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## Essentials of Possession :-

The four essentials of possession are :

- 1 : subject matter of possession
- 2 : physical control
- 3 : Intention
- 4 : Knowledge

## Kinds of Possession :-

There are certain kinds of possession according to its control.

- Corporeal Possession
- Incorporeal Possession
- Mediate Possession
- Immediate Possession
- Adverse Possession
- Constructive Possession



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## Corporeal Possession :-

Objects which have physical or materialistic manifestation and which our senses can perceive are called corporeal possession.

For example : House, car, pen etc.

## Incorporeal Possession :-

Objects which don't have any physical or materialistic manifestation and which our senses can not perceive are incorporeal objects.

For example : Goodwill, Patent, copy right etc.

## Mediate Possession :-

Mediate possession of an object is the possession of a thing through a mediator, like an agent, friend or servant. It is also called indirect possession.

For example if a landlord let his house to a tenant. Landlord has mediate possession.



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## Immediate Possession:-

When the possessor himself possesses the property or thing we call it immediate possession.

- For example when I buy a pen and keep it for myself it is my immediate possession.

## Constructive Possession:-

Constructive possession is the authority over an object without having actual possession or charge of that material.

- For example the delivery of my key by my car driver.

## Adverse Possession :-

Adverse possession means the possession of some property or object without legal title, for a certain time period.

- In this the possessor is actually required to prove an intention to keep it absolutely for oneself.



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## De-facto Possession :-

It is a Latin word meaning "in fact". De facto possession means the possession which exists in reality if it is not legally recognized.

## De-Jure Possession :-

De-Jure means "in law"; lawful, legitimate or a matter of law. It is legally recognized possession regardless whether it exists or not. It is also called juridical possession.

## Acquisition of Possession :-

There are two modes of acquiring possession

I: Delivery

II: By Taking



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## Delivery :-

It completes voluntary act from one person to another. The transferor gives actual position to the transferee.

## By Taking :-

It is done without the consent of the previous possessor. This may be also done in two ways.

- = Rightful taking
- ≠ Wrongful taking

## Difference between Possession & Ownership :-

### Meaning :

Possession literally means "physical control" over a thing or an object.

### Meaning :-

Ownership means "to have or hold a thing". One holds a thing as his own called owner.



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Def :

Intentions coupled with physical power to exclude others from the use of material.

Def :-

Ownership is a right availing against the world indefinite in point of user.

Relation :

Possession is the most basic relation between man and thing

Relation :-

It is relation of a person with an object forming the subject matter on ownership.

Transformation :-

The transfer of possession is comparatively easier and less technical

Transformation :-

The transfer of ownership involves technical process of conveyancing.

Right :

Possession is prima facie a proof or a evidance of ownership

Right :-

It consists bundle of rights and all rights are right in rem.



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## Possessory Remedies :-

→ Possessory remedies are those which exist for the protection of possession even against ownership. Proprietary remedies are those which are available for the protection of ownership.

• Even a wrongful possessor who is deprived of his possession can retrieve it from any person whatever on the ground of his possession. There are many grounds why possessory remedies are recognized.

1: Possession often amounts to evidence of ownership. A finder of goods becomes the owner against the whole world excluding the true owner. This is on ground that if a person in adverse possession of property for 12 or more years he becomes the legal owner of that property.



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2 The iniquities of violent self help are very serious and in all civilized country these are forbidden.

3 Another reason of possessory remedies is to be available in the serious imperfection of early proprietary remedies. It was under these circumstances that it provided that the original state of affairs must be restored first. Very often, small technicalities led to the defeat of one's title to property.

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## Ownership

Jurists 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. Thus, 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.

## Austin's definition

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

Indefinite User

Unrestricted Disposition

Unlimited Duration

The abolition of Zamindari system India, the abolition of privy purses, nationalization of Bank etc. are some example of the fact that the ownership can be cut short by the state for 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

Possession

Enjoyment

Disposition

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 constitute ownership is a bundle of rights which in here resides in an individual. Salmond's definition thus point out two attributes of ownership:

Ownership is a relation between a person and right that is vested in him

Ownership is incorporeal body or form

## MODERN LAW AND OWNERSHIP

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

Original mode

Derivative mode

The original mode is the result of some independence personal act of the acquire himself. The mode of acquisition may be three kinds

Absolute when a 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 a right of easement is acquiring after 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 s prior owner. It is derived either by purchase, exchange, will, gift etc. 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 manage

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 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.

### 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 and Beneficial Ownership

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 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.

## 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.

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.

## 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 fulfillment 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. A contingent ownership is based upon the mere possibility of future acquisition, but it is based upon the present existence of an inchoate or incomplete title.

## Sole Ownership and Co-ownership

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

Right to possession

Right to enjoy the property

Right to dispose

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 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

A4 years ago

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