

PROPERTY OUTLINE

I. Adverse possession of real property

- a. Once statute of limitations runs out, O's title extinguished and new title created in AP. AP's title transferable but can't be recorded; if he wants it recorded, AP must bring suit to quiet title.
 - i. APer's title reverts back to beginning of adverse period
- b. Only acquire the portion of land that the APer was occupying
 - i. Exception: color of title
- c. **Rationale/Policy**
 - i. Practical – Protects owners who can't prove title.
 - ii. Economic – Rewards productive users of property – Locke.
 - iii. Doctrine of Repose: Should be able to know that after certain time the APer can no longer be sued. And O only has right to sue for definite time.
 - iv. Psychological – you should get land you've used for long time (honors expectations).
- d. **Requirements**
 - i. (1) Actual/continuous:
 1. Use as **normal owner** would given the nature, character, and location of the property
 - a. E.g. *Nome 2000* – owners only use during summer
 2. For continuity, note TACKING rule
 - a. Tacking automatic on the owner's side; for APer if transfer is consensual and immediate then tacking permitted – BOTH APers must meet 4 requirements
 3. Seasonal use qualifies (*Nome 2000*)
 - ii. (2) Open/notorious: such that reasonably diligent owner would know – constitutes notice
 1. Depends on nature of land.
 2. Building/improving helps (e.g. plant grass, etc.)
 4. Community opinion helps.
 - iii. (3) Exclusive: of TO and others.
 1. Sharing possession with TO, even w/o TO's consent, cannot be AP
 2. Others can be allowed on if AP "acting as a hospitable landowner might." (*Nome*)
 - a. Cannot be on equal footing with APer
 - iv. (4) Hostile
 1. **Maj** – Objective test: AP used land **w/o TO's permission** – focus on lack of permission and acts/statements make it apparent that he is claiming ownership
 2. **Min** – Subjective test (very FEW courts): Adverse Possessor's state of mind counts. Must be there with hope to acquire

- a. **SOME** – APer must know the property isn't his but intends to claim it anyway in order to get via AP.
 - b. **SOME** require APer to mistakenly (in good faith) believe that he is true owner OR require color of title.
 - v. (Some western states add element of paying prop. taxes).
 - vi. NOTE – cannot disclaim ownership, this would stop the AP
- e. How can a TO stop an AP?
- i. Sue or threaten to sue.
 - ii. Show you've given permission (e.g. write letter). Though court may find this not enough. (Deals w/ *Hostile* requirement)
 - iii. Move onto land. *Exclusive*.
 - iv. NOT ENOUGH to make efforts; must actually interrupt.