

Property

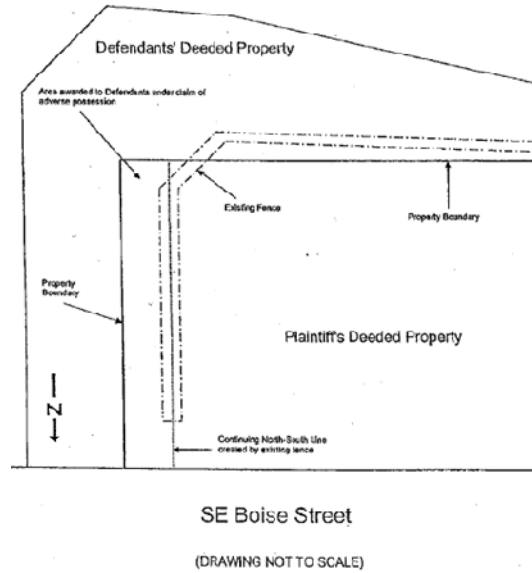
- Module 6
- Adverse Possession

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
- Traditional justifications:
 - The problem of lost evidence
 - The desirability of quieting titles
 - The interest in discouraging sleeping owners
 - The reliance interests of [adverse possessors] and interested third persons (note 7, pg. 221)
- Disadvantages for the doctrine
- Other perspectives
 - Sleeping (keep owner “speaking”) versus Earning Theory (reward productive use of land – note 6, pg. 220)

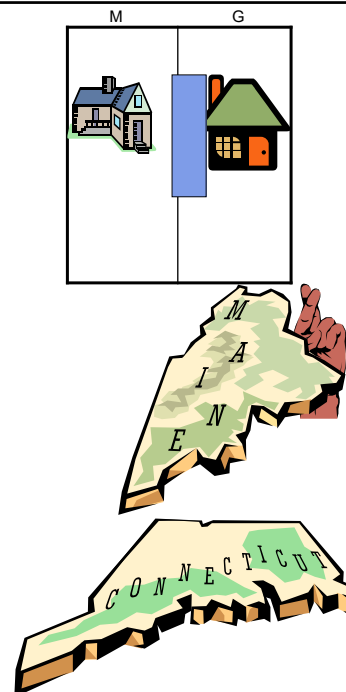
Tieu v. Morgan (Ore. App. 2011)

- Fence is three foot too far to the west inside the east edge of Tieu's (P) rectangular plot
- Trace chain of title for each plot
- Doctrinal queries
 - What is "actual" possession?
 - What is "exclusive" possession?
 - What is "hostile" possession?
 - Tacking? (note 9, pg. 222)



Mannillo v. Gorski (N.J. 1969)

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

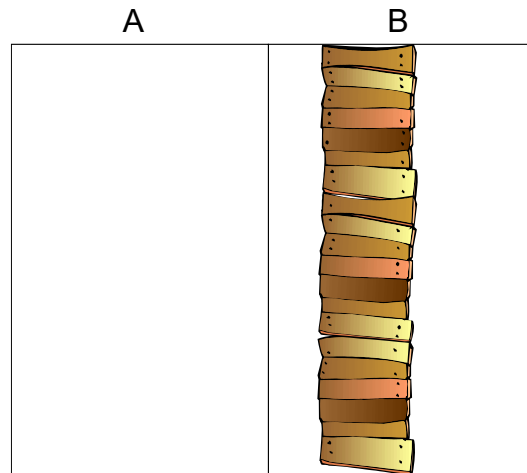


Other doctrinal points

- A's fence and B's survey (Note 3, pg.

218)

- Boundary dispute doctrines
 - Agreed boundaries
 - Acquiescence (pg. 219, note 31)
 - Estoppel
 - Laches (pg. 219, note 31)



Cahill v. Morrow (R.I. 2011)

- 1977: Cahill purchases and takes possession of Lot 20
- 1977-1991: Cahill mows and maintains outdoor furniture and plantings on Lot 19
- 1987: Cahill begins hosting annual family reunions and summer visitors using Lots 20 and 19
- 1991 or 1992: Cahill begins hosting an annual public festival using Lots 20 and 19
- 1991-1997: Cahill increases planting and decorating on Lot 19
- 1997: Cahill offers to buy Lot 19 from Morrow
- Late 1990s/Early 2000s: Cahill persuades zoning board to protect Lot 19; landscapes areas affected by works projects
- 2002: Cahill again offers to buy Lot 19 from Morrow
- 2003: Morrow dies

Cahill v. Morrow (R.I. 2011)

- “[C]laim of right may be proven through evidence of open, visible acts or declarations, accompanied by use of the property in an objectively observable manner that is inconsistent with the rights of the record owner.”
- “[A]dverse possession does not require the claimant to make “a good faith mistake that he or she had legal title to the land.”
- But: “[O]bjective manifestations that another has superior title ... are poignantly relevant to the ultimate determination of claim of right and hostile possession during the statutory period.”

Dombkowski v. Ferland (Me. 2006)

- “[U]nder Maine law, the two elements [of hostility and claim of right] are distinct.”
- “‘Hostile’ simply means that the possessor does not have the true owner’s permission to be on the land....”
- “‘Under a claim of right’ means that the claimant is in possession as owner, with intent to claim the land as [its] own, and not in recognition of or subordination to [the] record title owner.”
- “Under Maine’s common law, as part of the claim of right element, we have historically examined the subjective intentions of the person claiming adverse possession.”

Color of Title

- Claim of title
- Color of title
 - Claim founded on a written instrument

Merrill: Property Rules, Liability Rules & AP

- Helmholz's survey (note 1, pg. 231)
 - 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

Example Elements

(1) Actually possess or occupy – use of the kind appropriate to the property, triggers owner's cause of action

Exclusive of others rights – exclusive entry and use

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

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

(4) Continuous uninterrupted occupation for statutory period – 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
<u>Property rule</u> : no one can take without his consent	<u>Liability rule</u> : AP' or in bad faith can take by paying fair market value