

Chapter Three: Possession

3.1 Meaning of Possession

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3.1 Meaning of Possession

Oxford Dictionary=

1. Something that someone possesses, but to which he doesn't necessarily have private property rights
2. Something that is owned
3. Ownership; taking, holding, keeping something as one's own
4. A territory under the rule of another country
5. The condition or affliction of being possessed by a demon or other supernatural entity.
6. In sports, the control of the ball; the opportunity to be on the offensive
7. In linguistics, a syntactic relationship between two nouns or nominals that may be used to

The term 'possession' may be defined as the detention and enjoyment of a thing by a person himself or through another person in his name. It refers to the relation of person to a thing over which he may, at his pleasure, exercise such control as the character of the thing permits to the exclusion of other persons. Possession in the narrow legal sense is the holding of a thing in the power of a person who intends to exercise, with regard to it, a property right. (Art 1140 of the Civil Code).

The distinction between detention and possession follows from a proper analysis of the latter concept, i.e., the fact that possession is made up of two elements

- The Corpus or element of physical control
- The Animus or element of intent with which such control is exercised.

Accordingly, though the holder and the possessor have the same physical control, the difference between them is found in the mental element, i.e., the intent of the possessor and what distinguishes the possessor from the mere holder is the animus domini or the desire to hold for one self and not on behalf of another.

On the other hand, the mere holder holds the thing not for his own benefit but for the benefit of another person

Possession

Acquisition of possession: things or objects of property can be acquired by:

- Physically controlling the thing
- Showing clear intention to use such thing for himself.

The taking of possession can be executed not only by the intended acquirer, but also through the offices of a third party acting as an agent or representative. The intention to control a thing for one's own interest/ animus/ must be manifested by an external act which is usually represented by the taking of possession itself or entering in to an

Transfer of Possession

The transfer of possession may result from:

- Contracts such as sale, donation or
- Operation of the law.

Possession may be transferred by:

- the **delivery** or handing over the thing or
- **Documents** representing the thing such as a bill of lading, consignment note, a ware house goods deposit certificate.
- **Brave-manue**, i.e., an agreement between the holder and the person for the account of whom the former exercises possession and in which the holder ceases to hold in the name of another and begins to possess in his own name.
- **Constructive possession** in which the possessor agrees to cease to hold in his own name and to begin to hold for the account of another who is considered as the actual possessor. (Art. 1143-1145)

3.3 Defects of Possession

Art 1146/1/ of the Civil Code also provides that defective possession shall not give rise to any right. The following are the grounds that can render a possession defective.

1. Precarious Possession happens if the person does not have a right of ownership in relation to the object he holds. Hence, the possession of a usufructuary, a limited user /usage/, a tenant farmer, leaseholder or a pledgee, a creditor secured by antichresis, a tutor with regard to a minor's property.

2. Clandestine Possession

Possession is clandestine, that means not open, if the acts by which it was acquired and continued were not such as to be known to the outside, especially to those persons against whom they are to be claimed. Clandestineness is purely a relative defect that can be subject to claim only by those who could not have known about the possession.

3. Violence

a possession acquired or continued by physical or psychological violence is vitiated by a defect of violence. The Ethiopian law does not clearly declare violence as a cause for defectiveness of possession (Art 1146). However, we can deduce from the provisions of Art 1148, which allows a possessor to use force to recover a thing which has been taken away from him through violence, that a person who used force to acquire possession is not protected by the law as his action is unlawful and violates public interest for peace and order.

4. Ambiguous/ Dubious possession

According to Art 1146/3/, a possession is said to be ambiguous or dubious where, in the circumstances, it is doubtful whether the thing belongs to the person who claims to be the possessor or whether he holds the thing on behalf of another person. This type of defect is clearly related to the mental or animus element of possession. An ambiguous possession shall not have the effects of possession. For instance, it cannot be the basis for acquisitive prescription (Arts 1146/1/ 1168 and 1150).

3.4 EFFECTS OF POSSESSION

➤ Possession may create ownership either by occupation, i.e., by taking control of res-nullius/ a thing without an owner/ or through the expiration of a period of acquisitive prescription(Art 1151 and 1168).

➤ Possession is a prima facie evidence of ownership, and he who would disturb a possessor must show either title/ownership or a better possessory right and defense of lack of legal title by the possessor may not be set up him.

For example, a blacksmith cannot claim the return of a ring from a person who found it on the ground that the finder is not an owner, nor can a person who is not an owner claim the return of a thing from a thief. Hence, even a wrongful possession is good against all persons except the true owner or one claiming through him or one claiming a prior possessory right(Art 1193).

the law protects a possessor, as it does not always know that a possession in question is unlawful. The doctrine that in most cases possessors are the rightful owners may not be historically accurate, but it is convenient for the law to reward possession as well-founded, at least until a superior title is shown to exist.

3.4 Dispossession and Remedies

Dispossession is the act of taking away an object of property from the person in whose control such a thing is situated. Hence, the law protects possession by presuming the possessor to be the owner until some one else proves a better right to the thing than the possessor. Therefore, to ask why the law protects possession amount to asking why the law protects ownership. There are two types of remedies of dispossession:

1. Use of force

According to Art 1148 of the Civil Code, the possessor or holder has the right to defend his possession by using a **reasonable force** to prevent a person who intends to dispossess him or to retake possession of a thing which has been taken away from him by force or which has been stolen from him provided that the **usurper is caught in the act or when running away**.

2. Possessory action

possessory actions are legal actions or suits instituted by a possessor who has been disposed of his possession or whose possession is interfered with or whose possession is threatened by the actions of another person.

A possessor [or even a holder] who is dispossessed of his possession or whose possession is interfered with may institute an action for the restoration of the thing or cessation of the interference and claim compensation for damages resulting from the dispossession or interference(Art 1149/1/).

Finally, according to Art 1149/2/, a possessory action of any type shall be barred if not brought within a period of one year/ the Amharic version provides two years/ from the day of the usurpation or interference