

A man owned a tract of undeveloped land. The man's land abuts a tract of land owned by the state's governmental energy agency. The agency has operated a waste-to-electricity recycling facility on its land for 12 years. Both the man's land and the agency's land are in a remote area, and the agency's land is the only developed parcel of real estate within a 10-mile radius. The boundary line between the man's land and the agency's land had never been surveyed or marked on the face of the earth.

During the past 12 years, some of the trucks bringing waste to the agency facility have dumped their loads so that the piles of waste extend onto a portion of the man's land. However, prior to the four-week period during each calendar year when the agency facility is closed for inspection and repairs, the waste piles are reduced to minimal levels so that during each of the four-week closures no waste was, in fact, piled on the man's land. Neither the man nor any representative of the agency knew the facts about the relation of the boundary line to the waste piles.

The time for acquiring title by adverse possession in the jurisdiction is 10 years.

Last year, the man died, and his son succeeded him as the owner of the man's land. The son became aware of the facts, demanded that the agency stop using the man's land for the piling of waste, and, when the agency refused his demand, brought an appropriate action to enjoin any such use of the man's land in the future.

If the agency prevails in that action, what is the most likely reason?

- A. The facts constitute adverse possession, and title to the portion of the man's land concerned has vested in the agency.
- B. The interest of the public in the conversion of waste to energy overrides the son's entitlement to equitable remedies.
- C. The man's failure to keep himself informed as to the agency's use of his land and his failure to object constituted implied consent to the continuation of that use.
- D. The power of eminent domain of the state makes the son's claim moot.

Explanation:

A person may acquire title to another's land by **adverse possession** if his/her possession of the land is:

Open and notorious – apparent or visible to a reasonable owner

Continuous – without substantial interruption for the statutory period (daily/weekly use is not required)

Exclusive – not shared with the owner

Actual – physical **presence** on the **portion of the land** to be adversely possessed

Nonpermissive – hostile and adverse to the owner

Here, the agency openly and continuously dumped waste on a portion of the man's land for more than 10 years (the statutory period) without his participation or permission. The four-week period each year during which waste was not being dumped did not invalidate the agency's continuous use of the land. Therefore, title to that portion of the man's land has likely vested in the agency by adverse possession.

(Choice B) Although converting waste to energy has social value, the agency could have reasonably achieved that interest without infringing on the son's ownership rights (eg, by dumping waste on other land in the remote area). As a result, the utility of the agency's activity likely does not override the son's entitlement to equitable remedies.

(Choice C) The man's failure to notice or object to the agency's use of his land did not constitute implied consent to the continuation of that use. Instead, his failure to notice or object within the 10-year statutory period allowed the agency to acquire title to a portion of his land through adverse possession.

(Choice D) Eminent domain prohibits the government from taking private property for public use *without just compensation*. Since there is no evidence that the governmental agency compensated the man or his son for its use of the land, there is a live controversy (ie, the son's claim is not moot).

Educational objective:

Adverse possession allows one to acquire title to any portion of another's land that he/she possesses in an open and notorious, continuous, exclusive, actual, and non-permissive manner (OCEAN).

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