

Property Law

Introduction

Introduction to Property Law

In this presentation:

- ☞ **Why talk about property?**
- ☞ **The *Raison d'être* for 'Property Law'**

Why talk about property?

- Why should we be concerned about property? Why should we talk/be obsessed about it?
- The obsession with property is clearly observable in a number of areas of societal life:
 - Property a subject matter of study in different disciplines. We can mention, for example: economics; political science; sociology; anthropology; psychology; law, etc.
 - Most of the activities of the State relate to property:
 - ✓ look at the institutions (ministries, agencies, etc.) – many of them have to do with property.
 - ✓ Look also at the various laws being enacted from time to time – most of them have to do with property.
 - ✓ In fact, one of the fundamental functions of government is said to be protecting property interests of individuals (John Locke, Adam Smith).

Why talk about property?*ctd.*

- Customary norms and institutions for their most part deal with property: who should own/have access to property? What types of rights for the community members on different classes of property – for the community leader(s), for community as a whole, for individuals? When there is infringement of such rules – what is the remedy? Who should adjudicate?
- Look also at the international order:
 - ✓ The institutions: WB, IMF, WIPO, WTO, regional and sub-regional economic organizations
 - ✓ The international legal regime: international water law, international trade law, international air and space law, international intellectual property law.

Why talk about property?*Ctd.*

➤ So, why this obsession with property?

- ☞ Because, property is essential for human beings, individually as well as a society.
- ☞ Can we think human life without property? No, human life without property is unthinkable!
- ☞ Even the most anti-materialist person or those who do not fully control their mind do not live life without property – look at monks; kids; schizophrenic persons; the senile, etc. are somehow in possession of something.
 - property is vital for survival as a living being;
 - some objects have sentimental value;
 - some objects of property determine social status;
 - Property endows power and privilege

Why talk about property?*Ctd.*

- Because of these importance attached to property by man, human life as an individual or society is very much related to/affected by property.
 - Look at your individual life – what is your aspiration?
 - Look at the buzz in town – the activities in trade, services, manufacturing, production, etc.
 - As a political group – the allocation of resources is a thorny issue.
 - Look at all the activities of government – promoting investment, property registration, etc.
 - Internationally – the idea of property has a central role in world history. Note the epic moments in human history:-
 1. The transformation of human way of life: hunter-gatherer → Developing tools → controlling fields for hunting/gathering → agriculture and sedentary life → surplus production → trade in goods

Why talk about property?*Ctd.*

2. Ideologies of property ownership/control & administration. By ideology we mean perspectives or theoretical positions about who should control what property? What property rights for individuals? It is about the most productive and beneficial (for society) use of property resources.

- the slave owning system
- the feudal system
- the capitalist system
- socialism/communism

3. Historical events triggered by property concerns

- Explorers - Christopher Columbus & Vasco Degema
- colonial expansion of Europeans
- Revolutions (socialist)
- The Cold War
- Industrial Revolution

The *Raison d'être* for 'Property Law'

- So, why do we (society) need to have 'Property Law'? What is the rationale for having body of law called 'property law'?
 - Because, given the centrality of property for man/society, life without a set of norms/rules governing matters of property would be difficult.
- 1. A law governing relations among humans concerning property is important for the **maintenance of law & order**.
 - In the absence of law governing relations among humans in respect of property anarchy and chaos will prevail. Imagine a world where nobody can identify who controls what object and the rules that govern property vary from person to person!
 - Property law system helps to avoid this kind of situation by providing rules concerning the manner of acquisition, enjoyment, transfer and extinction of property rights & setting up the institutions that enforce the rules and adjudicate when disputes/allegations of rights violation arise.

The *Raison d'être* for 'Property Law' ...*ctd.*

2. Property law lays the foundations for the creation and reaction of wealth – which means improvement/advancement in quality of human life. Property law helps to achieve this by:

- *providing security of rights* – certainty about who has what rights over a given object will ensure security of transactions – the free flow of goods and ideas, the foundation for market-based economy.
- *Security of rights encourages the taking of risk* by entrepreneurs which is essential for wealth creation.

The *Raison d'être* for 'Property Law' ...*ctd.*

- *Security in property rights encourages innovation*:- making constant improvements on the methods and means of production with a view to increase productivity, hence wealth creation. Ex. Trademark law
- *Security in property spurs inventions* – if it were not for the protection of property interest of inventors in their inventions the world would not have been in the technological and entertainment advancement that it is in now. Eg. Patent law – for all the inventions that improved human life; Copyright law – for the amazing productions of the entertainment industry.

The *Raison d'être* for 'Property Law' ...*ctd.*

N.B.:-

First, It should be noted that there is no one set of prescriptions of property law rules;

- There are variations from one country to another as to the exact nature/content of the rules.
- There are different ideologies/approaches to setting the precise content of the rules. Different approaches as to the best way of administering property resources.

Second, the setting of the rules (rules considered the best) alone is not enough to realize the benefits of having property law; there has to be effective enforcement.

End!