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A Comparative Study on Ownership and Possession in the Context of Sale

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ABSTRACT

The Transfer of Property Act, of 1882, a cornerstone of Indian property law, is subjected to a rigorous examination in this research study. By probing the Act's provisions and the caveat emptor principle, this research endeavors to expose the intricate mechanisms of ownership and its profound impact on various aspects of property transactions. This study strives to provide a nuanced understanding of the complex ownership landscape, revealing the subtle yet significant consequences of this pivotal concept.

This research highlights the inherent tensions between autonomy and accountability by critically examining the dynamic interplay between the owner, property, and law. This study explores the intricacies of ownership rights, such as possession, use, and disposal, and their link to the caveat emptor principle by looking at the triadic connection. This paper offers a thorough examination of the complex ownership environment, highlighting the tensions and conflicts that result from the interaction of legal frameworks and individual rights.

Using a mixed-methods approach, this study skillfully combines the empirical breadth of field-based research with the methodical analysis of doctrinal research. A thorough analysis of sources, such as legislation and case law, is placed in the context of a more comprehensive evaluation of secondary sources, which include academic journals and professional opinion. By combining the strengths of both doctrinal and empirical research, this holistic method facilitates a thorough comprehension of the research topics and generates a rich and nuanced interpretation.

This study paper also examines the primary distinction between possession and ownership. It contains illustrations and case law of the subject topic for easier comprehension.

Through a rigorous examination of property law, this research seeks to illuminate the conceptual boundaries between ownership and possession, exploring the subtleties and intricacies that distinguish these two related yet distinct concepts.

Keywords: *Transfer of Property, Ownership, Possession, Caveat Emptor, Law, Primary Sources.*

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I. INTRODUCTION

The concepts of ownership and possession are interconnected with each other. The concept of possession is factual whereas the concept of ownership is strictly legal. Both the concepts of ownership and possession govern an individual's right over the property or a thing. The ownership runs from that of the possession and the appropriate entitlement evidence over a property or a thing by persons that leads to the possession loss of property or a thing by another person. Ownership and possession are considered vital to understanding the concept of ownership and possession clearly and applying them to resolve legal problems accurately and correctly. In simple both these concepts seem to define an act or a state or right of owning. In this research article, the concept of ownership and possession will be discussed in the context of sale.³

(A) Literature Review

1. The Reversioner under the Hindu Law Hasan, Saiyid Asghar Page – 51

This article focuses on the psychological significance of ownership and possession and the perspectives of different people on them. It focuses on the possession of individual's possession on intangible entitlements and analyses the relationship between ownership and possession, including doctrines of first possession and adverse possession. It also talks about the extent of freedom to use their property and the restraint from using it.

2. Aikhenvald, Alexandra & Dixon, R.M.W. (2013). Possession and Ownership

In this article, the author explains the relationship between possession and ownership and this article mainly focuses on the linguistic perspective of ownership and possession especially on the linguistic expressions of ownership and possession in the land, language, in relation with the societal structures. And this article also focuses on the expression of possession like predictive, and incorporation possession.

3. Rostill, Luke. (2021). Possession, Relative Title, and Ownership in English Law

This article throws light on two fundamental principles of English property law- the principle of relativity of title and the principle that possession is a source of title. It has mentioned the different interpretations of these principles by judges, practitioners, and academics. This article mainly focuses on the definition of possession, the nature of title acquired through possession, and the grounds of relativity of title.

³ Concepts Of Property, Ownership And Possession, <http://www.legalserviceindia.com/legal/article-2655-concepts-of-property-ownership-and-possession.html>

(B) Research Problem

The concept of ownership and possession under property has existed since human civilization. The ownership and possession are similar to the layman but as per legal terminology, it is quite distinguished and are used in extensive uncommon circumstances. The right of ownership is subjected to many statutory laws such as the Sales of Goods Act, the Transfer of Property Act, and the Land Reforms Act. Ownership is a de jure recognition whereas Possession is a de facto recognition of continued exercise and enjoyment.

(C) Hypothesis

Ownership and possession are quite similar. In both cases, the owners have absolute rights to the property or an object. Possession is more about physically controlling an object or property. The possessor is said to have the title to the property, except for the owner. These concepts play an important role in modern times, as they are rooted in ancient property law. The main difference between ownership and possession is that possession concerns the right to possess the object, while ownership is exclusively a legal concept.⁴

(D) Research Question

1. Whether ownership and possession the same?
2. How do ownership and possession differ from each other?

(E) Scope of this study

The scope of this paper is to understand the concept of ownership and possession through elements, characteristics, acquisition, and its types.

(F) Objectives of the Study

- To understand the difference between ownership and possession
- To know the modes of acquisition of ownership and possession
- To understand the characteristics and elements of ownership and possession.

(G) Findings

Caveat emptor provides a critical counterbalance to the exercise of ownership rights, promoting a balance between personal freedom and fiscal responsibility. By recognizing the importance of caveat emptor, individuals can better manage risks and ensure more transparent transactions.

⁴ Analysis of the Concept of "Possession" through Theories and Case Laws, https://heinonline.org/HOL/Page?public=true&handle=hein.journals/injlolw9&div=66&start_page=1&collection=journals&set_as_cursor=4&men_tab=srchresults

Yet, ownership rights are inherently limited by legislative, social, and economic considerations. A deep understanding of these dynamics is essential for navigating the intricacies of property ownership.

(H) Research Methodology

The paper is of doctrinal method as it mostly collects data from various places. The sources are mostly secondary. It includes books, journals, and different articles from India and around the world. The following methods will be relied upon to fulfill the objectives of the study and the collection of necessary data. It also includes case laws.

II. CONCEPT OF OWNERSHIP

Ownership means to own something ownership is the concept that comes with both the rights and duties of the owner is having both right and duties towards the object and an owner has the sole right and he or she can do anything with the object whether they want to sell, modify the title, destroy the object, throw the object anything as of his or her wish it gives the owner An enforceable legal right so that they have the freedom to act or not act as they see fit. The owner has having bunch of rights he or she can give some rights to another person but the ultimate right will be in the hands of the owner only if a person owns a shop and wants to give that shop in rent then some right will be given to the tenant. Let's understand the concept with an example Mr. Raghav is the owner and has all the legal documents of the car so he has the ownership of the car and his driver Sonu has possession as per the agreement with Mr. Raghav but he does not have the ownership of car and. Sonu has to follow all instruction directed by Mr. Raghav as Mr. Raghav have the ownership of the car. Ownership is characterized by three key features. First, it represents a singular relationship known as the "right of property." Second, this right is marked by the owner's complete and absolute control, excluding any claim by others. Finally, ownership applies to physical, tangible objects in the world.⁵

(A) Ancient Hindu Law and Ownership

Rather than being seen as a mere right over property, ownership was closely linked to social and ethical obligations in ancient Hindu law. Ownership had to do with more than just personal belongings; it also had to do with the well-being of members of the family and the larger society. For example, land was not something to be exploited for private benefit but rather something to be controlled and protected for future generations.

Property is something that is inherited from the ancestors and laws and rules are controlled by

⁵ Lars Bergström, THE CONCEPT OF OWNERSHIP, <https://philarchive.org/archive/BERPOA-6>

the caste system and family structure. Today, a single, unified law of succession applies to all Hindus, replacing the old Hindu and customary laws of succession. Partition, or Vibhajan, is described in the Mitakshara as the division of shared wealth, where specific portions are allocated to individuals who previously held joint ownership over the property. Before it was changed by later commentators, Hindu law recognized a widow as her husband's equal, or "other half," in both body and soul and granted her complete ownership rights over property. In ancient Hindu law, ownership was not an unrestricted right but carried with it moral and social responsibilities. Property had to be managed per dharma (moral duty) and the expectations of society.

(B) Characteristics of Ownership

The provisions of the Transfer of Property Act, of 1882, highlight the complex nature of ownership and capture its essential elements. The Act defines ownership as the combination of three rights that constitute the basis of all property transactions: the right to hold, the right to use, and the right to dispose. The concepts of exclusivity, which forbids numerous persons from owning a property at the same time, and perpetuity, which guarantees that ownership continues unless freely renounced or terminated by legislation, support this triad. Moreover, the Act's focus on the owner's ability to alienate others and the caveat emptor doctrine highlights how ownership and autonomy go hand in hand.

The Transfer of Property Act, offers a thorough framework for property transactions in India, thereby smoothly blending the legal, social, and economic aspects of ownership.

(C) Types of Ownership

Any legal or equitable claim to resources, property, or other assets is referred to as ownership. Depending on the context it might be applied to any section like business, intellectual property, personal property, etc. There are different kinds of ownership each having unique characteristics.

- 1- **Absolute Ownership** – This is the fullest form of ownership while maintaining total control over it. In absolute ownership, the owner can use, sell, or keep the property for heirs. Has no limitations on being sold, given as a gift, or inherited. For example –

A person owns a bus outright without any conditions or limitations.⁶

- 2- **Joint Ownership** - The ownership of a piece of property is shared by two or more

⁶ DAVID KIM, OWNERSHIP, No. 76 (2019), pp. 130-133 (4 pages), Published By: Architectural Association School of Architecture, https://www.jstor.org/stable/27124590?searchText=&searchUri=&ab_segments=&searchKey=&refreqid=fastly-default%3A7f072529b752f35a52af8fd9e89de494&seq=2

persons. There are many types of co-ownership:

- a. **Joint tenancy**- The right of survivorship is applicable, and each co-owner has an equal part (if one dies, the other automatically receives their share).
- b. **Tenancy in common** - Tenancy in common is the primary form of co-ownership in Tennessee today. It occurs when two or more individuals own separate and distinct interests in the same property, where each person is entitled to share both possession and the income generated from the property. Apart from shared possession, each co-owner holds their interest independently, enjoying the same rights over their portion as if they were the sole owner. This type of ownership does not require that all co-owners acquire their interests at the same time or from the same source. Unlike joint tenancy, tenancy in common is not defined by the right of survivorship. In this form of ownership, a co-owner can take possession of the shared property as an owner without deferring to anyone else's title, which contrasts with the landlord-tenant relationship. Additionally, the typical relationship between co-tenants does not constitute a partnership unless that is the clear intention of the parties involved.

Creation of Tenancy in Common-Tenancy in common can arise in several ways. It frequently occurs when two or more individuals inherit property from a deceased person who did not leave a will. It can also be established through a deed or a will that transfers property to multiple people, as long as there is no mention of survivorship rights.

- c. **Tenancy by the Entirety** - This is a type of ownership that is somewhat similar to joint ownership this type of ownership is especially for married couples with some additional protection.
- 3- **Life Estate** - The property is owned by the life tenant for the term of their life, after which it passes to another individual (the remainderman).

A life tenant has the right to use and enjoy the property for the duration of their life, but they are not allowed to sell or leave the property to anyone in a will. Once the life tenant passes away, ownership of the property automatically goes to the remainderman. A kid who receives a life estate from a parent may occupy the home throughout their entire lifespan, but upon passing away, it passes to the next successor.

- 4- **Lease Holder Ownership** - Leaseholds are involved in a wide range of activities, including the creation of multi-tenant office towers to the acquisition of single-family homes. Ownership under a leasing arrangement for a predetermined amount of time. The tenant receives ownership and usage rights from the property's owner (landlord) for

a certain amount of time, but the landlord eventually owns the property again. Depending on the conditions of the lease, it may be handed (assigned) to a different party. For example – A commercial property leased for 80 years.

- 5- **Conditional Ownership** - Ownership is conditional, and if the specified conditions are not met, the property may return to the original owner or their heirs. It is possible to transfer the property, but the person who purchases it will need to abide by the terms stated in the first transfer.

For example - A piece of land is granted to a school with the requirement that it be utilized for purposes of education only; otherwise, the original owner will reclaim the land. If the school does not abide by the conditions as it was given for educational purposes and instead of that if they make a cinema hall then the original owner can take away his property.

- 6- **Trust Ownership** - Trust ownership is a legal structure in which an individual, referred to as the grantor, transfers property to a trustee. The trustee is responsible for managing and overseeing the property for the advantage of a third party, called the beneficiary.

For example – Assets entrusted to a trust for the benefit of minors up until a specified age.

The legal ramifications of various ownership arrangements vary depending on how the asset is utilized, passed down, or inherited.

III. MODES OF ACQUISITION OF OWNERSHIP

There are two types of modes of acquisition of ownership.

1- Original Acquisition –

Ownership is initially obtained through actions personally undertaken by the individual acquiring it. There are three possible ways through which original ownership can be acquired. “Original acquisition: The pioneering act of ownership, where uncharted legal territory is claimed and cultivated, birthing title through discovery, conquest, or creation, and anchoring the roots of property rights.”

Absolute - In legal terms, the concept of “res nullius” refers to objects or property that have no current owner and are therefore available to be claimed. When someone acquires res nullius, they are typically considered the first legal owner of the item. This principle is most commonly applied to unclaimed natural resources, such as land or wildlife. Once acquired, the person has full ownership rights, as no prior claims or ownership interests exist.

Extinctive Acquisition - Extinctive acquisition refers to the process by which an individual's deliberate actions lead to the termination of a previous owner's rights, resulting in the acquisition of ownership for themselves. Examples include acquiring ownership through prescription or adverse possession, where uninterrupted possession for a prescribed period, typically 12 years in India, extinguishes the original title and confers ownership to the new possessor.

Accession - Accession, also known as accessory acquisition, refers to the process by which ownership of property is gained through the addition of something to existing property. Examples of this include the natural products of land or animals, such as crops or offspring, or the fruits from trees.

2- **Derivative Acquisition** –

When ownership is obtained from a prior owner, it is referred to as a derivative acquisition of ownership. This occurs when ownership is transferred through means such as inheritance, gifts, or purchases. In the Indian context, the acquisition of property ownership is governed by various laws, including the law of succession, the Transfer of Property Act, and the Sale of Goods Act, among others. These laws regulate how ownership is passed from one party to another through derivative modes.

The legal phoenix, transforms one person's ownership into another's, through the spark of inheritance, gift, or sale, forging a new link in the chain of title.

(A) **Possession**

The word **Possession** has been defined by many jurists according to their personal beliefs. According to **Salmond** Possession is the continuing exercise of a claim to the exclusive use of an object.

Savigny defined Possession as an intention coupled with physical power to exclude others from using material objects.

Justice Holmes defines Possession as 'To gain possession a person must stand in a certain physical relation to the object and the rest of the world, must have some intent.'

Sir Henry Maine defines Possession as physical detention coupled with holding the things detained as one's own.

The Hon'ble Supreme Court of India in the case of **B. Gangadhar vs. Ramalingam (1995) 5 SCC 238** expanded the concept of Possession. Ownership is the possession required to achieve objectives.

A claim to a specific piece of property for the actual exercise over that property is known as possession. Where the claims are most typical and manifested, they are from outward.

An object or a thing that has physical control, then it is called Possession. It is a legal concept and real.

As per the **Sales of Goods Act, 1930** possession refers to the physical transfer of ownership of a property from the transferor to the transferee. It can also refer to the legal right to control intangible property, such as credit.⁷

(B) Elements of Possession

There are two fundamental elements of Possession: -

1. Corpus Possession

The physical element that comprises physical command over a thing is known as Corpus Possession.

It comprises of two things –

- It is the physical relationship with the object or the res.
- The rest of the world is for the possessor's relationships.

A person whatever he owns must have physical touch with reasonable expectations where other persons cannot intervene in that. That means other persons should not intervene in the possessor's rights to use or enjoy the property or object.

The physical power of a possessor over the property or object in his possession works as an assurance. Another person cannot intervene in the possession of that property or object because it is an assurance. To avoid these kinds of interventions the possessor can build walls, gates, etc.⁸

Personal presence is enough to keep ownership over the property or object to the Possessor.

Secrecy is the method with the competence to irradicate the intervention or external influences of other persons and to secure possessor possessions and maintains in a hidden area. Wrongful ownership over the property or object prevents others from interfering with the lawful possession of that property or object.

2. Animus Possidendi

A mental element that comprises the assurance to practice that control is known as Animus

⁷ Article – The Reversioner under the Hindu Law Hasan, Saiyid Asghar Page – 51

⁸ Jurisprudence – V.D. Mahajan

Possidendi.

To desire to exercise such power and imply the possibility of bodily control. It is a mental component of Possession.

Animus Possidendi in legal possessions the factors are –

- The possessor has no right over the property even if it is deliberately illegal.
- The property's sole owner must possess the possessor.
- As the owner the possessor does not intend to utilize the items accompanied by a claim.
- The animus possidendi of the possessor does not have to be his own.
- The animus possidendi must be broad.
- The animus possidendi is merely general, and may not be specific.

(C) Types of Possessions

There are eight types of possessions.

- 1- **Corporeal Possession** – Objects which have physical or materialistic manifestation, and which our senses can perceive are corporeal possession. For example – House, Car, Bicycle, Pen, Pencil, etc.
- 2- **Incorporeal Possession** – Objects which does not have physical or materialistic manifestation and which our senses cannot perceive are incorporeal possession. For example – Will, Trademark, Patent, Copyright, etc.
- 3- **Mediate Possession** – Mediate possession of an object is the possession of a thing through a mediator (Middle man) like an agent, friend, or servant. It is also called indirect possession. For example – If 'A' is a landlord let his house to 'B' be a tenant. 'B' is bound to hand over the house to 'A' whenever he decides. So 'A' has the mediate possession of the house through 'B' a tenant.
- 4- **Immediate Possession** – Whenever the possessor himself possesses the property or a thing are immediate possession. For example – If 'A' buys a pen from a shop and keeps it for himself. The pen is in the immediate possession of 'A'.
- 5- **Constructive Possession** – It is a possession of the authority over an object without having actual possession or charge of the material. In other words, we can say that constructive possession is not a possession but it is a possession in law not in fact. For example – The delivery of a key by 'A' car driver. Here car driver was the constructive

possessor of an 'A' car until he delivered the key.

- 6- **Adverse Possession** – It is a possession means the possession of some property or object, without a legal title for a certain period, sufficient to become an acknowledged legal owner. It is sometimes recognized as 'squatter rights. The possessor is required to prove an intention to keep it absolutely for oneself. Just claiming the property or paying liabilities for it, without actually possessing it, is not sufficient. For example – 'A' continuously uses an agricultural field of 'B' an unused piece of land.
- 7- **De facto Possession** – It is a Latin word that means 'in fact'. It is the possession which exists in reality even if it is not legally recognized. For example – In common-law principles, the spouse can be recognized as the defacto wife or defacto husband though they are not married legally, yet they live like a married couple.
- 8- **De-jure Possession** – It is a Latin word that means 'in law'. It is a possession that is legally recognized possessions regardless of whether it exists really or not. It is also known as judicial possession which means possession in the eyes of law. For example – 'A' an owner of the house could cease 'B' a man to live in a house without intending and to abandon it for good. It is a case of De jure Possession.⁹

(D) Modes of Acquisition of Possession

There are three modes of acquiring possession.

By Taking –

This mode can be either original or derivative. Without the consent of the previous owner, an acquisition of possession may be right or wrong.

It must be already some other person's possession is not necessary.

For example – If 'A' seizes the goods of 'B', and has failed to pay the rent of a house, there is the acquisition of possession by rightful taking.

But if 'A' steals the goods of 'B', then the acquisition of possession by wrongful taking.

A wild animal or a bird does not belong to anyone.

By Delivery –

This mode involves one person willingly giving up possession to another person. It can be both actual and constructive.

⁹ Transfer of Property Act – Ratanlal_ Dhirajlal

When immediate possession is transferred then it is actual delivery. Whereas if there is no actual or direct possession transfer the thing is constructive delivery.

Constructive delivery is of three types –

1. Traditio Brevi Manu – A person having immediate possession already to give up the possession. For example – ‘A’ sells a thing to ‘B’ who has a hirer and already has immediate possession.
2. Constitutum possessorium – Here immediate possession remains with the transferee and the mediate possession is transferred as opposed to tradition brevi manu. For example – If ‘A’ buys a scooter from a hired person and gives that scooter to him for the same purpose.
3. Attornment – Immediate possession is with the hands of a third person during the transfer, while mediate possessions include the delivery. For example – If ‘A’ sells goods to ‘C’ when the goods are in ‘B’ warehouse. So, a ‘B’ person accepts goods for the ‘C’.

Operation of law –

This is another mode of acquiring possession. Possession can be acquired by the operation of law like in the case of succession and unfavorable possession.

IV. COMPARISON BETWEEN OWNERSHIP AND POSSESSION

<u>Ownership</u>	<u>Possession</u>
Ownership is in rights.	Possession is in fact.
The assurance of law is ownership.	The guarantee of the realities is possession.
Ownership may not always include possession.	Possession always includes ownership.
Ownership is a collection of rights, all of which are real.	Possession is not proof of ownership; it is merely prima facie evidence.
Ownership is the de jure recognition of the claim.	Possession is a de facto exercise of the claim.
Ownership is the soul.	Possession is the body and the existence of the body is necessary for the realization of

	the soul.
Ownership is absolute and unconditional.	Possession is not absolute but it is conditional.

V. CASE LAWS

1. Hannah Vs. Peel (1945) 1 KB 509

In this case, the plaintiff was a soldier and he was asked to stay in the house and he found a badge from the house where he was living. The defendant in this case filed a suit against the plaintiff but the badge was not given to the owner as he did not take the house in physical possession and the badge was found on the floor.

In this case, the court considered two things –

- Corpus element was never in favor of the owner of the house.
- And the way the badge was found in the doctrine of res nullis was applicable.

The **Doctrine of Res Nullius** is a concept that means the things which do not belong to anyone and which can be acquired by taking possession of them. It is a Latin word that means ‘thing of no one’.

2. Bridges Vs. Hawkesworth (1851) 21 LJ QB 75

In this case, a person handed over a bundle of notes to a shopkeeper which he found under the stairs of the shopkeeper’s shop and told the shopkeeper to give it to the owner. After trying so much the shopkeeper could not find the real owner and kept those bundles of notes to himself. And the person who found those bundles of notes filed a suit against the shopkeeper. The Issue in this particular case was to whom those bundles of note belonged.

The court held that the doctrine res nullius was applied which means the person who first found it has the right to keep it.

3. Merry Vs. Green (1847)

In this case, the plaintiff bought a table from the respondent in an auction. The plaintiff found a purse in a secret drawer of the table and had money in it. The money belongs to the respondent, but the plaintiff keeps it to himself. The issue in this case was whose purse it was and whether the plaintiff could keep it to himself.

The court held the plaintiff guilty because the respondent was ignorant and unaware of the money in the purse kept in a secret drawer of the table. So, the plaintiff does not have possession

of the money in the purse and cannot possess it.

VI. CONCLUSION

To sum up, our research has looked closely at the complicated relationships and unique qualities of possession and ownership, illuminating their complex dynamics. This research has brought attention to the subtleties of ownership rights, such as possession, use, and disposal, through a careful examination of the Transfer of Property Act, of 1882, and the caveat emptor doctrine. The study's conclusions highlight how important it is to comprehend the distinctions between possession and ownership, especially when it comes to real estate transactions. Additionally, the study has looked at the multiple ways that ownership and possession may be acquired, such as original and derivative acquisition, as well as the various kinds of ownership and possession that exist, such as joint ownership, absolute ownership, and intermediary possession.

This work has advanced our knowledge of the conceptual distinctions between possession and ownership by fusing doctrinal analysis with empirical investigation. The study highlights the necessity for a nuanced approach to property transfers and the need to define the rights and duties of the parties involved, with implications for legal practitioners, researchers, and policymakers. The ultimate goal of this research is to contribute to and improve the conversation on property law by encouraging a deeper comprehension of the intricate connections between possession, ownership, and the law.
