

Chapter 2 Possession

Possessio to posses or occupy

Possession is purely physical fact. Without possession it was imposible to acqure ownership.

Kinds of possession:

- **Possessio civilis** (prescreptvite possession)
- **Possessio ad interdicta** (possession protected by inderdict)
- **Possessio naturalis**

Possessory interdicts:

- **Interdictum uti possidetis**
- **Interdictum utriubi**
- **Interdictum unde vi** and **interdictum unde vi armata**

Chapter 2 (3) Possession

Kinds of possession:

- **Possessio ad interdicta** (possession protected by inderdict)

Protected possession

(A) Possessor who possessed the thing with *animus* and *domini*

Persons who were entitled to possessory protection by means of intedicts could, if their possession of a thing were thretened or if they have been deprived of possession, apply to the *praetor* for an interdict by means which their position as possessor could be **maintained** or **restored**.

This group of person include:

- owner of the thing
- Possession civilis
- Possessor in bad faith (*mala fide* possessors)

(B) Person who lacked the *aminus domini*:

- Pledgee
- Long term lease holder
- The *pracario tenens*
- The Sequester

The las 3 groups did not enjoy possessory protection, dispite the fact they must have been entitled to protection.

Chapter 2 (2) Possession

Kinds of possession:

- **Possessio civilis** (prescreptvite possession)

Protected possession.

Possessio civilis was protected physical control that could lead to full ownership, *dominium*, by means of prescription This form of possession was obtained by means of **lawful ground,isto cause**, such as contract of percheses and sale, donation, legacy.

The possessor of the thing should really have obtained onwership immediatly, but because of a **formal defect** this didn't happened. It was possible that the person who should transfer ownership was not the owner. In terms of ***nemo plus iurus*** rule he was not permitted to transfer own.

In the secound place irregular **mode of conveyance**.

In both cases the recipient eventually bcame the owner after the expiry of the prescription period of the prescription. During the period of prescription the possession was protected by the possessory interdicts of the praetor.

Chapter 2 (4) Possession

- **Possessio naturalis**

Not protected possession

Possession of person who had phisical control over the thing but were not entitled to possessory interdicts. The had to request someone else (in case of a lesee the lessor) on thir behalf to restore possession.

There was not possession but only physical control.

They exercised control in terms of an agrremnt with the party from whom they obtained cotrol of the thing.

Such persons are:

- lessee
- Borrower
- depositee

Possessio Civilis	Possessio ad interdicta	Possesio naturalis
<ul style="list-style-type: none"> - Protected possession - Could lead to dominium through prescription • Possessor by prescription • Bonitary owner 	<ul style="list-style-type: none"> - Protected possession (A) Possessors who possessed the thing with <i>animus domini</i> (i) owner (ii) Mala fade possessor (iii) Bona fade possessors who could not obtain ownership through prescription (<i>possessio civilis</i>) (B) Possesors who lacked <i>a..d</i>: <i>pledgee, long-term lease holder, precario tenens, sequestor</i> 	<ul style="list-style-type: none"> - Unprotected possession - Excercise control in terms of an agrrement with the party from whom he obtained control of the thing • Lessee • Borrower • Depositee

Chapter 2 (5) Possession

Aquisition of possession

Possession was obtained when a person established **physical** control over the thing with the **intention** controlling it.

Protection of possession

Possession was protected by **praetor** by **interdicts**.

A person whose possession has been **interfered** or **deprived** could apply to the praetor for help. The praetor the issue **interdict** to maintain the possession of the person in question or to restore possession. This was speedy procedure where by the a person was ordered to **do something** or **prohibited from doing smt.**

Possession was therefore protected by means of interdicts not by means of an action.

When granting an interdict the praetor **didnot** enquire whether the possessor's possession was lawful or not.

The only Q was **whether the possessors possession had been interfered with?**

Once the possessor's possession had been restored then the legal position of the possessor would be decided.

Chapter 2 (6) Possession

Devision of possessory interdicts into:

- those aimed at **maintainig or protectiong possession** (prohibitory interdicts)
- Those aimed at **restoring possession** (restitutory or mendatory interdicts,

POSSESSORY INTERDICS

- **Interdics uti possidentis**
- **Interdics utrubi**
- **Interdictum unde vi** and **unde vi armata.**

Chapter 2 (7) Possession

POSSESSORY INTERDICS

- **Interdics uti possidentis**

Immovable things. It protected the possessor who was in possession of the thing at the time when the interdict was requested.

Protected the possessor or whose possession wa disturb. Even protecting the possessor who lost possession.

NB - The possessor could apply succesfully for this interdict **if** he had been disturbed in his possession or deprived by his possession by **force, secretly or on sufference.**

Chapter 2 (8) Possession

POSSESSORY INTERDICS

- **Interdics utrubi**

Movables

Person who requested it

Person against whom it was requested.

It was not necessary the person to be of the possession at the time when the interdict has been applied for. The person who had been in possession the **longest** period of the time during the past year was the possessor and was protected. He was only protected if he did not obtained the thing by **force, secretly or on sufference.** The person who had been in a possession for shrttest period could gain possession if the other party had deprived him possession by **force, secrettly or on sufference.**

Justinian - person who was in the possession of the thing at the time whn interdict was requested was maintained in possession unless he obtained possession by force, secretly or on sufference.

Chapter 2 (9) Possession

POSSESSORY INTERDICS

- **Interdictum unde vi** and **interdictum unde vi armata**

These interdics were available when immovable things had been lost in a **violent manner.**