Lecture Outline 05: Spoliation and Possession Cheat Sheet

by Euphoria_ via cheatography.com/38396/cs/32237/

Introduction: Nino Bonino v de Lange

Lease agreement (contract) between Antonnino Bonino and Klaas de Lange:

- Lange is the owner of the premises

- Bonino can lease the billboard room within lease conditions - but he broke conditions so De Lange barred the door.

Bonino took De Lange to court **Mandemant van Spolie**

Court ruled this was spoliation as **"a man cannot take the law into his own hands and dispossess another"** His remedy is to **enforce his rights through the courts**

- MVS used restores the status quo to before De Lange took law into his own hands

What is Possession?

Corpus	Animus
- Physical Possession: Is there sufficient and effective physical control?	- The mental attitude of possession. Four elements: Possessor:
- This means that the strongest corporeal relationship exists.	1. Must have capacity to form legal intention
- Does not need to be continuous: You control a car if you have the keys.	2. Must be aware of the fact that they are exercising physical control (*vd Walt*).
- Does not need to be excersised personally: you control your car if chauffer takes it as agent	3. Intention must be directed towards exercising control over the thing **for themselves**.

What is Possession? (cont)

4. Specific intention regarding control must be established. (*Meyer*)

- *Animus Domini*: intention to own needed for acquisition of ownership

- *Animus Ex Re commodom acquirendi*: intention of securing benefit for *yourself* not as agent.

Largely depends on whether you want to gain or keep control. If you are trying to gain it, you intuitively do not have it

Manament van Spolie

MVS is available when one has been unlawfully dispossessed of property and protects/restores **possession**

Speedy remedy in which the court does not consider who has a stronger claim to the thing/owns it.

The purpose of the remedy is to prevent self help and maintain peace and order. It is a temporary return to status quo while court decides on matter.

Facta Pro Banda:

1. Peaceful and Undisturbed Possession of Property

2. The respondent dispossessed the applicant by means of **unlawful self-help (spoliation)**

Valid Defences to MVS

1. Disprove Facto Probanda

Not in Possession

- Did not have effective control (*Mbangi & Van Rhyn*)

- Did not have correct animus (*Meyer*)

Dispossession was not Unlawful self help (*Sillo*)

2. Unreasonable delay in bringing the application

If you wait long to bring case, court assumes you agree to being dispossession. MVS is supposed to be a quick remedy.

"Too long" depends on factual circumstances of each case.

3. Counter-Spoliation

Limited and reasonable amount of help allowed in defence of property should it occur in OG dispossession and not a new incidence. e.g. Thief snatches bag and you grab it back quickly. (*Mans & Ness*)

4. Restoration Impossible

Point of MVS is to return to status ho before spoliation. Not possible if they don't have the thing or if it is destroyed (*Tswelopele*).

Ius Possessionis and Ius Possidendi

Ius Possessionis	Ius Possidendi
Grants possessor right to protection against disopossession	The entitlement to demand control over a thing

- Protected by law even if you have no rights to the thing.

- For other remedies (ie possessory action) you need to prove a right

By **Euphoria_**
cheatography.com/euphoria/

Published 29th May, 2022.
Last updated 30th May, 2022.

Sponsored by **CrosswordCheats.com**
Learn to solve cryptic crosswords!
http://crosswordcheats.com

Invalid defences to MVS

Anything about the merits of the claim

Anything about having a stronger right to the thing

Requirements for MVS

Peaceful and Undisturbed Possession

Did the applicant have effective physical control?

Van Rhyn NO v Fleurbaix Farms: Daily jog on someone else farm disturbed when gate was erected. Jog not "effective physical control" of road, thus gate was not spoliation.

Did the applicant satisfy mental element?

Mbangi v Dobsonville City Council: Town constantly demolished erected houses. Civic successfully used MVS. Also indicates that those in the process of dispossessing someone of a thing & cases in which possession is not yet an accomplished fact. MVS cannot be used.

Unlawfully Deprived

Sillo v Naude: Former tenants cattle sent to pound in terms of Pound Ordinance. Not spoliation because he invoked aid of law.

George Municipality v Vena: Should action exceed bounds of legal authority = spoliation. PISA did not necessarily allow removal wo court. Held that onus is on dispossessor to show actions w/o courts were covered by thestatute.

Impala Water Users: WUA suspended water as charge wasn't paid as allowed by National Water Act. Argued water was like *Sillo*. SCA held that WUA had onus of showing that dispossession fell within statute. What was unclear: Whether the water was unpaid as it was undecided what would be a reasonable price for the water. Thus this is spoliation.

Sponsored by **CrosswordCheats.com**
Learn to solve cryptic crosswords!
http://crosswordcheats.com