

“POSSESSION”

Understanding the Concept of Possession

- Definitions of Possession
- Elements of Possession
- Division of Possession
- Nature of Possession
- Possession under Roman Law
- Possession under English Law

Definition of Possession

- **POLLOCK**- Having physical control over a thing constitutes possession.
- **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----
 - i-Claim of exclusive user; it is mental element called “*animus possessions*”
 - ii-Conscious or actual exercise of this claim i.e. physical control over it called as “*corpus possidendi*”.

- **SAVIGNY** - The essence of corporeal possession is to be found in the physical power of exclusion.
 - i. The first is “*corpus*” i.e. physical power to possess a thing for the first time.
 - ii. The second is having initially acquired the thing, there must be physical power to retain it.
- **MAINE**- “Physical detention coupled with the intention to hold the thing detained as one's own.”
- **KANT** defines possession and says, that , “*there must be empirical fact of taking possession conjoined with the will to have external object as one's own.*”

Elements of Possession

There are two elements which are essential to constitute the concept of possession as complete and valid.

- i. “*corpus possession*” -Physical element which consists in physical control over the thing,
- ii. “*animus possidendi*”-A mental element which consists in the determination to exercise that control.

According to SAVINGNY both the elements i.e. corpus and animus must be there to constitute possession.

Division of Possession

Possession is divided into two categories-

1. Possession in fact (“*de facto possession*”)
 2. Possession in law (“*de jure possession*”)
- The relation between a person and a thing which he possesses is called possession in fact or “*de facto possession*”.
 - Possession in law or “*de jure possession*” means possession in the eye of law. It means a possession which is recognized and protected by law.

Nature of Possession

- “primca-facie” evidence of ownership.
- One of the mode of transferring ownership.
- Possession is said to be nine out often points of law.
- An evidence of ownership.
- Right against trespasser.
- Remedy to recover possession- “*possessory remedy*”.

According to HENRY MAINE, *possession means that contact with an object which involves the exclusion of other person from the enjoyment of it.*

Possession denotes physical contact resemble at will. In other words, it does not signify mere physical detention but physical coupled with the intention to hold the thing detained as one’s own.

Possession under Roman Law

Under Roman law, the concept of possession was used in two different sense. To be in possession of a thing was different from having legal possession over it.

- The former denoted that a person simply has physical control over the thing and it was called “*corpus possessionis*”.
- While the later meant having exclusive control over a thing. The Roman called as “*civili possessionis*” which denoted legal possession.

In Roman law, continued possession of an immovable property for a long period which was not detention gave to the possessor ownership or “*dominium*” over the property. The property disputes were mostly decided on the basis of legal possession only and the courts thought it unnecessary to decide the question of ownership.

- Roman law distinguished “detention ” from custody. In case of detention, a person was to have real possession and control over a thing though he may or may not have ownership of it. The "custody" on the other hand, involves possession and control without ownership. The English law, however, did not recognize this distinction.
- A person was deemed to be in legal possession of a thing when they not only think was in his physical control or he had custody over it, but he also had the power to exclude other form interference in his possession. This mental element to hold possession and control over a thing to the exclusion of all others was called “animus Thus possession to be legal, required two essential elements i.e.
 - i) Corpus, and
 - ii) Animus

Possession under English Law

The importance of possession has equally been recognized in the English law also. The term is commonly used in both, Civil and Criminal law.

- In Civil law- the law of torts, contract, property, specific relief, etc. many wrongs are defined in terms of possession.
- In law of Crimes –Nuisance, Theft, Extortion, Robbery, Dacoity, House trespass etc. many offences are defined and punishable in term of possession.

The English law recognizes that acquisition or loss of possession results into many important legal consequences. Possession has been given protection under the law of varied reasons.