Possession

Acquisition, Vices & Extinction

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In this Session:

- **Acquisition & Transfer of Possession**
- **Defects of possession**
- **Extinction of possession**

Acquisition & Transfer of Possession

- **How does one become ‘possessor’ in the legal sense of the term?**
- **There are three legally known modes of acquiring possession:**
  a) **Occupation (taking)**
  b) **Delivery/transfer from another person**
  c) **Operation of the law**

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a) Acquisition of possession by *occupation*

- **This is the acquiring or taking possession of a thing without a previous possessor or without the consent of a previous possessor (even if the thing has possessor. This may be on:**
  - ***Masterless thing:*** **when the thing being taken control of had no previous possessor. This relates to things without master: *res nullies* susceptible of appropriation & *res derelictae* (abandoned things).**

A person who occupies such things becomes possessor.

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a) Acquisition of possession by *occupation* …*ctd*.

- ***Things that have a master***: **when a person occupies an object which has a possessor but against the will of such possessor.**

Such form of acquiring possession is normally wrongful and the possession is defective. But still the person will be regarded by law as possessor.

- **No specific provision on possession (Arts 1140-1149) expressly indicates the possibility of acquiring possession by occupation.**
- **Instead, the possibility of original occupation (occupation of masterless objects) is implicitly indicated in Arts 1151-1157.**

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b) Acquisition of possession by *delivery*

- This form of acquisition of possession takes place when a person acquires a thing which has a possessor but with the consent and cooperation of such possessor. This is the case of transfer of possession from another person.

- This can be: *Actual Delivery* or *Constructive (Symbolic) Deliver*

1- Actual delivery – is transfer of direct (immediate) possession to another person. It involves the actual transfer of object from one person (current possessor) to another. Eg. actual delivery on sale, loan or on deposit.

This mode of acquiring possession is recognized in Art 1143.

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b) Acquisition of possession by *delivery ….ctd.*

***2- Constructive (Symbolic) delivery* – here there is *no change in the position of direct possession*/possessor; there is only transfer (creation of) *indirect possession* for another person. This may take any of the following forms:**

1. ***Traditio brevi menu***
2. ***Constitutem possessorium*, or**
3. ***Attornment***
4. ***By delivery of the document representing the thing***

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b) Acquisition of possession by *delivery ….ctd.*

1. ***Traditio brevi menu*** **– refers to the surrender of indirect possession to the person who is in a direct possession of the thing.**

   E.g.: If I sale a thing with whom I deposited

   Art 1147(1) – recognizes this modality of transferring/acquiring possession

2. ***Constitutem possessorium:*** **this is the converse of *traditio brevi menu*. It refers to the transfer of *indirect* possession while the direct possession remains with the transferor. Art 1145(1)**

   E.g.: If I buy a book from a book store and leave it there for the seller to keep it for me. Or if I buy a house and allow the seller to continue living in.

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b) Acquisition of possession by *delivery ….ctd.*

2. Constitutem possessorium: …ctd.

Here possession will be transferred (indirect possession created) to a new possessor without actual transfer of the object. See Art 1145(1) :-

- **'A thing' – 'things certain' OR 'individualized things', as the object of transfer of possession.**

  (1) '*things certain*' (non-fungibles) – the thing must exist in advance & it must be easily identifiable with no possibility of substituting one with another of equivalent value;

  OR

  (2) In the case of 'things that are *generic specie*' (fungibles) – it should be individualized.

- **'A contract' that entails transfer of possession & names a new possessor (Not expressly indicated but implicit in Art 1145(1)).**

- **'declaration to detain the thing for another person' – The declaration may be made in different ways: by written or oral declarator statement, by putting on marks/sign posts on the object, or by putting separately.**

❖ **Art 1145(2) is intended to foreclose possible fraudulent act of bankrupt traders on their creditors.**

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b) Acquisition of possession by *delivery ….ctd.*

3. ***Attornment:*** **refers to the transfer of *indirect* possession (from A) to another person (to B) while the *direct* possession is in the hand of a third person (with C). Art 2831**

   E.g.: If A sales good which he deposited with C to B, A is transferring the *indirect* possession he has to B.

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b) Acquisition of possession by *delivery ….ctd.*

4. By delivery of the document representing the thing

- As provided in Art 1144 possession may be transferred to a new possessor by delivery of the document representing the thing.
- This is not referring to immovables and special movables which are required to be registered and title document issued (e.g. ሊብሬ).
- Art 1144 is rather referring to documents representing or replacing the thing, e.g.:-
  - የግምሩክ ዲክላራሲዮን (customs declaration)
  - Bill of lading – Art 187(3), Maritime Code
  - Warehouse deposit vouchers

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c) Acquisition of possession *by* operation of the *law*

- **Possession may also be acquired by automatic operation of the law.**
- **This happens when possession changes hands as a result of operation of the law; not by the initiation of the parties.**

  E.g.: In case of succession, Art 826

Defects/Vices of Possessions

- **These are facts or situations relating to the manner of acquisition or exercise of control over a thing and which make the possession an imperfect one.**
- **The known sources of defective possession are:**
  - **Secrecy (clandestineness)**
  - **Dubiousness (equivocal/ambiguousness/uncertainty)**
  - **Violence**
  - **Discontinuity**
  - **Precariousness**

Defects/Vices of Possessions …ctd.

- **Secrecy (clandestineness)**
  - This arises when a person hides his status or his acts relating to the possession from the public.
  - A person may make his possession secrete either at the time of taking possession or in the manner he uses the object. Art 1146(2)
  - Gives no right to the possessor: Art 1146(1)
- **Dubiousness (equivocal/ambiguousness/uncertainty)**
  - Possession is dubious when it is not clear as to the possessor or holder status of the person controlling a thing; that is when the intention of the person controlling the thing is not clear. Art 1146(3).
  - Gives rise to no right to the possessor: Art 1146(1).

Defects/Vices of Possessions …ctd.

- **Violence**
  - This relates to the manner the possession is acquired. If the possession is acquired by violence (physical or psychological) or without consent of the previous possessor.
- **Discontinuity**
  - When a person claims to be a possessor, he has to continue the possession without interruption. Obviously, reasonable interruption is tolerable. Art 1142
  - Once a person controls an object his control should not be erratic, i.e., control the thing today, lose it tomorrow & regain it again.
- **Precariousness**
  - Possession is precarious when a person controls a thing on his own account/his own interest but acknowledges the better possession of another person
  - Eg. Bailee, lessee, guardian, pledge, usufructuary

Termination of Possession

- **Possession may terminate under anyone of the following circumstances:**
  1. **Loss of both *animus* & *corpus* elements of possession**
  2. **Loss of the *corpus*, preserving the *animus***
  3. **Loss of the *animus*, while the object is preserved**

1. **Loss of both *animus* & *corpus* elements of possession**
   - **A person may lose both the *animus* & the *corpus* in one of the two ways:**
     - **Alienation of corpus – though transfer of title to the thing**
     - **Abandoning the object (turning it into *res derelictae*)**

Termination of Possession …ctd.

2. **Loss of the *corpus*, preserving the *animus***
   - **This situation arises when an object is misplaced or lost; you lose physical control of the object but the *animus* is there.**
   - **This (loss of the *corpus*) doesn't always result in loss of possession. If the disruption or loss of *corpus* is for a short time, it will not result in loss of possession. It has to be prolonged loss of *corpus* that results in termination of possession. See Art 1142.**

3. **Loss of the *animus*, while the object is preserved**
   - **This happens in case of constructive transfer of possession. Art 1145(1)**