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 of scarce resources.
- Reliance interest of 3d parties: protects 3d party purchasers, lenders, etc., encourages development because you know who to deal with.
- Reliance interest of AP: allows AP to move on with life.
Why does the law provide for forced conveyances through AP (cont’d)?

- Desirability of quieting title: promotes security; allows people to arrange affairs.
- Decay or loss of evidence: without the statute of limitations claims could be brought up many years later.

Why does the law provide for forced conveyances through AP (cont’d)?

- Interest in discouraging *sleeping owners*: must act to remove trespassers; promptness suggests importance of claim.
Van Valkenburgh v. Lutz, 106 N.E. 2d 28 (N.Y. 1952)
Casebook, p. 115

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

July 6, 1947
Van Valkenburghs take possession of lot 19

April 1947
Van Valkenburghs buy lots 19-22

July 21, 1947
Lutz agrees to clear out but claims prescriptive right to use traveled way

August (?) 1947
Van Valkenburgh blocks traveled way with fence

Jan. 1948
Lutz wins prescriptive right

July 8, 1947
Attorney sends letter to Lutz to clear out

Yonkers Tax Map, 1984
Van Valkenburgh v. Lutz Cont’d

N.Y. Civil Practice Act
Casebook p. 118, n. 11

• § 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.

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 against which the SOL runs.
Open and Notorious

- Acts of entry have to reasonably inform an attentive landowner that someone is on her property.
- 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 the wrongful possession 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.

*Marengo Cave Co. v. Ross,*
10 N.E.2d 917 (Ind. 1937)
Casebook p. 125, n.3

• Ad coelum doctrine.
  • Other possible rules.
• Bilateral Monopoly.
Adverse/Claim of Title/Claim of Right/Hostility: Relevancy of State of Mind

1. **Objective.** State of mind of the adverse possessor is irrelevant because the purpose is to quiet title after a reasonable period of time.

2. **Good faith.** State of mind matters. You must have good faith or honest occupation.

3. **Aggressive trespasser.** State of mind matters. You must be adverse and hostile and thus know that you are trespassing.

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Adverse Possession & Mistakes

- **Hostility**
  - Maine Doctrine
  - Connecticut Doctrine
- **Notoriety**
  - Constructive Knowledge
  - Actual Knowledge
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

One-Size Fits All Solution?

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