



RAMA UNIVERSITY

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FACULTY OF JURIDICAL SCIENCES

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Lecture-32



Lecture 32 Kinds of Possession

Kinds of Possession

Following are the various kinds of possession:

(a) Corporeal and Incorporeal Possession-

Corporeal possession is the possession of material or tangible objects both movable like books, cattle, watch and immovable like house, land, etc. And incorporeal possession means possession of immaterial or intangible objects like copyright, patent, goodwill, reputation, etc. Corporeal possession consists of both the elements, corpus and, but actual use of the thing is not necessary, for example, a person can keep his ring locked in a safe and never use it but still he will be said to be in possession of the ring. On the other hand, for incorporeal possession actual, continuous use is considered is necessary because physical control or contact, with the things, in possession is not visible as an objective fact.

Also, some jurists are of the opinion that there is no such thing as incorporeal possession because this concept falls short of requisites of real possession. It is for this reason that in Roman law it is called as quasi-possession

(b) Mediate and Immediate Possession-

Mediate or indirect possession is the possession of a thing through another person. For example, A purchases a watch through an agent or servant, he has mediate possession of it so long as the watch remains with the agent or servant. But if A goes to the market himself and buys the watch, he is in immediate possession of it.

Salmond has given three categories of mediate possession as follows:

- Possession acquired through an agent or servant;
- Possession held through a borrower or hirer to tenant, where the res, that is, the object can be demanded at will;
- Possession is held through a person who is bound to return the object after a certain period or on the fulfillment of certain conditions, like, the pledgee is bound to return the goods pledged when the debt is paid."

This categorization has been criticized on many grounds. Firstly, has been pointed out that in case of an agent or servant, he does not possess the thing but merely has custody of it as here the

animus is lacking. Secondly, it is said that two persons cannot be in possession of the same thing, at the same time as Salmond himself points out, exclusiveness is the essence of possession. And the situation is different in case of co-owners as none of them has the right to exclude the other. And it is worth noticing that the first category has been called as representative possession also, while some call it as a type of duplicate or concurrent possession and the other two as derivative possession. Lastly, English law doesn't recognize this distinction between mediate and immediate possession while the German law recognizes it.

(c) Concurrent or duplicate possession-

As mentioned above, exclusiveness is the essence of possession. It is not possible that two persons have an independent as well as adverse claim to possession of the same thing at one time. But it is possible that two persons have concurrent claims to the possession of the same thing at the same time, that is, their claims are not mutually adverse. And in such cases the possession is called as concurrent or duplicate possession.

- The most important example of concurrent possession is what Salmond calls as mediate and immediate possession, like of landlord and tenant respectively or of bailee and bailor, etc.
- The possession of co-owners is another example of concurrent possession and is called as compossessio in Roman Law.
- Corporeal and incorporeal possession may also co-exist in respect of the same material object. For example, a person has corporeal possession over a piece of land while another has a right of way over it, which is incorporeal possession of it.

(d) Constructive Possession-

It simply means that though the person is not in actual physical contact or control over the thing but he has the power as well as the intention to deal with it at his will. An illustration is of constructive possession is when goods sold by one person to another are stored in a warehouse and the purchaser does not take the actual physical control over the goods but only the key of the warehouse is given to him by the seller. Here, the purchaser is in constructive possession of those goods. Similarly, a tenant may be occupying a house but the landlord has constructive possession of it. Further, Pollock has explained that constructive possession is possession in law and not possession in fact. However, Keeton has not recognized this type of possession at all.

(e) Adverse Possession-

It means that a person who doesn't have legal title to a property, usually a land, acquires ownership of it based on continuous possession or occupation of the land without the permission of its legal owner. If the adverse possession continues, undisturbed, for the prescribed period (which is 12 years in India) then the title of the real owner comes to an end and the possessor

becomes the owner thereof. This effect of the lapse of the prescribed time on titles is called as prescription has two effects- positive or acquisitive for the person in whose favor the right of ownership is created, and negative or extinctive for the person whose right is extinguished. Lastly, the requisites of adverse possession can be mentioned as:

- Continuity of possession for the prescribed period
- Adequate publicity, that is, the possession must not be held in secrecy but openly,
- Peaceful or undisturbed possession for the prescribed period

SELF-TEST QUESTIONS

S.NO	Question	Option (a)	Option (b)
1.	Corporeal possession is the possession of material or tangible objects both movable like books, cattle, watch and immovable like house, land, etc	True	False
2.	Mediate or indirect possession is the possession of a thing through another person.	True	False
3.	Possession acquired through an agent or servant	True	False
4.	The possession of co-owners is another example of concurrent possession and is called as compossessio in Roman Law	True	False
5.	If the adverse possession continues, undisturbed, for the prescribed period (which is 12 years in India) then the title of the real owner comes to an end and the possessor becomes the owner thereof.	True	False

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