

ADVERSE POSSESSION

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A crash course

- Disposition of the true owner of land by a squatter
- Necessary elements:
 - factual possession
 - sufficient intention
 - without the owner's consent
 - a specified period of time

J A Pye (Oxford) Ltd v Graham [2002] UKHL 30

Buckinghamshire County Council v Moran [1990] Ch 623

The old law

- all unregistered land and registered land where AP for relevant period prior to 13/10/03
- combo of (1) positive force of AP **giving** title and (2) negative force of LA 1980 **extinguishing** paper title
 - For registered land rather than paper title being extinguished, the land is deemed to be held on trust for the squatter (s75 LRA 1925; Sch 12 [18] LRA 2002).

The new law (1)

- registered land where AP not established for relevant period prior to 13/10/03
- “squatter proof”(ish)
- mere running of time does not convey title

The new law (2)

Procedure under the new law

- After 10yrs' AP squatter entitled to apply to be registered as proprietor
- Notice given to true owner (and others)
- If opposed within 65 business days application rejected unless one of three conditions met – proprietary estoppel, some other reason, reasonable mistake as to boundary ([5] Sch 6)
- If unsuccessful can reapply after 2 more years.
- If not opposed: squatter succeeds

Q1: Can I AP any land?

- No public highways (*R ex parte smith v Land Registry of Cambridge County Council* [2010] EWCA Civ 200)
- However:
 - Subsoil
 - Party walls
 - Land belonging to an owner whose title derives from statute (e.g. compulsory purchase)
 - Foreshore

Q2: enclosure and exclusion

“The strongest possible evidence...”

Cockburn CJ in *Seddon v Smith* (1877) 36 LT 168

- Not a requirement; AP considers exclusive use not exclusionary use.
- Context very important (*Pye* at [41])
- Examples:
 - Garden/land: *Chapman v Godinn Properties Ltd* [2005] EWCA Civ 941
 - Car park: *Gayadeen v AG Trinidad & Tobago* [2014] UK PC 16

Q3: how does AP work with a lease?

By the tenant:

- Never during currency of the lease
- Encroachment on to TP land by T will benefit L if the land is close by and no different intention is shown by T or L during the relevant period
- Of other land belonging to L: it is presumed (rebuttable) that this land is a mere addition to the demised land and becomes subject to the terms of the tenancy.
- Tenant at will: from determination of the tenancy
- Tenancy at sufferance: from commencement of the tenancy

AP & leases cont'd

- By the landlord: notwithstanding that L must not derogate from his grant he is able to adversely possess his T
- By a third party: the relevant period runs against T from dispossession but only against L from the determination of the lease.

AP, leases & the surrender of leases

Unregistered land

T can surrender lease once interest extinguished:
Fairweather v St Marylebone Property Co Ltd [1963] AC 510, HL – strongly criticised but the reasoning of the majority has survived

Registered land

T cannot effectively surrender the lease once interest extinguished (*Spectrum Investment Co v Holmes* [1981] 1 WLR 221)

Q4: what's up with the transition mumbo-jumbo?

- If you had 12yrs AP of registered land prior to 13/10/03 you could apply for immediate registration under Sch 12 [18] LRA 2002
- 13/10/03→13/10/06: a squatter's right to be registered as proprietor was an overriding interest that survived first registration and bound successors in title (Sch 12 [7] & [11]). After these 3yrs up have to satisfy Sch 3 [2].

Q5: the squatter wasn't claiming an interest and now he is!

- Can rely on estoppel in defeating AP
- Representations & detrimental reliance?
- What if the squatter has changed his mind because he didn't know about AP and now does? Irrelevant.

St Pancras & Humanist HA v Leonard [2008]
EWCA Civ 1442

Q6: we missed the 65 day window, what can we do?

- **65 business days**
- If squatter not actually in AP for 10yrs: apply to rectify under Sch 4 [2]
- *Baxter v Mannion* [2011] EWCA Civ 120 – true owner missed deadline due to illness. The court rejected that Sch 4 was limited to procedural mistakes

Q7: a dispossessed owner has registered the land anyway

- Dispossession whilst land unregistered
- Registration pre-13/10/03: s75 LPA 1925 would have applied therefore look to Sch 12 [18] LRA 2002.
- Registration post-13/10/03: apply to alter register under Sch 4 LRA 2002 and substitute squatter as registered proprietor
 - S11 LRA 2002: first registered proprietor takes subject to LA interests of which it has notice
 - If in occupation, rights protected as overriding interest (Sch 1 [2])
 - No indemnity payable

Q7 cont'd: no notice and no occupation?

- Interpreting mistake under Sch 4: “*whenever the registrar would have done something different had he known the true facts*” (*Megarry & Wade: The Law of Real Property*, 8th Ed. [7-133])
- If alteration constitutes rectification which prejudicially affects the title of the registered proprietor they are entitled to an indemnity (Sch 8 LRA 2002)
 - For the squatter: (1) not prejudicially affected because extinguished; (2) it is AP which has prejudicially affected the true owner’s title, not registration
 - For the paper owner: (1) s58 LRA 2002; (2) it is a feature of the LRA 2002 that an indemnity can be claimed by a person who in common law is without title (e.g. transfer of land void); (3) s11(4) provides for the vesting of title and exception of LA interests where there is notice; (4) policy decision as under LPA 1925 AP rights were overriding interests & binding in absence of actual occupation – not maintained in LRA 2002.

Q8: the new law and rejection

- A squatter makes his application under Sch 6 [1]
- Sch 6 [6] provides: ““(1) **Where a person’s application under paragraph 1 is rejected,** he may make a further application to be registered as the proprietor of the estate if he is in adverse possession of the estate from the date of the application until the last day of the period of two years beginning with the date of its rejection”.

More rejection

What is rejection?

- Could be following substantive decision but could equally be rejection by HMLR prior to notice being given to others
- *Gill v McCarthy* [2016] UKFTT019 (PC)
 - 4 applications in 3 years – was the latest app under [1] or [6]?
 - Decided [6] only applies if squatter has 10yrs AP and fails on [5] conditions
 - Implies this is the only solution
 - Poor, thin reasoning

How to cope with rejection

COMMON SENSE:

Likely any [6] app requires the initial app ([1]) to be:

- a) Valid
- b) Referred to a Tribunal
- c) Substantively determined
- d) AP for 10yrs established but fails on [5] conditions

Law Commission is looking into this.

Developments

Law Commission Consultation Paper No 227

- Consultation now closed; report and draft bill expected spring 2018
- Focusing on :
 - removal of the first two conditions in [5] of Sch 6
 - clarification of relationship between belief and the date of application under the third condition of [5] of Sch 6
 - clarification of when [6] of Sch 6 can be utilised