OWNERSHIP

The concept of ownership developed in degrees, as humans became more of a settled species and became more civilized, the concept of ownership started developing. Earlier there was no distinction between possession and ownership, but later as legal system became more complex there was seen a differentiation between both the concepts

The differentiation can be seen in early Roman Law. In roman law **'dominium' meant the absolute right** to a thing and **'possessio' implied only the physical control** over a thing.

According to Austin Ownership is defined as *'a right indefinite in point of user, unrestricted in point of disposition and unlimited in point of duration'*

Indefinite in point of user – The thing owned can be used by the owner in very many ways.

Unrestricted in point of disposition – Can dispose of property without any restriction.

Unlimited in point of duration – The right exists as long as the thing exists.

Criticism: Austin defines ownership as a right but in fact it is a bundle of rights, even if some rights are transferred by you to someone else, the ownership still belongs to you. Right indefinite in point of user is not accurate because the owner can use the property with as much freedom which does not interfere with the rights of others. He may have to allow officers of the government on his land, he may have to pay taxes. Etc.

According to Holland ownership is *'a plenary control over an object'* and an owner has three rights on the object owned.

(i) Possession
(ii) Enjoyment
(iii) Disposition.

Hohfeld - Ownership is a collection of rights, privileges and powers, some of which are frequently found to reside, either for a limited period or perpetually in persons other than the owner.

Buckland - Ownership is *'the ultimate right to the thing or what is left when all other rights vested in various people are taken out'*

Salmond - Ownership vests in the complex of rights which a person exercises to the exclusion of all others. Bundle of rights in an individual constitute ownership. Ownership is always of rights and not material objects.

Hibbert - Ownership means that a person has 4 rights: right of using, right of excluding other from using, right of disposal and right of destruction. (Under English law there can be no absolute owner of land because land can never be destroyed)

CHARACTERISTICS OF OWNERSHIP

It is indefinite in point of user, which means that it is impossible to define exhaustively the wide variety of ways in which the thing owned may be used.

It is unrestricted in point of disposition. An owner can easily dispose of his property during his lifetime or even after his death with a will.

It comes with the right to possess, even when the property is rented out or stolen or is out of the possession of the owner, he still has the right to repossess it later in some point of time.

It can be exhausted, destroyed, alienated by the owner while using it (if the nature of the thing is as such)

It is residuary in character. An owner may part with several rights in respect of the thing owned by him, but he will still be the owner. For a property, X can lease to someone and give an easement to someone else but X will still be the owner.

MODES OF ACQUISITION OF THE OWNERSHIP:

Two modes of acquiring ownership are Original and Derivative:

Original Acquisition - Original Acquisition of ownership takes place when ownership is acquired by some personal act on the part of the acquirer. It can be done in three ways.

1. Absolute Acquisition– When a thing is acquired res nullius, i.e. which has no previous owner. This has been called *Parigrah* by Manu who stated that the first striker of an arrow to a prey whether a bird or wild animal, becomes its owner. Original acquisition of ownership may also be by a specification which means a person by working upon material belonging to another makes a new thing. Eg.: if a sculptor makes a statue from the clay belonging to the another, he becomes the original owner of that statue.

2. Extinctive Acquisition of ownership - When a person by some act on his part extinguishes the ownership of the previous owner and acquires its ownership himself, it is called extinctive acquisition. Eg: acquisition of ownership by prescription or adverse possession for a prescribed period which is 12 years in India. (Article 65, Schedule I of the Limitation Act, 1963)

3. Accessory Acquisition (Accessio) – This is called accessory acquisition that is, when the ownership of property is acquired by way of accession to some existing property. Eg. The produce of lands or animals or fruits of trees.

Manu has termed this mode of acquisition as *Prayog* which means acquiring by accession.

Derivative Acquisition – When ownership is derived from a previous owner, it is called derivative acquisition of ownership. It takes place when ownership is acquired by inheritance or gift or purchase, etc. In the Indian context, the law of succession , transfer of property, sales of goods, etc., regulate the acquisition of ownership of the property by derivative mode.

KINDS OF OWNERSHIP:

1. Corporeal Ownership/Incorporeal Ownership:

Corporeal things are those which can be perceived and felt by the senses and which are tangible. Corporeal Ownership is the complete ownership on material objects like Car, House, Land etc.

Incorporeal ownership is the ownership of a right. Incorporeal ownership is described as ownership over intangible things. Incorporeal ownership includes ownership over intellectual objects and encumbrances. Ownership of a copyright, trade mark, patent is incorporeal.

2. Legal/Equitable Ownership:

Legal ownership is derived from the common law of England given by common law Court. In many cases, equity recognises ownership where law does not recognise ownership because of some legal defect. Equitable ownership is the outcome of law of equity and proceeds from the rules of equity. Legal rights are enforceable in rem but Equitable rights are enforced in personam because equity can act in personam only.

Equity: The quality of being fair an impartial

3. Absolute/Limited Ownership:

All rights are vested without any restrictions in absolute ownership.

In limited ownership, limitations on use, disposal or duration on ownership

4. Vested/Contingent Ownership:

Vested ownership is complete itself i.e. owner's title is perfect. It is conditional on the happening of an event, which is certain.

The word contingency means happening or non-happening of an uncertain future event. A contingent ownership is one, which is incomplete, but becomes complete upon the contingency. 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.

5. Trust and Beneficial Ownership:

Trust ownership is an example of duplicate ownership. Trustee is nominal or legal owner. In the eye of Law the trustee represents his beneficiary. 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 also called beneficial ownership. The ownership of a trustee is nominal and not real, but in the eye of law the trustee represents his beneficiary.

6. Sole/Co- ownership:

In sole ownership there is only one owner. One person constituted as an owner to the exclusion of the others. Single person is the exclusive owner as against the whole world.

When two or more persons jointly own a property they are called co-owners. Eg: Partnership Property. It is duplicate ownership as 2 or more persons are the owners at the same time and have interest in the same property.

7. Joint ownership and Co ownership (ownership in common)

If the ownership is in common then the right of a dead man descends to his successors like other inheritable rights. But in case of death of a joint owner, his ownership dies with him and the survivor becomes the sole owner by virtue of this right of survivorship (jus accrescendi). Common ownership is familiar to Hindu law, joint ownership of the English law type is rather foreign to Hindu law.
