

Possession

PROTECTION OF POSSESSION

In This Presentation:-

- Introduction
- Dispossession
- Legal Remedies for Dispossession

Introduction

- Possession is important in society
- Because it is vital and important in society, it is recognized and protected by law.
- The mere fact of possession of a thing by a person, irrespective of the rights that he may have over the thing, is protected by law: uninterrupted possession is protected by law.
 - Criminal law: Arts 685 & 686 criminalize dispossession and interference
 - Civil law remedies designed to protect from dispossession

Dispossession

- A possessor is protected from dispossession.
- But what is dispossession? What constitutes dispossession? When do we say that a person's possession is threatened entailing the application of lawful measures (remedies)?
- The law doesn't provide a direct definition of the term 'dispossession'.
- From a cumulative reading of Arts 1140, 1148 & 1149, we can construct the following definition for the term 'dispossession':

Dispossession is a third party's physical or juridical act that interfere with or disturb another person's possession of a thing.

Dispossession ...*ctd.*

- The defining elements of dispossession
 - 1st, dispossession consists of **overt conduct**; it involves a **material act**. Mere thought or desire does not constitute dispossession. It will not affect the person's possession actually or potentially.
 - 2nd, the material **act should target**, actually or imminently against possession. It should be directed at disturbing the peaceful possession of a thing by a person.

Dispossession ...*ctd.*

□ The defining elements of dispossession ...*ctd.*

3rd, the material act that constitute interference may be a simple *physical act* or it may be a *juridical act*.

Physical act: eviction or any other physical act which prevents the possessor from enjoying peaceful possession, It means a physically felt act of dispossession or interference. Eg. snatching, demolition, eviting, fencing in, etc.

Juridical act: performance of juridical acts that contradict one's possession. Eg.

- ✓ Trying to register in one's own name;
- ✓ Pose as seller of the thing and draw up contract
- ✓ Proclaiming oneself as owner or possessor.

Dispossession ...*ctd.*

- The defining elements of dispossession ...*ctd.*

4th, the material act (physical or juridical) must be taken without the consent of the possessor.

5th, the material act of dispossession must be one that is not authorized by law. If the person performing the material act of dispossession is authorized by law, then it will not be considered as dispossession. Eg.

- Seizure of exhibits by police – Criminal Procedure Law
- Attachment of a object of property to satisfy judgement creditor – Civil Procedure Code
- The Power of the Agency for Government Houses to evict defaulting tenants & unlawful occupants of government owned houses. Art 6(3) Proc No. 555/2007
- The power of municipal authorities to demolish constructions contrary to masterplan or without having building permit. Procls 315 & 316/1987

Dispossession ...*ctd.*

- The defining elements of dispossession ...*ctd.*

6th, the author of the act constituting the dispossession could be any person other than the possessor himself/herself.

Having right of ownership or any other *real* or *in personam* right in relation to the object cannot be a justification to commit the act constituting dispossession; will not take away its dispossession character or effect in law. Rights holders have to use possessory action or petitory action (in case of property) or personal action (in case of *in personam* rights).

Dispossession ...*ctd.*

- The defining elements of dispossession ...*ctd.*

7th, the act that constitutes dispossession may be either *usurpation* or *interference*.

Usurpation: is an act of evicting or depriving a person of his possession – partly or wholly.

It involves an act of taking away a thing another person possesses without his consent by force or fraudulently.

Interference: this is not about snatching or taking away the thing under the possession of a person.

Rather, it is about creating every sort of inconvenience or interference on the possessor so that he will not peacefully enjoy his possession or to cause him to lose the *animus* or *corpus* or both with regard to his possession.

Distinguish this from nuisance under Art 1125 which is about interference in the enjoyment of a right.

Remedies for Dispossession

- When dispossession occurs as defined above, the law provides a remedy. There are two alternative remedies. These are:
 - Use of force (self-help remedy) – Art 1148
 - Possessory action (legal action in court)
- Use of force – Art 1148
 - According to Art 1148 a person who is in an imminent or actual danger of dispossession can use force to repel the act of usurpation or interference.
 - The law permits the use of force to protect one's possession in so far as one has the physical ability to do so. But, there are conditions:
 - ✓ The use of force must be forthwith: while the act is being committed or when the usurper is running away;
 - ✓ Proportional use of force: only that amount of force that is necessary to repel the act of dispossession must be used (Art 1148), No use of force in excess of what is necessary under the circumstances. No revenge or punishment. Further, the value of the thing and the minimum force that can compel the wrongdoer from his action should be considered in applying force.

Remedies for Dispossession ...*ctd.*

○ Possessory Action – Art 1149

- If one cannot or did not want to preserve his possession by force or if was not around to protect his possession by force, there is a second alternative to restore or ensure the integrity of his possession:
Possessory Action
- In the possessory action:
 - The plaintiff must state and describe the factual circumstances that constitute usurpation of interference. He should indicate the overt conducts of the defendant that threatened his possession.
 - The plaintiff should indicate the legal remedy he is seeking: restoration of the thing or cessation of the interference; plus, compensation, as the case may be.

Remedies for Dispossession ...*ctd.*

○ Possessory Action – Art 1149*ctd.*

▪ In the possessory action:

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- The plaintiff has to produce evidence which show:
 - a) That he is the possessor of the thing; should not necessarily relate to the real rights he/she has over the thing.
 - b) The commission of the act by the defendant
- The plaintiff should observe period of limitation; the possessory action should be brought within 1 year from the date the act of usurpation happened/interference commenced.
- When these are shown, then the court will order the restoration of the thing or cessation of the interference.