

## Question MEE 5 – February 2023 – Selected Answer 1

1. Wendy obtained title to the central acre by adverse possession. The issue is whether Wendy adversely possessed central acre as to John/Mary when Mary was under a disability. The general rule for adverse possession is that the adverse possessor must: 1) Continuously possess the property they are claiming, 2) Openly and notoriously, 3) Hostile (possession must be against the owners claim of right and without his consent), 4) Exclusively and actual possession. The rule for disabilities is that the disability must be present at the time the adverse possessor began possessing in order for the time to be tolled. Here, Mary - whom is John's descendant was under the age of 18 when she took title to the property and would qualify as a disability. However, the rule states that the disability must have existed as the rightful owner when the adverse possessor began adversely possessing. John was under no disability when Wendy began possessing in 2010 and therefore the 10 year time for adverse possession continued to run against Mary when she took possession in 2016. Because Wendy exclusively and actually possessed the central acre, without the consent of John the owner, was openly using the property, and was in continuous possession for the 10 years, she will take title to the central acre.

2. Wendy did acquire title to the western acre. The issue is whether Wendy adversely possessed the entire tract of John's land under color of title. The general rule is that an adverse possessor will only take title to the part of the property that they have been utilizing/possessing. However, there is an exception when the adverse possessor is possessing based upon color of title. Here, Wendy was only making use of the central acre. There are no facts to indicate that she ever utilized the other area of the property in order to be qualify as openly using the property but she did receive a quitclaim deed from one of the Smith's descendants. The deed described all three acres and Wendy began adversely possessing the tract. Wendy will take title to all of John's land.

B. Wendy will not obtain title to Beth's Eastern Acre. The issue is whether Wendy adversely possessed the Eastern Acre that Beth owned by her color of title to the entire three acres. The general rule under adverse possession by color of title is that the adverse possessor will obtain title to the entire tract of property if they meet the requisite elements for adverse possession listed above. However, Wendy did not utilize or possess the eastern acre and has no right to Beth's interest as Beth owned and recorded the deed to her eastern acre. The three acres was divided among John and Beth. Wendy's possession of the tract never came about as to the eastern acre and did not meet the elements required to take title to that part of the property. Wendy only adversely possessed John/Mary's interest under color of title and has no claim of right to the eastern acre under color of title.

## Question MEE 5 – February 2023 – Selected Answer 2

### Adverse Possession to Central Acre in 2020

Adverse possession requires the possessor's possession be open and notorious, continuous, exclusive, and hostile for the statutory period. The facts indicate that these requirements were met as of January 1, 2020, ten years after Wendy began occupying the land on January 1, 2010. As of January 1, 2020 Wendy was entitled to bring an action to quiet title to Central Acre. The continuous requirement of adverse possession does not require that the adverse possessor stay in possession all the time, only for a reasonable amount of time to establish continuous possession. For example, a summer home would not be required to be possessed year round but if possession occurred for 6 months out of the year that would likely be sufficient. Here, Wendy ceased actual possession of Central Acre two months before bringing the quiet title action. This two month gap in actual possession would likely not defeat the continuous requirement for adverse possession and Wendy could still proceed.

Additionally, if at the time the cause of action for the actual owner accrues, which would be the time the adverse possession starts, the owner has capacity, the later incapacity of the actual owner will not defeat the continuous running of the statutory period for the adverse possessor. Here, in 2010 when Wendy took actual exclusive possession of central acre, John the owner had the capacity to bring suit to remove Wendy. The fact that in 2016 John died leaving the land to his minor daughter Mary does not defeat the claim of adverse possession Wendy has. This is further supported by the adverse possession law of the state which states that an action to recover title shall be brought within 10 years after the cause of action accrues. The only exception is if at the time the cause of action accrues the person entitled to bring the action is under 18 is there an extension for 5 years after that person turns 18. The cause of action accrued in 2010 when John was alive so Wendy would acquire title by adverse possession to Central Acre.

### Western Acre Title

The issue here is whether Wendy's adverse possession of Central Acre entitles her to acquire title in Western Acre as well. This land was owned by the same owner that had title to Central Acre, John. When the adverse possessor is operating under color of title, that color of title may allow the possessor to acquire title to the whole property conveyed in an adverse possession action to quiet title. This is further supported by the fact that the same owner that owned Central Acre also owned Western Acre. Assuming there are no physical boundaries that distinguish Central

Acre from Western Acre, Wendy operating under color of title to both properties would likely acquire title to Western Acre in her action to quiet title.

### Eastern Acre Title

The same rules that applied to Western Acre above apply here. However, Eastern Acre was owned by a different owner Beth than was the rest of the property. While Wendy was operating under color of title to the whole property, the requirements for adverse possession were not met as to Beth's Eastern Acre. Wendy did not have actual, open, notorious, continuous, exclusive, and hostile possession of any part of Beth's Eastern Acre for the statutory period. The requirements for adverse possession of Beth's property were not met and even though Wendy was operating under color of title to the whole 3 acres, Wendy would not prevail in acquiring title to Eastern Acre because she did not meet the requirements for adverse possession to any of Beth's Eastern Acre.

### **Question MEE 5 – February 2023 – Selected Answer 3**

1. The issue here is whether Wendy acquired title by adverse possession to the Central Acre in 2020.

In order to acquire title by adverse possession, a person must possess, for a period of time specified under state law, in a manner that is actual, open and notorious, continuous, exclusive, and hostile. The possessor need not act under a claim of right in most jurisdictions.

In this jurisdiction, the adverse possession period is 10 years. The catch here is that if at the time the cause of action accrues, the person entitled to bring that action is under 18 years of age, such person, after the expiration of 10 years from the time the cause of action accrues, may bring the action to recover title or possession within five years after reaching the age of 18. That means that the adverse possession period tolls if the landowner has not reached 18 at the time of the initial adverse possession.

Here, Wendy possessed the Central Acre in a manner that was actual, open and notorious, continuous, exclusive, and hostile for 10 years, starting on January 1, 2010. That means that in 2020, 10 years after she began her possession, Wendy acquired title by adverse possession.

The fact that John passed the land down to his 12-year-old heir in 2016 does not toll the adverse possession period because at the time the cause of action accrued

(*i.e.* 2010) the person entitled to bring that action (John) was not under 18 years of age.

Accordingly, Wendy acquired title of Central Acre by adverse possession on January 1, 2020.

2a. The issue here is whether Wendy also acquired title by adverse possession to the Western Acre in 2020.

Wendy will likely argue that because she actually occupied 50% of John's (now Mary's) two-acre parcel in a manner that was actual, open and notorious, continuous, exclusive, and hostile, she acquired the entire parcel. Wendy's argument would be aided by the fact that she was acting under colorable title of John's entire lot (and Beth's!).

In this situation, a court would look to see how much of the land Wendy actually occupied, whether she acted under colorable title, and how she used the land. In this case, actually occupying 50% of John's land under colorable title likely means that Wendy acquired the entirety of John's land.

Accordingly, Wendy also acquired title to the Western Acre in 2020.

2b. The issue here is whether Wendy also acquired title by adverse possession to the Eastern Acre in 2020.

While Wendy actually occupied one third of the land she had colorable title to, none of that land was Beth's. This analysis differs from the Western Acre, because there, Wendy could point to the fact that she occupied 50% of John's land. Here, it's clear that Wendy occupied 0% of Beth's land. There was no actual possession, let alone possession that is open and notorious, continuous, exclusive, and hostile. The fact that she had colorable title does not change the analysis where there was no actual possession.

Accordingly, Wendy did not acquire title to the Eastern Acre in 2020.