

Chapter 17: Assessment question

Ewa holds a freehold title to Redacre. She uses most of Redacre for her business as a scrap merchant. However she left vacant part of Redacre; this part is called the 'Grey Land'.

In 1989 Fran, the owner of nearby Blue House, started to cultivate Grey Land as an ornamental garden. Fran admits that, 'I have known all along that Grey Land belongs to Ewa'. Indeed in 2002 Fran wrote to Ewa offering to buy Grey Land. (Ewa did not reply to this letter.)

Advise Fran as to the legal position with respect to Grey Land:

1. on the assumption that Ewa's title to the land is unregistered;
2. on the assumption that Ewa has been registered proprietor of Redacre (including Grey Land) since 1970.

On the assumption that Ewa has been the registered proprietor since 1970, would your advice be different if Ewa had not started to cultivate the Grey Land until 1998, but had never written to Ewa offering to buy the land?

Specimen answer

Fran would first have to establish that she was in adverse possession of Grey land since 1989. Adverse possession is defined by cases such as *Buckinghamshire County Council v Moran* as taking control of the relevant land with intent to exclude everyone else from the land. It does not matter that the 'squatter' knows that the land in question is not theirs.

It seems that Fran satisfies the *Moran* test. Her offer to buy made in 2002 is (fortunately) irrelevant. Had it been made in 1998, it would have been an acknowledgement of Ewa's title which would have stopped time running in Fran's favour. But an offer/acknowledgement made after time has already run in favour of the squatter is of no effect. It cannot revive rights which have already been destroyed.

If Ewa's title is unregistered

This title was destroyed when the 12 years ran out some time in 2001. Fran has a new title based on her long possession. She will have no title deeds, but she will be able to defend her right to Grey Land against somebody who buys Redacre from Ewa.

To help secure her position against possible future challenges, Fran should voluntarily register her title. In her application she should admit that she has been an adverse possessor. The Land Registry will initially only grant her a possessory title, but that will be upgraded to absolute title after a further 12 years.

If Ewa's title was registered

Ewa remains legal owner of Grey Land, as the register is conclusive as to legal ownership. From (some time) 2001 to October 2003, Ewa held the Grey Land on trust for Fran. The transitional provisions of the Land Registration Act 2002 abolished this trust. Ewa now holds Grey Land subject to Fran's property right to apply to be registered as proprietor of Grey Land.

Fran should apply for rectification of the registration, which is likely to succeed. (Contrast what will be said in the next section).

Should Ewa try to sell the Grey Land before Fran obtains rectification, then Fran should be able to assert against any purchaser an overriding interest within Sch.3 para.2. (Her right to apply for rectification is a property right.) To be absolutely sure of her position under Sch.3 para.2, she should:

- remain firmly in actual occupation of the Grey Land;
- ensure that her occupation is obvious on a reasonably careful inspection; e.g. Fran should put up a sign board proclaiming her ownership;
- answer any questions posed by strangers regarding her right to be on Grey Land.

If Fran only started cultivating in 1998

This situation is radically different – it is governed by Sch.6 LRA 2002. However, long Fran goes on cultivating, even 50 or more years, she will not be able to gain a proprietary right to Grey Land. At any time Ewa (or her personal representatives) could 'wake up' and bring proceedings to evict Fran.

Fran has a stark choice. Either she carries on cultivating hoping that Ewa has forgotten about Grey Land, or she takes a chance and applies to the registry under Sch.6 LRA 2002 to be registered as owner of Grey Land. If she follows the latter course, the registry will give notice of her application to Ewa, who is likely to be stirred into action.

In the unlikely event of Ewa ignoring the notice from the registry, Fran will gain ownership, she will be registered as owner of Grey Land and Ewa will lose her rights, and without compensation.

But if Ewa does object to Fran's application, this first application is bound to be rejected. Fran's only remaining hope is that Ewa, having secured the rejection of Fran's first application, takes no further action for another two years. The chances are that Ewa will bring eviction proceedings against Fran within two years, but if she does not, then Fran should make a second application to be registered as owner of Grey Land. This time, Fran's application will succeed.

(As Fran knew all along that the land 'belonged' to Ewa, there is no possibility of her relying on the 'reasonably believing encroacher exception').