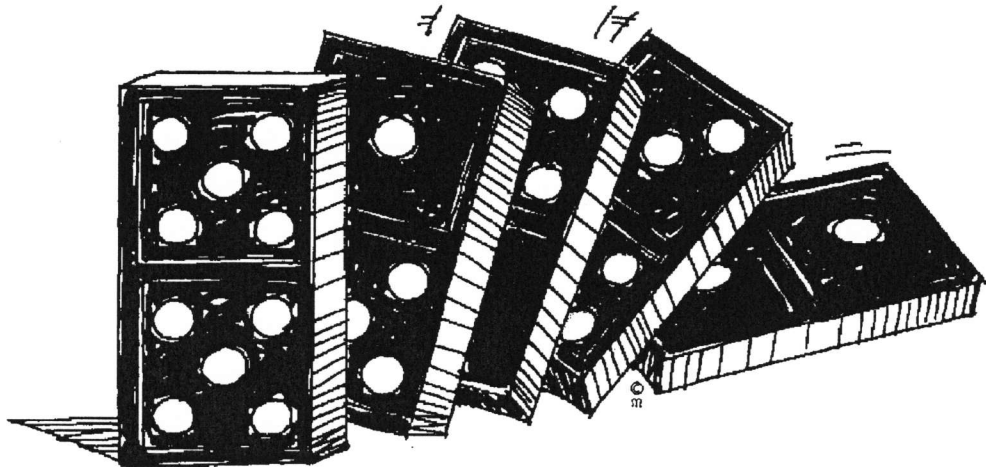


SQUATTERS!



- | | |
|---|------------------------|
| P | —Possession |
| O | —Open possession |
| A | —Actual possession |
| C | —Continuous possession |
| H | —Hostile possession |

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Credits

American Jurisprudence Pleading and Practice Forms Annotated, Volume 1, Bancroft-Whitney Company

American Jurisprudence Second Edition, Volume 3, Lawyers Cooperative Publishing

American Law Reports, 4th, Volume 39, The Lawyers Co-operative Publishing Co., Bancroft-Whitney Co.

Black's Law Dictionary, Revised Fourth Edition, West Publishing Company

Cases and Text on Property, Second Edition, Casner and Leach, Little, Brown and Company

Corpus Juris Secundum Volume 2A, West Publishing Company

Land Transfer and Finance, Cases and Materials, Axelrod, Berger, Johnstone; Little, Brown and Company

Real Estate Law Concepts and Applications, Theron R. Nelson, Thomas A Potter, West Publishing Company

The Language of Real Estate 6th Edition, Riley, Dearborn Real Estate Education

SQUATTERS!

Chapter One (1)

Overview: In this chapter, you will explore the purposes and requirements of adverse possession.

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

- Recite several benefits derived from studying squatter's rights.
- Recite that this course cannot be used as a substitute for competent legal advice.
- Define adverse possession.
- Describe how adverse possession was created.
- List purposes for the creation of adverse possession.
- Explain how adverse possession resolves land ownership claims when public records are lost or destroyed by calamity, flood or war.
- Answer this question: "is it easy to establish claims to a property through squatter's rights?".
- Decide which state law governs disputed property ownership.
- Recite two (2) easy ways to remember elements and requisites of adverse possession.

Introduction

Once read of a family living in San Francisco having the desire for leading a simpler, slower paced life. They purchased and closed on land located in rural Washington state. Selling their home, they packed their possessions and headed north.



When they arrived, they were met by the sheriff who prevented them from moving onto their property. He explained, "the neighbor is claiming squatter's rights on your property and my job is to inform you that you cannot take possession until this claim is settled in court." The purchasers successfully defended their title after a lengthy, costly court battle. Their battle with the neighbor/squatter was so painful they decided to sell the property and move elsewhere.

The word "title" can mean "ownership." Real estate transactions can be filled with title problems. Squatter's rights or adverse possession claims are examples of title problems.

There are benefits for studying squatter's rights.

You will become more professional when explaining difficult title problems.

Having studied the material in this program, you will be able to review with your clients & customers their attorney's concerns about squatter's rights. When the attorney requires special affidavits to clarify situations regarding title you can respond in a more professional manner.

You will not be tempted to engage in the unauthorized practice of law.

As you will soon learn, the topic of adverse possession is extremely complex. Understanding its complexity, you will have no temptation to engage in the unauthorized practice of law. A non-lawyer may give general information about different topics of law. However, a non-lawyer may not give legal information specific to the client or customer's need to protect money or real property interests. The giving of advice to cure title problems, perfect title, protect interests using a mortgage, note or deed of trust, make a will or deed or affidavit is reserved for the attorney. The real estate agent has extensive training in areas of appraising, financing, contract law, easements, title issues, marketing, etc. But, the real estate agent must not give the client information specific to solving their real estate legal issues.

You will become more proficient when *time is of the essence*.

Time is of the essence in most real estate transactions. Real estate transactions are filled with time deadlines. If the deadline is not met, the transaction contract could be rendered a nullity. If the attorney identifies adverse claims against the property, the transaction may require additional time to close. Some sellers and buyers require closings that take place in the current calendar year for IRS tax purposes. Some must sell their home by a certain deadline in order to purchase a different home. Some require tax deferred exchanges with deadlines required by statute to identify replacement property and to close the exchange. If there are allegations of adverse possession, the transaction contract time periods may need to be extended.

You will be able to recognize other benefits for studying squatters rights as you begin your study.

Warning: This course may not and should not be used as a substitute for competent legal advice.

The opinions of the author are not necessarily those of the Real Estate Commission.

QUESTION 1.1 What is Adverse Possession and what are Squatter's Rights?

It is the ripening of hostile possession, under proper circumstances, into title (ownership) by the passage/lapse of time. It is the acquiring of title to real property owned by someone else by means of open, notorious, hostile, and continuous possession for the time required by state law. It is a possession which is commenced in wrong and is maintained in right.

Read the sample petition (prayer to the judge) which may be found in the squatter's action to quiet title in his name:

"Wherefore petitioner (the squatter) prays that the fee simple title in and to the land hereinabove described be quieted and confirmed; that the claim of defendants and the aforesaid warranty deed recorded in Book _____ at Page _____ in records of _____ County, _____, be cancelled, and expunged from the records of _____ County as a cloud on the title of petitioner...."

QUESTION 1.2 How was adverse possession created? How did squatter's rights come about?
It is the creation of legislation and an application of the statute of limitation.

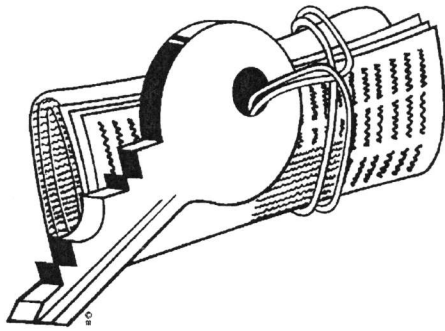
QUESTION 1.3 What is a statute of limitation?

It is that law pertaining to the period of time within which certain actions must be brought to court. Actions must be brought within certain time limits; if not, the action may fail because the action was "outlawed" by the statute of limitations. "The theory behind the statute of limitations is that there must be some end to the possibility of litigation. It is said that stale witnesses and stale records produce little truth

and result in accidental justice, if any.” Riley

In all states there exist statutes which limit the time within which certain types of actions may be brought—for example, the controlling law may provide six years for actions upon ordinary contracts, twenty years for actions upon contracts under seal, two years for actions for wrongful death, one year for death claims based on the employer’s liability act.

Among statutes of limitations those which deal with the recovery of possession of land have a peculiar standing, because the running of this statute has not only a procedural but a proprietary significance. That is, if the Statute prescribes that an action to recover possession of land must be commenced within 20 years from the time the action accrues (the usual provision), and the owner of the land of which someone else is in possession allows the 20-year period to go by without commencing this action, the right of action is dead, the owner loses his title to the land, and the possessor acquires title.



Thus, the Statute of Limitations is a means of acquiring title to lands and suppressing long dormant claims. This is not a by-product of the Statute but its very purpose, for one finds in the original general Statute of Limitations (21 Jac. I, c.16, 1623) a preamble stating that it is designed “for quieting of men’s estates.” It is natural, then, that this branch of the law should receive a name—“adverse possession”—which adopts the point of view of the possessor whose claim is being ripened rather than the point of view of the suitor whose cause of action is being lost.

(Cases and Text on Property, Second Edition, Casner and Leach, Little, Brown and Company, page 57)

QUESTION 1.4 Is title/ownership gained by adverse possession as good as title gained by a deed? It is well settled that the title acquired by adverse possession is equivalent to that acquired in any other way.

QUESTION 1.5 Let’s suppose that public records are destroyed by calamity, flood or war. Could adverse possession be used to establish ownership?

Yes. Consider the following statement from the United States Supreme Court:

“The existence of a proper and valid Spanish grant and its proper record in the archives of Mexico, within the provisions of article 6 of the Treaty of December 30, 1853, with that country, that no grant should be respected which had not been so recorded, may be presumed from satisfactory proof of exclusive and uninterrupted possession under a claim of title continuing from 1790 until the filing of the petition for confirmation of the grant in the court of private land claims, together with evidence of the existence of a grant covering the land so possessed, of the destruction by the military forces of the United States of the original documents of title, and of the record of the grant in the place where records of grants of land in the neighborhood were customarily made.” United States vs. Pendell 22 S Ct 624.

QUESTION 1.6 Is it easy to establish claims to a property through adverse possession or squatter’s rights?

No. It has been said that adverse possession presents some of the most doubtful questions known to the law.

QUESTION 1.7 Is it the purpose of adverse possession to punish the real owner?

No; the purpose and intention of adverse possession is not to punish the real owner who may be negligent in protecting his property from outsiders but to protect those who have maintained the possession of the land for the statutory period time.

QUESTION 1.8 What are other purposes of adverse possession?

Other purposes of adverse possession may include:

- making sure privately owned land is in its fullest and most productive use.
- settling land ownership claims by the lapse of time and prevention of litigation.

QUESTION 1.9 Which state's laws determine a person's rights under adverse possession?

Adverse possession is governed by the law of the state in which the property is situated.

Elements and Requisites

QUESTION 1.10 What are the elements and requisites of adverse possession?

One taking title by adverse possession must possess the property openly, actually, continuously and hostilely.

QUESTION 1.11 Are there any easy ways to remember the elements and requisites of adverse possession?

Yes. Here are two (2) ways to remember the elements and requisites of adverse possession:

POACH. Possession is open, actual, continuous, and hostile.

CANOE. Possession is continuous, actual notorious, open and exclusive.

P—possession

O—open possession

A—actual possession

C—continuous possession

H—hostile possession

C—possession is continuous

A—possession is actual

N—possession is notorious

O—possession is open

E—possession is exclusive

Duration

QUESTION 1.12 What is meant by duration?

Duration means the length of time the possessor must occupy the property to obtain clear title to the property.

QUESTION 1.13 Must one examine state law to determine the length of time to be met for duration? It is necessary to examine the local laws in all cases.

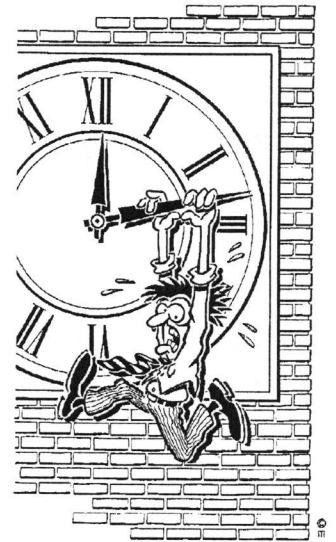
QUESTION 1.14 Could circumstances change the time periods for claims of adverse possession?

Yes. The duration of possession required to establish title by adverse possession is less in some jurisdictions where the possession is under color of title than where it is without color of title. More about color of title later on in this program.

QUESTION 1.15 What if there are conflicts whether the possessor has met the time period required by adverse possession? Who decides then?
Questions of this nature are decided by a jury.

Instruction to Jury—Title by Adverse Possession—Elements

The jury are instructed that, by the laws of this state, if a person goes into the possession of real estate under a claim of title, and continues in the adverse, hostile, open, exclusive, and uninterrupted possession of the premises under such claim of title for the period of _____ years, he will be deemed to be the true owner thereof.



QUESTION 1.16 When does the time period begin to run under adverse possession?
The time period begins to run when the adverse possessor takes possession of the property.

QUESTION 1.17 Regarding the prior question, what if the possessor took possession with permission?
When does the period begin to run under adverse possession?
If the possessor took possession of the property with the permission of the true owner, the time period starts to run when this possession turns hostile.

Summary—Chapter One (1)

Squatter's rights is also called adverse possession. It is a creation of legislation and is a statute of limitation. Different states have different time periods for which the squatter must possess the land. Squatters must possess the land in the way required by the law. This possession must be open, actual, continuous and hostile; questions whether the adverse squatter have accomplished these requirements may be decided by a jury. The purpose of squatter's rights is not to punish the real owner but to protect those who have possessed the property and used the property to its fullest and most productive use.

Chapter Two (2)

Overview: Chapter Two (2) explores the meaning of "possession" required by the law of adverse possession. Color of title and claim of title are distinguished.

Learning Objectives: as a result of studying this chapter you should be able to:

- Define various aspects of possession.
- Explain what is meant by the squatter “personally” possessing the property.
- List persons who may have a personal association with the squatter.
- Define “color of title.”
- Distinguish between “color of title” and “claim of title.”

Actual Possession

QUESTION 2.1 Is mere possession a sufficient basis for a claim of title by adverse possession?

It is well established that mere possession is not a sufficient basis for title by adverse possession. Possession is an introductory fact but will never, by itself, ripen into title. The possession must have certain characteristics.

QUESTION 2.2 What does possession mean?

Possession means complete dominion over the property which excludes all others. It means actual entry onto the property. It is the type of possession that will indicate to others living in the neighborhood that the possessor has exclusive management and control of the land. The squatter “must unfurl his flag on the land, and keep it flying, so that the owner may see, if he will, that an enemy has invaded his domains, and planted the standard of conquest.” (*Marvel vs. Barley Mill Road Homes, Inc.*—Delaware)

QUESTION 2.3 What are some examples of possession?

- exercising acts of dominion over it, making the ordinary use of it, and taking the ordinary profits it is capable of producing in its present state. *Stark vs. Akard* (Ohio)
- there may be actual possession of land without cultivation, residence, enclosure, buildings or other improvements, unless they are required by statute.
- it does not necessarily require the claimant to live upon the land or to enclose it with fences, or to stand guard at all times upon its borders to oppose the entry of trespassers or hostile claimants. *Clear Lake Amusement Corp. vs. Lewis* (Iowa)



QUESTION 2.4 A person removes or erases a common boundary line between neighbors. Does this turn this possessor into a squatter?

No.

QUESTION 2.5 Must the possessor use or appropriate the property to some purpose to which it is adapted?

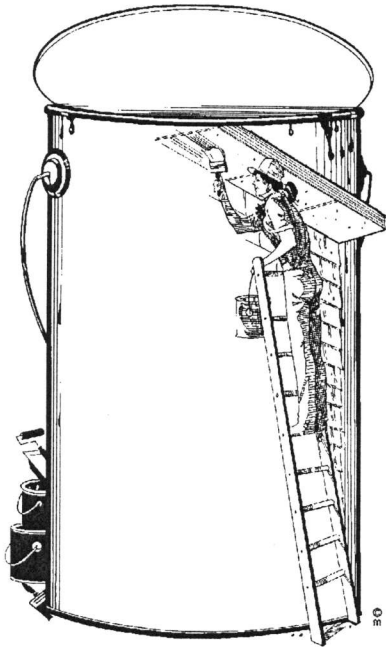
Yes. And this use depends largely on the character of the property. What is adverse possession is one thing in a populous country, another thing in a sparsely settled one, and still a different thing in a city or village. (*United States vs. Algodones Land Co.*) The possession of marshland contemplated by law is that which is commensurate with its nature, its chief value, and by the extent of operations conducted thereon which the character of the soil and its surroundings may reasonably permit. *Acosta vs. Nunez* (Louisiana)

QUESTION 2.6 Must the person claiming squatter's rights personally possess the property or may it be done by others who have an association with him?

It can be done through the squatter or others who have an association with him. Here are some examples:

- an agent
- a licensee
- a relative
- a tenant. (if the tenant is in possession under a squatter landlord, the tenant flies the landlord's flag. Kirby Lumber Corp. vs. Laird—Texas; a tenant of the adverse claimant will inure to the latter's benefit and ripen into title in his favor. Combs vs. Ezell—Kentucky)

Color of Title



QUESTION 2.7 What is color of title?

A person claiming title by adverse possession who possesses color of title means this person has some document or paper which has passed title to him but that paper or document is in some way defective.

Any instrument having a grantor and grantee, and containing a description of the lands intended to be conveyed, and apt words for their conveyance, gives color of title to the lands described. Such an instrument purports to be a conveyance of the title, and because it does not, for some reason, have that effect, it passes only color or the semblance of a title.

Anything in writing purporting to convey title to the land, which defines the extent of the claim, it being immaterial how defective or imperfect the writing may be, so that it is a sign, semblance or color of title. A title imperfect, but not so obviously so that it would be apparent to one not skilled in the law.

Black's Law Dictionary: Color of Title

The appearance, semblance, or simulacrum of title. Also termed "apparent title." Any fact, extraneous to the act or mere will of the claimant, which has the appearance, on its face, of supporting his claim of a present title to land, but which, for some defect, in reality falls short of establishing it.

Riley: a condition in which a title appears to be good, but because of a certain defect, it is in fact invalid (paper title).

For example, the seller conveys a ten-acre farm to the buyer by deed. The buyer enters into possession unaware that the seller held title under a forged deed. Thus, the buyer does not have valid title to the property. By occupying the premises for a prescribed period of time, the buyer can acquire legal title to the entire ten-acre parcel by means of adverse possession under color of title, even though he physically occupied only part of the ten acres, because the adverse claimant under color of title need only possess a portion of the premises described in the ineffective conveyance to acquire title to the whole parcel. If there were no deed involved, and the buyer adversely occupied just part of the ten acres, after the prescribed period he would acquire title only to the acreage he actually occupied (or fenced or cultivated). In addition, a claimant not under color of title has a stronger burden of proof on each of the required elements for adverse possession.

In some states, a possessor of property under color of title must be in good faith in order to acquire title by adverse possession. That is, the possessor must believe the deed is really valid even though it is actually defective (i.e., the possessor cannot be a squatter). Thus, the defect in the deed must not be so obvious that a reasonable person would know the deed was not valid.

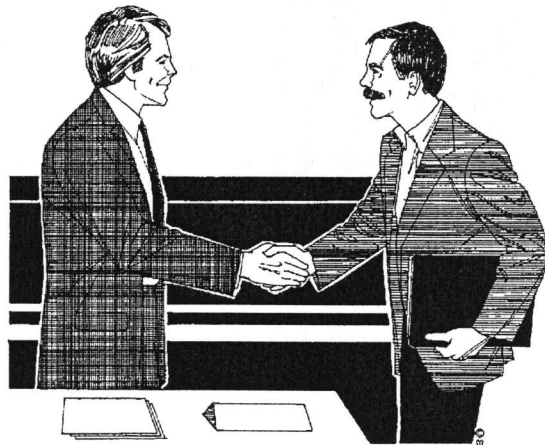
QUESTION 2.8 Is "color of title" the same thing as "claim of title?"

No. "Color of title" is not synonymous with "claim of title." To constitute "color of title" there must be a paper title to give color to the adverse possession, whereas a "claim of title" may be shown wholly by parol. Black's Law Dictionary

QUESTION 2.9 What is meant by parol evidence?
Parol evidence means oral evidence.

**Complaint, Petition, or Declaration To Establish Title by Adverse Possession—
Possession Under Parol Gift.**

"...Plaintiff states that it became the duty of the said executor to have executed to this plaintiff the deed to said property; that the said executor was familiar with the transaction between plaintiff, and the deceased, R.B.; that plaintiff has requested that said executor execute to him a deed to the property but that said executor has failed and refused so to do. Wherefore, plaintiff prays that it be adjudged that he is the owner of the above described property and is entitled to have same conveyed to him; he prays that by a decree of this court that the said executor be directed to execute to him a deed to said property; he prays for his costs and all proper relief."



QUESTION 2.10 What are examples of "color of title?"
Examples include: forged deeds, invalid tax certificates/deeds, fraudulently altered documents, etc.

QUESTION 2.11 Are there any minimum requirements for an instrument to serve as color of title for adverse possession?
In order for an instrument to serve as color of title for adverse possession purposes it must adequately describe the property.

QUESTION 2.12 What then is the clear difference between "color of title" and "claim of title?"
In order to be "color of title", there must be some document, invalid document, which passes title to the squatter. "Claim of title" does not require the squatter's interest to be derived from a document.

Summary Chapter Two (2)

To successfully take title through adverse possession, the squatter must have possession of the property personally or by others associated with him. Possession is complex in its meaning but normally means exercising acts of dominion over the property including certain activities. Color of title is paper title but for some reason is defective, such as a possible forged deed. Claim of title does not require any paper evidence of ownership; claim of title may be verbal/parol.

Chapter Three (3)

Overview: Chapter Three (3) delves into the acts of ownership shown by the squatter trying to perfect his claim. Topics in this chapter include temporary uses of the property, isolated uses of the property and fences. Some studies in this chapter show persons who were not able to gain title to the disputed property because their use was permissive.

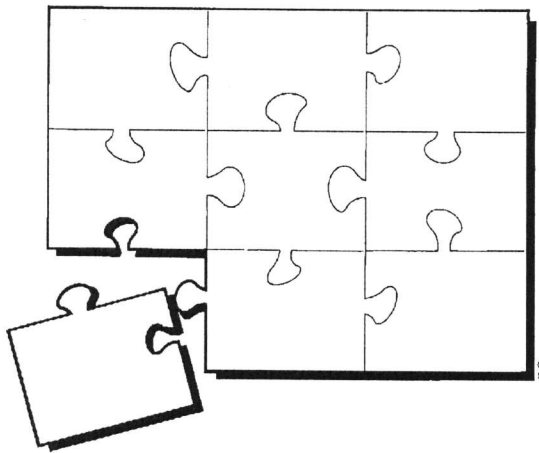
Learning Objectives: As a result of studying this chapter, you should be able to:

- List certain acts of ownership which may be required of those claiming squatter's rights.
- Predict whether temporary acts of possession will ripen into clear title.
- Describe the importance of collective acts of possession by the squatter rather than single acts of possession.
- Recite the importance of fencing or enclosures placed by the squatter on the subject property.
- List one fact learned from Killough vs. Hinds.
- List examples of those who unsuccessfully claimed title because their possession was deemed permissive.

Acts of ownership

QUESTION 3.1 What acts of ownership have squatters shown?

Acts of ownership by the squatter have included:



- receiving rents from the property
- conveying and leasing the property
- improving the property
- encumbering the property with a mortgage
- fishing and keeping up fish traps
- erecting and repairing dams
- paying for insurance
- subdividing the land into lots.
- persistent and continuous cutting from a particular tract of land, to the exclusion of the owners, as to advertise to the world that the party so doing is occupying that specific tract and claiming it as his own.

determining squatter's rights?

All acts of a possessory nature by an adverse claimant are to be considered collectively rather than independently in determining the sufficiency of his possession.

QUESTION 3.2 Can any of the single acts listed above be used in

QUESTION 3.3 Can a temporary use of the property by the squatter ripen into fee simple title?

Generally not.

QUESTION 3.4 What are examples of temporary uses which have not ripened into fee simple title?

Examples include:

- trespassers who go upon land for a special purpose, such as hunting, fishing, camping, surveying, etc., do not thereby acquire possession.
- the erection of a television antenna on a portion of a 10 acre tract cannot be considered possession of the property sufficient for adverse possession.
- going upon grazing land and making a topographical map, and marking points with red flags, do not constitute a taking of possession. Such acts do not interfere with the owner's ability to use the land as grazing land.
- the building of a rough board shanty upon one of four contiguous lots and the placing of posts around a portion of that lot do not constitute a taking of possession of the lots.

- occasional acts of trespass by wheels of cars and trucks ordinarily adjacent to a driveway are not sufficient to support a claim of adverse possession.
- annual entries on land containing maple trees to make maple sugar do not amount to adverse possession of the land, but are merely a series of trespasses.

Necessity of residence

QUESTION 3.5 Must the squatter reside on the property to claim rights arising from adverse possession?

No. As a general rule, actually residing on the property is not a necessary element of adverse possession. A person may be in possession real estate without residing on it. Actual possession must not be confused with residence.

QUESTION 3.6 Can a person obtain title by cutting grass?

Under varying circumstances it has been held that a claimant acquired title to land in a residential area by adverse possession where one of the uses of the land was cutting grass. 170 ALR 877. But it should be remembered that all acts of a possessory nature by an adverse claimant are to be considered collectively rather than independently in determining the sufficiency of his possession.

Under a New York statute providing that land is deemed to have been possessed "where it has been usually cultivated or improved," it has been held in numerous cases that land is cultivated where it is suitable only for cutting hay and claimant has cut hay annually for the statutory period. 170 ALR 870. But in many cases it has been held that a claimant did not acquire adverse possession of land by cutting hay or gathering natural crops. 170 ALR 863

QUESTION 3.7 What are examples of collective uses made by the squatter?

Collective uses include a combination of various acts including:

- using the land for grazing and the removal of timber.
- grazing and cultivation.
- grazing and the gathering of natural crops.
- living on part of claimed tract, cultivating a part, and use of the remainder for grazing, gathering natural crops and removing timber.
- grazing, making hay or crops and cutting timber.

QUESTION 3.8 What must the squatter prove during times the squatter is not physically on the property?

The squatter must prove that the land was not occupied by anyone else during the part of each year when it was not in use by them.

QUESTION 3.9 The claimant's sheep grazed upon land for a few weeks in the spring as they were being herded to summer pasture and upon their return in the fall, some wandered upon and across the land. Is this sufficient to support a claim of title by adverse possession?

No. The possession was not sufficient possession to support a claim of title by adverse possession.

Enclosures.

QUESTION 3.10 It is not necessary that the land claimed by the squatter be fenced off by the squatter.

What is an exception to this rule?

It must be fenced if required by state law.

QUESTION 3.11 What is strong evidence of possession?

Strong evidence of possession by the squatter is if the squatter fenced the portion of land under the claim.

QUESTION 3.12 When would fencing the land be inappropriate?

Fencing would be inappropriate if it would destroy the highest and best use of the land.

QUESTION 3.13 What is an example of squatter's rights by fencing?

The plaintiff fenced in a strip of land along one boundary of her property, cultivated it, and exercised open, undisputed, and frequent dominion over it for 35 years, such use during this entire period was sufficient to give plaintiff title. 17 ALR 2d 1125

Complaint, Petition, or Declaration To Establish Title by Adverse Possession—Possession Evidenced by Enclosure—Injunction To Restrain Removal of Fence

"... That on or about the ____ day of _____, _____, in the temporary absence of plaintiff, the defendant, without the knowledge or consent of the plaintiff, wrongfully and unlawfully entered and trespassed upon plaintiff's premises, and tore down and removed the east line fence upon plaintiff's premises, and rebuilt said line fence in and upon plaintiff's premises a distance of some eight or ten feet, claiming title to said strip of plaintiff's premises; that immediately thereafter plaintiff removed the fence and rebuilt his fence on the east line of his premises; that the defendant claims and asserts title to said eight or ten foot strip of plaintiff's lot on the east thereof, and threatens to, and will unless restrained by the order of this court, again remove and destroy plaintiff's line fence, and again rebuild same over and upon plaintiff's premises."

Instruction to Jury—Character of Possession—Improvements Alone Insufficient To Show Adverse Possession

Although the jury may believe, from the evidence, that one _____, more than _____ years before the commencement of this suit, built a fence around the land in question [otherwise improved it], this alone does not show adverse possession in him. To constitute adverse possession, it must further appear, from the evidence, that what he did on the land was not with the leave or permission of the owner, but was done under a claim of right in himself, and in hostility to the right of the owner.

Adverse or Hostile Character of Possession

QUESTION 3.14 Must the squatter hold the property adversely and hostile to the real owner?
Yes.

Instruction to Jury—Character of Possession—Hostility and Notoriety Required

You are instructed that adverse possession sufficient to defeat the legal title must be hostile in its inception, and continue uninterruptedly for _____ years; it must be open, and of such a character as to clearly show that the occupant claims the land as his own, and all of these things must be proved by a preponderance of evidence.

QUESTION 3.15 How long must this adverse use continue?
It must continue until the real owner is ousted by the adverse possession of the squatter.

QUESTION 3.16 A person, not the real owner, occupies the property, pays the property taxes and makes improvements to the property. Are these activities sufficient in themselves to ripen into clear title?

No. The person conducting these activities must hold the property hostile to the claim of the real owner.



QUESTION 3.17 Must the original entry by the squatter be hostile?

No. But it must become hostile to claim title by adverse possession.

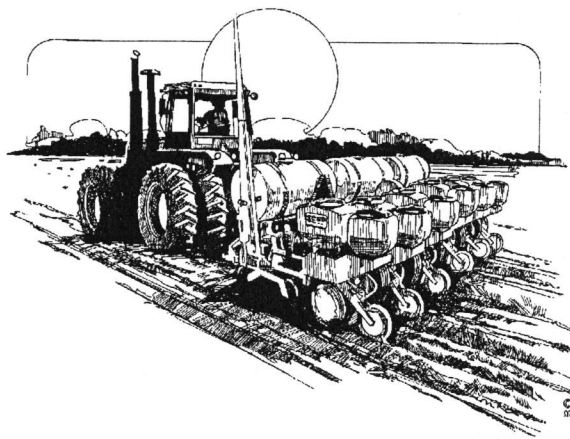
QUESTION 3.18 What did the court conclude in Killough vs. Hinds?

Where one enters upon land in recognition of the title of another, in order for the former to prevail under the statute of limitations three things must be established: 1. there must be a repudiation of the relationship thus established and claim of title adversely to that of the latter; 2. this repudiation and adverse claim must be clearly brought home to the latter, since the limitation will only begin to run from that date; 3. there must be adverse possession for the statutory period after notice of repudiation and adverse claim has been brought home to the latter. Killough vs. Hinds 338 SW 2d 707

QUESTION 3.19 Does hostility of possession imply ill will?

No. It is simply a denial of the real owner's title.

QUESTION 3.20 A farmer testified that he never claimed or made a claim to the ownership of the disputed land, but temporarily farmed it because no one else was using it. Is this sufficient to make a successful claim of adverse possession? No. He admitted that his possession was not adverse for purposes of acquiring title by adverse possession. Archuleta vs. Rose 315 P2d 201



QUESTION 3.21 A person, claiming to be a squatter, was on the property with the permission of the owner. Is this the type of possession required by adverse possession?

No. It is elementary that adverse possession cannot be permissive.

The claimant must intend to hold land as his own against the owner and all the world and intend to appropriate it to his own use to the exclusion of all others in order to constitute adverse possession and that intention must be made manifest by his acts.

Example: A church congregation split into a larger and smaller congregation. The larger allowed the smaller to meet at the church building. Because this use was permissive, the smaller congregation's use was said to be permissive rather than adverse. Booker vs. Smith 214 SW 2d 513

Example: One who enters into possession of his father's land by permission of the father cannot claim title by adverse possession unless he has given his father unequivocal notice that he holds adversely. McCutchen vs. McCutchen 57 SE 678

Example: One having an easement over the land of another cannot change the character of his right to an adverse holding of the land itself unless he either gives the true owner actual notice, or his acts and declarations of a hostile claim are so open and notorious as to leave no doubt in the mind of the true owner; and the facts that one having an easement of way (right of way easement) enclosed it, occasionally locked the gate, and would not permit others to use it, and often allowed his stock to pasture on the way, are not sufficient to apprise the owner of the land that the owner of the easement is asserting a hostile title to the land itself. O'Banion vs. Cunningham 182SW 185

Allegation Denying Adverse Possession—Permissive User

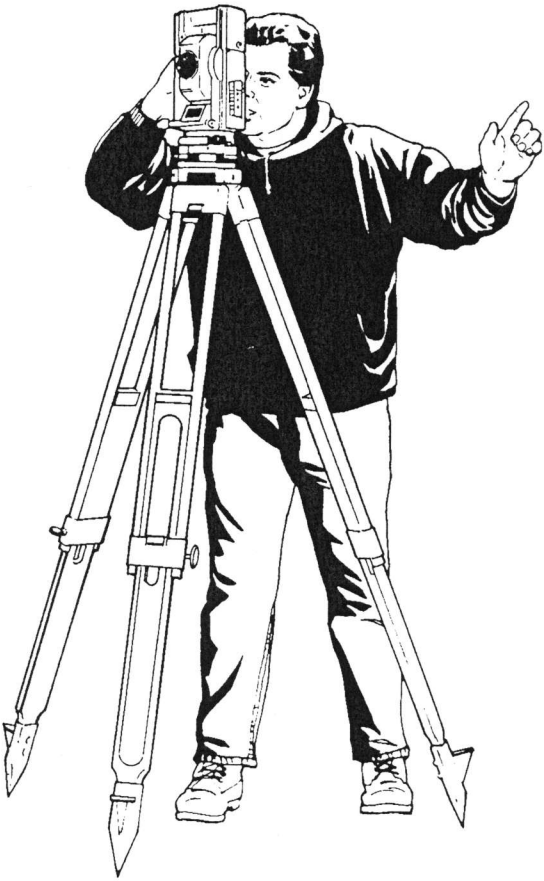
Defendant admits that on or about _____, _____, complainant's deceased husband, C. D., built a house upon the land last above described; the same being defendant's land; that when C. D.,

complainant's predecessor in interest, discovered that he had built a house upon defendant's land, he obtained the permission and consent of defendant that said house remain on said land during C. D.'s lifetime; that said user of said land by C. D. and his successors in interest has at all times been a permissive use under defendant, said user being at all times subservient to defendant's fee simple title in said land.

Instruction to Jury—Character of Possession—Possession With Consent of Owner Not Hostile

You are instructed that if a person enters into the possession of the lands of another with the consent of the owner for any other purpose except to claim the land as his own, such possession alone, no matter how long it is continued, will never bar the right of the owner to take possession of his land when he sees fit to do so.

Possession as indicating adverse claim



QUESTION 3.22 What if the fence or other boundary marker was placed by mistake. Can a person claim squatter's rights to the excess land?

Yes.

Example: If one by mistake as to the boundary line enters upon and takes possession of land of another, claiming it as his own to a definite and certain boundary by an actual, open, exclusive, and continuous possession there under such claim for the statutory period, he acquires title thereto by adverse possession *Vrana vs. Stuart* 99 NW 2d 770

Example: The fact that a plaintiff's acts of possession of the defendant's strip of land outside his retaining wall may have occurred as the result of a mistaken belief that the edge of the defendant's retaining wall constituted the true boundary line does not prevent such acts of continuous exclusive possession extending over the statutory period from ripening into a good title to such strip by adverse possession.

Example: Where the cave was thought to be altogether under the land owned by the adverse claimant, and such erroneous supposition was not revealed until a survey was made at the request of the owner of record and ordered by the court, the claimant's possession for 20 years or more of that part of the cave underlying the land of the other party was not open, notorious, or exclusive, as required

by the law applicable to obtaining title to land by adverse possession. *Marengo Cave Co. Vs. Ross* 10 NE 2d 917

QUESTION 3.23 What are the general rules about mistaken fence lines or boundary lines? Can one gain title to property when the fence line is misplaced from the true boundary line?

"It is generally said that there are two rules governing the question of possession under mistake as to the boundary, which rules are stated in many cases substantially as follows: When a landowner, acting under a mistake as to the true boundary between his land and that of another, takes possession of land of such other, believing it to be his own, encloses it, claims title to it, and holds possession for the statutory period, he becomes the owner, for such possession and claim of title, though founded on a mistake, are adverse;

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.