



Activity 1: Why do we give rights to squatters? What do you think the law should be?

In this activity, we will consider why, from a policy perspective, the Law might give rights to squatters. You will also be asked to consider what you think the law *should* be.

Question 1

Consider what you have read about adverse possession so far. Can you think of any arguments for and against giving ownership of land to squatters?

➔ Now watch **video 1**

You might find it useful to refer to this extract from a Law Commission report:

Law Commission, *Land Registration for the Twenty-First Century, A Consultative Document* (Law Com No 254, 1998), excerpt from paragraphs 10.5 to 10.10.

What is the justification for adverse possession?

It is, of course, remarkable that the law is prepared to legitimise such “possession of wrong” which, at least in some cases, is tantamount to sanctioning a theft of land. So sweeping a doctrine requires strong justification. Of the reasons that are often given for it, four are particularly cogent, and of these the fourth is the most compelling.

First, ... adverse possession [may be accounted for], in part at least, [by a] policy of protect[ing] defendants from stale claims and to encourage plaintiffs not to sleep on their rights. ... It therefore behoves a landowner to be vigilant to protect that possession and not to sleep on his or her rights.

Secondly, if land ownership and the reality of possession are completely out of kilter, the land in question is rendered unmarketable if there is no mechanism by which the squatter can acquire title. This situation can easily happen, as for example where ... the true owner has disappeared and the squatter has assumed the rights of ownership for a substantial period.

Thirdly, in cases of mistake, the law of adverse possession can prevent hardship. For example, a squatter may have innocently entered land, mistakenly believing that he or she owned it, perhaps due to uncertainty as to the boundaries. He or she may have incurred expenditure under the mistaken belief of ownership. Although in some cases the squatter may have a claim based upon principles of proprietary estoppel, because the true owner knew of and acquiesced in the squatter's mistake, that will not always be true.

Fourthly, title to *unregistered* land is relative and depends ultimately upon possession. The person best entitled to land is the person with the best right to possession of it. The fact that adverse possession can extinguish earlier rights to possess facilitates and cheapens the investigation of title to *unregistered* land [and thereby] facilitate[s] conveyancing.



Question 2

In your opinion, when (if ever) should squatters be permitted to become the owner of a piece of land? Should any of the following factors be relevant, and why?

1. How the squatter is using the land. For example:
 - (a) How often, and to what extent, the squatter is using the land;
 - (b) Whether the squatter is living on the land, or using it for some other purpose; and
 - (c) Whether the squatter has improved the land (eg by building on it, at his/her own expense).
2. Whether the owner has any future plans for the land (eg building houses on it).
3. The personal circumstances of the squatter (eg whether or not he/she would be homeless if he/she were evicted from the land).
4. The personal circumstances of the landowner, and the impact that losing his/her land might have on him/her.
5. The amount of time the squatter has been on the land.
6. The type of land concerned. For example:
 - (a) Whether it is urban or rural land;
 - (b) The size of the plot concerned; and
 - (c) The value of the plot concerned.
7. Whether the squatter is innocently or deliberately occupying the owner's land.
8. Whether or not the landowner knows about, or consents to, the squatter's occupation of the land.
9. Whether any compensation should be paid by the squatter to the owner, when the squatter becomes the landowner.

Question 3

Bearing in mind your answer to Question 2, try to formulate a clear set of rules, setting out the precise circumstances in which, in an ideal world, you think a squatter ought to succeed in becoming a landowner.