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Program : BA-LLB /1-19/M027

Course. : Jurisprudence 2

Instructor : Advocate Imtiaz Ali Abroo Assignment : Final term

Submission date : 3/2/2022

DEFINITION OF OWNERSHIP ACCORDING TO DIFFERENT JURISTS

AUSTIN

According to him, Ownership is a right which avails to him against everyone who is subject to the law. Confering the right to put things to user of indefinite nature. And a right to user indefinite to point of user unrestricted to point of disposition and point of unlimited duration when it comes to full ownership.

SALMOND

According to him, ownership in its most comprehensive significance denotes the relation between the person and right that is vested in him that which a man owns in all cases of right also he states that every right has its own and nothing can be owned except right.

HOLLAND

He follows Austin views of ownership and According to him, an owner has three kind of power, namely, possession, enjoyment and ownership all or some of which can be lost by lease or mortgage.

RIGHT OF OWNERSHIP

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

CHARACTERISTICS OF OWNERSHIP

1) Right to possess

Possession means "physical control over a thing or an object. To constitute ownership the owner must be entitled to the possession of the property.

2) Right to possess the thing, which he owns:

This right in strict sense. He may not have necessarily the possession for he may have been wrongfully deprived of it or may have voluntarily divested himself of it.

3) Right to use and enjoy:

The owner of the property has a right to use and enjoy the property he owns subject to certain restrictions / regulations by law/state. These are liberties. The right to manage it for example: the right to decide how it shall be used and the right to income from it. These are in fact liberties; the owner has liberties to use the thing. I.e. he is under no duty not to use it in contract with other who is under duty not to use it or interfere with it.

4) Right to Consume, destroy (liberties) or alienate:

It means right to dispose off or gift or Mortgage or lease etc. The right of owner over property is absolute, which includes the right of alienation. The right to consume and to destroy is straightforward liberties.

5) Perpetual right / Indeterminate Duration:

The owner of the property has perpetual right or the right for unlimited period over the property. Those who are not owners may be entitled to possess or use the thing but the period for which they are so entitled is a limited duration. But in case of Ownership, it is of an indeterminate duration. Thus the interest of Bailee or lessee comes to an end when the period of bailment or lease is over. But the owner's interest is perpetual and does not terminate even in owner's death, because in that case the property will go to his legal heirs.

6) Actual right:

The right of owner over the property is heritable. It passes to the legal heirs after his death.

KINDS OF OWNERSHIP

Corporeal ownership and incorporeal ownership

Corporeal ownership

Corporeal ownership is the ownership of material object . It is the ownership of tangible thing which can be perceived by sense .

Example:

Ownership of house , factory and machine etc.

Incorporeal ownership

Incorporeal ownership is ownership of right. It is that ownership that can't be tangible and nor be perceived by sense . It also include intellectual property and encumbrance.

Example:

Ownership Of shares , trademark and copyright etc.

Q No 2

What is Possession

Definition:

The literal meaning of possession is the physical take over the property.

Sevigne's Theory: Savigny define possession as Intention which is mixed with physical power to exclude other from the use of material object.

Ihering's Theory: Possession is more objective and it presents a sociological approach to possession. It was stated by him that whenever a person looked like an owner in relation to thing, he had possession of it unless possession was denied to him by rules of law based on practical convenience. This theory given by him is more in consonance with the practice in Roman law than Savign's theory. This theory is more flexible. It explains those cases which were found difficult by Savign's theory.

Legal Consequences Of Possession

Many important legal consequences flow from the concept of possession. Possession is considered to be strong evidence of ownership. **Law protects possessor of a thing against every person other than someone who has a better title or possessory right.**

A wrongful possessor who is deprived of his possession even by the owner otherwise than in due process of law can recover it from his simply on the ground of his possession. The true owner who

retakes possession must first restore it to the wrongdoer and then proceed to recover it on the basis of law.

Essential Of Valid Possession

There are two elements of possession. They are corpus of the possession and animus of the possession.

Corpus possession's:

By corpus is meant an effective physical control of the object. The physical power of dealing with the subject immediately and of excluding any foreign agency over it, which must exist in every acquisition of possession. The immediate physical power is not necessary to continue the possession, as was it was required to it, through which the continue possession depends rather on the constant power of reproducing the original relationship at will.

Animus:

By animus it is meant the mental element or the intention to hold the object as owner against all others. In other words, it is a conscious intention to exclude others from the object. Without this mental element, there can be no possession. It refers to the intention of the possessor. As regards with animus domini, there are certain points to be noted:

Q No 3

What is Subordinate Legislation

Subordinate Legislation

Subordinate legislation is that which proceeds from any authority other than the sovereign legislation power, and is, therefore, dependent for its existence or validity on some superior or supreme legislative authority. It comes from a subordinate legislature or any authority and is subject to the repealing or sanctioning control of a superior legislation. In England all form of legislative activity recognized by law, other than the power of parliament are subordinated and subject to parliamentary control.

Types of Subordinate Legislation

The chief forms or types of subordinate legislation are five in number. These are:

1. Colonial Legislation

It means legislation by the legislature of the colonies or other dependencies. The parliament can repeal, alter or supersede any colonial enactment.

2. Executive Legislation

Though the main function of the executive is to enforce laws, but in certain cases, the power of making rules is delegated to the various departments of the government, which is called subordinate delegated legislation.

Judicial Legislation

It means rules of procedure made by superior courts for their own guidance under authority delegated to them for the purpose. In other words the superior courts have the power of making rules for the regulation of their own procedures.

Q No 4

What is property

In its widest sense, **Property includes all the legal rights of a Person of whatever description 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. ... Examples of such property and copyright, patent, trademark etc

Modes Of Acquiring property

(1) Transfer of property

The common way of acquiring a valid title deed to land in the country is through the process of transfers. This is whereby a buyer follows the legal process to buy land before the seller transfers registered ownership.

(2)

Government allocation

There are also six other ways of acquiring legitimate title deeds countrywide. For instance, there is a procedure of acquiring legitimate

title to land known as allocation whereby the Government transfers public land to an individual for a specific time and use with conditions.

3. Adjudication

There are also instances whereby land adjudication is undertaken by the Government – it mainly includes ascertaining and recording rights and interests in areas of community land which were traditionally referred to as trust land areas.

Compulsory acquisition

(4)

Title deed to land can also be acquired through compulsory acquisition whereby the Government acquires private land for a public purpose (infrastructural development, construction of schools and hospitals) after following the legal processes and compensating the private owner. The Government must first issue sufficient notice to land owners and even publish the same in the Kenya and County Gazette.

(5)

Adverse possession

There are people who have acquired legitimate title deeds through the process of adverse possession or prescription. Adverse possession comes about when a person stays and uses land that is not his or hers for a continuous period of 12 years without opposition from the registered owner. The 'trespasser' can move to court and claim valid ownership and title of the land since the original owner had slept on his rights.

(6)

Settlement programmes

The Government has also passed over ownership of land through settlement programmes by providing access to land for squatters, families displaced over natural calamities like floods

(7)

Land transmission

There is also the process called transmissions whereby valid ownership of land passes to others following death, bankruptcy or liquidation of a company through a court process. For instance, if a registered property owner passes on, his or her personal representative is registered as the proprietor. If it is a case of bankruptcy, the trustee will automatically become the registered proprietor while a liquidator will be the registered owner following a court order.