

Resolving the Conflict Between Prior Ownership and Present Possession in Jurisprudence, Law, and Judicial Practice

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ABSTRACT

Possession, historically associated with labor and control, has long been regarded as an important basis for acquiring ownership. Many legal systems also treat possession as ownership as a presumption in favor of the possessor. Although the rule of possession generally privileges the current possessor over a former possessor, the more difficult question addressed here is whether prior ownership or present possession should prevail when they conflict. Some scholars prioritize prior ownership, while others give precedence to current possession because the evidentiary presumption arising from possession overrides the continuing presumption of former ownership. Although the latter view is more consistent with the internal logic of the Civil Code, its application, particularly to immovable property, creates practical difficulties. This study argues that present possession should ordinarily prevail over former ownership, except where transfer of the property legally depends on a constitutive formality. The relevant exception concerns formalities necessary for the formation of the transfer, not merely requirements affecting opposability or proof. This approach brings the law of evidence closer to its fiqhi foundations and to ordinary social understanding.

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Introduction

Possession, or *yad*, denotes a person's effective power and authority over a thing or legally cognizable interest. Its scope may extend beyond tangible objects to situations in which control or guardianship is socially and legally recognized. One of the most difficult applications of the rule of possession arises when the current possessor confronts a person who proves former ownership. In that setting, the presumption of possession supports the current possessor, whereas *istiṣhāb* supports continuation of the earlier ownership.

Iranian scholarship has proposed three broad solutions. Some regard possession as a rule or evidentiary presumption strong enough to defeat *istiṣhāb*. Others consider that result incompatible with fairness and public order and require the possessor to prove a lawful transfer. A third approach distinguishes valuable assets, such as land and vehicles, from low-value movables. Article 35 of the Civil Code, however, expressly recognizes possession as evidence of ownership. The *prima facie* rule should therefore favor present possession unless the alleged transfer belongs to a class of transactions whose validity depends on specified formalities.

Methodology

The study uses critical content analysis. Jurisprudential writings, legal scholarship, statutes, and judicial decisions were examined through library and electronic research. Competing theories were reconstructed and evaluated, after which the authors developed a general account of the priority of present possession and the circumstances in which constitutive formalities justify an exception.

Literature Review

The rule of possession has extensive textual and rational foundations and is commonly treated in *fiqh* works as an independent evidentiary rule. Existing legal literature generally discusses the issue in connection with Article 35 of the Civil Code. Important studies include works on the presumption of possession, conflicts between proofs of ownership, and the conflict between current possession and former ownership. Yet prior studies have not adequately considered the demands of contemporary transactions or distinguished constitutive formalities from formalities serving proof or opposability.

Findings

Possession under the Civil Code is a legally recognized presumption and therefore takes priority over former ownership established merely by *istiṣhāb*. Article 92 of the Registration of Deeds and Property Act likewise indicates that, in relation to movables, the rights of a possessor claiming ownership may prevail over the apparent content of an official instrument. Where legislation does not expressly make the acquiring cause or legal transfer constitutively formal, current possession may therefore prevail even against evidence of former registered ownership.

Economic order may nevertheless require a broader legislative use of constitutive formalities, particularly for immovable transactions. Where ownership cannot pass without compliance with a legally prescribed form, possession alone cannot establish title. The acknowledgement contemplated in Article 37 should also reverse the parties' procedural positions only when accompanied by an allegation of a specific lawful cause of transfer. A bare acknowledgment of former ownership does not transform the possessor into the claimant.

Discussion

The proposed theory separates evidentiary priority from transaction policy. The rule of possession remains the default because it accords with fiqh, commercial reliance, and ordinary understanding. At the same time, the legislature may protect economic stability by defining selected transfers as formal and making compliance a condition of legal effect. This avoids the artificial distinction between high- and low-value property and provides a clearer criterion: whether the law makes a formality constitutive of the transfer.

Conclusion

Present possession should ordinarily prevail over former ownership because the law grants it evidentiary force superior to *istiṣhāb*. The exception arises where transfer depends on a constitutive formality. Reform of Article 37 should clarify that an acknowledgment of former ownership changes the burden of proof only where the possessor also alleges a specific legal transfer. Such reform would reduce inconsistency in judicial practice, reinforce transactional order, and align positive law more closely with the fiqhi logic of the rule of possession.

Declarations

Author Contributions: Hamed Khubyari analyzed the data, prepared the research report, and drafted the article. Seyyed Mohammad Sadeq Tabatabaei supervised the analytical and drafting process. Seyyed Mohsen Atashipour collected data and prepared the sources.

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