

Twenty-five years ago, a seller conveyed a lot of land to a buyer by a warranty deed. The seller at that time also executed and delivered an instrument in the proper form of a deed, purporting to convey a second lot of land to the buyer. The seller thought she had title to the second lot but did not; therefore, no title passed by virtue of that deed. The second lot consisted of three acres of brushland adjoining the west boundary of the first lot. The buyer has occasionally hunted rabbits on the second lot, but less often than annually. No one else came on the second lot except occasional rabbit hunters.

Twenty years ago, the buyer planted a row of evergreens in the vicinity of the opposite (east) boundary of the first lot and erected a fence just beyond the evergreens to the east. In fact, both the trees and the fence were placed on a neighboring lot, owned by a neighbor, which bordered the east boundary of the first lot. The buyer was unsure of the exact boundary, and placed the trees and the fence in order to establish his rights up to the fence. The fence is located 10 feet within the neighboring lot.

Now, the buyer has had his property surveyed and the title checked and has learned the facts.

The period of time to acquire title by adverse possession in the jurisdiction is 15 years.

In an appropriate action, to which of the following would the buyer likely obtain title?

- A. The second lot but not the 10-foot strip of the neighboring lot.
- B. The 10-foot strip of the neighboring lot but not the second lot.
- C. Both the second lot and the 10-foot strip of the neighboring lot.
- D. Neither the second lot nor the 10-foot strip of the neighboring lot.

**Explanation:**

To acquire title to another's land by **adverse possession**, a person's possession of the land must be:

**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 **portion of the land** to be adversely possessed

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

Here, the buyer openly planted trees and built a fence 10 feet into a neighboring lot, which excluded the neighbor from that portion of his property. And since the trees and fence have continuously remained on the neighbor's property without his permission for over 15 years (the statutory period), the buyer likely obtained title to the 10-foot strip by adverse possession.

**(Choices A & C)** The buyer did not acquire title to the second lot by deed because the seller had no interest to convey. Therefore, the buyer could only acquire title by adverse possession. But since the buyer merely used the second lot to hunt rabbits *less often than annually* (no continuous use), he did not adversely possess that lot.

**(Choice D)** Although the buyer did not acquire title to the second lot, he did acquire title to the 10-foot strip of the neighboring lot by adverse possession.

**Educational objective:**

A person may acquire title to another's land by adverse possession if his/her possession of the land is open and notorious, continuous, exclusive, actual, and non-permissive (OCEAN). However, the adverse possessor can only acquire title to the portion of the land that he/she actually occupies.

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