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THE DOCTRINE OF RES NULLIUS IN INTELLECTUAL PROPERTY

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ABSTRACT

Res nullius is one of the oldest principles of property law. Its origins lie in Roman law, and its effects are felt in common law and public international law alike. Res nullius is Latin for “a thing belonging to no one”, and refers to a property which is not owned by anyone, and thus capable of being acquired by anyone first taking possession. While this appears to be a straightforward concept, the legal consequences of res nullius can be quite wide-ranging. In addition to wild animals, res nullius includes abandoned property, lost and found property, and in public international law, territory which belongs to no one. In the past, the principle of res nullius has also been abused, most notably by colonialists invoking the doctrine of terra nullius. Res nullius has a Roman law origin. It means “things belonging to no one”. In Roman law any property which has not yet become the subject of rights of any person was res nullius. Property classified as res nullius was free to any person to acquire by taking possession of it. In Roman law the acquisition of ownership by res nullius was called occupatio. Under occupatio ownership was acquired by the first person to take possession of the property. The idea behind occupatio was that if the property was without an owner, the first person taking possession of it would become the owner. According to the Transfer of Property Act, Res nullius is not directly dealt with. Rather, it deals with creation of ownership. A res nullius is the stage where ownership is yet to be created, and once that is accomplished the property is then dealt with under the Act. Thus res nullius is dealt with indirectly in the Transfer of Property Act. Res nullius is a legal theory in that a res nullius is considered a property that does not belong to anyone, and the first person to take possession becomes the owner of such a property.

RESEARCH QUESTIONS:

- (1) In what ways can ownership acquired through res nullius be legally recognized before it becomes transferable under the Transfer of Property Act, 1882?

- (2) How do Indian courts interpret and apply the concept of res nullius in cases involving ownership and subsequent transfer under the Transfer of Property Act, 1882?
- (3) To what extent is the doctrine of res nullius relevant in modern Indian property law, particularly in relation to the principles governing transfer under the Transfer of Property Act, 1882?

SCOPE OF RESEARCH

In this thesis, I study how res nullius fits into the Transfer of Property Act, 1882. The Act states that property can only be transferred by a lawfully owner and since res nullius means that property without any owner so it does not really fit the definition in the Transfer of Property Act 1882 which governs the transfer of property among living people. Thus we will be exploring the connection between res nullius and the transfer of property as it may appear that no property can be transferred since res nullius is a property without owner. I will also show that a transfer of property does happen under res nullius after ownership by a valid title has been established. We will show thus that res nullius represents a preliminary stage of ownership rather than a form of transfer itself. The study will look at how res nullius acquired ownership can be lawfully recognized as ownership so as to allow the property to fall within the provisions of transfer of property act 1882. In so doing we will have to look at what legal principles govern res nullius acquired title or ownership other than the Transfer of Property Act, 1882. We shall also be looking at what provisions of the law and principles restrict what type of property can acquire ownership under res nullius as well as public policy and restrictions of res nullius acquired title/ownership. We will also look at the res nullius in terms of ownership of what type of property in which it is not possible to acquire ownership since it will be excluded from private ownership by the law e.g. res nullius in terms of ownership of natural resources may not be acquired since they cannot be transferred into private ownership but may be controlled by the state as a part of public trust even if res nullius is applicable in them. The above shall enable us to show how res nullius in terms of acquisition of ownership is not arbitrary and that ownership has to be recognized and established before it can transfer. Res Nullius has been cited in many case laws such as: John D'souza vs Edward Ani: The decision of the Supreme Court was predicated on the fiduciary nature of the advocate's duty to his client. D'Souza's failure to return the will without good cause constituted a breach of that fiduciary obligation. The Court carefully reviewed the facts and circumstances to determine if the advocate was legally permitted to withhold the document. This evidence comprised the lack of any plausible reason for D'Souza's failure to return the will and the contradictory statements he made

concerning the delivery of the will. In addition the principle of 'res nullius' was put into consideration. D'Souza was of the view that the will was mere waste paper after its revocation. This was however rejected by the Court, since there was no doubt that an advocate had a duty to return the will whether he perceived it as valuable or not. Some relevant provisions of the Transfer of Property Act, 1882, Sections 5, 6, 7, 8, 54, 58, are by way of analogy to appreciate that res nullius, at the core, is a concept of property transfer and ownership. While section 5 provides "transfer of property" as an act between living persons, section 6 deals with the properties transferable and section 7 deals with persons competent to transfer property, and section 8 deals with transfer of ownership, section 54 and section 58 deal with sale and mortgage of property respectively. All the provisions cited above are by implication dealing with pre-owned property. It is therefore evident that res nullius, where things begin as ownerless and may later become property, contrasts with this framework. It becomes particularly relevant in intellectual property law, where ideas and expressions may initially arise without clear ownership yet are later granted proprietary protection by legal recognition. The research further evaluates the application of res nullius in contemporary Indian property law vis à vis the principles enunciated in the Transfer of Property Act, 1882. It will review judicial precedents to examine how courts interpret the transition from res nullius status to recognized ownership. The thesis will point out that although res nullius has minimal practical application in current jurisprudence, it retains theoretical importance for tracing the genesis of specific property rights. The study ends by assessing the contemporary utility of the doctrine in an era where legislative frameworks are more inclined to prioritize regulation, public welfare, and environmental conservation. In short, the project comprehensively addresses the relationship between res nullius doctrine and the current Indian legal landscape regarding property and its transfer.

METHODOLOGY

This study follows a doctrinal legal research methodology to analyse the concept of res nullius in relation to the Transfer of Property Act, 1882. The doctrinal method is appropriate as the research is based on the interpretation of existing legal rules, principles, and judicial decisions rather than empirical data. The primary focus is on understanding how Indian property law deals with ownerless property and how ownership is subsequently created and transferred under statutory provisions.

The research is based on secondary sources of law, including statutory provisions, textbooks, legal commentaries, articles, and judicial pronouncements. Special emphasis is placed on the provisions of the Transfer of Property Act, 1882 to understand the requirements of a valid transfer, especially the existence of a competent transferor. Case laws from Indian courts are analysed to examine how the judiciary has interpreted concepts related to possession, ownership, and acquisition of property initially considered ownerless.

Conclusion

In conclusion, the doctrine of *res nullius* still has importance in understanding how ownership begins in Indian property law, even though it is not commonly used in practice today. The research shows that simply finding or possessing ownerless property does not automatically make a person the legal owner. Ownership is recognized only when the law accepts the possession as lawful and supported by intention, legal rights, and public interest considerations.

The study also explains that the Transfer of Property Act, 1882 mainly works on the assumption that property already has an owner before it can be transferred. Provisions such as Sections 5, 6, 7, and 8 make it clear that only a person with a valid ownership interest can legally transfer property to another person. This shows that Indian law gives importance to legally recognized ownership rather than mere possession of property.

The research further finds that courts carefully examine claims relating to ownerless property and do not allow ownership to arise in a random or unfair manner. Public policy, environmental protection, and the public trust doctrine also limit private ownership over certain resources like forests, rivers, minerals, and other natural resources, even if they appear ownerless. These resources are often protected and controlled by the State for the benefit of society.

Therefore, the study concludes that *res nullius* is still useful as a legal concept for explaining the origin of some property rights, but its application in modern law is limited and controlled by statutes, judicial decisions, and public interest. Ownership in Indian law is not created automatically through possession alone; it becomes valid only after legal recognition and compliance with established legal principles.

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