



RAMA UNIVERSITY

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FACULTY OF JURIDICAL SCIENCES

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LECTURE: 30

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Lecture-30



Lecture 30 Possession of property

The institution of property has a crucial relationship with mankind. There are two important rights related to property:

1. possession; and
2. ownership.

Regarding possession, as Salmond says, it is the most basic relation between a man and a thing. Possession of material things is necessary because human life and human society would rather be impossible without the use and consumption of material things. As civilization began to progress, the struggle for existence was so bitter that people began to take possession of certain objects and considered them as their own.

They began to take pride in the possession of those things and were not prepared to allow outsiders to interfere with them. They were determined to exercise continuous control to the exclusion of all others. And from a humble beginning, the concept began to grow and now much progress has been made in this connection.

From the legal point of view also it is a very important concept. Innumerable legal consequences flow from the acquisition and loss of possession and thus, it is said that there is no concept in the field of law as difficult as that of possession. Firstly, it is the prima facie evidence of ownership, called as nine out of ten points of law, meaning that there is a presumption that the possessor of a thing is the owner of it and the other claimants in order to have that thing must prove their title or better possessory right.

The principle has also been incorporated under Section 110 of the Indian Evidence Act, 1872 also, as follows:

Burden of proof as to ownership- when the question is whether any person is the owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the persons who affirm that he is not the owner.

As Salmond also says, Possession is the objective realization of ownership, it is in fact what ownership is in right. It is the de facto exercise of a claim while ownership is the de jure recognition of that claim. Explaining the relation between possession and ownership the Supreme Court of India in the case of B. Gangadhar v. B.R. Rajalingam stated, possession is the external form in which claims normally manifest themselves. It is in fact, what ownership is in right enforceable at law to or over the thing.

Even a person who wrongfully possesses a property, like a thief, has a good possessory right over it against the world at large except the true owner. This means that a person cannot interfere with the possession of another person by setting up a defence of jus tertii, that is, the title of a third person. Also, dispossessing or ejecting a person from one's own land and re-entering forcibly is wrongful act even though the possession of the person turns out to be wrongful. Thus, simply, it can be said that law protects possession.

Meaning of the term **possession**

Several jurists have defined the term possession differently, some of the notable definitions are as follows:

1. **Salmond-**

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

Thus, possession involves two things: (1) claim of exclusive user; and (2) conscious or actual exercise of this claim, that is, physical control over it. The former is the mental element called as animus possessionis and the latter is the physical element called as corpus possidendi.

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2. **Federick Pollock-**

He pointed out that in common parlance a man is said to possess or to be in possession of anything of which he has apparent control, or from the use of which he has the apparent power of excluding others. So, he also talks about the two elements: corpus possidendi and animus possessionis.

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3. **Savigny-**

He in his theory of possession says, the pith of corporeal possession is to be found in the physical power of exclusion.

However, Salmond does not agree with this view of Savigny that the possessor must have the physical power to prohibit outside interference or obstruction. It is so firstly due to the fact that certain things cannot be physically possessed, like A may have the right of way over another person's land this does not mean that he has physical possession of the same. So, Savigny's theory would not be applicable in case of incorporeal possession.

Another reason as explained by Salmond through an example is: an infant has no physical capacity to exclude others from depriving him of his possession like a strong and healthy man, nevertheless, if he holds a coin with him, he would be deemed to have legal possession of it. So, the true test according to Salmond is not the physical power of exclusion but the improbability or unlikelihood of interference or obstruction by others. Markby also says, physical power is rather the possibility of dealing with a thing as one

like and of excluding others.

4. **Ihering-**

He takes a sociological view of the concept of possession and is of the opinion that the element of animus possidendi is not material and cannot serve as test of legal possession. But if the view of Ihering is accepted it would provide no answer to the question as to why a thief can claim possession of a thing which he has stolen but not a servant who is possession of his master's goods. Thus, simply, intention is also a material element of legal possession.

5. **Justice Holmes-**

He says, to gain possession a man must stand in certain physical relation to the object and to the rest of the world, and must have a certain intent. Thus, he also points out to the two elements of possessions.

6. **Sir Henry Maine-**

According to him, possession means that contact with an object which involves the exclusion of other persons from the enjoyment of it. Possession denotes physical contact resumable at will. In other words, it does not signify mere physical detention but physical detention coupled with the intention to hold the thing detained as one's own.

SELF-TEST QUESTIONS

S.N	Question	Option (a)	Option (b)	Option (c)	Option (d)
1	Who said that it is the most basic relation between a man and a thing.	Salmond	Savigny	Federick Pollock-	
2	Who said that Possession is the objective realization of ownership, it is in fact what ownership is in right.	Ihering	Salmond	Savigny	Federick Pollock-
3	He pointed out that in common parlance a man is said to possess or to be possession of anything of which he has apparent control, or from the use of which he has the apparent power of excluding others.	Federick Pollock-	Salmond	Savigny	Ihering
4	He in his theory of possession says, the pith of corporeal possession is to be found in the physical power of exclusion.	Savigny	Federick Pollock-	Salmond	Ihering
5	He takes a sociological view of the concept of possession and is of the opinion that the element of animus possidendi is not material and cannot serve as test of legal possession.	Ihering	Salmond	Savigny	Federick Pollock-

Answers: 1-(a),2-(b), 3-(a),4-(c), 5-(a)