

# POSSESSION

The term possession expresses the physical relation of control exercised by a person over a thing.

Possession can be in Fact or in Law

The Roman lawyers made a distinction between possession in fact as *possession naturalis* and possession in law as *possession civilis*.

Possession is the *prima facie* evidence of the title of ownership. Transfer of possession is one of the chief modes of transferring ownership. ***'Possession is nine-tenths of the law'*** is an expression meaning that ownership is easier to maintain if one has possession of something

**According to Salmond** *"in the whole range of legal theory, there is no conception more difficult than that of possession"* and he defines possession as *"the continuing exercise of a claim, to the exclusive use of a thing constitutes the possession of it"* he also said that it is the **most basic relation between a man and a thing.**

**Bentham** gives the analogy that *"defining possession in law is like defining roundness in geometry, Absolute roundness cannot be defined and is nowhere to be found, so we say a thing may be round when it is round enough for practical purposes, same goes for possession, it cannot be defined absolutely and perfectly, but for practical purposes certain rules of legal possession can be laid down for the guidance of the courts"*

**Henry Maine** defines possession as *"physical detention coupled with the intention to hold the thing detained as one's own"*.

**Pollock** says that *"in common speech a man is said to possess or 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"*.

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

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

**Ihering** says, *"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."*

## Hannah v. Peel (1945)

Defendant owned a house, but did not occupy the house. Then, in October of 1939, the house was requisitioned by the government to some soldiers.

Defendant was compensated with 250 pounds per month. Plaintiff was housed in the residence in 1940. During his stay he found a brooch. He then alerted Defendant of his find, and took the brooch to the police to find the rightful owner, receiving a receipt.

Thereafter, in 1942, the rightful owner was still not located, and the police gave the brooch over to Defendant. Defendant sold the brooch for 66 pounds to a jeweller who resold the brooch for 88 pounds.

Plaintiff demanded return of the brooch from Defendant, who refused. The Plaintiff sued claiming return of the brooch, or its value, and damages for its detention.

The Court had to decide between two rules of law, both rules formed in previous cases:

**The 1<sup>st</sup> rule of law** - "If a person finds an object while employed by the property owner, he finds the object for the property owner and not for himself, so long as the property owner exercises control over the property" this was formed in the in the case of **South Staffordshire Water Co. v. Sharman**.

The Court declined to apply this rule because Defendant never actually occupied the house and Defendant does not have an absolute right of ownership of all items found loose upon his property.

**The 2<sup>nd</sup> rule of law** - "The finder of an object holds title to the object subject to no claims except that of the rightful owner" is found in **Bridges v. Hawkesworth**

The Court decided to follow this rule. The Defendant had never occupied the house and could not have a right of prior possession in the brooch.

The Court held that the conduct of Plaintiff was commendable in this case. The brooch was "lost" as the word is commonly understood and Plaintiff "found" the brooch as finding is commonly understood. Further, the rightful owner of the brooch has never been located, and that Defendant was notified when the brooch was found. The Court decided that the rule of Bridges v. Hawkesworth, is applicable and that the judgment should be for Plaintiff for 66 pounds

## ELEMENTS OF POSSESSION

There are two types of rights in regards to possession

**Right to possess** (*jus possidendi*): A person's right to acquire or to retain possession; an owner's right to possess.

**Right to continue to possess** (*jus possessionis*): Once you get the possession you have right to remain in possession except against a person who has better title.

So derived from that we have two elements of possession and those are the ANIMUS and CORPUS.

**Animus possidendi** - (Mental / Subjective): The will or intention to exercise control over a thing. Animus is the intent or mental condition or activity or claim of exclusive use of the thing possessed.

**Corpus possessionis** – (Physical Element): Actual power over the object possessed.

Elements required for Corpus Possessionis:

- (a) Actual Presence;
- (b) Exclusion of all Alien interferences with things possessed
- (c) Reasonable and sufficient security of the exclusive use of it in the future.

According to John Salmond, both corpus and animus must be present to constitute Possession.

Ownership is a legal concept whereas Possession is factual as well as legal concept. The intent to exclude others from interfering with the object possessed must be evidenced by physical facts.

## Legal Consequences of Possession:

Possession is the prima facie evidence of title of Ownership. – **Section 110 of Indian Evidence Act.**

**Adverse Possession** – Long adverse possession confers title even on the property which originally belonged to another.

Possession is chief mode of transferring Ownership.

First possession of thing which as yet belongs to no one is a good title of right (*Res Nullus*).

In some cases, possessor may confer a good title on another, even though he has none himself. Exception to the rule – ***Nemo dat quod non habet*** - "no one gives what they do not have"

# Kinds of Possession:

## 1. Corporeal And Incorporeal Possession:

Corporeal possession is the possession of a material or tangible objects, thus it is continuing exercise of a claim on the use of material or tangible object. Eg: car, money, land, etc.

Incorporeal possession is the possession of a non-material or intangible object. Thus it is continuing exercise of a claim on the use of non-material or intangible object. Eg: Intellectual property rights; easementary rights; etc.

## 2. Mediate and Immediate Possession:

Mediate possession means in between or remote possession. It is an indirect possession. It is acquired with agency or servant holds something for his master.

Immediate possession means direct or proximate possession or primary possession by a person over a particular object which he acquires or gets directly or personally.

## 3. Possession in fact (de facto) and Possession in law (de jure)

In fact possession means which physically exists in term of control over it i.e. actual or physical possession. It can be seen landlord and tenant where tenant holds possession of house physically or de facto, but it is not possession in law or de jure. It is a physical relation to a thing

In law possession means which in the eyes of law exists. It means a possession which is recognized and protected by law. It may exclude physical control over it. It is also called constructive possession.



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