



RAMA UNIVERSITY

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FACULTY OF JURIDICAL SCIENCES

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Lecture-31



Lecture 31 Elements of possession

Elements of possession

It becomes sufficiently clear from the above-mentioned definitions that there are two elements of possessions, namely corpus and animus. They can be discussed as follows:

(a) Corpus of Possession (corpus possession is)-

Corpus implies two things:

1. Possessor's physical relation to the res, that is, the object; and
2. The relation of the possessor with the rest of the world

There must exist some physical contact or control of the possessor with the thing so as to give rise to a reasonable assumption that other people will not interfere with, or simply, with the possessor's right of use, enjoyment of that thing.

This non-interference can be secured in the following ways:

- Physical power of the possessor- the person in possession generally uses walls, gates, doors, etc. to prevent others from interfering in his possession. For example, a person is in possession of the money which he locks up in a safe.
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- Personal presence of the possessor- the physical power of the possessor and his personal presence though commonly present together, but it is not necessary that they must coincide. For example, a coin in a child's hand implies possession even though he does not have the physical power to exclude interference with its possession.
- However, possession is not lost by mere temporary absence of the possessor from it. For example, a person who goes for walk leaving his things in the house, doesn't lose possession over them. Another example is where a person enters a restaurant for dinner, takes off his coat and hangs it on the stand there, is still in possession of the coat. And someone who takes away the coat dishonestly will be guilty of theft. Similarly, when a person gives a dinner his silver forks while in the hands of the guests are still in his possession.
- Secrecy- if the possessor keeps the thing in a hidden manner, it is also a way of keeping the thing secured from interference by others.

- Protection afforded by the possession of other things- at times possession of an object tend to confer possession of certain other things which are connected with it or accessory to it. Thus, possession of land confers possession of things that are on or under it. [iv]
- Manifestation of animus domini- the visibility of claim is another element in the de facto security of the enjoyment of a thing. a manifested intent is much more likely to obtain the security of general acquiescence than on which it has never assumed a visible form. Simply, open use of a thing carries with it a prima facie right mindedness of its possession.
- Lastly, in social context, wrongful possession is not seen with favor, therefore, respect for rightful, legal claim prevents people from interfering with the legal possession of others.

(b) Animus Possidendi-

Mere physical contact or control over a thing is not enough, but it must be accompanied with a will or intention to exercise such control. This mental or subjective element in possession is called animus possidendi. To define, it is the conscious intention of the possessor to exclude others from interfering with his right of possession.

In the case of **N.N. Majumdar v. State** it was held that corpus without animus is ineffective. Following are a few important points in respect of animus:

- It is not necessary that the animus must be rightful, and may be wrongful as well, like in case of a thief who is in possession of stolen goods.
- The animus need not be absolute. For example, a person still has legal possession over a land even though others possess a right of way over that land. Similarly, it need not be specific also. It can be general like a fisherman has possession of all the fishes I his net, although he may not know their exact number, or that a person is said to be possession of all the books in his library even though he might have forgotten about the existence of some of them.
- It is not necessary that the animus must be to hold the thing as an owner. thus, in case of a pledge, the pledgee has possession of the thing pledged, although he intends to retain it in custody as a security to ensure repayment of his debt. The same applies in case of a tenant too. In other terms, the animus need not be of the possessor himself, a servant or agent does not keep a thing for his own use but on behalf of another person.

Distinction between possession in fact and possession in law

Possession in fact or de facto possession is the actual or physical possession. And possession in law or de jure possession is possession in the eye of law, that is, recognized and protected by law.

They both most often exist together must not always. For example, a servant holds a bicycle on behalf of his master, he has actual possession of it, but in the eye of law the possession is with the master. The Roman Law also recognizes the distinction between possession in fact and possession in law as possession naturalis and possession civilis.

A few illustrative cases are as follows:

1. **R v. Chissers**- A person went into a shop and took some cloth in his hand to see it and then ran away with it. He was held guilty of larceny because he had not obtained possession of the cloth only by taking it in his hand and the possession of the cloth was still with the shop-keeper.
2. **Acona v. Rogers**- Here, the owner of a house allowed a lady to keep her luggage in one of the rooms of the house. But the keys of that room were with the lady and not with the owner of the house. And thus, the court held that in the eye of law the lady was in possession of the luggage and not the owner of the house.
3. **Elwas v. Rogers**- the plaintiff gave their land on lease to the defendant for erecting a gas plant. The defendant found a pre-historic boat below the land. The court held that the plaintiff had the right to possession over the boat.
4. **South Staffordshire Waterworks Co. v. Sharman (gold rings case)**- the plaintiff company employed the defendant to clean a pond owned by the company upon its land. While cleaning the pond the defendant found gold rings at its bottom. The court held that the company had the right of possession over the rings as the pond was owned by it upon its land.
5. **Hannah v. Peel**- the defendant purchased a house but never occupied it and thus, it was requisitioned by the government and a soldier was stationed in it. The soldier found a brooch in the house, from the top of a window frame and handed it over to the police. But the police without trying to find the owner of the brooch, sold it. Thus, the plaintiff (soldier) claimed the brooch or the value of it as its finder while the defendant maintained that he was entitled to the brooch as the house where it was found belonged to him.

The court held that the defendant was not entitled to the brooch as he never stayed in the house and so had neither the corpus nor animus as he had no knowledge of the brooch. And the plaintiff was entitled to it as the finder thereof, except against the true owner who could not be found.

6. **Merry v. Green**- a man purchased a chest of drawers at an auction and later found some money in a secret drawer. The court held him guilty of theft as he was not aware of the existence of the money at the time when he purchased the chest of drawers and thus had no animus of possession until he found the money.

Thus, the simple principle, as explained by Justice Cave in R v. Ashwell, is: a man has no possession of that, of the existence of which he is unaware.

SELF-TEST QUESTIONS

S.NO	Question	Option (a)	Option (b)
1.	corpus without animus is ineffective	True	False
2.	It is not necessary that the animus must be to hold the thing as an owner	True	False
3.	Possession in fact or de facto possession is the actual or physical possession.	True	False
4.	It is not necessary that the animus must be to hold the thing as an owner. thus, in case of a pledge, the pledgee has possession of the thing pledged, although he intends to retain it in custody as a security to ensure repayment of his debt.	True	False
5.	The animus need not be absolute	True	False

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