it is invested in two or more persons at the same time, it is called duplicate ownership.

The chief instances of duplicate ownership are ;

(i) Co-ownership;

(ii) Trust and beneficial ownership;

(iii) Legal and equitable ownership;

(iv) Vested and, contingent ownership.

Co-ownership that is to say, ownership shared by several persons with equal or co-ordinate results may be of two kinds, namely:—

(a) Joint ownership, and

(b) Ownership-in-common.

(a) '**Joint ownership**' is that whereon the death of one of the co-owners, the whole right ensures for the benefit of surviving co-owner or co-owners, until at last when the last survivor of the joint owners, dies, it would devolve on his heirs. The heirs of a predeceased co-owner will not get any share at all in the property of the joint owner.

(b) **“Ownership-in-common”** is that where on the death of one of the co-owners, his heirs step into his shoes.

Ordinarily, a right is owned by one person only at a time. However, duplicate ownership is as much possible as sole ownership. When the ownership is vested in a single person, it is called sole ownership; when it is vested in two or more persons at the same time, it is called co-ownership, of which co-ownership is a species. For example, the members of a partnership firm are co-owners of the partnership property.

Under Indian law, a co-owner is entitled to three essential rights, namely

Co-ownership and Joint Ownership

According to Salmond, “co-ownership may assume different forms. Its two chief kinds in English law are distinguished as ownership in common and joint ownership. The most important difference between these relates to the effect of the death of one of the co-owners. If the ownership is common, the right of a dead man descends to his successors like other inheritable rights, but on the death of one of two joint owners, his ownership dies with him and the survivor becomes the sole owner by virtue of this right of survivorship.

Absolute and Limited Ownership:

An absolute owner is the one in whom are vested all the rights over a thing to the exclusion of all. When all the rights of ownership, i.e. possession, enjoyment and disposal are vested in a person without any restriction, the ownership is absolute. But when there are restrictions as to user, duration or disposal, the ownership will be called limited ownership.

For example, prior to the enactment of the Hindu Succession Act, 1956, a woman had only limited ownership over the estate because she held the property only for her life and after her death; the property passed on to the last heir or last holder of the property. Another example of limited ownership in English law is life tenancy when an estate is held only for life.

