

PROBLEMS

The book (pp. S81–S83) has a number of questions about disability provisions. Here they are slightly revised. One reason for doing this is that you are also taking a course in legislation and regulation.

Before you actually do the problems the problems, think about the following questions:

Why have disability provisions? Which of the policies of the statute do they further?

42 Pa.Cons.Stat.Ann. §5533(a) (2012) has abolished the disabilities of insanity and imprisonment. It still has a general disability for civil actions by minors, which are defined as those under 18 “at the time the cause of action accrues.” They get the full period after they reach their majority. *Id.* §5533(b)(i)–(ii). Hence the PA stat. is not particularly interesting. If, however, we go one state west, we get a provision of considerable interest.

“An action to recover the title to or possession of real property shall be brought within twenty-one years after the cause of action accrued, but if a person entitled to bring the action is, at the time the cause of action accrues, within the age of minority or of unsound mind, the person, after the expiration of twenty-one years from the time the cause of action accrues, may bring the action within ten years after the disability is removed.” OHIO REV. CODE ANN. § 2305.04 (Baldwin from Westlaw 2012, derived from Ohio Rev Stat 4978, codified, I think, in 1851; the Rev Stat also included “a married woman” and “imprisoned” among the ‘disabled’.)

“That if any person or persons that is or shall be entitled to such writ or writs, or that has or shall have such right or title of entry, be or shall be, at the time of the said right or title first descended, accrued, come, or fallen, within the age of one and twenty years, feme covert, non compos mentis, imprisoned or beyond the seas, that then such person and persons, and his and their heir and heirs, shall or may, notwithstanding the said twenty[-one] years be expired, bring his action or make his entry as he might have done before this act, so [long] as such person and persons, or his or their heir and heirs, shall within ten years next after his and their full age, discoverture, coming of sound mind, enlargement out of prison, or coming into this realm, or death, take benefit of and sue forth the same, and at no time after the said ten years.” 21 Jac. 1, c. 16, § 2 (1623) (spelling modernized).

Here’s some more questions to think about before you do the problems:

What is the difference in the wording of the English statute and the Ohio statute?

Is this word “disability” being used in a Hohfeldian sense?

What did the Ohio legislature do to the English statute? (Notice the assumption about legislative history here.) (1) Removed the stuff about married women, beyond the seas, and prison. (2) Fussed around with the wording. The first change is clear enough. It’s the second I want to focus on.

AP enters in 1990. The limitations period is 21 years. AP has possessed in all the ways that AP is supposed to possess. The age of majority in both England and Ohio is 21. None of the characters in the problems are, or were at any relevant period, married women, imprisoned, or ‘beyond the seas’. When does the statute run out against TO

(‘true owner’) under the following assumptions? (Suggested answers are given in square brackets.)

- (1) TO was of sound mind in 1990. TO became insane the day after AP entered. TO is alive and not well today. [2011]
- (2) TO was 18 in 1990. He is alive and well today. [2011]
- (3) TO was 5 in 1990. TO died in 2005. H, TO’s heir, was of full age, of sound mind, and not in prison at the time. [2011]
- (4) TO was insane in 1990. He died insane in 2005. H is his heir and has no disability. [2015]
- (5) TO was 5 in 1990. He became insane in 1995. He is alive and not well today. [2016, or still tolled under the English statute; 2016 under the Ohio statute]
- (6) TO had no disability in 1990. He died in 1995. H is his heir and was 6 in 1995. [2020 under the English statute; 2011 or 2020 under the Ohio].
- (7) TO was 5 in 1990. He is alive and competent today. [2016 under the English statute; 2011 or 2016 under the Ohio statute].
- (8) TO was insane in 1990. TO died insane in 1995. H was 6 at the time of TO’s death. [2011 or 2020 under the English statute; 2011 under the Ohio.]
- (9) Would your answers to any of the above questions be different if you were told that all the disabled parties had a judicially-appointed guardian or conservator who could sue on their behalf?
- (10) TO disappeared in 1980. AP entered in 1981. Your client wants to buy the land from AP. When would you advise your client that s/he is ‘safe’?