

【法學英文】：模擬測驗練習第九回

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文章閱讀：本期「論時效取得地上權」

【原文裁判書摘要】

Court of Appeal, Third District, California.

David NIELSEN et al., Plaintiffs and Respondents,

v.

Guy GIBSON as Executor, etc., Defendant and Appellant.

No. C059291.

Decided: October 13, 2009

David Nielsen and his wife Tricia brought this action against Guy Gibson, in his capacity as executor of the estate of Bettyan Gayl Bender (Gayl), and her heirs to quiet title to property adjacent to the Nielsen home (the property, or the subject property). Following an unreported court trial, the court found the Nielsens had established they had acquired the subject property through adverse possession and entered judgment quieting title in the Nielsens.

Gibson appeals on the judgment roll. He contends that, under Code of Civil Procedure section 328, the five-year adverse possession period did not begin to run until after Gayl's death because she was incapacitated and incapable of managing her own affairs before the Nielsens began possessing the subject property. In an unpublished portion of the opinion, we conclude the record does not contain evidence supporting this claim.

Gibson also contends the court erred in finding that Gayl could have had reasonable notice of the Nielsens' possession of the property, because Gayl was in Ireland during the whole of the five-year period. In the published portion of the opinion, we reject this argument.

We therefore find no error, and shall affirm the judgment.

FACTUAL AND PROCEDURAL SUMMARY

We treat this case as an appeal on the judgment roll, because it reaches us based only on the original trial court file in place of a clerk's transcript. (Rule 8.833; cf. *Rubin v. Los Angeles Fed. Sav. & Loan Assn.* (1984) 159 Cal.App.3d 292, 296, 205 Cal.Rptr. 455.) Because the case is presented in this posture, we presume that the trial court's findings of fact are supported by substantial evidence, and its conclusions of law are binding upon us unless error appears on the face of the record. (*Bond v. Pulsar Video Productions* (1996) 50 Cal.App.4th 918, 924, 57 Cal.Rptr.2d 917.) Except where otherwise indicated, the following facts are taken chiefly from the trial court's excellent statement of decision.

Ownership of the Subject Property

The subject property was owned at the start of these events by Lyman Bender and his wife Mary (the Benders). In 1993, the Benders executed a gift deed to the subject property to their daughter, Gayl. Gayl built a cabin on the property before she left permanently for Ireland in the early 1990's.

While living in Ireland, in approximately 1997, Gayl became the subject of legal proceedings concerning her competency, after she was found living in her car with all her personal property, including cash, stocks and bonds. An attorney/solicitor in Ireland, Brendan Twomey, was appointed by the Irish court to act for Gayl in a role comparable to that of a conservator of a person's estate. Notwithstanding these developments, the Benders believed Gayl was competent and that someone in Ireland was trying to take legal advantage of her by having her declared incompetent; they said as much to the Nielsens. In mid-1997, Mary Bender went to Ireland to be with Gayl.

In 1997, the Nielsens wanted to buy from the Benders three lots in Granite Bay, which included a residence and the subject property. The Benders also wanted to complete the sale, but the transaction was complicated because the subject property had been gift-deeded to Gayl, who was still in Ireland, and no one had power of attorney to act on her behalf. Lyman Bender urged the Irish attorney Twomey to help them complete the transaction, but Twomey told them that the Irish courts had determined Gayl was incapable of managing her affairs and did not have the capacity to make decisions with legal consequences.