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Mid Assignment

- Ownership, its meaning, Right of Ownership and Ownership of a right also discussed Characteristics and Kinds of Ownership with difference between Sole and Contingent Ownership.

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Ownership

Ownership and Its Meaning

Ownership refers to the relation that a person has with an object that he owns. It is an aggregate of all the rights that he has with regards to the said object. These rights are in rem, that is, they can be enforced against the whole world and not just any specific person. The concept of ownership flows from that of possession. In the primitive societies, there was no idea of ownership. The only concept that they identified with was that of possession. It was only after they started settling down by building homes and cultivating land that they developed the idea of ownership.

According to Austin, ownership refers to “a right indefinite in point of user, unrestricted in point of disposition and unlimited in point of duration.”

Concurring with Austin’s view, Holland defines ownership as the right of absolute control over an object. According to him, ownership is an aggregate of all rights pertaining to the possession, enjoyment and disposition of an object. According to Salmond, “ownership, in its most comprehensive signification, denotes the relation between a people and right that is vested in him.”

Concept of 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 ‘possession’. The term dominium denotes absolute right to a thing while possession 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

With the growth of civilization, humans settling down to cultivate and produce their own food and staying at one place they began to develop the idea of ownership and recognized the terms 'mine and thane. First came the concept of possession then the concept of ownership evolved. The Roman law had two distinct terms 'possession', which denotes physical control over a thing and 'dominium' which denotes the absolute right to a thing. Ownership as an absolute right in English Law evolved through the developments in the law of possession, according to Holds worth and the term 'ownership' was first used in English Law in 1583.

Rights of Ownership

Upon analyzing the various definitions of ownership, the following right of ownership can be derived:

- Indefinite point of user:
The owner of a property has the liberty to use it. Others have the duty to not to use it or to not to interfere with the owner's right to use it.
- Unrestricted point of disposition:
The owner has the right to dispose of the property at his own will. A person needs to have the ownership of a thing in order to transfer that ownership to someone else. Mere possession does not give the power to dispose of the ownership.
- Right to possess:
The owner has the right to possess the thing which he owns. Right to exhaust- If the nature of the thing which is owned is such that it can be exhausted then the owner has the right to exhaust it at his own will.
- Residuary character:
The owner may part with several rights with regards to the thing he owns. This does not take away the ownership from him.
- Right to destroy or alienate:
An owner has the right to destroy or alienate the thing that he owns.

Subject Matter of Ownership

One of the subject matters of ownership is material objects. Salmond is of the view that the real subject matter of ownership is rights. This particular view of Salmond is supported by the common law system.

However, it has also received some amount of criticism. It has been argued that law generally recognizes ownership of land and chattels and not of any right. A person is said to have certain rights and not own rights. The subject-matter of ownership is essentially determined by the legal system of a state. There are certain objects which, by their very nature, are incapable of being owned such as jungles, air, water, etc. However, the legal system of a country may recognize the ownership of such objects thereby making them a subject matter of ownership.

Modes of Acquisition

Ownership may be acquired in two ways.

- Firstly, ownership may be acquired over a thing which has no owner. Such things are known as res nullius and the ownership may be acquired by possession.
- Secondly, there may be things which are already owned by someone else. The ownership in such cases can be acquired using the derivative method, that is, by way of purchase, gift, inheritance, etc. The acquisition of ownership, unlike possession, has to be done strictly by lawful means.

Kinds of Ownership

Ownership may be of the following kinds:

1. Corporeal and Incorporeal Ownership

Corporeal ownership refers to the ownership of material objects whereas incorporeal ownership refers to the ownership of a right. Incorporeal ownership can also be said to be the ownership of intangible things. Examples of corporeal ownership include ownership of a house, table, car, etc. whereas those of incorporeal ownership includes ownership of trademarks, copyright, patents, etc.

2. Trust and Beneficial Ownership

The subject-matter of such ownership consists of property owned by two persons wherein one person is obligated to use it to the benefit of the other. The person under such an obligation is called the trustee and his ownership is known as trust ownership. The person to whose benefit the property is to be used is called the beneficiary and his ownership is known as beneficial ownership. Trust ownership is only a matter of form and not a matter of substance. This means that a trustee's ownership of the property is only nominal in nature. He is given someone else's property fictitiously by law and thereby obligating him to use it to the real owner's benefit.

3. Legal and Equitable Ownership

Legal ownership refers to the ownership as recognized by the rules of a legal system whereas equitable ownership refers to the ownership as recognized by the rules of equity. There may be cases wherein law does not recognize the ownership due to some effect but equity does. In such situations, the ownership is said to be equitable ownership. Legal ownership is a right in rem whereas equitable

ownership is a right in persona since equity acts are in persona. A person may be the legal owner of a thing and another may be the equitable owner of the same thing at the same time.

4. Vested and Contingent Ownership

All kinds of ownership may either be vested or contingent. Ownership is vested ownership when the title of the person is perfect. On the other hand, ownership can be said to be contingent if it is imperfect and can be perfected subject to the fulfilment of certain conditions. Thus, contingent ownership is conditional in nature.

5. Sole Ownership and Co-ownership

Under ordinary circumstances, a right can be owned by only one person at a time. Such ownership is known as sole ownership. However, in certain cases, same right may be vested in two individuals at the same time. This is known as co-ownership. For instance, partners of a firm are co-owners of the partnership property.

Difference between Sole and Contingent 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

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 spas acquisitions. 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...