



RAMA UNIVERSITY

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FACULTY OF JURIDICAL SCIENCES

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Lecture-38



DIFFERENT KINDS OF OWNERSHIP

Experience shows that there are many kinds of ownership and some of them are corporeal and incorporeal ownership, sole ownership and co-ownership, legal and equitable ownership, vested and contingent ownership, trust and beneficial ownership, co- ownership and joint ownership and absolute and limited ownership.

Corporeal and Incorporeal Ownership

Corporeal ownership is the ownership of a material object and incorporeal ownership is the ownership of a right. Ownership of a house, a table or a machine is corporeal ownership. Ownership of a copyright, a patent or a trademark is incorporeal ownership. The distinction between corporeal and incorporeal ownership is connected with the distinction between corporeal and incorporeal things. Incorporeal ownership is described as ownership over tangible things. Corporeal things are those which can be perceived and felt by the senses and which are intangible. Incorporeal ownership includes ownership over intellectual objects and encumbrances.

Trust and Beneficial Ownership

Trust ownership is an instance of duplicate ownership. 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 called beneficial ownership. The ownership of a trustee is nominal and not real, but in the eye of law the trustee represents his beneficiary. In a trust, the relationship 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 former is called the trustee and his ownership is trust ownership. The latter is called the beneficiary and his ownership is called beneficial ownership. The ownership of a trustee is in fact nominal and not real although in the eye of law, he represents his beneficiary. If property is given to X on trust for Y, X would be the trustee and Y would be the beneficiary or cestui que trust. X would be the legal owner of the property and Y would be the beneficial owner. X is under an obligation to use the property only for the benefit of Y.

A trustee has no right of enjoyment of the trust property. His ownership is only a matter of form and not of substance. It is nominal and not real. In the eye of law, a trustee is not a mere agent but an owner. He is the person to whom the property of someone else is fictitiously given by law. The trustee has to use his power for the benefit of the beneficiary who is the real owner. As between the trustee and the beneficiary, the property belongs to the beneficiary and not the trustee.

Legal and Equitable Ownership

Legal ownership is that which has its origin in the rules of common law and equitable ownership

is that which proceeds from the rules of equity. In many cases, equity recognizes ownership where law does not recognize ownership owing to some legal defect. Legal rights may be enforced in rem but equitable rights are enforced in personam as equity acts in personam. One person may be the legal owner and another person the equitable owner of the same thing or right at the same time. When a debt is verbally assigned by X to Y, X remains the legal owner of it but Y becomes its equitable owner. There is only one debt as before though it has now two owners.

The equitable ownership of a legal right is different from the ownership of an equitable right. The ownership of an equitable mortgage is different from the equitable ownership of a legal mortgage.

There is no distinction between legal and equitable estates in India. Under the Indian Trusts Act, a trustee is the legal owner of the trust property and the beneficiary has no direct interest in the trust property itself. However, he has a right against the trustees to compel them to carry out the provisions of the trust.

Vested and Contingent Ownership

Ownership is either vested or contingent. It is vested ownership when the title of the owner is already perfect. It is contingent ownership when the title of the owner is yet imperfect but is capable of becoming perfect on the fulfillment of some condition. In the case of vested ownership, ownership is absolute. In the case of contingent ownership it is conditional. For instance, a testator may leave property to his wife for her life and on her death to A, if he is then alive, but if A is dead to B. Here A and B are both owners of the property in question, but their ownership is merely contingent. It must, however, be stated that contingent ownership of a thing is something more than a simple chance or possibility of becoming an owner. It is more than a mere spes acquisitionis. A contingent ownership is based upon the mere possibility of future acquisition, but it is based upon the present existence of an inchoate or incomplete title.

Sole Ownership and Co-ownership

Ordinarily, a right is owned by one person only at a time. However, duplicate ownership is as much possible as sole ownership. When the ownership is vested in a single person, it is called sole ownership; when it is vested in two or more persons at the same time, it is called co-ownership, of which co-ownership is a species. For example, the members of a partnership firm are co-owners of the partnership property. Under the Indian law, a co-owner is entitled to three essential rights, namely

1. Right to possession
2. Right to enjoy the property
3. Right to dispose of

Therefore, if a co-owner is deprived of property, he has right to be put back in possession. Such co-owner has interest in every portion of the property and has a right irrespective of his quantity of share to be in possession jointly with other co-owners.

Co-ownership and Joint Ownership

According to Salmond, “co-ownership may assume different forms. Its two chief kinds in English law are distinguished as ownership in common and joint ownership. The most important difference between these relates to the effect of death of one of the co-owners. If the ownership is common, the right of a dead man descends to his successors like other inheritable rights, but on the death of one of two joint owners, his ownership dies with him and the survivor becomes the sole owner by virtue of this right of survivorship.”

A joint ownership occurs when two or more persons are entitled to the same right or bound by the same obligation in respect of a thing. For example, a partnership property is owned by the persons constituting the firm jointly and trustees are the joint owners of the trust property. The essence of the conception is that there is only one right and one obligation, so that anything which extinguishes such right or obligation, releases all parties.

Absolute and Limited Ownership

An absolute owner is the one in whom are vested all the rights over a thing to the exclusion of all. When all the rights of ownership, i.e. possession, enjoyment and disposal are vested in a person without any restriction, the ownership is absolute. But when there are restrictions as to user, duration or disposal, the ownership will be called a limited ownership. For example, prior to the enactment of the Hindu Succession Act, 1956, a woman had only a limited ownership over the estate because she held the property only for her life and after her death; the property passed on to the last heir or last holder of the property. Another example of limited ownership in English law is life tenancy when an estate is held only for life.

We may in conclusion say that:

1. Ownership is a right which comprise of powers, claims, privileges etc.
2. Ownership in respect of a thing may be corporeal or incorporeal
3. The right relating to or connection with ownership are subject to the state regulation i.e. can be limited or restricted by law
4. Owner is he who is entitled to the residue of rights with respect to an object left after the limitation resulting from the voluntary acts of the owner or those imposed by law are exhausted
5. Ownership does not imply or indicate absolute or unlimited rights either use, disposal or duration.

SELF-TEST QUESTIONS

S.NO	Question	Option (a)	Option (b)
1.	Corporeal ownership is the ownership of a material object and incorporeal ownership is the ownership of a right.	True	False
2.	. Incorporeal ownership is described as ownership over tangible things	True	False
3.	Trust ownership is an instance of duplicate ownership	True	False
4.	The owner has a right to possess the thing that he owns.	True	False
5.	A trustee has no right of enjoyment of the trust property	True	False

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