

I. SOME THOUGHTS ON THE LAST CLASS

1. Do ask questions.
2. The use of old cases.

II. POLICIES AND PRINCIPLES

Why do we have a policy of protecting peaceable possession? Is it a policy or a principle? The Maitland extract suggests some possible answers:

1. Proof (notice how nicely it works in *Tapscott* and how it would have worked had they gone with possession in *Winchester*). That's a policy in the more technical sense.
2. Peace
 - a. From the point view of the society at large
 - b. From the point of view of the individuals involvedThese are also policies in the more technical sense.
3. Possession worth protecting in itself? That's a principle.

III. ADVERSE POSSESSION

1. 42 PA. CONS. STAT. ANN. § 5530. It is derived from Stat. 21 Jac. 1 (1623). That statute, unlike the Penn. statute (or that of most states) has a preamble that announces the purpose of the statute, which it declares to be "the avoidance of suits" and "the quieting of men's titles."

(a) General rule.—The following actions and proceedings must be commenced within 21 years:

(1) An action for the possession of real property.

(2) An action for the payment of any ground rent, annuity or other charge upon real property, or any part or portion thereof. If this paragraph shall operate to bar any payment of such a rent, annuity or charge, the rent, annuity or charge to which the payment relates shall be extinguished and no further action may be commenced with respect to subsequent payments.

(b) Entry upon land.—No entry upon real property shall toll the running of the period of limitation specified in subsection (a)(1), unless a possessory action shall be commenced therefor within one year after entry. Such an entry and commencement of a possessory action, without recovery therein, shall not toll the running of such period of limitation in respect of another possessory action, unless such other possessory action is commenced within one year after the termination of the first.

2. What does § (a)(1) mean? What does § (a)(2) mean? What does § (b) mean? (We'll come back to § (b).)
3. What are the consequences of the statute for ownership.
4. Derivation from the statute of the 5 essential elements in *Bellotti* (p. S82):

At first glance it would seem that they are all judicial glosses, something that the judges had added to the statute that is not in the statute. That view may be exaggerated.

- a. actual
- b. exclusive
- c. open and notorious
- d. hostile and under claim of right
- e. continuous

5. Which of these were really at issue in *Belotti*? Continuity clearly the big issue. There's also an acutality issue w/ regard to the part that was on Berrian Avenue.



6. How were these requirements met in *Peters*? The trial court held that Peters' possession was continuous and open and notorious for the requisite 10-year period in Alaska, the issues were exclusivity and hostility. Here the appellate court reversed. What does it have to say about:
- exclusivity "In the present case Willis Peters' use of the property in question was exclusive and not in common with the public generally. Occasional clamdiggers could not destroy the exclusive character of Peters' use since such casual intrusions were clearly not considered by Peters to interfere or conflict with his own use. In allowing strangers to come on the land to dig clams and in allowing friends, relatives and other members of the Tlingit tribe occasional use of the land, Peters was merely acting as any other hospitable landowner might. Appellee's implication that Peters held the land as steward or custodian for all the Tlingits of Alaska is not supported by the record. Rather, it appears that Peters held his land as any other landowner might, for himself and for his descendants."
 - hostility "But, whether Peters thought the land was legally his or Nick Bez's or the cannery's or the Girl Scouts' is not controlling. What is more important is that he at all times acted as if the land were his and treated it as his."
7. Nonetheless, viewed on their face, the policy of avoiding suits, i.e., punishing the laches of the true owner, is not nearly so much at stake in the five requirements as is the policy of quieting people's titles or rewarding the possessor.
8. There's one more basic question about the statute. How long should the statute of limitations for real actions be? Why has there been a tendency to reduce it? The time in the English statute reflects the peculiar sanctity attached by the common law to land. The lowering of this limit reflects both the decline of this sanctity and the increasing mobility of our society.

IV. POLICIES AND PRINCIPLES REVISITED

The Ballantine, Patton, and Holmes excerpts serve to reinforce this point, but also to show what a divergence of views can be incorporated under the heading “adverse possession.”

1. What’s Ballantine’s policy? Ballantine suggests that the protection afforded possession by the statute has not for its object to reward the diligent trespasser, nor yet to punish the laches of the true owner for sleeping on his rights, but rather to quiet openly and consistently asserted titles, to provide proof of meritorious titles, and to correct errors in conveyancing. He thus comes out pretty much with Maitland’s third view of the policy for protecting possession, the one that he ascribes to Ihering (S22–S23).
2. What’s Holmes’s policy or is it a principle? Holmes, on the other hand, suggests a view that is ultimately quite close to the Hegelian notion of protecting property in order to protect the will of the possessor.
3. What’s Patton’s policy? Patton, on yet another hand, believes that the statute means what it says. It is a statute of limitation not a codification of Continental ideas about possession. Patton is struggling against 19th-century cases like *Jasperson v. Sharnikow* (p. S99), which had tended to incorporate ideas about the good faith of the adverse possessor in our law.
4. Taken to its extreme the Ballantine policy would not protect the AP if it was clear that that he had no claim to ownership. Taken to its extreme the Holmes policy would not protect the adverse possessor who mistakenly believed that his possession was permissive. Taken to its extreme the Patton policy would not require that the AP maintain continuity against third-party wrongdoers. None of these extremes is, for the most part, the law, so we might say, as we will say many times in this course, that in the majority of cases all three policies will be fulfilled, so that courts do not have to choose among them, and that the general results in the minority of cases where policy choices are at stake do not show a consistent adoption of one policy over the others.