

# Kinds of Possession

## KINDS OF POSSESSION

1. Corporeal and Incorporeal Possession
2. Mediate and Immediate Possession
3. Constructive Possession
4. Adverse Possession
5. Concurrent or Duplicate Possession
6. Representative Possession
7. Derivative Possession
8. Quasi Possession



# 1. Corporeal and Incorporeal Possession

- The possession of material or tangible things is known as Corporeal Possessor. Example: the possession of land, house, books, chattels etc.
- The possession of immaterial or intangible things which one can not touch, see or perceive, is known as Incorporeal Possession. Example: Possession of a copy-right or a Trade-mark or a Right of reputation, Goodwill etc.

## 2. Mediate and Immediate Possession

- The possession of a thing through another person is called as Mediate Possession or Indirect Possession. Example: when a person purchases a book through his agent or servant, he has mediate possession so long as the book remains in agent's or servant's possession.
- When the relation between the possessor and the thing possessed is a direct one, it is called as Immediate Possession or Direct possession. Example: when a person purchases a book himself, he has immediate possession of it without any intervening agency. The things in possession of a master, principal and owner are said to be in their immediate possession.
- Under English law, the distinction between Mediate and Immediate possession is not recognised; because at a time only one person can have exclusive possession over a thing. A servant merely has custody of his master's goods.



### 3. Constructive Possession

- According to **Pollock**- A Constructive Possession is de-jure possession or possession-in-law. It is not actual possession. It is a right to recover possession.
- Example: the delivery of keys of a building may give rise to constructive possession of the contents of building to the transferee of the key.

## 4. Adverse Possession

- It means the possession by a person who initially holds the land on behalf of some other person and subsequently setup his claim as a true owner of that land.
- For establishing Adverse Possession, following 3 - elements must be proved
  - a) Continuity,
  - b) Adequate publicity, and
  - c) Peaceful and undisturbed possession for specific period.



## 5. Concurrent or Duplicate Possession

- According to definition of the possession when two persons cannot be in possession of the same thing at the same time because the exclusiveness is one of the essence of the possession.
- No two adverse claims of exclusive use can be effectually realised at the same time. But when the claims are not adverse and are not mutually destructive, they can be concurrently realised at the same time. Such cases of Concurrent Possession are also called Duplicate Possession.
- **Example:** Corporeal and Incorporeal possessions may concurrently exist in respect of the same material thing. as A certain land may be in possession of Mr. A and right of way may be in possession of Mr. B.

## 6. Representative Possession

- Representative possession is that in which the owner has possession of a thing through an agent or a servant. The real possession is that of the actual owner and not that of the representative.
- Example- I put some money in the pocket of my servant to buy certain things from the market. Money in the pocket of the servant is not in his possession. It is a case of representative possession.
- The essence of representative possession lies in the fact that the master has the animus to exercise control over the thing in the hands of the servant or agent.



## 7. Derivative Possession

- In the case of derivative possession, the holder of the thing combines in himself both the physical and mental elements which constitute legal possession.
- A creditor has a derivative possession of the thing pledged to him, A watch-maker has a derivative possession of a watch entrusted to him for repair so long as the repair charges are not paid, A Bailee has a derivative possession of the goods bailed to him.
- In these cases, the title of the holder of the thing is derived from the person who entrusts the thing. It is pointed out that if the owner of the watch takes away the watch forcibly without making the payment, he is guilty of theft.<sup>9</sup>

## 8. Quasi Possession

- Incorporeal possession is known in Roman law as "quasi possession".
- Possession “which is really understood as a right” should not be confounded with the subject matter of that right.
- Example- A right of way over a piece of land, cannot be identified with that land. Besides, as we have seen, in our discussion, under the previous heading, there can be no “*corpus possession*”.