

INTRODUCTION

- Possession is the most basic relationship between men and things.
- Possession means physical control over a thing. Actual occupancy and may be held irrespective of ownership.
- It is considered as the prima facie evidence of ownership.
- Possession of thing is a good title against the whole world except the real owner. *Armory v. Delamirie* 1722.
- Possession is the nine points of the law.
- It's transfer is the chief method of transferring ownership.
- The term is used in and has prominent place in civil and criminal law- trespass, theft.



DEFINITIONS

- **Salmond:** Possession is the continuing exercise of a claim to the exclusive use of an object.
- **Savigny:** Possession as an intention coupled with physical power to exclude others from the use of material object.
- **Pollock:** "In common speech, a man is said to possess or to be in possession of anything of which he has the apparent control, or from the use of which he has the apparent power of excluding others."
- Exclusive use, control, exclusion of all others, intention and physical power.



ELEMENTS OF POSSESSION

There are two elements of possession: Animus Possidendi and Corpus Possessionis.

CORPUS POSSESSIONIS

- Effective physical control of the object.
- The existence of such physical contact of a person with a thing as to give rise to a reasonable assumption that others will not interfere with it.
- Two factors to be considered under this head:
 - ❖ **Relation of the possessor to other persons:**
 - Non-interference with the use of the thing.
 - Salmond: I am in possession of a thing when such possession creates a reasonable expectation that I will not be interfered with the use of it.
 - Must have some sort of security. Sources of security are: physical power of the possessor, personal presence of the possessor, secrecy, protection afforded by the possession of other things.
 - ❖ **Relation of the possessor to the thing possessed:**
 - The possessor must have physical power ensuring his exclusive use of the thing.



ANIMUS POSSIDENDI

- The mental element or intention to possess or the intent necessary to constitute possession.
- It is the intention to exclude others from interfering with a material object.

❖ **Aspects of Animus Possidendi:**

- ☐ It may not be rightful. Eg: possession of a thief.
- ☐ The claim of the possessor must be exclusive but the exclusion need not be absolute.
- ☐ The person having the animus is not necessarily the owner. Eg: Possession of a tenant.
- ☐ It need not be a claim on one's own behalf.
- ☐ It may be general.



CASES

- **Merry v. Green 1841:** A bureau was purchased by a person. Money discovered in the secret drawer. Appropriated it. Here animus is lacking. He was held to have committed larceny.



CASES

- **South Staffordshire Waterworks Co. v. Sharman 1896:** The plaintiff company owned a pond upon their land. They employed the defendant to clean the pond. The defendant found gold rings at the bottom.



CASES

- **Hannah v. Peel 1945:** Defendant owned a house but did not occupy the house. The plaintiff was residing and during his stay he found a brooch. Defendant sold it for 66 pounds. The court awarded damages to the plaintiff and he is the prior possessor of the brooch.

