Property law

UNIT ONE

GENERAL OVERVIEV OF PATRIMONY, PROPERTY AND PROPERTY LAW

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Property law

At the end of this unit, students are expected to:

- ✓ distinguish between patrimonial and extra-patrimonial rights
- ✓ Identify theories regarding the origin & justifications of private property.
- ✓ identify the scope of property law
- ✓ understand the rationales behind classification of things into various categories.

THE CONCEPT OF PATRIMONY

Rights of a person:-

- patrimonial rights, i.e.,

  have a pecuniary value such as property rights over things and rights arising out of contractual relations or those arising out of extra-contractual relations.

- extra patrimonial rights;

  cannot be assessed in terms of money such as family, political and civil rights.

THE CONCEPT OF PATRIMONY

- patrimonial rights are also referred to as
  - **rights in-personem/personal rights/**;
    - ✓ kt and Tort rights
    - ✓ against a specific person or persons.
  - **rights in-rem/ real rights;**

    rights over things/ property rights/

    governed by the law of property

    against any person

THE CONCEPT OF PATRIMONY

Similarly, the obligations or liabilities may be patrimonial or extra-patrimonial depending up on whether they can be valued in terms of money or not.

The totality or unity of patrimonial rights and obligations of a person constitutes his patrimony.

However, the modern conception of patrimony restricts the definition of patrimony to the totality of a person's patrimonial rights only.

According to this conception, a person's patrimonial obligations are the charges/burdens over a person's patrimony rather than constituting its elements.

THE CONCEPT OF PATRIMONY

Yet another view expressed **by Paul Esmein** considers patrimony as the totality of property rights,

i.e., rights related to objects of a person and its elements are such objects w/c have the quality of property.

It is the totality/ universality/ of rights because the various property interests are unified through the person of the owner.

THE CONCEPT OF PATRIMONY

classical theory,

- patrimony is distinct from the actual elements of which it is composed.
- Hence, the loss or extinction of one or more of its elements does not affect its existence,

and also its contents may vary from time to time to the extent where it may be negative.

- the unity of patrimony is derived from the person in whom the rights and obligations are centered;
- hence, patrimony should be regarded as the emanation of the personality of its holder and the expression of the legal power with which a person is invested.

THE CONCEPT OF PATRIMONY

Accordingly, the characteristics of patrimony are to be sought in the nature of personality. Hence, it follows that:

1. Every patrimony presupposes a person who is its holder

2. Every person has a patrimony

3. A person can have only one patrimony

4. Patrimony is inseparable from the person of its holder.

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THE CONCEPT OF PROPERTY

The term property has a variety of uses

Ordinary, refers to ownership or title

- ✓it also refers to the res or the thing over which ownership right is exercised
- ✓ in its broad sense, - everything that has material or moral value for human beings beginning with their own body, reputation, and freedom to think and act,

Property law

However, in its narrower and proper legal sense,

- exclusive right to control, use, transfer... an object or a thing of economic importance and its fruits,
- exclude all other persons from its use and enjoyment and the follow of the thing and its fruits in the hands of any person who might have unlawfully taken it.
- Hence, accurate legal terminology ought to reserve the use of the word property for designation of rights of persons with respect to things.

Property law

The things in relation to which such property rights are exercised are objects of property rather than property itself.

. Hence, the house, or the car, or the table in relation to which an ownership right is exercised is properly called an object of the right of ownership.

Art 40/1/ of the FDRE Constitution which guarantees the right to property provides that

Property right includes, unless restricted by law for public purposes, the rights to acquire, use, and transfer things/ tangible or intangible/ of financial value.

Property

property:-

- ✓Appropriable – to be owned
- ✓Useful- economic or moral use to the owner

DEFINITION AND SCOPE OF PROPERTY LAW

- *What is the law of property?*

- *Could it be said that it is the law relating to physical objects such as a house, land a car … etc?*

- *Or is it a branch of law dealing with or governing relations between a person and things or objects?*

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Property law

- Not every transaction, right, or liability relating to physical objects/ material things/ is regarded as relevant to the law of property; (contract vs. tort matters)

It is a branch of law which deals with and regulates the property rights i.e. the real rights /rights in-rem/ a person exercises over a certain object ;

rights to use, to collect and enjoy the fruits of, to transfer and even abandon the object and exclude others.

THEORIES OF PROPERTY

❖***the origin and foundation of private property;-***

There are two main groups of theories of property

✓ 1st group attempts to explain how private property came to existence,

i.e. it describes the facts, which purports to show the origin of private property.

✓ It attempts to explain how things came to be owned privately.

Theories Property

2nd group of theories

- is concerned with passing a judgment on the institution of private property and attempts to justify or condemn the institution.
- it tries to explain the economic and social reasons behind the recognition and protection or condemnation of private property.
- Sometimes those two aims are combined

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THEORIES REGARDING ORIGIN OF PROPERTY

A. THE POSITIVIST THEORY

- ✓ law is nothing but the command of the sovereign
- ✓ the rules promulgated for reasons of public policy, protection of individual rights, promote the general welfare, increase social wealth or maximize social utility
- ✓ Ppty is all about expectation and persuasion of deriving advantage from the thing owned
- ✓ Now this expectation, this persuasion, can only be the work of law- law makes to forget weakness- via protection
- ✓ Property and law are born together and die together

v+st

- ✓ Property rights exist only if and to the extent they are recognized by the legal system.
- ✓ Before laws were made there was no property; take away laws, and property ceases.
- ✓ rights, including property rights, arise only through government is known as *legal positivism*.

Theories Property

Critics; John Locke

- 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.

- the state is the result of a social contract in which the society transferred some of their rights to the state for the purpose of protection their rights including the right to property.

B. THE HEGELIAN THEORY

(Locke, Hegel, Margaret Jane Radin)

- According to George Wilhelm Friedrich Hegel,
  - a human person is merely an abstract unit of free will or autonomy that does not have a concrete existence until that will acts on the external world.
  - From the need to embody the person's free will from the abstract realm to the actual, extends his will to external things
  - the person becomes a real self only by engaging in a property relationship with something external.

THE HEGELIAN THEORY

Hence, private property originated in the person's attempt to actualize his/her free will, i.e., when someone extends his wills to external things he makes that thing a part of himself.

- to be a person, an individual needs some control over resources in the external world.

- Locke says that "every man has a property in his own person," from which it immediately follows that "the labor of his body, and the work of his hands… are properly his."

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D. The **Natural Law Theory**

In contrast to legal positivism;

- *natural law theory* posits that rights arise in nature as a matter of fundamental justice, independent of government.
- As John Locke observed, “[t]he Law of Nature stands as an Eternal Rule to all Men, *Legislators* as well as others.”

- The role of government, Locke argued, was to enforce natural law, not to invent new law
- the “unalienable Rights” of “Life, Liberty, and the Pursuit of Happiness” were endowed upon humans “by their Creator”; governments exist merely “to secure these rights.”

THEORIES/ JUSTIFICATION OF PRIVATE PROPERTY(*why should there ever be any property rights at all?*)

A)Occupation theory;-

- the first occupier should be rewarded and
- property acquired in such a manner is ethically justifiable

o He who first reduces in to possession of a piece of property has the best of justifications for remaining in control, and hence the institution.

B) Labor theory (Economic justification of property rights)

- private property is the result of individual labor
- industry should be encouraged by granting to a worker the ownership of the res,
- greater productivity is achieved
- it encourages independent and specialized risk taking
- The whole effect of these ensures economic growth.

C) 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..

D. Hegelian Theory

- ✓Property is a part of the personality of the owner and
- ✓the protections provided for property of the person are protections for the person.
- ✓the existence of the person and hence his/her property is just

E) Marxist Theory

the history of all societies in the world is the history of class

- struggles slaves vs. freemen, feudal lords vs. serfs or vassals, the bourgeoisie and the proletariat.
- These relations were not always based on equal or even fair exchange of labor and wages
- In effect private property served and is serving as a means of exploitation of the ….by……..
- Hence, private property is the evil that has to be abolished is the Communist Manifesto.

OBJECTS OF PROPERTY

DEFINITION;-

objects of property’ -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
- ✓ **choses**; the title dealing with ownership
- ✓to anything, which exists in nature, whether susceptible of appropriation or not
- ✓**beins;** title on things and their classification
- ✓things that are susceptible of appropriation
- ✓Here it is important to note that all ‘beins’ are ‘choses’ while not all ‘choses’ are ‘beins’.

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Objects of Property

In its legal usage, thing possible or potential mater of rights and duties which, conceived as a whole and apart from all others, can be separately perceived by the senses.

- ✓A thing, which is corporeal and tangible matter
- ✓A thing, which is neither material/ corporeal/, nor tangible but which is an element of wealth

Hence, the phrase objects of property refer to things in the sense of any possible matter over which legal right of property may be exercised.

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Objects of Property

- When we see Book III of the Ethiopian Civil Code objects of property', i.e., 'things' are not properly defined
- However, the various principles found scattered in the provisions of Articles 1126_1139
- Accordingly, under Ethiopian law, objects of property, herein after called thing /good may refer to;

- ✓ Things /goods which have material existence (Art 1127 & 28)
- ✓ Things which have no physical or material nature but which are perceptible by senses w/h are mastered and put to use by man kind (Art 1129)
- ✓ **Note: terms goods and things are used interchangeably in the code to refer to the same concept (Articles 1126_1140).**

Objects of Property

To sum up object of property’

- refers to the things/goods over which a potential right of property may be exercised and
- it may be a corporeal thing or a an incorporeal thing.

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Movable, immovable, (corporeal)

Negotiable instruments

Any thing w/c could be appropriable and have economic/moral value

Intrinsic and Accessary Elements

Elements of object of ppty
INTRINSIC ELEMENTS OF THINGS (1132-34)

intrinsic elements;

- ✓are things, movable or immovable,
- ✓by custom as forming part of a thing, or
- ✓which is materially united to a thing and
- ✓cannot be detached there from with out destroying or damaging such thing

Effects of being Intrinsic Element

(art.1133/34)

1. Rights on or dealings relating to the principal thing shall include the intrinsic elements

o ***unless the parties have agreed expressly that such right or dealings shall not apply to them.***

2. A thing that becomes an intrinsic element of another thing ceases to exist as a distinct movable thing.

➢ the right, which third parties previously had on such thing shall be extinguished

✓ **Remedies;** rules of unlawful enrichment (Arts 1134 and 2162-2163 of the Civil Code)

Accessories (article 1135-1139)

- anything, movable or immovable, which the owner or the possessor of the thing has permanently destined for the use of another thing.

- **Effects;- article 1137 &38**

1. rights on and dealings relating to the principal thing shall apply to the accessory.

2. Temporary separation of the thing shall not, in any way, terminate the character of accessories

3. Rights of an owner or possessor of a thing, which is considered as an accessory of another thing shall not be affected by its treatment as such

Effects

4. owner or possessor may not claim it from third parties in good faith who have acquired the principal together with the accessory unless his rights to the accessory are evidenced by a deed dated prior to date when it is so destined

5. the owner/possessor of a principal thing may terminate the character of accessory of such thing at any time,

but he cannot do so if a third party has already acquired a right in relation to the principal thing with the belief that he will benefit from the accessory.

CLASSIFICATION OF OBJECTS OF PROPERT

1. As to their nature
2. As to movablity
3. As to Existence
4. As to physical nature
5.

CLASSIFICATION OF OBJECTS OF PROPERTY

THE PURPOSE OF CLASSIFICATION

1. d/ce means of acquiring right
   - occupation 1151
   - uscaption – 1168
2. d/ce in way of transfer
   - mere delivery
   - strict formality
3. Jurisdiction
4. Good faith
5. Period of limitation

✓

Unit two possession

UNIT OBJECTIVES:-

- understand the meaning of possession and distinguish it from a mere holding.
- understand the legal effects of possession and its importance.
- identify the protections provided by the law to the possessor.
- identify the modes of transfer of possession.
- identify the grounds on which possession is lost.

Unit two possession

THEORIES

- **three theories regarding definition of possession**

1/ SAVIGNY'S/CLASSICAL/ THEORY OF POSSESSION; (subjective theory)

possession consisted o f two ingredients,

- ✓ corpus possessions, i.e., effective control and
- ✓ animus domino, i.e., the intention to hold as an owner. (detention and possession)

➢ i.e. Possession is made up of two elements

- ✓ The corpus or element of physical control and
- ✓ Animus or element of intent with which such control is exercised

limitation

- ***derivative possession -a non-owner possessory right***

Possession

2/ JEHRING'S THEORY OF POSSESSION /Objective theory/

- ***To be possessor***

- physical control of the thing-*direct physical control of such thing*

- No need of animus or intent to own and use-*animus being merely an intelligent consciousness of the fact*

- This theory explains those cases, which were difficult to Savigny such as the pledgee and the usufructuary that were given possession right

Limitation

- ✓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 depositor.

Possession

3/ SALMOND'S THEORY/realist theory

A Modified version of Savigny's theory

-shift in the meaning of possession has occurred and the term is not confined to physical control.

He started by distinguishing b/n

- possession in truth------ ----in fact
- possession in law- ---------- a legal fiction
- possession -corporeal possession and possession of rights, which he called incorporeal possession

•physical or corporeal things involves two ingredients

o corpus possessions and animus posidendi

➢Hence, corporeal possession is animus and corpus the animus possidendi is the intent to exclude others, i.e., to hold for one’s own interest.

Possession

He further classified the corpus possession is under two headings

a. The relation of the possessor to the thing,

   which must allow him to put the thing to the use which accords with its nature

b. The relation of the possession to other persons- create a reasonable expectation of non-interference in the use of it.

Critiques

1. Expectation of non-interference is not necessary for the continuation of possession. *Eg. pocket book vs pickpocket* **-** interfere with his use in a few moments
2. the assumption that corpus and animus, which are only conditions for the acquisition of possession, are possession themselves.

Possession

To sum up

- ❖ the following three situations became possible in relation to possession of a thing.
- ✓ A man could have physical control with out possession and its advantages.
- ✓ He could have possession and its advantages with out physical control.
- ✓ He could have both, i.e., he may have physical control as well as the advantages attached to possession.

Theories/justification of Possession

1. Public order theory
2. Will theory
3. Ownership theory
4. Continuity theory
5. Entitlement theory

modes of Possession

1. Direct possession— article 1140/1141
2. Indirect possession –article 1141-1144
3. constructive pos. 1145

Vices of POSSESSION

1. PRECARIOUS POSSESSION -occupants lack the animus element (1147)
2. CLANDESTINE POSSESSION(secret possession)-1146(2)
3. VIOLENCE (1148/49)
4. *AMBIGUITY/ DUBIOUSNESS-1146(3)*

=======article 1150===end of vice/defective possession.

Effects of possession

1. Presumption of ownership
2. Possessory rights and remedies
3. Possessory action vs petitory(nugatory) Action

Chapter three; Ownership

- ***define the concept of ownership and its component elements.***
- ***identify how ownership right is acquired.***
- ***identify the restrictions on the right of ownership.***
- ***grounds and modes of transfer of ownership.***
- ***various modes of proof of right of ownership.***
- ***grounds on which right of ownership is extinguished***

DEFINITION AND ELEMNTS OF OWNERSHIP

Right of ownership is;

- the widest and the ultimate property right
- relationship that gives rise rights and obligations between persons in relation to an object.
- is said to be absolute in the sense

continued

- The rights of an owner include;
  - The right of use and enjoyment (*Arts 1205/1/ and 1270-1271).*
  - The right of possession that with the exclusion of others (Arts 1204, 1148 and 1149)
  - The right to transfer the thing and its fruits for consideration or gratuitously (Arts 1205/2/ and 3049/2/)
  - The right to leave or abandon the thing or its fruits at will. (Art 1189).
  - Generally ownership right can summaries as
    - *the usus 1204 & 1205*
    - *the fructus* Arts 1215-1227 and 1309-1352
    - *the abuses*

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continued

ownership

1. Ultimate Ownership- other persons hold the rights of present enjoyment temporarily 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

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