

PROPERTY LAW

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KICKING OFF

- ▣ What is property?
- ▣ What is property law?
- ▣ How property right acquired? Transferred and disposed?
- ▣ How do you prove you are an owner of a certain property?
- ▣ Why property rights need protections? Who should be the protector then?
- ▣ Is property right absolute or just needs some restrictions?

CONCEPT OF PATRIMONY

- ▣ Rights can have a pecuniary value and without a value – both are protected by law.
- ▣ Law of obligations – can have rights in rem or in personam
- ▣ Patrimony is the rights and obligations of a person that can be valued in money- having pecuniary value- and transferred.

Features of Patrimony

- ▣ Patrimony can not be separated from the natural person;
- ▣ Every person have patrimony since date of birth or establishment;
- ▣ Every one have one patrimony only;
- ▣ Will be extinct on the date of death;
- ▣ Political rights, marriage related rights, human rights are not patrimonies since they do not have pecuniary value and transferred to other person;

Introduction

- ▣ In common English parlance, the term property refers to things or objects such as a house, a land, a car, a table...etc.
- ▣ It also refers to the right of ownership of person.
- ▣ In legal usage, it is the rights a person may have in relation to things or objects that have economic value.
- ▣ The things or objects in relation to which property rights are exercised are called objects of property.
- ▣ Property refers to rights such as ownership, possession, usufruct, use, and rights of servitude, recovery, preemption and promise of sale.
- ▣ Property law regulates the relations between persons with respect to things or objects.

What is Property?

- ▣ **Property:**
- ▣ Comes from a Greek term called proprius which means self owned;

Requirements

- Appropriable
- Useful
- Pecuniary value
- ▣ Slaves and corporeal movables were considered as properties.

Theories of property

- ▣ There are two main groups of theories of property
- ▣ the first group explain *how private property came to existence*,
 - it describes the facts, which purports to show the origin of private property.
 - It attempts to explain how things came to be owned privately.
- ▣ The second group tries to explain **the economic and asocial reasons behind the recognition and protection or condemnation** of private property.

THEORIES REGARDING ORIGIN OF PROPERTY

1. THE POSITIVIST THEORY

- ▣ Law is but the command of the sovereign. It is promulgated by government officials for reasons of public policy, protection of individual rights, promote the general welfare, increase social wealth or maximize social utility.
- ▣ The idea of property consists in an established expectation; in the persuasion of being able to draw such or such an advantage from the thing possessed. Now this expectation, this persuasion, can only be the work of law.
- ▣ Property and law are born together and die together. Before laws were made, there was no! Property.
- ▣ If you take away laws, and property ceases.

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- ▣ private property is a creation of the state and achieved only after a long struggle with the clan.
- ▣ The essential characteristics of private property such as the right to exclude others, the right to charge the thing for a debt, to alienate or leave by will has been provided by the state machinery by which these rights are enjoyed.
- ▣ 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.

2. THE 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.
- ▣ 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 the community

3. OCCUPATION THEORY

- ▣ The first occupier should be rewarded and property acquired in such a manner is ethically justifiable – it is on this way private property have been created.
- ▣ 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

4. 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.
- ▣ Society needs labor and the occupations are still few where the intrinsic interest is so great that men will labor for the love of it.
- ▣ It enables the acquisition of means of production by those who can use them efficiently and achieve maximum productivity; it encourages independent and specialized risk taking.
- ▣ It encourages saving and reinvestment. The whole effect of these ensures economic growth.

5. THE UTILITARIAN THEORY

- ▣ The function of the legislator/ state is to maximize the sum of human felicity (Utility) or happiness.
- ▣ Private property, which is the expectation of protection provided by the state, is justifiable because it increases human felicity/ happiness

6. 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 bourgeoisie. Hence, private property is the evil that has to be abolished.

THEORIES REGARDING THE JUSTIFICATION OF PRIVATE PROPERTY

- ▣ The theories discussed above in connection with the origin of private property are also used to justify or condemn the existence of the institution.

Objects of property: things/goods

- ▣ The phrase 'objects of property' may be defined as the goods or things over which a right of property may be exercised.
- ▣ The French Civil Code uses 'choses' and 'beins' to refer to objects of property but without defining and distinguishing them.
- ▣ John Austin argues that things are such permanent objects that can be perceived the senses. They are permanent in the sense that they can be perceived repeatedly. According to this definition and other common usages, for a certain matter to be considered as an object of property, it must have:
 - A certain element of permanence, as opposed to events and facts, for example a puff of smoke may not be considered as a thing since it lacks permanence. However, the precise degree of permanence required is difficult to determine.

- A certain element of physical unity i.e. organic unity as in the case of an ox or a sheep, or inorganic unity as in the case of a house made of bricks.
- ▣ In its legal usage, the term thing refers to some possible or potential matter 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 sum of money...etc.

- ▣ Accordingly, under Ethiopian law, objects 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)
 - The terms goods and things are used interchangeably in the code to refer to the same concept (Articles 1126_1140).

Views on the meaning and scope of objects of property

- ▣ Things over private property rights may be exercised fall within the purview of the law of property while those objects over which private property interest cannot be are beyond the reach of property law.
- ▣ The code uses the word thing, good, property, corporeal good, a corporeal thing, and a product without defining the words.

- ▣ Considering the thing as a property is layman's conception.
- ▣ Five dimensions of property
 - Right bearer (the subject)
 - The object over which the property rights are exercised (object of the right),
 - Sovereign right accorded the subject over the object (contents of the right)
 - The sphere beyond which a holder of property right cannot go (limitations)
 - Justification for bestowing semi-sovereign rights in respect of an object up on the subject (justifications).

Definition and scope of property law

- ▣ property law seeks to articulate the principles, policies, and rules by which disputes are to be resolved and by which transactions may be structured so that disputes may be avoided.
- ▣ 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 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 regulates;
 - The manner of acquisition of ownership;
 - Transfer;
 - Definition of possession and possessory rights;
 - Prove of once rights;
 - Protections accorded;
 - Limitation of rights; and
 - Termination of rights.

The purposes of property law

- ▣ Define the rights and responsibilities of property owners.
- ▣ Resolve disputes between property owners.
- ▣ Promote economic efficiency.
- ▣ Protect the environment.

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- ▣ **Protection of Property Rights:** Property law ensures that individuals and entities have legal rights and protections over their property. It provides a framework for acquiring, owning, and transferring property, which fosters economic stability, investment, and individual autonomy.
- ▣ **Facilitating Transactions:** Property law establishes the legal rules and requirements for property transactions, such as buying, selling, leasing, and mortgaging. Clear and enforceable property laws promote confidence in the marketplace, facilitate business transactions, and support economic development.
- ▣ **Certainty and Predictability:** Property law provides certainty and predictability by defining the rights and obligations of property owners. It sets out legal mechanisms for resolving disputes and clarifying ownership rights, which reduces uncertainty and encourages peaceful coexistence.

- ▣ **Economic Development and Investment:** Property law plays a crucial role in economic development and investment. Clear property rights and enforceable legal frameworks encourage individuals and businesses to invest in property, develop land, and undertake productive activities, fostering economic growth and prosperity.
- ▣ **Social Stability and Order:** Property law contributes to social stability and order by establishing a legal structure for resolving property disputes and maintaining peace among individuals with conflicting interests. It helps prevent conflicts and disputes over property rights, reducing social tensions and promoting harmonious cohabitation.
- ▣ **Preservation of Natural Resources and Environment:** Property law includes provisions for the management and preservation of natural resources and the environment. It establishes regulations for land use, zoning, conservation easements, and environmental impact assessments to balance private property rights with the collective interest in sustainable development and environmental protection.

- ▣ **Cultural and Heritage Preservation:** Property law often incorporates provisions to protect cultural heritage sites, historic properties, and indigenous lands. It recognizes the significance of cultural and historical properties and establishes legal mechanisms to preserve and safeguard them for future generations.
- ▣ **Intellectual Property Protection:** Property law encompasses intellectual property rights, such as copyrights, patents, and trademarks. These protections incentivize innovation, creativity, and investment in research and development, fostering technological advancement and economic growth.
- ▣ **Social Justice and Equity:** Property law can be used to promote social justice and equity by addressing issues such as affordable housing, tenant protections, and land redistribution. It allows for the establishment of regulations and policies that balance individual property rights with the broader social and economic interests of society.

Scope of Property Law

- ▣ Giving recognition to the rights
- ▣ Defining the mechanism of acquiring property rights
- ▣ Setting boundaries to the rights created by law
- ▣ Define the mechanisms of right transfer

Source of property law in Ethiopia

▣ The Constitution;

- ▣ Article 40(3) of the Constitution
- ▣ Private property is tangible or intangible, has value
- ▣ Produced by labour, creativity, enterprise or capital of an individual citizen

▣ The Civil code: Book III Article 1126-1552

- ▣ No difference between things (which can be possessed) and choses (anything existing in nature whether subject to appropriation or not)

▣ Other Ethiopian Laws

- ▣ Commercial code (business, intellectual property, shares, insurance policies, commercial instruments) are things.
- ▣ Criminal code Book IV crime against property – Article 689 to 705
- ▣ Family Code: matrimonial and personal property

Jurisdiction over property law

- ▣ Which layer of the government has the jurisdiction to enact property law the federal government or regional?
- ▣ **Regarding**
 1. Water, land and natural resource: the federal government enact the framework law but the administration is left to the states.
 2. Patent, copy right and trade mark rights it is exclusively left to the federal government based on Article 51/19.
 3. The lofty goal of creating a single economic community. Any property right that is believed to serve the purpose of creating one economic community will fall under jurisdiction of the constitution. Article 55/6 based on the approval of the HoF and HoPR

The notion of property under the Code

- ▣ The conception of right in rem has been adopted.
- ▣ The code is organized around the civil law conception of patrimony [the sum total of a person's rights and obligations whether or not susceptible of quantification in monetary terms].

The organization of the Code

- ▣ Goods in General
- ▣ Possession
- ▣ Individual Ownership
 - Acquisitions
 - Transfer
 - Extinction
 - Proof
 - Rights and duties of Owner
- ▣ Joint Ownership
- ▣ Usufruct
- ▣ Servitude
- ▣ Rights of Recovery
- ▣ Restrictions on property rights
- ▣ Collective exploitation of properties and public domain

Generally

▣ Good

- Means anything capable of human appropriation
- Can be corporeal or incorporeal
- Can be acquired only by the means provided by law
- Can be appropriated collectively or privately
- It is not necessary for the good to have economic value to be property at law. It may be invaluable, worthless or negligible value.

CHAPTER II: CLASSIFICATION OF GOODS

▣ Why Classification?

1. The economic and social values attached to things are not the same, i.e., certain things are more important than others are.

- As a result, the rules governing the acquisition, transfer, proof and extinction of property rights over the various categories of objects are different.
- Articles 1723, 1195 and 1193 of the Civil Code/.
- This shows the degree of protection given by the law to the owners of various types objects of property varies depending on their importance or value, i.e., property rights over immovable things are given more protection than property rights over most movable objects.

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2. 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.

Primary Classification of Goods

- The code tacitly classifies those goods which can be appropriate in to corporeal and incorporeal things.
- Corporeal goods , things which can be perceived using human senses are further classified into movables and immovables.
- ▣ Movable and Immovable classification of goods.
- ▣ Criteria of the classification
 - A thing that can move or be moved without losing its individuality is a movable property. They are not fixed in place.
 - Immovables are fixed in place and they cannot move or be moved.

▣ **Reasons for the classification**

- Under the common law legal system properties are classified in to “real property” which includes land and its affixture and “personal property” which includes personal belongings.
- In the Ethiopian setting the classification of goods in to movable and immovable has something to do with the economic importance of the goods.
- The classification reflects day to day realities and makes the law intelligible to the ordinary man.

▣ **Consequences of the classification**

- The following will be undertaken primarily based on the classification of goods to movable and immovable;
 - Transfer of title,
 - Authentication and registration of transfer documents,
 - Manner of acquisition and transfer of ownership,
 - To provide the properties as a security, pledges are available to movable while mortgage and antichresis are available to immovable properties.
- The division of movable and immovable is applicable for the following set of laws
 - Succession law: the liquidator cannot sell immovable property
 - Contract law: contract concerning immovable must be made in writing
 - Agency law: special appointment is required to transact immovable properties of the principal,
 - Civil Procedure: special rules are applicable for the attachment of immovable. Disputes relating to immovable can be entertained by the jurisdiction on which the properties are situated.

Purposes of Classification

1. The method you use to acquire the property is different between the two:

- ▣ Movable property can be owned by direct occupation - Art. 1151...etc. and If it is an immovable property, except during the period of usucaption ArtNo. 1168/ it is not possible to be an owner by occupation.

2. The way of transfer of ownership rights differs between the two:

- ▣ movable property can be transferred from one person to another person by simply giving away the goods. (Art. 1185, 2274, 2395 and 2444(1) can be mentioned).
- ▣ it is not possible to transfer immovable property from one person to another unless the formalities prescribed by law are met (ex. Written contract, registration Art 1723, 2877-2879)

3. Helps to determine the court having jurisdiction

- ▣ Suits relating to movable property shall be filed in the court where the plaintiff resides, or, if there is a contract, where the contract was made or where the contract is to be performed. CPC Art . 24).
- ▣ Suits for immovable property shall be filed in the court where the immovable property is located. Article. 25).

4. There is a difference between the two in terms of being a security for a debt:

- ▣ It is possible to pledge movable property for debt (Art. 2825... etc.); (Mortgage of special movable property such as ships, airplanes, etc. is subject to protection). In the case of immovable property, however, it is possible to provide a loan through a mortgage. (According to Law Art. 3041... etc.)

5. There is a period of limitation difference between the two:

- ▣ For movable property, the period of limitation set by law is short /for example, CC 1165, 1192/; The time limit set by the Immovable Property Law is longer Article . 1168/

6. Obtaining the right to be an owner by acquiring in good faith:

- ▣ When a person who owns a movable property in good faith can become an owner of the property CC Art. 1161.
- ▣ Ownership over immovable property cannot be acquired by being a bona fide owner.

7. Different conditions are required to prove the right of ownership of property:

- ▣ In order to prove the right of ownership of movable property, being the possessor of the property is presumed to be an owner in itself Article. 1193.
- ▣ In order to prove ownership of immovable property, it is necessary to submit a title deed certificate CC Art. 1194-1196/.

8. Inheritance of property acquired by inheritance or gift:

- ▣ Immovable property left to the heir by inheritance or gift from his father's or grandfather's side of the line cannot be transferred by inheritance to the heirs of the mother's line. Also, it is not possible to transfer the inheritance from the mother's or grandfather's side to the heirs of the father's line (CC. 849, 1088).
- ▣ No such requirements for inheritance of movable property.

9. The guardian of a minor child is authorized to sell movable property that is the child's property, but does not include immovable property (Family Code Art. 289).

▣ **A movable property**

- Under Art.1127 of the civil code, movable thing is an object that can move or be moved by human agent losing its essential feature.
- This includes animate and inanimate things.
- The movement of the thing from one place to another should not change the quality and the quantity of things.
- Movable things can be divided into movable by nature, become movable by virtue of their application/attachment to a movable object, movable by anticipation, incorporeal movables, intrinsic elements and accessories.

a) **Movable by nature**

- Article 1127
- There are three requirements for a thing to be movable by nature. a) the thing must have material existence or must be perceptible by the senses, b) it must be able to move itself or be able to be moved by man, and c) must not lose its individual character when it is moved.

b) Things which the law deems movable

- Article 1129 and 1128
- Natural resources such as electricity which have an economic value and have been mastered by human beings and used by them are movables.
- Claims and other incorporeal rights embodied in securities to bearer are considered as movables as a matter of law.

c) Intrinsic elements of movable

- Intrinsic element is an essential/integral aspect of a thing, that makes it complete, without which the thing would be incomplete.
- Intrinsic elements of movable things merge with it and become movable as well.
- In any transaction, the intrinsic elements forms part of and follow the principal.
- We have three kinds of intrinsic elements:
 - a) Elements customarily linked with the principal: the practice of the relevant community in the question of the relationship between those objects needs to be proved. The material union between things and the detachment of one from the other must lead to destruction.
 - b) Elements materially united with the principal: Article 1132(2) , the identity of the person and its intention being irrelevant, two thing shall be materially interconnected and separating the two objects must result in destruction or damage to the principal thing.
 - c) Elements deemed intrinsic by operation of the law:

d) Accessories of movable

- Article 1136
- There can be an accessory-principal relationship between two movable things when a usufructuary or an owner intentionally permanently destines a movable for the economic benefit of another movable it becomes an accessory.
- An accessory remains an accessory when it is temporarily separated from the principal object, it does not lose its own character as a movable property and third parties maintain their rights to the accessory.

e) Movable by anticipation

- Article 1133(2)
- This includes trees and crops that are affixed to a land and become movable by anticipation when they are subject to an agreement to separate them from the land in the future.
- All movables by anticipation are treated as ordinary movables.
- Under Article 2268 (1) sale of an intrinsic element of an immovable amounts to sale of movable where such parts are to be separated from the immovable and transferred as a corporeal chattel to the buyer.

f) Incorporeal movables

- Incorporeal goods are those which have an economic value but can't be grasped by the senses.
- This includes business, which is the assembly of tangible and intangible resources to make profit.
- A business is regarded by the law as a movable property for transaction purposes.
- Shares that denotes the rights and duties of a member of a business organization, is regarded as a movable property.
- Intellectual properties (copyright, patent, industrial design, industrial models, trademark and trade secrets) are classified as an incorporeal movables.

g) Real property rights which attach to movable

- Movable real rights are rights connected to physical movable objects. They are movable by the object to which they apply or movables by the operation of the law or movable rights.
- A pledge established in relation to the a corporeal movable thing is a movable real right (Art. 2825-2874), a usufruct created over a corporeal movable is a movable right as well Article 1309.

▣ **Immovable properties**

- ▣ Article 1130
- ▣ The provision lists two prominent immovable properties i.e. lands and buildings.
- ▣ Land is the individualized portion of the earth and includes the airspace directly above and below the surface of the earth.
- ▣ Rights of a person in a plot of land extend to the airspace and the sub-surface only to the extent necessary for the use of the land. Article 1209 and 1211.
- ▣ A building is any man made structure placed or affixed on to earth. It includes tower houses, roads, tunnels, irrigations channels, dwelling houses, office buildings, bridges, wells, ovens, dikes, dams, tunnels and the like.
- ▣ The Ethiopian property law categorizes immovable things into immovable by nature, real rights that have the status of immovable, intrinsic elements of immovable and accessories to immovable.

a) **Immovable by nature**

- Comprises building and lands.
- Buildings need to have a permanent nature.
- Unlike accessories to immovable, immovable by nature cannot be moved by the act or intention of its owner because its status is fixed by law.

b) Real rights that have the status of immovable

- ▣ Intrinsic elements of immovable
- ▣ Accessories to immovable

Subsidiary Classification of Goods

- Corporeal and Incorporeal
- Consumable and non-consumable
- Fungible and non-fungible
- Divisible and indivisible
- Principal things and their fruits
- Things in the public and private domain
- Personal and collective thing
- Collective thing versus common things
- Ordinary movables and special movables

Intrinsic and Accessory Element of Goods

- ▣ Intrinsic Elements of Goods:
 - UOA, dealings over a certain movable or immovable property includes the intrinsic element as well.
 - How to determine intrinsic element – Art 1132
 - ▣ Customs
 - ▣ A thing materially attached to another thing and cannot be detached without damage;
 - ▣ Ex. Trees and crops are intrinsic elements to the land;
 - Effects of IE:
 - ▣ The IE will not be separately treated as a good;
 - ▣ Third parties will no longer have right;
 - ▣ Third parties can claim by the law of unlawful enrichment.

▣ Accessories Art. 1135-1139

- The dealings over the parent thing includes the accessories also.
- Accessories are things which the owner permanently attached to the parent thing for the utilization of such parent thing.
- Temporary detachment will not affect the characterization of being an accessory.
- How long is temporary and permanent?
- Effects of Accessories:
 - ▣ Will not be claimed against third parties unless included in a written document.

CHAPTER III POSSESSION

- ▣ Definition of possession
- ▣ Theories of possession
 - ▣ Public order theory
 - ▣ Will theory
 - ▣ Ownership theory
 - ▣ Continuity of possession theory
 - ▣ The entitlement theory
 - ▣ Law and economics perspective

DEFINITION OF POSSESSION

- ▣ The term 'possession' may be defined as the detention and enjoyment of a thing by a person himself or through another person in his name.
- ▣ It refers to the relation of person to a thing over which he may, at his pleasure, exercise such control as the character of the thing permits to the exclusion of other persons.
- ▣ Possession in the narrow legal sense is the holding of a thing in the power of a person who intends to exercise, with regard to it, a property right. Refer to Art 1140 of the Civil Code.

- ▣ Possession means that taking control of and having a command over a movable or immovable property in an ambiguous or undisguised manner.
- ▣ it is not only being able to control and command the property, but also to use and serve the property.
- ▣ A person can become a possessor in different ways. For example, by being the beneficiary of the loan, being the owner of the property, holding a property as a pledge, etc.
- ▣ Possession describes the relationship between a person and a property, not the right of property ownership. In fact, it has narrower rights than the rights of owners.
- ▣ The concept of possession first emerged to refer to the physical control of a thing by a person. The distinction between detention and possession follows from a proper analysis of the latter concept, i.e., the fact that possession is made up of two elements.

- ▣ *The exercise of a right in relation to an object consists of either physical acts of use, enjoyment, or transformation, or legal acts of administration and disposal.*
- ▣ Possession is, in the broadest sense, the state or relation of fact that gives a person the physical, actual and exclusive capacity with regard to a thing to carry out acts of use enjoyment or transformation.
- ▣ However,
 - the exercise of the legal acts of administration or disposal does not necessarily require the fact of possession because an agent who is acting in the name of the actual possessor may perform such acts.
 - The owner of a thing can sell or lease it even if it is occupied by or is in the possession of a third party.
 - If a person has a thing in his power, without intending to exercise to it a real right, the situation is more specifically called simple occupancy or holding, or detention.

THEORIES OF POSSESSION

1. SAVIGNY'S/CLASSICAL/ THEORY OF POSSESSION

- ❑ Possession consisted of two ingredients, corpus (effective control and animus domini (the intention to hold as an owner).
- ❑ The **corpus** (dominium, occupation, physical control) is element of **physical control** and
- ❑ **Animus** is element of **intent** with which such control is exercised.
- ❑ Since the detentor and possessor have the same physical control the difference between these terms must be found in the mental element, the intent which distinguishes the possessor is the animus (the desire to hold for one self and not on behalf of another.
- ❑ However, this theory was faced with the difficulty that in certain cases Roman law gave a non-owner possessory right which Savigny rejected as anomalies (exceptions) and termed them as derivative possession, i.e., possession derived from the owners.
- ❑ So this is a subjective theory as it gives emphasis on the mental attitude of the owner.

2. JEHRING'S THEORY OF POSSESSION

- ▣ Argued that the Roman law were devised to benefit owners by protecting their holding of property and so placing them in the advantageous position of being defendants in any action as to title.
- ▣ Persons who had property would be owners in majority of cases and possession was attributed to them in order to make the interdicts available..
- ▣ **According to this theory a possessor is a man, who in relation to a thing, is in a position in which an owner of such thing ordinarily is, animus being merely an intelligent consciousness of the fact.**
- ▣ This theory explains those cases, which were difficult to Savigny such as the pledge and the usufructory that were given possession right.
- ▣ However, it fails to explain the cases where the law denies possessory right to those who are in exclusive physical control of a thing such as a borrower, a tenant and a deposittee.
- ▣ The anomaly in this theory is that not every detentor is a possessor and it fails to explain these exceptions.
- ▣ The is an Objective theory as it holds that any one who takes control of the property would be considered as an owner of the same.

3. SALMOND'S THEORY

- ▣ Distinguish between possession in fact and possession in law - that there is only one conception and that is possession in fact which is possession in truth /in fact, and possession in law is a legal fiction.
- ▣ Distinguish between possession of physical objects, which he called corporeal possession and possession of rights, which he called incorporeal possession.
- ▣ Corporeal possession is the continuing exercise of claim to the exclusive use of physical or corporeal things and the extent of this claim involves two ingredients corpus possession and animus possidendi.
- ▣ Hence, corporeal possession is animus and corpus the animus possidendi is the intent to exclude others, i.e., to hold for ones own interest.
- ▣ He further classified the corpus possessionis under two headings;
 - The relation of the possessor to the thing; and
 - The relation of the possession to other persons.

- ▣ The relation of the possessor to the thing, which must allow him to put the thing to the use which accords with its nature.
- ▣ The relation of the possession to other persons. A person shall be considered to be in possession of a thing, where the facts of the case are such as to create a reasonable expectation of non-interference in the use of it.
- ▣ This later condition of expectation of non-interference is one of the grounds on which this theory is criticized.
- ▣ Critiques argue that expectation of non-interference is not necessary for the continuation of possession. For example, a man continues to possess his pocket book although pickpocket, who would interfere with his use of it in a few moments, is pursuing him.
- ▣ The other point of criticism is the assumption that corpus and animus, which are only conditions for the acquisition of possession, are possession themselves.

Elements of Possession

- ▣ The Corpus or element of physical control
- ▣ The Animus or element of intent with which such control is exercised.
- ▣ Though the holder and the possessor have the same physical control, the difference between them is found in the mental element, i.e., the intent of the possessor.
- ▣ The possessor has the desire to hold for one self and not on behalf of another.
- ▣ On the other hand, the mere holder holds the thing not for his own benefit but for the benefit of another person.
- ▣ The following three situations became possible in relation to possession of a thing.
 - A man could have physical control without possession and its advantages.
 - He could have possession and its advantages without physical control.
 - He could have both, i.e., he may have physical control as well as the advantages attached to possession.

ACQUISITION OF POSSESSION

- ❑ The acquisition of possession is realized if the two constitutive elements concur, i.e., where the present and exclusive power to act physically with regard to the thing (corpus) and the manifestations of an intention to keep the thing as owner (Animus) exist.
- ❑ The action by which a person obtains the present and exclusive power to act physically with regard to thing is called seizing (apprehension).
- ❑ This power can result from various material circumstances or situations and suffices to acquire possession, without regard to the physical nature of the acts or means through which it was obtained.
- ❑ Thus, it is possible to take possession of a land without physically entering it or of a corporeal movable thing without touching it.
- ❑ However, acts which constitute criminal violation of property rights or which would have been enjoined judicially as affecting possession of a third party are not effective for acquiring possession.

- ▣ As distinguished from exercising physical control, which can be exercised through third party, the intent to possess must internally exist in the person of the possessor himself and manifested by him.
- ▣ However, it may be manifested through a mandate given in advance to a third party to take possession.
- ▣ In such cases, the principal acquires possession from the time when the agent entered into a contract or other juridical act for his account.

- ▣ Possession is deemed to exist when there is physical control of the object and the intention to use and serve it as a possessor.
- ▣ In principle, the two conditions must be fulfilled.
- ▣ In exceptional cases, however, the two may differ. For example, a person with a mental illness needs the guardian's consent because he or she has lost or diminished intelligence.
- ▣ In another case, a person can take possession of a property / object / put it under his control; but the idea of ownership can be held by someone else. For example, a situation between an agent and an agent can be mentioned.

DEFECTS OF POSSESSION

- ▣ Possession may be affected by flaws either in the the animus or in the the corpus through which possession has been acquired or continued.
- ▣ A defective possession shall not produce the effects that are normally associated with possession, does not give rise to any right. See Art 1146/1/ of the Ciyvil Code.

Grounds for making a possession defective.

1. PRECARIOUS POSSESSION

- ▣ *Possession of a person is affected by the defect of precariousness if the person does not have a right of ownership in relation to the object he holds.*

- ▣ A person who possesses a property is expected to use the property carefully and continuously.
- ▣ Is the possession of those who hold a thing for another on basis of an agreement or in such quality that, at the expiration of the agreement, or where they lose their quality, they must return the thing.
- ▣ Ex. a usufructuary, a limited user /usage/, a tenant farmer, leaseholder or a pledgee, a creditor secured by antichresis, a tutor with regard to a minor's property is affected by the defect of precariousness.
- ▣ Simple occupants lack the animus element (intent to hold for themselves).
- ▣ However, those simple occupants who hold a real interest in the thing, such as a usufructuary, a holder of a use right, and a pledgee are considered as possessors in relation to all persons other than the person to whom they have the obligation to return the thing.
- ▣ The defect of precariousness can be healed only by change in the nature of the possession resulting from a legal ground originating in a third person or from the owner, or from a formal contest by the simple possessor against the person for whose account he has been holding.

2. CLANDESTINE POSSESSION

- ▣ Like all other legal rights, possession should be used or used in a clear manner and the public should know about it.
- ▣ It means that it must be clearly visible to all who are interested in knowing your possession.
- ▣ Possession is clandestine, that means not open, if the acts by which it was acquired and continued were not such as to be known to the outside, especially to those persons against whom they are to be claimed.
- ▣ This defect can be healed as soon as it is revealed by material acts openly carried out.
- ▣ Clandestineness is purely a relative defect that can be subject to claim only by those who could not have known about the possession.

3. VIOLENCE

- ▣ A possession acquired or continued by acts involving physical or psychological violence is vitiated by a defect of violence.
- ▣ The Ethiopian law does not clearly declare violence as a cause for defectiveness of possession. See Art 1146 of the Civil Code.
- ▣ However, we can deduce from the provisions of Art 1148, which allows a possessor to use force to recover a thing which has been taken away from him through violence, that a person who used force to acquire possession is not protected by the law as his action is unlawful and violates public interest for peace and order.
- ▣ Therefore, a possession that is acquired through violence or force is defective and cannot produce the effects of a lawful possession.

4. AMBIGUITY/DUBIOUSNESS

- ▣ Possession is said to be ambiguous where it is not clear whether the person is holding a thing in his own name or in the name of another person.
- ▣ According to Art 1146/3/, a possession is said to ambiguous or dubious where, in the circumstances, it is doubtful whether the thing belongs to the person who claims to be the possessor or whether he holds the thing on behalf of another person.
- ▣ This type of defect clearly related to the mental or animus element of possession. Arts 1146/1/, 1168 and 1150 of the Civil Code.

EFFECTS OF POSSESSION

1. Establish Ownership:

- Possession may create ownership either by occupation, i.e., by taking control of res-nullius/ a thing without an owner/ or through the expiration of a period of acquisitive prescription. Art 1151 and 1168 Of the Civil Code.

2. It is a **prima facie** evidence of ownership,

- Those who disturb a possessor must show either title/ownership or a better possessory right and defense of lack of legal title by the possessor may not be set up him.
- even a wrongful possession is good against all persons except the true owner or one claiming through him or one claiming a prior possessory right.
- Art 1193 of the Civil Code.

3. Helps to get Remedies

- ▣ Possession is the basis for certain remedies
- ▣ The doctrine that in most cases possessors are the rightful owners
- ▣ Hence, the law protects, even a wrongful possessor, from dispossession by the owner without due process of law and the owner has to institute legal action by proving his ownership right to recover the thing.

PROTECTION OF POSSESSION

- ▣ The law protects possession for the following reasons,
 - It aids the criminal law by preserving the peace and order;
 - To enable citizens use their property and enjoy the fruits – Art 40 of the Constitution.
 - The law recognizes the relationship between a property and its owner or occupier, and protects the law against illegal interference and extortion from any person.
 - The goal that the law seeks to achieve through the protection of property rights is to take care of economic benefits and motivate people to use the resources efficiently.
- ▣ Two main types of protections provided by the law:

1. POSSESSORY ACTIONS

- ▣ Possessory actions are those that are based exclusively on possession without touching the basis of the title.
- ▣ Include actions to retain possession, actions in restraint of works by neighbors and actions to recover possession. Arts 1149 and 1206 of the Civil Code.
- ▣ Are legal actions or suits instituted by a possessor who has been disposed of his possession or whose possession is interfered with or whose possession is threatened by the actions of another person.
- ▣ The action for recovery of possession is an action by which the possessor, or even a simple holder, who has been dispossessed can claim that a state of things, which was changed or eliminated to his detriment by violence or otherwise, be restored.

- ▣ Things and interests with regard to which a possessory action can be brought are corporal immovable, their usufruct, servitudes and immovable rights of enjoyment and use.
- ▣ Since possession of corporeal movable things /chattels/ is equivalent to ownership, the action applicable to them is negatory actions, i.e., actions based on title or ownership and that are intended to recover the same.
- ▣ It shall not apply to things that are considered as part of the public domain. See Art 1444-1447 of the Civil Code.
- ▣ The possessor of land expropriated for public purposes such as construction of local roads can bring a possessory action against the municipality, which would contest his right to be compensated. This action does not aim at retention or recovery of possession, but at the recognition for the purpose of establishing his title to the compensation.

- ▣ Usufruct, use and habitation rights can be the object of possessory actions in as much as they are related to corporeal immovable things in-commerce/ belong to the private domain./.
- ▣ Legal servitudes or servitudes established by law can give rise to a possessory action provided that the plaintiff still is or was, at the time when the interference occurred, in possession of the servitude.
- ▣ Continuing conventional servitudes and apparent servitudes can be the subject of possessory action without the plaintiff having to show the title on which his possession is based.

▣ **Who can bring the law suit?**

- Art 1149/1/ of the Civil Code,
- a possessor
- or even a holder

▣ **When?**

- At the time he's is dispossessed of his possession or whose possession is interfered with .
- According to Art 1149/2/, a possessory action of any type shall be barred if not brought within a period of one year/ the Amharic version provides two years/ from the day of the usurpation or interference.
- the possessor loses his right to require the restoration or cessation of interference where he fails to institute legal action within the period of two years.
- he may still recover the thing by instituting action for restitution/ nugatory action/ under Art 1206 of the Civil Code provided that he can prove his right of ownership and as long as he has not lost his ownership through extinctive prescription. Art 1168 and 1189 of the code.

▣ **What is the claim about?**

- for the restoration of the thing or
- cessation of the interference and
- claim compensation for damages resulting from the dispossession or interference.
- See also , Arts 1210 and 1225/2/ of the code

- ▣ Art 1149/3/ of the code provides that the court, provided that the plaintiff has proven his possession and the interference in such possession, shall order the cessation of interference or the restoration of the thing unless the defendant can prove forthwith and conclusively the existence of a right in his favor justifying his conduct.

2. USE OF FORCE

- ▣ Use of force is the other means provided by the law for the protection of possession.
- ▣ The law allows the possessor or holder to use force in order to repel violent actions of persons aimed at taking the thing under his control.
- ▣ Art 1148: using a reasonable force to prevent a person who intends to dispossess him or to retake possession of a thing which has been taken away from him by force or which has been stolen from him provided that the usurper is caught in the act or when running away.
- ▣ der Art 1148, entitles even a mere holder to this mode of protection of possession.
- ▣ This is because this mode of protection is more than a mere protection of property interests of a person; it rather intended to enable the person to take measures to protect his/her personal security.

There are factors that must be taken into account in order to prevent violence against possession using force:

- The right to defend by force to recover property taken from you should be applied to the person who is the cause of the problem or the person who created the problem, and should not be applied to a third party.
 - The right to use force should be proportional to the problem and that it is forbidden to go beyond the limit,
 - The act of using force to prevent should happen as soon as the problem that caused it to be prevented immediately.
- ▣ These conditions are closely related to the right to defense provided by Article 78 of the Criminal Code.

TRANSFER OF POSSESSION

- ▣ The transfer of possession may result from **contracts** such as sale, donation or **operation of the law**.
- ▣ Possession may be transferred by the delivery or handing over the thing or documents representing the thing such as a bill of lading, consignment note, a ware house goods deposit certificate.
- ▣ It may also be transferred through delivery *bravemanue*, i.e., an agreement between the holder and the person for the account of whom the former exercises possession and in which the holder ceases to hold in the name of another and begins to possess in his own name.
- ▣ Alternatively, it may be transferred through constructive possession in which the possessor agrees to cease to hold in his own name and to begin to hold for the account of another who is considered as the actual possessor. See Arts 1143-1145 of the Civil Code.

LOSS OF POSSESSION

- ▣ Since both animus and corpus are necessary for possession, possession is lost when one of the two elements ceases to exist. The isolated continuation of one element does not suffice to maintain it.
- ▣ However, a possessor shall not be considered to have lost his possession by the sole fact that, at a given time, he was not able to exercise physical control in relation to the thing or that he did not intend to hold it in his own name and for his own benefit.
- ▣ Possession is lost only by deliberate abandonment or by a physical obstacle that makes it impossible to reconstitute, at any time the possessor desires, the state of affairs that constituted the possession. Art 1142 of the Civil Code.
- ▣ Under French law possession of movable things is lost as soon as they have ceased to be under the power or control of the possessor.
- ▣ Possession of wild animals is lost as soon as they have acquired their freedom. Possession of tamed animals such as bees and pigeons is lost when they cease to return habitually to their hives or dovecotes, or when they lose their animus revertendi, i.e., 'their intention/habit to return'.

- ▣ Possession of immovable things can be preserved solo-animo, i.e., it is not lost just because the possessor has voluntarily abstained, for a time, from material or physical acts of possession or has been incapable to exercise them because he was too far away, or because of the nature of the immovable, or because of some temporary obstacle.
- ▣ However, abnormally long intervals between acts of possession, taking in to account the nature of the thing, may be considered as a tacit renunciation. Art 1142 of the Civil Code.
- ▣ Furthermore, possession is not necessarily lost just because a third person has occupied the immovable. It shall be lost only if he occupies the immovable for a year. / Arts 1142 and 1149 of the Civil Code/.
- ▣ If the former possessor lets this period elapse without any act of enjoyment or any claim for return of possession, whether he did or did not know of the adverse occupancy, he shall lose his right of possession. This is true even if he manifested his intention to continue in possession by acts such as the payment of taxes.

Questions

- ▣ The law provides the right to defend possession by force and file a case of violence removal not only for the possessor, but also for the person who holds property on behalf of another person. What do you think is the reason?
- ▣ Can a thief become a possessor?
- ▣ Explain what are the rights of a possessor?
- ▣ Can the possessor exercise power over the owner of the property or not?
- ▣ Explain the ways in which possession can be **transferred**.

CHAPTER IV: OWNERSHIP

- ▣ Definition and content of right of ownership
- ▣ Various conceptions of ownership
 - ▣ Ownership as an exclusive right
 - ▣ Ownership as an absolute right
 - ▣ Ownership as the sum total of rights
 - ▣ Ownership as a synergy of certain rights
 - ▣ Ownership as the widest right
 - ▣ Ownership as a functional concept

- ✓ Right of ownership is the widest and the ultimate property right that may be had in relation to things or objects.
- ✓ Is a legal relationship that gives rise to certain rights and obligations between persons in relation to an object.
- ✓ Ownership is said to be absolute in the sense that the owner may do as he likes with the thing that is his own.
- ✓ The rights of an owner include;
 1. **The right of use and enjoyment**, which includes the right to determine to what type of use the object may be put, to deal with the fruits of the thing as he likes, and even the right to destroy the thing or its fruits. Arts 1205/1/ and 1270-1271 of the Civil Code.
 2. **The right of possession** that includes the right to exclude others. Arts 1204, 1148 and 1149 of the Civil Code.
 3. **The right to transfer the thing and its fruits for consideration or gratuitously** which could be intervivos / while the owner is alive / or mortis causa/ up on his death/ and the right to charge them as security (mortgage or pledge). Arts 1205/2/ and 3049/2/ of the Civil Code.

Some other sources also argue that a right of ownership is composed of the following main elements;

- The right to use the object himself (the usus)
 - The right to collect and use fruits - such as crops or rents (the fructus)
 - The right to dispose of it and its fruits by alienation by destruction (abandonment) and the right to charge it with pledge or mortgage (the abuses)
-
- ✓ Ownership is said to be 'exclusive' because these rights are in principle available only to the owner, and is "perpetual" since these rights are neither extinguished by non-usage nor limited by duration. See Art 1204 of the Civil Code.
 - ✓ The owner can, at will, use or enjoy his property, dispose it off, perform all the legal transactions to which the thing is susceptible, and to exclude all other persons from participating in the exercise of these rights.
 - ✓ However, an owner may not possess or exercise all the rights set out above and his rights may be restricted by law or by an agreement he has made with another person.
 - ✓ The fact that an owner may cede so many rights and still retain ownership raises difficulties of definition. From this we can consider ownership as the magnetic core which remains when all present rights of enjoyment are removed from it and which attracts to itself the various elements temporarily held by others as they lapse.

✓ To understand the concept of ownership comprehensively, let us try to distinguish between:

1. **Ultimate Ownership-** in which other persons hold the rights of present enjoyment temporarily through contracts such as usufruct or lease and the residual magnetic core is left to the owner.
2. **Complete or Beneficial Ownership-** in which the owner enjoys all the rights and privileges emanating from it.

▣ ***RESTRICTIONS ON THE RIGHT OWNERSHIP***

- ✓ Restrictions may be based on public interest, for instance the law orders that animals affected by or suspected of having contagious diseases be reported and isolated, that they not be sold or offered for sale. Arts 2369 and 2373 of the Civil Code.
- ✓ Under French law historical monuments/ antiquities/ may not be sold, if they are owned by the state. And if individuals own them the state has a right of preemption upon their sale by public auctions.
- ✓ Under the Ethiopian Research and Conservation of Cultural Heritages Proclamation No 209/2000/, cultural heritages discovered after the 27th of June 2000 may not be privately owned / Art 14/2/ and Art 35/3/ of the proclamation.
- ✓ Individuals who own or possess cultural heritages on the coming in to force this law are required to report their possession to the Cultural Heritages Conservation and Research Authority and get them registered. See Art 17 of the proclamation.
- ✓ The state may confiscate any privately owned cultural heritages when it believes that they are not properly protected, repaired or restored or where they are exposed to damage or decay.
- ✓ The state can also expropriate, against payment of compensation, objects of historical, artistic or archeological interests where it finds it necessary to preserve them in a museum.
- ✓ Transfer of privately owned cultural heritages is subject to prior notification by both parties to Authority which has a right of preemption, i.e., a priority right to purchase the cultural heritage.

- ▣ The owner of a movable may be deprived of his property through requisition under conditions specified by law; similarly immovable things may be expropriated, against payment of compensation, where they are needed for public purposes. See Arts 1319/2/ 1460 and 1464 of the Civil Code.
- ▣ The law may also require that an owner be prohibited completely from exercising certain powers naturally inherent in right of ownership, or allow him to exercise them only under specific conditions.
- ▣ Such restrictions or burdens that result from the law constitute statutory/legal servitudes, if they are established with relation to one estate for the immediate benefit of another estate with a character of a dominant estate.
- ▣ Public interest or service includes construction of pre-determined public works such as public health, urbanization, conservation of historical or natural monuments and sites, reforestation and conservation forests.

- ✓ The restriction on the right of ownership may also be based on considerations of mutual interest of neighboring estates.
- A. It is prohibited to undertake on one's estate works or operations that may materially endanger a neighboring estate for instance, excavations or ditches which may result in damages to buildings or agriculture. See Arts 1210 and 1225 of the Civil Code.
- B. The law prohibits owners from causing nuisances to a neighbor by noise, smoke, gases odor if it exceeds limits considered tolerable. See Art 1225 "Good neighborly behavior". The neighbor who is the victim of such nuisance may require repair of the damage caused or get an injunction/ a court order requiring suspension of such act/ and payment of compensation. See Art 1226.
- C. The law prohibits an owner from directing water to another's holding waters other than proceeding from rain or a spring and flowing naturally from higher to lower grounds. For example, water from a well, or a shaft, waste or polluted water from industry, water used for irrigation may not be directed to the neighbor's land. See Art 1246 (1) of the Civil Code.
- D. The owner of a building must construct the roof so that rainwater falls in to the public road or on his own land. See Art 1245.
- E. Under French law the owner of a wall or a building, which is not far enough from the neighboring estate is required to permit opening of direct or indirect view or access of light through windows with wired glass panes "picture windows" and iron grillwork with opening not larger than 10 cm

F) The owner/holder of land is required by law to allow access to his land/holding in some circumstances. Hence, he/she may not prohibit access to his/her land where it is necessary: -

- To prevent or avoid eminent damage or danger to life or property (Art. 1217)
- To repair of walls or buildings (Art 1218)
- To recover lost things or animals (Art 1219)
- To install of pipes (Arts 1220, 1252, 1253)
- To allow right of way to a neighbor (Arts 1221-1224, 1249(2))

▣ *PROPERTY RIGHTS WITH REGARD TO LAND AND WATER*

- ✓ Under Art 40 of the FDRE Constitution land/ both rural and urban/ is declared to be the property of the state of Ethiopia and its peoples.
- ✓ However, the constitution entitles Ethiopian farmers and pastueralists to obtain farmland/ pastureland free of charge and a right of use of such land.
- ✓ It also provides that investors in the agriculture sector may also obtain land in accordance with land use laws to be issued by the regions. In urban areas, individuals and investors have the right to obtain land necessary for construction of buildings for residential or commercial purposes in accordance with the land lease law issued by the House of Peoples Representatives and City or Regional governments.
- ✓ Regarding property rights in relation to water resources, Arts 1255 and 1447 of the Civil Code provide that waterways (rivers), lakes and underground accumulation of water shall be deemed to form part of a public domain, i.e., they can not be privately owned, alienated, or acquired through possession in good faith, occupation. See also Art 1454 and 1455.

SCOPE OF RIGHT OF OWNERSHIP/USE OF LAND

- ✓ The ownership/holding and use right/ of land includes what is above it. In other words, the air space is exclusively the owner's/ holder's/ and he can erect in it structures, he may demand the destruction of works which, in any way infringes his air space, or the cutting of branches which grow in to it. See Art 1211 and 1212 of the Civil Code.
- ✓ There is a presumption that the owner/holder of the land owns what is constructed on it. However, this presumption is refutable if the owner of a building is different from the owner/holder of the land on which it stands. See Art 1214 and 1200 of the Civil Code.
- ✓ However, the natural proposition that ownership of the land implies the title to whatever is above it cannot be reversed to conclude that the ownership of works on it implies ownership/holding of the land.
- ✓ The ownership/holding of the land extends to a depth below, including all the objects located there. Art 1255(2) limits this right to a depth of 100 meters.

ACQUISITION OF OWNERSHIP

▣ **Derivative Acquisition;**

- Is the mode of acquisition right of ownership through transfer from one person to another.
- here is that no one can transfer a better title or right than he has, and where the transferor is not an owner or if his right is defective, the transferee will not acquire right of ownership or will acquire a defective right.
- may result from contracts such as sale and donation/ Arts 2266-2426 and 2427-2470 of the Civil Code respectively or from the will of a deceased person/ testate succession/ or the operation of the law, in cases of in testate succession/ Arts 826-1125 of the Civil Code/.

▣ **Original Acquisition;**

- involves the creation of new property a right, which is independent of any preexisting rights over the same thing.
- This mode of acquisition of ownership includes occupation, possession in good faith, accession and usucaption/ acquisitive prescription,

▣ OCCUPATION

- Is a mode of acquiring ownership by the sole fact of taking possession of a thing that does not have an owner with the intention of becoming an owner.
- is largely limited to chattels such as wild animals, birds, fish /res nullius/ and abandoned chattels /res derelictae/ and treasures. In the past, land could also be acquired by occupation or cultivation.
- Hence, occupation or first possession as a mode of acquisition of ownership right is limited to the following cases.

1. **Wild Animals;**

- a person may acquire ownership right of wild animals living in natural freedom through the act of hunting and fishing in accordance with the law.
- this cannot apply to semi-domesticated animals that customarily return to the same habitat, for example, pigeons, bee swarms. Art 1152 and 1153 of the Civil Code.

2. **Treasures;**

- anything hidden or buried to which nobody can show an ownership title and which is discovered by chance.
- Art 1159/3/ of the Civil Code, for a thing to be considered as a treasure it must be found buried or hidden, in an immovable or movable thing, for a period of at least 50 years on the date it is discovered and nobody can prove it belongs to him/her.
- The rule is that the owner of the immovable or movable thing in which a treasure is discovered shall acquire ownership to it by occupation or his discovery.
- where the treasure is discovered by a person who is not the owner of the thing in which it is found, the finder shall be entitled to half of the value of the treasure he discovered.
- a person shall not acquire ownership of archeological discoveries and antiques because of the historical importance attached to these categories of treasures.
- the thing must have been owned originally, and precious stones or gold grains found in their natural mining place are not considered as treasures. Ownership of natural resources belongs to state and a person must acquire a license to mine natural resources.

3. Lost things;

- lost things and misplaced things have an owner but the owner does not know where to find them.
- the law attributes ownership to the finder after a lapse of certain period of time, or completion of certain requirements such as announcement of the find or report to the authorities.
- the finder of a lost thing has the duty to comply with rules requiring him to report the find
- the finder may have to make public announcements/ that may include local radios/ or post notices, at public places...etc, about the thing found. Art 1154/2/ of the code.
- A finder who has complied with this requirement shall have the right to keep the find in his possession and shall take all the necessary measures to preserve thing. Art 1155 of the code.
- where the thing is vulnerable to rapid deterioration or where its custody or preservation is onerous, the finder may sale the thing at a public auction in which case the proceeds of the sale shall replace the thing sold. Art 1156 of the code.
- Art 680/1/ of the FDRE Criminal Code provides that a person who appropriates a lost object which he has found without notifying the authorities or taking the measures necessary to trace the owner shall be punishable, up on complaint, with fine not exceeding 5,000.00 Birr, or according to the gravity of the case, with simple imprisonment not exceeding one year.
- the owner retains the right to ask for its return as long as he has not lost his right of ownership, i.e., within a period of ten years from the date of loss of the object. Arts 1157/1/ and 1192 the Civil Code.
- In such cases the owner shall have the obligation to reimburse the finder with the expenses the latter has incurred for the custody and preservation of the thing. Art 1157/2/ of the code.
- Where the owner fails to claim the return a thing found within a period of ten years the thing shall become a thing without a master and the finder shall acquire its ownership through occupation. See Art 1192 cum 1151 of the Civil Code.

▣ **Abandoned things;**

- are things to which the owner has clearly renounced his right of ownership and hence which are without a master or owner.
- Art 1191 of the Civil Code.
- The fact that a thing has been abandoned may be clearly expressed by the owner or may be presumed from acts such as finding the thing at a local rubbish or waste disposal area...etc.
- Hence, a person who finds and possesses an abandoned thing or a derelict thing with the intention of becoming an owner shall acquire ownership right through occupation.
- See Art 1151 of the Civil Code.

2. POSSESSION IN GOOD FAITH

- ✓ Acquisition of ownership through possession in good faith is a mode of acquisition in which a person who purchases a corporeal movable thing from a person who is not an owner or who is not entitled to alienate or transfer a thing, becomes an owner of such thing originally as a result of his good faith.
- ✓ a person who purchases a corporeal movable object from a finder or a thief, with the belief that he was purchasing it from the owner of the thing or a person who is entitled to alienate it, shall become the new owner of the thing where he purchased it in good faith, i.e., with the belief that the seller is the actual owner of the thing and took possession of the thing. Art 1161(1) and 1162(1) of the Civil Code.
- ✓ Is based on practical considerations of impossibility of registration of all chattels /corporeal movable things/ and the consequent impossibility for the purchaser to ascertain the title of the seller of such goods.
- ✓ It is also intended to protect freedom of contract that helps the promotion of free transfer of goods and ensure security of transactions by enabling the bona fide purchaser to acquire a new right of ownership by protecting him from any claim by the true owner of such thing 1161(2).
- ✓ Transactions involving chattels in respect of which registration and issuance of deeds is almost impossible, will result in uncertainty of contracts and business transactions and will hinder free circulation of goods.

- ✓ The purchaser will acquire the ownership of the thing at the time when he takes of possession of the thing according to Art 1143-46 of the code.
- ✓ A purchaser is presumed to be in good faith in the absence of contrary evidence showing that the purchaser knew, at the time of taking possession, that the seller was not the owner of the thing.
- ✓ However, a proof that the purchaser discovered the fact that the seller was not the true owner of the thing after he took possession may not rebut this presumption. See Art 1163.
- ✓ The good faith acquirer who bought such thing from a trader who sells similar things, or in a public auction, or in an open market / market overt / has the right to require the seller to reimburse him with the price he had paid for the thing. See Arts 1166 of the Civil Code..
- ✓ This mode of acquisition is not applicable to immovable things and special movables such as vehicles in respect of which there is a requirement of registration and special mode of proof, i.e., production of title deeds, is required.
- ✓ This is because the purchaser is expected to ascertain the true owner of a thing he is about to purchase by referring to official registers, which are open for any interested party and can not claim to have purchased the thing in good faith, believing that he was dealing with the true owner.

▣ *ACQUISITIVE PRESCRIPTION (USUCAPTION)*

- ✓ The concept of prescription, in its broad sense ,includes both acquisitive prescription through adverse possession (usucaption) and extinctive prescription (statute of limitations).
- ✓ Acquisitive prescription is a mode of acquiring ownership title or some real interest through possession that is free from defects, exclusive and continuous (see Art 1168 and 1150 junction of possession).
- ✓ the possession must be adverse, i.e., contrary to the owners will, which means that where the possessor had acquired possession of the immovable with the consent of the owner the rules of usucaption or acquisitive prescription shall not apply.
- ✓ Limitative/extinctive prescription is a defense through which it is generally possible to resist a claim on the sole ground that the claimant failed, for a certain period, to bring the action or to exercise the right on which it is based.
- ✓ Acquisitive prescriptions, similar to limitative prescription provide a defense against an action for restitution by the former owner; and a restitution claim against any adverse possessor, including the former owner.
- ✓ The rationale behind this principle is that owners must not leave their property unattended for a long period of time. I
- ✓ n case where the owner leaves his property unattended and fails to claim its restoration with in the period of time determined, the law assumes that the owner does not need the property any more and hence decides to reward a person who can put the same to a better use for himself and the public.

- ✓ Art 1168 of the Civil Code a person who has possessed an immovable belonging to another for a period of fifteen consecutive years and who has been paying taxes relating to ownership of such immovable shall become the owner of the immovable through acquisitive prescription or usucaption.
- ✓ The main requirement in this mode of acquisition is that the possession should be adverse, i.e., the possessor must have a claim contrary to the right of the owner and persons who possesses an immovable thing on the permission of the owner may not acquire right of ownership to it.
- ✓ In addition, the possession should also be continuous /see also Art 1150 of the code/ and free from defects under Art 1146 of the code.
- ✓ The other main requirement for the acquisition of ownership through adverse possession /usucaption/, is payment of taxes relating to the immovable for 15 consecutive years.
- ✓ A person who is not able to acquire ownership of an immovable thing through adverse possession, for instance who possessed a thing for ten years or who failed to pay the taxes relating to the immovable, may still acquire a property right lesser than ownership.

- ✓ These requirements are cumulative and both must be fulfilled before a person can acquire right of ownership through adverse possession.
- ✓ However, note that the application of this mode of acquisition is restricted to immovable things and that an owner of a movable thing who failed to exercise his right of ownership /to claim restitution of the thing for a period of 10 years/ loses his right of ownership and the thing becomes a thing without an owner /res nullius/, which can be acquired by occupation. See Arts 1192 and 1152.

4) ACCESSION

- ✓ The union of two or more things belonging to two or more persons.
- ✓ If the thing which is joined does not have a master before, a person acquires it by the sole fact that nobody can claim it.
- ✓ For a thing to be acquired through accession, the two things must belong to different persons.
- ✓ when the two things now joined belonged to different persons before the union, each owner should be able to request their separation.
- ✓ However, in majority of cases such separation cannot take place without deterioration of the things or often it is impossible.
- ✓ Hence, the solution is to attribute anything formed by such union to one person and compensate the other, based on the maxim "Accessio cedit principali, i.e., the owner of the principal owns the new thing, See Art 1183(2) or require it to be commonly owned by the owners of the component parts in certain proportion. See Art 1183(1)

- ✓ Accession also applies to increase from breeding in case of animals/ accession by separation/. Hence, the owner of the mother shall become the owner of the calf. See Art 1171. Similarly, a person who owns a thing also owns its natural fruits, in cases of ownership of things capable of bearing fruits. See Art 1171 of the Civil Code.

A) ACCESSION OF MOVABLE THINGS TO IMMOVABLE THINGS

- Crops sown on the land of another person who sows seeds on a land that belongs to another person against a clearly expressed objection of the owner/holder shall not become the owner of the crops.
- Where the crops have already harvested by the sower, the owner/holder of the land shall have the right to claim the whole harvest or the value of the crop harvested from his land.
- The same rule applies where the owner/holder of the land was aware of the act and wanted to object to the act but was not able to express his objection. For instance, he was far away or sick or prevented from objecting by any other reason, i.e., he was not aware of the act of sowing.
- Where the sower sows seeds with out the objection of the owner/holder or where he was aware of the act of the sower but failed to object to the act, the sower may be entitled to a fourth /25%/ of the crops provided that he sow the land in good faith or with the belief that the land belongs to him or has the right to sow the land.
- However, if the sower acted in bad faith, i.e., with the knowledge that the land does not belong to him or he does not have the right to sow seeds on the land, the whole crop will belong to the owner of the land. (See Art 1172 - 1174)

B) Plantations on a land belonging to another-

- Where a person plants trees on a land belonging to another person against a clearly expressed objection of the landowner/holder, the latter will acquire ownership to the trees and the former will not have the right to claim the trees or compensation.
- Where the trees are planted with the permission of the owner/holder of the land, the two persons shall become joint owners of the trees. But the owner/holder of the land may terminate the joint ownership and may acquire the full ownership of the trees by payment of compensation to be determined by the agreement of the parties or according to the provisions of Art 1177. (See Art 1175 - 1177)

C) Buildings on a land belonging to another person,

- where a person, against a clearly expressed objection of the owner/holder of the land, constructs a building on a land that does not belong to him, the owner/holder of the land shall acquire the ownership of the house through accession.
- The same rule applies in cases where the landowner/hoder was aware of the construction but was not able to object to it for any reason.
- the landowner/holder may, at any time, force the builder to leave the building or require him to demolish the building and clear the land without compensation.
- where the landowner/holder knew of the construction but failed to express his objection to the act, the builder shall acquire the ownership of the building.
- The owner/holder of the land is entitled to evict the builder by payment of compensation to be determined by the agreement of the parties or the provision of Art 1180. (See Art 1178 - 1180)

D) Using materials belonging to another-

- where a person uses materials belonging to another for building or other works, he shall become the owner of such material by accession, and the former owner of the materials cannot demand the return of the materials.
- However, the person who used materials belonging to another shall have the obligation to refund the value of the materials to the former owner.
- Where he acted in bad faith, i.e., he used the materials knowing that they do not belong to him; he may also be required to pay damages. See Art 1181.
- Also compare Art 1134 of the Civil Code.

TRANSFER OF OWNERSHIP RIGHTS

- ▣ Art 1184 - right of ownership may be transferred from the owner to another person by the agreement of the owner which may be a contract of sale (see Art 2266) or contract of donation (see Art 2427) or a contract of barter according to Art 2408 and 09 or by will.
- ▣ It may also be transferred, in cases of intestate successions, by the operation of the law. For instance, the properties of the deceased person shall be transferred, according to Art 842, to his/her children.
- ▣ the principle applicable is "nemo dat quod non habet" which means that the transferor may not transfer a better right than he has on the object.
- ▣ in order for a person to transfer a perfect right of ownership he/she must have a perfect right of ownership.

▣ **How Transfer is made?**

- The right of ownership of ordinary corporeal movable things (chattels) is transferred by the transfer of possession, pursuant to the provisions of Art 1143-45.
- Possession may be transferred by delivery or handing over of the thing, or by delivery of document representing the thing such as bills of lading, way bills, warehouse goods' deposit certificates or constructively, i.e., by declaration of the possessor of a thing that from that time on he will hold the thing in the name of the creditor who failed or refused to take delivery.
- in exceptional circumstances, ownership of chattels may be transferred at a different time than the time of transfer of possession.
- This is true in cases of sale with ownership right reserved (see Art 2387 of the code).
- In such cases, ownership will be transferred from the seller to the buyer at the time when the buyer pays the price, i.e., the transfer of possession shall not transfer ownership to the buyer until the later pays the agreed price.
- However, the seller may not or the buyer may not raise such provision against third parties/ for instance, the creditors of either party who may want to attach such thing/ unless such third party accepts such provision or it has been publicized through registration in a public registry in accordance with law. See Art 1187 of the code.

- ▣ Transfer of ownership right over immovable things and special movable things is effected by striking out of the name of the transferor and entering the name of the transferee in the registers of immovable things and special movable things respectively, and issuing a new title deed in the name of the transferee.
- ▣ See Art 1185 and 1189 of the code.
- ▣ Contracts relating to immovable things are subject to this additional requirement because of the fact that immovable things have special economic & social importance to the individual right holder and the society at large and hence the law provides special protection through strict requirements for contracts relating to them.
- ▣ Furthermore, it argued that there is no contradiction between Art 1723(1) and Art 2877, rather the two provisions are complementary provisions that have to be interpreted and applied in a manner to give effect to the general goal intended to be achieved, i.e., providing special protection to immovable things and ensuring security of transactions/contracts.
- ▣ Though motor vehicles are movable things, they are required, by special laws, to be registered and their ownership to be proven by producing title deeds.
- ▣ the provisions of art 1195 -1198 regarding proof ownership of immovable things shall also be applicable to prove ownership of special movable things
- ▣ According to Art 1195(1) the issuance of a title deed by the relevant administrative authority to the effect that a given special movable thing (motor vehicle) belongs to a given person shall raise a presumption that such person is the owner of such thing.
- ▣ One of the grounds upon which such presumption may be rebutted is a proof showing that another person has acquired the motor vehicle after the title deed is used. See Art 1196/c/ of the Civil Code.

▣ PROOF OF OWNERSHIP RIGHTS

- The mode of proof of the existence of a right of ownership varies depending on the type of the object of the right.
- The owner of an ordinary corporeal movable object / a chattel/ shall prove his right to the thing by the mere fact of possession.
- The same is also the case for rights contained in bearer negotiable instruments. See Art 1193 of the Civil Code and Art 721 of the Commercial Code.
- , the possessor of a chattel or a holder of a bearer instrument shall be presumed to be the owner thereof unless interested persons prove the contrary.
- The owner of an immovable object or a special movable object may establish his ownership by producing a title deed, which is given by the keeper of register of immovable things or the organ registering special movable things. See Art 1593-1561 of the Civil Code.
- Art 1195 the issuance of a title deed shall give rise to a presumption that the person named therein is an owner of the immovable mentioned.
- However, this presumption may be rebutted where:-
 - ▣ The title deed is not issued in accordance with the law, see Art 1553-1636
 - ▣ The title deed is issued by an authority having no jurisdiction, see Art 1553(1)
 - ▣ The title deed was issued on the basis of an invalid act, such as a void contract
 - ▣ The plaintiff acquired the ownership of the immovable after the day on which the title deed was issued.

- ▣ Prior to issuing a new deed, the authorities issuing a title deed has to require the return of the deed previously issued to the previous owner and cancel it.
- ▣ Where the previous title deed is lost or destroyed, the authority has to require the person requesting issuance of new title deed to produce sufficient security to cover possible damages that may be caused to third parties as a result of non-cancellation of previous title deed. See Art 1197.
- ▣ The state shall be liable to third parties who acquired title based up on deeds which was not issued in accordance with the law or which was issued by authority having no jurisdiction, or which the authority failed to cancel. See Art 1198.
- ▣ All structures, crops, trees, buildings and other works on a land and caves, wells and other works under the surface are presumed to be owned by the owner/holder of the land. However, this presumption may be overcome by contrary evidence w/c may be witnesses or other evidences. See Art 1200.
- ▣ Party walls - any wall or fence, which lie on the boundary line separating two lands, shall be presumed to be jointly owned unless one parcel of land only is fenced in or unless the contrary is proved by evidence showing that they are individually owned. See Art 1201. This presumption shall not apply to ditches on boundary lines if the embankment is made on one side only.
- ▣ Ditches that lie on the boundary line are presumed to be owned by the owner/holder on whose land the embankment is made. This presumption may also be rebutted by proof to the contrary. See Art 1202.
- ▣ Accessories; the ownership of a thing, movable or immovable, includes the ownership of the accessories, natural or artificial, which are necessary part of the thing. See Art 1203.
- ▣ Water, gas and electricity supply lines - are deemed to be accessories of the undertaking from which they emanate and which provides the service. See Art 1203, this presumption may be rebutted.
- ▣ Ownership of fruits- the ownership of a thing includes the objects, which it is capable of producing, either by itself, or with human help, as well as of monetary benefits that can be gained from it. For example, crops, rents ...See Arts 1170 and 1171 of the Civil Code.

EXTINCTION OF OWNERSHIP RIGHTS

- ▣ Extinction of right of ownership may be absolute in the sense that the owner or another person may no longer exercise right of ownership in relation to that thing because the thing is destroyed, or it has lost its individual character.
 - This is because property rights do not exist without a thing, which is the object of right. See Art 1188 of the Civil Code.
 - Ownership right may also be extinguished absolutely if the thing is expropriated for public purposes.
 - Ownership of wild animals will be extinguished absolutely if they regain their natural freedom and become res nullius. See Art 1152(1).
- ▣ □ Extinction of ownership right may be relative, i.e., only in relation to the present owner, if it is acquired by another person through acquisitive prescription /usucaption, or transfer or waiver or renunciation.

- ▣ The right of ownership shall also be extinguished where the owner, with the intention to have it acquired by the first finder or occupant, abandons the object.
- ▣ See Art 1191 of the Civil Code.
- ▣ The owner of a corporeal movable object shall lose his right as an owner where he fails to exercise, for a period of ten years, the rights arising out of ownership.
- ▣ See Art 1192 of the Civil Code. However, this does not apply to a person who has transferred the thing to another, for example, by a contract of loan for use Art 2767 of the Civil Code.
- ▣ Ownership of immovable things and special movable things in respect of which there is a requirement of registration/ Art 1723, 1185 / shall be extinguished when the registration is cancelled / Art 1190 /.
- ▣ This is only a formal requirement to accomplish the transfer rather than a ground for the transfer of ownership.

JOINT OWNERSHIP

- ▣ Is the right of ownership exercised by two or more persons in relation the same object.
- ▣ It refers to the right of use and enjoyment, right of possession and exclusion of others and the right to transfer a thing or to charge it with pledge or mortgage exercised jointly by several persons. See Art 1257 (1) of the Civil Code.
- ▣ The following are the main characteristics or natures of joint ownership;
 - The thing, which is jointly owned, is undivided and,
 - Each joint owner is considered as owner of each and every part of the thing.

THE SCOPE OF RULES GOVERNING JOINT OWNERSHIP

- The rules on joint ownership are developed and applied to cases where the relations between the co-owners are simple relations of common interest in a thing.
 - do not apply to things held jointly as a result of a partnership agreement, i.e., an agreement to join resources with the purpose of undertaking commercial activities and earning a profit
 - joint ownership of things is regulated primarily by the agreement entered into by the joint owners at the time of inception of joint ownership, where joint ownership arises from contracts, or by the agreement entered in to after the joint ownership is created and/or by the mandatory provisions of the rules contained in the Civil Code, i.e., Arts 1257-1308.
 - the rights and duties of the joint owners, the use and administration of the thing are regulated by the agreements entered in to by the joint owners provided that the agreements are not defective/ invalid/ and are not contrary to mandatory provisions of the Civil Code mentioned above.
 - See Arts 1264, 1265, 1266, 1267, 1268/2/, 1271 and 1274 of the Civil Code.
- ▣ The permissive provisions of the Civil Code shall apply where there is no agreement or a provision governing the various aspects of joint ownership or where such agreement or provision is defective or invalid. See Arts 1263, 1275, 1260 1268/3/ of the Civil Code.

▣ ADVANTAGES AND DISADVANTAGES OF JOINT OWNERSHIP

ADVANTAGES

- ▣ a thing may be owned by two or more persons helps people to acquire certain property very important for their lives, which they would not have otherwise acquired because of lack of sufficient financial capacity by joining or contributing a lesser amount of money.
- ▣ Joint ownership will also help in achieving efficient utilization of scarce resources.

DISADVANTAGES

- joint ownership may hinder the free transfer of goods because joint owners may not have the opinion and understanding as to the importance of the proposed act to agree to the proposed act.

RIGHTS AND DUTIES OF JOINT OWNERS

1. **Right to Use and Enjoy the Undivided Thing/Property, and its Fruits: See Arts 1263 and 1264 of the Civil Code.**
2. **Right to Administer the Thing: No co-owner individually own specific part/unit of the thing.**
 - Hence, the consent of the other joint owners is required in order to undertake any one of these acts in relation to the thing jointly owned.
 - See Art 1265 and 1266 of the Civil Code.
3. **Each co-owner shall bear, in proportion to his/her share, the costs of administration, taxes... and necessary costs (costs incurred to avoid lose or damage to the thing).**
 - Each co-owner has right to force other co-owners to reimburse him with necessary expenses.
 - In other words, a joint owner who incurred costs for the maintenance and preservation of the jointly owned thing has the right to demand reimbursement of the money he has paid in proportion to their shares.
 - However, a joint owner may relieve himself of this obligation by surrendering his share in the thing to the joint owners. See 1268(3) and 1282(2).
4. **Each joint owner has the right to dispose of his share of rights in the undivided interest in the thing jointly owned**
 - See Art 1260 of the Civil Code. Hence, a joint owner may sale, donate, pledge or mortgage his share of right in the thing.
5. **Each joint owner has the right to request termination of joint ownership.**
 - Each co-owner has the right to request the court, at any time, for partition or division of the thing or the sale by auction of the thing and division of the proceeds of the sale. If the thing jointly owned is a movable thing, a joint owner may apply for sale by an auction.
 - See 1271. This right cannot be waived by agreement.
 - If the thing jointly owned is an immovable thing such as a building, a joint owner may apply for division or sale by auction (see Art 1272 and 73).

▣ SPECIAL CASES OF JOINT OWNERSHIP

1. PERPETUAL JOINT OWNERSHIP

- ▣ Represents a joint ownership in which joint owners do not have the right to demand termination.
- ▣ This kind of joint ownership exists where continued joint ownership is in accordance with the nature or purpose of the thing or where sale or partition is impossible or unreasonable. See Art 1276 of the Civil Code.
- ▣ Perpetual/ continuous/ usually exists in relation to indispensable accessories of things intended for the common use of two or more estates belonging to different owners, for example, lanes, passages, yards, wells, sewer pits, paths, roads, dams, canals, party walls, and common portion of condominium houses, in which partition or division would not leave each house owner a separate space necessary for /his/her needs.
- ▣ Similarly, the right to co-ownership to walls, ditches, hedges or other enclosures, which separate contiguous estates, called mitoyennete in French law, constitutes a perpetual joint ownership.

2) PARTY WALLS

- ▣ A wall placed on the boundary line between two estates, and belonging in common to their owners, including the land on which it rests
- ▣ A wall is any masonry work, one made of materials bonded with cement, plaster or lime stone mortar. Any wall corresponding to this definition is subject to rules governing party walls. See Arts 1201 and 1278-80 of the Civil Code.
- ▣ Party Co-ownership of ditches: Any ditch separating two estates is considered party co-owned, unless only one of these estates is enclosed, or there exists a documentary title or a prescriptive title or unless there exists a feature implying exclusive ownership, such as a dike or pile of excavated earth only on one side of the ditch which is then considered as belonging to the owner/holder of the land on which such dike or pile of earth rests. See 1202 of the Civil Code.
- ▣ Other enclosures are also considered as party co-owned unless there exists a contrary documentary title, prescription title or feature contrary to the presumption.

3.) CO-OWNERSHIP IN BUILDINGS IN WHICH FLOORS OR APARTMENTS ARE SEPARATELY OWNED

- ▣ The ground, the structural walls, the roof, the staircases, the elevator...etc as indispensable accessories, are co-owned by all co-owners by a forced undivided title. In other words, parts of the building that are not intended for the exclusive personal use of one owner are presumed to be commonly owned.
- ▣ For example, yards, walls, roofing, structural flooring, staircases and elevators, the janitors able, halls and corridors, heating and other ducts of all sorts, except those located within each house. In addition, walls separating two houses or rooms belong to both owners as party walls. However, windows, shutters, and blinds, door so f the rooms and balconies are individually owned.