

Fifteen years ago, two men who were fishing buddies moved onto vacant rural land owned by a woman they didn't know and built a small fishing shack on it. Twelve years ago, the men replaced the shack with a fish processing plant and a commercial fishing boat dock. The men maintained their commercial fishery operation on the land until one of them died intestate last year, leaving a sole heir.

The period of time to acquire title by adverse possession in the jurisdiction is 10 years.

The woman has now become aware of the changes that have occurred on the land.

In an action to determine title, for whom should the court decide?

- A. The man who is still alive and the deceased man's heir, because the men acquired title as tenants in common.
- B. The man who is still alive, because he is the surviving adverse possessor.
- C. The woman, because the use was changed by the men while they were in possession.
- D. The woman, because title cannot be claimed by two adverse possessors simultaneously.

Explanation:

Types of concurrent estates

(real property owned by two or more persons)

	Creation language	Succession of interest
Tenancy in common*	"To A and B"	No right of survivorship
	"To A and B as tenants in common"	
Joint tenancy	"To A and B as joint tenants with the right of survivorship"	Right of survivorship
Tenancy by the entirety	"To A and B as husband and wife"	Indestructible right of survivorship
	"To A and B as tenants by the entirety"	

*Presumed unless creation language states otherwise

An adverse possessor can acquire title to land owned by another if his/her possession of the land is:

Open and notorious – apparent or visible 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

When land is adversely possessed by **two or more persons**, the possessors acquire a concurrent ownership interest as **tenants in common**. Since a tenancy in common has **no right of survivorship**, a co-tenant's ownership interest will pass to his/her heirs if the co-tenant dies intestate (ie, without a will).

Here, the two men moved onto the land without the woman's permission or participation, opened a fishing operation, and continuously remained on the property for the 10-year statutory period (**Choice D**). As a result, the men divested the woman of title through adverse possession and became co-tenants in common. Since one of the men later died intestate, his concurrent ownership interest passed to his sole heir. Therefore, the living man and the sole heir own the land as tenants in common.

(Choice B) The living man would have acquired sole ownership of the property upon the other man's death if the men had a joint tenancy—a concurrent ownership interest *with* the right of survivorship. But since the men only acquired a tenancy in common (*no* right of

survivorship) by adverse possession, the deceased man's interest passed to his sole heir—not the surviving adverse possessor.

(Choice C) To satisfy the continuous-use requirement, an adverse possessor must (1) constantly remain on the property *or* (2) consistently use the property in the same manner a usual owner would—eg, seasonal use of a hunting cabin, intermittent use for grazing cattle. Here, the men constantly remained on the property, so it does not matter that their use of the property changed.

Educational objective:

When two or more persons adversely possess the land of another, they acquire a tenancy in common—a concurrent ownership interest with *no* right of survivorship.

References

Restatement (First) of Property § 65 (Am. Law Inst. 1936) (creation of tenancy in common).

Restatement (First) of Property §§ 12–13 (Am. Law Inst. 1936) (transferring and devising a property interest).

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