

Chapter: Possession

It expresses the closest relation of fact that can exist between a thing and the person, who possess it. In law, possession means it includes not only physical control over a thing Example: A has an article in his hand. In other words, he is in possession of that article. The person who is in possession is called a 'Possessor'. In human life, consumption of material things is very essential and it would be Impossible without the position of the material things.

Literally:

The ownership, control, or occupancy of a thing, most frequently land or Personal Property,

"Possession" literary means physical control over a thing or an object. But also an intention to exercise that physical control.

The person who is in possession is called a 'Possessor'.

Importance

Concept of possession is of utmost practical importance in human life.

The U.S. Supreme Court has said that "there is no word more ambiguous in its meaning than possession"

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Depending on how and when it is used, the term possession has a variety of possible meanings. As a result, possession, or lack of possession, is often the subject of controversy in civil cases involving real and personal property and criminal cases involving drugs and weapons—for example, whether a renter is entitled to possession of an apartment or whether a criminal suspect is in possession of stolen property.

Possession versus Ownership

- Although the two terms are often confused, possession is not the same as ownership.
- No legal rule states that "possession is nine-tenths of the law," but this phrase is often used to suggest that someone who possesses an object is most likely its owner.
- The owner of an object may not always possess the object. For example, an owner of a car could lend it to someone else to drive.

Definitions

John Salmond:

Salmond defines Possession as, "possession is the continuing exercise of a claim to the Exclusive use of an object."

Savigny:

Savigny defines Possession as, "intention coupled with physical power to exclude others from the use of material object."

Salmond criticized Savigny's definition and ground that Savigny committed an error by including the element of physical power in his definition.

O.W. Holmes:

Holmes defines Possession as, "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."

Maine:

Maine defines the possession as, "physical detention coupled with the intention to hold the things detained as one's own."

Sir Frederick Pollock:

Sir Frederick Pollock defines Possession as, "In common speech a man is said to possess to be in possession of anything of which he has the apparent control from the use of which he has apparent power for excluding others."

Ihering:

The best among them is the definition given by Ihering. According to him, "whenever a person looked like an owner in relation to a thing, he had possession of it unless Possession was denied to him by rules of law based on practical convenience."

Possession means physical control over an object or thing. Though in law it is difficult to define the concept of possession because there is no precise definition of possession. It is factual as well as a legal concept. But, we can say that it is the physical custody, control or occupancy of any object with a definite intention of ownership. Let us now discuss the types of possession in detail.

Kind of Possessions

Following are the important types of possession:

1. Corporeal possession.
2. Incorporeal Possession.
3. Mediate possession.
4. Immediate possession.
5. Constructive possession.
6. Adverse possession.
7. De facto possession.
8. De jure possession.

1. Corporeal Possession

Objects which have physical or materialistic manifestation, and which our senses can perceive are corporeal possession. Thus, it is the persistent exercise of a claim on the use of material or tangible objects. For Example House, car, cycle, pen, etc.

2. Incorporeal Possession

Objects which don't have any physical or materialistic manifestation, and which our senses cannot perceive are incorporeal objects. Thus, it is the persistent exercise of a claim on the use of immaterial or intangible objects. For example Trademark, [goodwill](#), patent, copyright, etc.

3. Mediate Possession

Mediate possession of an object is the possession of a thing through a mediator (middleman) like an agent, friend or servant. It is also called indirect possession. For example: If a landlord let his house to a tenant. The tenant is bound to hand over the house to the landlord whenever he decides. So the landlord has the mediate possession of the house through the tenant.

4. Immediate Possession

When the possessor himself possesses the property or thing, we call it immediate possession or direct possession. For example: when I buy a pen from a shop and keep it for myself. The pen is in the immediate possession of mine.

5. Constructive Possession

Constructive Possession is the authority over an object without having actual possession or charge of that material. In other words, we can say that constructive possession is not actually a possession but it is a possession in law and not possession in fact. For example The delivery of my key by my car driver. Here my driver was the constructive possessor of my car until he delivers me the key.

6. Adverse Possession

Adverse possession means the possession of some property or object, without legal title, for a certain time period, sufficient to become acknowledged legal owner. Sometimes, we also define it informally as "squatter's rights". In actual adverse possession of some property, the possessor is required to prove an intention to keep it absolutely for oneself. Just claiming the property or paying liabilities for it, without actually possessing it, is not sufficient.

For example Continuous use of private land or driveway or agricultural field of an unused piece of land.

7. De facto Possession

It is a Latin word meaning 'in fact'. De facto possession means the possession which exists in reality even if it is not legally recognized.

For example, A common law spouse can be considered as a de facto wife or de facto husband though they are not lawfully married, yet they live like a married couple.

8. De Jure Possession

De jure is a Latin word meaning "in law"; lawful, legitimate or a matter of law. De jure possessions are legally recognized possessions regardless of whether it exists in reality or not. It is also known as juridical possession meaning possession in the eyes of law.

For example, An owner of the house could cease a man to live in a house but without intending and to abandon it for good. It is a case of De jure possession.