Acquisition by Adverse Possession

Transfer of interest in land without the consent of the prior owner and even in spite of the dissent of such owner. 

A forced conveyance.

Why does the law provide for forced conveyances through AP?

- Efficient allocation
- Reliance interest of 3d parties
- Reliance interest of AP
Why does the law provide for forced conveyances through AP Cont’d?

- Desirability of quieting title
- Decay or loss of evidence
- Interest in discouraging *sleeping owners*

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**Van Valkenburgh v. Lutz, 106 N.E. 2d 28 (N.Y. 1952)**

*Casebook, p. 122*

- **1912**
  - Mary & William Lutz buy lots 14 & 15 and travel across lots 19-22
- **1916**
  - Lutz starts truck farm on lot 19
- **1920**
  - Charlie’s one-room house on lot 19
- **1928**
  - Lutz loses job and starts to *tend garden*
- **1937**
  - Joseph & Marion Van Valkenburgh buy lots west of Lot 19
- **1946**
  - Feud begins between Lutzes and Van Valkenburghs over children in Lutzes' garden
- **April 1947**
  - Van Valkenburghs buy lots 19-22
- **July 6, 1947**
  - Van Valkenburghs take possession of lot 19
- **July 21, 1947**
  - Lutz agrees to clear out but claims prescriptive right to use traveled way
- **July 8, 1947**
  - Attorney sends letter to Lutz to clear out
- **August (?) 1947**
  - Van Valkenburgh blocks traveled way with fence
- **Jan. 1948**
  - Lutz wins prescriptive right
Van Valkenburgh v. Lutz Cont’d

N.Y. Civil Practice Act
Casebook p. 125-26, n. 16

• § 34 – possession required for a minimum of **15 years**.

• § 39 - must demonstrate **actual occupation** under **claim of title** or **claim of right**.

• § 40 - actual occupation means that the land has been **enclosed**, or “**usually**” cultivated and improved.
Van Valkenburgh v. Lutz Cont’d

Corner of Leroy Ave. and Leroy Place with back to lots 14 and 15

Hill behind Lutz’s house

Elements of Adverse Possession

• Actual physical exclusive possession.
• Open and notorious.
• Adverse and under claim of right or title.
• Continuous occupation for the statutory period.
Actual Physical Exclusive Possession

- Not shared with the owner.
- Triggers a cause of action for trespass or wrongful entry

MINE!

Open and Notorious

- Acts of entry have to reasonably inform an attentive landowner.
- Notice such as cultivation, enclosure, or improvement.
- The sleeping theory.
Adverse and Under Claim of Right or Title

- Hostile.
- Not in possession subordinate to the owner but is claiming it for herself.
- Partly so that owner doesn’t think that the occupant will make no claim and partly to reward the productive acts of occupancy.
- The earning theory.

Continuous Occupation for the Statutory Period

- As an actual owner would do as appropriate to the type of property.
- Makes sure that the owner has enough time to discover and do something about it.
- Also makes sure that the adverse possessor is really sticking to his claim of right, earning the land, and getting very attached to it.
Thomas W. Merrill,  
*Property Rules, Liability Rules, and Adverse Possession, Perspectives, p. 190-99*

1. Professor Helmholz’s study

Merrill: purely coercive transfers are socially undesirable

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**Merrill Cont’d**

Calabresi-Melamed

- Property Rule
  - Protects TO *initially*
  - Protects AP *after SOL runs*
- Liability Rule
  - Protects TO (to some lesser extent) after SOL runs
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

✔ hostile  ✔ exclusive
✔ actual  ✔ continuous
✔ open and notorious
Merrill Cont’d

One-Size Fits All Solution?

• Exempting wildlands from AP?
• Squatters entitlements?

Adverse/Claim of Title/Claim of Right/Hostility:
Relevancy of State of Mind

Objective

Good faith

Aggressive trespasser
OPEN & NOTORIOUS - YES
ACTUAL - OF COURSE
EXCLUSIVE - BETTER BELIEVE IT
CONTINUOUS - STILL MINE

HOSTILE - TEST ME, I DARE YOU