

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 be exaggerated. It is possible to derive the requirements from the statute if we focus on what it means to have a cause of action for possession of real property for the statutory period. We probably need to add the concept of estoppel to get in the open and notorious requirement, but that’s pretty standard in the jurisprudence of statutes of limitation, e.g. fraud. The continuity requirement is also decidedly problematical, but even that with some massaging can be reconciled with the statute with the notion that a break in continuity gives rise to a new cause of action in the true owner (TO). 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.
  - c. Patton: the statute of limitations means what it says.
  - d. Taken to its extreme:
    - i. The Ballantine policy would not protect the AP if it was clear that that s/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. Hohfeld (the answers to the questions that follow may be found at [http://www.law.harvard.edu/faculty/cdonahue/courses/prop/lec/outcl07\\_19F\\_selftest.html](http://www.law.harvard.edu/faculty/cdonahue/courses/prop/lec/outcl07_19F_selftest.html)) :

Jural	right	privilege	power	immunity
Opposites	no-right	duty	disability	liability

Jural Correlatives	right	privilege	power	immunity
	duty	no-right	liability	disability

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?
4. What happens if we apply Hohfeldian terminology to *Keeble v. Hickeringill*?
  5. 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?
  6. 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.)
      - i. 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.
      - 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
      - ii. Variant: AP1 enters in 1990 AP2 enters in 2000. 20 year statute. TO sues in 2015.
      - 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

Estoppel comes in a number of varieties. The estoppel that we are talking about in this case is estoppel in pais, literally 'country estoppel'. It is a close cousin of promissory estoppel; it also bears some relationship to fraud. The elements of estoppel in pais are usually said to be these: If a party to a case has behaved in

such a way as to lead the other party reasonably to rely on that behavior, he won't be allowed subsequently to change his mind to the relying party's detriment. That sentence is full of weasle words, perhaps the most musteline (from *mustela* the Latin word for a weasle) is 'reasonable'.

- 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 1995, 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 2008, who remains in possession after her death, but not for the main statutory period. He is then sued by APW's intestate heir (APW having died intestate). The intestate heir is the same person who was the conveyor of the void conveyance in 1995. 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 1995. [This was a principal issue in an exam question that I gave a few years ago. Imagine a 20 year statute and that the year is 2013. See *Mats*. p. S110.]

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7. *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*?