Property

- Module 2
- Subsequent Possession

Subsequent Possession

- Find
- Adverse Possession
- Gift

- When does a subsequent possessor become owner?
  - Even without becoming “owner” – what protections might the subsequent possessor obtain?
Armory v. Delamirie (King’s Bench, 1722)

- Dispute
- Analysis & Outcome
  - Mode of determining damages

- Finders law
  - F1 & F2 Hypo, page 96-97
- Bailor / Bailee
- What if true owner shows up?
- What if the sweep stole the jewel?

---

Hannah v. Peel (Kings Bench 1945)

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dec. 1938</td>
<td>Peel buys Gwernhaylod house, does not move in</td>
</tr>
<tr>
<td>Oct. 1939</td>
<td>The government requisitions the house for soldiers</td>
</tr>
<tr>
<td>Aug. 1940</td>
<td>Hannah finds the brooch</td>
</tr>
<tr>
<td>Oct. 1940</td>
<td>Hannah informs his commanding officer, turns the brooch into the police</td>
</tr>
<tr>
<td>Aug. 1942</td>
<td>Owner having not appeared, the police give the brooch to Peel</td>
</tr>
<tr>
<td>Oct. 1942</td>
<td>Peel sells the brooch</td>
</tr>
<tr>
<td>Oct. 1943</td>
<td>Hannah sues, claiming the brooch, or the proceeds from sale</td>
</tr>
</tbody>
</table>
**Hannah v. Peel (Kings Bench 1945)**

- **Precedent**
  - Traveler finding package of notes on the floor of a shop . . .
  - To what degree was the shop open to the public, or the place where the notes were dropped?
  - Water company agent cleaning a pool of water finds two rings embedded in the mud . . .
  - Lessee finds a prehistoric boat in a dig where the lease reserved mineral rights with the lessor . . .

- Which approach(es) does the current case follow?
- Why?

---

**McAvoy v. Medina (Mass. 1866)**

- **Dispute?**

- **Common law categories**
  - Lost
  - Mislaid
  - Abandoned
Adverse Possession

- Justifications and underpinnings of the doctrine

- By adverse possession, a person who is not the legal owner of a piece of property can obtain completely valid title to it merely by possessing and using the land as if it were his own for a period of years specified by statute

Van Valkenburgh v. Lutz (N.Y. 1952)

<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>1912</td>
<td>Purchase 14 &amp; 15</td>
</tr>
<tr>
<td>1912 – 1917</td>
<td>Cleared &quot;traveled way&quot; on north edge of 19</td>
</tr>
<tr>
<td>1916</td>
<td>Truck farm</td>
</tr>
<tr>
<td>1920</td>
<td>Houses on 14/15 &amp; 19 occupied</td>
</tr>
<tr>
<td>1928</td>
<td>Lutz gardens on 19 full time</td>
</tr>
<tr>
<td>1937</td>
<td>Van Valkenburgh's (VV) move nearby</td>
</tr>
<tr>
<td>1946</td>
<td>Disputes (neighborly?)</td>
</tr>
<tr>
<td>Apr., 1947</td>
<td>VV buys 19</td>
</tr>
<tr>
<td>Jan., 1948</td>
<td>Lutz wins right of way by prescription</td>
</tr>
<tr>
<td>Apr., 1948</td>
<td>Lutz brings adverse possession suit</td>
</tr>
</tbody>
</table>
### Van Valkenburgh v. Lutz (N.Y. 1952)

<table>
<thead>
<tr>
<th>Elements (pg. 118-119)</th>
<th>Majority</th>
<th>Dissent</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Actually possess or occupy (§39) – use of the kind appropriate to the property, triggers owner’s cause of action</td>
<td>Seems to find the uses insufficient</td>
<td>✓</td>
</tr>
<tr>
<td>Exclusive of others rights (§39) – exclusive entry and use</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>(2) Open and notorious – visible, sufficiently public to warn owner</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>(3) Claim of title (§§39-40) - claim of right, hostile, adverse, without owner’s permission</td>
<td>Actions and admissions did not establish this</td>
<td>Established by acts, in particular extensive clearing and log/brush barrier</td>
</tr>
<tr>
<td>(4) Continuous uninterrupted occupation (§34) for statutory period (§34) – pattern of occupation of an actual owner</td>
<td>Times are long enough, but actions don’t qualify</td>
<td>✓</td>
</tr>
</tbody>
</table>

**Note: Color of Title . . . & Problems, pg. 129**

- Claim of title
- Color of title
  - Claim founded on a written instrument
  - Effect in statutory scheme in Lutz?
  - Constructive adverse possession
- Problem 1
  - Adverse possessor of 40 under color of title to 100, with owner in possession of the 100
- Problem 2
  - Two contiguous lots invalidly conveyed by a deed by Z to A

![Diagram of two contiguous lots X, Y, Z, Lot 1, Lot 2, A, with a deed]
Mannillo v. Gorski (N.J. 1969)

- Dispute?

- Which elements are at issue?
  - claim of right, hostile, adverse
  - open & notorious

Note 3, pg. 134

- A’s fence and B’s survey

- Boundary dispute doctrines
  - Agreed boundaries
  - Acquiescence
  - Estoppel
Howard v. Kunto (WA, 1970)

- Kunto’s house is on C, but deed says D

- Moyer’s house is on B, but deed says C

- Howard’s original deed says A & B

- Howard “swaps” with Moyer, gives Moyer deed to B in exchange for deed to C

Howard v. Kunto (WA, 1970)

- Issues
  - Adverse possession and occasional (summer) use

- Tacking by Kunto?

- Question, pg. 141
  - Does mere camping satisfy the continuous possession element?
Tacking Problems (pg. 142)

- **Problem 1**
  - ¶1 - B to A: get out – I’m taking over
  - ¶2 - A later recovers possession
  - ¶3 - A abandons

- **Problem 2**
  - Possession
  - Ownership

- **Problem 3**
  - A enters against B after O devises life estate to B, remainder to C

Disabilities Problems (pg. 142-43)

- **Disability extensions**
  - Example statute

- **Problem 1**
  - ¶(a) – O’s heir, H is under no disability in 2003
  - ¶(b) – O’s heir, H is six years old in 2003

- **Problem 2**

- **Problem 3**
  - 2001, 2003 or a later date?
  - How are O’s interests protected?
  - Interpretation of example statute

- **Problem 4**
**Merrill: Property Rules, Liability Rules & AP**

- Helmholtz’s survey
  - Is subjective mental state of possessor irrelevant?
  - If good faith is helpful, how do courts obtain this result?
  - Is good faith an unstated additional element?

- Warsaw v. Chicago Metallic Ceilings (CA 1984)
  - First cousin of AP – prescriptive easement

**Elements (pg. 118-119)**

| 1 | Actually possess or occupy (§39) – use of the kind appropriate to the property, triggers owner’s cause of action |
| 2 | Exclusive of others rights (§39) – exclusive entry and use |
| 3 | Open and notorious – visible, sufficiently public to warn owner |
| 4 | Claim of title (§§39-40) - claim of right, hostile, adverse, without owner’s permission |
| 5 | Continuous uninterrupted occupation (§34) for statutory period (§34) – pattern of occupation of an actual owner |

**Merrill: Property Rules, Liability Rules & AP**

- “property rules”
- “liability rules”
- Four rationales for adverse possession
- innovation by appellate court in **Warsaw**

**Judgment**

<table>
<thead>
<tr>
<th>True Owner</th>
<th>True Owner</th>
</tr>
</thead>
<tbody>
<tr>
<td>Property rule: no one can take without his consent</td>
<td>Liability rule: AP’or in bad faith can take by paying fair market value</td>
</tr>
</tbody>
</table>

**time**
Acquisition by Gift - Problems

- Intention requirement
- Delivery requirement
  - Acceptance

- Problems, pg. 158-59
  - One – Pearl ring (¶1 to ¶4)
  - Two – Check
  - Three – Watch
  - Four – Safe Deposit Box