CONCEPT OF PROPERTY

'Property' if defined widely includes all the legal rights of a person of whatever description. Property is all what a man has in law. (Everything whether corporeal, incorporeal). So, to understand the right of Property and further understand complex concepts relating to property (ownership, possession) we need to understand the basic differences between the types of property.

Property can be widely divided into :

Corporeal Property and Incorporeal Property,

Movable and Immovable Property,

Real and Personal Property

Then there are Rights in re Aliena which are also known as encumbrances, such properties are: **Leases**, **Securities, Trust and Servitude**

Corporeal Property and Incorporeal Property

Corporeal property is also called tangible property because it has a tangible existence in the world. It relates to material things.

It includes both **movable** and **immovable** property.

Definition of Immovable property according to various laws of India:

Section 22 of INDIAN PENAL CODE- Movable Property – Corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth.

Section 2(6) of INDIAN REGISTRATION ACT - Immovable property includes land, building, hereditary allowance, rights of way, lights, ferries, fisheries or any other benefit to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth but not standing timber, growing crops or grass"

INDIAN TRANSFER OF PROPERTY ACT also excludes standing timber, growing crops and grass from the definition of immovable property.

Incorporeal property is intangible property, the recognition and protection of this property is fairly recent.

Real and Personal Property

Another differentiation is of real and personal property which is almost same as the differentiation of movable and immovable property.

Real property means all rights over land recognized by law. That is why you sometimes hear land referred to as real estate or realty.

Personal property (don't confuse with personal rights) are all other PROPRIETARY rights whether they are rights in rem or rights in personam. Personal property can be broken down into two categories: chattels and intangibles.

Chattels refers to all type of property. Often, individuals use it regarding the tangible property such as a purse or clothing. Some chattels are attached to land and can become a part of real property, which are known as fixtures.

In some cases, fixtures may remain personal property. For example, at the end of a lease term, a tenant might have the right to remove fixtures they installed even if they do not have any rights to the real property.

Modes of Acquisition of Property

Possession – If a person is in possession of a thing, he cannot be ousted except by one who is true owner of the property. It is said that possession is 9/10 points of ownership.

Prescription – Prescription is lapse of time which creates and destroys rights, positive prescription means the creation of a right by the lapse of time. Negative prescription is the destruction of a right by the lapse of time.

Agreement – No need to explain this

Inheritance – When a person dies, certain rights survive him and pass on to his heirs and successors.

Encumbrances

Rights in re aliena (Rights over someone else's property). Such right is called an encumbrance over the property, such properties are of following types.

Leases

A lease is an encumbrance giving a right to the possession and use of the property of another person. It is the transfer of a right to enjoy certain property. Normally leases are for land, but now there can be lease over a copyright, patent etc. Any right which can be possessed can be made subject to a lease.

Securities

Salmond *'A security is a **jus in re aliena** (right in the property of another), the purpose of which is to ensure or facilitate the fulfilment or enjoyment of some other right (usually a debt) vested in the same person'*

Difference between Security and surety: In security a particular property is charged with debt, in case of surety, the surety is under an obligation to pay the debt of another if the latter fails to pay.

Securities are mainly of three types:

Pledge - Pledge is used when the lender (Pledgee) takes actual possession of the asset pledged.

Mortgage – Same as Pledge but only of Immovable property

Hypothecation - possession of the asset remains with the borrower.

Trust

A trust is an obligation annexed to the ownership of property. It arises out of a confidence reposed in and accepted by the owner or declared and accepted by him for the benefit of another, or of another and the owner.

Servitudes

When you get possession of others property it is a lease, but when you acquire right to use the land in a definite way but not the possession or ownership then it is a servitude.

Types of Servitudes

Praedial: Relating to land

Tenement: Piece of land

Appurtenant: Belonging

Praedial/ Real/ appurtenant Servitude

This servitude is a right to use a property for the benefit of another property.

The property which gets the benefit is called dominant tenement, the property which provides the benefit is called the servient tenement. This is why it is called 'appurtenant to dominant tenement'

Ex. Right of way across the land of somebody because your property is blocked by his property.

Servitude in gross

Term coined by John Salmond, this means the servitude which is not appurtenant to any tenement.

Personal servitude

This servitude is attached to an individual and not any tenement.

Ex. right of fishing into pond of another

Public Servitude

This servitude in not appurtenant to any property and is available to public at large.

Ex. Public right of Navigation, Public right of way, right of pasturage (land used for grazing animals)

Servitudes are called Easements when a Right of way is provided and profits a prendre when a Right to derive a profit is provided (ex. Right of pasturage, right of fishing)