

THE CONCEPT OF PROPERTY

The word 'property' is derived from the Latin term '**proprietary**' and the French equivalent '**proprius**' which means a thing owned. The concept of property and ownership are very closely related to each other. There can be no property without ownership and ownership without property. The concept of property occupies an important place human life because it is impossible to live without property. There are four **modes of acquisition of property** and Several **Theories about the origin of the Property.**

MEANING AND DEFINITION OF PROPERTY -

The term Property is not a Term of Art. It has been used in a variety of senses. In its widest sense, Property includes all the **legal rights** of a Person of whatever description The The property of a man is all that is his in law. In the narrower sense, the property includes the proprietary rights of a person and not his personal

rights. Proprietary rights constitute his estate or property and personal rights constitute his Status or personal and condition. In another sense, the term property includes only those rights which are both proprietary and real.

According to Sir John Austin, the term property is sometimes used to denote the greatest right of enjoyment known as to law excluding servitudes. Sometimes, life interests are described as property. Even servitudes are described as property in the sense that there is a legal title to them. Sometimes property means the whole of the assets of a man including both the right in rem and right in personam

According to Bentham "property is nothing more than the basis of a certain expectation of deriving thereafter certain advantages by a thing the reason of the relation in which we stand towards it. There is no image, no visible lineament which can property the relation that constitutes property. It belongs not to physics, but to metaphysics. It is altogether a conception of Mind. To it, all or any of these physical circumstances failed to assist in conveying the idea of property."

KINDS OF PROPERTY -

Property is essentially of two kinds Corporeal Property and Incorporeal Property. Corporeal Property can be further divided into Movable and Immovable Property and real and personal property. Incorporeal property is of two kinds-*in re propria* and rights *in re aliena* or encumbrances.

1) CORPOREAL AND INCORPOREAL PROPERTY -

(I) Corporeal Property -

Corporeal property is the right of ownership in material things. Corporeal property is always visible and tangible. Corporeal property can be perceived by senses. It can be seen or touched.

Examples -A House, Land, Car, Bike etc

Corporeal property may be divided into two classes-

1. Movable Property (Chattels) and Immovable property. (Land and buildings)

2. Real Property and Personal Property

(II) Incorporeal Property -

Incorporeal property also called as intellectual or conventional property. it includes all those valuable interests which are protected by law. Incorporeal property is intangible. It cannot be Perceived by Senses.

Examples - Patents, Copyrights, Trademarks etc.

Incorporeal property is divided into two classes-

(a) Jura in re propria Over Material things (for example patents, copyrights, trademarks etc)

(b) Jura in re Aliena encumbrances, whether over material or immaterial things, for example, Lease, **Mortgages** and Servitude etc.

2) MOVABLE PROPERTY AND IMMOVABLE PROPERTY -

All Corporeal Property is either movable or immovable. In English law, these are termed as chattels and land respectively.

(I) Movable Property -

Movable property is one, which can be transferred from one place to another place with the human efforts.

(II) Immovable Property -

According to the General Clauses Act, 1897
"Immovable property includes land, benefits arising out of land and things attached to the earth or permanently fastened or anything attached to the earth."

According to the Indian Regulation 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.

Section 3 Para 2 of the Transfer of Property Act 1882 defines immovable property as "immovable property does not include standing Timber, growing crops or grass. Movable property includes corporeal property which is not immovable.

According to Salmond immovable property (i.e., land) has the following elements-

A) a determinate portion of the surface of the earth.

B) The ground beneath the surface down to the centre of the earth

C) The column of space above the surface ad infinitum.

D) All objects which are on or under the surface in its natural state for example-minerals natural

vegetation, or stones lying loose upon the surface.

E) An object placed by human agency on or under the surface of the land with the intention of permanent annexation, for example, House walls, Doors, Fences, etc.

3) REAL AND PERSONAL PROPERTY -

In English law, the property has been divided into the real and personal property. This division is identical to a great extent with that of immovable or movable. The division into real and personal is not based on any logical principle but is a result of the course of legal development in England.

a) Real property -

The real property includes all rights over land with such additions and exceptions, as the law has deemed fit.

b) Personal property -

The law of personal property includes all other proprietary rights whether they are in rem or in personam.

4) PUBLIC PROPERTY AND PRIVATE PROPERTY -

Having regard ownership property is either public or private -

(a) Public property-

Public property is that owned by the public as such in some governmental capacity. Public property is used as a designation of which are Public Juris and therefore, are considered as being owned by the public. the entire state or the community and not restricted to the domain of private person or that which belongs to a state or political constituents like provinces etc

(b) Private property -

The private property is that which is owned by an individual or some other private person.

MODES OF ACQUISITION OF PROPERTY-

According to Salmond, there are four kinds of acquisition of property those are possession, prescription, agreement and inheritance.

I) Possession -

A possession is the objective realization of ownership **Possession** means Physical Control over a thing or an object. It is Prima facie evidence of ownership. The property which belongs to no one i.e. Res nullius, belongs to the first possessor of it and he acquires a valid title to it against the world. A property which is already in possession of someone else, when acquired by possession, gives a good title to the possessor against all third persons except the true owner. Even as against the true owner, the possessor is entitled to maintain his possession until evicted in due course by law. In such a case of adverse possession, there are in fact two owners the ownership of one is absolute and perfect, while that of the other is relative and imperfect and often called possessory ownership by reason of its origin possession.

If a possessory owner is deprived of its possession by a person who is other than the true owner, he has the right to recover possession of the same.

If Property belongs to nobody, the person who captures and possesses it has a good title against the whole world. In this way, the birds of the air and the fish of the sea are the property of that person who first catches them.

II) Prescription -

According to Salmond: "Prescription may be defined as the effect of lapse of time in creating and destroying rights; it is the operation of time as a vestitive fact. Prescriptions are of two kinds- Positive or acquisitive prescription and negative or extinctive prescription.

(a) Positive or Acquisitive Prescription

Positive Prescription means the creation of a right by the lapse of time. For example, right of way is acquired by continued de facto use of it, undisputedly and openly for a period Prescribed by law. Under Indian Easement Act, this period is 20 years.

(b) Negative or Extinctive Prescription.

Negative prescription is the destruction of a right by the lapse of time. Example, the right to sue for non-payment of a debt within a prescribed period is extinguished after the lapse of that Period. In India, limitation Act prescribes three years period for extinction of the right.

III) Agreement -

Property may also be acquired by agreement which is enforceable by law. The owner of a right can transfer his rights in property to another with or without consideration. if it is for consideration it is called a sale and if it is without consideration it is called a gift. It is one of the important principles of law based on the Maxim "Nemo dat quad habet legime", that is no one can convey a better title than he himself has, as a general rule.

According to Paton, an agreement is an expression by two or more persons communicated each other to the other of a common intention to affect the legal relation between them.

An agreement has four essential elements which are as follows -

- 1) There should be two or more parties to an agreement
- 2) Mutual consent of the parties
- 3) It should be communicated;
- 4) There should be common intention to affect the legal relationship

IV) Inheritance

Another method of acquiring property is by means of inheritance. When a person dies certain rights survive him and pass on to his heirs and successors. There are others which die with him. Those rights which survive him are called heritable or inheritable rights. Those rights which do not survive him are called uninheritable rights. Proprietary rights are inheritable as they possess value. Personal rights are not inheritable as they constitute merely his status. However, there are

certain exceptions to the general rule. Personal right may not die in case of hereditary titles. Proprietary rights maybe unhereditary in the case of lease for the life of lessee only or in case of joint ownership.

Succession of the property of a person may be either tested it or it may be intestate i.e by means of a will or without a will. If the deceased has made a will, then succession would take place according to the term to the will. But if there is not will, then succession will take place by the operation of law which is known as non-testamentary succession. In case there are no heirs of the deceased, his property shall go to the State.

an actual physical relation between the possessor and the object, but it goes beyond and considers the personal will of the individual more important in the concept of the property.

This theory has been criticized on the ground that it is a little concerned with realities and is based on theoretical assumptions.

IV) THEORIES OF PROPERTY -

Jurists have differed in their views regarding the origin of the property. Many theories have been put

forward to explain the origin of property and give justification. The following are theories of property

(1) Natural law theory -

Grotius, Pufendorf, Locke and Blackstone are supporters of this Theory. According to the natural law theory, Property is based on the principle of natural reason derived from the nature of things. According to Grotius, all things originally were without an owner and whosoever captured them or occupied them, became their owners. Locke says: "Every man has a property in his own person, he has right to preserve his property, that is, his life, liberty and estate." According to Pufendorf, originally, all things belonged to the people as a whole.

Criticism -

The natural law theory of property has been criticized by Sir Henry Maine and Bentham. According to them possession does not give rise to title nor the property is originated by the first occupation of an ownerless thing but it is a creation of law. He does not believe in the

existence of property without the existence of the law.

2) The labor theory/ positive theory

The labor theory of property is also sometimes called as the positive theory. Spencer was propounder of the positive theory. According to this theory, a thing (res) is the property of a person who produces it or brings it into existence. However, the labor theory has been criticized by Professor Laski key on the ground that labor does not produce the property, it is only a means to earn property. This theory has lost significance in modern times because it has been shown that there may be many situations when property can be acquired without labor, for example, property obtained by inheritance or under a will.

3) The Metaphysical theory

The metaphysical theory was propounded by Kant and Hegel. According to Kant, "A thing is

rightfully mine when I am so connected with it that anyone who uses it without my consent does me an injury." According to Hegel, "property is the objective manifestation of the personality of an individual. In other words property in an object on which person has liberty to direct his will."

Kant observed that law of property does not merely seek to protect possession where there is an actual physical relation between the possessor and the object, but it goes beyond and considers the personal will of the individual more important in the concept of the property.

This theory has been criticized on the ground that it is a little concerned with realities and is based on theoretical assumptions.

4) The historical theory -

The propounder of historical theory is Bentham. Henry Maine was the main supporter of the historical theory of the origin of property. According to the historical theory, private property had a slow and steady growth. It has grown out of the collective group or joint property. There were many stages in the growth of individual property. The first stage was that of natural possession

which existed independently of the law or state. The second stage was juristic possession and the last stage of development was that of ownership.

5) The psychological theory

The propounder of this theory is Bentham.. According to this theory, property came into existence on account of acquisitive tendency of human beings. Every individual desires to own things and that brings into existence property. Bentham pointed out that property is altogether a conception of mind. There is no image, no visible lineament which can portray the relation that constitutes property. It belongs not to Physics but to metaphysics.

6) The sociological theory -

The sociological theory was propounded by Duiguit, Laski, Karl Marx. According to the Sociological Theory, property should not be considered in terms of private rights but should be considered in terms of social functions. Property is

an institution which secures a maximum of interest and satisfies the maximum of wants.

According to Laski, "property is a social fact like any other and it is the character of social facts to alter. It has assumed the most varied aspects and it is capable of yet further changes.

According to Jenks, " The unrestricted right to use, neglect or misuse his property can no longer be granted to any individual and the right of property should be made comfortable to rules of equity and reason."

8) The theory that property is the creation of the state

According to this theory; the origin of property is to be traced back to the origin of law and the state. The supporter of this theory observed that property and law born together and would die together. In other words, the property came into existence when the laws were framed by the state.

Rousseau is the main supporter of this theory. He asserted that property was the creation of the state.