Adverse Possession Cont’d

- Hostility (especially in mistake cases)
  - Maine Doctrine
  - Connecticut Doctrine
- Notoriety
  - Constructive Knowledge
  - Actual Knowledge

Mannillo v. Gorski,

Thomas W. Merrill,
Property Rules, Liability Rules, and Adverse Possession,
Perspectives, p. 190-99

1. Professor Helmholz’s study – good faith as 5th requirement
2. Warsaw v. Chicago Metallic Ceilings, Inc. – innovative remedy in case of bad faith

Professor Merrill’s theory – purely coercive transfers are socially undesirable
Merrill Cont’d
Calabresi-Melamed

• Property Rule
  • Protects TO initially – no one may take his property without his consent
  • Protects AP *after* SOL runs – no one, including TO, make take her property without her consent

Merrill Cont’d
Calabresi-Melamed Cont’d

• Liability Rule
  • Protects TO after SOL runs – AP must pay FMV
Merrill Cont’d

Liability Rule and Bad Faith

• Merrill proposes the liability rule as a middle ground in cases of bad faith possession.

• Transfer is still forced, but TO is compensated.

• Incentives to engage in coerced transfers would be reduced.

Merrill Cont’d

• Advantages to limiting use of subjective intent.
  • decay of evidence & difficulties of proof
  • reliance interests
  • purity of common law doctrine
Merrill Cont’d

- Exempting wildlands from AP? (John Sprankling)
- Squatters entitlements? (Brian Gardiner)

Howard v. Kunto

The Mechanics of Adverse Possession

- 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 gives Moyer deed to B in exchange for deed to C.
Howard v. Kunto cont’d

Elements of AP

• Actual, exclusive occupation?
• Color of Title?
• Claim of Title?
• Notoriety?
  • What about camping and leaving no trace in winter?

Howard v. Kunto cont’d

Elements of AP Cont’d

• Continuity for the statutory period?
  • Occupied only in the summer
  • Nature and condition of property
  • Tacking
    • Claiming more land than described in deed v. claiming land not at all described in deed
    • Privity v. trespass