

same existing property called the accession acquisition of property e.g. Timbers, Honey from bees, vegetables, fruit etc.

Derivative Acquisition

When the ownership is derived from a previous owner, it is called derivative acquisition of ownership. The Law of Succession, transfer of Property, sales of goods etc regulate acquisition of ownership of the property by derivative mode.

Possession:

Possession is prima facie evidence of ownership. Even a person who wrongfully possess a property has a good title against the world at large except the true owner. So it is said that possession is 9/10 of the ownership.

According to 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 –

- Claim of exclusive user
- Conscious (सचेत) or actual exercise of this claim i.e. physical control over it.

The former (first) is mental element called as animus possession is and the later (last) is physical element. Known as the corpus possidendi.

The relation between a person and a thing which he possesses is called possession in fact (de facto possession) Possession in law is termed as de jure possession.

In *Rv. Moore*, a bank note was dropped in the shop of accused who took it and converted it to his own use. The accused was convicted of larceny since he was not in possession of the note until he actually discovered it.

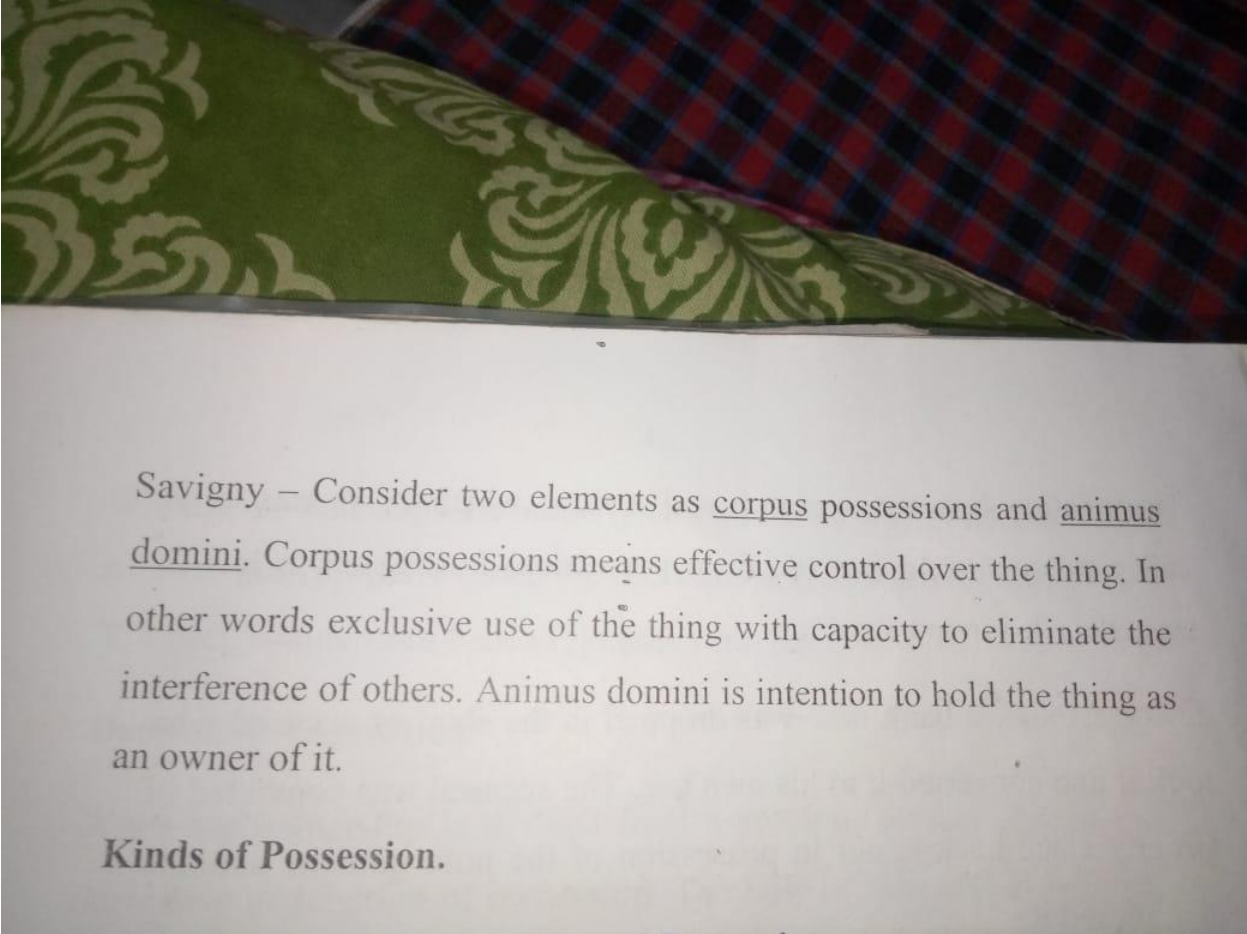
In *Cartright v Green* a bureau was delivered to a car painter for repair, where in a secret drawer he found some money and appropriate the same. He was guilty of larceny.

In *Merry v. Green* a man purchased a chest of drawers at an-auction & took possession of it. He found some money in the secret drawer but appropriated the same for his own use. He was found guilty of larceny (theft) as he was unaware at the time of purchasing about the money.

In *R.V. Ashwell* A gave B a guinea (गिन्नी) in a dark night. Both of them believed it to be a shilling. (twelve part of pound). B subsequently discovered that it was a guinea and appropriate the same. He was convicted for larceny

According to Holland legal possession has two essential elements namely – Corpus

➤ Animus



Savigny – Consider two elements as corpus possessions and animus domini. Corpus possessions means effective control over the thing. In other words exclusive use of the thing with capacity to eliminate the interference of others. Animus domini is intention to hold the thing as an owner of it.

Kinds of Possession.

(2) The natural guardian shall not, without the previous permission of the court.

a. Mortgage or charge or transfer by sale, gift, exchange or otherwise any part of the immovable property of the minor, or

b. Lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain the majority.

3. In contravention of above provision the disposal will be voidable.

4. No court shall grant permission to the natural guardian to do any of the acts mentioned in sub-sec (2) except in case of necessity or for an evident advantage to the minor.

The natural guardian has the power to interfere into family settlement on behalf of the minor provided it is in nature of ban fade compromise.

Sec 8 (1) says that the guardian cannot bind the minor in any manner by his personal covenant (प्रसविरा). He cannot contract in the name of the minor so as to impose on the minor any personal liability.

Sec 68 of the Indian Contract Act provides an exception of this rule.

The natural guardian's right is sort of a trust. Which can be delegated to another person for the same of convenience. He can always in a position to remove that authority and take upon himself. The custody and education of his minor child.

Testamentary Guardian (Sec-9)

A testamentary guardian is one who is appointed by a will of the natural guardian of minor. Such a guardian can be appointed by father who is a natural guardian. Testamentary guardian appointed by father

b. In case of an illegitimate boy or an illegitimate girl the mother and after her, the father.

c. In case of married girl, the husband. *given the custody of a child*

Provided that no person shall be entitled to act as a natural guardian of a minor under the provision of this section:-

- a. ~~Of he has ceased to be a Hindu or.~~ *if close not removed*
- b. ~~Of he has completely and finally renounced the world by becoming a hermit or an aseptic.~~
- c. Step father and step mother.

Disabilities to act as a guardian. Sec 6 defines the disabilities-

1. Disability arising from apostasy (धर्म त्याग)
2. Disability arising from civil death.
3. Disability owing to minority.
4. Where the guardianship is prejudicial to the Welfare of the minor.

Effect of remarriage by widow: A Hindu widow does not by her remarriage, lose her preferential right of guardianship over her minor children by the deceased husband whether such marriage is permitted by customs or not.

Natural guardian of an adopted son: *Tip* Sec 7 says that natural guardian of an adopted son. Who is minor *one given to the* possess on adoptive father and after him to the adoptive mother. The father and mother of the original family lose every right of guardian after adoption.

Power of Guardian

Sec-8: The natural guardian of a Hindu minor has power. Subject to the provision of this section, to do all acts which are necessary and reasonable and proper for the benefit of the minor or for the realization protection or benefits of the minor's estates but the guardian can in no case bind the minor by a personal covenant.

(2) The natural court.

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other person nor adopted child can renounce his or her status as such and returns to the family of his or her birth (sec 15).

GUARDIANSHIP'

(25/8/1956)

Age of majority: sec 4 of the Hindu minority and Guardianship Act 1956 defines the word minor as a person who has not completed the age of eighteen year. The age thus prescribed for majority shall be applied for all purpose except marriage.

Guardian: Sec 4(b) defines the word guardian as follows:

"guardian means a person having the care of the person of a minor or of his property, or both his person and property and includes-

1. A natural guardian
2. A guardian appointed by the will of the minor's father or mother
3. A guardian appointed or declared by a court.
4. A person empowered to act such by or under any enactment relating to any court of wards.

Besides the above, there are two more types of guardian namely.

- a. De facto guardian and
- b. Ad hoc guardian former has been mentioned in the act, hence later not.

Natural Guardian: Sec 6 of the Act reads as under:

"The natural guardian of a Hindu minor, in respect of minor's person as well as in respect of minor's property ^{or & including} (including his or her undivided interest in joint family property), are-

- a. In case of ^{his wife} boy or ^{his wife} unmarried girl the father and after him, the mother, but custody till five year age shall be with mother.

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