

PROPERTY PRACTICE QUESTIONS

ANSWER 5A

Gerry W. Beyer

Governor Preston E. Smith Regents Professor of Law



Caveat: The outline of the answer below provides guidance regarding the main issues which you should address in your answer. The answer is *not* designed to be a model answer.

Victoria v. Annabel (BFP defense)

- *True owner has to entrust* (first element of a BFP claim)
 - Victoria did not entrust her violin to the thief
- No need to go any further because for the BFP defense to succeed all elements must be satisfied
- Annabel's claim failed to meet the first element; therefore she is not a BFP

Victoria v. Annabel (Adverse possession defense)

- **General rule - true owner prevails over unauthorized possessor**
 - **Exception – adverse possession**
- **Texas law on adverse possession / Discovery rule**
 - *2 year period of possession for statute of limitations on conversion to run*
 - Annabel had the violin for 11 years
 - *Claimant must possess and use property*
 - Annabel possessed the violin and used it by playing it
 - *Claimant must hold property exclusive and hostile to the true owner*
 - Annabel did not have Victoria's permission to possess the violin
 - *Claimant must assert ownership directly to the owner or use the property so notoriously that the true owner is presumed to know about the use*

- Arguably, the fact that Annabel used her violin during public concerts was sufficiently notorious
- *In Texas, the statute of limitations does not begin to run until the true owner discovers or by reasonable diligence should have discovered who has his item (discovery rule)*
 - Annabel exercised reasonable diligence in searching for the violin (notices in school).
- **Conclusion:** Because Texas law applies, Victoria’s cause of action did not accrue until she discovered that Annabel had her violin. That’s when the statute of limitations begins to run
 - Because Victoria brought her action within 2 years after discovery that Annabel had her violin, Victoria should prevail

Victoria v. Annabel (Victoria helped herself to the violin)

- Self-help is not an appropriate remedy to regain possession of a chattel
- If Victoria exercises self-help, she will not be able to legally keep her violin