

# **Ownership**

**WHAT IS OWNERSHIP?**

**INTRODUCTION TO THE CONCEPT OF OWNERSHIP**

# What is ownership?

## ■ Definition

- Art 1204(1) “ownership is the widest right that may be had on a corporeal thing”
- This definition is defective one for 2 reasons:
  1. Except stating that it is the ‘widest right’, it doesn’t tell us its essence. It only tells its scope: that it is the widest right, compared to other *in rem* rights.
  2. It limits the objects of ownership only to corporeal objects. It excludes incorporeal objects from the class of objects of ownership. But this is not true; as we can learn from other provisions of the CC and other legislation, incorporeal objects such as patent & copyright are regarded as objects of ownership.
- The only importance of the definition under Art 1204(1) is that it tells us that ownership is a right, that it is a real right; and that it is the widest and most comprehensive of all real rights.

## What is ownership? ....*ctd.*

### ■ Definition ....*ctd.*

- We can construct the following definition based on the general literature and cumulative reading of Arts 1204(1), 1205(1)&(2) and other provisions of the CC:

*The exclusive right of a person over a thing to use, collect the fruits and dispose of it subject to the limitations provided by law.*

### ○ Ownership is a right over a thing:

- Because it is a right, it is different from possession over a thing.
- It is a right in/over a thing (object of property right); it is *in rem* right as opposed to *in personam* rights.

### ○ It is the widest and most comprehensive of real rights

- Ownership gets this quality b/c it contains a number of rights within it; ownership, as such, is not a single right; it is an aggregate or bundle of rights; it contains a number of rights within it.

## What is ownership? ....*ctd.*

### ▪ Definition ....*ctd.*

- We can construct the following definition based on the general literature and cumulative reading of Arts 1204(1), 1205(1)&(2) and other provisions of the CC:

The *exclusive right of a person over a thing to use, collect the fruits and dispose of it subject to the limitations provided by law.*

### ❖ Ownership is a right over a thing:

- Because it is a right, it is different from possession over a thing.
- It is a right in/over a thing (object of property right); it is *in rem* right as opposed to *in personam* rights.

### ❖ It is the widest and most comprehensive of real rights

- Ownership gets this quality b/c it contains a number of rights within it; ownership, as such, is not a single right; it is an aggregate or bundle of rights; it contains a number of rights within it.
- Usus, fructus, abusus, usufruct, servitude, right of recovery, promise of sale, right of preemption. Usus, fructus & abusus are considered as pillars.

# What is ownership? ....*ctd.*

## ▪ Definition ....*ctd.*

### ❖ Ownership gives rise to power/liberty over a thing:

- To possess and use the thing (Art 1205(1)).
- Collect the fruits (fructus) – Art 1205(1): the owner has the right to exploit or collect the fruits of the thing.
- Abusus (Art 1205(2)): the owner can alienate or dispose of the thing (in essence, his right):
  - By transferring to another person: for consideration/ without consideration;  
*inter vivos/ mortis causa*
  - By abandoning or destroying the thing
- For other powers/rights (and duties) of owner see Arts 1207-1227.

### ❖ Ownership gives rise to the power to exclude others in the exercise of the rights on a thing

- Ownership entails a negative duty on all other persons in the world other than a co-owner.
- The owner has the power to exclude all other persons not to interfere in his enjoyment of the powers that come with ownership.

## What is ownership? ....*ctd.*

### ▪ Definition ....*ctd.*

- The power to exclude has two manifestations (Art 1206):
  - The owner can oppose others by force or through court action not to use the thing, collect the fruits or transfer the thing to another person without his consent.
  - Petitory action: The owner has the right to reclaim the object of ownership if it is taken by other persons without his consent.

### ❖ Ownership is subject to limitations and restrictions in accordance with the law

- Although ownership is the widest & most comprehensive right, it is not an absolute right; it is subject to limitations and restrictions: Arts 1204(2) & 1205(1).
- The powers and privileges that come with being owner may be restricted: by law (provisions in the CC and other legislation & By juridical acts made in accordance with the law.

## What is ownership? ....*ctd.*

- Definition ....*ctd.*

- Some limitations imposed by law on ownership:

- On the *usus* aspect: should not cause damage or nuisance for others (Art 1225); .
    - On the *fructus* aspect: a person may be prevented from collecting the fruits or exploiting the object of the right. Eg. the income from a thing may be attached and channeled to pay debt.
    - On *abusus* aspect: a person may be prevented from freely alienating a thing he owns: rights of creditors; rules on dishersion; rules that prohibits from damaging/burning currency.