Property Law

Chapter One: Property Rights

1.1 Meaning and Features of Property Rights
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Rights

Property refers to rights such as **ownership**, **possession**, **usufruct**, **use**, and rights of **servitude**, **recovery**, **preemption** and **promise of sale**. In general, property law may be defined as a **branch of private law** regulating **relations between persons** with respect to **things or objects.**

In lexical definition, property = thing (matter)

Patrimonial vs. extra-patrimonial classification

Patrimonial rights = rights which can be valued in terms of money such as **property** rights, contractual rights, extra-contractual rights

Extra-patrimonial rights = rights w/c can't be expressed in terms of money such as human rights (family, political, religious etc…)

Patrimony = is the totality of unity of rights and obligations (owns + owes) a person has on a certain thing. The characteristics of patrimony are the following:

- Patrimony is inseparable from the person
- Every patrimony presupposes a person who

classification

Real rights = it is a right that a person can claim from anybody in the world

Personal rights = it is a right which results from contractual agreement or extra-contractual events. Such right can be claimed only from the person who has previous relationship.

1.2 Relationship between Property Rights and Objects of Property

Property Rights are legal entitlements that a person have acquired by law over objects of property (things or materials)

Objects of property are things which make up the discussion of property rights such as the following:

- **Res communes=** things which a person cant use exclusively such as air and water etc…
- **Res Nullies=** things that have never been owned before. It can be owned at any time, such as forests, minerals, fish stocks in the sea etc…
- **Res Derilectus=** things which had owners before, and not now. They are things whose owners are impossible to trace, or the owner should have expressly shown disowning the thing.

In its legal usage, the term thing refers to some possible or potential mater of rights and duties which, conceived as a whole and apart from all others, can be separately perceived by the senses. According to this definition, the term may refer to;

- A thing, which is corporeal and tangible matter, which has an organic or physical unity, for example a horse, block of marble.
- A thing, which is corporeal and tangible, but consists of specific things, for example, a flock of sheep, a house.
- A thing, which is neither material/ corporeal/, nor tangible but which is an element of wealth, for example a copyright or a patent right, a claim for payment of

property, herein after called thing /good may refer to;

- Things /goods which have material existence such as a car, an ox a house/ corporeal things/ (Art 1127), as well as claims and rights contained in securities to bearer which are incorporeal or intangible by nature but which are assimilated to corporeal things (Art 1128) and
- Things which have no physical or material nature but which are perceptible by senses for example natural forces of economic value such as solar and wind powers which are mastered and put to use by mankind (Art 1129)

Note: ‘goods’ and ‘things’ are used interchangeably in the code to refer to the

1.3.1 Historical background of property rights
(Theories Regarding Origin Of Property)

- **Positivist theory (utilitarianism)..** things should be seen in light of the benefits to human being. According to Jeremy Bentham, Property and law are born together and die together. Before laws were made, there was no property; take a way laws, and property ceases.

However, this theory is criticized on the ground that the state and private property are the results of the same social and economic forces and we can hardly say one is the creation of the other. John Locke argues that the state is the result of a social contract in which the society transferred some of their rights to the state for the purpose of protection their rights including the right to property

a human person is merely an abstract unit of free will or autonomy that does not have a concrete existence until that will acts on the external word. The person must give its freedom an external sphere in order to live as an idea. This external sphere, capable of embodying the person's freedom, consists of the rest of the word, everything that is distinct from the person.

From the need to embody the person's free will from the abstract realm to the actual, Hegel concludes that 'the person becomes a real self only by engaging in a property relationship with something external'.

Occupation (first possession) theory…

Property, both in lands and movables, originally acquired by the first taker, which taking amounts to declaration that he intends to appropriate the thing to his own use, it remains in him, by the principle of natural law, till such time as he does some other act which shows his intention to abandon it; for then it becomes, able to be appropriated by the next occupant.

However, what become useless to one is useful to another, who is ready to give something in exchange that was equally desirable to the former. This natural convenience introduced commercial traffic and the reciprocal transfer of property by sale, grant or conveyance; which may be considered as the continuation of the original possession of the first occupier or as an abandonment of the thing by

Though the earth and all the creatures are common to all men, every man has a property in his own person to which nobody has any right to but himself. The labor of his body and the work of his hands, we may say, are properly his. So where a person appropriates a land or any one of its fruits, he has mixed his labor with, and joined to it, such thing is his own and thereby makes it his property. This is because he has removed it from the common state of nature and has placed it in to something which is exclusively his own.

However, this theory has certain problems, first, in the absence of prior theory of ownership, it is not self evident that one owns even his/her own labor that is mixed with something, second, the labor theory does not provide guidance in determining the scope of the right that one establishes by mixing one's labor with something else. Robert Nozick described this problem as follows, "suppose I pour a can of tomato juice in to

1.3.2 Justification Theories of property rights

A) **Occupation theory** tries to justify the existence of private property on the ground that the first occupier should be rewarded and property acquired in such a manner is ethically justifiable He who first reduces in to possession of a piece of property has the best of justifications for remaining in control, and hence the institution.

B) **Labor theory…** private property is the result of individual labor because industry (hard work) should be encouraged by granting to a worker the ownership of the res, which is created by his labor so that even greater productivity is achieved.

felicity (Utility) or happiness, and private property, which is the expectation of protection provided by the state, is justifiable because it increases human felicity/ happiness.

D) **Hegelian Theory**- Property is a part of the personality of the owner and the protections provided for property of the person are protections for the person. This, thus, the existence of the person and hence his/her property is just. Furthermore, some control of property is essential for the proper development of personality.

The community has slowly evolved from status to contract, from group holding to individual property. freedom liberty has grown in the process and it is the control of property that makes men free. However, the theory does not justify the present system, which allows the concentration of property in a minority of

E) Marxist Theory- According to the communists, the history of all societies in the world is the history of class struggles between the slaves and freemen, feudal lords and serfs or vassals, the bourgeoisie and the proletariat.

These struggles are always between those who control the means of production and those who do not and hence that have to depend on the former for their livelihoods by selling their labor. These relations were not always based on equal or even fair exchange of labor and wages or other form of payments.

The slave’s labor was freely exploited, the serf /vassal was forced to toil for a meager reward and the products of his labor taken away by the feudal lord and the proletariat receives a wage that does not cover the bare minimum of his needs.

In effect private property served and is serving as a means of exploitation of the slave by the slave owner, of the serf/vassal by the landowner of the proletariat by the

1.3.3 Economic perspectives of property rights

Classical economists such as Adam Smith and Karl Marx generally recognize the importance of property rights in the process of economic development, and modern mainstream economics agree with such a recognition.[24] A widely accepted explanation is that well-enforced property rights provide incentives for individuals to participate in economic activities, such as investment, innovation and trade, which lead to a more efficient market.

This can be exemplified by the development of property rights in Europe during the Middle Ages. During this epoch, political power was fully placed in hand of kings and hereditary monarchies, who often abused their power to exploit producers, impose arbitrary taxes, or refuse to pay their debts..

The lack of protection for property rights provided little incentive for landowners and merchants to invest in land, physical or human capital, or technology. After the Civil War of 1642 and the Glorious Revolution of 1688, shifts of political power away from the Stuart monarchs led to strengthening of property rights of both land and capital owners.

Consequently, rapid economic development took place, setting the stage for Industrial Revolution. Property rights are also believed to lower transaction costs by providing an efficient resolution for conflicts