

## Law of Property under Roman Law

In the following written material , the law related to property including possession and ownership shall be discussed . As a prelude to the current law , a special mention is being made here to the law of property as it existed in Roman Law as it is imperative to understand the origins of the law . Roman law is responsible for the conceptual formation of the main areas of law that we study today .

Roman Private Law was primarily categorized into the following :

- (A) Persons.
- (B) Things.
- (C) Actions.

‘Things’ were related to property , obligation and succession . Interest in property could further be classified under :

- (a) Legal Interests (Ownership and limited real rights).
- (b) Factual interests ( Possession).

Gaius had divided property into two categories . One was subject to human law and the other was subject to divine law .

**The concept of ‘res’** : Originally it meant ‘thing’ . Later it came to be known as ‘property’ . Property in Roman Law meant any asset that had economic value . The wide meaning of property was connected to categorization of property into ‘ res corporeal’ and ‘res incorporeal’ .

Classification of Property under Roman law :

- (1) Corporeal and incorporeal things.
- (2) Public and Private.
- (3) Movable and Immovable.
- (4) Res mancipi and res nec mancipi.

- (1) Corporeal and Incorporeal : It was one of the earliest classification of property under Roman Law . Only corporeal things could be owned and possessed through the device called *usucapio* . A corporeal thing is something which could be touched ,

- while an incorporeal thing being immaterial could not be touched . The chief examples of incorporeal things were inheritance , obligations , limited rights over property belonging to another person ( servitudes) .
- (2) Public and Private things : Public things included
- (a) *res communes* : These were the things common to all men , eg: air , running water , sea . Even if they could not be owned , they could be enjoyed . An interference with their enjoyment result in a delict (legal wrong).
  - (b) *res publicae* : Public property belonging to State , eg: public roads , harbours , ports , rivers , bridges , enemy property . Provincial land i.e. land in the provinces outside Roman territory .
  - (c) *res universitatis* : These were the things that were intended for public use , owned by corporate public bodies such as municipalities and colonies , eg : public streets , building , park.
  - (d) *res nullius* : It was the property which belonged to no one . It was further classified into
    - (i) *res sancate* : Things considered to be protected by Gods eg : city walls , gates .
    - (ii) *res religiosae* : tombs , mausoleum, land used for burial.
    - (iii) *res sacrae*: dedicated to Gods , temples , shrines and sacred grooves.
    - (iv) *Sea shore* .
- (3) Movable and Immovable property :
- (4) *res Mancipi and res nec Mancipi* : *res Mancipi* can best be described as things useful or essential to the household in each Roman Society , eg: slave , beasts , draft , houses on land , servitude . Whatever was not classified under *res Mancipi* was categorized as *res nec Mancipi* and need not be transferred through a formal deed of conveyance .

**Possession under Roman Law** : According to Ulpian , ownership has nothing in common with possession . Possession was regarded essentially as physical control of the sort that was protected by possessory interdicts , whereas ownership was the ultimate entitlement to property . Under the Roman Law , possession was more important for the following reasons :

- (a) Since the concept of legal personality was limited , ownership was not conferred on too many people.
- (b) Absence of registration of land.
- (c) The Evidence of ownership was problematic.

**Mode of acquiring possession under Roman Law ( Dominium)**

- (a) **Occupatio** : Taking property which was res nullius.
- (b) **Usucapio** : acquisition of ownership through possession for a prescribed period of time .

Instead of defining possession , Roman jurists told us ‘how’ it was acquired. According to Paul , “ Now we take possession physically and mentally , not mentally alone or physically alone.”

Paul’s assertion necessitates that possession requires physical control i.e. corpus and mental element i.e. animus . To possess with ‘ body and soul’ is the accurate description of Possession .

**Corpus** : Person could not take possession without taking effective control of the property . Earlier possession could only be acquired over corporeal things.

**Animus** : ( Mental element) . It means the ‘intention’ to hold the property of one’s own . It means ‘ consciousness of being in physical control of the thing.’ One could not acquire possession if one lacked or was incapable of the required possession . The requirement of animus meant that you did not necessarily possess everything that was in one’s physical control .

**Acquiring possession for another** : Possession could be acquired by one person on behalf of another e.g. a slave for the master , a child for paterfamilias . In such cases the general rule was that the initial acquirer had to take the property with corpus and animus , while the ultimate possession had to have animus .

**Possessors Interdicts** : The standard remedies in disputes about possession were the possessory interdicts issued by the *Praetors*. Possessory interdicts were classified according to their purpose :

- (a) Acquiring possession : Issued for property which was previously not possessed.
- (b) Retaining possession : It was further classified into two parts

- (i) *Uti possidetis* ( possession interdicts issued for land)
- (ii) *ut rubi* ( possession interdict issued for movable).

( c ) Recovering possession : Where force had been used to obtain possession , the appropriate remedies were *utrubi* for movables and interdicts *unde vi* for immovables . *Unde vi* meant restoration of land to one who had been evicted by force , provided the possession had not been acquired by force , stealth or permission .