

Possession – Is It Really Nine-Tenths of the Law?

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What does the expression “possession is nine-tenths of the law” mean?

“Possession is nine-tenths of the law” is simply a recognition of presumed ownership. As highlighted recently in an Alexandria federal case over the rightful heirs to four original Norman Rockwell paintings (see *Elam v. Early*, Case No. 1:23-cv-229), the common law provides that the one possessing property is presumed to own it. On the flip side, one claiming ownership in property possessed by another has one’s work cut out.

Why does the common law presume that one in possession is the rightful owner of something?

Why does the common law presume that one in possession is the rightful owner of something? Stated alternatively, “Why do we infer ownership from possession?” Because the alternative is too impractical! Imagine a world in which you had to carry or produce receipts or other proof of ownership for anything and everything you own, everywhere, all the time! Absent such proof, you would instead be presumed a thief subject to arrest. One will note that we have developed certain exceptions to the general rule – vehicle registries and cattle branding come immediately to mind. While not expected to produce a car title if stopped by police, drivers are expected to produce proof of registration in part to evidence that the vehicle they are driving isn’t stolen. Similarly, ranchers have a longstanding tradition of uniquely branding their livestock as a means of readily identifying ownership of the animal. The exceptions are generally accepted as appropriate due to the significant value of the items involved. Similar “branding” exists with other items of significant value to which unique identifiers or serial numbers are inscribed or otherwise affixed. While registries and unique identifiers may prove helpful in establishing ownership, however, it must be noted that they, too, merely provide evidence on which one might rely in proving one’s status as the rightful owner.

How does one legally challenge the “possession is nine-tenths of the law” presumption?

The ability of one not possessing property to establish proof of ownership renders the original presumption rebuttable. One claiming ownership might claim, for instance, that the possessor stole or, in non-criminal terms, “converted” the property. Alternatively, if one had originally come into possession of property legally but subsequently refused to return it, an aggrieved owner of the property might argue that a breach of bailment had occurred. While proof of theft would serve to rebut ownership, it would not necessarily be conclusive in a particular situation where what is ultimately called for is proof of superior title. One might imagine a situation, for instance, where the true owner is shown to have improperly stolen an item back from the original thief. Proof of superior title would prevail as to ownership even if the owner might remain answerable for any legal consequences of the thievery.

Establishing proof of a gift of an item is another foreseeable step in a case in which burdens of proof shift back and forth. As a presumption can be rebutted, so too can additional evidence of many kinds serve to support an ownership claim grounded in possession. The challengers in the Norman Rockwell case failed utterly to produce any evidence of superior title such that the party possessing the paintings need not establish, even in the absence of proof that the paintings had been gifted by the decedent prior to death, anything more than unquestioned possession. Proof of a gift is not always impossible, however. Testimony of anyone aware of the gift is generally relevant and admissible, as would be a reference in a gift card (in the event it still existed) to the gift itself. I am reminded of a case of my own early in my career in which my client, for reasons I no longer recall, actually had a Polaroid picture of herself with a gift cuckoo clock and writing from the decedent on the bottom of the frame referencing how pleased he was to have given it to her. Then again, one of my all-time favorite lawyer movies, *Legal Eagles* (a 1986 romcom starring Robert Redford, Debra Winger, and Darryl Hannah – check out its [IMDB](#)), draws a much closer parallel to the Eastern District’s recent summary disposition of the Norman Rockwells. While I had not intended this as a movie review or date night recommendation, I can’t help but encourage my fellow law-minded movie lovers to check out this legal classic in which Redford and Winger struggle with proving their non-possessory client’s (Hannah’s) ownership of a valuable painting which ultimately comes down to establishing the existence of a gift inscription on the back of the painting (the fiery pursuit and result of which I wouldn’t dream of spoiling for you!). [You’re welcome in advance for this “oldie but a goodie,” 2-in-1 romcom – “lawyer movie” recommendation, notwithstanding the purposefully only-a-lawyer-could-love, yawnfest of a description! I’ll look forward to reading your critical movie reviews.]

Does “nine-tenths of the law” equate to only a 10% chance of successfully challenging one claiming ownership merely by possession?

Possession may be nine-tenths of the law, but legally supporting or refuting ownership on behalf of either the one in possession or in favor of the other one-tenth is when you need 100% confidence in the legal advocate you choose to help make your case. Don't make the mistake of equating "nine-tenths of the law" with a 90/10 probability outcome regardless of who represents you. Good legal representation can increase your odds of success, and indifference in the selection process can lead to unfavorable results. Don't leave your outcome to chance. Relevant experience matters.