

Fifteen years ago, a father and daughter lived on a large 15-acre tract of land owned by the father. The land consists of three five-acre sections that are generally known as the home, the barn, and the hunting cabin. Due to the father's deteriorating health, he decided to move into an assisted living facility. The daughter soon realized that she could not perform all of the duties required to maintain the 15-acre tract. When she asked the father for permission to sell the land, he refused. Against the father's will, she proceeded to list the 15-acre tract for sale in the local newspaper. A couple who was new to the area contacted the daughter with a cash offer to buy the tract. The daughter prepared a warranty deed conveying the tract to the couple and forged her father's signature on the deed.

For the last 14 years, the couple has lived in the home and maintained the surrounding five acres. During each hunting season, the couple occasionally spends time at the hunting cabin and hunts on that five-acre portion of the property. However, the couple has never used the five acres surrounding the barn.

Recently, the couple learned that the signature on the deed was a forgery and filed suit to quiet title based on adverse possession. The period of time to acquire title by adverse possession in the jurisdiction is 10 years.

In an action to determine title, what portion of the 15-acre tract will the court likely award the couple?

- A. None, because the couple's possession of the farm was not hostile to the father.
- B. The five acres surrounding the home, because that was the only portion of the land continuously used by the couple.
- C. The 10 acres surrounding the home and the cabin, because those were the only portions of the land actually possessed by the couple.
- D. All 15 acres, because the deed described the entire 15-acre tract.

Explanation:

The **deed** conveying the 15-acre tract to the couple was invalid because the father's signature was forged. However, the couple may still have acquired title to the tract through **adverse possession** during the 10-year statutory period. An **adverse possessor** may **acquire title** to the **portion of the land** that was **actually and continuously possessed**. To satisfy the continuous-use requirement, an adverse possessor must either:

constantly remain on the property *or*

consistently use the property in the same manner that a usual owner would.

Here, the couple actually and continuously possessed the five acres surrounding the home because they lived in the home and maintained that land for the past 14 years. And they actually and continuously possessed the five acres surrounding the hunting cabin by consistently using it on a seasonal basis to hunt—just as a usual owner would (**Choice B**). However, the couple never used the barn.

Nevertheless, the couple acquired **title to the entire property** through **constructive adverse possession (Choice C)**. This arises when an adverse possessor (1) **enters the property under color of title**—eg, a facially valid deed that describes the entire property—and (2) **actually possesses a reasonable portion** of the property for the statutory period.

Here, the couple entered the property under color of title because they had a facially valid deed that described the entire 15 acres of the tract. And since they actually possessed two-thirds of the property (reasonable portion) for the 10-year statutory period, they acquired title through constructive adverse possession. Therefore, the court will likely award the couple title to all 15 acres.

(Choice A) Since the couple possessed the tract without the father's permission, their possession was hostile (ie, nonpermissive). Additionally, in a majority of jurisdictions, the possessor need not purposefully seek to defeat the owner's title for the possession to be "hostile."

Educational objective:

If a person enters property under color of title and actually possesses a reasonable portion of the property for the statutory period, then constructive adverse possession gives the person title to the entire property.

Actual possession v. Constructive possession

Actual possession



Constructive possession
(color of title)