

# POSSESSION: THE GOLDEN LEGAL OPPORTUNITY TO ACQUIRE OWNERSHIP

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**ABSTRACT:** This paper explores the legal concept of possession as a key mechanism for acquiring ownership, arguing it represents a "golden legal opportunity." It differentiates between factual and legal possession, analyzing the required elements of control and intention. The paper examines how possession is legally protected and how it can evolve into ownership through doctrines like adverse possession and prescription. It also addresses possession in movable property, including finding and abandonment. While acknowledging criticisms, particularly regarding adverse possession, the paper emphasizes its role in land utilization and dispute resolution, ultimately highlighting possession's enduring importance in property law.

**KEYWORDS:** Possession, Ownership, Adverse Possession, Prescription, Property Law, Animus Possidendi, Corpus Possessions, Legal Title

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## 1. INTRODUCTION

The concept of "possession" permeates both our daily lives and the intricate structures of legal systems. While often perceived as a simple matter of physical control, possession, within the legal context, is a nuanced and powerful instrument capable of generating significant property rights. It is not merely about "having" something; it is about the complex interplay between physical dominion and the intent to exercise that dominion. This paper will explore the proposition that possession represents a "golden legal opportunity" to acquire ownership, a principle that has shaped and continues to influence property law across various jurisdictions.

Throughout history, legal systems have recognized the significance of possession, acknowledging that factual control, when coupled with the requisite intent, can serve as a foundation for legal title. This recognition stems from a variety of rationales, including the desire to promote efficient land use, to settle disputes, and to protect those who have relied on their possession for extended periods. This paper will delve into the core elements of possession, distinguishing between *de facto* and *de jure* possession, and examining the critical components of *corpus possessionis* (physical control) and *animus possidendi* (intention to possess).

Furthermore, this analysis will extend to the legal implications of possession, particularly its role in the acquisition of ownership. Doctrines such as adverse possession and prescription, which transform long-term possession into legal title, will be examined in detail. Additionally, the paper will explore the application of possession principles to movable property, including the legal consequences of finding and abandonment. While acknowledging the criticisms and complexities surrounding these doctrines, this paper aims to demonstrate the enduring importance of possession as a fundamental building block of property law, a "golden legal opportunity" that continues to shape our understanding of ownership.

## 2. METHODOLOGY

This paper utilizes a doctrinal legal research methodology, analyzing primary and secondary legal sources, including case law, statutes, and scholarly literature, to explore possession as a pathway to ownership. It examines the elements of possession, legal doctrines like adverse possession and prescription, and their application to both land and movable property. The methodology incorporates a comparative approach where relevant, and critically evaluates the legal principles involved,

synthesizing findings to demonstrate possession's role as a "golden legal opportunity" for acquiring ownership.

### 3. DEFINING POSSESSION: FACT AND LAW

Possession is not a monolithic concept. It exists at the intersection of fact and law. Possession is a *sui generis* state of fact, it is effective power protected by the norms of law.<sup>1</sup> Factually, possession involves the physical control of an object or land. Legally, it requires a specific intention and a demonstrable act of control. To understand possession, we must distinguish between *de facto* possession (actual control) and *de jure* possession (legal possession).

- **De Facto Possession:** This refers to the actual physical control or occupation of a thing. It is a factual state, demonstrable through actions like occupying land, holding an object, or using a resource.

- **De Jure Possession:** This refers to possession recognized and protected by law. It requires not only physical control but also the intention to possess (*animus possidendi*) and a legally recognized basis for that possession.

The interplay between these two forms is crucial. While *de facto* possession establishes a factual basis, it is *de jure* possession that confers legal rights and protections. The law does not simply recognize any factual control as possession; it imposes requirements to ensure that possession is exercised in a manner that aligns with societal norms and legal principles.

#### Elements of Possession: Control and Intention

Two fundamental elements constitute legal possession: control (*corpus possessionis*) and intention (*animus possidendi*).

- **Corpus Possessionis (Physical Control):** This element requires a degree of physical control sufficient to exclude others. The nature and extent of control vary depending on the nature of the property. For instance, possession of land may involve fencing, building, or cultivating, while possession of a movable object may involve holding, carrying, or storing it. The control must be effective and manifest, demonstrating a clear assertion of dominion over the property. The level of control required is fact specific. For example, occasional acts on a large plot of land might not be enough to demonstrate control, while the same acts on a smaller plot might suffice. The benefits of possession are generally attributed to the person who possesses it as the owner.<sup>2</sup>

- **Animus Possidendi (Intention to Possess):** This element requires the possessor to have the intention to hold the property as their own, excluding others. It is not enough to simply have physical control; the possessor must also have the mental state of claiming the property as their own. This intention can be inferred from the possessor's actions, such as using the property, improving it, or preventing others from accessing it. The animus must be clear, and not ambiguous. For example, if someone is simply holding an object for another person, they lack the requisite animus possidendi. In Roman law the requirement for animus meant that you could not necessarily possess everything that you had under physical control, but you had to be aware of what this thing was that you possessed.<sup>3</sup> On the contrary, a possessor is not someone who holds the thing through a title by recognizing the right of ownership to others.<sup>4</sup> In this case we are faced with simple possession of the thing.

#### Legal Implications of Possession: Protection and Acquisition

Possession, when legally recognized, carries significant legal implications. It provides the possessor with certain rights and protections, and it can serve as a foundation for acquiring ownership.

- **Protection of Possession:** The law protects possession against unlawful interference. Possessors can bring legal actions to recover possession or to obtain damages for trespass or other wrongful acts. This protection is based on the principle that even a wrongful possessor has a better right to possession than a mere trespasser. This protection is a way to maintain public order.

<sup>1</sup> Gjata R., "Civil Law: Objects and the property, AlbPaper, Tirana 2006, pg. 87

<sup>2</sup> Yiannopoulos A.N., "Possession", Louisiana State University – Paul M. Hebert Law Center, 1991, pg. 540

<sup>3</sup> Borkowski A., Du Plessis P., "Roman Law", UET Press, pg. 225

<sup>4</sup> Galgano F., "Private Law", Luarasi University Press, Tirana 2006, pg. 171

● **Acquisition of Ownership:** In certain circumstances, possession can ripen into ownership. This occurs through doctrines such as adverse possession and prescription.

**Adverse Possession: Transforming Possession into Ownership**

Adverse possession is a legal doctrine that allows a person to acquire ownership of land by possessing it for a specified period, provided certain conditions are met. This doctrine is based on the idea that land should not be left idle and that long-term possession should be rewarded.

The requirements for adverse possession typically include:

- **Actual Possession:** The possessor must physically occupy and use the land.<sup>5</sup>
- **Open and Notorious Possession:** The possession must be visible and obvious, so that the true owner has notice of it.
- **Exclusive Possession:** The possessor must possess the land to the exclusion of others, including the true owner.
- **Hostile Possession:** The possession must be without the permission of the true owner.
- **Continuous Possession:** The possession must be uninterrupted for the statutory period.

The rationale behind adverse possession is to promote the efficient use of land and to settle disputes over ownership. It also serves to protect possessors who have relied on their possession for an extended period.

**Prescription: Acquiring Easements and Other Rights**

Prescription is a similar doctrine that allows a person to acquire easements or other rights over land by long-term use. Unlike adverse possession, which leads to ownership of the land itself, prescription leads to the acquisition of specific rights.

The requirements for prescription are similar to those for adverse possession, including open, notorious, continuous, and hostile use for the statutory period. Prescription often involves the acquisition of rights of way, water rights, or other easements.<sup>6</sup>

**Possession in Movable Property: Finding and Abandonment**

Possession also plays a crucial role in the acquisition of ownership of movable property. Doctrines such as finding and abandonment govern the rights of possessors of lost or abandoned items.

● **Finding:** A finder of lost property generally acquires a right to possession against all but the true owner. The finder must act honestly and make reasonable efforts to locate the true owner. The finder's rights are based on the principle that possession is better than no possession.<sup>7</sup>

● **Abandonment:** When the true owner intentionally abandons property, the finder may acquire ownership. Abandonment requires a clear intention to relinquish ownership, and it must be manifested by overt acts.<sup>8</sup>

## 4. DISCUSSION

The preceding analysis has demonstrated the pivotal role of possession in the acquisition of ownership, highlighting its status as a "golden legal opportunity." However, the application of this concept is not without its complexities and controversies.

The core principle that possession can ripen into ownership, particularly through adverse possession, reflects a tension between protecting established rights and promoting efficient land use. While the doctrine incentivizes the productive use of land and provides a mechanism for resolving stale claims, it also raises concerns about rewarding trespassers and potentially dispossessing rightful owners. The balance struck between these competing interests varies across jurisdictions, reflecting differing societal values and policy considerations.

Possession constitutes a qualified right to hold, a right of ownership which is valid against anyone who does not show an earlier and better right.<sup>9</sup>

<sup>5</sup> Powell on Real Property, Vol. 7, § 1013.

<sup>6</sup> Restatement (Third) of Property (Servitudes) § 2.16.

<sup>7</sup> Armory v. Delamirie, (1722) 1 Str. 505.

<sup>8</sup> Moorhouse v. Angus & Robertson (No 1) Pty Ltd 1 NSWLR 700.

<sup>9</sup> Pollock F., Wright R., "Possession in the Common Law", Clarendon Press, Oxford 1888, pg. 43

The requirement of "hostile" possession, for instance, is subject to varying interpretations. Some jurisdictions emphasize the possessor's subjective intent, while others focus on the objective nature of their actions. This distinction can significantly impact the outcome of adverse possession claims, particularly in cases where the possessor's intent is ambiguous. Similarly, the level of "open and notorious" possession required to provide adequate notice to the true owner is often a fact-specific inquiry, leading to potential inconsistencies in judicial decisions.

The doctrine of prescription, while similar to adverse possession, highlights the distinction between acquiring ownership of land and acquiring specific rights over land. The acquisition of easements through long-term use underscores the importance of protecting established patterns of use and preventing the disruption of settled expectations. However, the potential for prescription to create unintended burdens on land ownership necessitates careful consideration of the scope and duration of prescriptive rights.

The application of possession principles to movable property, particularly in cases of finding and abandonment, raises distinct challenges. The need to balance the rights of the finder with the rights of the true owner requires a nuanced approach that considers the circumstances of the finding, the nature of the property, and the efforts made to locate the true owner. The concept of abandonment, while seemingly straightforward, requires a clear demonstration of the owner's intent to relinquish ownership, which can be difficult to establish in practice.

Furthermore, the digital age introduces new dimensions to the concept of possession. Digital assets, such as domain names, cryptocurrencies, and digital content, raise questions about the nature of possession in a virtual environment. The traditional concepts of physical control and exclusive use may not be readily applicable to these assets, necessitating the development of new legal frameworks.

The ongoing evolution of property law reflects the enduring importance of possession as a foundational concept. While the specific applications and interpretations of possession principles may vary, the underlying recognition that factual control, when coupled with the requisite intent, can serve as a basis for legal title remains a cornerstone of property law. As society continues to evolve, the legal framework surrounding possession will undoubtedly adapt to address new challenges and ensure that it remains a relevant and effective mechanism for acquiring and protecting property rights.

## 5. FINDINGS

This research has yielded several key findings regarding the role of possession in the acquisition of ownership:

- **Dual Nature of Possession:** Possession operates on two levels: factual control (*de facto*) and legal recognition (*de jure*). Legal possession requires both physical control and the intention to possess (*animus possidendi*).

- **Essential Elements:** The core elements of legal possession are *corpus possessionis* (physical control) and *animus possidendi* (intention to possess). The specific requirements for these elements vary depending on the nature of the property and the jurisdiction.

- **Adverse Possession as Ownership Acquisition:** Adverse possession serves as a primary mechanism by which long-term, open, notorious, exclusive, hostile, and continuous possession of land can ripen into legal ownership.

- **Prescription for Rights Acquisition:** Prescription allows for the acquisition of specific rights over land, such as easements, through long-term, continuous, and hostile use.

- **Possession in Movable Property:** The principles of finding and abandonment govern the acquisition of ownership in movable property, with the finder generally acquiring a right to possession against all but the true owner.

- **Balancing Competing Interests:** The application of possession doctrines, particularly adverse possession, involves balancing the interests of protecting established rights with promoting efficient land use and resolving stale claims.

● **Jurisdictional Variations:** The specific requirements and interpretations of possession doctrines vary across jurisdictions, reflecting differing policy considerations and legal traditions.

● **Enduring Significance:** Despite criticisms and challenges, the concept of possession remains a fundamental principle in property law, serving as a basis for establishing and protecting property rights.

● **Evolution in the Digital Age:** The digital age presents new challenges to traditional concepts of possession, requiring the development of new legal frameworks to address the unique characteristics of digital assets.

**Possession as a "Golden Legal Opportunity":** The research confirms that possession, when meeting specific legal criteria, provides a significant pathway to acquiring ownership, thus validating its characterization as a "golden legal opportunity."

## 6. CONCLUSION

This paper has explored the multifaceted nature of possession, demonstrating its crucial role as a "golden legal opportunity" for acquiring ownership. From the foundational distinction between *de facto* and *de jure* possession to the application of complex doctrines like adverse possession and prescription, the concept of possession permeates property law, shaping the allocation and protection of property rights.

The analysis has highlighted the essential elements of *corpus possessionis* and *animus possidendi*, emphasizing the necessity of both physical control and intentional dominion. These elements, while seemingly straightforward, are subject to nuanced interpretations and fact-specific applications, reflecting the inherent complexities of property disputes.

The doctrines of adverse possession and prescription, while often criticized, serve essential functions in promoting efficient land use, resolving stale claims, and protecting settled expectations. They represent a legal recognition that long-term possession, when exercised under specific conditions, can create legitimate property rights. However, the need to balance these functions with the protection of rightful ownership necessitates careful consideration of jurisdictional variations and policy implications.

Furthermore, the examination of possession in movable property, including finding and abandonment, underscores the adaptability of possession principles to diverse contexts. The digital age, with its unique challenges to traditional notions of possession, necessitates ongoing evolution and adaptation of legal frameworks.

Ultimately, this paper has demonstrated the enduring significance of possession as a fundamental building block of property law. It serves as a testament to the law's capacity to recognize and protect factual realities, transforming them into legally enforceable rights. Despite the complexities and controversies surrounding its application, possession remains a vital mechanism for acquiring and securing ownership, validating its designation as a "golden legal opportunity." As legal systems continue to grapple with evolving societal needs and technological advancements, the principles of possession will undoubtedly remain central to the ongoing discourse on property rights.

## REFERENCES

- Gjata R., "Civil Law: Objects and the property, AlbPaper, Tirana 2006  
 Yiannopoulos A.N., "Possession", Louisiana State University – Paul M.Hebert Law Center, 1991  
 Borkowski A., Du Plessis P., "Roman Law", UET Press  
 Galgano F., "Private Law", Luarasi University Press, Tirana 2006  
 Powell on Real Property, Vol. 7, § 1013.  
 Restatement (Third) of Property (Servitudes) § 2.16.  
 Armory v. Delamirie, (1722) 1 Str. 505.  
 Moorhouse v. Angus & Robertson (No 1) Pty Ltd 1 NSWLR 700.  
 Pollock F., Wright R., "Possession in the Common Law", Clarendon Press, Oxford 1888