

TOPIC 4 - DOCTRINE OF RELATIVE TITLE

DOCUMENTARY TITLE HOLDER

POSSESSION

A person who takes possession acquires a 'possessive' interest, which is good against the whole world, except another person who can show a prior or better right.

→ In disputes concerning land, the courts approach the matter by considering whether the plaintiff or the defendant has a relatively better title/right to the land (*Asher v Whitlock*)

- *Asher v Whitlock*: Authority for the proposition that the defendant in action to recover land cannot raise successfully the plea of *jus tertii* (a plea that if a 3P to the proceedings has a better right to the land than either the plaintiff or the defendant, then the plaintiff cannot succeed even if he/she has a better possessory than the defendant)
- *Perry v Clissold*: A later possessor CANNOT raise a claim of *jus tertii*, that is a third party cannot justify its entitlement to possession based on showing legal title of another - who may be the legitimate or 'better' title.

Characteristics of the found item:

- Attached: When an article is attached to the land → Owner/possessor has better rights than the finder
- Unattached: When an article is unattached to land → Owner/Possessor can only have after title if it manifests intention to control (→ cannot have abandoned it)

RIGHTS OF FINDERS

The doctrine of possession confers the same rights in respect of goods (*Jeffries v Great Western Railway Company*).

→ An item is the finder's property on the basis that the finder found the item, unless the true owner comes forward (*Armory v Delamire*)

→ **RED FLAG**: When someone is claiming an item is theirs, but they don't have title to it

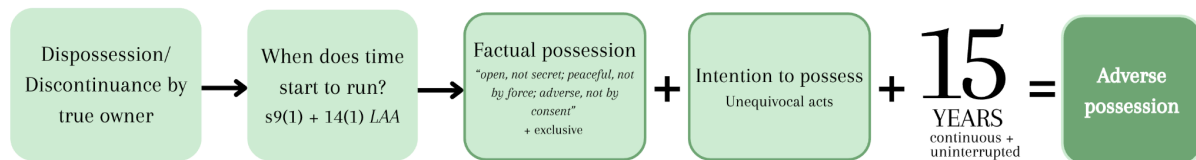
Obligations of a Finder (*Parker v British Airways Board*)

1. No rights are acquired unless:
 - The item was **abandoned or lost** OR
 - The finder must take the item under their care and control to gain rights
2. If the finder takes it into their care with dishonest intent or in the course of trespassing, then they acquire only limited rights
3. The finder only acquires any rights against the world as a whole. The true Owner, and anyone with a prior right to keep the item that existed when the finder took it into their care **have better rights to the item**
4. Employees finding items in the course of their employment are finding it on behalf of their employer (unless there is agreement otherwise) (usually just on the property of the employer)
5. The finder has an **obligation to inform the true owner** that the item has been found and where it is by **whatever means are reasonable** in the circumstances. In the meantime, they have to take care of the item.

RIGHTS AND LIABILITIES OF THE OCCUPIER (*Parker v British Airways Board*)

1. The occupier has better rights than the finder to the **things embedded in or attached to land**. Likewise, the occupier has superior rights to things attached to a building, even if they did not know it was there.
 - ONLY embedded items and fixtures
 2. With regard to items in (or on top of) the building: The occupier has better rights only if they have manifested an intention to exercise control over the building and the things in it
 3. If an occupier has manifested an intention to control they must maintain a Lost and Found facility (In a manner that is reasonable under the circumstances)
 4. 'Occupiers' of a chattel such as... vehicles, boats, cars, airplanes, etc. are treated like the occupiers of buildings for these rules
⇒ The occupier must attempt to exert control if they want to have the best claim
- + **The true owner always has a better claim - unless it has been abandoned**
+ **A person who dishonestly acquires a chattel will have little, or no claim to it**

ADVERSE POSSESSION



In law, adverse possession means the ‘actual possession of the land without the license of the true owner’
Where a person, who has possession of a piece of land, holds that land in possession for a sufficiently long period of time, the rights of the true owner to bring a real action and recover the land may be extinguished.

→ The doctrine enables a person in possession to acquire title to the land which is good against the world, if they have remained possession of the land for a prescribed period of time.

JUSTIFICATION:

- Encourages title holders not to sleep on their rights
- Facilitates the conveyancing of land where the documentary title holder has disappeared
- Facilitates the investigation of title to unregistered land

*NOTE: A right to action to recover land does not accrue unless the person entitled to possession **is out of possession** and some other person in whose favour the limitation period can run is in adverse possession.

1. Definition	The doctrine of adverse possession enables a person in possession to acquire title to the land which is good against the world, if they have remained in possession of the land for a prescribed period of time.
2. Discontinuance/Dispossession of the true owner	<p>Per s9(1) LAA, a right to bring an action to recover land has accrued when:</p> <ul style="list-style-type: none"> • (The true owner or person in possession) is dispossessed or has discontinued possession • Discontinuance: means the true owner, or a person with possessory interest has abandoned possession. • Dispossession: means the true owner or person with a possessory interest has been driven out of possession by another • Need to ask has (the true owner) discontinued or been dispossessed?
3. Factual possession - Intention to possess → Objective	<p>A person claiming title to land by adverse possession must prove both factual possession for the relevant period of time, as well as intention to possess.</p> <ol style="list-style-type: none"> 1. <u>Factual possession</u>: demonstrates an appropriate degree of physical control of the land in the circumstances 2. <u>Intention to possess</u>: The acts done must, by their nature, demonstrate the requisite intention to possess the land <p>→ Each case is decided on its own facts</p> <hr/> <p>Factual possession</p> <ul style="list-style-type: none"> • Factual possession signifies an <u>appropriate degree of physical control</u> (<i>Whittlesea City Council v Abbatangelo</i>) • It must be single and [exclusive] possession <p>→ The owner and an alleged possessor cannot both be in possession at the same time</p> <p>→ The question of what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed.</p> <ul style="list-style-type: none"> • Possession must be open and peaceful:

- + Open means the possession must be noticed by the paper title owner who is reasonably careful in the management of his or her land interest. Possession cannot be secretive
 - Mere use of the land that falls short of possession (use that will not constitute possession - e.g. casual acts of trespass) (Abbatangelo)
 - The acts of the possessor do not need to be inconsistent with the rights of the paper owner and the use the paper owner intended to make of the land
- + Peaceful means that possession must have occurred without violence. However, a squatter who threatens and warns people (including the documentary owner) off the property with a shotgun may still satisfy the "peaceful without force" test. However, if the documentary owner is frightened to enforce his/her rights in the courts because of the adverse possessor's conduct → the concept of peaceable possession may not be satisfied (Barlett v Ryan; Haugh v Taylor)
- Factual possession **must be without the consent** of the true owner. Possession cannot be 'adverse' if the occupier is on the premises under a lawful title (e.g. a lease) or by the license of the true owner
 - + If a license has terminated, the formerly consensual possession of the occupier may become adverse possession (*Public Trustee v Bellotti; Bridges v Bridges*)
 - + If permission to occupy is given (even if not requested by the occupier) → time stops running
 - + Where the dispute involves family members, the courts are more likely to find that possession executed by one member against another is by license, and thus is not adverse (*Bridges v Bridges; Radonich v Radonich*)
- Possession must denote an appropriate degree of **physical and exclusive control**
 - The particular and peculiar circumstances of the case in hand must be analysed closely
 - "The issue of possession must be determined having regard to the nature of the land and the manner in which land of that nature is commonly used or enjoyed"
 - "The alleged possessor [must have] been dealing with the land in question as an occupying owner might have been expected to deal with it and [show] that no one else has done so" (Slade J in *Powell v McFarlane*)
 - Consider:
 - + The character and value of the property
 - + The suitable and natural mode of using it
 - + The course of conduct which a proprietor might be expected reasonably to follow with regard to his/her own interests

E.g.: the occupation of premises evidenced by physical presence by carrying out improvements or repairs or by the erection of buildings will constitute strong evidence of possession (*Cooke v Dunn; Mclynte v Porter*)

>< Camping and fishing on land without evidence that others were prevented from using the land was held insufficient to constitute adverse possession (*Re Johnson*)
- Where land comprises a large area, acts of possession performed on 1 part of the land may provide evidence of possession of the whole piece of land. HOWEVER, possession of land pursuant to the paper title DOES NOT amount to adverse possession of the minerals in the land, where the minerals are subject to a separate title

Intention to possess (Animus possidendi)

The 2nd material consideration in determining whether adverse possession of the land has been taken concerns the intention of the alleged possessor. The person claiming to have taken adverse possession must have the relevant animus possidendi - they must have the intention to use the land as his/her own and to exclude all others, including the true owner so far as is practicable and so far as the law permits.

Clear and unequivocal acts regarding intention to possess the land to the exclusion of others (need not specifically be owner) - must be **clear and unequivocal acts**.

- Claimer must intend to exclude the whole world, including the true owner
- An intention to possess is required not an intention to own (*Pye*)
- Enclosure of the land does not necessarily demonstrate an intention to possess if evidence suggests the person still invited others to use the premises
- The intention to possess **needs to be not only present, but also should be made clear to the world at large** (Slade J in *Powell v McFarlane*)
→ the intention should be clear from the acts themselves
- While statements made by the claimant indicating intention may be accorded little weight due to them being potentially 'self-serving', they may still be accepted when properly evaluated in the context of all the evidence in the case (*Whittlesea City Council v Abbatangelo*):
"While a statement by a person that he or she intended to possess land will not be enough in itself to establish such an intention, it may be relevant when taken in combination with other evidence suggesting an intention to possess"

Fencing

The enclosing of an area of land by fencing is clearly a method by which a person can demonstrate that they intend to dispossess and have taken possession of the land. In fact, enclosure has been said to be the strongest possible evidence of adverse possession (*Seddon v Smith*)

However, the erection of a fence must still be considered in light of all circumstances ⇒ "The nature and purpose of a fence will be affected by the nature, location and characteristics of the land the uses to which it is put" (*Whittlesea*)

- + In *Kirby v. Cowderoy* (16) a possessory title was upheld notwithstanding the land was unfenced, the possessor having paid rates and visited the land from time to time.

Payment of rates (payment of property taxes)

The payment of rates by a person who is not the true owner, but is in occupation, may be significant in relation to the issue of adverse possession, provided the person knows that he/she is paying rates in respect of the land.

→ May constitute strong evidence to show that the claimant had a deliberate purpose to create a title in himself and intended to do whatever acts might be necessary to effect that purpose

- + Generally, the payment of rates must be reinforced with other acts of possession on the land
- + The payment of rates by a person who is not in occupation, and who is not the true owner, will not constitute adverse possession
- + The **payment of rates by a true owner who is out of possession provides only very slight evidence in his/her favour** that the occupier of the land is not holding adverse possession for himself/herself (*Bree v Scott*; *Shaw v Garbutt*)
"The payment of rates by the person in adverse possession affords a very much stronger influence in his favour than the payment by a true owner does in his (*Madden CJ in O'Neil v Hart*)"

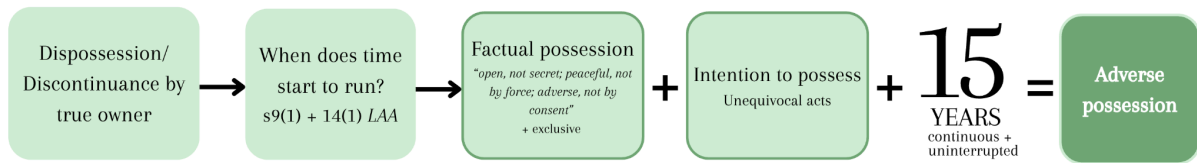
✿ CASE/CITATION	✿ SUMMARY	
	FACTS	DECISION - PRINCIPLE
✿ TOPIC 4 - ADVERSE POSSESSION		
<i>Asher v Whitlock</i>	<ul style="list-style-type: none"> Williamson took possession of 2 pieces of land in 1842 and 1850 respectively Documentary title to the land was held by another person Williamson died in 1860 In his will, Williamson devised the 2 pieces of land he had enclosed to his widow, given that she did not remarry 1861: widow remarried Whitlock (Defendant) → Whitlock also came to reside on the land 1863: Daughter died 1 month later: widow died <p>⇒ Asher (Williamson's grandchild - daughter's heir) brought an action against Whitlock</p>	<p>HELD: The court held in favour of Asher (the plaintiff)</p> <ul style="list-style-type: none"> + Cockburn CJ: stated that the clear proposition that is Whitlock dispossessed Williamson, Williamson would have had the right to recover the land from Whitlock <ul style="list-style-type: none"> ○ Williamson's prior, and therefore better, possessory interest would have given him a better right to the land than Whitlock → "Possession is good against the whole world except for the person who can show a better title" ○ Possessory interest is clearly a devisable one → Asher (heir of the daughter) stood on the shoes of her predecessors-in-title (Williamson and his daughter) → Asher could rely on the prior possessory right in the action in ejectment against Whitlock ○ The only way in which Whitlock could have succeeded is if he had maintained possession in his own right for the period of time (20 years) necessary to bar the right of action against the holder of the prior possessory interest <p>⇒ PRINCIPLE: Authority for the proposition that the D in action to recover land cannot raise successfully the plea of jus tertii (a plea that: If 3P to the proceedings has a better right to the land than either the P or the D, then the P cannot succeed even if P has better possessory than D)</p>
<i>Perry v Clissold</i>	<ul style="list-style-type: none"> Clissold, a squatter, moved onto land he does not own Clissold used the land as his own and asserted control of the land by putting up fences 10 years later, the government wanted to explore the land → The Government gave notice to resume land that Clissold occupied Clissold claimed compensation for the compulsory acquisition on the basis that his possessory rights entitled him to such compensation Before compensation was claimed, Clissold died → His executors took action to recover compensation → Government refused to pay on the basis that Clissold had been occupying the land without legal title: He was a mere trespasser without any estate or interest in the land, 	<p>ISSUE: Whether someone in possession but without legal title is entitled to compensation when land is acquired by the Crown under statute</p> <p>HELD: (On appeal to the Privy Council): A person in possession of land has perfectly good title against the whole world, EXCEPT for against the rightful owner. → The government could not deny compensation to Clissold if the rightful owner does not come forward</p> <ul style="list-style-type: none"> + Did not matter that Clissold's title was not documentary + Clissold had a right against the Crown not to be dispossessed, because he had a better title

	and this should not be paid	<p><i>"It cannot be disputed that a person in possession of land in the assumed character of the owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but that of the rightful owner. And if the rightful owner does not come forward and assert this title by process of law within the period prescribed by the Statute of Limitations applicable to the case, then his right is forever extinguished, and the possessory owner acquires an absolute title"</i></p> <p>⇒ PRINCIPLE: Authority for the argument that a later possessor cannot raise a claim of jus tertii (a 3P cannot justify its entitlement to possession of land based on showing legal title of another, who may have the legitimate or "better title")</p>
<i>Whittlesea City Council v Abbatangelo [2009] VSCA 188</i>	<ul style="list-style-type: none"> • The land in question was general law land • 1908: The land was a gift to the Council's predecessor - the Shire of Whittlesea • Mrs Abbatangelo's land surrounded the disputed land on 3 sides. On the 4th side, the disputed land adjoined a public road • There were wire fences constructed by Mr Abbatangelo on all boundaries of the land (including between the disputed land and the road) → Effectively incorporated the disputed land with Mrs Abbatangelo's land • Mrs A had been the sole proprietor of the property, including the disputed land, since her husband died in 1991 	<p>HELD: Mrs Abbatangelo was successful in her claim for adverse possession, both at first instance and on appeal</p> <ul style="list-style-type: none"> + Fencing: The court concluded that the role of the fence in securing possession of the disputed land was not diminished by the fact that the fence was put up to keep grazing animals in, as well as other people out, as fences can serve multiple purposes <ul style="list-style-type: none"> ○ Nor did it matter that it was possible for people to simply step through the wires that comprised the fence → The fence was nonetheless a sign to others not to enter the land ⇒ <i>"The nature and purpose of a fence will be affected by the nature, location, and characteristics of the land the uses to which it is put"</i>
<i>Mulcahy v Curramore Pty Ltd [1974] 2 NSWLR 464</i>	<ul style="list-style-type: none"> • 1968: Curramore obtained documentary title to rural land that was 2 acres (disputed land) • Alongside the disputed land lay a regular rectangular block, which was 33 acres (rectangular block) • 1970: Mulcahy bought the rectangular block of land from the landlord, and also bought the landlord's rights to the disputed land → Mulcahy sought a declaration that he was the owner of the disputed land 	<p>ISSUE: Can successive periods of adverse possession be aggregated?</p> <p>HELD: It was permissible to aggregate successive periods of adverse possession</p> <ul style="list-style-type: none"> + It was also held that possession needs to be "open and not secret, peaceful and not by force; and adverse, not by the consent of the true owner" + If there is a gap in time, time will stop running. However, if there are successive possessors → If the adverse possessor is dispossessed by a 2nd adverse possessor, the 2nd adverse possessor can add the 1st period of adverse possession to his own

PROPERTY LAW FINAL EXAM NOTES ❀

TOPIC 4 - ADVERSE POSSESSION

❀ ADVERSE POSSESSION



In property law, the doctrine of adverse possession enables a person in possession to acquire title to the land which is good against the world, if they have remained in possession of the land for a prescribed period of time. Thus, if [adverse possessor] can prove that he/she had held the land in question for the prescribed statutory period of time, the rights of the true owner [true owner] to bring a real action and recover the land may be extinguished.

*NOTE: A right to action to recover land does not accrue (start) unless the person entitled to possession is out of possession, **AND** some other person whose favour of the limitation period can run is in adverse possession

Discontinuance/Dispossession of the true owner	<p>The first issue is to establish a discontinuance or dispossession of the land by the registered proprietor, namely [party]. Per s9(1) of the LAA, a right to bring an action to recover land for the person claiming the interest will accrue when the true owner is dispossessed or has discontinued possession of the land.</p> <p>OTF, [true owner] is the registered proprietor of the land, as [facts]. Thus, [AP] needs to show that [true owner] has discontinued or dispossessed of [the land].</p> <p>[AP] may argue that [TO] has dispossessed/discontinued the land, as [facts]. Such actions (clearly) show that [TO] has [definition of selected option]. Therefore, this likely constitutes dispossession/discontinuance of possession of the land, satisfying the first requirement for a claim in adverse possession by [AP].</p> <ul style="list-style-type: none"> • Discontinuance = the true owner, or a person with possessory interest, has <u>abandoned the possession, thus having lost (or having an intention to relinquish) factual control over [the land in question]</u> • Dispossession = the true owner, or a person with possessory interest, <u>has been driven out of possession by another, thus having lost (or having an intention to relinquish) factual control over [the land in question]</u>
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Commencement of the limitation period	<p>The next issue is to determine when the timing of the limitation period started running in favour of [AP]. Per s 9(1) and s 14(1) of the LAA, the accrual of right of cause of action is deemed to accrue on the date of which the true owner dispossesses of the land, and that adverse possession is taken of the land.</p> <p>Present interest As [TO] had a present interest ((vested) fee simple in possession) in the land and had dispossessed the land at the time [AP] took possession, time will be deemed to have started running on the date that [AP] took adverse possession of the land (s 9(1); 14(1) LAA). This means that time started running since [date].</p> <p>s 9 - Accrual of right of action in case of present interest in land (1) A person bringing an action to recover land or some person through whom he claims - (a) Has been in possession thereof; and</p>
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	<p>(b) Has while entitled thereto been dispossessed or discontinued his possession - the right of action shall be deemed to have accrued on the date of the dispossession or discontinuance</p> <p><i>s 14(1) - Right of action not to accrue or continue unless there is adverse possession</i></p> <p>(1) No right of action to recover land shall be deemed to accrue unless the land is in the possession of some person in whose favour the period of limitation can run (hereafter in this section is referred to as “adverse possession”); and where the foregoing provisions of this Act any such right of action is deemed to accrue on a certain date and no person is in adverse possession on that date, the right of action shall not be deemed to accrue until adverse possession is taken of the land</p>
	<p>Future interests</p> <p>However, as [holder of future interest] has a future interest, and did not come into possession of the property until [date], his right of action only accrued on the date of which the estate comes into his possession, meaning [date].</p> <p>Per s10(2) of the LAA, his limitation period to bring a cause of action against [AP] is 15 years from the time [AP] originally took adverse possession, or 6 years from the time [holder of future interest] came into possession (whichever is later).</p> <p>OTF, [date] is later, therefore time started running since [original date/6 year date], and [holder of future interest]’s has until [later date] to bring a cause of action or else his title extinguishes.</p> <p>s10(2) LAA: If the person entitled to the preceding estate/interest, not being a term of years absolute, was not in possession of the land on the date of the determination thereof → no action shall be brought by the person entitled to the succeeding estate/interest after the expiration of <u>15 years</u> from the date on which the right of action accrued to the person entitled to the <u>preceding</u> estate/interest, or 6 years from the date on which the right of action accrued to the person entitled to the succeeding estate/interest, whichever period last expires.</p> <p>Adverse possession by a tenant</p> <p><u>Tenancy at will</u></p> <p>OTF, [AP] originally had a tenancy at will agreement with [TO] when [TO] dispossessed of the land. Thus, per s 13(1) of the LAA, [TO]’s right of action accrues 1 year from the commencement date of the tenancy at will agreement (unless the termination date has already been determined, then it will accrue of that termination date). As [AP] and [TO] have/have not determined the expiration date of the tenancy at will, time will start running for [AP] from [date].</p> <p><u>Periodic tenancy</u></p> <p>OTF, [AP] originally was in a periodic tenancy agreement with [TO] when [TO] dispossessed the of the land. Thus, per s 13(2) of the LAA, [TO]’s right of action accrues on the expiration of the first period (or on the date of the last receipt of rent). Thus, [AP] will be deemed to have taken adverse possession and time will start running for her/him from [date].</p> <p>+ Rent for a periodic tenancy is paid at the end of each period</p> <p><u>Squatter adverse possesses tenant</u></p> <p>OTF, [AP] took adverse possession of [third party tenant]. As [tenant]’s right to possession of the property was still ongoing at that time, [AP]’s adverse possession was against [tenant]’s right. Per s10(1) of the LAA, [AP]’s adverse possession against</p>

	<p>the [landlord] and [landord]'s cause of action only accrued since [landlord]'s reversionary interests vests in possession on the determination of the lease. OTF, [tenant]'s lease ends in [date], thus [landlord] vested a reversionary interest in fee simple in [date]. Accordingly, [landlord]'s right of action (i.e. time started to run) from [date].</p> <p><u>Tenant pays rent to wrong person (third party)</u> OTF, [AP] paid rent to [3P], who was the wrongful person claiming the rent. Per s 13(1) of the LAA, in such situations, the right of [TO]'s action will accrue when the wrongful person first receives rent, instead of when the lease actually ends. Here, [AP] first paid [3P] rent on [date]. Accordingly, [TO]'s right of action (i.e. time starts running) accrues from [date].</p> <p>s 13(3) Where-</p> <ul style="list-style-type: none"> (a) any person is in possession of land by virtue of a lease in writing by which a rent amounting to the yearly sum of not less than \$2 is reserved; and (b) the rent is received by some person wrongfully claiming to be entitled to the land in reversion immediately expectant on the determination of the lease; and (c) no rent is subsequently received by the person rightfully so entitled- <p>the right of action of the last-named person to recover the land shall be deemed to have accrued at the date when the rent was first received by the person wrongfully claiming as aforesaid and not at the date of the determination of the lease.</p> <p>Exceptions Not possible for anyone to obtain title to land by adverse possession against:</p> <ul style="list-style-type: none"> • The Crown: s 7 LAA • Public Transport Corporation, Victorian Rail Track: s 7A LAA • Water Authorities: s 7AB LAA • Local Councils: s 7B LAA
<p>Factual possession</p>	<p>In order to succeed in a claim of title to land by adverse possession, the first essential element is factual possession over the land for the relevant period of time. The burden of proof to establish this element lies of the person claiming adverse possession, namely [AP].</p> <p>Per <i>Whittlesea City Council v Abbatangelo</i>, factual possession demonstrates an appropriate degree of physical control of the land in the circumstances. This is "possession which is: open not secret; peaceful, not by force; and adverse, not by the consent of the true owner" (<i>Mulcahy</i>). OTF, [AP] [facts of control].</p> <ul style="list-style-type: none"> • <u>Exclusive physical control:</u> [AP] may argue that the fact that [AP] [act] indicates long-term use, as well as [act] demonstrates a degree of power and exclusive control. This shows that [AP] treats the land like he owns it, rather than merely occupying the land, which signifies factual possession (<i>Buckinghamshire</i>). <ul style="list-style-type: none"> + <u>Renovations/Repairs:</u> The occupation of premises evidenced by physical presence by carrying out improvements or repairs, or by erection of buildings will constitute strong evidence of possession >< Camping and fishing on land without evidence that others were prevented from using the land was held insufficient to constitute adverse possession (Re Johnson) + <u>Nature of the land (character and value of the property):</u> <ul style="list-style-type: none"> ○ The way an individual piece of land is actually possessed depends on its type, character and value (<i>Whittlesea</i>), and "the manner in

which land of that nature is commonly used or enjoyed” (*Powell v McFarlane*).

OTF, the property in question is [farmland/agricultural land/mountainous land/ residential land/urban land]. Thus, [AP/TO] may argue that [AP]’s actions of [facts] [does/does not] suggest such occupation that an occupying owner might have been expected to deal with it.

- The suitable mode of using it
- The course of conduct which a proprietor may be expected reasonably to follow with regard to his own interest

- Open and peaceful:

[AP] may also argue that his possession of [the land] is sufficient as it is open and peaceful, and not by force (*Mulcahy*).

(However, [TO] may argue that possession needs to be open and peaceful, and not by force in order to constitute sufficient factual possession (*Mulcahy*))

Peaceful means that possession must have occurred without violence. OTF, [AP] [facts].

Where peaceful and no violence:

- + OTF, none of [AP]’s behaviour demonstrates any degree of aggression or force in his possession of the land, satisfying the requirement that possession be open and peaceful.
- + Furthermore, [TO] knew of [AP]’s use of the land. Thus, [AP] may argue that similarly to *Mulcahy* where the court accepted that the adverse possessor occupied and used the disputed land “clearly with the acquiescence” of the registered proprietor, [AP]’s occupation of the land without objection or disagreement and force satisfied the concept of peaceable possession.

Where minimal violence:

- + While this indicates a certain degree of aggression/force, [AP] may argue that it is not to a level that vitiates factual possession. Rather, the actions demonstrate reasonable control/protection of the property that any owner would exercise in control and defence of his land.

Where clear violence:

- + [TO] may argue that such actions demonstrate a level of aggression/force that vitiates peacefulness of factual possession, and that such behaviour made [TO] frightened to enforce his rights in the courts. → The concept of peaceable possession may not be satisfied

- Without consent

However, [TO] may argue that [AP]’s possession of the premises is not ‘adverse’ as P was on the premises with [TO]’s knowledge and no objection. However, [AP] may argue that similarly to *Mulcahy* where the occupation and use of the disputed land even with ‘clear acquiescence’ of the registered proprietor was still held to constitute adverse possession, [AP] also possessed the land in similar circumstances, as [TO] never expressed consent for [AP] to use the land.

- Where land comprises a large area, acts of possession performed on 1 part of the land may provide evidence of possession of the whole piece of land. However, possession of land pursuant to the paper title does not amount to adverse possession of the mineral in the land, where the minerals are subject to a separate title

Conclusion

	While adverse possession is a question of fact, it is likely/unlikely that [AP] will be found to have exercised a sufficient degree of factual possession in this case.
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