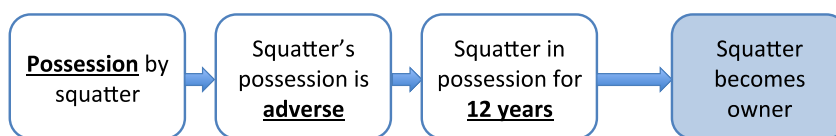




Activity 2: What is the Law of Adverse Possession in England and Wales? The law prior to October 2003

Here, we will examine the technical legal rules relating to adverse possession. As you will find out, the law was changed in October 2003, by the Land Registration Act 2002. To understand the full legal picture today, we need to begin by analysing the legal rules prior to October 2003, before looking at the changes that were brought in by Parliament on that date.

In broad terms, in order to become the owner prior to October 2003, the squatter was required to meet three requirements, after which the squatter would *automatically* become the owner of the land. These ingredients are shown in the following flow diagram:



The rules were, in part, governed by the Limitation Act 1980, sections 15 and 17, and Schedule 1. There is no need to look at the legislation at this stage, but if you would like to explore it, follow this link.¹ For a more detailed explanation as to how the law operates, see this Land Registry guide.²

In order to apply the rules set out in the flow diagram, it is crucial to understand the precise meaning of 'possession' in English law, and what 'adverse' means. For example, if we define 'possession' broadly, then the squatter is more likely to win; if we define it narrowly, he is less likely to win.

The legal definitions of '**possession**' and '**adverse**' are found in previous court judgments (known as '*case law*'). In this activity, you will discover how the law defines these concepts, by examining the case of *JA Pye (Oxford) Ltd v Graham*, a high-profile decision of the House of Lords from 2002 (the House of Lords was the highest court in the United Kingdom until it was replaced by the Supreme Court in 2009).

Read through the following synopsis of the facts in the *Pye v Graham* case, and then try to answer the questions below.

***JA Pye (Oxford) Ltd v Graham* [2002] UKHL 30**

In 1982, Mr and Mrs Graham bought a farmhouse in rural Berkshire. Next to their farmhouse were some fields, owned by JA Pye (Oxford) Ltd, a housing developer. The fields were prime development land (worth over £10m in 2002). It was Pye's intention to retain the fields until it could obtain planning permission for development. The following crucial events then occurred:

- In 1982, Pye gave the Grahams informal, unwritten, permission to graze their animals on fields until February 1983.
- In February 1983, Pye gave the Grahams written permission to graze their animals on the fields until 31 December 1983.

¹ <http://www.legislation.gov.uk/ukpga/1980/58>

² <https://www.gov.uk/government/publications/adverse-possession-of-1-unregistered-land-and-2-registered-land/practice-guide-5-adverse-possession-of-1-unregistered-land-2-registered-land-where-a-right-to-be-registered-was-acquired-before-13-october-2003--2>



- At the end of December 1983, the Grahams wrote to Pye, seeking to renew the grazing agreement. The Pye company refused to give the Grahams permission to graze, because Pye wanted to apply for planning permission in the very near future, and wanted the land free from the Grahams' animals before making its application. The Grahams nonetheless continued to graze their animals on the field and eventually Pye gave the Grahams permission to graze and cut hay until 1 September 1984.
- The Grahams continued to graze their animals on the land after September 1984. When they wrote to ask for Pye's permission, they failed to get a response.
- The Grahams continued to use the fields for farming until 1999, at which point they argued that they had become owners of the land via the law of adverse possession.

The judge who heard the case in the High Court awarded ownership of the land to the Grahams. The Court of Appeal disagreed, and decided that Pye should retain the land. The case was appealed to the House of Lords.

Question 1

What do you think the result ought to be in *Pye v Graham*, and why? You may wish to refer back to the rules you formulated in Activity 1.

You will find the full judgment of the House of Lords in *Pye v Graham* here: <http://www.bailii.org/uk/cases/UKHL/2002/30.html>. Have a look at the judgment (which consists of five separate speeches given by the five Law Lords hearing the case). There will be parts of the case that are couched in unfamiliar and technical language. Do not worry about this; instead, try to focus your attention on working out the outcome of the case, and the legal definitions of 'possession' and 'adverse'. Once you have read through the case, answer the following questions.

Question 2

What was the outcome of the case? Were all the Law Lords content with the outcome? Look, in particular, at Lord Bingham's speech at paragraphs 1 and 2, and Lord Hope's speech at paragraph 73.

You might be interested to look at the media's reaction to the decision:

- BBC News: <http://news.bbc.co.uk/1/hi/england/2094190.stm>
- The Guardian: <http://www.theguardian.com/world/2002/jul/09/law.theguardian1>

Question 3

Lord Browne-Wilkinson defined "possession" within paragraphs 40-43, which are quoted below. Please read through these paragraphs and then answer the questions that follow.



JA Pye Oxford Ltd v Graham
[2002] UKHL 30

Excerpt from Lord Browne-Wilkinson's speech (paragraphs 40-43):

In *Powell's* case Slade J said, ...

"If the law is to attribute possession of land to a person who [is not the owner], he must be shown to have both factual possession and the requisite intention to possess ("animus possidendi")."

Counsel for both parties criticised this definition as being unhelpful since it used the word being defined—possession—in the definition itself. This is true: but Slade J was only adopting a definition used by Roman law and by all judges and writers in the past. To be pedantic the problem could be avoided by saying there are two elements necessary for legal possession:

1. a sufficient degree of physical custody and control ("factual possession");
2. an intention to exercise such custody and control on one's own behalf and for one's own benefit ("intention to possess").

What is crucial is to understand that, without the requisite intention, in law there can be no possession. Remarks made by Clarke LJ in *Lambeth London Borough Council v Blackburn* (2001) 82 P & CR 494, 499 ("it is not perhaps immediately obvious why the authorities have required a trespasser to establish an intention to possess as well as actual possession in order to prove the relevant adverse possession") provided the starting point for a submission by Mr Lewison QC for the Grahams that there was no need, in order to show possession in law, to show separately an intention to possess. I do not think that Clarke LJ was under any misapprehension. But in any event there has always, both in Roman law and in common law, been a requirement to show an intention to possess in addition to objective acts of physical possession. Such intention may be, and frequently is, deduced from the physical acts themselves. But there is no doubt in my judgment that there are two separate elements in legal possession. So far as English law is concerned intention as a separate element is obviously necessary. Suppose a case where A is found to be in occupation of a locked house. He may be there as a squatter, as an overnight trespasser, or as a friend looking after the house of the paper owner during his absence on holiday. The acts done by A in any given period do not tell you whether there is legal possession. If A is there as a squatter he intends to stay as long as he can for his own benefit: his intention is an intention to possess. But if he only intends to trespass for the night or has expressly agreed to look after the house for his friend he does not have possession. It is not the nature of the acts which A does but the intention with which he does them which determines whether or not he is in possession.

Factual possession

In *Powell* Slade J, at pp 470-471, said this:

"(3) Factual possession signifies an appropriate degree of physical control. It must be a single and [exclusive] possession, though there can be a single possession exercised by or on behalf of several persons jointly. Thus an owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same time. The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed. Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no-one else has done so."

I agree with this statement of the law which is all that is necessary in the present case. The Grahams were in occupation of the land which was within their exclusive physical control. The paper owner, Pye, was physically excluded from the land by the hedges and the lack of any key to the road gate. The Grahams farmed it in conjunction with Manor Farm and in exactly the same way. They were plainly in factual possession before 30 April 1986.



Intention to possess

(a) To own or to possess?

There are cases in which judges have apparently treated it as being necessary that the squatter should have an intention to own the land in order to be in possession. In *Littledale v Liverpool College* [1900] 1 Ch 19, 24 Lindley MR referred to the plaintiff relying on "acts of ownership": see also *George Wimpey & Co Ltd v Sohn* [1967] Ch 487 at 510. Even Slade J in *Powell*, at pp 476 and 478, referred to the necessary intention as being an "intention to own". In the *Moran* case (1988) 86 LQR 472, 479 the trial judge (Hoffmann J) had pointed out that what is required is "not an intention to own or even an intention to acquire ownership but an intention to possess". The Court of Appeal in that case [1990] Ch 623, 643 adopted this proposition which in my judgment is manifestly correct. Once it is accepted that in the Limitation Acts, the word "possession" has its ordinary meaning (being the same as in the law of trespass or conversion) it is clear that, at any given moment, the only relevant question is whether the person in factual possession also has an intention to possess: if a stranger enters on to land occupied by a squatter, the entry is a trespass against the possession of the squatter whether or not the squatter has any long term intention to acquire a title.

A similar manifestation of the same heresy is the statement by Lindley MR in *Littledale v Liverpool College* [1900] 1 Ch 19, p 23 that the paper owners "could not be dispossessed unless the plaintiffs obtained possession themselves; and possession by the plaintiffs involves an animus possidendi— ie, occupation with the intention of excluding the owner as well as other people". This requirement of an intention to exclude the owner as well as everybody else has been repeated in subsequent cases. In *Powell's* case 38 P & CR 452, 471 Slade J found difficulty in understanding what was meant by this dictum since a squatter will normally know that until the full time has run, the paper owner can recover the land from him. Slade J reformulated the requirement (to my mind correctly) as requiring an "intention, in one's own name and on one's own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable

- (a) Possession consists of two elements: "factual possession"; and an "intention to possess". What factors in the case helped the Grahams demonstrate that they satisfied each of the two elements of the possession test? Did it matter that the Grahams would have been willing to let the Pye company onto the land, if a company representative had visited?

At paragraph 36, Lord Browne-Wilkinson commented on the meaning of "adverse" in the following terms:

"Many of the difficulties [in the old cases and legislation] are due to a conscious or subconscious feeling that in order for a squatter to gain title by lapse of time he has to act adversely to the paper title owner. It is said that he has to "oust" the true owner in order to dispossess him; that he has to intend to exclude the whole world including the true owner; that the squatter's use of the land has to be inconsistent with any present or future use by the true owner. In my judgment much confusion and complication would be avoided if reference to adverse possession were to be avoided so far as possible and effect given to the clear words of the Acts. The question [as to whether or not possession is adverse] is simply whether the defendant squatter has dispossessed the paper owner by going into ordinary possession of the land for the requisite period without the consent of the owner."



- (b) At what date did the Grahams' possession become "adverse"? Was it relevant that the Grahams' use of land was not inconsistent with Pye's plans to develop the land in the future? When, according to the rules in the flow diagram on the first page, did the Grahams become the owners of the land?

→ Now watch **video 2**

- (c) Using the definitions of "adverse" and "possession", would you be regarded as being in "adverse possession" in the following circumstances?

You enter a friend's house as a dinner guest.

You discover some marshland that belongs to someone else, and decide to shoot birds that fly over the land.

You moor your boat on someone else's lake. For discussion of similar facts, see this case:

<http://www.bailii.org/ew/cases/EWHC/Ch/2009/954.htm>

You stay overnight in a hotel room.

You rent a house for a year, as a tenant.

→ Now watch **video 3**

Question 5

How does the English law of adverse possession compare with the rules you drew up in Activity 1? Do you think English law is too generous to squatters? If so, how would you change English law?

Before moving on to consider the new law of adverse possession, you might like to read on, to learn about the conclusion to the *Pye v Graham* story.

Pye's appeal to the European Court of Human Rights in Strasbourg

As you will have gathered by now, the House of Lords decided in *Pye v Graham* that the Grahams had been adversely possessing Pye's land for long enough that the



Grahams were now the owners of it. This represented a loss of several million pounds to the Pye company, which had earmarked the land for development.

Dissatisfied with the House of Lords' decision, Pye decided to take their case to the European Court of Human Rights in Strasbourg, alleging that there had been a breach of one of their fundamental human rights – namely their right to have their **property** protected against unjustified interferences. This right is contained within Article 1 of the First Protocol of the European Convention on Human Rights (see here: http://www.echr.coe.int/Documents/Convention_ENG.pdf at p 31), and provides:

Protection of property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

This time, Pye brought its legal claim against the *state* (ie the United Kingdom), rather than the Grahams. The essence of Pye's claim was:

- There had been a disproportionate interference with Pye's ownership of the land;
- The United Kingdom was responsible for the laws on adverse possession, and therefore was responsible for Pye's loss;
- The interference with Pye's land could not be justified, especially given that Pye had received no compensation for its loss; and
- That the United Kingdom should compensate Pye for their loss.

Pye's claim succeeded at first in the European Court of Human Rights. However, the case was appealed to the Grand Chamber of the European Court of Human Rights, where Pye's argument failed: the court ruled (with a majority of 10 to 7) that our law of adverse possession could be justified, after all. In essence, the Grand Chamber decided that there were sufficiently strong policy reasons to justify squatters obtaining rights after twelve years' adverse possession of an owner's land.

If you are interested in looking at the two judgments, you can find them here:

First instance decision of European Court of Human Rights:

[http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{"appno":\["44302/02"\],"itemid":\["001-71034](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{)

Grand Chamber decision of European Court of Human Rights:

<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-82172>