OWNERSHIP

- It is the relation that a person has with an object that he owns.
- Bundle of rights.
- Black's Law Dictionary: Collection of rights allowing one to use and enjoy property.
- Ownership: Own and Owner.
- The concept of ownership flows from possession.
- Roman Law:
  - Dominium - Absolute right to a thing and
  - Possessio - Physical control over a thing.
- Possession and ownership are interconnected concepts.
- Difference between ownership and possession:

❖ Ownership: Absolute authority, bundle of rights, proprietary remedies.

❖ Possession: physical control, limited concept and possessory remedies.

DEFINITIONS

AUSTIN: Ownership means a right which avails against everyone who is subject to the law. It is:

a. A right indefinite in point of user,

b. Unrestricted in point of disposition,

c. Unlimited in point of duration.

Indefinite in point of user: The owner can use the thing owned in variety of ways.

Unrestricted in point of disposition: Absolute right of alienation or transfer.

Unlimited in point of duration: Right exists so long as the thing owned exists.

Criticisms:

- It is not a right but a bundle of rights. If some of the rights are given to another, the person in whom vests the residue is still the owner.
- The owner cannot be allowed to use the property in a way which is injurious to others or to injure the rights of other persons.
- Restrictions can be imposed on the power of disposal.

- **HOLLAND**: Ownership as a plenary control over an object. An owner has three kinds of powers:

a. Possession,

b. Enjoyment, and

c. Disposition.

- **SALMOND**: Ownership denotes the relation between a person and right that is vested in him.

- **HIBBERT**: Ownership involves four rights:
  - Rights of using the thing,
  - Excluding others from using it,
  - The disposal of the thing, and
  - The destruction of the thing.

ELEMENTS OF OWNERSHIP

- **Right to possess**: Ownership includes the right to possess the thing which he owns.
- **Liberty to exhaust**: The owner has the right to exhaust the thing which he owns, if the nature of the thing is such that it can be exhausted.
- **Residuary character**: If the owner gives various rights to others with regard to the thing he owns, the ownership will remains with him. He retains whatever rights remains after giving few rights to others.
- **Right to use, Right to destroy or alienate**

MODES OF ACQUISITION OF OWNERSHIP

There are two modes of acquisition of ownership:

1. Original, and
2. Derivative.

1. Original mode of acquisition: Ownership is acquired by some personal act on the part of acquirer. There are three kinds of original modes of acquisition:

Absolute: Ownership is absolute when the ownership is acquired over previously ownerless objects. The first occupier becomes the owner. Absolute ownership can be acquired by occupation and specification.

Extinctive: When the ownership is acquired by a person by some act on his part which extinguishes the title of the previous owner.

Accessory: The ownership of property is acquired by way of accession to some existing property.

2. Derivative: The ownership derived from a previous owner. Derived either by purchase, inheritance or gift.

KINDS OF OWNERSHIP

- Corporeal and Incorporeal Ownership:

When the subject matter of ownership is material object, it is called as corporeal ownership. Example: ownership over land, house.

When the subject matter of ownership is an incorporeal thing then the ownership is called as incorporeal ownership. Eg: patent, copyright.

- **Sole ownership and Co-ownership:**

When ownership is vested in a single person is sole ownership.

When it is vested more than one person at the same time, it is called co-ownership. It is also called as duplicate ownership. Example: partnership, the members of partnership are co-owners of the partnership property.

Co-ownership can be divided into two: **Ownership in common** and **Joint ownership**.

In ownership in common, the right of a dead man descends to his successors.

In Joint ownership, on the death of one of the joint owners, his ownership dies with him and the survivor becomes the sole owner.

- **Vested and Contingent Ownership**:

Vested ownership: When the title of the owner is already perfect. It is absolute in nature.

Contingent Ownership: When the title of the owner is imperfect and it will become perfect on the fulfillment of certain conditions. It is conditional in nature.

Conditions can be either:

Condition precedent: It is a condition by the fulfillment of which an incomplete title is completed.

Condition subsequent. It is a condition by the fulfillment of which a title already completed is extinguished.

- **Absolute and Limited Ownership:**

Absolute ownership: All rights in respect of the thing owned is vested in the owner.

Limited ownership: Limitations imposed upon the right of the owner in respect of the property.

- **Trust and Beneficial Ownership**:

The subject-matter of the ownership that is property is owned by two persons. One is under obligation to use it for the benefit of the other and the other is for whose benefit the property is used. Former is called as trustee, the ownership that he holds is known as trust ownership and the latter is beneficiary, the ownership that he holds is known as beneficial ownership.

So here trust is created. Property is trust property.

Trustee has no right of enjoyment of trust property and has to use to for the benefit of the beneficiary.

- **Legal and Equitable Ownership**:

The ownership which has its origin in the rules of common law and are recognized by the common law courts.

The ownership which has its origin in the rules of equity and are recognized by the Equity courts.