

Extremely Important

OWNERSHIP AND POSSESSION

*Legal status of unborn child,
dead man, animal, idol, mosque,
Guru Granth Sahib etc*

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OWNERSHIP AND POSSESSION EXPLAINED

OWNERSHIP

Austin- Ownership is a right indefinite in point of user unrestricted in point of disposition and unlimited in point of duration.

From above definition we find three elements:-

1. Indefinite user.
2. Unrestricted disposition (dispose off)
3. Unlimited duration.

Salmond- Ownership in its most comprehensive significations denotes the relation between a person and right that is vested in him.

G.W Paton- Ownership includes four rights:-

1. Right of user
2. Possession which also includes eliminating other from that thing.
3. Right of transfer.
4. Disposition as he wishes.

Acquisition of ownership:

According to Salmond, Ownership can be acquired in two ways:-

1. By operation of law.
2. By reason of some act or event.

Subject matter of ownership:

Consists of material objects like land, immovable or movable properties etc. The wealth and assets of a person like interest in the land, debts, share in the company, patents, goodwill, copyrights etc may also be subject matter of ownership.

Thus intangible rights may also constitute subject matter of ownership.

KINDS OF OWNERSHIP

1. Corporeal and Incorporeal Ownership

Corporeal → ownership of material objects.

Incorporeal Ownership → ownership of rights.

2. Sole ownership and Co-ownership

Sole ownership → vested in single person.

Co-ownership → vested in two or more persons at the same time.

3. Vested ownership and Contingent ownership

Vested ownership → title of the owner is already perfect.

Contingent ownership → While in this the title is imperfect but is capable of becoming perfect on the fulfillment of some conditions.

4. Absolute and limited ownership

Absolute ownership → all the rights like possession, enjoyment and disposal are vested in a person without any restriction.

Limited ownership → But when there are restrictions about disposal or use and enjoyment.

For example-

*Before **Hindu Succession Act, 1956** the woman had only a limited ownership over the estate because she held the property only for her lifetime and after her death the property passed on to the heirs last holder of the property.*

5. Legal and equitable ownership

Legal ownership has its origin in the rules of common law and equitable ownership is that which emanated (emanated-spread out from a source) from rules of equity. A person may be the legal owner and another person the equitable owner of the same thing or right at the same time. Like a trustee is the legal owner of the trust property and the beneficiary has no direct interest in the trust property but he has a right against the trustees to compel them to carry out the provisions of the trust.

POSSESSION

Possession is the prima facie evidence of ownership. It has nine points in law.

KINDS OF POSSESSION

1. Corporeal possession and Incorporeal possession

Corporeal possession → on material things like house, building.

Incorporeal possession → on immaterial or intangible things.

For Example- Possession of a copyright, trademark.

2. Mediate possession and Immediate possession

Mediate possession → of a thing through another person.

Also known as indirect possession.

For Example- If I purchase a book through my servant.

Immediate possession → Also known as direct possession.
For Example- If I purchase a book by myself, I have immediate possession of it.

3. Constructive Possession

Constructive Possession means having power and intention of retaining control over property but without actual control or actual presence over it.

According to Paulock, Constructive possession is possession in law and not actual possession.

Keaton doesn't recognise this kind of possession.

4. Concurrent possession and Duplicate possession

As a general rule two persons cannot be in possession of the same thing at one and the same time.

But when two persons are having possession on the same thing this is concurrent or duplicate possession.

5. Adverse possession

Adverse possession means possession by a person initially holding the land on behalf of some other person and subsequently setting up his own claim as a true owner of the land.

Modes of acquiring possession:

1. By taking- Acquisition of possession without consent of owner. Taking might be rightfully or wrongfully.

2. By delivery- When a person acquires possession with the consent of owner.

3. Operation of law- Possession may be obtained by operation of law.

For example,

If a person dies, the possession of his property is transferred to his successor and legal heirs.

Elements of possession:

According to Savigny, possession has two essential elements.

1. Corpus possessionis
2. Animus Domini

Corpus possessionis means effective control over the thing.

Animus Domini means the intention to hold the property.

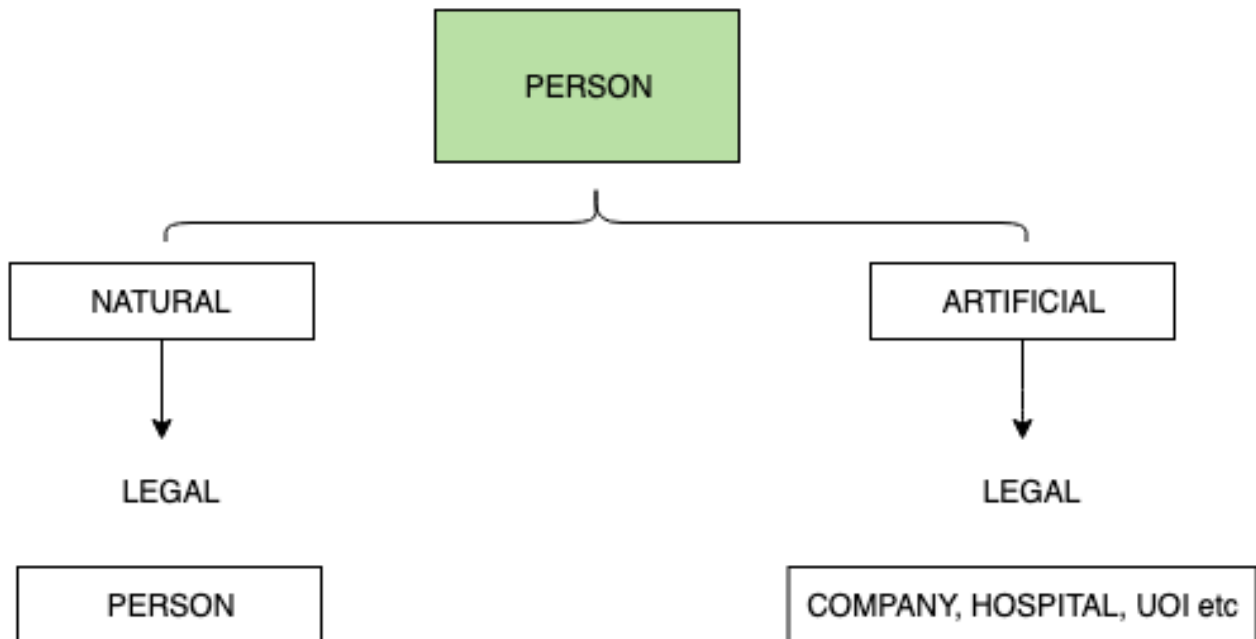
Bridges v Hawkeworth 1851

The court held that the hundred rupees note found on the floor of a shop passed into the possession of the finder rather than the shopkeeper. The decision has been supported by Paullock and Salmond.

LEGAL PERSON

The word 'Person' has been taken from the word 'Personna' (mask)

PURPOSE: To decide the rights and liabilities of artificial person.



There are generally **two types of person** which the law recognise namely - natural person & artificial person. The former refers to human being while later refers to other than human being which the law recognised as having duties and rights. One of the most recognised artificial person is corporation.

Definition of legal person

Salmond- A person as any being to whom the Law regards as capable of rights or duties. Any being that is so capable, is a person whether human being or not, is a legal person.

Paton- Legal personality is a medium through which some such units are created in whom rights can be vested.

Legal status of unborn person

Generally an unborn person is not a legal person but for some purposes he is considered as a legal person.

For example-

A gift maybe made to a child who is unborn. Although the rights conferred on unborn are contingent (conditional, resting, dependent upon) because it depends on his taking birth alive.

Legal status of dead person

Salmond says that the personality of human being starts with birth and ceases with his death. Therefore dead men are no legal person in the eyes of law.

Even then the law protects the body of a dead man, reputation and the property.

Ashray Adhikan Abhiyan vs UOI (2002)

Supreme Court held that even a homeless person when found dead on the road; he has right of cremation as per his religious faith.

Legal status of animals

Law does not recognise animal as a legal person because they are only thing and have no natural or legal rights.

Salmond says, animals are only objects of legal rights and duties but never the subject of them.

Recently in *Karnail Singh vs State of Haryana 2019* Court held that from now all animals will be considered as "persons" that is juristic entity.

Even the state of Uttarakhand has in recent recognized animals as persons.

Legal status of idol

It has been judicially recognised that idol is a legal person; it can hold the property but the position of idol is like a minor because the priest acts as a guardian to look after the interest of idol.

The PC in historic case *Pramatha Math Mullick v Pratyuman Kr Mullick* held that an idol is a legal person and it is represented by the next friend.

Yogendra Nath Naskar v Commissioner of Income Tax SC 1969

Supreme Court held that an idol is a juristic person capable of holding property and of being taxed through its Shebait who is entrusted with the possession and management of its property. An idol can be treated as a unit of assessment for assessing its liability under the Income Tax Act.

(Shebait- Shebait is that person who serves the deity in the temple.)

Legal status of mosque

In case of *Maula Bux v Hafizuddin Lahor HC 1925*, court held that mosque is a legal person, can sue and can be sued. But the privy council in the case of *Masjid Shahid Ganj Case 1940* held that the mosque are not artificial person in the eyes of law so no suit can be brought by mosque or against mosque.

Legal status of Guru Granth Sahib

Supreme Court in *Siromani Gurudwara Prabandhak Committee v Somnath Das SC 2000*, held that Guru Granth Sahib the holy Granth of Sikh is a legal person.

Court further made it clear that Guru Granth Sahib stands on a different footing than the holy books of other religion like Gita, Ramayan, Bible, Quran etc.

Legal status of corporate personality

Corporate personality is a creation of law. A corporation is an artificial person enjoying in law a capacity to have rights and duties and holding properties.

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