

## 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)

Dec. 1938	Peel buys Gwernhaylod house, does not move in
Oct. 1939	The government requisitions the house for soldiers
Aug. 1940	Hannah finds the brooch
Oct. 1940	Hannah informs his commanding officer, turns the brooch into the police
Aug. 1942	Owner having not appeared, the police give the brooch to Peel
Oct. 1942	Peel sells the brooch
Oct. 1943	Hannah sues, claiming the brooch, or the proceeds from sale



## 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)

1912	Purchase 14 & 15
1912 – 191?	Cleared “traveled way” on north edge of 19
1916	Truck farm
1920	Houses on 14/15 & 19 occupied
1928	Lutz gardens on 19 full time
1937	Van Valkenburgh’s (VV) move nearby
1946	Disputes (neighborly?)
Apr., 1947	VV buys 19
Jan., 1948	Lutz wins right of way by prescription
Apr., 1948	Lutz brings adverse possession suit

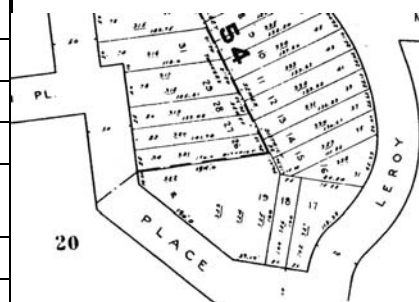


Figure 2-1  
Yonkers Tax Map, 1984

<b>Van Valkenburgh v. Lutz (N.Y. 1952)</b>		
Elements (pg. 118-119)	Majority	Dissent
(1) Actually possess or occupy (§39) – use of the kind appropriate to the property, triggers owner’s cause of action	Seems to find the uses insufficient	✓
Exclusive of others rights (§39) – exclusive entry and use	✓	✓
(2) Open and notorious – visible, sufficiently public to warn owner	✓	✓
(3) Claim of title (§§39-40) - claim of right, hostile, adverse, without owner’s permission	Actions and admissions did not establish this	Established by acts, in particular extensive clearing and log/brush barrier
(4) Continuous uninterrupted occupation (§34) for statutory period (§34) – pattern of occupation of an actual owner	Times are long enough, but actions don’t qualify	✓
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**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

X      Y

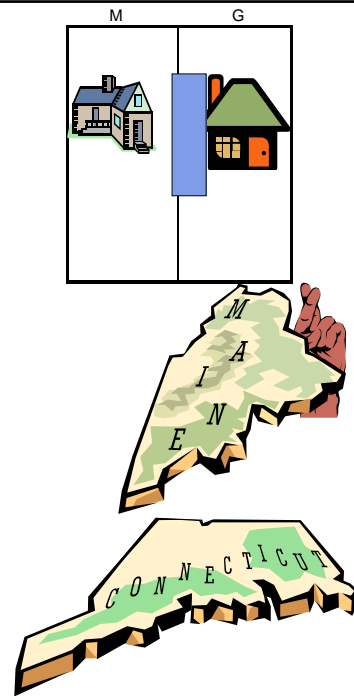
Z → [ Lot 1 | Lot 2 ] → A

deed

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## Mannillo v. Gorski (N.J. 1969)

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

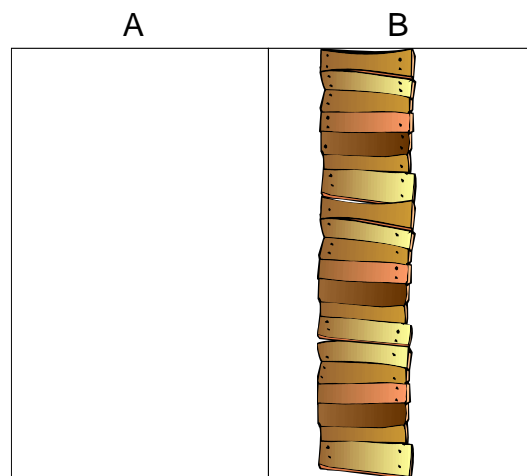


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## Note 3, pg. 134

- A's fence and B's survey
- Boundary dispute doctrines
  - Agreed boundaries
  - Acquiescence
  - Estoppel

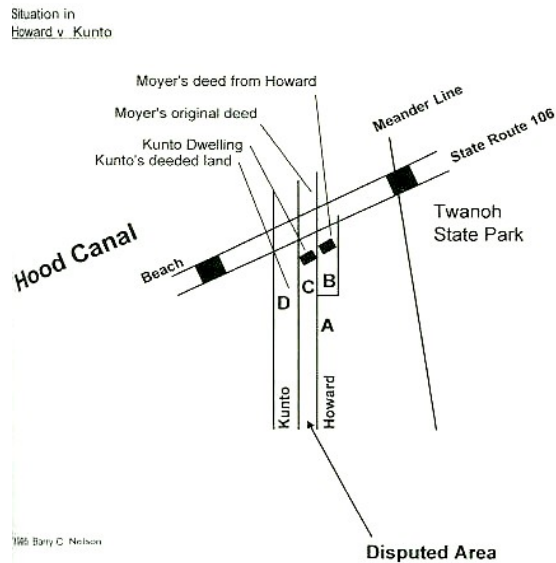


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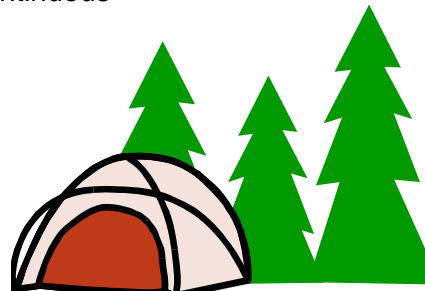
## Howard v. Kunto (WA, 1970)

- 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

		SOL runs	
	1990	2000	2006
A			
O	B		C

- 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

- Helmholz'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

Exclusive of others rights (§39) – exclusive entry and use

(2) Open and notorious – visible, sufficiently public to warn owner

(3) Claim of title (§§39-40) - claim of right, hostile, adverse, without owner's permission

(4) 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

True Owner

True Owner

Property rule: no one can take without his consent

Liability rule: AP'or in bad faith can take by paying fair market value

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

