ACQUISITION OF OWNERSHIP
Chapter 8

• Original v derivative
• O - no transfer of rights from predecessor to successor
• D - New owner entitled to benefits inherent in the ownership of his predecessor
• succeeds to liabilities attached to the right.
After studying this unit the learner must be able to:

- **Explain** what is meant by original acquisition of ownership and **distinguish** it from derivative acquisition of ownership.
- **Define** appropriation (occupatio), and **discuss and apply** the legal principles involved with reference to relevant case law.
- **Distinguish** between *res nullius*, *res derelictae* and *res deperditae* with the help of examples.
Learning outcomes of this unit (Cont…)

- **Discuss and apply** the legal principles involved in the following forms of accession (*accessio*) with reference to relevant case law:
  - immovables to immovables
  - movables to immovables
  - movables to movables.
Learning outcomes (cont..2)

- **Explain** how expropriation takes place.
- **Discuss** the requirements for acquisition of ownership through prescription are.
- **Illustrate** what interruption and suspension of prescription mean.
ORIGINAL ACQUISITION OF OWNERSHIP

- **OCCUPATIO**
  - Definition
  - Requirements
    - Corpus
    - Animus
    - Object - res nullius principles, res derelictae

- **ACCESSIO**
  - Definition
  - Test
  - requirements
Accessio (cont…)

• Accession of immovables to immovables
  a) Alluvio (alluvion)
    • definition
    • requirements
  b) Avulsio (avulsion)
    • definition
    • Requirements

  c) Forming of Islands (read)
Accessio (cont…)

- Accession of movables in immovables
  - *superficies solo cedit*
    a) *Plantatio et satio* (planting and sowing) *Gore v Parvatas*
    b) *Inaedificatio* (building)
      - Criteria
      - Respective weights
      - Effect
      - Remedies
      - Case law
Accessio (cont…)

• Accession of movables to movables
  • principal thing v accessory
  –examples
Homework activity

• Discuss the three criteria taken into consideration to determine whether a movable thing has been attached to an immovable thing.
• Refer to your textbook p 105-108
• Refer to the cases of:
  • MacDonald Ltd v Radin NO and Potchefstroom Diaries
  • Theatre Investments v Butcher Brothers
  • Melcorp SA v Joint Municipal Pension Fund (Tvl)
  • Konstanz Properties(Pty) Ltd v WM Spilhaus (WP)Bpk
Homework activity (Cont…)

- As assessment criteria will be taken into account your ability to:
  - Identify the traditional position
    The three criteria as indicated in the Potchefstroom case
    Refer to Standard Vacuum to indicate application of manner and degree of attachment principle and the fact that it is applied objectively. The subjective intention emphasized for the first time.
  - Identify the change that took place from the original position
    The ipse dixit (subjective will) of the of the annexor was emphasised to determine his intention. First two criteria of Potchefstroom case not independent anymore but mere indications from which the annexor’s intention can be derived.
  - Identify the approach by the court
    Mistake in indicating ownership of movable thing is transferred by attachment to imm. Subtle change. Attachment of mov makes it lose its independence and therefore owner of movable becomes owner of imm. Mélcorp case. Indicate position of court to infer intention of annexor.
  - Critically evaluate the current position Konstanz properties.
    Can the parties ahead of time always contract that they will exclude possibility of attachment? Will then ignore legal principles. Consent of owner not involved in original acquisition of ownership.
    In Konstanz case the court left open that position could be changed if argued in future.
COMMIXTIO ET CONFUSIO (MIXING AND FUSING)

- Definition
- Requirements
- effect: joint ownership in ratio to contribution

- ACQUISITION OF FRUITS
  – Read only
SPECIFICATIO (MANUFACTURE)

- Definition
- Requirements
- Effect
- Remedies
EXPROPRIATION

- Definition
- EXPROPRIATION PROCEDURE
- COMPENSATION

Read only the following:
- FORFEITURE AND CONFISCATION
- STATUTORY PASSING OF OWNERSHIP
PRESCRIPTION

- DEFINITION AND PURPOSE
- PRESCRIPTION ACT 18 OF 1943
  - Requirements
    - *Nec vi* (without force)
    - *Nec clam* (openly)
    - *Nec precario* (without owner’s consent)
    - Adverse use
    - Period of 30 years
    - Continuous
    - *Coniunctio temporum*
PRESCRIPTION (Cont…)

- PRESCRIPTION ACT 68 OF 1969
- Requirements
  - Possession
  - Openly
  - As if owner
  - For 30 years
    - Interruption
    - Suspension
- RESULT OF PRESCRIPTION
Homework activity

• In what ways do the requirements for acquisition of ownership by prescription in terms of the 1943 Act differ from the 1969 Act? When will the 1943 Act be applicable and when will the 1969 Act be applicable?

(5)

NB View examples on p 122 and make sure that you understand them.