Lee Burgess: Welcome back to the Law School Toolbox podcast. Today, we have another episode in our series "Law Every 1L Should Know", and this one is on real property. Your Law School Toolbox hosts are Alison Monahan and Lee Burgess, that's me. We're here to demystify the law school and early legal career experience, so you'll be the best law student and lawyer you can be. We're the co-creators of the Law School Toolbox, the Bar Exam Toolbox, and the career-related website CareerDicta. Alison also runs The Girl's Guide to Law School. If you enjoy the show, please leave a review or rating on your favorite listening app. And if you have any questions, don't hesitate to reach out to us. You can reach us via the contact form on LawSchoolToolBox.com, and we'd love to hear from you. And with that, let's get started.

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Lee Burgess: Welcome back! If you're new to this series, "Law Every 1L Should Know" is designed for incoming 1Ls – students who are getting ready for law school and want a head start on the law they're about to spend the next year learning. Each episode gives you a simplified overview of one of the core 1L subjects. We're not trying to cover every doctrine or every exception. We want to give you the framework, so that when you walk into class on day one, you already have mental shelves to put the new material on. And if you want to go deeper on any of the specific topics we mention today, our podcast also has a series called "Listen and Learn". Those episodes take one specific legal concept, review the rules in more detail, and apply the law to a fact pattern. We'll link to relevant "Listen and Learn" episodes in the show notes.

Lee Burgess: Today, we're talking about real property –what most people just call "property". Property is the class that surprises a lot of 1Ls, because it doesn't have the same kind of unifying theory that Torts or Contracts have.

Lee Burgess: We're going to do three things in this episode. First, a quick orientation to what property law actually covers, so you have a sense of the landscape. Second, a brief primer on one of the strangest and most distinctively property-flavored topics – future interests. And third, a deeper dive into adverse possession with a fact pattern at the end.

Lee Burgess: A quick reminder, especially if you're listening to this before law school starts: Don't try to memorize everything. Just let it wash over you. The goal is recognition. When your professor says "future interest" or "open and notorious" in class, those words should already have a shape to them. And with that, let's dive in.

Lee Burgess: Property law is famously fragmented. Unlike Torts or Contracts, each of which has a unifying theory, Property covers a bunch of loosely related topics that all happen to involve land or things. You'll spend the semester on estates and future interests, which is about how ownership of land gets divided across time; on adverse possession, which is about how you can lose land by not noticing someone else is using it; on concurrent ownership, which is when multiple people own the same property at the same time – think a husband and wife or business partners holding land together; on easements and other servitudes, which is about non-ownership rights to use someone else's land, like a right of way across a neighbor's property; on landlord/tenant, which is the rules for renting; and on recording acts, which is the public records system that resolves competing claims to the same property – for example, when the same parcel has been sold or mortgaged to more than one party, whether by mistake, fraud, or just disorganized record keeping.

Lee Burgess: Many Property courses also spend time on personal property – questions about who owns a wild animal someone captures, what rights a finder has to lost property, and how gifts work, which you'll meet through famous old cases like *Pierson v. Post* –the case about who owns a fox killed during a hunt. And some courses cover zoning and land use regulation, government takings of private property, and mortgages. Each of these is its own subject within a subject. We're not going to cover all of them today. Today, we'll do two things – a brief primer on what future interests are, and then a deeper dive into adverse possession.

Lee Burgess: So, let's start with the primer on future interests, because this is the part of property that feels the most alien to most students. Here's the core idea: Property – meaning a piece of land – can be divided not just by space, but by time. If I own a farm, I can split it geographically. I can give one piece to my brother and sell another piece to my neighbor. That's familiar. But I can also split that same piece of land in time. I can say, "My brother gets to use the farm for the rest of his life, and then when my brother dies, my daughter gets to use it." In that case, my brother and my daughter both own real, legally recognized rights in the same piece of land, just at different points in time. My brother has what's called a "present possessory estate" – the right to use the land now. My

daughter has what's called a "future interest" – the right to use the land later. That is the whole organizing concept of this area of law.

Lee Burgess: Property law has a vocabulary for naming each type of present possessory estate and each type of corresponding future interest. The categories have old-sounding names – they come from medieval English property law, and they have never really been modernized. You'll hear about the fee simple absolute, which is essentially full forever ownership with no strings attached. You'll hear about the life estate, which is the right to use the land for as long as someone is alive. You'll hear about defeasible fees, which are ownership rights that can be lost if some condition happens – for example land conveyed to a church, but if the church ever stops using the land for religious purposes, then over to a named third party, like the grantor's daughter. And on the future interests side, you'll hear about remainders, reversions, and executory interests, all of which are names for rights that vest in the future, when the present possessory estate ends. In that church example, the daughter's right to take the land if the condition is broken is an executory interest.

Lee Burgess: You'll also hear about the rule against perpetuities – a centuries-old rule that limits how far into the future you can control who owns a piece of land. RAP, as it's known, has a reputation for being one of the most dreaded doctrines anywhere in the 1L curriculum. We're naming it now just so it doesn't blindside you. We are absolutely not going to try to teach it today. Future interests, in general, is famously the hardest part of 1L Property, particularly because the vocabulary is dense and the cases are old, and partly because of RAP. But the underlying concept is simple: Land ownership can be cut up across time, and we have a body of law that tells you who owns what at any given moment. If you want to go deeper, our "Listen and Learn" series has a multi-part deep dive on present and future estates linked to in the show notes. And if you don't want to listen to those now, you should bookmark them and come back to them when you're taking Real Property, because they are just that good.

Lee Burgess: Okay, with that landscape in place, let's get into the deep dive – adverse possession. Adverse possession is the doctrine that lets someone gain legal ownership of a piece of land they don't actually own, simply by using it openly and continuously for a long enough period of time. Well, that sounds wrong at first. You're telling me I can just squat on someone else's land, and eventually it becomes mine? Well, yes, basically. Why would the law allow that? Two reasons. First, the law favors certainty in land ownership. If a piece of land has been used by one person for decades, and no one has ever challenged that use, the law would rather treat the longtime user as the owner than reward the absent true owner who never paid attention.

Lee Burgess: Second, the law disfavors letting valuable land go unused. Adverse possession encourages true owners to actually keep an eye on what they own, and it transfers ownership to people who are putting the land to productive use.

Lee Burgess: So, that's the policy. How does it actually work? Well, adverse possession has five elements, plus a statutory time requirement. The five elements are: actual possession; open and notorious possession; continuous possession; exclusive possession; and hostile or adverse possession. Plus, the possession has to last for the statutory period set by the state – typically somewhere between five and 21 years. Just like the four elements of negligence in our Torts episode, and the three elements of contract formation in our Contracts episode, this is a checklist you walk through in order every time.

Lee Burgess: So, let's take them one at a time. Element one: actual possession. The adverse possessor has to actually use or occupy the land, not just claim it on paper. The use has to be the kind of use that the true owner would make of similar land. If the land is a residential lot in a city, actual possession looks like living there, building structures, maintaining the property. If the land is a farm, actual possession looks like farming it. If the land is a vacation cabin parcel in the woods, actual possession looks like using a vacation cabin in the woods, which usually means seasonal use, not year-round. So you can't establish adverse possession by simply walking across someone's land occasionally, or by parking a car there once. You have to actually take possession in the way a real owner would.

Lee Burgess: Element two: open and notorious. This means the use has to be visible enough that the true owner, if the true owner were paying reasonable attention, would notice that someone was treating the land as their own. The adverse possessor cannot hide. The whole point of this element is to give the true owner fair notice that their ownership is being challenged. What counts as "open and notorious" depends on the type of land. Putting up a fence around the disputed area is the classic example. So is building a structure – a cabin, a shed, a garage. So is maintaining a lawn or a garden. The use has to be the kind of thing that if the true owner came by and looked, they would say, "Wait, who's using my land?" The flip side – quietly using a tiny corner of someone's woodlot where no one ever goes, in a way the true owner would never see – doesn't count.

Lee Burgess: Element three: continuous. The possession has to be continuous for the entire statutory period, but "continuous" doesn't mean 24 hours a day, 365 days a year. It means continuous in the way that the type of land lends itself to. If the land is a vacation cabin parcel, using it every summer from May to September year after year is continuous. If the land is a farm, planting and harvesting crops every growing season is continuous. The standard is: Would a reasonable owner

of this type of land be using it in this way? There's a related concept called "tacking", where successive adverse possessors can add their possession periods together to meet the statutory period, as long as the successive possessors are in what's called "privity", meaning one transferred their interest to the next. Tacking matters when, say, an adverse possessor sells the disputed land to a buyer halfway through the statutory period. The buyer can add the seller's time to their own.

Lee Burgess: Element four: exclusive. The adverse possessor has to possess the land to the exclusion of the true owner and the general public. It doesn't have to be absolute – you don't lose adverse possession because a hiker once walked across the property. But it does mean the adverse possessor can't be sharing the land with the true owner or with the public at large in any way. That's inconsistent with claiming the land for themselves. If the true owner and the adverse possessor are both using the land alongside each other – that's not exclusive. The whole idea of ownership is excluding others.

Lee Burgess: Element five: hostile or adverse. This is the most heavily litigated of the five elements, and the one with the most jurisdictional split, so pay attention here. At the simplest level, "hostile" means without the true owner's permission. If the true owner gave permission, adverse possession can never run. So, a tenant under a lease, a licensee using the land with the owner's express permission, or a guest staying at the invitation of the owner can never acquire title by adverse possession, because their use is permitted.

Lee Burgess: Beyond that core idea, jurisdictions split on what the adverse possessor has to subjectively believe about ownership. The majority rule is the objective approach. Under the objective approach, it doesn't matter what the adverse possessor believed. If the possession was without permission, it was hostile. The adverse possessor's state of mind is irrelevant. A minority of jurisdictions take what's called the "good faith approach", where the adverse possessor has to have honestly believed they owned the land – for example, because they thought they were on their own side of the property line. And an even smaller number of jurisdictions have flirted with a "bad faith approach", requiring the adverse possessor to know they were trespassing. For your 1L Property class, the majority objective approach is the default rule to know. But your professor may ask you to argue both sides if the facts make the adverse possessor's state of mind look favorable or unfavorable.

Lee Burgess: Finally, the statutory period. Each state sets its own time requirement, and they vary widely. Some states are as short as five years; others are as long as 21. Many states have a shorter period when the adverse possessor has what's called "color of title" –a defective written deed that purported to convey the

land but didn't legally  work, or when the adverse possessor has been paying property taxes on the disputed land. For an exam, your professor will give you the statutory period as a fact; you just have to apply it.

Lee Burgess: One important carve-out before we apply all this to facts: Adverse possession generally cannot run against the government. Land owned by the federal government, by a state, or by a city is usually immune from adverse possession claims, no matter how long someone has been using it. There is even an old Latin maxim for it, which I will save you from listening to my Latin, which means "no time runs against the king". So, if a fact pattern puts the disputed land on government property, a national forest, a city right of way, a public park – that's a signal the adverse possession argument fails, and you should flag it.

Lee Burgess: Alright, that was a lot of law. Hopefully, you're still with me. Let's bring it together with a fact pattern. As I read it, listen for where each of the five elements shows up, and watch the statutory time question at the end. Here's the hypo:

Lee Burgess: Tom owns a 100-acre forested parcel in rural Vermont that he inherited from his uncle in 2001. Tom lives in Boston and rarely visits the property. In 2003, his neighbor Sarah, without Tom's knowledge or permission, built a small cabin on a two-acre section of Tom's land near the shared property line. Sarah believed at the time mistakenly that the cabin was on her own land. She uses the cabin every summer from May through September, hosting friends and family. She installed a propane heater, a small generator, and an outhouse. She cut and maintained a small trail from the public road to the cabin, and she put up a hand-painted "Sarah's Place" sign at the trailhead. In 2025, Tom decides to sell his parcel. A surveyor discovers that Sarah's cabin and trail are on Tom's land. Tom demands that Sarah remove the cabin and vacate the property. Sarah refuses, claiming she now owns the two-acre area by adverse possession. Vermont's statutory period for adverse possession is 15 years. Does Sarah own the parcel?

Lee Burgess: So, let's go element by element. First: actual possession. Did Sarah actually use the land in a way an owner of similar land would? Yes. The disputed parcel is a forested rural lot in Vermont. The kind of use that fits that land is exactly what Sarah did. She built a seasonal cabin, used it as a vacation property, installed basic utilities. Element one is satisfied.

Lee Burgess: Second: open and notorious. Was Sarah's use visible enough that Tom, if he had been paying reasonable attention, would have known? Absolutely. A cabin, an outhouse, a maintained trail, a hand-painted sign at the trailhead – these are all classic open and notorious uses. The fact that Tom didn't actually notice

because he lived in Boston and rarely visited doesn't help him. "Open and notorious" means objectively visible, not actually noticed. Element two is satisfied.

Lee Burgess: Third is continuous. Was Sarah's possession continuous for the statutory period? Yes. She used the cabin every summer for 22 years. For a vacation cabin in rural Vermont, seasonal summer use is exactly the kind of use the land lends itself to. She doesn't need to live there in February for her possession to be continuous. Element three is satisfied.

Lee Burgess: Fourth: exclusive. Was Sarah's possession exclusive? Yes. Nothing in the facts suggests that she was sharing the land with Tom or with the general public. The cabin was hers, the trail was hers. The parcel was treated as her own. Element four is satisfied.

Lee Burgess: Fifth: hostile or adverse. Was Sarah's use without Tom's permission? Yes. Tom didn't even know she was there, so he definitely didn't grant permission. Under the majority objective approach, that's enough. Sarah's belief that the cabin was on her own land doesn't matter. What matters is whether she had permission, and she didn't. Element five is satisfied. Worth noting that even under the minority good faith approach, Sarah would still win, because she honestly believed the land was hers. Under a bad faith approach, she might lose, because she didn't realize she was trespassing. But most states, including Vermont, follow the objective approach, so Sarah wins under the rule that actually controls in this case.

Lee Burgess: Finally, the statutory period. Vermont's period is 15 years. Sarah's continuous use began in 2003. By 2018, she had met the statutory period. By 2025, she has more than met it.

Lee Burgess: So, all five elements are satisfied, and the statutory period has elapsed. Sarah owns the portion of the two-acre parcel she actually occupied. And because she has no color of title, her ownership extends only that far, not automatically to the full two acres. Tom is too late.

Lee Burgess: A few things to notice from that analysis. First, the structure mirrors what you'll do on every Property exam. Walk through each element in order, apply the facts, conclude, don't skip steps. Second, the "hostile" element is where the jurisdictional split matters most. Watch for facts that tell you about the adverse possessor's state of mind. Those facts are usually there for a reason. Third, the "open and notorious" element is where the true owner loses if they aren't paying attention. Adverse possession is, in a real sense, a punishment for owners who don't watch their land.

Lee Burgess: Now, before we wrap up, a quick recap. Property law is fragmented – it covers estates and future interests, adverse possession, concurrent ownership, easements, landlord/tenant, and recording acts, among other topics. Future interests is the body of law that divides ownership of the same land across time, using a vocabulary of "present possessory estates" and "future interests". Adverse possession is how someone can gain title to land they don't legally own, by using it actually, openly and notoriously, continuously, exclusively, and hostilely for the statutory period. If you want to go deeper on any of these topics, check out the show notes. We've linked to "Listen and Learn" episodes on present and future estates, adverse possession itself, covenants, constructive eviction, and other property topics. Those go into more depth than we did here.

Lee Burgess: Next time in the "Law Every 1L Should Know" series, we'll tackle another core 1L subject. Until then, take a breath. Property class is going to feel like learning a foreign language at first. The vocabulary is old and dense and full of obscure terms. But the underlying concepts are usually simpler than they sound, so just stay with it.

Lee Burgess: Thanks again to Juno for sponsoring this podcast. If you're thinking about student loans for law school, head to JoinJuno.com to explore your options and learn how Juno can help you find a better rate.

Lee Burgess: If you enjoyed this episode of the Law School Toolbox podcast, take a second to leave a review and rating on your favorite listening app. We'd really appreciate it. And be sure to subscribe so you don't miss anything. If you have any questions or comments, please don't hesitate to reach out to myself or Alison at lee@lawschooltoolbox.com or alison@lawschooltoolbox.com. Or you can always contact us via our website contact form at LawSchoolToolBox.com. Thanks for listening, and we'll talk soon!

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