

ADVERSE POSSESSION?

ASK → Has the adverse possessor extinguished rights of the registered proprietor, and thereby gain an interest in the land?

STATE → *If the limitation period has ended, X may be able to enforce their possession and acquire an interest in land owned by Y through the doctrine of adverse possession. Adverse possession is a legal principle that allows a person who is not the registered owner of land to obtain legal title if they have occupied the property in a manner that is continuous, exclusive, open, and without the permission of the true owner for a prescribed period. If these requirements are satisfied, X may be able to claim possessory title to the land, resulting in the extinguishment of Y's rights as the registered proprietor and the acquisition of legal ownership by X.*

STEP 1: WHEN CAN AN ADVERSE POSSESSION CLAIM BE MADE?

STATE → *For adverse possession to be established, there must be someone in adverse possession so the limitation period can run in their favour (LAA s 14). The limitation period for a landowner to recover land only starts when someone occupies the land without the owner's consent and inconsistently with the owner's title. Here, X is [ANALOGISE W FACTS, HAVE THEY MOVED ONTO THE LAND WITHOUT Y'S CONSENT? HOW DOES IT APPEAR TO BE AP?]*

Consider:

- **S 14(2)**, if there is a break in AP (**where the RP regains possession**), the right of action is considered to have never commenced. The limitation period stops running, and a new limitation period will only start if the land gets APd again
- **S 15**, an AP who gets dispossessed by another AP does not stop the clock. The clock continues, and AP #2 will be 'tacked on' to AP #1 time

STEP 2: IS THERE SOMEONE AGAINST WHOM THE LIMITATION PERIOD CAN RUN?

STATE → *Secondly, there must be someone against whom the limitation period can run. Here, Y has a [PRESENT/FUTURE] interest in [THE PROPERTY]. Per [S9/S10], the time for Y to recover [THE PROPERTY] will begin to accrue [STATE THE TIME] and therefore expire [DATE].*

DO THEY HAVE A PRESENT INTERESTS (S 9)?

- If a person with a present interest is dispossessed, the limitation period starts from the date of dispossession.
- If the person entitled to recover land is the successor of a deceased person who was in possession at death, the period starts from the date of death.
-

OR DO THEY HAVE A FUTURE INTERESTS (S 10)?

- If a person has a future interest (e.g., after a lease or life estate ends), the limitation period starts when that interest becomes a present possessory interest.
- The limitation period is the longer of:
 - o 15 years from the start of adverse possession (while the prior interest exists), or
 - o 6 years from when the person with the future interest actually obtains possession.

STEP 2.5 CONSIDER → FOR STEPS #1 AND #2, IS THERE A LEASE/TENANCY?

TENANCY AT WILL - s13(1) / KIRK

- *Allowing other to be a tenant/LIVE/take property, no payment*
- After **1 year**, possessor is deemed to be in AP if no payment & allowed to stay there
- Right of action accrues 1 year after commencement

STATE FOR TAW → *On the facts, X and Y entered into a tenancy at will (Kirk). Indeed, Y has given X permission to [ANALOGISE TO SHOW IT'S A TAW]. Per LAA s13, a tenancy at will is deemed to be determined at the expiration of one year from its commencement. Here, [HAS IT BEEN A YEAR? IF SO, NOTE THAT ITS BEEN ONE YEAR, AND THE 15 YEAR CLOCK STARTS], X's continued stay has become adverse to Y's interest per s10(1).*

Consider analogy w Kirk:

- AP can still occur, even when consent was first given
- Robert Hawley was **a tenant at will**...it follows that at the end of sixteen years...the right of the Sutherlands to enter by reason of their title was extinguished'
- REMEMBER → LAA s13(1) → if after one year, a tenancy at will does not end → adverse possession starts
 - o If someone takes land with 'consent' of the rightful owner, remember it is a different limitation period
- 1 years + 15 years = 16 years as described above

FIXED TERM LEASE - s10(1)

- A landlord accrues the right to recover possession of the land they have leased the day the lease expires and possession reverts to the landlord

STATE FOR FTL → *On the facts, X and Y entered into a fixed term lease. Indeed, Y has given X permission to [ANALOGISE W LEASE FACTS]. X's lease expired [DATE], and their continued stay has become adverse to Y's interests. Per LAA s10, Y has accrued the right to recover possession of [THE PROPERTY] from the day in which X's lease expired.*

STEP 3: MAKE SURE THE LAND IS NOT SUBJECT TO THE LAA S 7 EXCEPTIONS:

Importantly, [Y]'s land is not owned by Crown, Public Transport Corporation, Victorian Rail Track, Water authorities, local councils or owner's corporations. Therefore, no exception to the land capable of being adversely possessed is seen on the facts (LAA ss7-7C)

EXCEPTION → LAA s 7 – no title by AP against the Crown:

- Rail authorities (7A)
- Water Authorities (7AB)
- Councils (7B)
- Common property (7C)

STEP 4: ESTABLISH THE APOR HAS FACTUAL POSSESSION AND INTENTION TO POSSESS:

STATE → *For X to succeed in a claim for adverse possession, they must establish both factual possession—meaning actual, exclusive physical control of the land (Abbatangelo)—and animus possidendi, which is the clear intention to exercise that control on their own behalf and to exclude the true owner and others from the land.*

FACTUAL POSSESSION?

STATE → *Factual possession to be present, there must be the ability to exercise an appropriate degree of physical control of the property in the circumstances, which is more than mere occupation (Abbatangelo). [X] would argue that they have FP as [HE/SHE] [ACTIONS SUCH AS BUILDING, LIVING, ERECTING THINGS] on [PROPERTY], and thereby exercising a significant degree of control of the property (Abbatangelo).[Y] may attempt to argue that these actions were too sparse to constitute an appropriate degree of physical control over the vast [PROPERTY], however, this is unlikely to be effective as what constitutes an appropriate degree of*

physical control depends on the nature of the land (*Abbantangelo*). In the case of [TYPE OF PROPERTY E.G. VAST PROPERTIES], these actions would surely be sufficient.

Things to consider: *Abbantangelo*

- Factual possession signifies an “appropriate degree of physical control. It must be single and [exclusive] possession” (*Abbantangelo*, recall from *Powell*)
- At trial, *Abbantangelo* relied on the following acts to demonstrate factual possession and *animus possidendi*:

Things to consider: *Kirk*

- **The possession was intended to be exclusive**
 - o Fencing was used and fencing is generally indicative of an intention to exclusively possess land
- **The possession was in fact exclusive**
 - o Was used solely by H
 - o Again, the fencing

ANIMUS POSSEDENDI?

STATE → X must prove that they had the intention to possess the land. An intention to possess will be satisfied if X can prove that they had a clear and unequivocal intention to exclude the whole world, including the true owner for the time being (*Abbantangelo*). Statements alone of an intention to possess are not sufficient to qualify as an intention [IS THIS PRESENT ON THE FACTS?](*Abbantangelo*). X would argue that their acts of [ACTIONS E.G. PUTTING A LOCK ON THE DOOR], demonstrates an intention to possess at the exclusion of Y and anyone else as X is the only person with access to the property

Things to consider: *Abbantangelo*

- Analogous to *Abbantangelo*, enclosure via fencing of land by itself, prima facie indicates intention to possess the land as the construction of the fence on [property] in [time period], intends to exclude the true owner and others from it.

STEP 5: ARE THERE ANY OTHER IMPORTANT CONSIDERATIONS/EXCEPTIONS WHICH MUST BE DEALT WITH?

Breaks/interruptions in time period

- **S16** no right of action to be preserved by formal entry/continual claim
- If the owner enters the land/leaves again, formal entry is not enough to restart the clock → they must **act on the rights**
 - o *Abbantangelo*: time limitation stops if there isn't a continuous period

Acknowledgement – LAA S24

- If the AP-er acknowledges the possessory right of the true owner, the clock starts again
- **Must be in writing and signed**
- *Paying rent probs constitutes acknowledgement*

Is there a disability? – LAA s 23

- If the person being AP-ed against (true owner) has a **disability**, the 15 yr period can be **extended**
- Disability: unsound mind, childhood...
- Limitation is **extended to the longer of**
 - o 15 yr from beginning of the AP or;
 - o 6 yrs from when they recover from their disability
 - **Recover also includes death!!**

