



RAMA UNIVERSITY

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FACULTY OF JURIDICAL SCIENCES

Course : LL.B. 1st Semester

SUBJECT: Jurisprudence

SUBJECT CODE: LLB 301

LECTURE: 33

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Lecture-33



Lecture 33 Modes of Acquisition of Possession

Modes of Acquisition of Possession

There are three modes of acquiring possession as follows:

(a) By Taking-

it is the acquisition of possession without the consent of the previous owner and it may either be rightful or wrongful.

For example, as Keeton says, where an inn-keeper seizes the goods of his guest, who has failed to pay his bill, there is acquisition of possession by rightful taking. But where a thief steals something, he acquires possession wrongful taking. But it is not necessary for acquisition of possession by taking that the thing must be already in the possession of some other person. For example, *res nullis*, that is, a thing belonging to no one, like, a wild animal or bird, etc. and acquiring possession of a *res nullis* is also by way of taking.

(b) By Delivery-

it is the acquisition of possession with the consent of the previous owner and is of two types, actual and constructive.

Actual delivery is the physical or actual transfer of a thing from the hands of one person to another. It is of two kinds, one in which the owner still has a mediate possession like when A lends his book to B, and the other in which the owner does not retain even the mediate possession like when A sells the book to B.

Further constructive delivery is one in which there is no direct or actual transfer of the possession of the thing.

it is of three kinds:

1. *Traditio Brevi Manu*- it is the giving up of possession to someone who already has the immediate possession of the thing. For example, a person sells a book to the hirer thereof who is already in immediate possession of the book. So, in other words, it is only the *animus* that is transferred as the transferee already has the *corpus*.
2. *Constitutum Possessorium*- as opposed to *traditio brevi manu*, *constitutum possessorium* means that the mediate possession is transferred and the immediate possession remains with the transferee. For example, if A purchases a bicycle from someone who also does

the work of giving bicycles on hire. So, A allows him to keep the bicycle and continue to use it for hiring purpose. Here, although the immediate possession is still with the other person, A has got its possession through constructive delivery.

3. Attornment- in this kind of delivery, there is transfer of mediate possession while immediate possession is in the hands of a third person. For example, A has goods in the warehouse of B and they are sold by A to C, then in this case A has constructively delivered the goods to C as soon as B agrees to hold them for C and no longer for A.

(c) Operation of law-

Possession can be acquired by the operation of law also like in case of adverse possession and of succession.

It can be safely concluded that possession is the most fundamental relation between a man and a thing, but one of the most difficult concepts of the field of law. It is a very vast concept consisting of various kinds and modes of acquisition which deal with the acquisition of res nullis too. It is the prima facie evidence of ownership and is protected by law through various possessory remedies like the doctrine of jus tertii and statutory remedies are also available like section 5 and 6 of the Specific Relief Act, 1963, section 145 of the Code of Criminal Procedure, 1973, section 47 and 48 of the Sale of Goods Act, as well as section 167 and 168 of the Indian Contract Act, 1872. Also, for de jure possession both the elements of corpus and are necessary, as opposed to de facto possession.

SELF-TEST QUESTIONS

S.N	Question	Option (a)	Option (b)	Option (c)	Option (d)
1	What are the modes of acquiring possession	By Taking	By Delivery	Operation of law	All of the above
2	It is the acquisition of possession without the consent of the previous owner and it may either be rightful or wrongful.	By Taking	By Delivery	Operation of law	All of the above
3	It is the acquisition of possession with the consent of the previous owner and is of two types, actual and constructive	By Taking	By Delivery	Operation of law	All of the above
4	It is the giving up of possession to someone who already has the immediate possession of the thing	Traditio Brevi Manu	Constitutum Possessorium	Attornment	None of the above
5	The mediate possession is transferred and the immediate possession remains with the transferee	Traditio Brevi Manu	Constitutum Possessorium	Attornment	None of the above

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