



## 3.17 Possession—Defined



### 3.17 POSSESSION—DEFINED

A person has possession of something if the person knows of its presence and has physical control of it, or knows of its presence and has the power and intention to control it.

[More than one person can be in possession of something if each knows of its presence and has the power and intention to control it.]

#### Comment

The Committee believes this instruction is all-inclusive, and there is no need to attempt to distinguish further between actual and constructive possession and sole and joint possession.

The Ninth Circuit has approved language similar to that contained in this instruction. *United States v. Cain*, 130 F.3d 381, 382-84 (9th Cir.1997).

In the event the case involves use or possession of a firearm under 18 U.S.C. § 924(c), see Instructions 8.71 (Firearms—Using or Carrying in Commission of Crime of Violence or Drug Trafficking Crime) and 8.72 (Firearms—Possession in Furtherance of Crime of Violence or Drug Trafficking Crime). See also *United States v. Johnson*, 459 F.3d 990, 998 (9th Cir.2006) (citing with approval an out-of-circuit case rejecting premise that "passing control" of a firearm does not constitute possession).

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