

# Ownership

**1.1 What is ownership?** The fullest possible right one could have over **corporeal** thing.

## 1.2 Restriction of ownership.

- the existence of **personal** rights against the owner
- Restricted real rights over the thing that he owned.

Person is prevented of doing smt with his own property which might prejudice another and use your own in such a manner that you don't damage the property of another.

## 1.3 Co-ownership

## 2. Kind of ownership

### 2.1 Civil ownership (**dominium exiure Quiritium**)

Only to RC, **Corporeal** thing in commerce and without **defect**.  
Rec Mancipi + Rec Nec Mancipi, if not correct mode of transfer no civil ownership

### 2.2 Praetorian or bonitary ownership

Exceptio - defence against owner's rei vindicatio  
Actio Publicana - defence against 3<sup>rd</sup> person.  
Exceptio (defence) against the owner's rei vindicatio  
At the end of the period of prescription the transferee obtains civil ownership  
*Constitutio Antoniana AD 212; Justinian*

### 2.3 Foreigners

Could not obtain ownership. They were permitted to use traditio. The praetor changed the wording in the formula and they were permitted to own property.  
*Constitutio Antoniana*

## 3. The acquisition of ownership

**3.1 In.** The one derived from *ius civile* and *ius gentium*  
B/n **original** and **derivate**.

**Original** - independently or without assistance

**Derivate** - ownership passed from 1 person to another with cooperation of the **predecessor**. *Nemo plus iuris ad alium*

## 3.2 Derivate methods of acquisition of ownership

### 3.2.1 Mancipatio (ius civile RC only)

Abstract, Children and Res Mancipi; Formal cash sale;  
Reason + Mancipatio = Estab of real right.  
5 witness + scale + bronze or copper  
Reason - cash sale, donation, etc

### 3.2.2 In iure cessio (ius civile RC only)

Abstract; Res Mancipi + Res Nec Mancipi  
Agreement + iure cessio = est of real right

### 3.2.3 Traditio (ius gentium RC + F)

Valid **reason** + delivery = est of real right. Casual mode,  
this means can pass only if **valid reason**  
**Valid reason:** contract of sale, donatio, fulfilment of valid obligation.

Could be used in cases: Transfer ownership of Res Nec M;  
Transfer provincial land; Means by which F obtained ownership.

### Forms of traditio

- single delivery
- Delivery with the long hand
- Delivery with short hand
- Constitutum possessorium
- Symbolic delivery

## 3.3 Original Methods of acquiring ownership

### 3.3.2 Prescription

(a) **Intro** laid down 12 tables; if person uninterrupted possession 2 y land, 1 movable

Only to **RC**; no stolen things;  
Reasons why legal institution like prescription was required: 1 to meet legal certainty; 2 plaintiff had to prove his ownership etc.

## (b) Requirements for prescription

(i) **the thing has to be capable of ownership**  
(res habilis)

Things in commerce

(ii) **had to be cause that the law normally recognizes as sufficient for transfer of ownership.**

Purchase and sale; received as performance in terms of obligation etc

(iii) **good faith** (bona fide) only when the thing was acquired

(iv) **Possession** undisturbed

(v) **Period**; originally 1 year mov and 2 year imov; but Justinian 3 y M, 10 for IM when in the same province; 20 years

**3.3.3 Appropriation (occupatio)** res nullius; 2 kind of res nullius: 1 never before owned by someone; 2 abandoned things

**Strict requirement** - factual control

Things belong to enemy; res washed away on the beach; wild animal

**3.3.4 Treasure-trove** something hidden for so long that it was impossible to trace the owner. If found on someone's property - co-ownership

**3.3.5 The acquisition of fruits** the owner of the fruit bearing thing becomes the owner of the fruit; Only on **separation** of the principle thing

**3.3.6 Accession or joining of things (accessio)**

**Requirements:** not to lose **identity**; inseparably connected

(a) **joining mov to movables** (identity)

(b) **Join mov to imov** (owner of the land is the owner of composites thing)

(c) **Joining im to im**

- **Gradual imperceptible accretion** soil; **Perceptible accretion** wind; **When island arose** river

**3.3.7 Mixing (commixtio) and blending (confusio)**

Difference with accession that the res not subordinated in 3.3.7

- mixing with permission different owners become co-owner; no permission - each owner **retained** ownership on the separate portion; if not easy to identify the things when mixed *pro rata*

- In case of mixing **fluids (confusio)** the 2 owners acquired joint ownership/ with agreement or not - it doesn't matter. The owner can claim shares *pro rata*.

**3.3.8 The creation of new thing from existing material**

(**specificatio**). This acquired when someone, without authorisation, created a new thing, with material belonging partly or entirely to someone else. Eg wine from grapes etc

1. If person created new thing from its own material partly and from another he always becomes the owner (labour)

2. However if all of the material belonged to another:

- 2 schools (1 modern) owner of the material also owner (2 cons) maker of the new thing - owner (3 new) If the thing made could be **reduced** to its original condition - owner of the material if the opposite, the maker is the owner.

## 4 Protection of ownership

**4.1 Intro** If the thing had been stolen can be claimed by **rei vindicatio**. It could also **actio furti** (twice price) to punish and if not

recover the **conditio furtiva**. All personal action

**4.2 Rei Vindicati (ius civile)** RC, no F or bonitary owners. If *nemo plus iuris*, plaintiff has to prove that the seller was the real owner of the thing. To show that the owner complied with all the requirements with prescription or he had acquired the res by another original means of acquisition of ownership. No difference whether the defendant acted in bona fide or mala fide. The defendant had to be in factual control. Defendant was not obligated to return the thing but if he didn't he had to pay.

Also can use it to claim fruits.

**4.3 Praetorian protection of ownership**

- **Person who received res Mancipi by traditio** (against all people) **and a person who received the thing from someone who was not the owner** (against 3<sup>rd</sup> party, excluding the owner).

ACTIO PUBLICANA (real action) by means of this action, the possessor could reclaim the thing from any person

Exceptio iusi domini

**4.4 The actio ad exhibendum.** In cases involving real action the defendant was not obligated to participate in the institution if the action. To solve this problem the plaintiff was afforded a personal action (action ad exhibendum) with which he could force the person in possession of the res to appear before the praetor.

**4.5 The actio negatoria.** The owner of a piece of land could deny the existence of servitude over his property. Available against person who laid claim to the servitude in bona fide.