

Property Exam 3

Mary had a little land. Although it wasn't her own. But everywhere that Mary went she claimed the land was her own.

Oakaly was the true owner of the land. He had been since 2005. But Oakaly lived in another state. Oakaly had no idea that Mary had moved into his land in 2010 and was now living on his land.

Mary put up a house on the land and then a fence and then a giant keep out sign. Mary lived on the land for five years and then wrote up a contract purporting to sell the land to Rex. Rex moved into the house with the fence in 2015 and lived there until 2050.

Unknown to Mary or Rex in 2014 Oakaly had transferred the property to his favorite nephew, Dokaly. Dokaly was four when he received the land.

Assume that the land is located in a state with a adverse possession statute that states that a person may obtain title to property by adversely possessing it for ten years. When (if ever) can Rex obtain title to the property by adverse possession?

Example Answer:

When (if ever) can Rex obtain title to the property by adverse possession?

A person may obtain title to property by adversely possessing it for a period of time indicated under the statute. In order to obtain property by adverse possession, the possession of property must be open, notorious and visible. In addition, the possession of the property must be hostile, meaning without the owner's consent. And finally, the adverse possession must be continuous for the statutorily required time.

Open, notorious and visible

Was the possession by Mary and Rex open, notorious and visible?

In order to obtain title to property by adverse possession, the possession must be open, notorious and visible. Here Mary put up a house, a fence and giant keep out sign. Mary and Rex both lived in this house with the fence and sign. These actions made Mary and Rex's possession of the property open, notorious and visible. In addition the facts state that everywhere Mary went she claimed the land was her own. This fact would also make the possession by Mary notorious. The possession by Mary and Rex was open, notorious and visible.

Hostile Possession

Was the possession by Mary and Rex hostile?

For purposes of adverse possession, "hostile possession" means without the owner's consent. Here there is nothing in the facts to indicate that Oakley or Dokaly gave Mary or Rex permission to use the land.

The possession by Mary and Rex was hostile.

Continuous Possession by Mary

Was the possession by Mary continuous for the statutorily required time period?

Here the statute indicated that the time for adverse possession is 10 years. Mary only possessed the property for five years so Mary did not meet the statutory requirement of ten years.

Continuous Possession by Rex

Was the possession by Rex continuous for the statutorily required time period?

Here the statute indicated that the time for adverse possession is 10 years. Rex possessed the property beginning in 2015 and possessed it until 2050. Rex, at some point, will have met the statutorily required 10 year period.

Tacking of Mary's Time with Rex

Can Mary's time in possession of the property be added to Rex's in calculating the 10 years?

Possession by more than one adverse possessor may be combined to reach the statutory amount of time so long the two adverse possessors are in privity.

Here Mary purported to sell the property to Rex. This put Mary and Rex in privity with each other regarding the land.

Mary's time in possession of the property can be added to Rex's in calculating the 10 years.

Transfer to Dokaly

What effect does the transfer from Oakaly to Dokaly have on calculating the 10 year statutory period?

Adverse possession against two owners may also be added together. If the adverse possessor is in continuous possession of the property for the requisite number of years it does not matter how many owners have owned the property or how many times it changed hands.

The transfer of the property itself has no effect on calculating the 10 year statutory period.

Dokaly's Infancy

What effect does the fact that Dokaly was 4 years old when he was transferred the land have on calculating the 10 year statutory period?

For purposes of adverse possession, if the owner of property is a minor or incompetent, the statute of limitations will be suspended until the minor or incompetent person becomes a competent adult.

Here, Dokaly was four in 2014. Based on the date 2014, it is assumed that a modern view of minors becoming adults at 18 would apply. (If the commonly law applied, a minor becomes an adult at 14). Dokaly would thus be an adult in 2028.

Therefore, from 2014 until 2028, the 10 year statutory period would be suspended.

Conclusion-- Title to the property

When (if ever) can Rex obtain title to the property by adverse possession?

As explained above, Mary's time would tack on Rex's as Mary and Rex are in privity regarding the land. Also explained above, the statutory period is suspended from 2014 until 2028 due to Dokaly's infancy.

The ten year statutory period for Rex would therefore start in 2010, run for four years until 2014, then be suspended and run for six more years from 2028 until 2034.

Rex would obtain title to the land by adverse possession in 2034.