

Fundamentals of Anglo-American and Polish Legal Systems – Property Law

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What is the property ????

1. Things capable of ownership

- tangible or intangible things
- real property, personal property
(movables, goods)

2. Relationship between a person and a thing (ownership!)

Ownership and possession

- Ownership – question of law.
- Possession – matter of fact.

Ownership

- Ownership – question of law.
- Right in respect of property is recognized and protected by law.
- The right to use and enjoy, to destroy, to dispose of by sale or gift.

Possession

- Possession – matter of fact.
- Power of control over a thing and the intention to maintain the control.
- Protected by law.
- Sometimes stands as an evidence of ownership.

Possession

- If possession is continued for a certain period of time, it will develop into ownership.
- Adverse possession.
- Right of prescription.
- Acquisitive prescription.

Custody

- Custody - matter of fact.
- Possession less intention:
- Power of control over a thing.

Property in Polish law

- Article 140. The owner may, within the limits specified by statutory law and the principles of community life and to the exclusion of other persons, use a thing in accordance with the socioeconomic purpose of his right, and in particular may collect the fruits and other incomes from that thing. He may dispose of that thing within the same limits.

Transfer of ownership

Article 155. § 1. A contract of sale, exchange, donation, conveyance of immovable property or another contract obliging to transfer the ownership of a thing defined as to its identity shall transfer the ownership to an acquirer unless a special provision or the parties have decided otherwise.

§ 2. If the object of a contract obliging to transfer the ownership are things designated only as to their kind, the transfer of the ownership shall require the transfer of the possession of those things. The same shall apply to the case in which the object of the contract obliging to transfer the ownership are future things.

Transfer of ownership

Article 156.If the conclusion of a contract transferring ownership takes place in the performance of an obligation arising from a previously concluded contract obliging to transfer the ownership or from a legacy, unjustified enrichment or another event, the validity of the contract transferring ownership shall depend upon the existence of that obligation.

Transfer of ownership

Article 157. § 1. The ownership of an immovable property cannot be transferred conditionally or with a reservation of a time limit. (...)

Article 158. The contract obliging to transfer an immovable property shall be concluded in the form of a notarial deed. (...)

Sale of land in English law

1. The contract of sale
2. Proving the title
3. The conveyance