

Principles of Adverse Possession

Mentoring Monday

Mon 1 Dec 2025



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Principles of Adverse Possession



- A. Some Legal Background
- B. Unwritten Right
- C. Adverse Possession
- D. The Surveyor and Unwritten Rights

Principles of Adverse Possession

A. Some Legal Background

I buy a truck – receive a written *title*.
Who *owns* the truck?



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A. Some Legal Background

I buy a truck – receive a written *title*.
Who *owns* the truck? Me.



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Principles of Adverse Possession

A. Some Legal Background

I buy a truck – receive a written *title*.
Who *owns* the truck? Well, me & the Bank.



The Bank has an
interest in my truck.



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A. Some Legal Background

I buy a truck – receive written *title*.
Who *owns* the truck?
Who *possesses* the truck? Me.
I have title, ownership, and possession.

I love my
truck!



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Principles of Adverse Possession

A. Some Legal Background

Someone steals my truck....



Principles of Adverse Possession

A. Some Legal Background

Someone steals my truck....

Who has:

Title
Possession
Ownership



Principles of Adverse Possession

A. Some Legal Background

Statute of Frauds (SoF)

English Law 1677

Some contracts must be written to be valid.

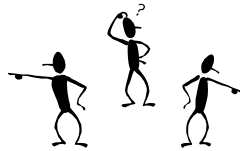
Including contracts for property sale.



Why an SoF?

All terms & conditions reduced to writing so original intent is clear to parties involved and anyone having reason to know.

Document stands on its own without having to ask either side what was meant.



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A. Some Legal Background

Statute of Frauds

A *deed* is a contract for land transfer.



Description on a deed is the subject matter of the contract.

Defines what the *grantor* conveyed to the *grantee*.

These are the *written intentions of the parties*.

A deed does not have to be recorded to be valid; it only has to be delivered.

Recording a deed is a form of *constructive notice*.

Land can only conveyed by written document.



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A. Some Legal Background

Land & Truck situation can be similar except "title" has different meaning

Written document

Truck - title

Land - deed



*title**

1. The union of all elements (as ownership, possession, and custody) constituting the legal right to control and dispose of property; the legal link between a person who owns property and the property.

Deed and possession are *evidence* of title.



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*Black's Law Dictionary (9th Ed)

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A. Some Legal Background

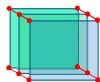
Corners and lines

Deed: defined by written description in deed.

Possession: to where use or control takes place.

Ownership: to where rights extend.

Ideally, all three coincide, but they don't always.



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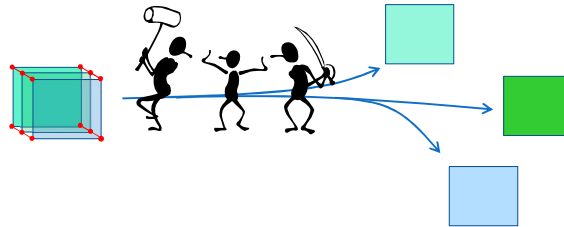
Principles of Adverse Possession

A. Some Legal Background

The three elements may start out vested in a single party

But

Can become separated by individuals' actions.



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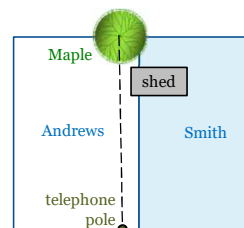
B. Unwritten Right

1. What's This?

An unwritten right is ownership that is obtained:

without benefit of a written document,
or based on a defective document

Is generally the result of an informal agreement, and/or
action/inaction of affected parties.



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B. Unwritten Right

2. Origins

Land transfers pre-date written documents

Traditionally grantor & grantee would:

- Walk the exterior,
- Point out & touch corners or features,
- Witnesses might have been present



Over time successive owners were further removed from original intentions creating

- boundary uncertainty
- animosity between adjoiningers

Hence the creation of the Statute of Frauds.



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B. Unwritten Right

3. English Common Law

Rooted in feudal principles.

Recognized that two adjacent owners could reach an arrangement on an **uncertain** boundary:

- by agreement
- by action



Served to:

- stabilize uncertain boundaries,
- protect person who acquire interests in good faith from another



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B. Unwritten Right

3. English Common Law

Landowner was expected to protect, defend, and preserve his ownership rights.



Someone else who possessed and defended the land could gain ownership if he acted more like the owner than the titleholder.

Common law favored the party who keep land productive by using it.



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B. Unwritten Right

4. What About the Statute of Frauds?



Modern court perspective:

“It is a familiar doctrine of law that the title to real estate cannot be transferred by parole. It is equally forbidden by the principles of common law and express provisions of the Statue of Frauds. This doctrine was recognized early in our law. It is equally settled, however, that the owners of adjoining tracts may, by parole agreement, settle a disputed boundary between them. Such an adjustment of the boundary, if followed by corresponding possession, may be binding on the parties to the dispute, **not because it passes title, but because it determines the location where the estate of each is supposed to exist.**”

Skinner v Francisco, 404 Ill 356, 1949

Courts do not view the situation as title *transfer* but instead as title *clarification*.

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B. Unwritten Right

5. Methods

Unwritten rights may be established by hostile or peaceful relationships between adjoining owners.

Primary Methods:

- Adverse possession
- Acquiescence
- Equitable estoppel
- Parol agreement



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B. Unwritten Right

6. Effect

Once established, unwritten rights are binding on the parties to the situation *and* subsequent owners.



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C. Adverse Possession

1. Concept

People are most familiar (or *think* they are) with adverse possession:

use someone else's land long enough without their permission and you can get ownership of the land.

"Adverse possession is a legal action that enables a party to obtain valid title of another's property by operation of law"

Wilcox v. Estate of Hines, 849 NW 2d 280 - Wis Supreme Court 2014

Adverse possession arises from common law but most states have adverse possession statutes defining requirements.

NE: NRS 11.100-11.180; NRS 40.090

WA: Chapter 7.28 RCW

CO: Section 38-41

FL: Title VIII Chapter 95



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C. Adverse Possession

2. General Requirements

Actual	possession/use must physically occur
Open and Notorious	cannot be hidden, title owner has opportunity to see
Exclusive	possessor acts as the owner; does not share use with anyone else
Hostile	against the title owner's interests
Continuous	must be uninterrupted for a specified period of time



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C. Adverse Possession

2. General Requirements

Hostility?

"Hostility, as defined by this court, "does not import enmity or ill-will, but rather imports that the claimant is in possession as owner, in contradistinction to holding in recognition of or subordination to the true owner.""

King v. Bassindale, 127 Wash. 189, 192, 220 P. 777 (1923)

"Defendant here claims the use of the road by plaintiff was not "hostile," but our court has made clear that "hostile" does not mean "unfriendly intent" or require "a manifestation of ill will." Rather an act is "hostile" in this context "... when it is inconsistent with the right of the owner and not done in subordination thereto.""

Leimert v. McCann, 255 NW 2d 526 - Wis: Supreme Court 1977

"The hostile use here began as soon as Vanasdal took possession and began using the property as his own."

Vanasdal, et al, v. Brinker, 27 Ohio App. 3rd 298 (1985)



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C. Adverse Possession

3. Tacking

Adverse possession is an ownership claim against a title claim; it's not person against person.

Either title holder or adverse possessor can change without affecting the adverse possession process - tacking



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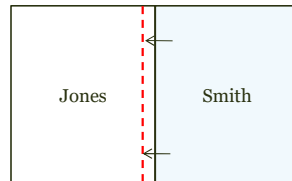
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C. Adverse Possession

3. Tacking

Period continues through successive owners.

Assume 20 years is needed to meet an adverse claim.



o y 1982 Smith initiates the adverse situation



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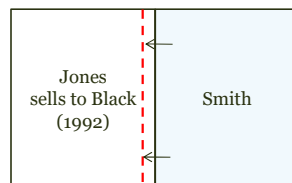
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C. Adverse Possession

3. Tacking

Period continues through successive owners.

Assume 20 years is needed to meet an adverse claim.



There must be *privity*
(legal connection) between
successive owners.

o y 1982 Smith initiates the adverse situation

10 y 1992 Jones sells to Black.



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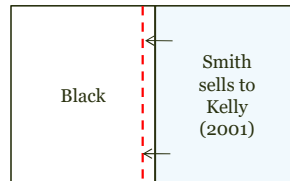
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C. Adverse Possession

3. Tacking

Period continues through successive owners.

Assume 20 years is needed to meet an adverse claim.



- 0 y 1982 Smith initiates the adverse situation
- 10 y 1992 Jones sells to Black.
- 19 y 2001 Smith sells to Kelly



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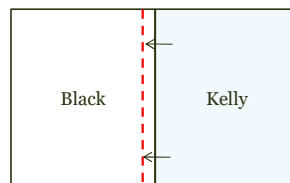
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C. Adverse Possession

3. Tacking

Period continues through successive owners.

Assume 20 years is needed to meet an adverse claim.



- 0 y 1982 Smith initiates the adverse situation
- 10 y 1992 Jones sells to Black.
- 19 y 2001 Smith sells to Kelly
- 20 y 2002 Kelly gains successful adverse claim against Black.



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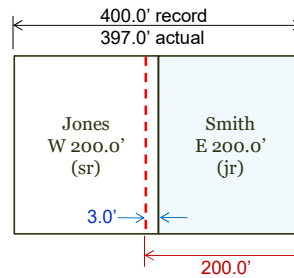
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C. Adverse Possession

3. Tacking

Constructive Possession – based on valid written document which contains a *defect*.

This is *color of title*.



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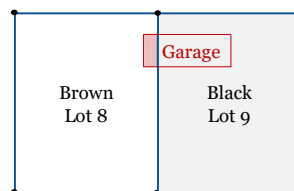
C. Adverse Possession

3. Tacking

Actual Possession - based on extent of real physical use.

Generally, is no record basis to substantiate claim.

Example: Black builds a garage that encroaches on Brown's lot.



For tacking, some states require adverse claim be based on defective deed.

Any use outside the deed cannot be tacked on by subsequent owner.

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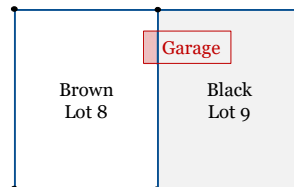
C. Adverse Possession

3. Tacking

Actual Possession - based on extent of real physical use.

Generally, is no record basis to substantiate claim.

Example: Black builds a garage that encroaches on Brown's lot.



BUT

Adverse claim can ripen for a single continuous claimant. That becomes part of any subsequent conveyance.



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Principles of Adverse Possession

C. Adverse Possession

4. Time of Possession

Diverse requirements across states

WI

- *Not founded on written instrument:*

Uninterrupted use for **20 Years**

Extent is the area is that continually occupied and:

protected by substantial enclosure or usually cultivated/improved

- *Founded on written instrument:*

Based on good faith title claim (Constructive possession)

Title is recorded within 30 days of initial entry

Uninterrupted use for **10 Years**

Broader range of acceptable occupation evidence

- *Founded on written instrument & payment of taxes:*

Based on good faith title claim (Constructive possession)

Title is recorded within 30 days of its execution

Uninterrupted use for **7 Years**

Broadest range of acceptable occupation evidence

Taxes are paid



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Principles of Adverse Possession

C. Adverse Possession

4. Time of Possession

Diverse requirements across states

CO

Five years and payment of taxes

FL

Seven years based on color of title of recorded deed.

Seven years with payment of taxes and public liens w/o color of tile

WA

Seven years based on color of title and payment of taxes

Ten years on Forestlands with substantial improvements

PA

Twenty one years



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Principles of Adverse Possession

C. Adverse Possession

5. Must adverse possession be intentional?

"The harsh result of this rule soon became apparent in many jurisdictions and courts began to hold that land could be acquired by adverse possession, even though adverse intent was absent, if the true owner acquiesced in such possession for a period of twenty years."

Buza v. Wojtalewicz, 180 NW 2d 556, (1970), WI

"Although he had openly claimed and used the land as his own for well over the statutory period, we held that he had never formed the requisite hostile intent because he would not have claimed the land as his own had he known it belonged to his neighbor."

Chaplin, et al. v. Sanders, et al, 100 Wn.2d 853 (1984), WA

"The mere possession of land beyond the real boundary line is not sufficient to make such holding adverse. There must be, in addition to that, an intention to claim title to the disputed area and to hold as the owner."

Anderson v. Cold Spring Tungsten, Inc, 458 P.2d 756 (1969), CO



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Principles of Adverse Possession

C. Adverse Possession

6. Protected Parties

Law protects title holders who are unable to defend their rights.

Includes parties with a handicap which prevents their recognizing that rights are in jeopardy.

If handicap is removed, so is protection.

Ex: Minor gaining ownership thru inheritance.

Protected until no longer a minor.



Most states include

(a) Person is under age of 18 years.

(b) Person is insane.

(c) Person imprisoned ... for a term less than life.



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C. Adverse Possession

6. Protected Parties

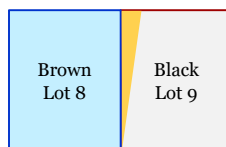
In some states, particular services are protected

Railroad corporations, Public service corporations, and electric cooperative



Tolling - the period during which an adverse claim cannot run due to a handicap.

Is an interruption, not cancellation



0 yr	2000	Brown initiates possession
7 yr	2007	Black incarcerated
7 yr	2012	Black early-release
20 yr	2025	Claim ripens



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C. Adverse Possession

6. Protected Parties

In most jurisdictions the public (federal, state, local gov't) cannot be adversely possessed against.

Public land *can* be adversely possessed in Wis:

Wis Stat 893.29 No adverse possession against the state or political subdivisions:

(1) No title to or interest in real property belonging to the state or a city, village, town, county, school district, sewerage commission, sewerage district or any other unit of government within this state may be obtained by adverse possession, prescription or user under s. 893.25, 893.26, 893.27 or 893.28 **unless the adverse possession, prescription or user continues uninterrupted for more than 20 years and is based upon a continuously maintained fence line which has been mutually agreed upon by the current landowners.**



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C. Adverse Possession

7. Breaking a claim

Title holder is expected to defend his/her title.

Adverse claimant must meet **all** requirements

but

Title holder needs only **one** to not be met to protect title.

Title holder can give use permission which lasts until withdrawal.

Legal remedies:

Wis Stat 893.305 Affidavit of interruption: adverse possession and prescriptive use

Wis Stat 841 893.32 Entry upon real estate, when valid as interruption of adverse possession.

Wis Stat 841 Declaration of interest in real property

Wis Stat 843 Actions for possession of real property; damages for withholding



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C. Adverse Possession

9. So, Now What?

What happens to the descriptions of the involved properties?

It depends...

"As in Brockman, we suggest that the parties provide for a permanent description by metes-and-bounds that can be inserted in the judgment to provide a permanent settlement of the controversy."

Otto v. Cornell, 349 NW 2d 703 - Wis: Court of Appeals 1984

"We further direct the trial court to quiet title to the disputed land accordingly."

Harwick v. Black, 580 NW 2d 354 - Wis: Court of Appeals 1998

If a quiet title action occurs, there could be a record of the modified descriptions.



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D. The Surveyor and Unwritten Rights

1. Authority

Adverse possession is a *Title* matter, not a *Survey* matter.

What's the difference?

Title matter: Rights associated with ownership;

Survey matter: Concerns corners and boundaries;

can be depicted graphically on a map.

Ownership is determined by court, not surveyor, so why worry about it?

Causes possession and deed line separations.

Which does the physical evidence represent?

Can deed lines be established from possession lines?



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Principles of Adverse Possession

D. The Surveyor and Unwritten Rights

1. Authority

Surveyor is equipped to:
 interpret written intent
 collect & evaluate evidence
 determine senior/junior relationships
 to re-establish boundaries



Not empowered to determine state of unwritten rights:
 whether all elements are present
 what ownership status is



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D. The Surveyor and Unwritten Rights

1. Authority

Wis Admin Code A-E 7.03 Boundary location:

Every property survey shall be made **in accordance with the records of the register of deeds** as nearly as is practicable. The surveyor shall acquire data necessary to **retrace record title boundaries such as deeds, maps, certificates of title** and center line and other boundary line locations. ...

By definition, unwritten rights are not in “the records of the register of deeds.”

Unless a quiet title action has occurred.



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Principles of Adverse Possession

D. The Surveyor and Unwritten Rights

2. Rules of Construction

A. Unwritten rights

B. Senior right in event of overlap

C. Written intention of parties

1. Survey
2. Monuments
3. Distance & direction
4. Area
5. Coordinates



Matter of Title

Matter of Survey



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Summary

Adverse Possession

is not a violation of the Statute of Frauds
 is an ownership claim against a title claim
 ripens when all the elements have been met
 has specific time periods
 affects subsequent land owners
 is determined by a court



Surveyor

collects boundary and possession information
 does not determine if land is adversely possessed



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