

### MEE Question 6

Owen owned vacant land (Whiteacre) in State B located 500 yards from a lake and bordered by vacant land owned by others. Owen, who lived 50 miles from Whiteacre, used Whiteacre for cutting firewood and for parking his car when he used the lake.

Twenty years ago, Owen delivered to Abe a deed that read in its entirety:

Owen hereby conveys to the grantee by a general warranty deed that parcel of vacant land in State B known as Whiteacre.

Owen signed the deed immediately below the quoted language and his signature was notarized. The deed was never recorded.

For the next eleven years, Abe seasonally planted vegetables on Whiteacre, cut timber on it, parked vehicles there when he and his family used the nearby lake for recreation, and gave permission to friends to park their cars and recreational vehicles there. He also paid the real property taxes due on the land, although the tax bills were actually sent to Owen because title had not been registered in Abe's name on the assessor's books. Abe did not build any structure on Whiteacre, fence it, or post no-trespassing signs.

Nine years ago, Abe moved to State C. Since that time, he has neither used Whiteacre nor given others permission to use Whiteacre, and to all outward appearances the land has appeared unoccupied.

Last year, Owen died intestate leaving his daughter, Doris, as his sole heir. After Owen's death, Doris conveyed Whiteacre by a valid deed to Buyer, who paid fair market value for Whiteacre. Neither Doris nor Buyer knew of the Owen-to-Abe deed. Both Doris and Buyer believed that Owen was the owner of Whiteacre at the time of his death. Buyer promptly and properly recorded the deed from Doris and immediately went into possession of Whiteacre.

Last month Abe returned to State B. When he discovered Buyer in possession of Whiteacre, he sued Buyer for possession.

State B has enacted the following statutes:

1. Actions to recover possession of real property shall be brought within ten years after the cause of action accrues.
2. No conveyance or mortgage of real property shall be good against subsequent purchasers for value and without notice unless the same be recorded according to law.

Who is entitled to possession of Whiteacre? Explain.

REAL PROPERTY V. A., B.2., D.1.d.

## ANALYSIS

- Legal Problems:
- (1) Did Owen convey a fee simple absolute to Abe by the Owen-to-Abe deed?
  - (2) Did Abe acquire title to Whiteacre by adverse possession?
  - (3) Did Buyer acquire title from Doris that was superior to Abe's title?

## DISCUSSION

### Summary

A valid deed requires that the grantee be named with specificity. Because the Owen-to-Abe deed did not name a grantee, it was ineffective to convey the land to Abe. Although Abe did not acquire title to Whiteacre by deed from Owen, he may have acquired title by adverse possession. This would depend on whether the court finds that Abe's acts were sufficiently open, notorious, exclusive, continuous, and under claim of right to warrant the conclusion that he had acquired title by adverse possession. If Abe acquired title to Whiteacre by adverse possession, his claim to possession is good against a subsequent purchaser for value like Buyer. If Abe did not acquire title by adverse possession either because an applicant wrongfully believes the Owen-to-Abe deed was valid or because Abe's acts are construed as insufficient to acquire a title by adverse possession, then Buyer's deed is controlling because he is a bona fide purchaser for value and had neither constructive nor inquiry notice of Abe's interest in Whiteacre.

### **Point One: (25-35%)**

Abe did not acquire title to Whiteacre by deed from Owen because that deed failed to specify the name of the grantee.

To be valid, a deed must identify the buyer and the seller, describe the land subject to the conveyance, contain words denoting a present intent to convey, and be signed by the grantor. *See generally* STOEBUCK & WHITMAN, THE LAW OF PROPERTY 810 (3d ed. 2000). Here, the deed from Owen to Abe read in its entirety: "Owen hereby conveys to the grantee by a general warranty deed that parcel of vacant land in State B known as Whiteacre. [Signature of Owen]." The Owen-to-Abe deed names the seller, describes the land, sets forth a present intent to convey to a grantee, and contains the grantor's signature, but it does not contain the name of the grantee. Therefore Owen did not effectively convey the land to Abe. Although some courts have upheld deeds when the grantee's name is missing, these cases involve deeds containing language providing a method for ascertaining the grantee's identity, such as "to the grantor's son" or to the "trustee of a trust." No such language appears here.

[NOTE: If an applicant does not know the rule that a deed must name the grantee, the applicant should conclude the Owen-to-Abe deed is valid. If the applicant wrongly concludes that deed is valid, then the applicant might either completely skip Point Two, or, in discussing Point Two, conclude that Abe did not acquire a title by adverse possession because Abe's possession was not hostile.]

**Point Two: (35-45%)**

Abe may succeed in establishing that he acquired title to Whiteacre by adverse possession.

An individual may acquire title to land by adverse possession. To do so, the claimant must show that he entered the land and remained in actual possession that was open, continuous, exclusive, and under claim of right during the entire period in which the record owner (here, Owen) had a cause of action for possession. In State B, a cause of action for possession is available for ten years after a possessor's entry.

Whether the possessor has acquired title by adverse possession can only be conclusively determined by a judicial proceeding, and the sufficiency of particular acts of possession is not always clear. In most states, it is not necessary that the possessor have paid taxes. *See* STOEBUCK & WHITMAN, *supra*, at 854. (In a few states, a possessor cannot claim title by adverse possession without paying taxes. *Id.* at n.7.) The possessor need not possess the land to its highest and best use; the possession must be consistent with how a true owner would have possessed the land. *See Jarvis v. Gillespie*, 587 A.2d 981, 985 (Vt. 1991).

Abe has a strong case for adverse possession. His acts of possession were open in the sense that they were observable by anyone who looked. They continued for eleven years. His grants to others of permission to use the land suggest exclusivity. He paid taxes, although in most states this is not essential to establish a title by adverse possession. Lastly, his claim of right or hostility is evidenced by his entry under an invalid deed. It is irrelevant that he thought he was there rightfully under a valid deed because, in fact, the deed was invalid, and Owen could have ejected him at any time during the 10-year statutory period. Abe's acts of possession endured for eleven years, one year more than required to acquire a title by adverse possession in State B. His possession was also more active than Owen's, supporting the claim that it was consistent with how a true owner would have possessed the land. The fact that Abe did not build structures on the land, fence it, or post no-trespassing signs should not adversely affect his claim given that Owen, the previous owner, appears to have acted in the same way.

[NOTE: An applicant's conclusion is less important than his or her demonstrated mastery of the relevant legal principles and ability to utilize the facts.]

**Point Three: (30-40%)**

If Abe acquired title to Whiteacre by adverse possession, his claim to possession is good against a subsequent purchaser for value like Buyer despite his failure to record his interest. If Abe did not acquire title by adverse possession, Buyer's deed is controlling because Buyer had neither actual nor constructive notice of Abe's interest in Whiteacre when he purchased the property.

If Abe acquired title by adverse possession, that title is as good as a title traceable to a prior record owner; it is not lost because he allowed the property to go unoccupied. Thus if Abe acquired title by adverse possession (*see* Point Two), he is entitled to recover possession from Buyer.

The State B recording statute does not alter this result. Under the statute, a subsequent bona fide purchaser prevails against a prior donee or purchaser if the purchaser acquired the property without knowledge of the interest of the prior donee or purchaser. Statutes like this aim to protect subsequent purchasers against interest holders who could—but have failed to—record the documents describing their interests in the local land records office. In such a case, equity clearly favors the subsequent purchaser who took without notice of the prior interest. However, in the case of title acquired by adverse possession, there is no document that the interest holder could record. Courts have thus held that title acquired by adverse possession cannot be defeated by a later conveyance from the prior record title owner even if the land is vacant at the time the buyer purchases the land. *See, e.g., Mugaas v. Smith*, 206 P.2d 332 (Wash. 1949).

If Abe did not acquire title by adverse possession, then Buyer acquired title to the property from Doris, Owen's successor-in-interest. In that case, Buyer is entitled to possession because, given Abe's absence at the time Buyer purchased the property, Buyer had no actual or constructive notice of Abe's interest in the land.