

Answers to end of chapter Q&A

Question 1: What do you understand by the concepts of “title by possession”, “relativity of title” and the “extinguishment” of title by limitations?

These terms are classically used in explaining the operation of adverse possession in unregistered land. To answer this question, you should consider the nature of title to unregistered land and review the outline of the operation of adverse possession in part 3 of this chapter.

- Title by possession. In English law, title both to land and personal property has historically been obtained by possession. A person in possession of land (or indeed of personal property) thereby acquires title to the land. It is for this reason that possession is an independent means of obtaining property rights. This concept has also been explored in chapter 3.4.
- Relativity of title. Closely related to the concept of title by possession is the idea that title is a relative concept. English law does not have a concept of absolute ownership, but recognises that more than one person may have title to land. The strength of each person’s title is determined by the order in which they obtained possession of the land. For example, consider the possibility that a paper owner (PO) obtained possession by the execution of a deed in 1980. In 1985, C1 moved into adverse possession and in 1987 C1 was dispossessed by C2 moving into adverse possession. PO, C1 and C2 all have title to the land. PO’s title is relatively stronger than that of C1 or C2 as PO obtained possession first. Hence (until the expiry of the limitation period) PO can assert title and exclude C1 and C2. C1’s title is stronger than that of PO, but weaker than C2. Hence, C1 can bring an action to assert title against C2, despite being vulnerable to PO’s title. C2’s title is vulnerable to challenge by PO and C1, but C2 would still be able to assert his or her title against subsequent trespassers.
- Extinguishment of title by limitations. Limitation periods provide a long-stop on a person’s ability to assert their legal rights. The ability to assert title to land, like the ability to assert other legal rights, is subject to a limitation period. Rights are lost if they are not asserted within the required time frame. Section 15 of the Limitation Act 1980 provides a 12 year limitation period for actions to recover land. Section 17 of the Act provides that, once the limitation period has expired, title is “extinguished”. For a title to be extinguished by limitations therefore means that the title is lost if it is not asserted against an adverse possessor within the 12 year limitation period. To continue the example in the preceding paragraph, if PO did not assert title within 12 years of C1 entering into adverse possession, then (assuming a continuous period adverse possession was maintained) PO’s title would be extinguished by limitations 12 years after the commencement of C1’s adverse possession. At that stage, C1’s title would become the strongest title to the land, as it would no longer be vulnerable to challenge by PO. It is important to note, as is explored further in the following question, that sections 15 and 17 no longer apply to registered land.

Question 2: To what extent are the concepts in question 1 compatible with registration of title? Consider how any differences you identify are reflected in the operation of adverse possession in registered land.

To answer this question you will find it useful to review the operation of registration of title discussed in chapter 9 in addition to parts 3 and 5.2 of this chapter. It is particularly important to consider the changes to the operation of adverse possession introduced by the LRA 2002.

- Title by possession. This concept made sense in the context of the system of unregistered titles in which it developed. In the absence of a central record of land ownership, possession provided the most reliable and identifiable evidence of title. It makes less sense where ownership of land can readily be identified by reference to a central register. As the Law Commission explain in the extract in part 5.3 “Title to registered land is not possession-based as is title to unregistered land. It is registration that vests the legal estate in the owner...” This is reflected in the new procedure for adverse possession contained in the LRA 2002 and discussed in part 5.3.1. For claims governed by that procedure, legal title to registered land can no longer be acquired purely through adverse possession. The 12 year limitation period for actions to recover land provided by section 15 of the Limitation Act 1980 is disapplied in respect of registered land by section 96 of the LRA 2002. Instead, completion of a period of adverse possession (10 years) enables the applicant to apply to become registered proprietor of the estate. Legal title is acquired, if at all, by registration.
- Relativity of title. The concept of relativity of title is *not* necessarily incompatible with registered land, but it is overshadowed by the overarching principle that legal title is acquired by registration. In registered land, as in unregistered land, a person who enters into adverse possession thereby acquires an independent freehold title, based on their possession. This title is relatively weaker than that held by a registered proprietor, but may still be enforceable against a subsequent possessor.
- Extinguishment of title by limitations. This concept is wholly incompatible with registration of title. A registered title cannot be extinguished merely by the operation of limitations, since for so long as a person is registered as proprietor they remain vested with legal title. We have seen in part 5.2 that the LRA 1925 sought to reconcile the idea of title being extinguished by limitations with principles of land registration through the imposition of a trust. An attempt at reconciliation is not provided by the LRA 2002 which instead gives a clean break from unregistered land concepts. In part 5.3.2 we have noted that under the new procedure for adverse possession contained in the LRA 2002, a registered title is “extinguished” only where the adverse possessor becomes registered proprietor of the estate. This terminology is used in schedule 6, paragraph 9 of the LRA 2002. Section 17 of the Limitation Act 1980 (which provides for the extinguishment of title by limitations) is disapplied in respect of registered land by section 96 of the LRA 2002.

Question 3: How is adverse possession established? To what extent is this dependent on the intention of the adverse possession and the paper owner / registered proprietor?

This question is concerned with how a claimant establishes that he or she is in adverse possession. It should be noted that, in this respect, the same principles apply to registered and unregistered land. To answer this question, you should review the material contained in part 4.1 (on the nature of “adverse”) and 4.2 (on the nature of “possession”). The issue of intent is relevant to “possession”. In *JA Pye (Oxford) Ltd v Graham* [2003] 1 AC 419, reflecting previous case law, the House of Lords defined possession as requiring both factual possession and an intention to possess. You should also refer to the extract from Radley-Gardner in part 4.2.2 who questions whether intent is in reality a free standing requirement, or is merely a matter derived from the claimant’s acts (factual possession). The relevant intent referred to in *Pye v Graham* is, however, the intention of the adverse possessor, *not* that of the paper owner or registered proprietor. This distinction is important, as for a period of time the paper owner’s intent was considered to be relevant to the claimant’s ability to demonstrate adverse possession. This was a result of the rule in *Leigh v Jack* (1879) 5 Ex D 264 (discussed in part 4.2.3) which suggested that a paper owner could not be dispossessed by a clamant whose acts were not inconsistent with the paper owner’s intended use of the land. In *Pye v Graham*, Lord Browne-Wilkinson commented that “the suggestion that the sufficiency of the possession can depend on the intention not of the squatter but of the true owner is heretical and wrong”. He explained that the paper owner’s intended use may be relevant only to the extent that it sheds light on the claimant’s intention. You should refer to paragraph 45 of the Lord Browne-Wilkinson’s judgment, which is extracted in part 4.2.3.

Question 4: Do you consider the maintenance of rules of adverse possession to be justified?

This question requires you to assess the justifications for adverse possession to reach a conclusion as to whether you consider their maintenance to be justified. It is asking for your own opinion (and opinions on this topic do differ). If you were being assessed on this question, the conclusion you drew would be far less important than the quality of the argument you made to reach your conclusion. We have considered the justification for adverse possession in part 2. We have seen in part 5.3 that the operation of adverse possession has been constrained in registered land by the LRA 2002 and in part 5.3.2 we assessed the effect of that Act. The justification for rules of adverse possession was also central to the human rights challenge mounted in *JA Pye (Oxford) Ltd v UK* (44302/02) [2008] 1 EHRLR 132 discussed in part 5.4.

To answer this question, you may find it useful to consider the following points:

- What are the general justifications given for the maintenance of adverse possession?
- To what extent are those justifications equally applicable to registered and unregistered land and to what extent are they of specific relevance to unregistered land?
- Are different justifications available for registered land?
- Does adverse possession play the same role in registered and unregistered land?

- What does adverse possession tell us about the nature of land ownership in English law? See, in particular, the extract from Cobb and Fox in part 5.3.2 and their work referred to in the “further reading” for this chapter.