



# Real Property

## Class 9



# Adverse Possession Elements – Exclusivity

- Adverse possessor must *not share* the property with the "true" owner
- Adverse possessor can share the property with another adverse possessor
- Possessing part of property while excluding the World from the whole property, entitles the possessor to the whole property
- Possessing part of property while excluding the World from only that part of the property, entitles the possessor to only that portion



# Adverse Possession Elements – Open and Notorious Possession

- Possession must not be done in a manner that implies *hiding* or implies that the possessor is not the true owner
- Owner must either actually know of the possession or have reason to know of the possession



# Adverse Possession Elements – Hostile – Under Claim of Right

- This **DOES NOT** mean that:
  - There have to be **malicious feelings** or intent between the parties
  - The adverse possessor has to really **honestly believe** that she has a right to possess the land
- This **DOES** mean that:
  - The possessor **can't openly acknowledge** that he is **only *possessing*** the land, but does not truly own it
  - Adverse possession doesn't count if the possessor has a **legal right or permission** to be there (e.g., a tenant)
- The problem of the mistakenly placed fence...



# Adverse Possession Elements – Continuity

- Must be *continuous and uninterrupted*, but only insofar as is usual for that property
- **Tacking:**
  - Successive true owners: Tacking always applies and works
  - Successive possessors: Tacking only applies if the first possessor **voluntarily gives and properly conveys the property** to the second possessor



# Duties of the Seller

## 1. Convey marketable title:

- This means title that is duly documented in the property records office. Title acquired by adverse possession is not marketable unless it can be proven with court records
- Title must be free of encumbrances (unless stated otherwise in the contract), such as mortgages, easements or liens.
  - Duty to convey marketable title “merges” and is extinguished when the deed is accepted by the grantee

## 2. Duty of Disclosure:

- Common Law Rule: *Caveat Emptor* “Let the Buyer beware” (only duty on seller was to avoid making any affirmative misrepresentations)
- Modern Rules: Seller must disclose all latent defects
- *Many states require disclosure forms to be filled out by the seller!*



# QUIZ TIME!

