

UNIT ONE

OVERVIEW OF PATRIMONY, PROPERTY AND PROPERTY LAW

RIGHTS PROTECTED UNDER THE CIVIL LAW AND THE CONCEPT OF PATRIMONY

Patrimonial rights vs. extra-patrimonial rights

Rights of a person that are recognized and protected by the civil law may be patrimonial rights, i.e., those that have a pecuniary value such as property rights over things and rights arising out of contractual relations or those arising out of extra-contractual relations. Patrimonial rights that arise out of contractual or extra-contractual relations are generally governed and protected by the law of obligations, i.e., by the law of contracts when they arise out of contractual relations and by the law of torts when they arise out of extra-contractual relations. These categories of patrimonial rights are also referred to as rights in-personam / personal rights/ because they can be exercised against a specific person or persons. On the other hand, patrimonial rights over things/ property rights/ are governed by the law of property and they are also called rights in-rem/ real rights/ since they can be exercised against any person who may interfere with the right-holder's enjoyment.

Rights may also be extra patrimonial rights, those that cannot be assessed in terms money such as family, political and civil rights. Extra-patrimonial rights, which are defined above, are governed and protected by family law, penal/ criminal law and other branches of law based up on the particular type of right in question.

THE CONCEPT OF PROPERTY

In its proper legal sense, property may be defined as an exclusive right to control, use, transfer an object or a thing of economic importance and its fruits, exclude all other persons from its use and enjoyment and the follow the thing and its fruits in the hands of any person who might have unlawfully taken it. It is a name for a concept that refers to the rights and obligations, privileges and restrictions that govern the relations of persons with respect to things having economic or financial value.

Objects of Property

The phrase 'objects of property' may be defined as the goods or things over which a right of property may be exercised. The things in relation to which such property rights are exercised are objects of property rather than property itself. Hence, the house, or the car, or the table in relation to which an ownership right is exercised is properly called an object of the right of ownership.

Property rights

Art 40/1/ of the FDRE Constitution which guarantees the right to property provides that Property right includes, unless restricted by law for public purposes, the rights to acquire, use, and transfer things/ tangible or intangible/ of financial value. Property rights are rights in-rem in the sense that it creates an obligation, on all other persons, to refrain from any act of interference in the use and enjoyment of a thing one owns or possesses. It also entitles a possessor or an owner of a thing to pursue such thing in the hands of any person in to whose possession the thing might have come. It is important to note here that private property is guaranteed and protected not only against interference by the government and its agencies but also by individuals and other persons. In this regard, Art 1206 of the Civil Code provides for the right of an owner to claim and recover the thing owned from any person who, without his consent, possesses or holds it and to oppose and repel any act of usurpation. See also Arts 1148 and 1149 of the Civil Code.

DEFINITION AND SCOPE OF PROPERTY LAW

Not every transaction, right, or liability relating to physical objects/ material things/ is regarded as relevant to the law of property, for instance, a contract between an owner of a car and a garage to service the car is part of law of contract rather than the law of property. Similarly, interference in the enjoyment of or damage caused to physical objects is an ordinary tort and not subject to property law. However, certain torts involving property claims /such as trespass and nuisance in relation to buildings and land/ have an effect that is more specific to property rights and are governed by the law of property than the law of torts. However, nuisances committed by a person with no proprietary claim are more part of torts than property law.

What distinguishes property law from other kinds of law is that the principles, policies, and rules of property law deal with the **relationships between and among members of a society with respect to things.** The things may be tangible, such as land, a factory, or a diamond ring or intangible, such as stocks and bonds or a bank account. Property law, then, deals with the allocation, use, and transfer of wealth and objects of wealth. As such, it reflects the economy of the society in which it is found. Property law is a branch of law which deals with and regulates the property rights i.e. the real rights /rights in-rem/ a person exercises over a certain object which include rights to use, to collect and enjoy the fruits of, to transfer (by sale, donation or inheritance) and even abandon the object and exclude others.

THEORIES OF the origin and foundation of private PROPERTY

THE POSITIVIST THEORY

Law is nothing but the command of the sovereign, that is, the rules promulgated by government officials for reasons of public policy, protection of individual rights, promote the general welfare, increase social wealth or maximize social utility. I cannot count upon the enjoyment of that which I regarded as mine, except through the promise of the law that guarantees it to me. It is law alone that permits me to forget my natural weaknesses.

It is only through the protections of law that I am able to enclose a field, and to give myself up to its cultivation with the sure though distant of harvest. Property and law are born together and die together. Before laws were made, there was no! Properties take a way laws, and property ceases. 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.

THE HEGELIAN THEORY

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 world. The person becomes a real self only by engaging in a property relationship with something external. Hence, private property originated in the person's attempt to actualize his free will i.e. when someone extends his will to external things he makes that thing a part of himself. Professor Margaret Jane Radin has argued that to be a person, an individual needs some control over resources in the external world. According to this theory the personhood perspective is that to achieve proper self-development to be a person--an individual needs some control over resources in the external environment.

THE OCCUPATION/ FIRST POSSESSION/ THEORY

In the beginning of the world The Creator gave to man dominion /ownership/ over all the earth and over the fish of the sea and over the fowl of the air and over every living thing that moves up on the earth. Thus the land was in common, and no part of it was the permanent property of any man in particular, yet whoever was in occupation of a determined spot, for rest, shade or the like acquired for the time being a sort of ownership, from which no one can derive him by force, for this would have been unjust and contrary to the law of nature. Thus also a vine or other tree might be said to be in common, as all men were equally entitled to its produce/ fruits/ and yet any private individual might get the sole property of the fruit which he had gathered for his own repast.

LABOR OR ENTITLEMENT THEORY

God, who has given the world to men in common, has also given them reason to make use it to the best advantage of life and convenience. The earth and all that is there in is given to men for the support and comfort of their being. 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.

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 slaves 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 bourgeoisie. Hence, private property is the evil that has to be abolished. Please read the following excerpt from the Communist Manifesto.

INTRINSIC ELEMENTS OF THINGS

Art 1132 of the Civil Code defines intrinsic elements of goods as things, movable or immovable, which are regarded by custom as forming part of a thing, or which is materially united to a thing and cannot be detached there from without destroying or damaging such thing. For example: - A windshield of a vehicle is materially united with the latter and cannot be separated from it without damaging the use of the car, as the vehicle is incomplete without a windshield. Water pipes in a building cannot be detached from the building without damaging the floor in which they are buried. Trees and crops are considered as intrinsic elements of land until they are separated there from or until a contract for their separation is concluded. A house in a farm may also be considered as forming part of the land (custom).

The legal effects of treatment of things as intrinsic elements of other things

1. Rights on or dealings relating to the principal thing shall include the intrinsic elements unless the parties have agreed expressly that such right or dealings shall not apply to them. For instance, a contract of sale of a land rights or mortgage of a land shall include the houses and trees that are considered as its intrinsic elements, unless the parties have expressly agreed that the sale or mortgage relates only to the principal and not to the intrinsic elements. Art 1132/1/

2. A thing that becomes an intrinsic element of another thing ceases to exist as a distinct movable thing. For instance, a water pipe fitted in a building or a newly bought windshield glass fitted to a vehicle ceases to exist as a separate thing or object of property. Hence, the right, which third parties previously had on such thing, shall be extinguished; and an owner or a person who has any other right in relation to such thing cannot recover the object from the owner of the principal thing. However, such person may claim reimbursement of the value of such thing and compensation for damages based on the rules of unlawful enrichment. See Arts 1134 and 2162 2163 of the Civil Code.

ACCESSORIES OF THINGS

Art. 1136 of the Civil Code defines an accessory as anything, movable or immovable, which the owner or the possessor of the thing has permanently destined for the use of another thing.

For instance, if an owner of a car puts a jack permanently for the use of his car the jack shall be considered as the accessory of the car. A tractor, or a pair of oxen, or a horse put by the owner/possessor of a land for the use of his land is considered as accessory. Similarly, a plot of land adjacent to a certain farm that is intended for the use of the farm or a private water well outside a certain farm and which the owner/possessor of the farm has destined for the use of such farm as a source of water is considered as an accessory to the principal thing, the farm.

The legal effects of treatment of things as accessories of another thing

1. In the absence of an express provision to the contrary, rights on and dealings relating to the principal thing shall apply to the accessory. See the examples given in relation to intrinsic elements above. See Art 1135 of the Civil Code.
2. Temporary separation of the thing shall not, in any way, terminate the character of accessories. See Art 1137.
3. Rights of an owner or possessor of a thing, which is considered as an accessory of another thing shall not be affected by its treatment as such. Hence, the owner of the principal may not raise the treatment of a thing as an accessory to another thing against the owner or possessor of the accessory. See Art 1138/1/. Note that this provision governs the relationship between the owner/possessor of the principal thing and the owner or other right holder of the thing treated as an accessory.
4. However, the owner or possessor of the accessory may not claim it from third parties in good faith who have acquired the principal together with the accessory unless his rights to the accessory are evidenced by a deed dated prior to date when it is so destined. See Art 1138/2/.
5. Finally, the owner/possessor of a principal thing may terminate the character of accessory of such thing at any time, but he cannot do so if a third party has already acquired a right in relation to the principal thing with the belief that he will benefit from the accessory. See Art 1139 of the Civil Code.

CLASSIFICATION OF OBJECTS OF PROPERTY

1. CORPOREAL AND INCORPOREAL THINGS: - This classification is based on the physical or material nature of things or objects, i.e., it is a classification of things into those that can be perceived by the senses and those which cannot be so perceived.

- **Corporeal things** are things that have material or physical existence and unity and hence, can occupy space and can be seen or touched. Hence, things such as a house, a car, an ox, and a watch are corporeal things. According to Art 1127 of the Civic Code, corporeal things are things that have material or physical existence and that can be seen and touched.
- **Incorporeal things** are things that do not have a material or physical existence, that cannot occupy space and hence that cannot be perceived by the senses. This category primarily include rights particularly those that have economic value and can be expressed in terms of money. For example, copyrights and patents, which are a bundle of claims to prevent others from copying and selling a work of art or to prevent others from using the protected process or invention without the permission of the author or the inventor. Rights and claims arising from various contracts and contained in negotiable instruments such as checks, promissory notes, bills of exchange, shares, bonds, warehouse goods“ deposit certificates and bills of lading are also examples of this category of things

2. MOVABLE AND IMMOVABLE THINGS: -

- **Movable things** are things which can move by themselves or be moved by man without losing their individual character. Hence, an ox, a car, table, a book etc. are movable because they can move by themselves or be moved by man from place to place without being dismembered in to several parts.
- **Immovable things** are things that cannot move by themselves or cannot be moved by man unless they are first dismantled or demolished. See Art. 1127 of the Civil Code.

3. SPECIAL MOVABLE THINGS: - These are movable things by nature but to which the law attaches characteristics of immovable things. The law does so mainly because of the importance attached to these types of things. The rules governing the acquisition, transfer and proof of rights over ordinary movable things/ also called chattels/ shall not apply to special movable things, because they are governed by the rules applicable to immovable. For instance, a right of ownership over a table is transferred by a simple delivery of the table, while owner ship of a special movable thing, such as a motor vehicle, is transferred in the same manner as a transfer of a building by registration of the act transferring the right, registration of transferee in the register kept by the relevant government organ and issuance of a title deed in the name of the transferee. /See Art 1185 and 1186 of the Civil Code. /

- 4. MOVABLES BY ANTICIPATION:** - These are immovable things by nature but which the law considers as movable things. According to Art 1133(2), trees and crops which are considered as intrinsic elements of land will be considered as distinct movable things or chattels where they are the subject to contracts for their separation. For instance, where a contract for the sale of standing trees is concluded, the trees that are not yet cut are considered as movable objects starting from the date of conclusion of such contract. They are called movables by anticipation of their future removal from the land. The same is also true of component parts of a building which is going to be demolished and its intrinsic elements such as the doors, windows, corrugated iron sheets, pipes and electrical appliances are considered as separate movable objects even before the house is demolished. Similarly, a contract for extraction and sale of products of quarry such as stone and sand shall have the same effect in relation to such things. Refer to Art 1133/2/ and 2268 of the Civil Code.
- 5. IMMOVABLE THINGS:** - Though Art. 1126 classifies all things into movables or immovable, our Civil Code does not define the concept of immovable things. It rather enumerates, under Art 1130, the things which are considered as immovable under Ethiopian law. Accordingly, **land and buildings** are considered as immovable things. From this enumeration, one may ask as to why other things that are attached to the ground such as trees and crops are not treated as immovable things under the law.
- 6. IMMOVABLES BY DESTINATION:** - Immovable by destination are movable things that are placed permanently with an immovable thing for the latter's economic exploitation. In other words, these are movable things by their nature but which the law considers as immovable things because they are placed or attached to a land for its economic exploitation. For example, horses, cattle, tractors and other movable things, which are intended to facilitate the use and exploitation of a land, are considered as immovable things by their destination.

7. REAL AND PERSONAL PROPERTY

Real rights/ rights in-rem refer to either a power to recover a specific thing, or more often a right that may be exercised against any person, while **personal rights or /rights in-personam** are rights that may be exercised against a particular person. Hence, if it is a claim of title to a specific thing/ res/, the action is in-rem, for example, a claim of ownership of land or a sheep. However, if the claim is framed as an obligation, for instance, a claim for performance of a contract of sale of land or a ship, such right is personal. There was no difference between movables and immovable.

8. CHOSE IN ACTION AND CHOSE IN POSSESSION

A chose in action includes all personal right of property, which can only be enforced by action and not by taking physical possession. If A owes B ten pounds, B has a chose in action. An owner of a car has a chose in possession, because, even where another person is unlawfully using it, the owner has a right of retaking it. See Art 1148 of the Civil Code.

However, a creditor is confined to sue the debtor in court to recover his money. Patent rights, copyrights, probably right of action for breach of contract and right of action for damages are also chose in action.

9. FUNGIBLE AND NON-FUNGIBLE THINGS

Fungible things consist of movable things that, in ordinary dealings, are usually determined by number, measurement or weight and hence any unit is, from its nature or by mercantile usage, treated as the equivalent of any other unit. A contract for the delivery of fungible things is performed by delivering anything of the same nature. For example, a contract of sale of a kilo of butter is performed by delivering one kilo of butter of the quantity and quality that he desires and not by delivering a specific piece of butter. However, the person may require a specific piece of butter and in such cases; the debtor may perform the contract by delivering that specific butter, not another thing of same nature. See Art 1745 and 1748 of the Civil Code. The creditor may not refuse delivery of fungible things on the ground that the quality or quantity offered to him does not exactly conform to the one agreed up on.

10. Non-fungible things, on the other hand, are movable or immovable things, which in ordinary dealings, are determined by their specific identity. A land or a vehicle is a non-fungible thing and contracts involving such a thing shall be performed by delivering that specific thing and not by delivering any vehicle or land.

THE PURPOSE OF CLASSIFICATION

- **The economic and social values attached to things are not the same**, i.e., certain things are more important than others are. For instance, buildings or houses and land / immovable things/ have a much higher economic and social importance or value than most movable things such as furniture, shoe or an ox.
- The rules governing the acquisition, transfer, proof and extinction of property rights over the various categories of objects are different. For instance, contracts relating to immovable things have to be made in writing and must be registered with the appropriate public organ, while contracts relating to most movable things are not subject these requirements.
- The existence of property rights in relation to immovable things must be proven by producing special written document, while the possessor of most movable things is presumed by law to be the lawful owner. / See Articles 1723, 1195 and 1193 of the Civil Code/.
- The systematic classification of things in to various categories helps the legislator to enact special rules governing the particular category of things which will in turn enable students, judges and other legal professionals to easily understand the law and apply relevant rules to resolve various disputes involving the particular object of property.