

UNIVERSITY OF DAYTON  
SCHOOL OF LAW

Property – Section 01

**MIDTERM EXAMINATION**

Professor J.G. Durham  
September 27, 2002  
4:00-5:00 p.m.

INSTRUCTIONS

1. You have one (1) hour to complete the examination.
2. The examination consists of one essay question with seven parts. The number of points allocated to a part is indicated at the end of the part. You should read all seven parts before answering any part.
3. **Please write legibly, on every other line, and only on the fronts of pages.** You may use as many blue books as you need, so there is no value in saving space.
4. The examination is closed book. You may bring no written or printed materials into the examination room.
5. Be sure to state any assumptions you make and the bases for your conclusions.

**QUESTION**

You are an associate attorney in a law firm. Your supervising partner comes to you with a client's story involving adverse possession. The client is Anna Part, the owner of Lot 38 in the Elm Street Subdivision. The south border of Lot 38 is Elm Street. On the west Lot 38 is bordered by Lot 37, and on the east it is bordered by Lot 39; all three lots are 100'x150' (100 feet wide and 150 feet deep). On the north Lot 38 is bordered by a treeless, grassy 10 acre parcel of land owned by Opal Oster, the developer of the Elm Street Subdivision. There are overhead electric wires strung from poles and running along the north borders of Lots 37, 38 and 39 (and

the other lots on Elm Street).

Adam Preston bought Lot 38 in 1977. In 1978 he built a home on Lot 38, and the original structure complied with the setback requirements for the Elm Street Subdivision (at least 25' from the street, at least 5' from each side lot line and at least 40' from the rear lot line).

In 1979 Adam created a large vegetable garden at the rear of Lot 38. He dug up the grass that was in his backyard and some grass that was on the 10 acre parcel. Opal was doing nothing with 10 acres, and, in fact, she had put the land up for sale for commercial use. Adam figured he might as well make good use of land that otherwise was going unused. Adam's vegetable garden went from one side of his lot to the other (100') and encroached 20' into the 10 acre parcel. Adam built a 3' tall white picket fence all the way around the garden in order to keep animals out.

In 1982 Adam built a garage behind the house on the west side of Lot 38, but, mistakenly, not all on Lot 38. Lot 37 was a vacant lot so Adam had a surveyor resurvey his lot in order to determine its boundaries before he poured the foundation for the garage. Unfortunately, the surveyor made a mistake and located the west boundary of Lot 38 10' to the west (10' onto Lot 37). Adam carefully observed the 5' side lot line setback requirement and built his garage 5' from the newly, and mistakenly, located west border of Lot 38. So Adam's new 20' wide 2-car garage actually was 15' on Lot 38 and 5' on Lot 37, and the concrete driveway, which ran directly from the garage to the street, also encroached 5' onto Lot 37.

In 1983 Omar Ott bought Lot 37 and built a house on it. Omar did not have Lot 37 surveyed, so he did not realize that Adam's garage and driveway encroached 5' onto his lot. Omar and Adam became good friends, and they frequently (summer and winter, spring and fall) played basketball on the driveway in front of Adam's garage, and Adam allowed Omar to store his boat in Adam's garage during the winter.

In 1984 Adam built a new 10'x10' garden shed behind the house and on the east side of Lot 38. This time Adam did not have a survey done (after all, it was just a small shed that could be moved if need be), but he carefully located the shed 5' from where he thought the boundary line was between Lots 38 and 39. At the time Adam built the shed, Lot 39 was vacant. Adam located the garden shed completely on Lot 39.

In 1995 Adam stopped tending to his garden. He had been using the garden for 16 years and he was tired of gardening. In early 1996, Adam took a new job in a distant city and put his house up for sale. Adam had to move before the house was sold, and during 1996 the house was empty for 6 months before it was sold and the new owner moved in. Omar was nice enough to help Adam by mowing the grass and otherwise keeping up Adam's yard. Omar also continued to

play basketball in Adam's driveway.

The new owner of Lot 38 is Anna Part. Anna had a survey done before Adam conveyed Lot 38 to her and it correctly showed the encroachments by the garden, the garage and driveway, and the garden shed. Anna therefore required Adam to give her a deed to Lot 38 which conveyed to Anna "Lot 38 and all my right title and interest in any adjoining land gained by adverse possession." Anna has lived in the house since late 1996, using the garage and the garden shed just as Adam did (well, not "just as" because she took down the basketball goal and she and Omar do not get along). Anna had a fence built along the north property line (right through the middle of what had been Adam's garden).

This summer Omar entered into a contract to sell his house. The potential buyer had a survey done and the survey revealed that Anna's garage and driveway encroached on Lot 37. When the buyer backed out of the purchase, Omar filed suit for ejectment and quiet title against Anna. Anna has consulted your supervising partner who has asked you to do some research on the issues raised by Anna.

Your research and investigation revealed several things. First, the statute of limitations for adverse possession in your state is 15 years. Second, the issue as to what constitutes hostility has not been settled by your state's supreme court. Third, Lot 39 and the 10 acre parcel are still owned by Opal Oster, who became mentally incompetent in 1988 and still is mentally incompetent. You talk the case over with your supervising partner and she asks you to write a memo to her which addresses the following questions (see next page):

- a. Can Anna establish actual possession of each of the three parcels? (10 points)**
- b. Can Anna establish that each of the possessions was exclusive? (10 points)**
- c. Can Anna establish that each of the possessions was continuous? (10 points)**
- d. Can Anna establish that each of the possessions was open and notorious? (15 points)**
- e. Can Anna establish that each of the possessions was hostile? (15 points)**
- f. If Anna cannot establish ownership by adverse possession to the garage and driveway or the garden shed, does she have another remedy? (10 points)**
- g. Does the fact that Opal became mentally incompetent make any difference? (5 points)**

**END OF EXAM****PROPERTY 2002  
FIRST MIDTERM – GRADING OUTLINE**

NOTE: Below is my “grading outline.” I grade in 5 point “clusters,” that is I assign 5 points to one topic (or more) and after reading the student’s answer on that topic determine how many points to award. The points are awarded on your exam answer sheet in the order on my outline. If a student addressed an issue “out of order” (many students did not include tacking in “a.” but that is where I had it, so you may notice a number crossed out on “a.” and a higher number replacing it), I put the points where they were on my outline. Finally, getting a “5” is a big deal. That means that you hit everything I could have asked for, both in terms of using the law and applying it to the relevant issue. Following are three exams, “A+ Exam,” “A Exam #1,” and “A Exam #2” exactly as submitted by the students who received the three top grades on the exam.

**a. Can Anna establish actual possession for 15 years of each of the three parcels?**

5 Garden. Adam used the garden as would the owner of a residential lot. He made regular and seasonal use of it by planting, tending and harvesting the garden, had physical control of it, and he excluded all others by building the fence, a permanent physical presence. Opal could argue that he did not use it as she intended (as commercial property), but that should fail because Adam’s use was an extension of his residential land which was immediately adjacent.

5 Garage and driveway and garden shed. Adam and Anna together had both significant physical improvements in place and used them. The physical structures being under their control and for their use should satisfy any formulation of “possession.” Anna may “tack” her possession on to Adam’s because Adam conveyed to Anna any rights he had to these two areas along with his ownership of Lot 38.

**b. Can Anna establish that each of the possessions was exclusive?**

5 Garden and garden shed. There is no indication that anyone else used these during the 15 year period. What is an “exclusive use” is determined by what the use is. In this case, the garden was fenced and the garden shed was an enclosed building. When you have

an enclosed area or an enclosed structure being regularly used with no evidence that others used, then it is an exclusive use.

5 Garage and Driveway. The same could be said about these, except the driveway was not enclosed, Omar played basketball in the driveway, and Omar stored his boat in the garage during the winter. The non-enclosure of the driveway should not be a problem because of Adam's and Anna's regular use of the driveway. As to Omar's playing basketball with Adam, storing his boat in the garage and keeping the yard up during the six months after Adam moved and before Anna moved in, the point is that all of these were permissive. Omar did so with Adam's permission so that Omar was not asserting a possession as an owner, but assenting to Adam's possession by using the driveway and garage with Adam's permission and assisting Adam's possession but keeping the yard up.

**c. Can Anna establish that each of the possessions was continuous?**

5 Garden. No problem. Adam possessed the garden for 16 years, and the statute is only 15 years. The type of use was continuous for what it was (I assume he did nothing in the garden during the winter), and the 15 years was satisfied before Adam stopped using the garden. Adam owned it at that point (assuming all other factors are met). The facts that Adam stopped using the garden, that no one used it for six months during the summer of 1996, and that Anna put a fence right through it, are all irrelevant because Adam already owned it (if the other factors are met).

5 Garage and driveway and garden shed. To comply with the 15 year statute Anna can tack her possession to Adam's, unless a court finds that the six months that the house was empty was too long. Six months is not a long time, and Adam had Omar keeping the yard up for him. Omar was acting as Adam's agent so what Omar did was as if Adam did it, even as to possessing against Omar's Lot 37.

**d. Can Anna establish that each of the possessions was open and notorious?**

5 Garden. The power lines ran behind the lots and in between the lots and the 10 acre parcel. Adam built a white picket fence that should have stuck out in a treeless, grassy 10 acre parcel, particularly if you stood under the power lines and looked east or west: the fence jutted out into the 10 acre parcel. The counter argument is that it is a small area and it would be difficult to determine just where the property line is. You could call it either way.

5 Garden shed. If Adam and Anna maintained the west 10' of Lot 39 so that it looked like the shed was just part of Lot 38, this may be so small as to not be open and notorious.

On the other hand, if the shed just stuck into Lot 39, it should have been observable. The lots are not that wide (100') and a 10'x10' shed off to the side may appear out of place.

5 Garage and driveway. The issue is whether the encroachment is so small that the owner of Lot 37 could only detect it by having a survey done, regardless of the fact that Omar did not figure it out. The garage is large, but 5' is relatively small given the width of the lots (100'). Likely it was not open and notorious, but you could call it either way.

**e. Can Anna establish that each of the possessions was hostile?**

5 Connecticut or common law. In each case Adam acted without permission and against the rights of the actual owner. Mistake does not matter, nor does intent (either to take or some kind of good faith basis for the claim). He went on to each piece of land, used it, and treated it as his own. It was hostile. Anna did exactly the same thing as to the garage and driveway and the garden shed.

5 Maine. As to the garden and the garage and driveway, Adam would qualify and so would Anna (as to the garage and driveway). Whether by mistake or by the intent to steal, Adam claimed the land as his own, including with the garage and driveway (mistake based) making substantial improvements. As to the garden shed, we don't know because we cannot tell if he intended to claim regardless; he mistakenly placed the shed but did so without a survey because it could be easily moved. Anna gets what Adam would because hostility is established at the inception of the possession and it does not matter what Anna thought.

5 Iowa. As to the garden, no way: Adam knew the land was not his and he was a "mere squatter," so he clearly did not have color of title or claim of right (with good faith). As to the garage and driveway, you cannot have any more good faith than having a survey done, and that should be enough to give Adam "claim of right with good faith" (the incorrect survey did not give Adam color of title). As to the garden shed, it depends on how much good faith is required, since Adam was sloppy but still thought he was putting the shed on his lot. Anna gets what Adam would because hostility is established at the inception of the possession and it does not matter what Anna thought.

**f. If Anna cannot establish ownership by adverse possession to the garage and driveway or the garden shed, does she have another remedy?**

5 Mistaken improver. Garage and driveway. If a court finds that the improver was innocent (Adam even had a survey done), that the improvement is substantial, that the loss to the owner would be small (Omar built his house assuming that his lot was to the west of

Adam's garage), then a court could order Omar to convey the relevant parcels to Anna upon Anna's payment of the fair value of the land. This is an equitable remedy based on the hardship it would cause the innocent improver and the lack of hardship on the adjacent owner.

5 Garden shed. It is more likely that a court will tell Anna to move the garden shed, however. First of all, Adam was not as innocent. Second, if the garden shed can easily be moved, there is not much hardship on Anna. Finally, the lot is vacant and it could result in a big drop in value if a court orders 10'-15' to be conveyed to Anna (the shed plus the required sideyard).

**g. Does the fact that Opal became mentally incompetent make any difference?**

5 It depends on the statute. In Ohio, no because the disability did not exist "when the cause of action accrues." In other states, it may toll the running of the statute of limitations so that Anna would have no adverse possession as to either the garden or the garden shed since Opal became incompetent less than 15 years after the beginning of the possessions.

**A+ EXAM  
GRADING SHEET**

a. (10) 3+5      8

b. (10) 3+3      6

c. (10) 4+3      7

d. (15) 4+2+3      9

e. (15) 3+2+4      9

f. (10) 5+2            7

g. (5) 2                2

Total Points            48

Grade                    A+

**A+ EXAM**

A) The first question is whether Anna can establish actual possession of the three parcels of land that being, the 20ft. encroachment in Opal's yard to the North, the encroachment into Omar's lot 37 and the encroachment of the shed on vacant lot 39. Starting with the 20ft encroachment to the north, Adam built the garden in 1979. In building the garden he took physical possession of the land, and used it for his own purposes. The fence and the garden all clearly show that he had physical possession of the land in question for the statutory period and thus it would be considered actual. As far as the encroachment on Omar's land, one would likely consider that to be actual as well. His garage and driveway encroached five feet on to Omar's land, he physically claimed that area and occupied it for his own personal purposes thus it would be an actual possession. Lastly, the encroachment of the shed on to lot 39 would also be considered to be an actual possession because he placed the shed on the land, and again took physical possession of it treating the land as his own. Although the shed was moveable, he did not move it and thus was considered an actual possession of the land.

B) I believe in all three circumstances Anna shows that the possessions are exclusive. First dealing with the land to the North, in 1979 Adam built a garden and a fence. He was the only person to use that garden from 1979 to 1995 when he quit gardening. Opal never claimed dominion over the garden and she was content to just let her land go unused till she sold it. Anna would also have an exclusive possession of the land the shed was on in lot 39. Again, at no time during the statutory period did anyone enter upon the land in lot 39. The shed sat there on an unoccupied parcel of land owned by Opal Oster which was for sale. Adam built the shed and exerted control over the land as if it were his own. It may be a little more difficult to prove if Anna had exclusive possession over the land between her and Omar's house. Her garage encroached 5 feet onto his property as well as the driveway. Omar would frequently use the driveway to play basketball on and store his boat. However, even though this was the case, Anna would have exclusive possession because all of Omar's activities were with the permission of

Adam. Although it was Omar's land Adam was acting as the owner and thus allowing Omar to use the land at Adam's choice. Once Anna Part moved in and she and Omar did not get along she quit letting Omar use the property.

C) Anna can easily establish that her possession was continuous over all 3 pieces of property. To be continuous the adverse possessor must have actual possession of the land for the statutory period of 15 years. Even though Anna has only lived on the land for 6 years, she acquired title in privity with Adam therefore, she was allowed to tack on the period which Adam was adversely possessing the land. Together this equals 15 years in all circumstances. One may argue that it is not continuous because Adam was not living in the house for 6 months before he sold it. However, he still maintained the interest in the property by having a for sale sign up and the property was cared for, therefore it is continuous since he did not abandon the property. The fact that he quit gardening is immaterial as well, because the statute of limitations had passed for one when he quit, and he left his improvements such as the fence on the land. Just because he was not using the garden as a garden anymore does not mean he did not consider it part of his possession.

D) Anna should be able to establish the possessions were open and notorious in most cases although it may be difficult with the shed and the garage. The garden is an easy one. The property line was easily marked by the power lines, she went over the line by 20 feet into an empty field, she improved upon the land and built a fence around it. It would be obvious that the possession was open and notorious to a reasonable person. As for the shed, it encroached onto the empty lot by 10 feet. Ten feet into a 100 ft lot should be easily visible and thus one would most likely determine that this was open and notorious as well. A survey was not done to determine the property line, but one probably would not have needed to be done to determine that he encroached on the boundary line in this area. As for Omar's land, again it should be most likely be considered open & notorious because Adam built and improved upon the land. The question is whether 5 feet is easily determinable without the need for a correct survey to be done. The mere fact that he built upon the land could be open & notorious, but the question is whether a reasonable owner such as Omar would suspect that the garage encroached on his property.

E) Anna should have no problem establishing that the possessions are hostile. Generally speaking, for a possession to be hostile, it must be a claim against the owner of title. There mere fact that Anna occupied the land against the interests of the true owners of record title should constitute this claim as hostile for all 3 circumstances. Some states such as Iowa place restrictions on hostility. They claim that a hostile claim must be in good faith or the owner must have color of title. This limits the scope of adverse possession claims. Under this method, Anna would not be able to claim the land to the North. It was obvious the garden was not on the land that she owned, and when Adam took it he was acting as a mere squatter. He had no good faith or color of title. As for the shed and the garage he would likely be held that he had hostility to

these claims. He built the shed on what he thought was the property line, and if he would be told otherwise he would have moved it. He cared for the land as his own because of his mistake, thus a court would likely find that he showed good faith. As far as the garage, he definitely shows good faith. He builds it according to the survey that was done. Although the survey was incorrect, this gives Anna color of title to encroachment that the garage was on, and therefore she acted in an appropriate manner placing the garage on that lot. A few other minority states ask that there be intent to claim the land in order for there to be color of title. If Anna needed to prove this she would keep the garden because, Adam knowingly took the land because it was empty and had intent to claim. She would lose the land the shed is on because Adam said he would move it if it was determined to be on someone else's land. Most likely he would keep the land his garage was on since he could show color of title which proves his intent to use it for his own.

F) If Anna cannot establish ownership to the driveway or garden shed she could ask the court to convey it to her under the innocent improver doctrine. Under this doctrine if a mistaken improver improves upon the land which is not his, and the true owner comes along for an ejectment action, she may be able to keep the land, if she can prove that the removal of her hardship will be more expensive than the detriment received to the person holding title to the land. The court would most likely make the owner of record title convey that land to Anna for a specified price or if Anna had to remove the property, the title owner may have to pay for the removal. As far as the shed goes, she would probably have to move it, since it is a cheap shed and easily moveable, it would not require a lot of cost to move it from the neighbor's property to her own property. She would likely be able to get a conveyance of the driveway and garage because they were very expensive to build and thus removing them would be at an enormous cost to her. Omar may argue that the driveway causes too much harm to his land because under zoning law he may be unable to sell his house or improve upon it. There, Anna may lose possession of the 5 feet the garage is on and it may need to be removed.

G) Opal's disability will not make a difference in this case. The disability is only relevant if it is in place at the time the cause of action accrues. In 1979 when Adam built the garden Opal was under no disability. She also was under no disability in 1984 when he built the shed. Therefore, the cause of action started to accrue from that point and the fact that Opal became disabled later is immaterial for she should not have sat on her rights to the point that she did.

**END OF A+ EXAM**

**A EXAM #1  
GRADING SHEET**

a. (10) 3+5            8

b. (10) 2+3            5

c. (10) 3+4            7

d. (15) 3+3+2        8

e. (15) 4+3+2        9

f. (10) 1+2            3

g. (5) 2                2

Total Points            42

Grade                    A

## **A EXAM #1**

In order for Anna to establish adverse possession. We must first look at what Adam did because he was the first owner discussed. The five elements are actual, open and notorious, exclusive, continuous, and hostile. First of all as long as we can show Adam had adverse possession, Anna will have as well since the two were in pivity of each other, we can tack the time together to equal the statue of limitations. HE sold her the land and that created her relationship that as long as Adam proved adverse possession, it would carry on to her as well and she would get that land.

- a. In order to have actual possession, one must use the land as an average land owner. Adam built a garden which does show possession because he tended the garden as an average owner would have and fenced it in. Next he made the garage, which is an actual possession and a normal use as well as a driveway that which is consistent with the nature of the neighborhood and land he used. The shed, was an actual possession, he used it and stored stuff in it, and that is consistent with a normal use of land. All of his structures the garden, shed, garage, and driveway all prove actual possession of the land being used.
- b. Each possession was exclusive. The facts never mentioned either Omar or Opal entering the land and ? it back or bringing it to his attention that he was trespassing. As far as Omar using the basketball hoop and cutting the grass, the possession was still exclusive because he gave him permission to use it. HE proved exclusivity for all 4 structures.
- c. Each was continuous. As far as facts go, he tended the garden for all 16 years. At no time did the facts say that he abandoned his land in any way. Even when he moved, after being there for 16 years, 6 months away was not a big deal. A reasonable person would still think someone Aowned@ or possessed the land in question. Plus Omar acted like a@tenant@ in the fact that he used and took care of the land when Adam moved, but it was with permission so that was OK and did not break the Acontinuous idea@.
- d. An average person would have to be see that someone was using and claiming the land as their own. As far as the garden, it was obvious he was using it, however because it was only 20 feet into the 10 acres open and notorious for that land would be harder to prove because Opal probably could not have driven by and noticed the small encroachment, the same problem with Gorsjki-s 15 inch encroachment we discussed. He might have a hard time proving that. However the fence around it would help to show open and notorious in this case. Next is the garage, which encroached 5 feet into lot 37 owned by Omar. 5 feet out of a 100x150 foot lot is not a lot either. A reasonable person might not notice that encroachment unless a survey was done. (same idea with Gorski-s mistake of encroachment, Adam made a mistake as well. However since he did have color of title for the faulty deed by the surveyor who said he actually owned that land, he might be saved. As for the shed, it was entirely not on his property and was 10 X 10 feet, the largest encroachment of them all. I feel that it was open and notorious because of its size and the fact that it was totally on another lot.
- e. Hostility is difficult. Hostile usually means just a claim to a piece of land against all others in many states. Starting with the Maine doctrine, which says the claim must be against all other (absolute) no matter what. He would have the garden and shed in Maine, however, it seems that as far as the garage and driveway, he might not have felt that way since he was friends with Omar

and the fact he even had a survey done to make SURE he was not encroaching, it was not his fault the surveyor messed up. He might not have wanted to claim the land against Omar, his friend or he might not have intentionally put the shed on someone else's land. Maine looks into intent, and intent is hard to prove. Next is Conn., which says claims can meet the hostility requirement even if by mistake and they can be conditional. Adam would surely meet hostility in Conn. with regards to the driveway, shed, and garage because he did use them as his own, even if it was by mistake and would have not built them or stopped using them had it been shown they were not his. For the garden, it would be harder because that was not really a mistake, because he knew the land was being sold. He could be called a squatter with regards to that piece of land. However he might have won in Conn. because he was using the land as his own and he might have been able to say he would have stopped had Opal asked him to. And in the Iowa doctrine, he Adam would have only established hostility to the garage and driveway because he had color of title to that land and a good faith claim. It does not matter that it was wrong because he has some type of claim to it and was not a mere squatter. The shed and garden would not meet hostility under Iowa because he knew the garden was not part of his land and he did not have a color of title to the shed (like Carpenter and Repeurto, he was squatting and trespassing on something he knew was not his, at least with regard to the garden). He should have had a survey done or not built the shed so close to the border is what Iowa courts might have told him he needed to do.

f. Anna can ask Omar to sell her the land that the garage and shed are on for a fair market price. Since the total land he would be selling would be 10 feet, not an enormous amount. The cost and hardship to move or destroy the garage and dig up the driveway would be absurd and a court might look at that when deciding this case. However since the shed is entirely on lot 39, she can either have it moved onto her land, sell the shed (at a fair market price) to the owner of 39 (when there is one) or just wait and see what a new owner would say or not say then she could keep the shed where it is and still possess it. Another option is if she buys the land the shed is on and just adds it to her property. That would make the most sense and should not be too difficult to just draw new deed up making ? 39, for the new owner, 10 x 10 feet smaller. She probably can get adverse possession of the driveway and garage, but would lose the land the garden was on for sure. The shed would be hard since no one is living in that lot yet?

g. Because Opal was not under disability when the possession took place in 1979 (she became disabled in 1988) her disability bears no effect on this case. One must be disabled at the time of the adverse possession, not after it has already begun.

**END OF A EXAM #1**

**A EXAM #2  
GRADING SHEET**

- a. (10) 3+4            7
- b. (10) 3+3            6
- c. (10) 4+3            7
- d. (15) 4+2+2        8
- e. (15) 3+4+3        10
- f. (10) 2+0            2
- g. (5) 2                2

Total Points        42

Grade                A

## A EXAM #2

Transcribed exam answer:

a.        The issue in this case is whether Anna can establish adverse possession of all three parcels of land in question. To establish adverse possession, one must show that possession was actual, exclusive, continuous, hostile, and open and notorious for the statutory period of fifteen years. There is no question that Adam's possession of the 20' of Opal's 10-acre parcel was actual. He used the land as a reasonable owner in a subdivision would by making a vegetable garden. This

showed physical possession and control of the land because there was a garden there constituting a physical improvement of the land. He used this land as a garden from 1978 to 1995 which satisfies the 15 yr. statute of limitations to establish adverse possession. Because Anna bought all of Adam's land interest and so would have title to this land if Adam did.

As for the garage and driveway located 5' onto lot 37, it is clear by the physical structure built on the land that Adam was exercising control over it. The driveway was put in in 1982 and so fulfills the requisite 15 years.

The garden shed on lot 39 was an actual possession because it was a physical improvement that showed control over the property and had been there for 15 years. Time of possession of this and the garage would be able to be ? between Adam and Anna because priority existed.

b. The possession of the garden was no doubt exclusive. Opal never gave Adam permission to use it and she obviously never used it herself or else would have noticed the garden.

Exclusive possession of the garage and driveway might be harder to prove because Omar, the actual owner used the driveway to play basketball but this shouldn't be a problem because it seems that he recognized it was Adam's and actually sought Adam's permission to use the garage, recognizing that Adam was the owner. The garden shed would have exclusive use too because the land on Lot 39 was vacant and Opal never tried to use it or gave her permission for Adam to use it.

c. All three parcels would constitute continuous possession. Even though there was 6 months between possession of the garage and driveway and the shed between Adam and Anna, one could assume that this is a reasonable amount of time for an owner to be gone without having abandoned the property. Even though Adam quit tending the garden in 1995, the parcel was already his by adverse possession so it would not be an issue that it took Anna 6 months to move in.

d. The garden on the 10 acres was definitely open and notorious. Even though it was small parcel out of 10 acres, Opal knew the telephone lines were at the back of the lots she sold and so if she even went back there she would have seen the garden which is a physical land improvement.

The garage and driveway and the shed both encroach on Lots 37 and 39 respectively but this is a minimal amount of land compared to the entire lot and a reasonable owner couldn't be expected to know of this encroachment without a survey even though there were physical structures built on the land. Based on this, I don't think it was open & notorious.

1 e. Hostility will be a problem for Anna. Under the Maine Doctrine, Adam would have adverse possession of the garden and the shed only. This would be true because the doctrine requires possession without owner's consent with intent to claim the land as your own no matter what.

2. Under the Iowa Doctrine, Adam would get only the garage because he had color of title due to the fact the survey as misrepresented the boundaries. This good faith claim of right is required by the doctrine and would not be met by the other parcels.

3. Under the Connecticut Doctrine, Anna would get all parcels because intent doesn't matter, only her use of the land. Adam had color of title for the garage and driveway, (intent under IA) the intent to claim the garden even though he knew it wasn't his (hostility under ME) but in this case the shed would be hostile too even though he conceded that he would move it if the owner of the land asked. Since Adam had hostility, Anna would too.

f. If Anna couldn't establish ownership of the garage, driveway, and shed she might be able to still acquire the land. Usually if removing physical structures places undue burden on the improves, the court will order the rightful landowner to sell the property on which the improvement sits to the improves for a fair price.

Overall, I feel Anna met all requirements for adverse possession for the garden but failed to . . .

g. The fact that Opal became mentally incompetent does not make any difference in this case. His disability began after Adam had begun adversely possessing her property so there is no additional time added to the 15 year period needed to gain adverse possession. The only way a disability will add time is if it exists at the time the adverse possession begins.

**END OF A EXAM #2**