



RAMA UNIVERSITY

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FACULTY OF JURIDICAL SCIENCES

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Lecture-34



Lecture 34 Ownership

Ownership is a complex juristic concept which has its origin in the Ancient Roman Law. In Roman law ownership and possession were respectively termed as 'dominium' and 'possessio'. The term dominium denotes absolute right to a thing while possessio implied only physical control over it. They gave more importance to ownership because in their opinion it is more important to have absolute right over a thing than to have physical control over it.

In English law the concept of ownership developed much later than possession. The earlier law gave importance to possession on the misconception that possession includes within its ownership as well. Holdsworth observed that the English law accepted the concept of ownership as an absolute right through gradual the gradual development in the law of possession.

The concept of ownership consists of a number of claims such as liberty, power and immunity in regard to the thing owned. Ownership is thus a sum-total of possession, disposition and destruction which includes the right to enjoy property by the owner. The owner has to side by side abide by the rules and regulation of the country.

DEFINITION OF 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.

1. Right to use a thing
2. Right to exclude others from using the thing
3. Disposing of the thing
4. 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 which may be analysed in detail.

1. Indefinite User:

By the right of indefinite user Austin means that the owner of the thing is free to use or misuse the thing in a way he likes. The pawner of a land may use it for walking, for building house or for gardening and so forth. However Austin was cautious enough to use the term "indefinite". He did not use the thing owned infamy way he likes. His use if the thing is conditioned by requirements or restrictions imposed by the law. The owned must not use the things owned as to

injure the right of others. The principle is the foundation of the well known maxim ‘sine utere tere ut alicuius non laedas’ the meaning of the maxims is that to use your own property is not to injure your neighbour’s right. Again the use of property may be restricted voluntarily e.g. town planning act, slum clearance act, 1955 etc.

2. Unrestricted Disposition:

What Austin implies by unrestricted disposition is that the power of disposition of the pawner is unhampered by law meaning thereby that he is absolutely free to dispose it to remove it to anyone This is incorrect. In case of lease of thousand years, servitudes and restricted, covenants, plenary control of a property is not possible. Moreover, in the law of the some of the western countries there is rule re relegitima portis which means that the person cannot dispose of his entire property. He has to keep a certain portion of the property for the members of his family. Under mohamdan law a similar rule prevails namely a person cannot dispose and delaying creditors would be set aside. As under Hindu law government by mitakashara law can’t alienate ancestral immovable property without the consent of other co perceners except for legal necessity.

3. Unlimited Duration:

It is incorrect since almost under every legal system the state possesses the power to take over the property of any person in public interest.

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:

1. Possession
2. Enjoyment
3. 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.

Criticism Against Austin’s Definition:

Austin’s definition has been criticised by many writers.

They argue that it is fallacious to think that ownership is a single right; in fact, it is a bundle of rights including the right of enjoyment by the user. Even if the owner gives away his few rights in ownership, the residue are still owned by him. For example, mortgage of property by the

owner.

Ownership is not merely a right but also a relationship between the right owned and the person owning it.

Owner having an unrestricted right of disposition has also been criticised. His right of disposition of the property can be curtailed by the state. For example, under article 31(2) of the Indian Constitution the state can take away the property of any person for public purpose.

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:

1. Ownership is a relation between a person and right that is vested in him
2. Ownership is incorporeal body or form

Salmond's definition does not indicate the content of the ownership. It does not indicate the right, powers etc. which are implied in the concept of ownership. Again, it is not wholly correct to say that ownership is a relation between a person and right that is vested in him. As the most popular and common idea of ownership is a relationship between a person and a thing.

Criticism against Salmond's Definition:

Dugit says the thing is what is owned not the right which does not really exist.

According to Cook, there are many rights which a person may possess and to use the term 'owner' to express the relationship between a person and a right is to introduce unnecessary confusion. Ownership is the name given to the bundle of rights.

Other Eminent Jurists

1. Fredrick Pollock improves upon other definition when he defines ownership as the entirety of the power of use and disposal allowed.
2. Prof. Keeton expresses a similar view when he observed that ownership is the ultimate right to the enjoyment in persons other than the one entitled to the ultimate use are exhausted.

These two definitions give relatively a more proper connotation of the term ownership. They bring out the most important fact that ownership is always subject to limitation imposed by the law; it is ultimate right to the employment of a thing subject to the condition or restriction imposed by law as to the use of the thing owned. Keeton has added another obvious dimension to the definition of ownership when he speaks of ultimate use is exhausted. Thus the owner may

mortgage his house give it to tenant after the rights of the mortgagee or tenant are exhausted.

SELF-TEST QUESTIONS

S.NO	Question	Option (a)	Option (b)
1.	Ownership is a complex juristic concept which has its origin in the Ancient Roman Law	True	False
2.	The concept of ownership consists of a number of claims such as liberty, power and immunity in regard to the thing owned	True	False
3.	Hibbert ownership includes four kinds of rights	True	False
4.	By the right of indefinite user Austin means that the owner of the thing is free to use or misuse the thing in a way he likes.	True	False
5.	Dugit says the thing is what is owned not the right which does not really exist	True	False

Answers: 1-(b),2-(a), 3-(a),4-(a), 5-(a)