

T3:

Adverse Possession Answer Plan

1. Has the claimant been in possession for requisite statutory period (**15 years**). (**s8 Limitations of Actions Act**)
 - a. 15 years continuous occupation by 1 or more possessors. (**Mulcahy v Curramore**)
 - Multiple Possessions:
 - If 1 adverse possessor is dispossessed by another, the 2nd adverse possessor can add the first period of adverse possession to their own for the purpose of satisfying the limitation period (unless abandonment occurred by AP 1).
 - b. Limitation period may be suspended if paper title owner = under a disability or affected by fraud. (**S23(1) Limitation of Actions Act**)
2. Factual Possession:
 - a. Physical control of the land must be (**Mulcahy v Curramore Pty Ltd [1974] 2 NSWLR 464**):
 - i. Open
 - ii. Peaceful
 - iii. Without consent
 - b. Must physically acquire the whole land
3. Intention to Possess:
 - a. Usually satisfied if it is proved the claimant has occupied the land without permission of the paper title owner **and** is acting as if they were the true owner (intention to exclude the rest of the world). (**JA Pye (Oxford) Ltd v Graham [2003] 1 AC 419**)
 - b. Relevant factors (**Whittlesea City Council v Abid Angelo (2009) Vic Supreme Court**):
 - i. Have they taken full and complete control of the property?
 - ii. Can TP's walk on the property or is it enclosed?
 - iii. Have they maintained or repaired fencing around the area?
 - iv. Have they paid rates?
 - v. Have they managed the area and used it in a manner akin to that of the paper title owner.
 - c. They need not know they are adversely possessing the land, they just must appear to intend to use the land as their own (exclude the rest of the world).
4. Effects of an adverse possession defence?
 - a. Does it operate against a registered title holder?
 - i. = The true owner will be prevented from making a claim to recover possession of his land.
 1. The true owner's action is statute barred and his title is extinguished under **s18 Limitation of Actions Act**.
 - ii. The possessor can apply to get title to that land under **s60-62 Transfer of Land Act**.

- b. Does it operate against a future interest holder?
 - i. **S10(2) Limitation of Actions Act** makes it clear that the time frame is 15 years of adverse possession from the time when the cause of action accrues against the true owner, or 6 years of AP from the date when the future interest holder vests in possession: whichever is longer.
- 5. Abandonment of AP:
 - AP will cease where it can be established that prior to the expiration of the limitation period, the possession has been abandoned.
 - When AP no longer in possession and excluding rest of the world.
 - Doesn't include temporary absences.