**OWNERSHIP**

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**OWNERSHIP**

**Introduction**

All jurist have defined the ownership in their own ways. All the jurist accept and agreed with the ownership as the complete or supreme right that can be exercise over any thing

Austin definition of ownership:

“ A right indefinite in point of user , unrestricted in point of disposition and unlimited in point of duration.”

There are three main thing which Austin highlights are

* Indefinite user
* Unrestricted disposition
* Unlimited duration

Here if we go through this topic only in the base of Austin theory then we came to know with the best example of nationalized bank for publically purposes on the behalf of unlimited duration.

Salmond definition of ownership:

“ownership denotes the relationship between a person and the object forming the subject matter of his ownership.”

Ownership is an akin conception of possession. The relation as well as the point of distinction between the two. But their as two separate and distinct conception exist in and is a product of mature and developed system. It seems that historically first the conception of the possession came into being and then the conception of ownership gradually developed out of it due to changes in the economic structure of the society.

Duguits definition of ownership:

“ownership is a relation between a person and a thing. On account of this relation the person has the power of disposal, use and employment of the thing”

The relation of person to an object can be of the following kinds:

**Custody**:

It is a relation of person to an object in which he was no full control over the thing, in other words, he has no requires animus to exclude others.

**Detention**

A person has in fact possession over a thing but law due to certain reasons dues not recognize it as possession.

**Possession:**

It is a relation of the person to an object which law recognizes as possession.

**Ownership:**

It is a relation of a person to an object which is exclusive or absolute and ultimate. The owner has a right of complete control and enjoyment of the object.

**Meanings:**

Literal meaning to have a hold a thing. The one who hold a thing as his own is said to be the owner and has the right of ownership over it

In non legal sense : The right of exclusive control over and disposal of a thing at will

In the legal sense: The right over a thing to the exclusion of all others person. This implies non interference by other in the exercise of this right and must be distinguish measure holding of a thing in one possession

Ownership implies two elements, one is formal element namely will, power, capacity, faculty, etc. another is the material element i.e , a think owned. For example if A has Rs 100 constitute the material element of his ownership , while his power under the law spend it, to gift it or to will it is the formal element of his ownership

**INCIDENT OF OWNERSHIP**

**Right to possess:**

The owner of a thing has a right to possess it, to the exclusion of all other i.e the owner have exclusive physically control of a think or such control as the nature of the thing admits. Generally speaking , one who own also posses a thing but this is not necessarily and always so. Example the owner may have been wrongfully deprived of it or may have voluntarily divested himself of it. Example the right to posses in case of theft and in case of lease and mortgages.

**Right to Use:**

The owner has the right of to use the subject matter of ownership according to his own discretion heir use means personal use and enjoyment the thing by the owner. This right of the enjoyment or use is not absolute; it can be and is infect limited by the law . this does not mean that an owner cannot use the thing in a way he likes, but he cannot thereby disturb the rights of others.

**Right to Manage:**

The owner has the right to manage I,e he has the right to decide how and by whom the thing owned shell be used. The owner have the power of contracting , the power to admit to ones land, to permit others to use one thing , to define the limits of such permission, to create a right of easement over his land in fever of a third person etc.

**Right to Alienate:**

One who own a thing has also the right to alienate the same or to waste, destroy or to consume the whole or part of it. The right to consume and destroy are strait forward liberties. The right to alienate the right to transfer his right over object to another involves the existence of a power. Alienation takes place by sale, will ,gift, lease, exchange, mortgage etc.

**Right to Income:**

The owner of a thing hs not only the right to the things but also the right to the fruits but income of the things within the limits , if any laid down by the law. Suppose A has a land he has not only the right to posses that land but he can enjoy benefits resulting their form for example fruits ,crop etc

Indefinite use:

The owner of a thing is free to use or misuse the thing in the manner he likes. The use of the word “indefinite “ has a special significance, because the of land by the owner can be restricted by agreement or by operation of law

The restrictions may include:

1. The owner of a thing cannot be allowed to use the thing in a manner which is injurious to others. This is expressed by the maxim so use properly as not to injure your neighbors
2. The ownership may be subject to encumbrance in fever of others in which case the power of the user of the owner curtailed by the rights of encumbrance.
3. The state official have a right to enter the owner premises in pursuance of a warrant issued by a court are for any lawful purpose

Unrestricted disposition : what Austin implies by un restricted disposition is that the power of disposition of the owner is unhampered by law meaning whereby that is absolutely free to dispose it to any one. This is incorrect. In case of lease of thousand years servitudes and restrictive convenient plenary control of property is not possible. More over , in the law of some of the western countries there is a rule of re legitima ports which means that a person can not dispose of his entire property. He has to keep ascertain portion of the property for the members of his family. Under Muhammadan law a similar rule prevails, namely a person cannot dispose of by will etc. More then 1\3 of his property to a stranger

**KINDS OF OWNERSHIP**

There are five difference kinds of ownership that we are going to discuss here:

**1.Corporeal and incorporeal ownership**

The ownership of material object is called corporeal ownership whereas the ownership of right is called incorporeal ownership.

The ownership of a house, table land, machinery etc is corporeal ownership and the ownership of copy right ,patent ,trademark ,right of way etc 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 intangible things. Corporeal things are those which can be perceived and felt by the senses and incorporeal things are those which cannot be perceived by the things and which are intangible.

Incorporeal ownership includes ownership over intellectual right and encumbrance.

**2.Sole ownership and co-ownership:**

When the ownership is visited in a single person , it is called sole ownership. When it is visited two are more person at the same time it is called duplicate ownership of which co ownership is a specie.

Example : the member of partnership firm are co owners of the partnership property. The usual consequence of a co ownership is the existence of reciprocal obligations and restricted use and enjoyment.

Co-ownership may be of two kinds :

1.ownership in common :

Two are more person hold the land in such a manner that they have an undivided possession, each being entitled to occupy the whole in common with others.

Joint ownership:

On the death of one of the joint ownership dies with him and survives two the others co owners by virtue of survivorship

According to Salmond :

The main difference between these relate to the effect of death of one of the co owner. In case of ownership in common the right of the deceased passes on his successor like other inheritable right but in case of a joint ownership, if one of the two joint ownership dies, his right of ownership also dies with him

Example: extinguish and the survivor become the sole ownership by virtue of the right of survivorship.

**3.Trust and Beneficiary ownership:**

Instance of duplicate ownership: it is a property owned by two person at the same time. One of them is under an obligation to use it for the benefit of another. The former is trustee having trust ownership the later is beneficiary with his beneficial ownership. The trustee is destitute of any right of beneficial enjoyment of trust property. His ownership is a more mater of form then of substance ; more nominal then real.

In legal theory , a trustee is not a measure agent but an owner. The property in law belong to beneficiary as between trustee and beneficiary. But as between trustee and third persons , the fiction prevails and the trustee clothed with the rights of his beneficiary. The chief purpose of trusteeship, is to protect the right and interest of person who for any reason or unable effectively to protect for themselves. The chief classes of person for those benefit the trust or created are four in number 1) unborn person infants lunatics or other disqualified person were large person are interested in common . when person have conflicting interest in the same property.

The interest in trust ownership and also in the beneficial ownership can be transferred the trustee can alienate the trust property even without the consent of the beneficiary provided such an alienation is the interest of the beneficiary. The creation of trust separate the trust ownership of the property from the beneficial ownership of it and wets them in difference persons. The extinction are revocation of a trust, however reunites both these ownership in the same person.

**4 Absolute and limited Ownership:**

When all the rights of ownership including the rights of possession enjoyment, and disposal are visited in a person without any restriction except that improved by law in the society, it is called absolute ownership. But this should not be taken to mean that he may exercise is ownership in accordance with his uncontrolled fancy. In the exercise of all legal rights weather of ownership or of any other kind, each of us is under certain control arising out of the relation in which we stand to the ruling power are to other members of the society to which we belong. I can not exercise may rights in such a way as to infringe of the law are the other . In modern time we now very little of absolute ownership but more of limited ownership which means that right of ownership is limited by its use, duration and disposal. In India before 1956 women estate was limited ownership. It was limited one in the sense that she could enjoy for life without power alienation except for legal necessity and on her death the property passed to her husband heirs who are known as reversion.

**5.Vested and Contingent Ownership:**

It is visited when all the events essential to west property in the owner have happened and the owner title is already perfect. Thus if A sells a house to B for a price settled the formalities pre scribed by law, are compiled with , B becomes a depend a visited owner of the house. A visited ownership does not depend upon the fulfillment of any condition but creates an immediate right through its enjoyment may be postponed to a future date. Suppose there is a transfer A property for life then to B , here B then interest is visited one because B need not fulfill any condition precedent and is title is perfect he is entitled to take possession the moment A dies. Thus, aforesaid transfer only postponed his right to his enjoyment to future date.

**6.Legal and Equity ownership:**

Legal ownership is that which has its origin in the rules of common law and equitable ownership is that which proceed from the rules of equity. Before the passing of the judiciary acts of 1873 and 1875 there were two kinds of court in England with separate jurisdiction. These courts were known as the common law courts and chancery or equity court. The ownership which was recognized as such under the law of common in the common law was legal ownership and the ownership which was recognized only in equity courts on equitable principle was called equitable ownership.

**MODES OF ACQUIRING OWNERSHIP**

Following are the modes of acquisition of ownership :

* **Original**

There are three modes of acquiring ownership:

1.Absolute:

Ownership is absolute when the same is acquired over previously ownership object. The rule is that the first occupier becomes the owner. Absolute ownership can be acquired in following two ways.

1. Occupation ( the physically control of the thing is essential in the case of occupation. Such an ownership is acquired in the case of wild animals ,mammals etc.)
2. Specification ( in the case of specification, material belonging to one person are given a new shape clay may belong to one person but the sculpture may make a statute out of it.)

* **Extinctive**

Ownership is extinctive if the ownership of a previous person is finished an account of adverse possession by the acquirer.

* **Derivative**

Ownership may consist in taking the thing from another with or without his consent both are cases are derivative acquisition since the owners title is derived from that of his procedure.

**Antique mode of ownership:**

Different modes of acquiring ownership of property which manu has suggested are under given:

* Inheritance
* Gain
* Purchase
* Conquest
* Application of wealth
* Employment
* Acceptance of gift form proper person

**Conclusion:**

As we can see that every jurist who have prescribed any topic of any subject that’s round against his own point of view. Common people and other jurist of that category may accept it or reject it as it is their critical right. But the concept of ownership is very important without any ups and down. So the concept of ownership is leading point in the sense of possession and any other object related about property or about any other material body. I can say that the concept of ownership is a key point of the this subject. Ownership basically makes a relation between the person and a thing and gave the power and right to use it as in the manner of ownership. The right of ownership is most clear and supreme that can be exercise over any thing .

As Lord Avershed said , property like others interest has a social obligation to perform. The extent of this social obligation reflect the social policy of the legal system.