PRACTICE QUESTIONS

ADVERSE POSSESSION

Question 1. In 2000, Olive owned Blackacre, a modest house on a small lot. In 2005, she properly deeded the property to Andy in exchange for his forgiveness of a loan she couldn't pay back. He agreed to allow her to continue living on Blackacre until she died. In 2006, Andy began serving a prison sentence. In 2007, Olive died. Olive's will specified that all of her property should go to her daughter Bianca. Bianca began living on Blackacre immediately. In 2015, Bianca took a job in a distant city, but she returned to the Blackacre house occasionally to keep it maintained and to visit friends. No one knew about the prior transfer to Andy except Andy himself. When Andy was released from prison in 2017, he brought an action to evict Bianca from Blackacre. In this jurisdiction, the statute of limitations for an action to recover possession of property is seven years.

If Bianca tries to establish adverse possession, which of the following requirements will be most likely to undermine her case?

A. If the jurisdiction requires continuous possession for the statutory period

B. If the jurisdiction requires open and notorious possession

C. If the jurisdiction requires good faith

D. If the jurisdiction has a disability statute

Question 2. Alberto owned Blackacre which was adjacent to Whiteacre, owned by Berta. In 1998, Alberto built his garage without doing a survey and, as a result, part of new garage extended about two feet over the property line onto Whiteacre. In 2005, Alberto died. His will gave Blackacre to his daughter Cara. She moved in and then in 2007 decided to sell Blackacre to Darrell, who promptly moved in. In 2012, Berta was trying to sell Whiteacre to a potential buyer, who discovered that the garage was over the line. In 2012, Berta sued Darrell to require him to move the garage or pay damages. Darrell claims title by adverse possession, which requires ten years of possession in this jurisdiction. Which of the following is true?

A. Darrell cannot meet the statutory period of possession, because he can tack on the possess ion of Cara but not Alberto.

B. Darrell cannot tack on the possession of either Cara or Alberto to meet the statutory requirement.

C. Darrell should be able to meet the adverse possession requirement by using the possession of Cara and Alberto in addition to his own.

D. Darrell cannot claim adverse possession in any case, because he does not meet the adversity requirement in any jurisdiction.

3. Andy and Sue Smith, husband and wife, and real estate lawyers lived in a subdivision in Denver, Colorado. An empty and vacant lot existed between the Smith house and a house owned by David Crook. David Crook owned the vacant lot. Andy and Sue, having heard that Mr. Crook was in prison, decided that they were going take the vacant lot by adverse possession. They, of course, knew that Mr. Crook owned the vacant lot. Andy and Sue extended their porch so it lay across half of the lot. Andy and Sue next built a fence around the vacant lot so that you could only enter the vacant lot from the Smith property, and they built a driveway over a portion of the lot. The Smith’s maintained the fence, driveway, and porch on Mr. Crook’s vacant lot for fifteen (15) years. If the State of Colorado has a 10 year statute of limitations period for adverse possession, and you later learn that the Smiths were ejected by Mr. Crook and the court upheld the ejectment, which of the following could be reasons for Mr. Crook’s success?

(a) under Colorado law imprisonment is a disability giving Mr. Crook a longer statute of limitations period to bring the action for ejectment;

(b) the State of Colorado is one of those minority states that require a good faith basis to satisfy an adverse possessor’s hostility/claim of right;

(c) the Smith’s would not be able to satisfy the actual entry that was exclusive requirement;

(d) both (a) and (b) could be reasons why Crook is able so successfully eject the Smiths.

4. Adam Prospect received a deed for a 0.5 acre lot in Maury County, Tennessee, with an existing residential home from Mike Tucker in 2010. The eastern boundary of the lot bordered an open field owned by Jimmy Hilvert. When Adam Prospect purchased the lot a beautiful flower garden was located to the east of the house. Mike Tucker explained that he had maintained the garden in its current location since the year 1995 when he purchased the home. When asked whether the garden was within the 0.5 acres, Mike Tucker said he thought it was but he didn’t really care and had never done a survey. Mike Tucker in addition to the deed told Adam that he gave Adam all rights he had in the flower garden and its current location. Adam Prospect continued to maintain the flower garden in its current location after closing.

In May 2016, Mr. Hilvert did a survey as part of potential sale of the fields that bordered Adam Prospect’s property. The survey revealed that a four foot strip of eastern most portion of the flower garden encroached on Mr. Hilvert’s property by one-half of a foot. Mr. Hilvert sued Adam Prospect in circuit court and requested the removal of the flower garden from Hilvert’s property. Adam Prospect comes to you for legal advice and you think about raising the defense of adverse possession. Which element of adverse possession do you think Adam Prospect will have the hardest time establishing:

(a) hostility/adverse under a claim of right

(b) the statute of limitations period for adverse possession

(c) open and notorious

(d) color of title.

5. A father gave his daughter marketable title to a five-acre parcel of undeveloped land that adjoined 200 acres of uninhabited forest owned by a neighbor. When she visited her property with her father, he mistakenly pointed out the boundary line. She subsequently staked out the boundaries and built a log fence along what she thought was the boundary line. Approximately an acre of the neighbor’s land was inside her fence. The daughter built a cabin and lived in it for 30 years until she had to sell the property for medical reasons.

The daughter entered into a contract to sell the land. In accordance with the contract, the purchaser had a survey of the land done, which revealed the boundary discrepancy in the legal description. The purchaser contacted the neighbor, who said he knew nothing of the matter and did not consent to the daughter’s placement of the fence on his property. The purchaser then refused to proceed with the purchase. The jurisdiction in which the parcel was located had a 20-year period of occupation to satisfy the requirements of adverse possession.

If the daughter sues for specific performance of the land sale contract, she will:

(A) Prevail, because the daughter satisfied all elements required to make out adverse possession of the portion of the neighbor’s property within her fence.

(B) Prevail, because the land sale contract was unaffected by the minor discrepancy in the legal description.

(C) Not prevail, because the daughter’s title to the land is not marketable.

(D) Not prevail, because the daughter’s fencing in of the neighbor’s property was not hostile, even if the neighbor had no knowledge of her actions.