

“शिक्षा मानव को बन्धनों से मुक्त करती है और आज के युग में तो यह लोकतंत्र की भावना का आधार भी है। जन्म तथा अन्य कारणों से उत्पन्न जाति एवं वर्गगत विषमताओं को दूर करते हुए मनुष्य को इन सबसे ऊपर उठाती है।”

— इन्दिरा गांधी

“Education is a liberating force, and in our age it is also a democratising force, cutting across the barriers of caste and class, smoothing out inequalities imposed by birth and other circumstances.”

— Indira Gandhi



Indira Gandhi
National Open University
School of Law

MIP-101
General Introductions
to IP Rights

Block

1

CONCEPT OF PROPERTY

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MIP-101 GENERAL INTRODUCTION TO IP RIGHTS

The Course on Introduction to IP rights will extensively deal with the meaning and concept of Intellectual Property Rights. We encounter intellectual property at every step of our lives today. From the design on the bed sheet to the titles, paints, books, films, the music CDs, in fact each and everything by which we are surrounded falls under some kind of intellectual property.

The concept of intellectual Property (IP) will be understood better if we understand what is meant by the term of Property. Property actually means some material object belonging to a particular person. Speaking legally property refers to the bundle of rights that the law confers on a person by virtue of the ownership and possession of an object.

Intellectual property on the other hand implies to any property created by the application of human mind. It is non physical (intangible) and it derives its values from ideas(s). There is no uniform definition of intellectual Property. The domain of IP is expanding fast as knowledge and information became key drivers of techno-economic growth and of societal progress in general.

This course divided into four blocks.

Block 1- Concept of Property

Block 2- Philosophy of IPR

Block 3- Kinds of IPR

Block 4- International Treaties and Conventions

Block 1 of this course deals with the concept of property, kind of property, different forms of property and how the private rights like patents, copyrights etc. be balanced with interests.

Block 2 of this course deals with the philosophy of IPR, wherein the history and evolution of IPR, theories of IPR are dealt with. Intellectual Property can be used as a tool for economic development; these concepts are extensively explained in the block.

Block 3 of this Course deals with the different kinds of IPR. As we know that Intellectual Property rights are divided into two parts industrial Property Rights and Copyrights and Related rights. This Block is divided into three parts, wherein Copyrights and Related rights and Industrial Property Rights like designs, Trademarks Patents, Geographical Indication etc are dealt with.

Block 4 of this Course deals with different International Treaties and Convention dealing with trade secrets, Trademarks, Competition law, Copyrights and Related Rights, Designs, Utility Models and classification treaties.

1 credit = 30 hrs of study

This means that you have to dedicate $30 \times 4 = 120$ hrs of study for this course.

Good luck and Best Wishes.!

BLOCK 1 CONCEPT OF PROPERTY

This Block deals with the general meaning of Property. Property as we understand consists of two fundamental attributes, one is possession and the other is the title. A person who possesses a property has the better title to it against the whole world, but the owner. It is also known as possession is nine points of law. An owner of the property holds the best title. Intellectual property on the other hand is a property which a person possesses through his intellect.

This Block consists of three units.

Unit 1 deals with the concept of property. It elaborates different types of property, general characteristics of property, attributes of property, theories of property, different definition of property, meaning of property by different philosopher etc.

Unit 2 emphasizes on different kinds of property, corporeal property, incorporeal property, immovable property, movable property, kinds of intangible property rights, different forms of Intellectual Property, modes of acquisition of property etc.

Unit 3 of this Course discusses on the balancing of private rights with the public interests. The unit deals with the characteristics of a legal right, kinds of rights, safeguards to protect public interests, etc.

UNIT 1 CONCEPT OF PROPERTY

Structure

- 1.1 Introduction
- 1.2 Objectives
- 1.3 Types of Property
 - 1.3.1 Ownerless Things
 - 1.3.2 What can be Property?
- 1.4 General Characteristics of Property Rights
- 1.5 Attributes of Property
 - 1.5.1 Possession
 - 1.5.2 Title
 - 1.5.3 Cases on Possession
- 1.6 Ownership
- 1.7 Theories of Property
- 1.8 Definition of Property by Different Philosophers
- 1.9 Meaning of Property
- 1.10 Property in Common Law
- 1.11 Property in Business Law
- 1.12 Supreme Court's View
- 1.13 Intellectual Property Rights
- 1.14 Illustration of IPR
- 1.15 Summary
- 1.16 Terminal Questions
- 1.17 Answers and Hints

1.1 INTRODUCTION

Property is physical or intangible entity that is owned by a person or jointly by a group of persons or a legal entity. The owner of the property, can based on the nature of property consume, sell, rent, mortgage, transfer, exchange or destroy it, or as per his choice exclude others from doing these things. We commonly recognise various types of property such as real property, personal property, private property, public property and intellectual property.

Property has been defined by different people in different ways but it is evident that all of them treat property as a means and not as an end. So, one can agree that property is a means to lead a good life. Most of the times property is defined as a fragment, i.e a relationship people with respect to a thing or only as a right or sometimes a combination of both, and this is so because people fail to understand the complex relationship between the two.

Different disciplines (such as law, economics or sociology) treat property in different manner. However, they treat property in a very systematic manner. The definitions given by these disciplines too vary.

1.2 OBJECTIVES

After reading this unit, you should be able to:

- define what property is ;
- explain the distinction between Property and Intellectual Property; and
- discuss the concept of property.

Self Assesment Question

(Spend 3 minutes)

1) What do you mean by property?

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1.3 TYPES OF PROPERTY

We commonly recognise types of property which are:

- 1) 'Real property' in common law means the combination of land and any improvements to or on the land made by human effort. Example any buildings, machinery, wells, dams, ponds, mines, canals, roads etc. This is also known as immoveable property, real estate or reality.
- 2) 'Personal property' refers to physical possessions belonging to a person. In common law it is also called as chattels. It is commonly known as 'moveable property'. Example car, jewelry, watch, horse, dog, cattle etc.
- 3) 'Private property' refers to property owned by legal persons or business entities.
- 4) 'Public property' or 'collective property' refers to property owned by state or community or government. This property is dedicated to the use of the public. Example public parks, roads, public transport buses, trains etc.
- 5) 'Intellectual property' refers to exclusive rights over artistic and other creations of mind, inventions. This is also known as intangible property. Example Patents, designs, trademarks, copyrights etc.

1.3.1 Ownerless Things

Ideas – normally ideas cannot be the property of any one person, as two persons can have the same idea.

Sea water – sea water cannot be the property of anyone. However, on the basis of territorial jurisdiction, any one nation can claim that the sea water in its territory belongs to that nation.

Celestial bodies – Similarly, Celestial bodies in the space are owner less things and thus not the property of anyone.

1.3.2 What can be Property?

Effort with an object – According to John Locke effort are necessary to create a property, example mixing your labor with an object, or clearing and cultivating virgin land, Intellectual property.

Possession and ownership – It was a notion earlier that any person who owned anything first became the owner of that thing. This applied mainly on chattels as well as land. So, one can say that the idea of possession came prior to ownership.

Scarcity of objects – According to Benjamin Tucker the purpose of property is to solve the scarcity problem. He suggested that only when things are relatively scarce with respect to people's desires do they become property. E.g. Agriculture land and houses build on land.

1.4 GENERAL CHARACTERISTICS OF PROPERTY RIGHT

Traditionally following principles are attributed to existence of a property rights

- 1) Control of the use of the property
- 2) The right to any benefit from the property (examples: mining rights and rent)
- 3) The right to transfer or sell the property
- 4) The right to exclude others from the property.

Traditional property rights however exclude uses of property that unreasonably interfere with

- 1) The property rights of another private party (the right of quiet enjoyment).
- 2) The public property rights, including uses that interfere with public health, safety, peace or convenience.

1.5 ATTRIBUTES OF PROPERTY

Oliver Wendell Holmes describes property as having two fundamental attributes i.e. possession and title.

1.5.1 Possession

Possession, is defined as control over a resource based on the practical inability of another to contradict the ends of the possessor.

1.5.2 Title

Title is defined as the expectation that others will recognize rights to control resource, even when it is not in possession.

Possession is defined as control over a resource based on the practical inability of another to contradict the ends of the possessor. Possession has been defined by various writers in a different ways.

According to Holmes "To gain possession a man must stand in a certain physical relation to the object and to the rest of the world and must have certain intent."

Salmond divides possession into 'incorporeal' and 'corporeal' and defines corporeal possession as "the continuing exercise of a claim, there are two elements the 'corpus' and 'animus'.

According to Pollock- "In common speech a man is said to possess or to be in possession of anything of which he has the apparent control or from the use of which he has the apparent power of excluding others.

The above definition emphasizes more on the intent or 'animus. The intent that constitutes possession is the intent to exclude others. In English law the intent or the 'animus' is the main element of possession, however it also require a some kind of physical relationship with the object.

As it is understood possession has two elements.

Corpus

Corpus means that there exist such physical contact of a person with a thing as to give rise to a reasonable assumption that others will not interfere with it. Corpus depends upon the nature of the thing. Thus whether in a particular case the necessary physical relation exists or not depends among other things upon the nature of the thing also.

The contract or relation has two aspects:

- 1) The relation of the possession to other persons and
- 2) The relation of the possession to the thing possessed.
 - 1) The relation of the possession to other person. According to Salmond, a person is in possession of a thing if it create a reasonable expectations that he will not be interfered by anyone in the use of it.
 - 2) The relation of the possessor to the thing possessed. Salmond says that "the necessary relation between" the possessor and thing possessed is such as to admit of his making such use of it as accords with the nature of the thing and of his claim to it.

Both of the above aspects are necessary to constitute possessions.

By possession means the person has the apparent control. Any domestic animal that is in the habit of returning home shall be considered in the possession of the master although he is wandering during the day.

In *Ancora v. Rogers* "A was permitted to put her goods in a room in B's house. A sent the goods though a man who kept it in the allotted room and locked it and took away the key with him.

A was held to be in possession of the room.

Animus

The corpus (the physical control) alone cannot constitute the possession. 'Animus' is a lot necessary. It means that there must be an intent a mental consciousness on the part of the possessor to exclude any interference by others.

The important things about animus are:

- a) The person having the animus is not necessarily the owner and he is also aware of it. For eg. a tenant and a mortgagee are not owners and they know it.
- b) The animus is not necessarily based on a possessors own interest or right as in the case of bailee. He has the possession of the object bailed although the animus to exclude others is not on his own behalf.
- c) It is not necessary that the animus should be specific, it may be a general animus.
- d) It is not necessary that the animus should be based on a legal claim to the object.
- e) The animus must be of exclusive claim to the object.

1.5.3 Cases on Possession

In *Merry v. Green* (1841) 7 M & W. 623, A person purchased a bureau. He found some money in a drawer which he appropriated. He was corrected for larceny on the principle that the money was not in his possession until he found it. Here animus was lacking.

In another case, In *RV Moor* (1861) L&C. In this case a bank note was dropped in the shop of the accused. The accused found it and appropriated it knowing full well that the owner could be discovered. He was convicted of larceny. It means that the accused was not in possession until he actually found the bank note because the animus was lacking.

In another case, *Bridges v. Hawkesworth* (1851), 21 L.J.Q, B. 75. In this case a pocket book was left on the floor of the shop of the defendant shopkeeper by a customer. The plaintiff (who was also a customer) found it. He gave it to the defendant by the purpose of returning it to the real owner when he was discovered. It was held that the plaintiff, and not the defendant, first acquired possession of the book (and so it belong to him in default of the real owner). The defendant did not know of the existence of the book before the plaintiff found it therefore the former has no animus and consequently, he was not in possession of it.

'Possession' is said to be nine points of law. It means that a person in possession of an object has better claim over it against the whole world except the real owner.

In the case of *Armorie v. Delamince* 1 Stra (1722) 505. A chimney boy found a jewel and took it to the shop of the defendant to know its value. The defendant refused to return to the boy on the ground that the boy was not the owner. The boy was allowed to recover it from the shopkeeper. The boy being the prior possessor had a better claim to it against the whole world except the real owner and as the shopkeepers claim was not on behalf of the owner the claim of the boy prevailed against him.

1.6 OWNERSHIP

Ownership is an akin conception of possession. It seems historically that first the concept of possession came into being and then the concept of ownership

gradually developed out of it due to changes in the economic structure of the society. The concept of ownership came into being when the society changed from romantic to agricultural.

According to Holdsworth, English Law reached the conception of the ownership as an absolute right, through development in the law of possession, ownership and property are correlated terms.

Ownership has a peculiar kind of relationship between a person and a thing. This relationship can be looked from two different angles. One can look at it from the angle of the person in whom the bundle of rights over the thing vest which constitutes ownership or it can be looked at from the angle of the thing and can be studied as subject to a special kind of control, exercised by a particular individual.

The bundle of rights of a person over a thing give him the ownership of the thing and the control exercised by the person over the thing makes the thing a property of that person. This the idea behind the ownership and property are the are fundamentally the same and the ownership and property are the two aspects of the same relation. These concepts are mutually interdependent and one cannot be fully and clearly understood without the other.

The rights of ownership constitute the three important rights which are:

- 1) The right of possession of the property owned.
- 2) The right of enjoyment of the property, which includes in it the power to deal with the property as the owner likes.
- 3) The right to dispose the property.

In India, earlier the right to property was a fundamental right but later on this right became a legal right, now right to property in India is a legal right.

1.7 THEORIES OF PROPERTY

There are a number of theories which define the origin and the justification of property. Some of these theories have been dealt with in this unit They are:

1) Natural Law Theory

According to this theory property is based on the principle of natural reason derived from the nature of things. This means that whosoever occupies a piece of land and by his toil does something to the land becomes the owner of that property. The advocates of this theory are Grotius, Pufendorf, Locke and Blackstone. Grotius is of the above view that whosoever occupied a property becomes the owner of that property as he thinks that all things originally do not have any owners so the one who occupies or captures that property becomes the owner of that thing. Pufendorf is of the view that the property belongs to the people as a whole and thus there is no concept of individual ownership. He is of the view that the concept of private ownership is the result of a pact or a private agreement. Again Blackstone is of the view that the one who possesses a piece of property continues to be the owner of the property as long as he uses that property. So in case he continues using it for perpetuity he will be the owner forever. Thus one can say that the natural theory was of the view that whosoever possesses a property becomes the owner of that property as long as he uses it.

2) The Metaphysical theory

Kant and Hegel were the propounders of this theory. According to them 'a property is mine if I am so connected with it that if somebody uses it against my will or direction causes the act of injury to me.' According to Kant property is a part of the human personality and so its existence and protection is necessary. This theory was criticized as it was not much concerned with the realities but based on metaphysical notions. But the fact is that a person dependent on the property of another does not live a free life.

3) Historical theory

As per this theory the institution of private property has developed through a steady growth. The idea of individual property has been developed out of group or collective property. It said that the various stages involved in the growth of individual property were firstly that of the natural possession which existed independently of the law or the state, the second stage was that of the juristic possession which was a conception both of law and fact and finally the stage of ownership which is purely a legal conception whose origin lies in law alone. Thus it says that owner here is provided with the exclusive control and enjoyment of the thing owned by him. This theory mainly focuses on the view that property never belonged to any individual but to larger societies which were composed on the patriarchal mode. Dean Roscoe Pound was of the view that the earliest form of property was that of the group property which was later on disintegrated by larger families this constituting into individual properties.

4) Psychological theory

This theory is of the view that the natural instinct of man to acquire and control things and objects results in the acquisition of property. Thus the law confers certain rights on the individuals with respect to the object which he has acquired. According to Jeremy Bentham 'property is nothing more than the basis of certain expectation of deriving hereafter certain advantages from a thing by reason of the relation in which we stand towards it.'

1.8 DEFINITION OF PROPERTY BY DIFFERENT PHILOSOPHERS

Thomas Hobbes (17th Century)

According to Thomas Hobbes idea of property was of "giving to every man his own", this was a phrase which he drew from the writings of Cicero. However, he could not understand how could anyone say anything to be his own, and so he said that anything can be my own if the thing was truly mine, and if there was any strong power which was ambiguous in the realm and that power treated that thing to be mine and also protected its status as such.

James Harrington (17th Century)

James Harrington was a contemporary of Hobbes, however his definition of property was different According to him property was a natural phenomenon. He said that property inspite of being natural was not inevitable. He thought political power was there as a consequence and not because of the distribution of property. He said that the worst possible situation is a when the masses

possess half of the nation's property and the other half is being owned by the crown. This was a situation of instability and violence, and therefore the best situation will be then when the masses will acquire most of the property. In the later years Harrington's admirers included American revolutionary and founder John Adams.

Self Assessment Question

(Spend 3 minutes)

2) How does Hobbes define property?

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Sir Robert Filmer:

According to him property rights are similar to household goods, that a father may distribute among his children which he could take back and dispose off according to his pleasure.

John Locke:

According to Locke: "Every man has a property in his own person". Every individual has a right to preserve his property that is his wife, liberty and estate.

William Blackstone:

According to him "The inferior hath no kind of property in the company, care or assistance of the superior, as the superior is held to have in those of the inferior".

1.9 MEANING OF PROPERTY

- Speaking broadly, property includes all the legal rights of a person irrespective of its description. Accordingly the property of a man is that which the law provides him.
- Talking narrowly about property, those include a person's proprietary rights and not his personal rights, that means property includes only those rights of a person which he owes in his property and not his personal rights, which is associated with his status or personal condition. Thus, we can say that a property of a person may include those for example his land, his chattel, shares, debts which are due to him and not his life or his liberty or his reputation.
- In other sense, the term property means those rights which are both his proprietary, as well as real. This sense include a patent, a copyright, a free hold, a lease hold estate, all of these are property of a person. However they do not include a debt or the benefit of a contract.
- In a very narrowest sense, property may mean corporal property or right of ownership in anything which may be material. In this context, according to Ahrens, Property is "a material object subject to the immediate power of a person".

- According to Austin, the term property is used as the greatest right of enjoyment according to law and which excludes servitudes. In this manner life interests are considered as property. Servitudes are also considered as property however they require a legal title. Thus a property includes the complete asset of a man which is rights in rem and rights in personam.

1.10 PROPERTY IN COMMON LAW

The common law has a very distinct approach towards property. According to common law ‘possession’ or “occupancy” is the origin of property. Thus the possessor of an animal who finds it will own the animal. If I find a treasure which is buried in my land, I will possess it, because I occupancy the place in which it is buried and I am in possession of the land.

The case of *Pierson v. post 3 cai R.* 175 (N.Y. Sup. Ct. 1805) is a very historical one of the nineteenth century. In this case Post a person was hunting a fox one day on a abandoned beach and he almost has aimed on the fox when an interloper appeared of nowhere and killed the fox and ran away with the concern.

Post thus sued the interloper for the value of the fox on the basis of this theory alleging that his pursuit of the fox had established his property right to it.

The Court however disagreed. It cited a long list of learned authorities.

1.11 PROPERTY IN BUSINESS LAW

It is rightly said that business law would not exist if a thing like property would not exist. Thus concept of property has great importance in terms of business law.

When once speaks about property for a lay man it means (personal property such as an almirah or a chair or refrigerator) or an immovable asset (such as real property i.e., his home, his flat, a building) etc. This refers to tangible property.

But one when speaks legally the term property refers neither to objects nor to land alone. So in its legal sense it means or it refers to those rights that are legally protected to use, possess, enjoy or to dispose it.

Land and other physical objects can exists where there is no law, for example rocks on the moon. However, property rights can exists where there is some law to define and enforce them. Law protects people in the exercise of property rights. Thus law contributes to the value of things.

Self Assessment Question	(Spend 3 minutes)
3) How is property related to business law?	
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1.12 SUPREME COURT'S VIEW

In *R.C Cooper v. Union of India*, AIR 1970, SC 564 the definition of Property has been quoted as

“ Property means the highest right a man can have to anything, the right being the one which has lands or tenements, goods or chattels which does not depend on other’s courtesy: it includes ownership, estates and interests in corporeal things, and also rights such as trademarks, copyrights, patents and even rights in personam capable of transfer or transmission, such as debts; and signifies a beneficial right to or a thing considered as having a money value, especially with reference to transfer or succession, and of their capacity of being injured.”

1.13 INTELLECTUAL PROPERTY RIGHTS

In recent times, the intellectual property is gaining importance in trademarks, property in designs and patents.

Erle J, in *Jefferys v. Boosey* 4 H. L. C. 815, 869 (1854) observed that “The notion of Mr. Justice Yates that nothing is property which cannot be earmarked and recovered in detenu or trover, may be true in an early stage of society when property is in its simplest form and the remedies for violation of it are also simple, but it is not true in a more civilized state when the relations of life and the interests arising there from are complicated”.

Intellectual Property rights are granted to a company, or a person by a state for the products of intellectual effort and ingenuity.

The basic concept of intellectual property can be related to the 4th Century BC. A person is rewarded for its innovation, because the idea of that innovation belongs to the one who has created it, in other words an idea is the manifestation of the creator personality and thus whatever labour he has spent in creating it should be rewarded with something (i.e. property)

In today’s scenario, which is completely market based, the idea of protecting intellectual property is essentially utilitarian. If new knowledge is made accessible to all freely then the person who invents it will be at a loss as he will not be provided with any incentive it may lead him of not producing any new idea anymore. However with the help of new knowledge maximum benefit can be provided to the maximum people by the utilization of these ideas. Therefore, there is a need to reward those who had invented that idea, thus giving them an incentive to create more new ideas to benefit the maximum, as these ideas can be used for benefiting the masses.

Self Assessment Question

(Spend 3 minutes)

4) Define IPR.

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1.14 ILLUSTRATION OF IPR

Rahim writes a book, The manuscript of the book is Rāhim property. The book is published and one of the copy of the book is purchased by Sheela. Thus Sheela owns the book and the book is her property. However, 'Rahim' is the author of the book and has the right to copy and distribute the book. Rahim as the author also has property rights to restrict anyone from using any other person in any manner who owns a copy of it. For eg, it is illegal to sell photocopies of a copyrighted book without the copyrighters permission.

Now, Rahim can transform the manuscript of the book in a movie also. These rights are form of property that is separate from the book. In fact these rights may be brought and sold separately. Therefore rights attached to property may change from person to person and from time to time.

Thus, we can say that the idea of a property is a part and parcel of a standard society in this modern age.

1.15 SUMMARY

- Property is any physical or intangible entity that is owned by a person or jointly by a group of a people.
- Property is a means to lead a good life.
- Property includes all the legal rights of a person irrespective of its description.
- Concept of property has great importance in terms of business law.
- IP rights include copyrights, trademarks property in design and patents.

1.16 TERMINAL QUESTIONS

- 1) Explain Property Rights.
- 2) How is Intellectual Property different from Corporeal or Real Property?
- 3) Explain the two attributes of property.

1.17 ANSWERS AND HINTS

Self Assessment Questions

- 1) Refer to Section 1.1
- 2) Refer to Section 1.4
- 3) Refer to Section 1.4
- 4) Refer to Section 1.5

Terminal Questions

- 1) Refer to Section 1.1
- 2) Refer to Section 1.3
- 3) Refer to Section 1.5

UNIT 2 KINDS OF PROPERTY

Structure

- 2.1 Introduction
- 2.2 Objectives
- 2.3 Kinds of Property
- 2.4 Corporeal Property
- 2.5 Incorporeal Property
 - 2.5.1 Difference between Corporeal and Incorporeal Property
 - 2.5.2 Difference between *Jura in re propria* and *Jura in re aliena*
- 2.6 Immovable Property Position in Indian Law
- 2.7 Movable Property Position in Indian Law
- 2.8 Real and Personal Property
- 2.9 Kinds of Intangible Property Rights
 - 2.9.1 Leases, Servitudes, Securities and Trusts
- 2.10 Different Forms of Intellectual Property
- 2.11 Modes of Acquisition of Property
- 2.12 Summary
- 2.13 Terminal Questions
- 2.14 Answers and Hints
- 2.15 References and Suggested Readings

2.1 INTRODUCTION

In the earlier unit we have read about the concept of property and the various definition of property. In this unit, we will be studying about the different kinds of property and the modes of acquiring them.

2.2 OBJECTIVES

After reading this unit, you should be able to:

- explain the different kinds of property; and
- explain the modes of acquiring them.

2.3 KINDS OF PROPERTY

There are many ways in which property can be classified. Generally we come across the property of two kinds:

- 1) Corporeal Property
- 2) Incorporeal Property

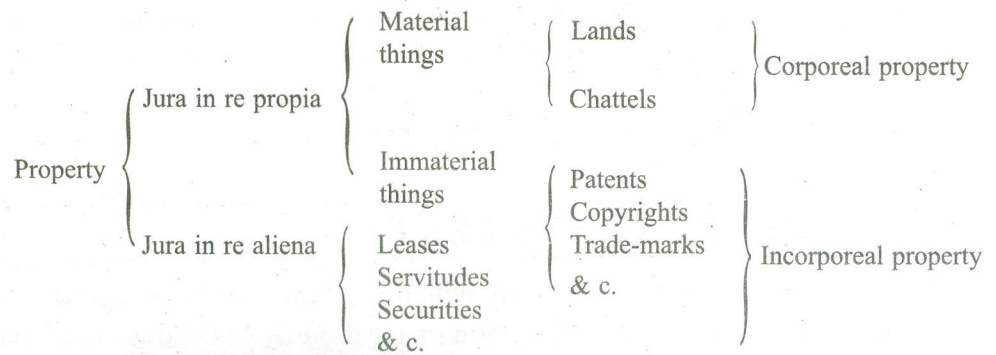
Corporeal property is that property which has a physical, tangible form, whereas incorporeal property exists only in a more abstract sense. In other words the

In legal parlance property Incorporeal property further divided into two categories depending on the right provided by the law. viz *Jura in re propria* (Means right over the property) and *Jura in re aliena* (Means right over the other property).

2.5.2 Difference between *Jura in re propria* and *Jura in re aliena*

	<i>Jura in re propria</i>	<i>Jura in re aliena</i>
1.	It means 'right over the property'.	It means 'right over other property'.
2.	These are rights of ownership in one's own property as are not exercised over material objects.	These right runs with the things encumbered
3.	These rights can be in material things or immaterial things	These are right in rem over a res (thing) owned by another.
4.	Examples : lands, chattals (material things) and Patents, Copyrights, Trademarks, Designs etc. (Immaterial things)	Examples : Leases, Servitudes, Securities etc

Traditionally the division of property can be represented in the following manner



2.6 IMMOVABLE PROPERTY POSITION IN INDIAN LAW

Indian law distinctly defines immovable and movable property. The definition of immovable property as contained in Section 3 (2) of the General Clauses Act, 1897, which is an inclusive definition reads as

“...immovable property shall include land, benefits arising out of land, and things attached to the earth, or permanently fastened to anything attached to the earth.

Section 3 of the Transfer of Property Act, 1882, gives a slightly narrower definition of ‘immovable property’ as it expressly excludes standing timber, growing crops or grass.

“Attached to earth” as defined in Section 3 of the Transfer of Property Act means (a) rooted in the earth, as in the case of trees and shrubs; (b) imbedded in the earth, as in the case of walls or buildings; or (c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached.

2.7 MOVABLE PROPERTY POSITION IN INDIAN LAW

Movable property includes all corporeal property which is not immovable. The definition of movable property as contained in Section 2 (9) of the Indian Registration Act 1908, which is an excluding definition reads as:

“ 9) “movable property” includes standing timber, growing crops and grass, fruit upon and juice in trees, and property of every other description, except immovable property;”

Self Assessment Question	(Spend 3 minutes)
1) What is meant by movable property?	
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.....	

2.8 REAL AND PERSONAL PROPERTY

Real property means all rights over the land recognised by law. Real property comprises all rights over land, with such additions and exceptions as the law has seen fit to establish.

Personal property means all other proprietary rights whether they are rights in rem or rights in personam. Personal property is also referred as chattel.

The distinction between real property and personal property has no logical connection with that between rights in rem and in personam. There is, an historical relation between them, inasmuch as they are both derived from the same source, namely, the Roman distinction between actions in rem and actions in personam. Real property meant originally that which was that which was recoverable in a personal action, and this English distinction between real and personal actions was derived by Bracton and other founders of our law from the actiones in rem and in personam in Justinian, though not without important modifications of the Roman doctrine .

The distinction between real and personal property is closely connected with but not identical with the distinction between immovable and immovable property. The Connection is, however, historical and not logical. According to Salmond: “Real property and immovable property form intersecting circles which are very nearly though not quite coincident. The law of real property is almost equivalent to the law of land, while the law of personal property failure of coincidence is due not to any logical distinction but to the accidental course of legal development; and to this extent the distinction between real and personal property is purely arbitrary and possesses no scientific basis.”

2.9 KINDS OF INTANGIBLE PROPERTY RIGHTS

The only immaterial things which are recognised by law as the subject-matter of rights of this description are the various immaterial products of human skill and labour. Speaking generally we may say that in modern law every man owns that which he created. That which he produces in his, he has an exclusive right to the use and benefit of it. The intellectual product of a man’s brain may be as valuable as his land or his goods. The law, therefore, gives him a right in it, and the unauthorised use of it by other persons is a violation of his ownership, no less than theft or trespass is.

These Intangible property rights are of five kinds:

- 1) *Patents*. The subject-matter of a patent-right is an invention. He whose skill or labour produces the ideas of a new process, instrument, or manufacture, has that idea as his own in law. He alone is entitled to use it and to draw from it the profit inherent in it.
- 2) *Literary copyright*. The subject-matter of this right is the literary expression of facts or thoughts. He to whose skill or labour this expression is due in it a proprietary right of exclusive use.
- 3) *Artistic copyright*. Artistic design in all its various forms such as drawing, painting, sculpture and photography, is the subject-matter of a right of exclusive use analogous to literary copyright. The creations of an artist's skill or of a photographer's labour are of exclusive property. The object of this right is not the material thing produced, but the form impressed upon it by the maker. The picture, in the concrete sense of the material paint and canvas, belongs to him who purchases it; but the picture, in the abstract sense of the artistic form made visible by that paint and canvas, belongs to him who made it. The former is material property, the latter is immaterial. The right in each case is one of exclusive use. The right to the material picture is infringed by destroying it or taking it away. The right to the immaterial picture is infringed by making material pictures which embody it.
- 4) *Musical and dramatic copyright*. A fourth class of immaterial things consists of musical and dramatic works. The immaterial products of the skill of the musician or the playwright are the subject-matter of a proprietary right of exclusive use which is infringed by any authorised performance or representation.
- 5) *Commercial good-will; trademarks and trade-names*. The fifth and last species of immaterial things includes commercial good-will and the species forms of it known as trade-marks and trade-names. He who by his skill and labour establishes a business acquires thereby an interest in the good-will of it, resort to him. To this good-will he has an exclusive right which is violated by any one who seeks to make use of it for his own advantage, as any falsely representing to the public that he is himself carrying on the business in question. Special forms of this right of commercial good-will are rights to trade-names and trade-marks. Every man has an exclusive right to the name under which he carries on business or sells his goods-to this extent at least that no one is at liberty to use that name for the purpose of deceiving the public and so injuring the owner of it. He has a similar right to the exclusive use of the marks which he impresses upon his goods, and by which they are known and identified in the market as his.

2.9.1 Leases, Servitudes, Securities and Trusts

There are certain rights in *realiena* which are also considered as property. Some of which are leases, servitudes, securities and trusts.

Lease: it is a kind of encumbrance. A lease is actually a right over a property which is others and the right of having a possession of the property and using the property for some time is known as lease. According to Salmond lease apart from the tenancy of land also includes 'all kinds of bailment of chattels and encumbrances of incorporeal property which possess the same essential nature.

as a tenancy of land'. In India the lease of an immovable property is a transfer of right to enjoy such property made for certain time, express or implied or in perpetuity, in consideration of price paid or promised, or of money a share of crops, service or any other thing of value, to be rendered , periodically or on specified occasions to the transferor by the transferee who accepts the transfer on such terms.

Servitudes: It is actually an encumbrance on property. By it a right is given to a person or persons for limited use of property, however the possession still remains with the person who has given the right for usage for example the use of a path on the land of another is a servitude. These are of two kinds-

Private servitude and public servitude

Private servitude is that in which the right to use vests in adeterminate individual or individuals.

A public servitude is that in which the right is vested in the public at large, or in some class of indetermine individuals

Securities: It is also a form of encumbrance. Its purpose is to ensure or facilitate the fulfillment or enjoyment of some other right vested in the same person.

In the above section we have seen the different forms of property. Thus we have seen that the subject matter of a right of property is either a material or an immaterial thing. A material thing is a physical object an immaterial thing is anything else which may be the subject matter of a right. However the immaterial things which are recognized by law as the subject matter of rights are the various immaterial products of human skill and labour. Thus any invention or creation of a man's intellect is his own property. This special creation of a man's intellect constitutes of intellectual property. As mentioned earlier this creation of a man's intellect may be protected under certain Acts , such as the Patent act, Copyright Act, Trademarks Act etc.

Let us now give a brief introduction about Patent, Copyright, Trademarks etc.

As mentioned earlier these are the different forms of intellectual property.

Self Assessment Question	Spend 3 minutes
2) Define Lease.	
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2.10 DIFFERENT FORMS OF INTELLECTUAL PROPERTY

The term intellectual property refers broadly to the creations of the human mind. Intellectual property rights protects the interests of creators by giving them property rights over their creations

The following list of the subject matter as protected by intellectual property rights.

- Literary artistic and scientific works
- Performances of performing artists, phonograms, and broadcasts;
- Inventions in all fields of human endeavor
- Scientific discoveries;
- Industrial designs;
- Trademarks, service marks, and commercial names and designations
- Protection against unfair competition; and
- “all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.”

Intellectual property actually refers to items of information or knowledge, which can be incorporated in tangible objects at the same time in an unlimited number of copies at different locations anywhere in the world.

Countries generally have laws to protect intellectual property for two reasons:

- To give statutory expression to the moral and economic rights of creators in their creations and to the rights of the public in accessing those creations
- To promote creativity and the dissemination and application of its results, and to encourage fair trade, which would contribute to economic and social development.

2.11 MODES OF ACQUISITION OF PROPERTY

Property can be acquired in four ways. They are:

- 1) Possession
- 2) Prescription
- 3) Agreement
- 4) Inheritance

The above four ways can be divided into two classes:

- a) Acquisition *inter vivos*: this includes possession, prescription and agreement and by
- b) inheritance.

1) Possession

As it is evident a person who is in possession of a property has a title to it. In Roman law and Hindu Law, a title to property was only acquired by having a possession to it. The title of possession holds good against the whole world. In modern times there is no scope for acquisition of property in this manner. In today's world, the person who is the real or legal owner has only an absolute title. The possessor has only a relative title i.e., it is good against the world except the owner.

2) Prescription

Salmond defines 'Prescription' as "the effect of laps of time in creating and destroying rights, it is operation of time as a vestive fact. It is of two kinds:

i) Positive or acquisitive prescription

When the right is created by lapse of time, it is called positive prescription. For example: the acquisition of right of way by use of it for a prescribed period (In India, according to the Easements Act, this period is 20 years) is a positive prescription.

ii) Negative or extinctive

When a right which already exists is destroyed due to its non-exercise for a prescribed period, it is called Negative prescription. For example: The right to sue for a debt is destroyed after prescribed period i.e., three years in India, which is a case of negative prescription.

3) Agreement

This is very importance mode of acquiring property, in agreement there is a title which is acquired with the consent of the previous owner. Agreements are not limited to contracts only but includes bilateral acts which create an interest.

4) Inheritance

i) Succession on death

Death of a person devolves his property upon his legal representatives. This is considered to be a continuation of the personality of the deceased because in law his representatives are identified with him. It is to be made clear that only the proprietary rights of the deceased is devolved upon his representatives. The devolution takes place in two ways:

a) Interstate Succession

Here the Property devolves according to the law or custom, by which the deceased is governed.

b) Testamentary Succession

Here the law empowers a person to determine during his life time, the disposition of his property which he leaves behind after his death in the form of a will.

2.12 SUMMARY

- Property can be classified in many ways.
- Property is generally can be classified in two ways corporeal and incorporeal property.
- Corporeal Property is that property which has a physical, tangible form, wherein incorporeal property exist only in a more abstract sense.
- There are certain rights in *re aliena*.

2.13 TERMINAL QUESTIONS

- 1) Explain the kinds of property.
- 2) Distinguish between corporeal property and incorporeal property.
- 3) What are the different form of intellectual property rights.

2.14 ANSWERS AND HINTS

Self Assessment Questions

- 1) Refer to Section 2.7
- 2) Refer to Sub-section 2.9.1

Terminal Questions

- 1) Refer to Section 2.3
- 2) Refer to Sub-section 2.5.1
- 3) Refer to Section 2.10

UNIT 3 PRIVATE RIGHTS VS. PUBLIC INTEREST

Structure

- 3.1 Introduction
- 3.2 Objectives
- 3.3 Characteristics of a Legal Right
- 3.4 Kinds of Rights
- 3.5 Protection of Property
- 3.6 Protection of Public Interest
 - 3.6.1 Right to Exploit the Patent (Section 48)
 - 3.6.2 Right to Transfer the Patent (Section 68, 69, 70)
 - 3.6.3 Right to Surrender the Patent (Section 63)
 - 3.6.4 Right to sue for Infringement (Section 104)
 - 3.6.5 Public Interest Provisions in the Patent Act
 - 3.6.6 Other Safeguards to Protect Public Interests
- 3.7 Limitation on Patent Rights
- 3.8 The Copyright Act, 1957 and Public Interest Provisions
- 3.9 Summary
- 3.10 Terminal Questions
- 3.11 Answers and Hints

3.1 INTRODUCTION

When we talk about rights it means a number of things. Right generally means the 'the standard of permitted action within a sphere'. According to Austin a person can have a right only when some other person is obliged or bound to do something with regard to him. **The Supreme Court in the State of Rajasthan v Union of India AIR 1977 SC 1362** observed that legal rights are correlative of legal duties and are defined as interests which the law protects by imposing corresponding duties on others. Right actually means an immunity from the legal power of another, immunity is exemption from the power of another in the same way as liberty is exemption from the right of another. It thus means that right always has a corresponding duty. According to Smith the common way in which we understand the word right, is the same as what we have called a perfect right, and is that which relates to commutative justice. A perfect right is one which corresponds to a perfect duty, and a perfect duty is one which is not merely recognized by the law but enforced. Grant of private right by state is always linked and subjected to public interest in general. IP laws particularly patent laws are crafted to create a delicate balance with the adequate protection to the patentee and the general public.

Definition of right

Rights have been defined by different jurists in different manner.

According to **Austin** right is a 'faculty which resides in a determinate party or parties by virtue of a given law and which avails against a party or parties (or answers to a duty lying on a party or parties) in whom it resides.'

Holland defines right as the capacity residing in one man of controlling with the assent and assistance of the state the actions of the others'

According to **Salmond**, right is an interest recognized and protected by a rule of law. It is an interest respect for which is a duty, and disregard of which is a wrong.

Duguit and **Kelsen** are of the view that no one has a right but he only has a duty. Kelsen also says that there is no conception of right in law. These two jurists are of the view that there is no right in law but only a duty to do.

3.2 OBJECTIVES

After reading this unit, you should be able to:

- explain the concept of rights;
- describe the characteristics of Legal Rights;
- describe the various kinds of right;
- explain the conception of protection of property; and
- appreciate the concept of the balance between private rights and public interests.

3.3 CHARACTERISTICS OF A LEGAL RIGHT

Every legal right has the following characteristics:

- 1) It is vested in the person who may be distinguished as the owner of the right, the subject of it, the person entitled, or the person of inherence.
- 2) It avails against a person, upon whom lies the correlative duty. He may be distinguished as the person bound, or as the subject of the duty, or as the person of incidence.
- 3) It obliges the person bound to an act or omission in favour of the person entitled. This may be termed the content of the right.
- 4) The act or omission relates to something (in the widest sense of the word) which may be termed the object or subject matter of the right.
- 5) Every legal right has a title, that is to say, certain facts or events by reason of which the right has become vested in its owner.

Thus if A buys a piece of land from B, A is the subject or owner of the right so acquired. The persons bound by the correlative duty are persons in general, for a right of this kind avails against all the world. The content of the right consists in non-interference with the purchaser's exclusive use of the land. The object or subject matter of the right is the land. And finally the title of the right is the conveyance by which it was acquired from its former owner.

Every right therefore involves a threefold relation in which the owner of it stands

- 1) It is a right against some person or persons
- 2) It is a right to some act or omissions of such person or persons
- 3) It is a right over or to some thing to which that act or omission relates.

3.4 KINDS OF RIGHTS

There are different kinds of rights.

- 1) **Perfect and imperfect rights:** According to Adam Smith 'Perfect rights' are those which we have a title to demand and if refused to compel another to perform.

According to Pufendorf and Hutcheson 'Imperfect rights' are those which correspond to those duties which ought to be performed to us by others but which we have no title to compel them to perform; they having it entirely in their power to perform them or not. For example A beggar is an object of our charity and may be said to have a right to demand it; but when we use the word right in this way it is not in a proper but a metaphorical sense.

According to Adam Smith " the common way in which we understand the word right, is the same as what we have called a perfect right, and is that which relates to commutative justice. Imperfect rights, again, refer to distributive justice. The former are the rights which we are to consider, the latter not belonging properly to jurisprudence, but rather to a system of morals as they do not fall under the jurisdiction of the laws".

Self Assessment Question

(Spend 3 minutes)

- 1) Differentiate between Perfect and Imperfect Rights.

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- 2) **Positive and negative rights:** 'Positive rights' are those rights which permit or oblige action, whereas 'Negative rights' are those rights which permit or oblige inaction. Examples of positive right : right to education ,employment, housing, food, police protection etc. Examples of Negative rights : freedom of speech, private property, patents etc. Theoretically speaking a negative right forbids others from acting against the right holder, while a positive right obligates others to act with respect to the right holder.

- 3) **Rights in rem and rights in personam:** A right in rem is sometimes known as a real right and it corresponds to a duty imposed upon persons in general

A right in personam is available only against particular persons.

Let us explain in this manner My right to my land is in rem, for all the world is under a duty towards me not to interfere with it, but if I grant a lease of the land to a tenant, my right to receive a rent from him is in personam, for it avails exclusively against the tenant himself. For the same reason my right to the possession and use of the money in my purse is in remm, but my right to receive money from some one who owes it to me is in personam.

A right in rem then is an interest protected against the world at large; a right in personam is an interest protected solely against determinate individuals. The distinction between the two is important. The law confers upon me a greater advantage in protecting my interests against all persons than in protecting them only against one or two. The right of a patentee who has a monopoly as against the entire world is much more valuable than the right of him who purchases the goodwill of a business and is protected only against the competition of his vendor.

3.5 PROTECTION OF PROPERTY

The property of a person should be protected. As we know that intellectual property is the result of any intellect, i.e it is the creation of an individual's intellect, therefore it is his/her private property. And this property of a person creates a right to that person to use that property in whatever manner he/she wants to use it. However these rights which are given to that person to use that property in the manner in which he/she wants is not absolute because all individual rights are subject to the recognition of, and respect for, the rights of other individuals and the rights of the society.

We all know that IPRS by nature are social contract between the state and the individual wherein rights accrues only where he agrees to disclose the creation of his labour which may fall under the categories such as patents, designs, trademarks, copyrights and neighboring rights. All of these rights though qualify as private property rights they in fact are not absolute rights. These rights are granted by state for a limited period of time and on the conditions that are balancing these private rights with the interest of general public. These provisions include fair use, check against misuse of right, condition relating to commercial exploitation such as availability, reasonable price and working. Certain exception to IPRS can be found in law such *de minimis* exceptions. Article 60 of TRIPS also recognize this as general exception to IPRS.

Article 60: De Minimis Imports

Members may exclude from the application of the above provisions small quantities of goods of a non-commercial nature contained in travellers' personal luggage or sent in small consignments.

3.6 PROTECTION OF PUBLIC INTEREST

We shall now deal with specific provisions in the Indian Patent Act 1970 as amended in 1999, 2002 and 2005, The Copyright Act, 1957 as amended in 1999, The Trademarks Act, 1999, the Designs Act, 2000, The Semiconductor Integrated Circuits Layout-Design Act, 2000, The Geographical Indications of Goods (Registration and Protection) Act, 1999 and Protection of Plant Varieties and Farmers' Rights Act, 2001 which protect the public interest.

Rights of the Patentee

There should be a balance between the rights and the way it should serve the interest of the society. Any right given to a person is not absolute, as for example a the right which lies in the patentee is the right to use his invention the way he

wants to use it, however this right of his is given to him by the state provided he discloses his invention wholly and his invention has any industrial application. Which means that the stress is on the benefit of the invention to many or to the society at large. In case his invention does not have any industrial applicability he is not given a patent. The crux of the matter is that any private right of a person should benefit the public at large and should not cause any hindrance to the public. In other words the private right of a person should have public interest at large.

There are certain rights which is provided by the Patents Act, 1970 to the patentee which are:

- 1) Right to exploit the patent
- 2) Right to transfer the patent
- 3) Right to surrender the patent
- 4) Power of registered grantee or proprietor to deal with patent
- 5) Right accrue from date of publication of the specification
- 6) Right to sue for infringement

3.6.1 Right to Exploit the Patent (Section 48)

Section 48 confers the right to exploit the patent on the patentee or his licensee or his assignee or his agent. The period for such right to exploit the patent is the term of patent. The right granted would be elapsed if renewal fees prescribed as time limit is not paid. Non payment of renewal fees results in automatic lapse of patent. (Section 53(2))

3.6.2 Right to Transfer the Patent (Section 68, 69, 70)

The patentee can transfer the patent right by assignment, a mortgage or license. A Patent right is heritable and it can be acquired by transmission or operation of law. The transfer of patent right is not valid unless it is in writing and duly executed.(Section 68). Further as per Section 69 registration of registration of assignments, transmissions etc. is necessary. Provisions under Section 68 and 69 are reproduced below.

Section 68. Assignments, etc, not to be valid unless in writing and duly executed

An assignment of a patent or of a share in a patent, a mortgage, licence or the creation of any other interest in a patent shall not be valid unless the same were in writing and the agreement between the parties concerned is reduced to the form of a document embodying all the terms and conditions governing their rights and obligations and duly executed.

69. Registration of assignments, transmissions etc..

- 1) Where any person becomes entitled by assignment, transmission or operation of law to a patent or to a share in a patent or becomes entitled as a mortgagee, licensee or otherwise to any other interest in a patent, he shall apply in writing in the prescribed manner to the Controller for the registration of his title or, as the case may be, of notice of his interest in the register.

- 2) Without prejudice to the provisions of sub-section (1), an application for the registration of the title of any person becoming entitled by assignment to a patent or a share in a patent or becoming entitled by virtue of a mortgage, licence or other instrument to any other interest in a patent may be made in the prescribed manner by the assignor, mortgagor, licensor or other party to that instrument, as the case may be.
- 3) Where an application is made under this section for the registration of the title of any person the Controller shall, upon proof of title to his satisfaction,
 - a) where that person is entitled to a patent or a share in a patent, register him in the register as proprietor or co-proprietor of the patent, and enter in the register particulars of the instrument or event by which he derives title; or
 - b) where that person is entitled to any other interest in the patent, enter in the register notice of his interest, with particulars of the instrument, if any, creating it:

Provided that if there is any dispute between the parties whether the assignment, mortgage, licence, transmission, operation of law or any other such transaction has validly vested in such person a title to the patent or any share or interest therein, the Controller may refuse to take any action under clause (a) or, as the case may be, under clause (b), until the rights of the parties have been determined by a competent court.

- 4) There shall be supplied to the Controller in the prescribed manner for being filed in the patent office copies of all agreements, licences and other documents affecting the title to any patent or any licence thereunder authenticated in the prescribed manner and also such other documents as may be prescribed relevant to the subject matter:

Provided that in the case of a licence granted under a patent, the Controller shall, if so requested by the patentee or licensee, take steps for securing that the terms of the licence are not disclosed to any person except under the order of a court.

- 5) Except for the purposes of an application under Sub-section (1) or of an application to rectify the register, a document in respect of which no entry has been made in the register under Sub-section (3) shall not be admitted by the Controller or by any court as evidence of the title of any person to a patent or to a share or interest therein unless the Controller or the court, for reasons to be recorded in writing, otherwise directs.

Power of registered grantee or proprietor to deal with patent (Section 70)

According to Section 70 subject to the provisions contained in this Act relating to co-ownership of patents and subject also to any rights vested in any other person of which notice is entered in the register, the person or persons registered as grantee or proprietor of a patent shall have power to assign, grant licences under, or otherwise deal with, the patent and to give effectual receipts for any consideration for any such assignment, licence or dealing:

Provided that any equities in respect of the patent may be enforced in like manner as in respect of any other movable property.

Self Assessment Question

(Spend 3 minutes)

2) What are the Rights of the Patentee?

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3.6.3 Right to Surrender the Patent (Section 63)

Section 63 provides that a patentee can at any time surrender the patent. When a patentee proposes to surrender, the Controller has to publish the offer and give notice to every person whose name appears in the register of patent (excluding patentee) to give opportunity to the parties having interest to oppose the offer for surrender. After hearing the opposition the Controller may accept or reject the offer of surrender. If the offer is accepted he shall pass an order to revoke the patent order.

Right accrue from date of publication of the specification (Section 11A (7))

Section 11A (7) provides right of the patentee accrues from the date of the publication of the application. However, he cannot institute a proceeding for infringement of patent until the patent is granted. In patents relating to Section 5(2) the right accrues from date of grant and patent holder is entitled to receive only reasonable royalty from those manufactures who are already producing and marketing the patented product. Patentee will not be entitled to institute infringement proceeding against them.

3.6.4 Right to sue for Infringement (Section 104)

The patentee, his assignee, licensee, or agent has the right to institute a civil suit in a court not lower than the District Court in case of any infringement. (Section 104)

All the above mentioned rights are private rights exclusively enjoyed by the patent holder for a specified period of time, i.e., twenty years from the date of filing of application.

3.6.5 Public Interest Provisions in the Patent Act

The Patent Act, 1970 as amended balances and calibrates Intellectual Property protection with public health, national security and public interest concerns effectively. Section 83 for example lays down the general principles applicable to the working of patented inventions wherein it categorically states inter alia that

- a) patents are granted to encourage inventions and secure that inventions are worked in India on a commercial scale ,
- b) the protection and enforcement of patent rights contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of right and obligation

- c) the patent should not impede protection of public health and nutrition and should, act as an instrument to promote public interest especially in sectors of vital importance for socio-economic and technological development of India.
- d) patents are granted to make the benefit of the patented inventions available at reasonably affordable prices to the public.

3.6.6 Other Safeguards to Protect Public Interests

Other safeguards to protect public interests includes the following sections of Indian Patent Act, 1970.

Section 84 Compulsory license : to ensure working, availability of products and at reasonable affordable price.

Section 92 Grant of compulsory license requirement is simplified to deal with circumstances of national emergency, extreme urgency or public non-commercial use. Government has the powers to notify the patents available for issue of such a license.

Section 107 (b) Allow parallel imports to ensure the availability of patented inventions at cheaper prices. The import need not be only from a person authorized by the patentee.

Section 47 empowers Government to import patented drugs without the consent of the patent holder for government use in dispensaries, hospitals, etc.

Section 102 Acquisition of patent by the Government. For a public purpose the government can compulsorily acquire patent rights.

Non-working and the patented invention not being available to the public at reasonably affordable price are grounds for revocation of a patent.

Section 66 Revocation of patent in Public interest. A patent can be revoked in public interest if it is prejudicial to the public or exercised in manner mischievous to state

Section 157 A. A patent can be revoked in the interest of security of the country.

3.7 LIMITATION ON PATENT RIGHT (SECTION 47)

The above mentioned rights of the patentee are not absolute as grant of patent is subjected to certain conditions imposed by Section 47 which includes import by government for own use, use of invention by the government, use for experiment, research and teaching, import of medicine for use or distribution in dispensary /hospital having regards to public service.

Use of patent by Government (Section 100)

Section 100 lays down the terms and condition for use of patented invention by Government. The patentee is entitled to get adequate remuneration on case to case basis based on the economic value of the use of the patent.

Acquisition of invention and patents by Government (Section 102)

In the case of acquisition of invention and patent by the Central Government, the

Central Government can acquire for the public purpose an invention mentioned in the application for patent or an invention for which patent is already granted.

Compulsory licenses (Section 84)

Compulsory licenses can be granted at any time after the expiration of three years from the date of grant of patent on an application by any interested person to the Controller alleging that reasonable requirements of public with respect to the patented invention have not been satisfied or that the patented invention is not available to the public at reasonable price (Section 84(1)). The applicant may seek the grant of a compulsory license to work the patented invention based on the terms and condition imposed by Controller.

Secrecy direction for inventions relevant for defence purposes (Section 35)

If the Controller finds that an application made for patent is for an invention that is relevant for defence purposes, he may give direction prohibiting or restricting the publication of such information (invention). Thereafter if the Central Government also formulates the opinion that the invention in question is relevant for defence purposes it will notify to the Controller accordingly. Thereupon the direction prohibiting or restricting publication of invention would be issued by the Controller and it would be continue to be in force until same is reviewed and secrecy direction is withdrawn by the government.

3.8 THE COPYRIGHT ACT, 1957 AND PUBLIC INTEREST PROVISIONS

The Copyright Act contains a number of provisions which take care of the public good. these provisions includes provisions for compulsory licence to publish works withheld from public and unpublished Indian works, licence to produce and publish translations of foreign works not made available in India (Section 31A). Section 39 permits fair use of copyright .It has an elaborate Section 52 to safe guard public interest. Section 52 specifically list uses of a work which are not considered as infringements.

Section 39

Fair Use

39. No broadcast reproduction right or performer's right shall be deemed to be infringed by—

- (a) the making of any sound recording or visual recording for the private use of the person aking such recording, or solely for purposes of *bona fide* teaching or research; or
- (b) the use, consistent with fair dealing, of excerpts of a performance or of a broadcast in the reporting of current events or for *bona fide* review, teaching or research; or
- (c) such other acts, with any necessary adaptations and modifications, which do not constitute infringement of copyright under Section 52.

Section 52

Certain acts are not regarded as infringement of copyright in order to protect public interest in general.

According to Section 52 of the Copyright Act, 1957 a fair dealing with a literary, dramatic, musical or artistic work, private use including research, making copies or adaptation of a computer programme by the lawful possessor of a copy as a back-up one, reverse engineering and de-compilation for operating inter-operability of an independently created computer programme with other programme, making copies of a computer programme for non-commercial personal use, fair dealing with a work for reporting current events, reproduction for judicial proceedings, reproduction by legislatures and their secretariats, reproduction by teachers during instructional and examination process, performance by educational institutions, and some other act are not infringement. Some of the act which shall not be treated as infringement of copyright are explained below.

Fair dealing

Fair dealing with a literary, dramatic, musical or artistic work for the purpose of private use including research is permissible. This clause is not applicable to copyright in computer programme. Fair dealing of such work is permitted for criticism or review, whether of that work or of any other work. Fair dealing with such work for the purpose of reporting current events in a newspaper, magazine or similar periodical, or by broadcast or in a cinematograph film or by means of photographs is also permitted.

Making copies or Adaptation

Making of copies or adaptation of a computer programme by the lawful possessor of a copy of such computer programme is permissible to utilise the computer programme for the purpose for which it was supplied or to make back-up copies purely as a temporary protection against loss or destruction or damage or for non-commercial personal use.

Obtaining information and study and testing of functioning

Any act necessary to obtain information essential for operating inter-operability of an interpedently created computer programme with other programmes by a lawful possessor and the observation, study or test of functioning of the computer programme is permitted.

Self Assessment Question

(Spend 3 minutes)

3) What is meant by fair dealing?

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.....

Reproduction of copyright work

The reproduction for the purpose of a judicial proceeding or for the purpose of a report of a judicial proceeding, in any work prepared by the Secretariat of a Legislature or, where the Legislature consists of two Houses, by the Secretariat of either House of the Legislature, exclusively for the use of the members of

that Legislature, in a certified copy made or supplied in accordance with any law for the time being in force. Reproduction of copyright work by a teacher or a pupil in the course of instruction; or part of the questions to be answered in an examination; or answers to such questions is not an infringement of a copyright.

Reading and recitation

The reading or recitation in public of any reasonable extract from a published literary or dramatic work is not infringement

Publication of collection

The publication of copyright work in a collection, mainly composed of non-copyright matter with *bona fide* intended for the use of educational institutions is permitted with certain restrictions.

Performance of dramatic or musical work

The performance in the course of the activities of an educational institution, of a literary, dramatic or musical work by the staff and students of the institution, or of a cinematograph film or a sound recording with limitation in respect of audience and tempering or packaging etc.

Causing of a recording to be heard in public

The causing of a recording to be heard in public by utilising it in an enclosed room or hall meant for the common use of residents in any residential premises (not being a hotel or similar commercial establishment) as part of the amenities provided exclusively or mainly for residents therein; or (ii) as part of the activities of a club or similar organisation which is not established or conducted for profit is not an act of infringement.

Performance of a literary, dramatic or musical work by an amateur club or society

The performance of a literary, dramatic or musical work by an amateur club or society, if the performance is given to a non-paying audience or for the benefit of a religious institution with certain restrictions is not treated as infringement.

Reproduction or publication

There is no infringement in reproduction or publication of any —

- Matter which has been published in any Official Gazette except an Act of a Legislature
- Act of a Legislature subject to the condition that such Act is reproduced or published together with any commentary thereon or any other original matter
- report of any committee, commission, council, board or other like body appointed by the Government if such report has been laid on the Table of the Legislature, unless the reproduction or publication of such report is prohibited by the Government
- Judgment or order of a court, tribunal or other judicial authority, unless the reproduction or publication of such judgment or order is prohibited by the court, the tribunal or other judicial authority, as the case may be.

Translation

The act of the production or publication of a translation in any Indian language of an Act of a Legislature and of any rules or orders made there under is not an infringement —

- if no translation of such Act or rules or orders in that language has previously been produced or published by the Government;

or

- where a translation of such Act or rules or orders in that language has been produced or published by the Government, if the translation is not available for sale to the public: situate in a public place or any premises to which the public has access.

Inclusion of any artistic work in a cinematograph film

The inclusion of any artistic work in a cinematograph film is permitted if that any artistic work is permanently situate in a public place or any premises to which the public has access or if such inclusion is only by way of background or is otherwise incidental to the principal matters represented in the film.

3.9 SUMMARY

- Right means of standard of permitted action within a sphere.
- There are kinds of rights which include perfect and imperfect rights, positive and negative rights, rights in rem and rights in personam.
- There are specific provision in the Indian Patent Act 1970, Copyright Act, Trademark Act, Design Act which protect the public interest and make a balance between the private and public interest.

3.10 TERMINAL QUESTIONS

- 1) Explain the characteristics of a legal right.
- 2) Distinguish between perfect and imperfect rights.
- 3) Explain the safeguards to protect public interest.

3.11 ANSWERS AND HINTS

Self Assessment Questions

- 1) Refer to Section 3.4
- 2) Refer to Section 3.6
- 3) Refer to Section 3.8

Terminal Questions

- 1) Refer to Section 3.3
- 2) Refer to Section 3.4
- 3) Refer to Sub-section 3.6.6

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