

1. **Abu is aware of a strip of land adjoining the end of his garden. It appears to be unused. What should Abu do if he wishes to take adverse possession of the land? What must he show to prove adverse possession?**

Abu has to show discontinuance of possession by or dispossession of the paper owner, plus adverse possession on his own part: *Powell v MacFarlane* (1979) 38 P. & C.R. 452.

Discontinuance is difficult to show, as even small acts of continuing possession will be enough to negate discontinuance. Most cases now rely upon dispossession. If Abu goes into ordinary possession of the land, he will dispossess the paper owner – *Pye v Graham* [2002] UKHL 30.

In addition, Abu must show that he is in adverse possession of the land. This has three elements: firstly, Abu must show the required degree of exclusive physical possession, that is, occupation or control of the land. Abu can show physical possession by enclosing the land, making it part of his land etc. – see *Buckinghamshire County Council v Moran* [1990] Ch. 623.

Secondly, Abu must also show an intention to possess the land to the exclusion of all others, including the paper owner - 'animus possidendi'. In *Powell v MacFarlane* at p.471, Slade J said :

'animus possidendi involves the intention, in one's own name and on one's own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow.'

Intention is proved primarily by what the squatter does on the land, rather than by what they say their intentions were. Again, the *Moran* case is likely to be most useful here – fencing, treating land as his own, making the only access to land through his land.

Abu must also show absence of consent by the paper owner i.e. the paper owner did not give permission for the squatter to be on the land; he has no consent from owner, so this is not an issue here.

2. **Abu receives a letter from the local council regarding the strip of land. The council claims to be the owner of the land, which it is planning to incorporate into a park in the future. What will be the effect of the letter if the council:**
- (a) **threatens to bring possession proceedings against Abu?**
 - (b) **states that Abu may use the land by licence?**

Sending a letter raises the question of 'stopping the clock'.

- (a) If the letter threatens to bring possession proceedings, it will probably have no effect. See *Buckinghamshire County Council v Moran* [1990] Ch. 623. There was a different result in *Wallis's Cayton Bay Holiday Camp v Shell-Mex* [1975] Q.B. 94, but this was an old implied licence case, so is probably not good law.
- (b) This raises the point in *BP Properties v Buckler* [1987] 2 EGLR 168. In that case, a unilateral grant of a licence was effective when the squatter did not write back. However, this sits oddly with fact that an acknowledgement of title must be in writing to be effective - LA 1980 s.29 – 30, and therefore this case has been criticized. To be on the safe side, Abu should write back refusing the offer of a licence if he wishes to remain in adverse possession.

3. If Abu were a tenant of his land, to whom would the strip of land belong if he were to be successful in proving adverse possession?

Answer: It may belong to his landlord. See *London Borough of Tower Hamlets v Barrett* [2005] EWCA Civ 923, in which it was held that there was a presumption that the tenant adversely possessed land on behalf of the landlord. The land here is adjacent to the demised (leased) land, and enjoyed with it, so the presumption would apply.

4. If Abu were to be able to show a sufficient degree of adverse possession, how likely would he be to become the owner of the strip of land if his 12 years' adverse possession ended in November 2003 and the land was:

(a) unregistered?

(b) registered?

It is very important that you understand which legislation is relevant to this question. Please look at Table 6.1 in order to understand this answer.

- (a) If this is unregistered land, then paper owner's title is extinguished after 12 years. Abu would become the owner.
- (b) If the land is registered, the case falls under LRA 2002. Abu must apply for registration. He does not fall within the three exceptions in paragraph 5 of schedule 6. Therefore, the council will probably object, and they have two years to evict Abu.

5. How would your answer differ if it was registered land and the 12-year period ended in 2001?

Again, you need to look at Table 6.1 in order to understand this answer.

The applicable law would be LA 1980, LRA 1925 s.75 and HRA 1998. Under LA 1980 and LRA 1925 s.75, after 12 years, the council would hold their title on trust for Abu. However, the doctrine of 'implied licence' was revived by *Beaulane v Palmer* [2005] EWHC 1071 (Ch). That would seem to apply here, as Abu's actions have not interfered with council's future plans, so Abu may not become the owner.

The decision in *Beaulane v Palmer* cannot remain English law for long, as the ECtHR in *Pye v UK (Grand Chamber)* held that the LA 1980 is not in fact incompatible with human rights. Therefore, Abu could go to court in the expectation of getting *Beaulane v Palmer* overturned.

6. **Suppose the council took no action while Abu lived in the house, but the strip of land was incorporated into the garden. Abu sold the house to Ben in 2006, not mentioning anything about the strip. In 2007, the council tried to evict Ben from the land. Ben sincerely believed that the land was part of the garden until the council wrote to him. Will Ben have any defence to possession proceedings?**

Unless there was 12 years adverse possession before 13th October 2003, Ben's case will fall under under LRA 2002. This will entitle the council to possession unless Ben can make out one of the exceptions in para 5 sched.6. At first sight, Ben may have a defence under para 5(4) schedule 6 LRA 2002. He occupies adjacent land and has a genuine though mistaken belief that land is his. However, the paragraph states that this belief must have existed for at least the last 10 years. Although Ben has a genuine belief that the strip of land is his, Abu did not, so Ben will have no defence to possession proceedings.