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**POSSESSION**

**POSSESSION INTRODUCTION:**

Possession is one of the most important concept in the whole range of legal history. It is a mere fact, which has an enormous legal significance, to which legal rights are attached and the legal consequences flow. Possession is prima facie evidence of ownership and anyone desiring to disturb it must show either a title or a better possessor right. Possession is 9/10th of ownership.

# MEANING OF POSSESSION:

Possession means physical control over things.

# DEFINITION OF POSSESSION:

**ACCORDING TO SALMOND:**

The possession of the material object is the continuing exercise of a

# ACCORDING TO POLLOCK:

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

# POSSESSION AS EVIDENCE OF OWNERSHIP:

**ACCORDING TO !HERING:**

Possession is ownership on the defensive. It is the evidence of ownership. Possession is the nine points of law and hence protection should be given to possession. 1. ILLUSTRATIONS: To support the above statement, following illustration or cases may be put.

1. A finder of goods becomes its owner against the whole world except the true owner [Hannah vs. peel, 19451
2. If a person is in adverse possession of a property for 12 or more years, he becomes the legal owner of that property and the right of the original owner is extinguished.
3. In many legal systems, possession is provisional or temporary title even against the true owner. Even a wrongful possessor who is deprived of his possession can recover it from any person whatsoever, on the group: of his possession.
4. Even the true owner who retakes his own must first restore possession to the wrongdoer and then proceed to secure possession on the ground of his ownership.

# Example:

In Pakistan, under section 145 Cr.p.c, a magistrate can restore possession back to the person forcibly dispossessed from an immoveable property, which is likely to cause breach of public peace.

1. First possession of a thing which as yet belongs to no one, is good title of right.
2. Prior possession is prima facie proof of it;
3. He who is in possession first in time has a better title than the one who has ": possession.

# II POSSESSORY REMEDIES:

Possessory remedies are those which exist for V-Ast protection of possession even against ownership. One of the main reason for the possessory remedies is that the possession is the prima facie evidence of ownership.

# III. DOCTRINE OF JUS TERM:

Though possession is a prima facie proof of ownership, A defendant is at liberty to rebut that presumption by providing that he has a better title but a defendant who has violated the possession of the plaintiff is not allowed to setup the defence of Jus Tertii which means that he cannot plead that neither the plaintiff nor he has the title, but some third person has.

# Exceptions:

English law considers jus tertii as a good defence under the following circumstances.

1. When the defendant defends the action on behalf of and by the authority of the true owner.
2. When he committed the act complained of by the authority of the true owner.
3. When he has already made satisfaction to the true owner by returning property to him.

# IMPORTANCE OF POSSESSION:

Possession is prima facie a proof of a title of ownership. The first possession of a thing which does not belong to any one is a good title of right.

# CATEGORIES OF POSSESSION:

Possession is divided into two categories:

1. Possession in fact
2. Possession in law

# I. POSSESSION IN FACT:

Possession in fact is actual or physical possession. It is a physical relation to a thing. This simply denoted the physical capacity of a person who had the thing within his control to deal with it as he liked to the exclusion of everyone else. Example: When a servant holds certain things in his custody on behalf of the master, he has the possession in fact and not in law.

# III. POSSESSION IN LAW:

Possession in law means possession in the eye of law. It means a possession which is recognized and protected by law. Law wanted to give possession, or the right to exercise a claim to the exclusive control of a thing, and along with it all the other advantages and rights which were closely associated with the idea of possession or physical control, even to a person, who had no actual physical control over it.

# Example:

When a servant holds certain good on behalf of his master, a master still holds possession in law though not in fact.

# A. FUNDAMENTAL ELEMENT IN POSSESSION IN FACT AND POSSESSION IN LAW:

There is sometimes a discrepancy between possession in fact and possession in law, although usually possession exists both in fact and in law in the same person. A person who is in defacto possession of a thing also comes to have dejure possession. The fundamental element both in possession in fact and possession in law is the same viz. possibility of excluding every person other than the possessor from the use or control of the thing.

# ELEMENTS OF POSSESSION:

There are two elements of possession:

1. Corpus Possessionis (Physical element)
2. Animus Possidendi (mental element)

# CORPUS POSSESSIONS:

It meant that there exists such physical power or physical contract of the possessor in relation to the thing possessed. So as to give rise to the reasonable assumption that other people will not interfere with it.

1. ESSENTIALS OF CORPUS POSSESSIONS:

To constitute the corpus possessions:

1. There must be a guarantee of control between the person in possession and the thing possessed.
2. So long as there is a guarantee of control, physical contact is not necessary.
3. The control may be exercised by a servant or an agent.

# CONSIDERATION OF CORPUS OF POSSESSION:

Salmond considers corpus possessionis under two headings:

1. Relation of the possessor to the thing possessed,
2. Relation of the possessor to the other person.
3. Relation of the Possessor to the thing possessed:

All that is necessary is that the possessor must have the physical power of dealing with the thing exclusively as his own.

# According to Savigny:

"The physical power of dealing with the subject immediately and of excluding any foreign agency over it is the factum which must exist in every acquisition of possession.

(ii) Relation of the Possessor to the other Person: When I possess a thing, it means that others shall not interfere with the use of that thing. Salmond points out that this measure of security that a person will not be interfered with can be derived from several sources.

1. Physical Power of the Possessor: By physical power of the Possessor to exclude alien interference.
2. Personal Presence of the Possessor: By the personal presence of the possessor e.g., A dying man may retain or acquire possession by his personal presence but not by any physical power left in him.
3. Secrecy: Another source of security may be secrecy. By hiding the thing the possessor can always exclude alien interference.
4. Custom: Another measure of security is custom e.g., If a man has ploughed and sown and reaped the harvest year after year, he can reasonably expect to do it again the next year without interference.
5. Respect for rightful claim: Another measure of security is respect for rightful claim. A rightful claim as against a wrongful one, will be accepted and respected by the community at large. It depends upon opinion of the community.

# Manifestation of Animus domini:

Another measure of security is the manifestation of the animus domini i.e., the visibility of the claim. The animus can be manifested only by an avert act.

# Protection afforded by Possession of other things:

Another measure of security is the protection afforded by the possession of other things. The possession of a house may consider possession of chattels situated upon it.

# II. ANIMUS POSSIDENDI:

Animus Possidendi is the intent to appropriate to oneself the exclusive use of the thing possessed. It is the conscious intention of the individual to exclude others from the control of an object.

# According to Savigny:

“Every case of Possession is formed on the state of consciousness of unlimited physical power.”

# A. DIFFERENT ASPECTS OF ANIMUS POSSIDENDI:

There are certain aspects of animus Possidendi which have to be considered.

# Not necessarily a claim of right:

The animus Possidendi is not necessarily a claim of right. It may be consciously wrongful. The thief has a possession no less real than that of the true owner.

# Exclusive claim:

The claim of the possessor must be exclusive. He must intend to exclude other persons from the use of the thing possessed. A mere intent or claim of use cannot amount to the possession of the material thing itself.

# Need not claim of use of thing:

The animus Possidendi need not be a claim to the use of the thing at all as in the case of a pledge or a bailee with a lien.

# Need not claim on one's own behalf:

The animus Possidendi need not be a claim on one's own behalf. A servant, agent of trustee may have true possession though he claims the exclusive use or control of the thing on behalf of another.

# Need not be specified:

The animus Possidendi need not be specified but may be merely general. A general intent with respect to a class of things is sufficient to confer possession of the individual object belonging to that class even though their individual exercise is unknown e.g., I possess all the books in my library even though I may have forgotten the existence of many of them.

CONCLUSION:

To conclude, I can say, that many legal consequences flow from the acquisition and loss of possession. It is the prima facie title of the ownership. The possession may be in fact or in law and two elements corpus and animus must be present in the case of possession and neither of them alone is sufficient to constitute it.

# INTRODUCTION:

Possession is one of the most important concept in the whole range of legal history. It is a mere fact which has an enormous legal significance to which legal rights are attached and legal consequences flow from the loss and acquisition of possession. So the topic of acquisition of possession is very important in the study of possession. Possession is also divided into eight different kinds.

# DEFINITION OF POSSESSION:

* 1. **ACCORDING TO SALMOND:**

"The possession of the material object to the continuing exercise of a claim is the exclusive use of it."

* 1. ACCORDING TO POLLOCK:

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

# MODES OF ACQUISITION OF POSSESSION:

Possession is acquired whenever the animus and corpus united. So there are three modes of acquiring possession.

* 1. Taking
  2. Delivery
  3. Operation of the law

I. TAKING:

Possession is acquired by taking the thing with the requisite animus, and it is done without the consent of the owner. It may be done in the following ways:

(1) Rightful taking of possession: A shopkeeper is entitled to get some money from a customer and the shopkeeper takes possession of the things of the customer. This is an example of the rightful taking of possession.

1. Wrongfully taking of possession: If a thief steals something from an individual, his acquisition of possession is wrongful.
2. Original taking of Possession: If a person captures a wild animal which does not belong to anybody, the posseision is called original.

# DELIVERY:

Another way of acquisition of possession is by delivery. In this case, a thing is acquired with the consent and co-operation of the previous possessor. A. KINDS OF DELIVERY: It is of two kinds: (i) Actual (ii) Constructive (i) Actual delivery: In Actual delivery, the union of the corpus and animus is brought about for the first time in the transferee, as a result of the delivery by the transferor. The transferor may or may not retain mediate possession depending on the nature the transaction.

# Example:

(i).A lend his book to 'B'. 'A' retain the mediate possession of the book but if 'A' sells this Book to him, he lose his mediate possession.

# (ii) Constructive Delivery:

To Salmond, constructive delivery is that which not actual, that is to say there are no physical dealings with the thing but by mere change c." animus intention possession is secured.

# Forms of constructive delivery:

It may take any of 3 forms or kinds.

# traditio brevi manu:

In this case, possession is surrendered to one who has already in possession of it e.g., I lend you a book, afterwards make a present of it to you.

# Constitutum Possessorium:

In this case, mediate possession is transferred to the transferee and transferor still holds the immediate possession. Example: I buy books from the shop. The shopkeeper agrees to holds books on my account, it is a constructive delivery.

# Attornment:

In this case, there is transfer of mediate possession from the transferor to the transferee while the immediate possession remains outstanding in some third person.

# Example:

A sells land to 'B'. C is in possession as a tenant, 'C' agrees with the 'B' to hold it for the future on his account instead of on account of 'A'. Here 'B' secures mediate possession by constructive delivery by\ way of attornment.

# III. OPERATION OF LAW:

The law removes goods from the control of one person to the control of another e.g., If a person dies, the possession of his property is transferred to successors and legal representative.

# RESNULLIUS:

According to this principle, the first finder of a thing has a good title to that thing against all but the true owner.

# Exceptions:

This rule is subject to the following exceptions: (a) The rule does not apply if the owner of the property on which the thing is found is in possession of the thing itself and the property.

1. If the finder finds the thing as the servant or agent of another person.
2. If the possession of the thing was got through trespass or other wrongful, act.