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#### LEGAL TOPIC: ADVERSE POSSESSION

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Adverse possession is the legal doctrine which allows a person who does not have the paper title of property to claim a right of Possession in the said property, which is actually owned by another person – the Paper Title Holder. The effect of adverse possession is that a person who is in possession as a mere trespasser or ‘squatter’ can eventually obtain a good title and in fact a better title than the true owner, if the true owner fails to assert his/her superior paper title rights within the requisite limitation period in the particular jurisdiction. When we use the term “Paper Title” we are referring to the person who has legitimate ownership of the property by Deed or by Certificate of Title, s of or all intents and purpose this is the lawful landowner.

According to Justice Slade in the case of **Powell v McFarlane (1977)** **38 P & CR 452**, the general position is that in the absence of evidence to the contrary, the owner of land with the paper title is deemed to be the person with the prime facie right to possession. The law will thus, without reluctance, ascribe prima facie possession either to the paper owner or to persons who can establish a title as claiming through the paper owner. However, possession of land by a Trespasser, can be attributed to a person who is not the paper title owner but who can establish actual, physical possession amounting to Adverse Possession.

**Section 3 of the Real Property Limitation Act, Chap 56:03** (hereinafter referred to as the “**RPLA**”) provides that a person claiming adverse possession is required to prove at least sixteen (16) years of uninterrupted exclusive possession against the paper title owner. The section provides as follows:

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*“No person shall make an entry or distress, or bring an action to recover any land or rent, but within sixteen years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to some person through whom he claims, or if such right shall not have accrued to any person through whom he claims, then within sixteen years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to the person making or bringing the same.”*

Furthermore **section 22 of the RPLA** states,

*“At the determination of the period limited by this Act to any person for making an entry or distress, or bringing any action or suit, the right and title of such person to the land or rent for the recovery whereof such entry, distress, action, or suit respectively might have been made or brought within such period shall be extinguished.”*

In the case of **Carlton Maynard v Wilton Blugh CV2017-03002**, the Honourable Justice Frank Seepersad opined,

*“The effect of sections 3 and 22 is that the squatter or trespasser in possession extinguishes the right and title of the paper title owner to the land at the end of the sixteen year statutory period. In that sense therefore the squatter’s possession during that period is adverse to the true owner’s title. Adverse possession thus means possession inconsistent with the title of the true owner. (See Megarry and Wade, sixth edition page 1308, paragraph 21.016.)”*

Once the sixteen year limitation period has expired, the paper title owner who has not asserted his rights in relation to the subject property will be barred from asserting them against the adverse possessor and the paper title owner’s rights will be extinguished and will now be subjugated to and lower

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than the “Possessory Title” of the Adverse Possessor. The adverse possessor would then be able to acquire a good title by Application to the High Court for a Declaration in this regard and by subsequent registration of this Order in the Grant of a Certificate of Title. Alternatively, the adverse possessor may remain in possession, which possession can no longer be disturbed by the paper title owner. Simply put, the adverse possessor would have acquired a better right to possession and ultimate ownership of the subject land, than the person sitting by holding the actual Deed or Certificate of Title to same.

***Did you know that the statutory sixteen (16) year period can be accumulated by possession on the part of a series of squatters?***

Yes! According to Lord Justice Stamp in the case of **Wallis’s Clayton Bay Holiday Camp Ltd. v. Shell-Mex and BP Ltd. [1974] 3 All ER 575, at 585.**

*“If a squatter who has been in possession for less than the full statutory period transfers the land, he can give the transferee a right to the land which is as good as his own and the latter can add the former’s period of possession to his own.”*

In order to acquire title to land by adverse possession, a person must show either:

1. discontinuance of possession by the paper owner followed by at least sixteen (16) years of possession by the claimant or his/her predecessor; or
2. dispossession of the paper owner.
3. Exclusive possession, occupation and/or control by the Adverse Possessor.

The case of **Rains v Buxton (1880) 14 Ch D 537** espoused that discontinuance of possession refers to a situation where an owner in possession goes out and is followed into possession by squatters, whereas,

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dispossession refers to a situation where a squatter comes in and drives out another from possession.

## **ELEMENTS OF POSSESSION**

According to the case of **J.A. Pye (Oxford) Ltd. & Anor. v Graham & Anor. (2002) 3 WLR 221**, in order to establish adverse possession, a squatter must have:

1. Factual possession of the land (*factum possessionis*), that is a sufficient degree of physical custody and control of the land; and
2. The requisite intention to possess the land (*animus possidendi*), that is an intention to exercise such custody and control on one's own behalf and for one's own benefit.

It is important to note that these elements must coincide continuously throughout the entirety of the statutory period of sixteen (16) years. Furthermore, the onus is on the party claiming possessory title to prove, on a balance of probability that he was in continuous possession for the requisite period of sixteen (16) years.

**Factual possession**- this entails a 'complete and exclusive physical control' over the land (**Buckinghamshire CC v. Moran [1990] Ch. 62. at 641B**, per Slade LJ). The squatter's possession of the land must be 'open, not secret; peaceful, not by force; and adverse, not by consent of the true owner'.

The question of whether there has been factual possession must be answered in consideration of the facts of the particular case. According to Lord O'Hagan in **Lord Advocate v. Lord Lovat (1880) 5 App.Cas 273**,

*"The acts implying possession in one case, may be wholly inadequate to prove it in another. The character and value of the property, the suitable and natural mode of using it, the course of conduct which the proprietor might reasonably be expected to follow with a due regard to his own interests – all these things, greatly varying as they must, under various conditions, are to be taken into account in determining the sufficiency of a possession."*

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What is certain however is that an adverse possessor must show sole and undisturbed possession, user and enjoyment deliberately, adversely and exclusively exercised for the limitation period.

In the local Court of Appeal case of **Katwaroo v Kadir and Another CA 86 of 2009**, the Honourable Justice of Appeal Narine quoted the case of **Bligh v. Martin [1968] 1 WLR 804 at 811 F**, wherein Pennycuick J opined:

*“Possession is a matter of fact depending on all the particular circumstances of a case. In very many cases possession cannot, in the nature of things, be continuous from day to day, and it is well established that possession may continue to subsist notwithstanding that there are intervals, and sometimes long intervals, between the acts of user”.*

Some acts which have been deemed sufficient by the Courts to establish factual possession are:

- Fencing of the property and/or construction of a wall around the perimeter of the property
- Consistent maintenance and renovation of the land
- Changing of locks to exclude strangers from the land including the paper title owner
- Grazing animals on the land
- Parking vehicles/using the land as a driveway

**Intention to possess-** a person who claims adverse possession must also establish a continuous possessory intent or *animus possidendi*. According to the case of **JA Pye (Oxford) Ltd. v. Graham [2003] 1 AC 419**, this mental element has been said to comprise an “*intention, in one’s own name and on one’s 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 process of the law will allow*”.

The Courts have subjectively assessed the intention to possess the land. The Claimant’s intention can be established through inference from the conduct of the adverse possessor. Such inferences can be made, however, only if the actions in question are ‘unequivocal and manifested to the true owner’.

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## RESUMPTION OF POSSESSION

A paper title owner may frustrate an adverse possessor's attempt to acquire an indefeasible title. The true owner must show that before the expiry of the sixteen (16) year limitation period, he performed acts which amount to dispossession of the trespasser/squatter and evidences the resumption of possession of the subject property by him/her.

The Courts have held that mere entry upon the property is not sufficient to establish resumption of possession by the paper title owner.

In the case of **Browne v Perry (1991) 40 WIR 165** a claim to adverse possession may be defeated by a written acknowledgment, made by the person in possession to any person claiming to be the proprietor, to the effect that the proprietor's claim is admitted. As such, any written acknowledgment of the proprietor's title signed by the person in possession causes the required period of limitation of sixteen (16) years to recommence at the date of the acknowledgment.

However, a squatter's mere receipt of an informal correspondence demanding that the squatter should quit possession of the land will not terminate the squatter's possession of the land (**Mount Carmel Investments Ltd. v. Peter Thurlow Ltd. [1988] 3 All ER 129**).

**In such circumstances, only a High Court action will suffice and it has to be one demanding possession and also one that is initiated before the expiration of the sixteen year Limitation period. Otherwise you as the Lawful and Law Abiding Land Owner and Paper Title holder with your Deed or certificate of Title, can lose ALL your rights to your property to a squatter, who remains on your land in exclusive possession and occupation of same for sixteen (16) years or more, with the intention to adversely possess same, contrary to your rights and interest. This same Squatter then can apply to the High Court and get a Declaration of the High Court, declaring that your Deed or Certificate of Title has now become extinguished by his act of squatting on your land for more than sixteen (16) years, and he then now acquires a better and**

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**greater Title to your land and now becomes the true and Legitimate and recognized owner of it, in the eyes of the Law.**

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