

Possession

Acquisition, Transfer & Extinction

In this Session:

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

Acquisition of Possession

- How does one become possessor in the legal sense of the term?
- There are three legally known methods of acquisition of possession. Possession can be acquired by:
 - a) Occupation (taking)
 - b) Delivery
 - c) Operation of the law

Acquisition of Possession ...*ctd.*

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. This may be:
 - Original: 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 acquires possession

Acquisition of Possession ...*ctd.*

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

- Derivative: when a person occupies an object which has possessor but against the will of such possessor.

Such form occupation are normally wrongful and the possession defective.

- No specific provision on possession expressly indicates the possibility of acquiring possession by occupation.
- The possibility of original occupation (occupation of masterless objects is implicitly indicated in Arts 1151-1157
- Arts 1146 & 1148 seem to suggest about the possibility of acquiring possession by taking against the will of another. But, the possession is defective.

Acquisition of Possession ...*ctd.*

b) Acquisition of possession by *delivery*

- This form of acquisition of possession takes place when a person acquires control of a thing which has a possessor but with **the consent and cooperation of such possessor**. This can be: *Actual Delivery* or *Constructive (Symbolic) Deliver*
- *Actual delivery* – is transfer of direct (immediate) possession. It involves the actual transfer of object from one possessor to another. Eg. actual delivery on **sale, loan** or on deposit.

This way of acquiring possession is recognized in Art 1143.

Acquisition of Possession ...*ctd.*

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

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

- *Traditio brevi manu*
- *Constitutum possessorium*, or
- *Attornment*

Acquisition of Possession ...*ctd.*

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

- *Traditio brevi manu* – refers to the surrender of indirect possession to the one who is in direct possession of the thing.

Eg. If I sale a thing with whom I deposited

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

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

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

Eg. If A sales which he deposited with C to B, A is transferring the *indirect* possession he has to B.

Acquisition of Possession ...*ctd.*

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

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

Eg. If A sales which he deposited with C to B, A is transferring the *indirect* possession he has to B.

Acquisition of Possession ...*ctd.*

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

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

Eg. In case of succession, Art 826

Transfer of Possession

- There are 4 main ways of transferring possession
 1. Deliver of the thing;
 2. Delivery of the document that represent the thing;
 3. Constructive delivery; and,
 4. *Traditio brevi menu*
- 1. Transfer of possession by delivery of the thing
 - Transfer of possession from one person (transferor) to another (transferee) by delivery of the thing. *Art 1143*
 - This usually happens by contract

Transfer of Possession ...*ctd.*

2. Transfer of possession 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 thing representing the thing.
- This is not referring to **immovables** and **special movables** which are required to be registered and title document issued (eg libre).
- Art 1144 is rather referring to documents representing or replacing the thing, eg.:-
 - ዲክላራሲዮን (customs declaration)
 - Bill of lading - Art 187(3), Maritime Code
 - Warehouse deposit vouchers

Transfer of Possession ...*ctd.*

3. Constructive delivery

- Here possession will be transferred to a new possessor without actual transfer of the object. See Art 1145(1)
 - 'things certain' - the thing must exist in advance; it should not relate to a future thing.
 - 'things that are generic specie' - should be non-fungible. It must be easily identifiable with no possibility of substituting one with another of equivalent value.
 - '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 prevent fraudulent act of traders on their creditors.

Transfer of Possession ...*ctd.*

4. *Traditio brevi manu*

- Art 1147(1) shows that transfer of possession can also be made by transferring indirect possession to the person who has the direct possession of the thing, without actually delivery of the thing.
- But this change must take place lawfully/validly - by consent or court order. It will not result from the unilateral will of the direct possessor.

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 secret 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)

❑ Violence

❑ Discontinuity

❑ Precariousness

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.
- Once a person controls an object his control should not be erratic, i.e., control the thing today, lose it tomorrow & regain it again.
- Art 1142

❑ Precariousness

- Possession is precarious when a person controls a thing on his own account/his own interest but acknowledges the possession of another person
- Eg. Bailee, lessee, guardian, pledge, usufructuary

Termination of Possession

- Possession may terminate on anyone of the following circumstances:
 - Loss of both *animus* & *corpus* elements of possession
 - Loss of the *corpus*, preserving the *animus*
 - Loss of the *animus*, while the object is preserved
- 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* - through transfer of possession
 - Abandoning the object (turning it into *res derelictae*)

Termination of Possession ...*ctd.*

- Loss of the *corpus*, preserving the *animus*
 - This situation arises when an object is misplaced or lost; you lose 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.
- Loss of the *animus*, while the object is preserved
 - This happens in case of constructive transfer of possession. Art 1145(1)