1. Last week we reviewed the so-called “five essential elements” in *Bellotti v. Bickhardt* and asked what their relationship is to the statute. 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, as we saw, may exaggerated. Nonetheless, viewed on their face, the policy of avoiding suits–punishing the laches of the true owner if you will–is not nearly so much at stake in the five requirements as is the policy of quieting people’s titles–rewarding the possessor, if you will. If the requirements are not met, a strict application of the statute of limitations coupled with the notion of relativity of title, could mean that the “true owner” is someone who possessed for a very short period of time and under the most dubious of circumstances. Because the courts decide adverse possession cases with a weather eye to who it is who is going to be awarded the title to the land if the statute of limitations is held to have run out, the results in adverse possession cases cannot always be reconciled with the nature of the statute itself.

2. 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.”
   a. Ballantine: by protecting possession we protect the owner.
   b. Holmes: possession is worth protecting in and of itself.
   d. Taken to its extreme:
      i. The Ballantine policy would not protect the AP if it was clear that he had no claim to ownership.
      ii. The Holmes policy would not protect the adverse possessor who mistakenly believed that his possession was permissive.
      iii. 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.

3. Before we get to Hohfeld, there’s one point on *Belotti* that we did not cover last time, because the note that vaguely explains it was not assigned until today. On p. S81, the *Belotti* court says: “By an alleged corrective deed, dated April 24, 1916, and not recorded, the devisees and heirs of Riedel attempted to correct their deed of 1906 and convey to the defendant Bickhardt by correct description the premises of which he was actually possessed, including the portion of the plaintiff’s property which is the subject-matter of this action. The trial court held that this instrument was champertous and of no effect.” Does anybody have any idea what that means? Herewith of barratry, champerty, and maintenance.
4. Hohfeld:

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<th>Jural Opposites</th>
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<td>no-right</td>
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Hohfeld’s fundamental insights were two:

a. The language of the law is, or ought to be, language about relationships between legal persons. Neither a piece of land nor a cow can bring or defend a law suit.

b. The key to understanding the differences among different types of legal relationships is to look to the correlative. A landowner might say “I have a right to possess my land; I have a right to use my land; I have a right to convey my land. I have a right not to have my land taken from me by the government, unless it pays for it.” But each of those phrases means something different if we look to the correlative. What is the correlative of each of these statements of right?

5. What happens if we apply Hohfeldian terminology to *Keeble v. Hickeringill*?

6. How might we apply Hohfeldian terminology to the position of an adverse possessor?

   a. Rights
   b. Privileges
   c. Powers—there are at least two
   d. Immunities?

7. Consider the following problems in Hohfeldian terms:

   a. O(wner) → (i.e., conveys) a life estate W(ife, but the relationship is irrelevant to this problem) → remainder C(hild, but the relationship is irrelevant to this problem). (We will consider life estates and remainders at some length later in the course. Suffice it to say here, that the LT has a right to possession during his/her life, a privilege of use during his/her lifetime with some limits on what s/he can do to impair the capital value of the land, and a limited power to convey, because the remainderman will be entitled to possession when the LT dies.)

   The conveyance takes place before AP enters. AP enters on W (she left and went to California). The statute runs out during W’s lifetime. Shortly after statute has run out, W dies, C sues AP.

   i. Neither W nor C has held for statutory period, but together they have
   ii. AP enters before O conveys to W → remainder to C. Rest of the facts same as above.

   b. AP → life estate W → remainder C, W dies, C enters, O sues

   i. Neither W nor C has held for statutory period, but together they have
   iii. After holding for statutory period, W → T, W dies, C sues T

   c. O → life estate W → remainder C, but the conveyance is void, W enters and holds for statutory period → T and dies, C sues
d. TO1 and TO2 are co-owners of land. Let’s say that they are sibs. There’s a small house on the land, with room for only one person. TO1 lives in it, and TO2 lives elsewhere. After 21 years TO1 claims to have adversely possessed against TO2.

e. In 1985, APH and APW, husband and wife, enter upon land pursuant to a void conveyance that purports to give them a co-tenancy. They farm the land together and generally behave as if they were cotenants. Unbeknownst to either of them APW is, in fact, TO. APW predeceases APH in 1998, who remains in possession after her death, but not for the statutory period. He is then sued by APW’s intestate heir (APW having died intestate). The jurisdiction has a seven-year statute of limitations for those who pay the taxes on the land and APH has paid the taxes since 1985. [This was a principal issue in an exam question that I gave a few years ago. Imagine a 21 year statute and that the year is 2000.]

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8. **Mendonca**

a. What does the second section of the Pennsylvania statute mean (p. S85)?

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. (42 Pa. Cons. Stat. Ann. sec. 5530(b))

b. How does the Massachusetts provision (p. S101) differ?

No person shall be held to have been in possession of land within the meaning of this chapter merely by reason of having made an entry thereon, unless he has continued in open and peaceable possession thereof for one year next after such entry or unless an action has been commenced upon such entry and seisin within one year after he was ousted or dispossessed. (M.G.L. ch. 260 §28)

c. Why did the SJC ignore the Massachusetts provision in *Mendonca*?