

Re-conceptualizing Possession

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Abstract

The concept of possession is ambiguous. The Taiwan Civil Code first defines possession as actual control over things, but then allows exceptions such as indirect possession and agent in possession. In several specific issues involving possession, the concept of possession is further adjusted. The concept of possession is also highly contentious. Some scholars have contended that actual control is insufficient; rather, animus is also necessary to award possessor status. Besides, even though the Taiwan Civil Code appears to consider possession as a fact, some scholars have argued that possession is a type of (quasi-) right.

Based on the economy of concept theory first articulated by Henry Smith, this article re-conceptualizes possession. Specifically, this article argues that a simplified conceptual framework of possession (that is, possession is nothing but actual control—no exception) alleviates the mental burden of legal practitioners and. Indeed, my framework actually better achieves economic efficiency by vesting benefits and liabilities in the persons with actual control. Possession itself does not require any type of intention. Certain type of mental state is required when property rights are acquired or abandoned through gaining or losing possession. Possession generally should not be inherited or tacked. Quasi-possession is a useless concept. Possession as actual control is a fact, whereas right to possess is one stick in the ownership bundle that can be transferred to holders of lesser property interests. In practice in Taiwan, possessors who prevail in a lawsuit of restoring possession do not have any property right but are entitled to possess because of their contracts with owners.

Keywords: actual control, indirect possession, agent in possession, quasi-possession, claims to restore possession, in personam, in rem, animus, economy of concept, lawful possession
