

A woman died, devising land that she owned in another state to her daughter, who was then 17 years old.

A neighbor who owned the property immediately adjacent to the land wrongfully began to possess the land at that time. For 24 of the next 25 years, the neighbor planted and harvested crops on the land, hunted on it, and parked cars on it. However, in the sixth year after he first took possession of the land, the neighbor neither planted crops nor hunted nor parked cars on the land because he spent that entire year living in Europe. The neighbor built a small gardening shed on the land, but he never built a residence on it.

When the daughter was 28, she was declared mentally incompetent and had a conservator appointed to oversee her affairs. Since then, she has continuously resided in a care facility.

The applicable statute of limitations provides as follows: "An ejectment action shall be brought within 21 years after the cause of action accrues, but if the person entitled to bring the cause of action is under age 18 or mentally incompetent at the time the cause of action accrues, it may be brought by such person within 10 years after attaining age 18 or after the person becomes competent."

If the daughter's conservator wins an ejectment action against the neighbor, what will be the most likely explanation?

- A. Because the daughter is mentally incompetent, the statute of limitations has been tolled.
- B. The daughter was age 17 when the neighbor first took possession of the land.
- C. The neighbor never built a residence on the land.
- D. The neighbor was not in continuous possession of the land for 21 years.

### Explanation:

Under the doctrine of **adverse possession**, a person who possesses land owned by another may acquire title to the land if his/her possession was:

**Open and notorious** – apparent to a reasonable owner

**Continuous** – uninterrupted for the statutory period

**Exclusive** – not shared with the owner

**Actual** – physical presence on the land

**Non-permissive** – hostile and adverse to the owner

Here, the statutory period for adverse possession is 21 years. Although the neighbor first possessed the land 25 years ago, he left after 5 years and spent a year in Europe. When the neighbor returned from Europe and retook possession of the land, the statutory period started anew. Therefore, the neighbor only *continuously* possessed the land for 19 years—not 21 years—and he did not acquire title by adverse possession.

**(Choices A & B)** The statute of limitations would have tolled (ie, paused) if the daughter had been under 18 or mentally incompetent *at the time the claim accrued*. Here, though the daughter was 17 when the neighbor first took possession of the land, she was 23 when the neighbor retook possession (and her claim accrued). And since she was declared mentally incompetent 5 years *after* her claim accrued, the statute of limitations was not tolled.

**(Choice C)** A person does not have to build a residence on the land to adversely possess it, so the fact that the neighbor never built a residence on the daughter's land is irrelevant.

### Educational objective:

A person can only acquire title to another's land through adverse possession if his/her possession of the land is continuous—ie, uninterrupted—for the entire statutory period.

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