

Ownership and its type

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Relationship of a person to an object may be

custody over goods: person does not have full control over objects and also does not have required animus (means motivation to do something) to exclude others, Just temporary holding for the time being . example police having custody of goods recovered from theft.

Detention of goods: for inspection or verification or other Specific Purpose of goods by any government Authority and person prevented from leaving place . example detention of goods in transit by GST officer, if discrepancy found in E- way Bill . Even Person Could be detained for enquiry or investigation before arrest.

Possession: Here **physical control over objects but not absolute control** and required animus possidendi present but lacking of all the essential ingredients of ownership. it is a physical control Concept. Example lawful possession of goods or immovable Property such as on rent, hire, lease etc.

Ownership: Person has **bundle of rights over an object** may be goods or immovable Property including right to use, control, Sale, dispose of etc. Such rights maybe related to intangibles also such as copy right, Trademark etc. it is more a legal Concept than physical concept.

Definition of ownership by John Austin

Austin has defined ownership as a **right** over a **determinate thing, indefinite in the point of user, unrestricted in point of disposition and unlimited in point of duration**. According to Austin, ownership is “a right that exists against everyone (right in rem) subject to the law granting the ability to put things to indefinite users.”

Essential elements of ownership are

- **Bundle of Right** such as right to use, enjoy, lease, rent out, sale, gift, transfer etc over a determinate thing
- **Rights against rem** but subject to operation of law in force. i.e. owner has exclusive rights to use/enjoy the things and exclude others to interfere with the owner without his consent.
- **Right of owner exist for unlimited time** unless diminished by operation of law.
- **Right to use thing in a variety of way** but reasonable restriction may be imposed under any law e.g. type of use of land.
- Right of owner to dispose by way of gift, Sale, Transfer etc

Definition of ownership by Holland: He was concurring with the Austin definition that the ownership has the **right of absolute control** over an object.

Definition of ownership by Salmond: According to him Ownership denotes the relation between a person and an object forming the Subject matter of his ownership. it consist of complex rights, all of which are right in rem, good against the whole world and not merely against Specific person.

Cook has defined ownership as “ it is a method of enjoyment which is more comprehensive than any other method.”

Definition by Duguit ownership is a relation between a person and a thing and on account of this relation, person has power of disposal, use, enjoyment of the things according to a La regle de drOit.

Subject matter of ownership is rights in objects.

Prime Subject matter of ownership consist of material objects such as land, building and chattels, but ownership by no means limited to the things of this category. ownership may be of interest in land of others due do him, shares of Company, Patent, copyright and interest in trust funds.

Dominum Vs Ownership

Dominum: in Roman law dominum means **absolute rights to a thing Subject to State restriction only**. dominum acquired in prescribed ways and right attached is protected under laws. It is a latin word but under **Ownership rights may not always be absolute**, there may be cases where rights of owners may be limited or restricted. Ownership developed in England at the time of economic growth to protect interest of business houses or influential person.

Rights of owner- in general

- **Right of possession** of things he owns which he may transfer in favour of Some other persons also.
- **Right to use and enjoy** the things owned. ie owner has liberty to use the thing. No one can interfere in the use of things by the owner.
- **Right to consume, destroy,alienate (transfer] right) , disposal, sale or transfer** otherwise the thing. During life time owner can effectively dispose of the property by way of Sale, transfer, gift etc and transfer effectively after his death by way of will.
- **owner right is perpetual** i.e indeterminate in duration. the interest of bailee or lessee comes to an end when the period of bailment or lease terminates but interest of owner is perpetual and continues till death of owner or owner exercising right of disposal of things.
- **ownership has a residuary rights.** for example when an owner of land gives on lease, the lessee has Some rights but still residuary right with owner.

Classification of Ownership

- **corporeal and incorporeal ownership:** corporeal means physical or tangible object Such as land building, motor car, incorporeal means intangible object/ things Such as copyright.
- **sole and co-ownership** (co-owner death inherited to successor but in case of Joint owner Survivor become the Sole owner not prevalent in india and in Hindu law)
- **legal and equitable ownership** : legal owner has right to disposal but equitable owner has only right to use and enjoy but no right to sale.
- **vested** (ownership already become Perfect)and contingent ownership(Still not perfect Some Conditions yet to be fulfilled)
- **Absolute and limited ownership**
- **Trust** (legal owner for the benefits of others not for himself) and beneficial ownership(not a legal owner but enjoy benefits)

Ownership in common and joint ownership

Co-ownership has two kinds :

1. Ownership in common- in case of death of any of co-owner , the right of dead inherited to the legal heir/successor familiar under Hindu laws.
2. joint ownership- in case of death of any of co-owner , the right of dead **not** inherited to the legal heir but his ownership dies with him and survivor become the sole owner by virtue of right of survivorship or jus accrescendi. This typical English law not found under Hindu law.

Mode of acquisition of ownership

1. Original Ownership and 2. Derivative ownership

Original acquisition of ownership i.e ownership acquired by some personal acts by the acquirer. such acquisition may be

Absolute ie res nullius when Things acquired has no previous Owner. Here acquisition may be by occupation for example a painting by a painter, book written by an author. further a person working on material of others made something new, he became owner of the new product called specificatio.

Extinctive owners: Here new owner acquired ownership extinguishing the title of previous owner example ownership of property acquired by prescription such as adverse possession after 12 years of Continuous peaceful Possession.

Accessory or accessio :Here acquisition of property by way of accession to some existing property. for example fruits of trees, produce of land, calf of cow owned.

Derivative acquisition : ownership derived from the previous owner, called derivative acquisition. such acquisitions may be by way of gift, inheritance, will, intestate Succession, transfer inter vivos . In every legal system there is prescribed method for Such derivative acquisition, for example Transfer of Property Act 1882.

there are two types of derivative method for acquiring ownership

By operation of law such as Succession, inheritance, bequeath (will), bankruptcy, acquired by prescription or by adverse possession.

By reason of some other Act recognised under law Such as Sale-Purchase, recognition of IPR

Sl.no	ownership	Possession
Nature	Absolute Right and legitimate claim to an object. it is a legal Concept. it is de jure relationship with an object	Possession is physical control over an Object. it is a physical concept. it is de facto relationship of an object.
Right effective against	This is right in rem	Exclusive right of control and use/ enjoy the object
Nature of right	Bundle of rights including right of disposal, right of Possession, use or enjoy	Does have owner all the rights fowner but limited right of Control, use and enjoy.
Disposal right and transfer	right of transfer or disposal. complex and technical Process for transfer Such as Sale deed, invoice etc.	No right to transfer or disposal. Possession can be handed over easily.
Duration	indeterminate duration unless rescind by operation of law or act of owner	gensally for limited period allowed by owner and right to possess is subject to change
	owner may or may not have possession over object but even when possess by other, owner has residuary right over objects.	Prima facie evidence of ownership but not always. possession may or may not Lead to ownership

Conclusion :

ownership is essentially a bundle of rights attached to an object and that gives the owner the various rights such as right to control, hold, use, enjoy, dispose of, let out, mortgage, gift, sale/ transfer or part with in any way but such rights or any of the rights may be restricted by the State in larger Public interest.

Although Austin Said owner has absolute right over an object but in present days it is not so .

in communist country, very few private ownership so ownership studied as Public law and in other country also move towards similar view because there are restrictions on the use, enjoyment and even disposal right due to state restrictions imposed.

Thank You

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