

JURISPRUDENCE. B.A.LL.B.6SEM.

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DEFINITION AND CONCEPT OF PROPERTY.

Definition and concept of property.

Property has a very wider meaning in its real sense. It not only includes money and other tangible things of value, but also includes any intangible right considered as a source or element of income or wealth. The right and interest which a man has in lands and chattels to the exclusion of others. It is the right to enjoy and to dispose of certain things in the most absolute manner as he pleases, provided he makes no use of them prohibited by law.

The sea, the air, and the like, cannot be appropriated; every one may enjoy them, but no one has any exclusive right in them. When things are fully our own, or when all others are excluded from meddling with them, or from interfering about them, it is

plain that no person besides the proprietor, who has this exclusive right, can have any claim either to use them, or to hinder him from disposing of them as he pleases; so that property, considered as an exclusive right to things, contains not only a right to use those things, but a right to dispose of them, either by exchanging them for other things, or by giving them away to any other person, without any consideration, or even throwing them away.

Basically Property is divided into real property, and personal property. Property is also divided, into absolute and qualified, when it consists of goods and chattels.

Absolute property is that which is our own, without any qualification whatever; as when a man is the owner of a watch, a book, or other inanimate thing: or of a horse, a sheep, or other animal, which never had its natural liberty in a wild state.

Qualified property consists in the right which men have over wild animals which they have reduced to their own possession, and which are kept subject to their power; as a deer, a buffalo, and the like, which are his own while he has possession of them, but as soon as

lands, houses, goods, merchandise and the like; the latter consists in legal rights, as chooses in action, easements, and the like.

It is proper to observe that in some cases, the moment that the owner loses his possession, he also loses his property or right in the thing: animals *ferae naturae*, as mentioned above, belong to the owner only while he retains the possession of them. But, in general, the loss of possession does not impair the right of property, for the owner may recover it within a certain time allowed by law.

Meaning and Definition of Property

Meaning of property

In general sense, property is any physical or virtual entity that is owned by an individual or jointly by a group of individuals. An owner of the property has the right. Human life is not possible without property. It has economic, socio-political, sometimes religious and legal implications. It is the legal domain, which institutes the idea of ownership. The basic postulate of the idea is the exclusive control of an individual over some 'thing'. Here the most important aspect of the concept of ownership and property is the word 'thing', on which a person has control

for use. To consume, sell, rent, mortgage, transfer and exchange his property. Property is any physical or intangible entity that is owned by a person or jointly by a group of people. Depending on the nature of the property, an owner of property has the right to consume, sell, rent, mortgage, transfer, exchange or destroy their property, and/or to exclude others from doing these things. [1]

There are some Traditional principles related to property rights which includes include:

1. Control over the use of the property.
2. Right to take any benefit from the property.
3. Right to transfer or sell the property.
4. Right to exclude others from the property.

Definition of property

There are different definitions are given in different act as per there uses and needs.

But in the most important act which exclusively talks about the property and rights related to property transfer of property act 1882 has no definite definition of the term property. But it is defined in some other act as per their use and need. Those definitions are as follows:

Section 2(c) of the Benami Transactions (Prohibition) Act, 1988 defines property as:

“Property” means property of any kind, whether movable or immovable, tangible or intangible, and includes any right or interest in such property.

Section 2 (11) of the Sale of Goods Act, 1930 defines property as:

“Property” means the general property in goods, and not merely a special property.

Theories behind concept of property:-

There are many theories which have been evolved for the purpose of understanding the concept of property properly.

Those theories are as follows:

1. Historical Theory of Property:
2. Labour Theory (Spencer):
3. Psychological Theory (Bentham):
4. Functional Theory (Jenks, Laski):
5. Philosophical Theories—
(i) Property as a means to Ethnical Ends

(ii) Property as an End in itself

Historical Theory of Property

According to the Historical theory, the concept of private property had grown out of collective group or joint property. In the words of Henry Maine, "Private property was chiefly formed by the gradual disentanglement of the separate rights of individual from the blended rights of the community.

Earlier property did not belong to individuals, not even to isolated families, but the larger societies composed on patriarchal mode. Later with the disintegration of family-individual rights came into being.

Roscoe Pound also pointed out that the earliest form of property was group property. It was later on that families were partitioned and individual property came into being.

Labour Theory (Spencer)

The theory is also known as 'positive theory'. This theory insists on the fact that labour of the individual is a foundation of property. This theory says that, a thing is the property

the result of individual labour. Therefore, no person has a moral right to property which he has not acquired by his personal effort.

Psychological Theory (Bentham)

According to this theory, property came into existence on account of acquisitive instinct of man. Every individual desires to own things and that brings into being property.

According to Bentham, Property is altogether a conception of mind. It is nothing more than an expectation to derive certain advantages from the object according to one's capacity.

Roscoe Pound also supports Bentham and observed that the sole basis of conception of property is the acquisitive instinct of individual which motivates him to assert his claim over objects in his possession and control.

Functional Theory (Jenks, Laski)

The theory is sometimes also known as 'sociological theory of property'. It implies that the concept of property should not only be confined to private rights but it should be considered as a social institution securing

maximum interests of society. Property is situated in the society, has to be used in the society.

According to Jenks, no one can be allowed an unrestricted use of his property, to the detriment to others. He said that the use of property should conform to the rules of reason and welfare of the community.

According to Laski, Property is a social fact like any other, and it is the character of social facts to alter. Property has further assumed varied aspects and is capable to further change with the changing norms of society.

Property is the creation of the State
The origin of property is to be traced back to the origin of law and the state. Jenks observed that property and law were born together and would die together. It means that property came into existence when the state framed laws. Property was nowhere before law.

According to Rousseau, "It was to convert possession into property and usurpation into a right that law and state were founded".

The first who enclosed a piece of land and

said- 'this is mine'- he was the founder of real society.

He insisted on the fact that property is nothing but a systematic expression of degrees and forms of control, use and enjoyment of things by persons that are recognized and protected by law. Thus the property was the creation of the state.

Philosophical Theories – Property as a means to Ethnical Ends

In the opinion of Aristotle, Hegel and Green, Property has never been treated as an end, but always as a means to some other end. According to Aristotle, it may be a means to the end of good life of the citizens, further in the opinion of Hegel and Green, it may be a means to the fulfillment of the will without which individuals are not full human.

According to Rousseau, Jefferson, Friedman, it may be a means as a pre-requisite of individual freedom seen as a human essence.

Similarly the outstanding critics of property like Winstanley, Marx have denounced it as destructive of human essence, a negative means in relation an ontological end.

In all the above cases, property is taken as a means not as an end.

Property as an End in itself

The supporters of liberal Utilitarian model, from Locke to Bentham, recognize property as an end. It is maximization of utilities.

According to Bentham, the command of utilities is measured by the material wealth.

The maximization of material wealth is indistinguishable from the ethical end; property is virtually an end in itself. In the words of Locke, the unlimited accumulation is a natural right of the individual that is an end in itself. Aristotle and Aquinas have considered, "property as a means, concluded for a limited property right. Hegel and Green, treats property, as a means, concluded for an unlimited right'. The supporters of utilitarian tradition treat, accumulation of property, as an end, always meant a right of unlimited accumulation.

Later the concept changed and the utilitarian Bentham held that the ultimate end to which all social arrangements should be directed was the maximization of the aggregate utility (Pleasure minus pain) of the members of the society. While listing out the kinds of pleasures, including non material one, he

held that wealth, the possession of material goods was so essential to the attainment of all other pleasures that it could be taken as the measure of pleasure or utility as such.

Kinds of property

Broadly Property is divided into three kinds those are as follow:

Movable and Immovable property

Movable property

The definition of movable property is given differently in many acts. Some of the definitions are as follows:

Section 3 (36) of the General Clauses Act defines movable property as:

'Movable property shall mean property of every description, except immovable property.'

Section 2 (9) of the Registration Act, 1908 defines property as:

'Moveable property' includes standing timber, growing crops and grass, fruit upon and juice in trees, and property of every other description, except immovable property.'

Section 22 of IPC defines property as:

The words "moveable property" is intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything, which is attached to the earth.

Things attached to the land may become moveable property by severance from the earth. for example Cart-loaded of earth, or stones quarried and carried away from the land become movable property.

Immovable property

The Term "Immovable Property" occurs in various Central Acts. However none of those Acts conclusively define this term. The most important act which deals with immovable property is the Transfer of Property Act (T.P.Act). Even in the T.P.Act this term is defined in exclusive terminology.

i. According to Section 3 of that Act, "Immovable Property" does not include standing timber, growing crops or grass. Thus, the term is defined in the Act by excluding certain things. "Buildings" constitute immovable property and machinery if embedded in the building for

the beneficial use thereof, must be deemed to be a part of the building and the land on which the building is situated.

ii. As per Section 3(26) of the General Clauses Act 1897, "immovable property" "shall include land, benefits to arise out of land and things attached to the earth, or permanently fastened to anything attached to the earth". This definition of immovable property is also not exhaustive;

iii. Section 2(6) of The Registration Act, 1908 defines "Immovable Property" as under:

"Immovable Property includes land, building, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth but not standing timber, growing crops nor grass".

The definition of the term "Immovable Property" under the Registration Act 1908, which extends to the whole of India, except the State of Jammu and Kashmir, is comprehensive. The above definition implies that building is included in the definition of immovable property.

The following have been held as immovable property.

A right to collect rent, life interest in the income of the immovable property, right of way, a ferry, fishery, a lease of land.

iv. The term "Immovable Property" is defined in other Acts for the purpose of those Acts. As per Section 269UA(d) of the Income Tax Act, 1961, Immovable Property is defined as under :

a. Any land or any building or part of a building, and includes, where any land or any building or part of a building is to be transferred together with any machinery, plant, furniture, fittings or other things, such machinery, plant, furniture, fittings and other things also.

Any rights in or with respect to any land or any building or part of building (whether or not including any machinery, plant, furniture, fittings or other things therein) which has been constructed or which is to be constructed, accruing or arising from any transaction (whether by way of becoming a member of, or acquiring shares in, a co-operative society, or other association of

persons or by way of any agreement or any arrangement of whatever nature, not being a transaction by way of sale, exchange or lease of such land, building or part of a building.

Tangible and Intangible property:

Tangible property

Tangible property refers to any type of property that can generally be moved (i.e., it is not attached to real property or land), touched or felt. These generally include items such as furniture, clothing, jewellery, art, writings, or household goods.

Intangible property:

Intangible property refers to personal property that cannot actually be moved, touched or felt, but instead represents something of value such as negotiable instruments, securities, service (economics), and intangible assets including choses in action

Intellectual property

Intellectual property is a term referring to a number of distinct types of creations of the mind for which property rights are recognized—and the corresponding fields of law.

Property does not just comprise of tangible things like houses, cars, furniture, currency, investments etc and such assets are not the only kind that can be protected by law. There are many other forms of intangible property known as intellectual property that have been recognized under the law and granted protection against infringement

Under intellectual property law, owners are granted certain exclusive rights to a variety of intangible assets, such as musical, literary, and artistic works; discoveries and inventions; and words, phrases, symbols, and designs. Patents, trademarks and copyrights, designs are the four main categories of intellectual property.

Patents

Patents are used to protect new product, process, apparatus, and uses providing the invention is not obvious in light of what has been done before, is not in the public domain, and has not been disclosed anywhere in the world at the time of the application. The invention must have a practical purpose. Patents are registrable nationally; the patent granted by European Patent Office is a "bundle" of national patents. No EU-wide single patent system

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Trade Marks

A symbol (logo, words, shapes, a celebrity name, jingles) used to provide a product or service with a recognisable identity to distinguish it from competing products.

Trademarks protect the distinctive components which make up the marketing identity of a brand, including pharmaceuticals. They can be registered nationally or internationally, enabling the use of the symbol ®. Trade mark rights are enforced by court proceedings in which injunctions and/or damages are available. In counterfeiting cases, authorities such as Customs, the police, or consumer protection can assist. An unregistered trade mark is followed by the letters ™. This is enforced in court if a competitor uses the same or similar name to trade in the same or a similar field.

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Design Registration

Design registrations are used to protect products distinguished by their novel shape or pattern. They are available for one-off items. The design itself must be new, although a 1 year grace period is allowed for test-marketing. Registration is not possible where the new form is dictated by function. The design is registrable either nationally or under an EU-wide single right. It can also be protected by copyright.

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