

but this would not be so if his intention was to claim only to the true line wherever that might be, for then the possession would not be adverse beyond such line.” 3 AmJur 2d 124

QUESTION 3.24 Is intention important in making a determination of squatter’s rights and fence lines? Yes. Intention is generally the controlling factor in determining an adverse character. If there is no intention to claim (the additional land because of an erroneous fence line), then the occupant will not acquire title by virtue of his possession, because it was not, in fact, adverse.

“The controlling fact is one of intention and if there is an inference arising from the evidence that there was an intention on the part of the complainant to hold and enjoy the property up to the line claimed by the complainant as the true dividing line between the property, with the assent or apparent recognition of it as such on the part of the other party and his predecessors in title for the stated period, this is sufficient to discharge the complainant’s burden of proof.” *Salter vs. Cobb* 88 So 2d 845

“The real test as to whether or not the possession of real estate by mistake beyond the true boundary line will be held adverse is the intention with which the party takes and holds possession; it is not merely the existence of a mistake but the presence or absence of the requisite intention to claim title that fixes the character of the entry and determines whether the possession is adverse.” *Ft. Wayne Smelting & Ref. Works vs. Ft. Wayne*” 14 NE 2d 556

“In determining the character of a possession where a fence is built beyond a boundary line, the important factor is not whether the true line is known or whether there is a mistake as to the boundary, since the location of a fence beyond the true boundary line is usually due to mistake, but it is the intent with which the boundary fence is built and the unequivocal character of the claim made thereafter which is decisive of the question.” *Agers vs. Reynolds* 306 SW 2d 506

Chapter Three (3) Summary

The squatter must exercise acts of ownership over the subject property; these acts are those which an ordinary owner would exercise such as residency and cultivating/harvesting crops. Temporary uses of the property may prohibit the squatter from gaining title to the property. Building fences and other enclosures help the squatter in his quest to gain title. Hostile use of the property does not imply ill will but a denial of the real owner’s title.

Chapter Four (4)

Overview: Chapter Four (4) further explores the requirements for adverse possession. Topics such as leaning buildings, fence condition, tacking and privity are explained and examples given.

Learning Objectives: After studying this chapter, you should be able to:

- Detail information regarding leaning buildings and squatter’s rights.
- Describe a situation when a building was built over the property line by virtue of a friendly arrangement.
- Define what is meant by the words: “open and notorious possession.”
- Define “tacking.”
- Recite key details about the principle of tacking.
- Explain the connection between the tacking principle and the principle of “privity.”
- List relationships which include privity.
- Explain why an interruption of possession may be fatal to the squatter’s attempt of adverse possession.
- Analyze whether fence condition could prevent squatter’s rights.

QUESTION 4.1 A building is leaning over the property line. May the owner of this building gain title to the property overshadowed by the leaning building?

Yes. To acquire title by adverse possession by this means to a strip of adjoining property, the building or other structure must be of a substantial and permanent nature, sufficient to call the attention of the owner of record to the fact that an encroachment upon his property is taking place.



Example:

Where an original stairway between two two-story buildings encroached about 4.5 inches onto the adjoining property, and such encroachment was visible to anyone using the stairway or viewing it from the rear of the buildings, and such stairway was in open and constant use by the claimant for more than the statutory period, it was held that he had acquired title by adverse possession to a space occupied by a second stairway constructed to replace the original, and not extending beyond the 4.5 inches originally occupied by the first stairway. *Thomas vs. Mrkonich*, 78 NW 2d 386

QUESTION 4.2 Are there examples when title will not pass even though a structure is leaning over the neighboring property?

Yes.

Example: "... in Virginia the rule has been stated to be that the encroachment on neighboring property, through mistake by one in the erection his building, is not such possession as will ripen into title by lapse of time." *Davis vs. Owen* 58 SE 581

"Continuous possession of a house for a statutory period will not give title by adverse possession to that portion of an adjoining lot upon which a part of the wall of the house is placed, if it appears that the portion of the wall projecting upon the adjoining property was built and located by virtue of a friendly arrangement between the person erecting the house and the owner of the adjoining property, and at the expense of the latter." *Munger vs. Curley* 57 A 306

"..., the court denied the claim that title had been acquired by the leaning of the building over the adjoining land, on the ground that the evidence did not establish with sufficient certainty that the building had leaned for the full statutory period over a definite portion of the land claimed, saying that when the amount of land claimed is so small, the rule of location of line is exacting, and possession for the statutory period must be definitely shown." *Baxter vs. Girard Trust Co* 49 ALR 1011

When statute begins to run

QUESTION 4.3 When does the time period required to take property by adverse possession start?

The general rule is that adverse possession begins to run at the time of the squatter's entry upon the property.

Open, Notorious, and Visible Possession

QUESTION 4.4 What is meant by the words "open and notorious possession?"

The words "open and notorious possession" mean that the squatter's claim of ownership must be shown by acts and conduct which are sufficient to put a person of ordinary prudence on notice of the fact that the land in question is held by the squatter as his own. It must be visible and open to the common observer, so that the owner or his agent, on visiting the property might see the owner's rights are being invaded.

QUESTION 4.5 What metaphor could be used to illustrate this?

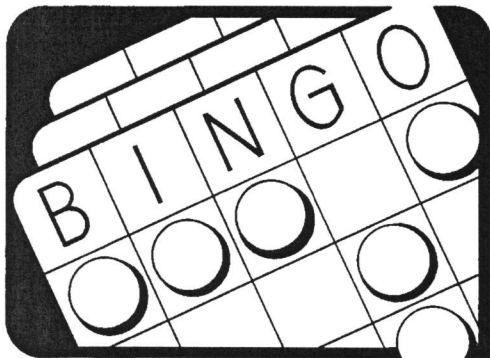
The squatter raises his flag and keeps it up continuously for the required period.

QUESTION 4.6 Could a fence, constructed by the squatter, be notice of actual occupancy?
Yes.

Tacking

QUESTION 4.7 What is tacking?

Tacking is combining one squatter's holding period with that of another squatter.



“Adding or combining successive periods of continuous occupation of real property by adverse possessors, thus enabling one not in possession for the entire required statutory period to establish a claim of adverse possession. For one person's possession to be tacked to that of another, each of the possessions must be continuous and uninterrupted, and the parties must have been successors in interest, such as ancestor and heir, landlord and tenant, or seller and buyer.” Riley, *The Language of Real Estate* 6th Edition, Dearborn Real Estate Education

The doctrine of “tacking” is one which permits an adverse possessor to add his period of possession to that of a prior adverse possessor in order to establish a continuous possession for the statutory period.

QUESTION 4.8 What is a real life example of someone using tacking with the idea of squatter's rights?
A husband and wife possessed property adversely. Before the expiration of the statutory period they were divorced, and she continued to occupy the property adversely. It was held that she could tack her former possession with her husband to her own to make out the statutory period. *Humphreys vs. Gribble* 227 SW 2d 235

Allegation as to Title by Adverse Possession—Tacking

“That the predecessor in interest in defendant remained in actual, exclusive, open, notorious, and adverse possession continuously for more than ____ years prior to _____, _____, and defendant and his predecessors in interest have continuously and up to the present time since said time remained in actual, exclusive, open, notorious, and adverse possession of said real property hereinabove described.”

QUESTION 4.9 What might be a wrongful attempt or unsuccessful attempt of using privity?

Here is a simplified example. Mr. A held land with permission. Mr. B is a squatter. Mr. B cannot tack his holding period on to Mr. A's period because Mr. A did not hold the property adversely.

Privity

QUESTION 4.10 What is privity in reference to squatter's rights?

Black's Law Dictionary: Privity: Mutual or successive relationship to the same rights of property

QUESTION 4.11 What are relationships which include privity?

- The executor is in privity with the testator.
- The heir is in privity with the ancestor.
- The remainderman is in privity with the life tenant.
- The agent is in privity with the principal.
- The mortgagee is in privity with the mortgagor.
- Members of a family are in privity with the husband and wife.
- Surviving spouse is in privity with the deceased spouse.
- The grantee is in privity with the grantor.

- The assignee is in privity with the assignor.
- The donee is in privity with the donor.
- The lessee is in privity with the lessor.

QUESTION 4.12 What is the theory of privity as it pertains to squatter's rights?

"The requirement of privity is based on the theory that the several occupancies must be so connected that each occupant can go back to the original entry or holding as a source of title; the successive occupants must claim through and under their predecessors and not independently to make a continuous holding united into one ground of action." *Sorensen vs. Costa* 196 P 2d 900

QUESTION 4.13 How is privity created as it relates to squatter's rights?

It can be created by:

- Deed,
- Operation of the law,
- The law of descent (no will),
- Grant,
- Judicial sale, etc.

QUESTION 4.14 Must privity be established by "paper evidence?"

No; verbal (parol) agreements are sufficient to establish privity.

Interruption of possession

QUESTION 4.15 What happens if the squatter is interrupted in his holding of the property?

The moment adverse possession is broken, it ceases to be effective against the real owner. This is caused by any substantial interruption of the possession of the adverse claimant.

QUESTION 4.16 What are examples of brief absences which had no effect on the adverse claimant's rights?

Brief absences include:

- Temporary absence from the land without an intention to abandon possession.
- Brief vacancies varying in duration from a few days to some months or a year.
- A break of two (2) or three (3) years in a chain of possession for 30 years was not material.
- A break in possession because of seasonal usage when used for seasonal purposes such as agricultural or logging.

QUESTION 4.17 A squatter possessed an island used as a summer home but did not occupy it during the winter months but left it in the autumn ready for use the following spring. Was this an interruption in the possession sufficient to cancel his claim of adverse possession?

No.

QUESTION 4.18 What are examples of activities of which did NOT cause a significant break in the squatters possession of the property causing no failure of adverse possession?

Examples include:

- an intruder builds a temporary barricade using planks and barrels. This barricade was never brought to the squatter's attention and was in existence for only several days.
- a trapper casually and temporarily trespasses the land claimed by the squatter but does not interfere with the squatter's use of the property.
- a mere trespass of cutting timber from densely wooded swamp land .
- a shack is built on the land claimed by a squatter. The shack is never used.
- cattle straying upon the land claimed by the squatter did not interrupt the hostile nature of the squatter's

claim.

- The squatter fails to keep cattle from neighboring farms from grazing does not break the squatter's possession
- the true owner seeks to remove the squatter from the property through litigation. The period of litigation does not break the squatter's possession.
- A mortgage foreclosure and sheriff's sale and certificate may not interrupt the continuity of holding.

Complaint, Petition, or Declaration To Establish Title by Adverse Possession

"...Wherefore, plaintiff prays that defendants be required to set forth the nature of their claims or claim to the several pieces or parcels of real property as hereinbefore described; and that all adverse claims of the defendants or either of them may be determined by decree of this court; and that by decree it be declared and adjudged that plaintiff is the owner of the several pieces or parcels of land as herein set forth and that the defendants have no estate, right, title or interest whatsoever in or to either or any of said pieces or parcels of real property, and that the defendants and each of them be forever estopped, barred and enjoined from asserting or setting up any claim whatsoever in or to the real property or in or to any part thereof, adverse to the plaintiff, and for such other and further relief as to the court shall seem meet and proper."

QUESTION 4.19 In a true life example, a squatter occupying the second floor of a building for use as a shop, closed the shop during the summer for weekends. On one occasion he went to a distant city for 3 weeks leaving a relative in charge. Did the nature of the shop's closure and his brief absence break his continued possession of the property required by principles of adverse possession?

No.

QUESTION 4.20 Is it required that the squatter not leave the state during his possession of the disputed property? Maybe. It has been held that an absence of the squatter from the state for several months before he sold the property had no effect on his claim, he at all times exercising dominion over the property and treating it as his own without objection on the part of others. (McCaughn vs. Young, 55 Texas 217) However, where the squatter took possession of property in one county but subsequently resided in another county for nearly a year, when he returned and resumed possession of the land, it was held that the continuity of his possession was broken by his absence, since he could not then have been sued for possession thereof. (Byrne vs. Lowry, 19 Georgia 27)

Squatter's rights and fence condition

QUESTION 4.21 The squatter removes fences during the winter to protect the fences from ice and water. They are replaced when weather permits. Did the removal of the fences under these circumstances break the squatter's possession of the property?

No. (East Hampton vs. Kirk, 84 NY215)

QUESTION 4.22 The squatter's fences fall into disrepair and become dilapidated. Sometimes the fences are covered by the tide. Is the squatter's possession broken because he allowed the fences to become dilapidated?

No.

QUESTION 4.23 What is an example when the squatter's time period was interrupted regarding the condition of the fences?

Settegast vs. O'Donnell (41 SW 84) The fences had been allowed to decay and the property had been abandoned for 2 or 3 years.

QUESTION 4.24 The squatter does not cultivate or farm the disputed property. May this cause a break in the squatter's possession of the property?

Maybe, depending on the circumstances in each case.

QUESTION 4.25 The squatter leaves the land uncultivated; the squatter is forced into military service. Is the squatter's absence fatal to his claim of adverse possession? (assume the squatter returns from military duty and again cultivates the farm land).

No.

QUESTION 4.26 May natural calamities of flood and fire break the squatter's required possession of the property?

Maybe, unless occupation and operations are continued when possible.

QUESTION 4.27 The squatter is removed from the disputed property by court order petitioned by the real owner. Will this break in possession be fatal to the squatter's claim of title by adverse possession?

Yes.

QUESTION 4.28 The squatter begins to pay rent to the real owner. Has his adverse possession been broken?

Yes. He is now holding the property with the permission of the legal owner.

Death of owner

QUESTION 4.29 If the squatter staked a claim to the property during the owner's lifetime, will his action fail upon the death of the owner.

Generally not. The squatter is now holding the property hostile to the owner's estate and heirs.

Claimant's testimony or admission as to claim.

QUESTION 4.30 To establish title by adverse possession the claim of right must be as broad as the possession. *Brewer vs. Claypool* 223 Iowa 1245

QUESTION 4.30 This idea of intent to occupy property which is not one's own...can you offer any further explanation? Must the squatter be willing to testify in court his intention to take his neighbor's property or is his conduct equally important?

The U.S. Supreme Court said: "... a generous and fair-minded person, discussing or justifying his possession of land outside his true boundaries, or testifying under a skilful cross-examination, might, unless put on his guard, often be led or entrapped into an admission that he did not intend to claim the land outside his legal boundary. If the questions were put to him baldly, an honest man would be reluctant to admit that he intended to claim the land of his neighbor. He would be inclined to say that he did not claim or want any land beyond his true boundary. But the courts are wisely liberal toward a claimant in this position, and his statement that he did not mean to claim anything more than was covered by his title paper will not generally conclude him." Other courts have said: "In arriving at the intent of the [squatter] it is better to weight the reasonable import of his conduct in the years preceding the litigation rather than rely on one remark made under the stress of cross-examination, which is elsewhere refuted. It is not necessary for a [squatter] to avow himself to be a wrongdoer."

Chapter Four (4) Summary

It is possible to obtain squatter's right on property wrongfully leaning over the property line. To obtain squatter's rights the possession must be open, notorious and visible, among other essential elements. Tacking is combining continuous holdings of adverse possession to complete the necessary time required by state law. Tacking may only be accomplished by those related by privity. Some try to break a squatter's holding period by discrediting the condition of the fences or other enclosures.

Chapter Five (5)

Overview: Chapter Five (5) is a narrative Supreme Court decision from the state of Colorado and the United States Supreme Court regarding a small piece of land in Ohio.

Learning Objectives: As a result of studying this chapter, you should be to:

- Apply learning lessons from the prior chapters to a squatter's rights problem.

Applying what you have learned.

You have now studied various aspects of adverse possession. Your study has included essential requirements, methods for remembering such requirements plus detailed studies interpreting these essential requirements.

Following is the full narrative of the Colorado Supreme Court deciding whether the squatter should get title to the protested land.

It will be helpful to remember the following things:

Mongers are the squatters.

Raftopouloses are the real owners.

39 ALR 4th 1142

The case involves the adverse possession claim of Ben and Lois Monger to 120 acres of rangeland in Routt County, Colorado. The record owners of the property are Georgia Simos Raftopoulos and Constantina S. Simos Raftopoulos.

The record establishes that the disputed tract is bordered on the west and north by the ranch owned by Raftopoulos, and on the south and east by the ranch owned by Monger. Raftopoulos' hold legal title to the tract in question and have paid the taxes thereon since 1933. The Mongers claim the land by adverse possession asserting that they have used the land continuously from 1934 to the present to graze cattle and horses. The Raftopoulos family disputes that claim based upon their annual usage of the land for sheep grazing.

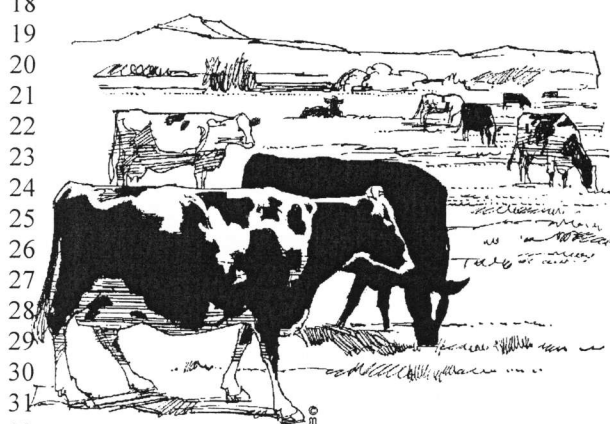
The following evidence was presented in support of the Mongers' claim of adverse possession. Ben Monger testified that he fenced the north and west boundary of the disputed property, although the fence was not "sheep-tight" around the disputed area. He admitted that he had seen Raftopoulos sheep on this property at least twice, but he acknowledged that he could not see the disputed area from his house, and that he visited that area infrequently. He testified that he chased the sheep off the property each time he saw them. He testified that he had used the property for grazing cattle and horses from 1934 until he and his family moved off the ranch in the late 1950's, when he leased his ranch to others.

Ben Monger's son, Maurice Monger, testified that he had seen sheep many times in the wheat field adjacent to the disputed area, but that he had not seen sheep inside the disputed area. The Mongers' daughter, Benita Pringle, testified that she had always assumed the property belonged to her father, since the family had used it for so many years.

George Wheeler, Ben Monger's brother-in-law, testified that he had jointly farmed the Monger ranch during the period from 1936 to 1943. He testified that although the Mongers then kept sheep on the disputed property, along with cattle and horses, he had no knowledge of anyone else keeping sheep there. He further testified that he had helped maintain the fence on the disputed property.

Dwayne Schnelling, who rented the property from Monger in 1976, testified that he had seen 200-300 sheep on the disputed property. He stated that the sheep were moved off the property at his insistence, but he testified that Raftopoulos' shepherd did not speak English. He was aware that the sheep camp was only one-half mile away.

1 In defense against the claim of exclusive possession, the Raftopouloses presented testimony regard-
2 ing the frequency of the use of the property by them for sheep grazing. Steven Raftopoulos, manager of
3 the Raftopoulos ranch, testified that the ranch, including the disputed acreage, was used for grazing sheep
4 and that the rangeland was utilized in a rotating pattern for maximum grazing efficiency. Steven further
5 stated that he had observed approximately 600 sheep grazing in the disputed area on three occasions in the
6 years 1975 through 1977. Cleto Padilla and John Katsogiannos, two shepherds employed by Raftopoulos
7 during the years from 1940 to the date of trial, testified by deposition that they had grazed between
8 1,800—2,000 Raftopoulos sheep in the disputed area every year during that period; that although the area
9 was partially fenced with a three-strand, barbed wire fence, it was not sheep-tight; and that the sheep were
10 able to go through and under the fence onto the disputed area. Katsogiannos, who was the shepherd as-
11 signed to use the area from the late 1960's through 1977, stated that although he had seen cattle grazing in
12 the area, none of the Mongers had spoken to him or had excluded the Raftopoulos sheep from the area.
13 The shepherds also testified that the disputed area was used by the Raftopoulos sheep for three to fifteen
14 days each year, depending on the amount of available forage on the property.
15



16 The vegetation on the disputed tract consists largely of
17 grass, serviceberry, buck brush, scrub oak, and sagebrush. Ste-
18 ven Raftopoulos testified that the utilization of the disputed
19 tract for grazing was similar to usage on other areas of the
20 Raftopoulos ranch rangeland. He explained that if the grass is
21 young and tender, both cattle and sheep will prefer the grass.
22 However, once the grass matures, the sheep prefer browse, the
23 leaves of small shrubs, serviceberry, cow cabbage, and choke-
24 cherry leaves, whereas the cattle continue to prefer dry grass.
25 Once the sheep had gone through an area, Raftopoulos did not
26 object to neighbors grazing cattle on parts of his ranch property.
27 He noted that other neighbors were allowed to do likewise.
28 Thus, it was his position that the use by Monger of the disputed
29 area was permissive and not hostile.
30

31

32 A neighbor of both parties, Richard Bloomquest, testified that he had seen sheep in the disputed
33 area six or seven times on different occasions over the years from approximately 1960 forward. Michael
34 Duzik, who had rented the ranch from Monger in 1977, testified that Monger had told him he wanted to
35 acquire the land and had stated that the fences there were often difficult to maintain because they were be-
36 ing interfered with by the Raftopoulos sheep and shepherds. He quoted Monger as saying that sheep were
37 “always getting in there.”
38

39 ...the trial court found that Raftopoulos sheep had grazed on the disputed property from time to time
40 over the years. The court concluded, however, that Raftopoulos had failed meet the burden of refuting
41 Monger's adverse possession claim because the precise dates the sheep had grazed on the property were
42 not sufficiently established to demonstrate that Monger's use for grazing livestock had been interrupted.
43 The court then determined that the Mongers had established that their possession was “actual, adverse,
44 open and hostile and under claim of right and that it had been exclusive and uninterrupted for the statutory
45 period.”
46

47 **Finding of the Colorado Supreme Court:**

48 One claiming title by adverse possession has the burden of proving his claim by clear and convinc-
49 ing evidence...(cases cited).. “the possession of the adverse claimant must be such that the true owner is
50 wholly excluded there from. Any sort of joint or common possession by the adverse claimant and the re-
51 cord owner prevents the possession of the one claiming adversely from [attaining] the requisite quality of
52 exclusiveness.”
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54 Our view of the evidence considered in the light most favorable to the Mongers convinces us that
55 the requisite element of exclusive possession was not established by clear and convincing evidence. Thus
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1 the court was in error in concluding that the Mongers had acquired title by adverse possession.

2 The Mongers testified that they maintained a partial fence around the property during the statutory
3 period; however, the evidence also showed that there were gates in the fences adjoining the disputed prop-
4 erty, by which the Raftopoulos shepherds gained access to the property. It was admitted that the fence bor-
5 dering the property was not sheep-tight, and that the sheep were able to and did easily go under and
6 through the fence, and onto the disputed tract for grazing. The corroborated testimony of two shepherds
7 demonstrated that the property was grazed on a regular annual basis by the Raftopoulos sheep. Moreover,
8 the trial court specifically found that the Raftopoulos sheep had indeed grazed on the disputed property
9 from time to time. Although the evidence established that the sheep grazed the disputed land for only a
10 small number of days out of each year, the use to which the land was put was consistent with its arid char-
11 acter and the speed with which a sizeable flock of sheep could deplete its vegetation. Other portions of the
12 Raftopoulos property were used in the same manner. We believe the evidence presented to the trial court
13 establishes that the possession of the property was joint, and the use by the Mongers of the disputed prop-
14 erty was permissive rather than adverse... In some circumstances a mere casual entry for a limited purpose
15 by the record owner may be insufficient to prove that the use of the property was joint. The evidence in
16 the present case indicates that the Raftopoulos' entry into the disputed tract was not casual nor for a limited
17 purpose, but rather was a part of their usual customary ranch operation, the seasonal grazing of sheep on
18 the disputed tract...The proof of adverse possession must extend beyond mere actual possession and estab-
19 lish that the record owner has been effectively excluded, and further, that the possession relied upon is not
20 joint. "We are persuaded that these circumstances, coupled with the fact that [Raftopoulos] held legal title
21 to the property, bring into operation the rule that in case of a mixed or common possession of land by both
22 parties to a suit, the law adjudges the rightful possession to him who holds legal title, and no length of time
23 of possession can give title by adverse possession as against the legal title."
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31 Before you read the following adverse possession case,
32 please read the following about John Cleves Symmes.
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34

35 John Cleves Symmes was a Revolutionary veteran who secured from the Federal gov-
36 ernment in 1792 the Miami Purchase, running northward from the Ohio River between the
37 Miami and Little Miami Rivers. This included the site of Losantiville, later renamed Cin-
38 cinnati. Washington appointed Symmes a judge of the Northwest Territory. Symmes main-
39 tained a constant state of warfare with the territorial governor, St. Clair. Symmes sold to
40 settlers large tracts of land which were not within the Federal grant to him; and, as this case
41 indicates, he sold some land twice. St. Clair issued proclamations warning the settlers
42 against him. Sued by numerous settlers to whom he had purported to make sales, Symmes
43 tried to get Congress to bail him out by making further grants; but this effort, though sup-
44 ported by Symmes's son-in-law William Henry Harrison, failed. Washington, Hamilton,
45 and Jefferson were continually pestered by this business; finally some relief was given to
46 the settlers, but not to Symmes, by pre-emption rights. The conclusion has been drawn that
47 Symmes was "a far-sighted pioneer, somewhat careless in details, but not intentionally dis-
48 honest." Bond, *The Civilization of the Old Northwest* 85 (1934)
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53 **Please remember the following sequence.**

54 You will read that Symmes deeded the same property to two (2) different people about five (5) years apart.

55
56 **Symmes —deed (June 11, 1798)—Samuel Forman—Williams (1798)— by will (1824)—Ewing**

57
58
59 **Symmes—deed (May 21, 1803)— Burnet**
60 **(fraud) (squatter)**
61

1 It is Ewing that is taking action against Burnet (the squatter) to clear title to the disputed property.

2 3 **Ewing vs. Burnet**

4 **Supreme Court of the United States, 1837**

5 **36 U.S. 41, 11 Peters41.**

6
7
8 In Error from the circuit court of the district of Ohio.

9 The plaintiff in error instituted an action of ejectment in the circuit court of Ohio, at December term
10 1834, against the defendant, to recover a lot of ground in the city of Cincinnati. Both the plaintiff and the
11 defendant claimed title under deeds from John Cleves Symmes, the original grantee of the United States
12 for all the land on which the city of Cincinnati is erected. The deed from Symmes, under which the plain-
13 tiff asserted his title, was executed June 11th, 1798, to Samuel Forman; the deed from Symmes to the de-
14 fendant, for the same lot, was dated May 21st, 1803. [Forman conveyed to Williams later in 1798; Wil-
15 liams died in 1824, and Ewing succeeded to Williams' title either as heir or devisee.] An adverse posses-
16 sion for twenty-one years and upwards, was relied on, as constituting a sufficient legal title, under the stat-
17 ute of limitations of Ohio...
18
19

20 [The Ohio Statute of Limitations applicable to this type of proceeding is as follows: "An action to
21 recover the title to or possession of real property shall be brought within twenty-one years after the cause
22 thereof accrued but if a person entitled to bring such action, at the time the cause thereof accrues, is within
23 the age of minority, of unsound mind, or imprisoned, cause of action accrues, may bring such action within
24 ten years after such disability is removed." Ohio Rev. Code Ann. 2305.04]
25 Baldwin, J. . . .
26

27 It was in evidence that the lot in controversy is situated on the corner of Third and Vine streets;
28 fronting on the former one hundred and ninety-eight feet, on the latter ninety-eight feet; the part on Third
29 street is level for a short distance, but descends towards the south along a steep bank, from forty to fifty
30 feet, to its south line; the side of it was washed in gullies, over and around which the people of the place
31 passed and repassed at pleasure. The bed of the lot was principally sand and gravel, with but little loam or
32 soil; the lot was not fenced, nor had any building or improvement been erected or made upon it, until
33 within a few years before suit brought; a fence could have been kept up on the level ground on the top of
34 the hill on Third street, but not on its declivity, on account of the deep gullies washed in the bank; and its
35 principal use and value was in the convenience of digging sand and gravel for the inhabitants. Third street
36 separated this lot from the one on which the defendant resided from 1804, for many years, his mansion
37 fronting on that street; he paid the taxes upon this lot from 1810, until 1834, inclusive; and from the date of
38 the deed from Symmes, until the trial, claimed it as his own. During this time, he also claimed the exclu-
39 sive right of digging and removing sand and gravel from the lot; giving permission to some, refusing it to
40 others; he brought actions of trespass against those who had done it, and at different times made leases to
41 different persons, for the purpose of taking sand and gravel there from, besides taking it for his own use, as
42 he pleased. This had been done by others without his permission, but there was no evidence of his acquies-
43 cence in the claim of any person to take or remove the sand or gravel, or that he had ever intermitted his
44 claim to the exclusive right of doing so; on the contrary, several witnesses testified to his continued asser-
45 tion of right to the lot; their knowledge of his exclusive claim, and their ignorance of any adverse claim for
46 more than twenty-one years before the present suit was brought. They further stated, as their conclusion
47 from these facts, that the defendant had, from 1806, or 7, in the words of one witness, "had possession of
48 the lot" of another, that since 1804, "he was as perfectly and exclusively in possession, as any person
49 could possibly be of a lot not built on or enclosed"; and of a third, "that since 1811, he had always been in
50 the most rigid possession of the lot in dispute; a similar possession to other possessions on the hill lot." It
51 was further in evidence, that Samuel Williams, under whom the plaintiff claimed, lived in Cincinnati, from
52 1803, till his death in 1824; was informed of defendant having obtained a deed from Symmes, in 1803,
53 soon after it was obtained, and knew of his claim to the lot; but there was no evidence that he ever made an
54 entry upon it, demanded possession, or exercised or assumed any exercise of ownership over it; though he
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1 declared to one witness, produced by plaintiff, that the lot was his, and he intended to claim and improve it
2 when he was able. This declaration was repeated often; from 1803 till the time of his death, and on his
3 deathbed; and it appeared that he was, during all this time, very poor; it also appeared in evidence, by the
4 plaintiff's witness, that the defendant was informed that Williams owned the lot before the deed from Sym-
5 mes, in 1803, and after he had made the purchase.
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7 This is the substance of the evidence given at the trial, . . . : whereupon the plaintiff's counsel
8 moved the court to instruct the jury that on this evidence the plaintiff was entitled to a verdict; also, that the
9 evidence offered by the plaintiff and defendant was not sufficient, in law, to establish an adverse posses-
10 sion by the defendant; which motions the court over-ruled.
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12 Before the court could have granted the first motion, they must have been satisfied, that there was
13 nothing in the evidence, or any fact which the jury could lawfully infer therefrom, which could in any way
14 prevent the plaintiff's recovery; if there was any evidence which conduced to prove any fact that could pro-
15 duce such effect, the court must assume such fact to have been proved; for it is the exclusive province of
16 the jury to decide what facts are proved by competent evidence. It was also their province to judge of the
17 credibility of the witnesses, and the weight of their testimony, as tending, in a greater or less degree, to
18 prove the facts relied on; as these were matters with which the court could not interfere, the plaintiff's right
19 to the instruction asked must depend upon the opinion of the court on a finding by the jury in favor of the
20 defendant on every matter which the evidence conduced to prove, giving full credence to the witnesses
21 produced by him, and discrediting the witness for the plaintiff. . . .
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24 An entry of one man on the land of another, is an ouster of the legal possession arising from the ti-
25 tle, or not; according to the intention with which it is done: if made under claim and colour of right, it is an
26 outster; otherwise it is a mere trespass, in legal language the intention guides the entry, and fixes its charac-
27 ter. That the evidence in this case justified the jury in finding an entry by the defendant on this lost, as
28 early as 1804, cannot be doubted; nor that he claimed the exclusive right to it under colour of title, from
29 that time till suit brought. There was abundant evidence of the intention with which the first entry was
30 made, as well as of the subsequent acts related by the witnesses, to justify a finding that they were in asser-
31 tion of a right in himself; so that the only inquiry is, as to the nature of the possession kept up. It is well
32 settled that to constitute an adverse possession, there need not be a fence, building, or other improvement
33 made: 10 Pet.442: it suffices for this purpose, that visible and notorious acts of ownership are exercised
34 over the premises in controversy, for twenty-one years, after an entry under claim and colour of title. So
35 much depends on the nature and situation of the property, the uses to which it can be applied, or to which
36 the owner or claimant may choose to apply it; that it is difficult to lay down any precise rule adapted to all
37 cases. But it may with safety be said, that where acts of ownership have been done upon land, which from
38 their nature indicate a notorious claim of property in it, and are continued for twenty-one years, with
39 knowledge of an adverse claimant without interruption, or an adverse entry by him, for twenty-one years;
40 such acts are evidence of an ouster of a former owner, and an actual adverse possession against him: if the
41 jury shall think, that the property was not susceptible of a more strict, or definite possession than had been
42 so taken, and held. Neither actual occupation, cultivation, or residence, are necessary to constitute actual
43 possession; 6 Pet. 513; when the property is so situated as not to admit of any permanent useful improve-
44 ment: and the continued claim of the party has been evidenced by public acts of ownership, such as he
45 would exercise over property which he claimed in his own right, and would not exercise over property
46 which he did not claim. Whether this was the situation of the lot in question, or such as the nature of the
47 acts done, was the peculiar province of the jury; the evidence in our opinion was legally sufficient to draw
48 the inference that such were the facts of the case; and if found specially, would have entitled the defendant
49 to the judgment of the court in his favor; they, of course, did not err in refusing to instruct the jury that the
50 evidence was not sufficient to make out an adverse possession...
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56 The judgment of the circuit court is therefore affirmed.
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58 **Summary Chapter Five (5)**

59 Chapter Five (5) was a supreme court narrative, discussion and decision regarding squatter's rights.
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Chapter Six (6) Miscellaneous Topics

Overview

Chapter Six (6) explains topics such as: quiet title action, the timing of affidavits of possession and prescription.

Learning Objectives:

- As a result of studying this chapter, you should be able to:
- Give a simple explanation of the quiet title action.
- Detail time periods required to record affidavits.
- Explain the difference between adverse possession and prescription.

Quiet Title Action

What is a quiet title action? Could it be necessary to prove the squatter is the new owner of the property? Yes, it could be necessary to perform a quiet title action for the squatter to prove that he is the new owner. A quiet title action is a court action. Read below.

Quiet Title Action. (Black's Law Dictionary) QUIET, v. To pacify; to render secure or unassailable by the removal of disquieting causes or disputes. This is the meaning of the word in the phrase "action to quiet title." Which is a proceeding to establish the plaintiff's title to land by bringing into court an adverse claimant and there compelling him either to establish his claim or be forever after estopped from asserting it. Wright vs. Mattison, 18 How. 56, 15 L.Ed. 280

Lawyers use quiet title actions for many reasons including: Adverse possession, church property conveyed for religious purposes, city deeds, contingent remainders, contract of sale, removal of school fund mortgage, executory interest, federal estate tax liens, improperly acknowledged deeds, inchoate dower interest, barring junior liens, partnership property, jurisdiction of probate court, imperfection in probate proceedings, reversionary interest, surviving spouse death before electing to take under will, surviving spouse interest in real estate, tax deeds and uncanceled tax sale certificates.

Time Chart for Adverse Possession

Recording of Affidavits.

Affidavits are used by attorneys to establish facts. An affidavit is a statement of fact made by someone knowledgeable of the facts set forth in the affidavit.

Consider one state's law regarding affidavits and adverse possession.

In the above diagram, the squatter (who we will now call the possessor) moves onto the property. The possessor (squatter) evidences all the requirements of adverse possession (remember the word POACH?).

Claimant (real owner)	X————squatter/possessor ———X	[Claimant's affidavit]	{ squatter's affidavit}
	10 years	one (1) year	

The state, whose law I am illustrating, requires the real owner (who we will now call the claimant) to record "the claimant's affidavit of possession" to preserve his interest in the property within one (1) year from and after the possessor takes hostile claim to the property. If the claimant files his claim within this one year, his rights to ownership are preserved. If not, the possessor files his possessor's affidavit of possession thereby prohibiting the real owner from claiming any future interest in the property. Visit with an

attorney in your state to determine and identify the proper steps for preserving and stopping claims.

Prescription

What is the difference between adverse possession and prescription?

As we have already studied, adverse possession is a possession of the property which is hostile in nature and may result in fee simple title to the property. Prescription is a use of the property rather than a possession of the property. Example: the neighbor, without permission, trespasses over the corner of your property during spring planting, summer cultivation and fall harvest. It appears that the neighbor has found a much easier way to get his tractor and wagon in and out of his field by trespassing over your property.

You have not given the neighbor permission to do this. This action by the neighbor may give him an easement to continue this action unless he is stopped by you from doing it. This easement would be called an easement by prescription. Many of the same principles which apply to adverse possession also apply to easements by prescription.

Summary Chapter Six (6)

A quiet title action is a court action to remove questions of title such as liens and other claims against the title. Some states require that affidavits of possession be recorded in a timely fashion. Prescription differs from adverse possession in that the former is a right to use and the latter is a possessory interest.