ROGERS, C. J., with whom PALMER and EVELEIGH, Js., join, dissenting. I respectfully dissent. Although the majority properly reviews the trial court's factual finding that the named plaintiff, Theresa P. O'Connor,[1] satisfied each element of adverse possession according to a sufficiency of the evidence standard, I believe the majority fails to afford the trial court the degree of deference that this court routinely affords in sufficiency challenges. Specifically, I cannot agree with the majority's conclusion that the record contains "absolutely no evidence" that the plaintiff intended to hold a parcel of land (lot) as the exclusive owner prior to 1997, and that the defendant, Dorothy Larocque, was on notice thereof, given the plaintiff's express testimony to that effect. Accordingly, I would affirm the judgment of the trial court.

I begin by noting that, were this an adverse possession case not involving cotenants, it is clear that the standard for adverse possession would be satisfied. Even setting aside the various uses to which the plaintiff and her husband, John J. O'Connor, have put the lot over the past several decades—planting trees, mowing the lawn, clearing brush, leasing it for parking—the fact that the plaintiff paid the property taxes, insured the property and was listed, with her husband, as the sole taxpayer of record provides " 'powerful evidence' " of adverse possession. *Wren* v. *Parker*, 57 Conn. 529, 531, 18 A. 790 (1889); *Porter* v. *Morrill*, 108 Conn. App. 652, 666–67, 949 A.2d 526, cert. denied, 289 Conn. 921, 958 A.2d 152 (2008).[2] Accordingly, the sole issue raised by this appeal is the extent to which the fact that the parties are cotenants impacts the adverse possession analysis.

Considering first the standard of review, I agree with the majority that adverse possession presents a mixed question of law and fact. Because it is not entirely clear what degree of deference the majority would afford to the trial court's findings,[3] however, I review what I believe to be the well established governing law. First, I agree with the majority that the definition of adverse possession, and the legal standards governing a finding of adverse possession, are questions of law over which this court exercises plenary review. It is the proper province of an appellate court, then, to identify the constituent elements of adverse possession,[4] to define those elements, and to impose any rules or restrictions as to the circumstances under which those elements may be satisfied. Second, I agree with the majority that the finding of basic evidentiary facts is the proper province of the trier of fact, and that such findings are reviewable by an appellate court only for clear error.

Third, and of particular importance for the present case, I believe it is well settled that the trier of fact is

also tasked with applying those basic evidentiary facts to the elements of adverse possession, and with finding whether each of those elements is satisfied.[5] Because the party seeking to possess adversely against a cotenant must establish those elements by clear and convincing evidence; *Wildwood Associates, Ltd.* v. *Esposito*, 211 Conn. 36, 42, 557 A.2d 1241 (1989); the trier's finding that an element of adverse possession is satisfied is reviewable under a sufficiency of the evidence standard. See *Caminis* v. *Troy*, 300 Conn. 297, 306, 12 A.3d 984 (2011). This is also a deferential standard of review. "[I]t is not the function of this court to sit as the seventh juror when we review the sufficiency of the evidence . . . rather, we must determine, in the light most favorable to sustaining the verdict, whether the totality of the evidence, including reasonable inferences therefrom, supports the [trier's] verdict . . . . In making this determination, [t]he evidence must be given the most favorable construction in support of the verdict of which it is reasonably capable. . . . In other words, [i]f the [trier] could reasonably have reached its conclusion, the verdict must stand, even if this court disagrees with it." *Carrano* v. *Yale-New Haven Hospital*, 279 Conn. 622, 645–46, 904 A.2d 149 (2006); see also *Considine* v. *Waterbury*, 279 Conn. 830, 858, 905 A.2d 70 (2006) (noting " 'rigorous' " standard that must be met before reviewing court may set aside verdict for insufficient evidence); *Lakeview Associates* v. *Woodlake Master Condominium Assn., Inc.*, 239 Conn. 769, 778, 687 A.2d 1270 (1997) ("[o]nly in the clearest circumstances where the conclusion found could not reasonably be reached will the trier's determination be disturbed" [internal quotation marks omitted]). Accordingly, this court has explained that "[a] trial court's findings in an adverse possession case, if supported by sufficient evidence [in the pleadings and the record as a whole], are binding on a reviewing court . . . ." (Internal quotation marks omitted.) *Caminis* v. *Troy*, supra, 306; see also 2 C.J.S. 219–20, Adverse Possession § 292 (2003) (notwithstanding burden to prove adverse possession by clear and convincing evidence, question of whether elements are satisfied is one for trier of fact where even slight evidence exists).[6]

I believe that the record here contained sufficient evidence for the trier of fact to have found that the plaintiff ousted[7] the defendant, and I further believe that nothing in the law precluded that factual finding. Accordingly, I would conclude that the trial court's decision was not clearly erroneous.

I now turn to the specific legal principles governing adverse possession between cotenants, and the various means through which such possession may be proven. I agree with the majority that any party seeking to establish adverse possession must demonstrate by clear and convincing evidence that her use of the land was "actual, [open] and notorious, exclusive, continuous

and hostile" throughout the statutory period. *Ahern* v. *Travelers Ins. Co.*, 108 Conn. 1, 4–5, 142 A. 400 (1928). I further agree that, in the cotenant context, the would-be adverse possessor bears the additional burden of proving not only that she intended to hold the land adversely, but also that the cotenant was on notice of this intent. *Ruick* v. *Twarkins*, 171 Conn. 149, 158–59, 367 A.2d 1380 (1976). These dual elements of intent and notice, which may collectively be termed "ouster," are necessary in light of the default assumption that any action by a cotenant as to common land is performed with the consent and for the benefit of all cotenants. Id., 157; *Bryan* v. *Atwater*, 5 Day (Conn.) 181, 191 (1811); annot., 82 A.L.R.2d 23–24, § 2 (1962). Lastly, I share the majority's view that there is no express notification requirement; notice to the ousted cotenant may be either actual or constructive. See generally, annot., supra, 82 A.L.R.2d § 50.

I would emphasize, however, that "[n]otice of the hostility of the possession resulting from acts or conduct of [a cotenant] possessor may appear in so many ways that judges and text writers have not undertaken an enumeration." Id., p. 235. The only requirement is that the trier of fact find, by clear and convincing evidence, that the possessory cotenant intended to hold the common land exclusively, and that the ousted cotenant was on notice thereof. Id. Although the majority, relying on some dicta in the case law, appears to believe that there can be adequate notice of a cotenant's intent to dispossess only when there is either an express notification or something closely akin to it, a thorough review of the cases reveals that there is no such requirement.[8] In his authoritative, 300 page annotation of the legal requirements for adverse possession among cotenants, W. W. Allen reviewed more than 1100 American cases on the subject;[9] id.; and concluded that, notwithstanding any dicta to the contrary, the dominant view in this country "is that outward or notorious acts of exclusive ownership . . . are not essential in any instance in which the hostile character of the possession is otherwise distinctly manifested and the fact thereof brought home to the possessor's cotenants." Id., p. 24. Allen further explains in the annotation that "the conclusion to be drawn from the cases as a whole, and which [follows] in reason as well, is that where the possession is in fact hostile and adverse, it is adverse in law if its adverse character is *in any manner* . . . plainly manifested to the possessor's cotenants." (Emphasis added.) Id., p. 69.[10]

Bearing out Allen's analysis, this court has found—or affirmed a trial court finding of—adverse possession in almost every cotenancy case in which we have considered the question. See, e.g., *Ruick* v. *Twarkins*, supra, 171 Conn. 161; *Hagopian* v. *Saad*, 124 Conn. 256, 259, 199 A. 433 (1938); *Lucas* v. *Crofoot*, 95 Conn. 619, 626, 112 A. 165 (1921); *Goodwin* v. *Bragaw*, 87 Conn.

31, 39–40, 86 A. 668 (1913); *Harrison* v. *International Silver Co.*, 78 Conn. 417, 422, 62 A. 342 (1905). In two additional cotenancy cases, we made clear that a finding of adverse possession would have been legally permissible. See *Standard Co.* v. *Young*, 90 Conn. 133, 135, 138–39, 96 A. 932 (1916) (reversing on other grounds); *Bryan* v. *Atwater*, supra, 5 Day (Conn.) 192–93 (trial court improperly instructed jury that, by law, defendant cotenant could not have adversely possessed property, and opining that "the verdict ought to have been for the defendant"); see also *Ricard* v. *Williams*, 20 U.S. (7 Wheat.) 59, 116, 119–20, 5 L. Ed. 398 (1822) (applying Connecticut law).[11] In fact, in the 200 years that have passed since this court first heard a case of adverse possession among cotenants, the present case represents the first instance, to my knowledge, in which we have ever reversed on the merits a trial court's finding in favor of the party in possession.[12]

Over the course of that history, while noting that ouster must be assessed on the basis of the unique circumstances of each case; *Ricard* v. *Williams*, supra, 20 U.S. 106; *Lucas* v. *Crofoot*, supra, 95 Conn. 623–24; see also annot., supra, 82 A.L.R.2d § 40; Connecticut courts have recognized a number of specific methods of providing constructive notice sufficient to establish the ouster of a cotenant. For example, the law permits the trier of fact to find ouster when: (1) the party in possession takes and holds the land under an exclusive claim of right, rather than as an avowed cotenant; (2) the ousted cotenant acquiesces for a long period of time in the possessor's exclusive use of the property, without either party acting as one might expect of a cotenant; or (3) the circumstances otherwise indicate that the ousted cotenants were on constructive notice of the possessor's intent to hold adversely to them. In the present case, the record contains sufficient evidence for the trial court to have found that all three theories apply.[13]

First, a cotenant is placed on constructive notice when she is aware that the adverse possessor takes common land from the outset under an exclusive claim of right, rather than as an avowed cotenant. This occurs when, for example, the possessor takes the land under exclusive color of title, or when she is ignorant of the existence of the cotenancy. "[T]he rule that, in order to amount to an ouster of his cotenants, the acts of the possessor must be of the most open and notorious character, clearly giving notice . . . that the possessor's intention is to exclude his cotenant . . . has no application to one whose possession commenced neither avowedly as a cotenant nor under an instrument defining his interest to be that of a cotenant." Annot., supra, 82 A.L.R.2d 168, § 41. In those situations, the majority rule is that "in the case of an entry hostile in its inception much less evidence is needed to establish that the possession is legally adverse to the possessor's

cotenants . . . .” Id., p. 167; see also 3 Am. Jur. 2d, Adverse Possession § 201 (2002).

In the case of common land taken under color of title in *Lucas* v. *Crofoot*, supra, 95 Conn. 626–27, this court held that a cotenant's conveyance of a quitclaim deed purporting to confer exclusive title was tantamount to ouster so that the grantees held the land adversely to the other cotenants. We explained that “[w]hen the grantees recorded this deed and entered and took possession thereunder, their possession is presumed to have been under the deed itself and not under the title of the cotenants.” Id., 624; see also *Hagopian* v. *Saad*, supra, 124 Conn. 259 (plaintiff's possession was referable to deed under which he held); *White* v. *Beckwith*, 62 Conn. 79, 82, 25 A. 400 (1892) (legal presumption is that tenant in common entering and occupying land openly and exclusively takes in conformity with deed as sole owner); *Clark* v. *Vaughan*, 3 Conn. 191, 193–94 (1819) (jury was authorized to find ouster solely on basis of cotenant in possession's claim to hold entire estate by partition deed). While acknowledging that a quitclaim deed conveys only that “ ‘right, title and interest’ ” held by the grantor, and so is not necessarily inconsistent with a cotenancy; *Lucas* v. *Crofoot*, supra, 624; we nevertheless concluded that holding under a quitclaim can be “ ‘good proof to show the [adverse] nature of the occupancy . . . .’ ” Id., 625.

The majority notes, correctly, that the quitclaim deed in *Lucas* differed from the one in the present case in that the deed in *Lucas* recited that the grantor had acquired all outstanding interest in the property. Id. I do not dispute that such a deed provides *stronger* evidence that the grantee intends to take the land as sole owner than does a conventional quitclaim deed, as in the present case, which merely conveys such right and title as the grantor holds in the property.[14] For present purposes, however, the relevant question is whether a conventional quitclaim deed, which is nevertheless believed by all parties to convey full title to the property, provides *any* evidence to support the trial court's finding that the plaintiff intended to hold the land exclusively and that the defendant was under no illusion otherwise. I believe that it does.

In *Lucas* itself, this court relied on a prior Connecticut case, *Cady* v. *Fitzsimmons*, 50 Conn. 209, 214 (1882), in which a deed that was described by the court in *Lucas* simply as “presumably a quitclaim” was held to demonstrate the adversity of the grantee's holding thereunder. *Lucas* v. *Crofoot*, supra, 95 Conn. 625. Indeed, the court in *Lucas*, citing *Rogers* v. *Hillhouse*, 3 Conn. 398, 403 (1820), emphasized that “*any evidence* conducing to prove that the possession was accompanied with a claim of title, and that it was the intention of the possessor to hold exclusively for himself, was undoubtedly admissible to support title by adverse pos-

session." (Emphasis added; internal quotation marks omitted.) *Lucas* v. *Crofoot*, supra, 625. The decision in *Rogers* is also instructive in that it clarifies that a deed that cannot itself confer legal title may nonetheless be "good proof, to [show] the nature of the occupancy, and that it was adverse." *Rogers* v. *Hillhouse*, supra, 403–404. Indeed, "[e]ven parol declarations, accompanying an entry . . . have been held good evidence, to evince the [adverse] character of a possession." Id., 404.[15] At the very least, as we explained in *Lucas*, holding under color of title of a quitclaim deed places an affirmative duty on cotenants out of possession to make a "hostile move in support of their own title . . . ." *Lucas* v. *Crofoot*, supra, 626.

Other jurisdictions have expressly concluded that a conventional quitclaim deed can provide evidence that a grantee thereunder intended to hold adversely to any cotenants, when the circumstances indicate that the parties understood the deed to convey full title to the property. See, e.g., *Gigger* v. *White*, 277 Ga. 68, 71 and n.3, 586 S.E.2d 242 (2003) (quitclaim deed to cotenant in ignorance sufficient to establish color of title where grantee believed grantor to be sole owner); *Bel* v. *Manuel*, 234 La. 135, 142, 99 So. 2d 58 (1958) (quitclaim deed conveying only "the vendor's right, title and interest in land . . . will be considered adequate to support a prescriptive title . . . where there is nothing contained in the deed itself which would create doubt in the mind of the vendee that the vendor's interest did not extend to the whole property"); *Scramlin* v. *Warner*, 69 Wn. 2d 6, 10, 416 P.2d 699 (1966) ("The deed in question described all the property [the grantor] thought he owned. The fact that it was in quitclaim form demonstrates only that he gave no warranties, not that anything less than all the property was intended to pass. [We are aware of] no authority for the proposition that color of title cannot be gained when a statutory quitclam deed is used . . . ."); see also annot., supra, 82 A.L.R.2d 177, § 42 ("[a]n entry made under a conveyance purporting to vest in the taker, *or seemingly completing in him*, exclusive title to the premises, ordinarily characterizes his possession as in fact and in law adverse to his cotenants" [emphasis added]); annot., supra, 82 A.L.R.2d 182, § 42 ("[where] the circumstances show that the possessor's cotenants had knowledge or notice that the possession was not taken as that of a cotenant but rather in reliance on an instrument purporting to give the possessor exclusive title, the adverse character of the possession, both in fact and in law, becomes fully apparent").

Courts have also found that a party does not take possession of common property as cotenant, and therefore may establish ouster through sole possession, when he is initially ignorant of the existence of the cotenancy. Annot., supra, 82 A.L.R.2d 162, § 40. The rationale for this rule is that when a party is not aware

that he is a cotenant, there is no reason to think that his possessory acts are performed for the benefit of any cotenants. And where his cotenants are aware that he does not perceive them as such, they, in turn, are on notice of the adversity of his possession. Moreover, "[r]equiring actual knowledge of disseisin would deprive the principle of prescription of much of its value in quieting controversy and giving sanction to long continued usages. . . . Long dormant claims to title could rise from the dust bin of history and many titles would become unsettled." (Citation omitted; internal quotation marks omitted.) *Allen* v. *Batchelder*, 17 Mass. App. 453, 457, 459 N.E.2d 129, review denied, 391 Mass. 1104, 462 N.E.2d 1374 (1984). Accordingly, a number of jurisdictions that have traditionally set a very high bar for establishing adverse possession against a cotenant make an exception where both parties are initially ignorant of the cotenancy.[16]

Although the majority suggests that Connecticut law does not permit adverse possession among cotenants in ignorance,[17] this court repeatedly has upheld findings of adverse possession under those circumstances. See, e.g., *Ruick* v. *Twarkins*, supra, 171 Conn. 154–55, 160–61 (affirming trial court's finding that mother adversely possessed land against her children beginning in 1938, notwithstanding that she was unaware of their claims until 1972); *Standard Co.* v. *Young*, supra, 90 Conn. 136–37 (finding adverse possession where widow, as cotenant with her children via dower, purported to sell entire property to unaware third party); *Harrison* v. *International Silver Co.*, supra, 78 Conn. 419 (finding ouster where defendant and its predecessors acquired and held contested land under color of title for twenty-six years unaware of cotenancy with plaintiff); see also *Hagopian* v. *Saad*, supra, 124 Conn. 259 ("[a] wrongful intent to disseize the true owner is not a necessary element of adverse possession").[18]

Here, the record supports a finding that, commencing in 1980, the plaintiff took and held the lot under a deed that she believed, and publicly represented, afforded her exclusive title. It is undisputed that the plaintiff did not initially acquire and possess the lot as an avowed cotenant. Both parties were unaware that they had each inherited a share of the lot from their father, Constanty Percoski, believing instead that the plaintiff had purchased full title to the lot from her mother, Doris Percoski.[19]

At trial, the plaintiff made clear that this was the central basis for her claim of adverse possession. When asked "isn't your claim in this lawsuit that . . . the reason you acquired the title to the property from . . . the defendant is because you paid the taxes on the whole piece," the plaintiff replied: "It's because I bought it from my mother under the assumption and she was—and everyone else was under the assumption that she

owned it totally." The plaintiff also explained, in response to multiple questions from her attorney regarding her purchase of the lot from her mother, that her February 27, 1980 mortgage to her mother, in the amount of the purchase price of $9000, represented the full market value of the lot at that time. The plaintiff further testified that her mother intended to convey all of the lot to her. The trial court, crediting the plaintiff's testimony, expressly found that "Doris Percoski, believing she held full title to [three lots] after [Constanty Percoski's] death, conveyed [two] lots . . . to [the defendant] and her husband . . . . [and] conveyed [the lot at issue in the present case] to [the plaintiff] and her husband . . . . At the time of these conveyances it appears that the [plaintiff and her siblings] were also of the belief that [Doris Percoski] was the sole owner of the real estate."[20]

Consistent with her view that she acquired all of the lot from her mother, the plaintiff testified that, after recording the deed in the land records, she insured the property, paid the full annual taxes due,[21] and leased out the property without seeking her siblings' consent. She further testified that both before and after 1987 she acted as the sole owner, emphasizing that "I . . . treated it as my own."[22] Accordingly, the trial court reasonably found that Doris Percoski conveyed the lot to the plaintiff in 1980, at which time both parties to the present action operated under the assumption that the plaintiff had acquired full title.

There is, moreover, no indication that the plaintiff abandoned her exclusive claim to the property in 1987 when she discovered "the cloud on [her] title . . . ." To the contrary, she continued to pay all of the taxes and to retain the profits from the lot, without seeking any permission or accounting from her siblings.[23]

The record is also devoid of evidence that the defendant ever took any affirmative steps to exercise her rights in the land. Once the parties discovered the cloud on the title, in the absence of any change in course by the plaintiff the onus lay on the defendant to indicate that she no longer intended to abide by the status quo. See footnote 17 of this dissenting opinion. The defendant never volunteered to shoulder her share of the tax burden when she became aware of her interest in the land in 1987, nor in the twenty subsequent years during which the plaintiff held sole possession. I would therefore defer to the trial court's factual finding that the plaintiff's purchase and use of the land afforded sufficient notice of her claim to exclusive possession, because, as the court explained, "[t]here was no occasion for the plaintiff to take any action to exclude the defendant from the property since the defendant herself gave no indication that she claimed an ownership interest, nor did she believe she had any interest in the property until 1987 . . . ."

A second situation in which the trier of fact may infer ouster occurs where one cotenant enjoys an extended period of sole, uninterrupted possession during which the cotenants out of possession fail to seek any accounting of or access to the land and its profits. The majority recognizes that this court embraced this principle in *Camp* v. *Camp*, 5 Conn. 291, 302 (1824), wherein we adopted *Doe ex dem. Fishar* v. *Prosser*, 98 Eng. Rep. 1052 (K.B. 1774), as Connecticut law.[24] Where the majority and I part ways is that the majority would apply the presumed ouster principle developed in *Prosser* and *Camp* only when the tenant in possession "occupies the property for a specific and obvious use, such as a parsonage," for significantly longer than the statutory period.

Considering first the use of the property, in *Prosser*, a case the majority correctly identifies as the leading one on the subject,[25] the property at issue was characterized only as "lands," and there is no indication that the possession and occupation were for any specific or obvious use. *Doe ex dem. Fishar* v. *Prosser*, supra, 98 Eng. Rep. 1052. Moreover, in *Prosser*, Justice Aston emphasized that the primary evidence supporting a presumption of ouster was simply that the defendant had enjoyed "uninterrupted receipt of the rents and profits without account . . . ." Id., 1053. Courts and commentators, in defining the principle for which *Prosser* stands, likewise have declined to impose any requirement that land be used in any particular manner. See, e.g., *Rickard* v. *Rickard*, 30 Mass. (13 Pick.) 251, 253 (1832) ("It is also now well settled, that a long exclusive and uninterrupted possession by one, without any possession, or claim for profits by the other, is evidence from which a jury may and ought to infer an actual ouster. *Doe ex dem. Fishar* v. *Prosser*, [supra, 1053]."); annot., supra, 82 A.L.R.2d 132, § 37 ("[l]ong continued, peaceable and undisturbed, and unshared and unquestioned possession and exclusive income taking, without acknowledgment of the cotenancy, [grounds] a presumption or inference of ouster, or of grant of adverse possession"); 3 Am. Jur. 2d, supra, § 207 (similar).[26]

Considering next the length of possession necessary to implicate *Prosser*, this court has implied that there is no minimum time frame beyond the statutory requirement for adverse possession. In *Bryan* v. *Atwater*, supra, 5 Day (Conn.) 182, the defendant's predecessors held the contested land for seventeen years prior to the plaintiff heirs' initiation of suit, during fifteen of which the parties held the land as tenants in common.[27] Relying in part on *Prosser*, this court rejected the trial court's conclusion that, as a matter of law, the defendant could not have acquired the property through adverse possession during that period. Id., 187–88.

Other jurisdictions have likewise concluded that while uninterrupted use of common land for more than

thirty-five years is *sufficient* to establish adverse possession by a cotenant, that duration is not *necessary* for *Prosser* to apply. Rather, the trier of fact may reasonably presume that a cotenant who sleeps on her rights for more than two decades has abandoned her claim to the land. See annot., supra, 82 A.L.R.2d 132, § 37 ("[n]umerous cases hold, recognize, or affirm that if a cotenant enjoys the sole, and the undisturbed and peaceable, occupancy for a long period of time, such as for [twenty] years or longer . . . the facts and circumstances will . . . warrant a presumption or inference that an actual ouster or disseisin of the possessor's cotenants occurred, and that an adverse possession was accordingly established"); cf. *Myers* v. *Bartholomew*, 91 N.Y.2d 630, 632, 697 N.E.2d 160, 674 N.Y.S.2d 259 (1998) (under New York statute, common-law presumption against adverse possession by cotenant expires after twenty years of sole possession).[28]

In the present case, the trial court reasonably could have found that the standards for presumptive ouster outlined in *Prosser* and its progeny were satisfied. The plaintiff maintained sole physical possession of the land from 1980 until 2007. During that time, there is no indication that the defendant ever entered or sought to enter onto the lot, nor that either party offered or requested an accounting. Those twenty-seven years of exclusive, peaceful possession represented nearly twice the statutory minimum for establishing adverse possession, and well over the twenty year period that most jurisdictions consider sufficient to demonstrate presumptive ouster. Moreover, the trial court found "no evidence that the [plaintiff's] use of [the] lot . . . was done with the defendant's permission." In addition, notice that a cotentant's use of joint property is hostile, and the expectation that the cotenant out of possession will seek an accounting, are heightened where the latter resides in the same neighborhood and can be deemed to be aware of the former's use of the land. Annot., supra, 82 A.L.R.2d 257, § 60. Here, where the parties were essentially next-door neighbors, the defendant cannot claim to have been unaware of the plaintiff's use of the property, and her protracted failure to seek either access or an accounting strongly suggests an acquiescence in the plaintiff's exclusive possession. I would therefore affirm the trial court's determination that "reliable evidence sufficiently repudiated the defendant's right of ownership."

Finally, it is well established under Connecticut law that the trier of fact may find ouster, in the absence of any affirmative act of notification, under any other circumstances indicating by clear and convincing evidence that the cotenant in possession intended to hold the property exclusively and the cotenants out of possession had actual or constructive notice thereof. See *Miller* v. *State*, 121 Conn. 43, 49, 183 A. 17 (1936); *Lucas* v. *Crofoot*, supra, 95 Conn. 623–24; *Goodwin* v. *Bragaw*,

supra, 87 Conn. 39–40; *Bryan* v. *Atwater*, supra, 5 Day (Conn.) 192; see also 3 Am. Jur. 2d, supra, § 206; see generally annot., supra, 82 A.L.R.2d §§ 52 through 76. For example, in *Ricard* v. *Williams*, supra, 20 U.S. 120–21, the United States Supreme Court, applying Connecticut common law,[29] reversed the Circuit Court and found that an heir had adversely possessed against his sibling cotenants when he took and held the land under a claim of exclusive title. The court explained that even in the absence of any paper title, the jury could have found adverse possession "if they were satisfied, that [the possessing heir's] possession was adverse to that of the other heirs, and under a claim of title distinct from, or paramount to that of his father . . . ." Id., 122. The rationale for this rule is, again, that the presumption *against* finding ouster of a cotenant rests on the principle that cotenants share equal rights to their common property, so that use by one is assumed to be with the consent and for the benefit of all. But where it becomes clear to the cotenants out of possession—and to the trier of fact—that a party has held the land not in her capacity as cotenant, but under an exclusive claim of right, then the presumption against adversity is no longer applicable, and the conventional rules of adverse possession should govern the case.

Here, I would affirm the trial court's finding that, "[u]nder the unique facts of this case, [one can readily infer] that the plaintiff intended to exclusively use the property and [the] defendant is being disingenuous to claim otherwise." The trial court based this finding of ouster on several subsidiary factual findings, including: (1) the bitter, unsisterly relationship between the parties, who had not spoken to each other since the early 1980s; and (2) their history of litigation, including the defendant's successful action to possess adversely two lots from the plaintiff "under very similar facts." The majority does not dispute that the record supports these subsidiary findings. Rather, the majority contends that these findings do not support the trial court's conclusion that the defendant was on constructive notice, after 1987, of the plaintiff's intent to oust her. I disagree.

In the prior action between the parties, the defendant's alleged use of the two lots at issue in that case closely paralleled the plaintiff's use of the lot in the present case: she acquired and recorded title to the property, was listed as the sole taxpayer of record, paid taxes on the property, performed lawn mowing and related general maintenance, and leased the lots annually to the county fair. See *Collens* v. *New Canaan Water Co.*, 155 Conn. 477, 496, 234 A.2d 825 (1967) (attorney's admissions in legal brief admissible against client); 2 B. Holden & J. Daly, Connecticut Evidence (1988) §§ 103a and 104d, pp. 1020 and 1038 (same).

On the basis of those facts, the defendant alleged that she and her husband had "used and enjoyed the

[land] for more than fifteen years . . . and such use and possession has been at all times open, notorious, adverse, exclusive, continuous, uninterrupted and [they] have thereby acquired and . . . now have sole and exclusive title to the premises . . . .'' In her post-trial brief in that prior action, the defendant further averred that her exclusive use of the lots at issue in that case was demonstrated by the fact that the plaintiff and the other sibling cotenants ''never did anything to interfere with their use . . . never used the property . . . [and] never contributed to the payment of any taxes . . . .'' In other words, the defendant contended in the prior action that, based solely on the defendant's use of the land and the plaintiff's lack thereof, the plaintiff was placed on notice that she was not welcome on the land, and that the defendant had no intention of sharing the land with her.[30]

Inexplicably, in the present action, between the same two sisters who have not been on speaking terms for more than twenty-five years, where the plaintiff's use of the lot in the present case has been a mirror image of the defendant's use of the lots in the prior case, the defendant now suggests that under those same circumstances *she* had no way of knowing that *she* was unwelcome on the plaintiff's lot, or that the plaintiff viewed it as exclusively her own. The trial court, having heard the testimony of both parties, rejected this sudden, self-serving change of perspective, concluding that the defendant ''was under no illusion'' that the plaintiff considered her to be a cotenant on the land, and that she was ''being disingenuous to claim otherwise.''[31] The trial court was in the best position to make this credibility assessment, and I would defer to the court's factual finding that the plaintiff intended to hold the lot as her own, and that the defendant was on notice thereof. Accordingly, I respectfully dissent.

[1] John J. O'Connor also was a plaintiff at trial, but is not a party to this appeal. For convenience, we refer to Theresa P. O'Connor as the plaintiff.

[2] It is not surprising that the trial court, in a prior case between the present parties involving virtually identical facts pertaining to two additional lots, concluded that the present defendant adversely possessed those two lots owned by the present plaintiff. See *Larocque* v. *Percoski*, Superior Court, judicial district of Tolland at Rockville, Docket No. CV 97-0063927S (February 18, 2003). The majority explains why, in its view, the outcome of the prior case is not material to the present dispute between the parties. See footnote 6 of the majority opinion. Although I agree that the *outcome* of the prior case is unimportant for present purposes, the pleadings offered and the positions taken by the present defendant in that action are highly relevant here. Indeed, although it is true that the trial court in the present case rejected the plaintiff's ''equitable'' claim—that the plaintiff should succeed in her adverse possession action merely because the defendant successfully adversely possessed against her in the prior action—the court expressly left open the possibility that ''certain aspects of the previous litigation among the parties may have a bearing on the resolution of the present suit, such as by way of *collateral estoppel*, *judicial admissions or evidentiary admissions* . . . .'' (Emphasis added.) As I discuss in this dissenting opinion, it is in precisely that capacity that the trial court properly relied on the prior litigation in finding that the present defendant was on notice that the plaintiff was holding the lot adversely to her.

[3] The majority, for example, concedes that under the clearly erroneous standard of review, it is the ''duty [of] an appellate tribunal to review, and

not to retry, the proceedings of the trial court." (Internal quotation marks omitted.) Elsewhere in the opinion, however, the majority contends that "[i]t is the province of the . . . court . . . to decide as a matter of law whether the facts found . . . fulfill the requirements of [adverse] possession," and that "[a]pplication of the pertinent legal standard to the trial court's factual findings is subject to our plenary review." What is not clear is whether the majority considers the conclusion that a particular element of adverse possession such as notice or intent is satisfied in a given case to be a factual finding, subject to deferential appellate review, or, alternately, a legal conclusion, subject to de novo review. As I explain in footnote 5 of this dissenting opinion, the overwhelming weight of authority supports the former position. Of course, I do agree with the majority that, even under a deferential standard of review, reversal is warranted as a matter of law if: (1) there is no evidence to support the trial court's factual findings; (2) the evidence is so slight that no reasonable fact finder could find the elements of adverse possession satisfied by clear and convincing evidence; or (3) the factual findings fail to satisfy the established legal standards for adverse possession. That is not the case here.

[4] For adverse possession to lie, possession must be "actual, [open] and notorious, exclusive, continuous and hostile" throughout the statutory period. *Ahern* v. *Travelers Ins. Co.*, 108 Conn. 1, 4–5, 142 A. 400 (1928); see also 3 Am. Jur. 2d 95–96, Adverse Possession § 10 (2002). In addition, in the case of adverse possession between cotenants, it is necessary to demonstrate that the cotenant in possession *intended* to hold adversely to the ousted cotenant, and that the latter was on actual or constructive *notice* of that intent.

[5] This court has stated repeatedly that whether the constituent elements of adverse possession are satisfied is ultimately a question of fact, subject to deferential review. See, e.g., *Caminis* v. *Troy*, 300 Conn. 297, 306, 12 A.3d 984 (2011) ("our scope of review is limited . . . [b]ecause adverse possession is a question of fact for the trier" [internal quotation marks omitted]); *Goldman* v. *Quadrato*, 142 Conn. 398, 404, 114 A.2d 687 (1955) ("Whether possession is adverse in character is a question of fact. . . . Since the [trial] court found all the essential elements of an adverse possession . . . the court was correct in its judgment." [Citation omitted.]); *Spencer* v. *Merwin*, 80 Conn. 330, 336, 68 A. 370 (1907) ("[a]dverse possession is a question of fact, and when found by the trial court will not be reviewed by this court as a conclusion from evidential facts, unless it appears that these facts, or some of them, are legally or logically necessarily inconsistent with that conclusion" [internal quotation marks omitted]); *White* v. *Beckwith*, 62 Conn. 79, 82, 25 A. 400 (1892) ("[i]t is true that [the trial court] has found certain [evidentiary] facts . . . from the existence of which, if they had satisfied the mind of the trier, it was for him to find whether any entry had been made or possession taken and held under the deeds, and if so, whether such possession was actual, open, exclusive and hostile"); see also annot., 82 A.L.R.2d 301, § 86 (1962) ("questions whether in a given case [the essential elements of adverse possession between cotenants] are present are ordinarily issues of fact for the jury, and can become matters of law only when the evidence, or want of evidence, is conclusive").

In particular, we have emphasized that the determination of whether the elements of adverse possession at issue in the present case—notice and intent—are satisfied is for the trier of fact. See *Ruick* v. *Twarkins*, 171 Conn. 149, 161, 367 A.2d 1380 (1976) ("[i]n the final analysis, whether [the plaintiff's] possession is adverse [to her cotenants] is a question of fact for the trier"); *Lengyel* v. *Peregrin*, 104 Conn. 285, 288, 132 A. 459 (1926) ("ouster . . . is a question of fact"); *Standard Co.* v. *Young*, 90 Conn. 133, 137, 96 A. 932 (1916) ("The only contested question of fact in the case was . . . whether there had been an ouster of the [cotenant] defendants. This was a proper question for the jury."); *Bryan* v. *Atwater*, 5 Day (Conn.) 181, 187 (1811) (whether possession was adverse to cotenant deemed "proper subject for the consideration of the jury," unless by law only one result is possible, as where life tenant purports to possess adversely against lessor).

These statements are consistent with our general rule that intent and notice are questions of fact subject to deferential appellate review. See, e.g., *State* v. *Hedge*, 297 Conn. 621, 658–59, 1 A.3d 1051 (2010) ("[i]t is well established that the question of intent is purely a question of fact . . . the determination of which should stand unless the conclusion drawn by the trier is an unreasonable one" [internal quotation marks omitted]); *State* v. *Hinton*, 227 Conn. 301, 323, 630 A.2d 593 (1993) ("the trial court's decision on the ultimate question of discriminatory intent represents a finding of

fact . . . entitled to great deference" [citation omitted; internal quotation marks omitted]); *Morin* v. *Bell Court Condominium Assn., Inc.*, 223 Conn. 323, 325, 612 A.2d 1197 (1992) (reviewing finding of constructive notice according to sufficiency of evidence standard); *Lukas* v. *New Haven*, 184 Conn. 205, 208, 439 A.2d 949 (1981) ("[w]hether the plaintiff sustained his burden of proof on the [issue] of . . . constructive notice . . . presented [a question] of fact for the trier to determine upon all the evidence"); *Baker* v. *Ives*, 162 Conn. 295, 307, 294 A.2d 290 (1972) ("constructive notice is a question of fact for the jury and unless . . . [only] one conclusion could be found, its determination should be left to the trier"). None of the adverse possession cases cited by the majority is to the contrary, and the majority offers no rationale for reviewing findings of notice and intent differently in adverse possession cases than in every other area of this court's jurisprudence.

[6] To the extent that the majority relies on *Bristol* v. *Tilcon Minerals, Inc.*, 284 Conn. 55, 931 A.2d 237 (2007), an inverse condemnation case, for the proposition that plenary review of the trial court's factual conclusions is warranted in the present case, its reliance is misplaced. In *Bristol*, we repeated, as we have on numerous other occasions, that a "trial court's conclusions *must stand* unless they are legally or logically inconsistent with the facts found or unless they involve the application of some erroneous rule of law material to the case." (Emphasis added; internal quotation marks omitted.) Id., 83. This language is by its very nature deferential, in that it requires a reviewing court to uphold a trial court's conclusions unless, as a matter of law, they could not flow from the factual record. Indeed, in the more than sixty cases in which we used the quoted language prior to *Bristol*, we never once equated it with a plenary or de novo standard of review. To the contrary, the language frequently appears in the context of reviewing the sufficiency of a trial court's *factual* conclusions, where it is clear that our standard of review is deferential. See, e.g., *AFSCME, Council 4, Local 704* v. *Dept. of Public Health*, 272 Conn. 617, 622–23, 866 A.2d 582 (2005) ("Waiver is a question of fact. . . . [W]here the factual basis of the court's decision is challenged we must determine whether the facts set out in the memorandum of decision are supported by the evidence or whether, in light of the evidence and the pleadings in the whole record, those facts are clearly erroneous. . . . Therefore, the trial court's conclusions must stand unless they are legally or logically inconsistent with the facts found or unless they involve the application of some erroneous rule of law material to the case." [Citations omitted; internal quotation marks omitted.]); *Newbury Commons Ltd. Partnership* v. *Stamford*, 226 Conn. 92, 99–100, 626 A.2d 1292 (1993) ("The trial court was presented with conflicting testimony as to the value of the property, and concluded that the report and testimony of the plaintiff's expert was the most credible. In any assessment case in which the trial court is confronted with conflicting appraisal methods, it is a proper function of the court to give credence to one expert over the other. . . . The conclusions reached by the trial court must stand unless they are legally or logically inconsistent with the facts found or unless they involve the application of some erroneous rule of law. . . . We will not disturb the trial court's adoption of the plaintiff's valuation of the property, therefore, unless the appraisal was legally invalid." [Citations omitted; internal quotation marks omitted.]); *Horton* v. *Meskill*, 172 Conn. 615, 639, 376 A.2d 359 (1977) ("A finding is to be read to uphold the judgment. Every reasonable presumption will be indulged in to support it. . . . The conclusions reached by the trial court must stand unless they are legally or logically inconsistent with the facts found or unless they involve the application of some erroneous rule of law material to the case." [Citations omitted; internal quotation marks omitted.]); *Esposito* v. *Commissioner of Transportation*, 167 Conn. 439, 440–41, 356 A.2d 175 (1974) ("The defendant has . . . made a wholesale attack on the referee's finding[s] [of fact]. Such an attack on a finding rarely produces beneficial results and in effect the defendant seeks to have this court retry the issues. This is not our function. . . . The conclusions reached by the trier must stand unless they are legally or logically inconsistent with the facts found or unless they involve the application of some erroneous rule of law material to the case." [Citation omitted.]); *Southern New England Contracting Co.* v. *State*, 165 Conn. 644, 651–52, 345 A.2d 550 (1974) ("These conclusions are to be tested by the finding, as corrected. . . . They must stand unless they are legally or logically inconsistent with the facts found or unless they involve the application of some erroneous rule of law material to the case. . . . The wisdom of these policies is pointed out with particular force by a case such as this where the factual framework is extremely complex and where, as the trial court pointed out, there were sharp conflicts in the evidence." [Citations omitted; internal quotation marks omitted.]). Accordingly, to the extent that we suggested in *Bristol* that this court engages

in a plenary review of the sufficiency of the evidence to support a trial court's factual conclusions, that statement was inconsistent with the weight of our case law.

[7] Although the cases are inconsistent in their use of the term "ouster," at times equating it with a physical eviction of the rightful owner, and at other times equating it with adverse possession in general, in this dissenting opinion I use the term merely to refer to the additional elements of intent and notice necessary to establish adverse possession among cotenants.

[8] Although the majority disputes the contention that it requires something closely akin to express notice, the examples it offers of how the plaintiff might have notified the defendant of her intent to hold the lot exclusively are, in fact, extreme measures, such as enclosing this small, undeveloped rural lot within an impassable barrier and surrounding it with no trespassing signs. The majority also concludes its analysis by declaring that "there is absolutely no evidence . . . that the plaintiff *expressly notified or conveyed* a clear and unmistakable intent to disseize the defendant . . . ." (Emphasis added.) It is clear from the authorities cited in this dissent that such extreme measures are not necessary, especially in a case such as this, where there has been virtually no communication between the parties over the past three decades, during which time the defendant never once entered onto the lot or contributed to its upkeep in any way.

It also bears noting that, while the majority appears to believe that a claimant must take some affirmative step to give her cotenant notice of her intent to hold exclusively, the very authorities cited by the majority make clear that *giving* notice is unnecessary; all that is required is that the ousted cotenant *have* notice of the adversity of the claimant's possession. See, e.g., *Ruick* v. *Twarkins*, supra, 171 Conn. 158 (there also must be proof of "an ouster and exclusive possession so openly and notoriously hostile that the cotenant will *have notice* of the adverse claim" [emphasis added]).

[9] E. Orr, comment, "Adverse Possession Against Tenants in Common in Tennessee," 37 Tenn. L. Rev. 776, 793 n.84 (1970) (citing Allen's annotation in 82 A.L.R.2d 5 and recognizing Allen's review of 1100 cases); see also *Shives* v. *Niewoehner*, 191 N.W.2d 633, 637 (Iowa 1971) ("excellent annotation"); *Wengel* v. *Wengel*, 270 Mich. App. 86, 98, 714 N.W.2d 371 (2006) ("[t]he law of adverse possession as between cotenants is thoroughly discussed in [Allen's annotation in] 82 A.L.R.2d 5"); *McCann* v. *Travis*, 63 N.C. App. 447, 451, 305 S.E.2d 197 (1983) (referring readers to Allen's annotation for unique set of rules governing adverse possession between cotenants); *Nelson* v. *Christianson*, 343 N.W.2d 375, 378 (N.D. 1984) (praising Allen's work as "exhaustive annotation"); *Caywood* v. *January*, 455 P.2d 49, 51 (Okla. 1969) ("exhaustive" annotation); *Silver Surprize* v. *Sunshine Mining Co.*, 15 Wn. App. 1, 32 n.11, 547 P.2d 1240 (1976) (McInturff, C. J., dissenting) ("extensive annotation"); J. Legg, "Real Property Actions and Proceedings Law Section 541: The Mind-Buster Busted," 59 Alb. L. Rev. 1485, 1516 n.198 (1996) ("broad discussion of adverse possession between co-tenants"). To its credit, the trial court relied on Allen's annotation in concluding that the plaintiff satisfied the legal requirements for adverse possession against a cotenant. The majority, by contrast, inexplicably dismisses a treatise that courts and legal scholars continue to recognize as the definitive source on the topic. While the majority rejects Allen's work for having been "published . . . fifty years ago," in fact the annotation has been recently updated and indicates no shift in the majority position that constructive notice of the intent to dispossess a cotenant may be given in myriad ways, and is to be determined by the trier of fact based on the unique circumstances of each case. See annot., supra, 82 A.L.R.2d 5, as updated by the Later Case Service (2001) §§ 40, 52, 53, 60 and 62. Nor does the majority offer any evidence that the prevailing rule established over the course of hundreds of years of common law has suddenly changed in recent years. As to the majority's contention that Allen's compendium reflects a statement of the law "unfamiliar in this jurisdiction," I would emphasize that every theory of constructive notice for which I cite Allen's annotation has been embraced, either expressly or implicitly, by appellate courts in Connecticut.

[10] Allen is in good company. Later Chief Justice Taft, writing for the United States Court of Appeals for the Sixth Circuit, reached the identical conclusion in *Elder* v. *McClaskey*, 70 F. 529, 542–43 (6th Cir. 1895): "There are some authorities in which language is used indicating that, before a tenant in common can hold adversely to his cotenants, he must prove that his cotenants had actual knowledge of his intention to assume exclusive possession, but it will be found that the language was not necessary to the decision of the cases under consideration. . . . By the overwhelming weight of authority . . . actual notice is not necessary . . . ." (Citation omitted.)

[11] Perhaps unsurprisingly, the majority concludes that the present case is more akin to *White* v. *Beckwith*, 62 Conn. 79, 83, 25 A. 300 (1892), the lone

case, to my knowledge, in which this court has found against a cotenant purporting to adversely possess against his tenants in common. It is noteworthy, however, that in *Beckwith* this court did not find that the plaintiff could not, as a matter of law, have adversely possessed the contested property. Rather, this court clarified that the trial court *could* have found adverse possession on the facts of that case, but we deferred to the trier's conclusion that the plaintiff's possession was not in fact adverse to the defendants. Id., 82–83. Here, the trial court found otherwise, and I would likewise defer.

[12] The majority's statement that "only five [of the nine cases decided by this court or the United States Supreme Court] have been decided in favor of the claimant" is somewhat misleading, given the fact that all nine cases made clear that a finding of adverse possession would have been legally permissible.

[13] The majority posits that these theories of constructive notice: (1) have not been adopted by Connecticut courts; (2) were neither raised at trial by the plaintiff nor considered by the trial court; and (3) are precluded by the plaintiff's alleged admission that the defendant was not on notice of her intent to hold the lot exclusively until 1997. These claims are simply untrue.

First, each theory has been embraced, at least implicitly, under Connecticut law. Indeed, of the three theories, the second, which focuses on lengthy acquiescence by the ousted cotenant, is *conceded* by the majority to be an accepted part of Connecticut law, and the third theory, which looks to the totality of the circumstances, is not really a distinct theory at all but merely the unexceptional proposition that the trier of fact may find that a cotenant is on notice wherever the unique circumstances of the case reasonably support that conclusion. Although the majority and I may differ as to what circumstances would constitute clear and convincing evidence, the majority, having conceded that constructive notice of adverse possession is possible, can hardly disclaim the principle that such notice is to be ascertained by the trier of fact on the basis of the circumstances of the case.

Second, the plaintiff's attorney did elicit testimony in support of these theories at trial. Indeed, the plaintiff herself emphasized that her claim of exclusive possession was based not only on a long history of sole possession and acts of ownership, without contribution from the defendant, but also on the fact that all parties believed that she had acquired full title to the lot in 1980.

In addition, the trial court made the necessary factual findings to support a conclusion that: (1) the plaintiff took the lot in 1980 under color of title, with the full knowledge of the defendant; (2) neither party at the time was aware of the defendant's interest in the lot; (3) over the ensuing twenty-seven years the plaintiff acted as if she were the exclusive owner of the lot, without interference from the defendant; and (4) other unique circumstances of the case, in tandem with the plaintiff's more credible testimony, made clear that the defendant was aware that the plaintiff intended to hold the lot as the exclusive owner. It is true that the trial court's ultimate conclusions are couched in general terms, alluding to the "bitter relationship" and "history between" the parties, and the "unique facts" of the case, and that it did not pin on its findings the precise labels I have used in this dissenting opinion. It might have been preferable for the court to have cited to all of the case law referenced herein, or to have connected the dots more directly between its evidentiary findings and its ultimate conclusion that the elements of adverse possession were satisfied, but there is no such requirement. Rather, where the sufficiency of the evidence to support the verdict is challenged on appeal, the reviewing court must "give the evidence the most favorable reasonable construction in support of the verdict . . . ." (Internal quotation marks omitted.) *Kimberly-Clark Corp.* v. *Dubno*, 204 Conn. 137, 153–54, 527 A.2d 679 (1987). Moreover, where a memorandum of decision is ambiguous, this court is not precluded from affirming the judgment on a basis not expressly cited by the trial court. See *Skuzinski* v. *Bouchard Fuels, Inc.*, 240 Conn. 694, 703, 694 A.2d 788 (1997); *Wenzel* v. *Danbury*, 152 Conn. 675, 676–77, 211 A.2d 683 (1965). Here, it strains credulity for the majority to suggest that, when all reasonable inferences are drawn in favor of the verdict, there was literally no evidence to support the court's determination that the defendant knew that the plaintiff was holding the lot adversely to her.

Lastly, the majority relies heavily on its finding that the plaintiff herself conceded that she did not give notice of her intent to dispossess the defendant until 1997. Initially, I note that the trial court did not make this finding, and that it is not our role to do so. *In re Jorden R.*, 293 Conn. 539, 559 n.17, 979 A.2d 469 (2009). Moreover, the majority discerns this allegedly dispositive concession solely from the fact that, when asked on cross-examination how she could have *told* the defendant that she was adversely possessing the lot when they were not on speaking terms, the plaintiff replied: "Through court and lawyers. When . . . the question of the other two lots

came up . . . it was brought up." There is literally nothing in this testimony to support the view that the plaintiff never provided any notice to the defendant prior to 1997, or that not only did the plaintiff not *tell* the defendant of her adverse intentions until 1997, but that none of her actions prior to that time afforded her sister even *constructive* notice thereof. The question to the plaintiff was not "when did you first tell her?" or even "when did you tell her?" It was "*how* did you tell her . . . ?" (Emphasis added.) There is no indication, given the context of the question, that the reply elicited or offered was intended to speak to the issue of when the plaintiff first sought to notify the defendant of the adversity of her holdings. Moreover, even if 1997 were the first time that the plaintiff actively sought to give the defendant notice, the relevant legal question is not when the plaintiff *gave* notice but, rather, when the defendant *had* notice. See footnote 8 of this dissenting opinion. The fact that the plaintiff *told* the defendant something in 1997 says absolutely nothing about what constructive notice the defendant might have had prior to that time. To construe this one statement by the plaintiff as a broad concession that she failed to satisfy the elements of adverse possession, and to credit it over her *explicit* testimony to the contrary, runs afoul of this court's long-standing commitment to "give the evidence the most favorable reasonable construction in support of the verdict . . . ." (Internal quotation marks omitted.) *Assn. Resources, Inc.* v. *Wall*, 298 Conn. 145, 185, 2 A.3d 873 (2010).

Similarly, from one brief reference to the parties' "prior acrimonious litigation" in the memorandum of decision, the majority concludes that the trial court relied on the prior litigation as the primary basis for its conclusion that the plaintiff held the lot adversely to the defendant, and that its decision was therefore clearly erroneous. The majority gives no credence to the various other factors discussed by the trial court in its memorandum of decision and articulation, including: the history between the parties; their bitter relationship and twenty-five years of not speaking; the fact that the defendant never claimed an ownership interest in the lot; the deeding of the lot to the plaintiff; the defendant's lack of credibility; and the plaintiff's general use of the lot as an exclusive owner. Nor does the majority consider the possibility that in referencing the prior litigation, the court was simply crediting the suggestion by the plaintiff's counsel during closing argument, that the defendant cannot plausibly deny that she was on notice when she essentially alleged in her own action that the same adversity had existed since at least 1982. In short, I see no indication that the majority has tried to give the evidence, and inferences drawn therefrom, the most favorable reasonable construction in support of the verdict, as required by our law.

[14] Although I agree with the majority that the quitclaim deed in *Lucas* conferred stronger color of title than the deed in the present case, I believe that *Lucas* nevertheless established the broader proposition that taking under color of any quitclaim deed can provide at least some indication of the grantee's intent to hold the property exclusively.

The majority also suggests, in footnotes 19 and 25 of its opinion, that I am ignoring "an essential legal fact of significance," to wit, that in the present case the land records contained a certificate of devise or descent indicating that Doris Percoski, the mother of both the plaintiff and the defendant, only acquired one third of the lot upon the passing of her husband. The plaintiff's action alleges a claim of adverse possession, not a claim of rightful ownership. To establish adverse possession, she need not prove that she had a legal right to the lot, or even that she had a reasonable belief that the lot was hers. She need only prove that she *intended* to hold the lot exclusively. The fact that she took the lot under color of a deed that she *believed* gave her full title demonstrates that intent to hold the lot as her own, regardless of how reasonable or unreasonable that belief might have been. In addition, the plaintiff must prove that the defendant, her cotenant, was on notice of her intent to hold the lot exclusively. Again, if the defendant *believed* that the plaintiff had acquired full title from their mother, and if she knew that the plaintiff also believed that, then the defendant was on notice of the plaintiff's adverse intent. The fact that either party easily could have discovered the truth by inspecting the land records would be relevant to a claim of *rightful* legal ownership but has no bearing on the questions at issue here.

[15] The majority, while attempting to distinguish *Lucas* from the present case, neglects to discuss any of the other Connecticut cases or the cases from other jurisdictions that I cite in this dissenting opinion, which support the commonsense rule that a quitclaim deed can confer color of title sufficient to support a claim of adverse possession when all parties believe that the deed conveys exclusive title. Moreover, even setting aside my disagreement with the majority as to the scope of the rule established by *Lucas*, *Cady* and *Rogers*, it is clear that no Connecticut case has ever held that a quitclaim deed such as the one in the present case *cannot* provide color of title sufficient to ground a claim of adverse possession.

[16] See, e.g., *Pebia* v. *Hamakua Mill Co.*, 30 Haw. 100, 109 (1927) ("[t]his court has always held that evidence of ouster or the adverse character of a claim must be much clearer as between co-tenants than as between strangers, but it has never gone so far as to hold that . . . the more stringent rule applicable to cases of co-tenancy applies where there is no recognition or knowledge of the existence of a co-tenancy"); *Chambers* v. *Wilcox*, 1905 Ohio Misc. LEXIS 48, *10–13 (Ohio Common Pleas January 16, 1905) (quieting title in plaintiff cotenant in ignorance, notwithstanding usual Ohio rule that cotenants may only adversely possess against other cotenants through overt, unmistakable acts of ouster, because where all parties had proceeded for years on assumption that plaintiff was exclusive owner, there had been no need or cause for him to notify defendants of his intention to continue in that capacity).

[17] The majority contends that *Newell* v. *Woodruff*, 30 Conn. 492 (1862), a case in which adverse possession was not even at issue, holds that ouster is not possible between cotenants in ignorance. I disagree. *Newell* was an action seeking damages for ejectment, predicated solely on vague letters the plaintiff's attorney had sent to the defendant, suggesting without proof or specificity that the plaintiff was " 'perhaps' " entitled to possession of a part of the property. Id., 499. In affirming the trial court's granting of nonsuit, we explained that it would be unjust to subject the defendant "to the cost and damage demanded in an action of disseizin" without first: (1) detailing the basis of the plaintiff's claims; (2) formally requesting possession of the land; and (3) affording the defendant an adequate opportunity to grant or deny access. Id., 498. Accordingly, although the case does suggest that knowledge of one's cotenant status is necessary for dispossession to occur, it does so in the specific context of an ejectment action, where it would be unjust to penalize the *party in possession* for disseizing a cotenant whom she never knew existed and had never actively barred from possession. In other words, the court, quite reasonably, imposed a mens rea requirement before a cotenant may be found liable for *damages* resulting from an alleged ouster. See *Giannattasio* v. *Silano*, 115 Conn. 299, 302, 161 A. 336 (1932) (*Newell* stands for proposition that "[w]here a person is occupying premises as his own, in the belief that he has an exclusive title, and in ignorance of the rights of another person as tenant in common, it is unreasonable that he should be subjected to the cost and damage demanded in an action of disseizin, until the demandant has apprised him with reasonable precision of the nature of his claim" [internal quotation marks omitted]).

There is no indication in *Newell* that the court would have applied the same standard where a party in long possession seeks merely to quiet title in herself. The majority asserts that the close relationship between actions for ejectment and actions for adverse possession—both revolve around a claim of disseisin—means that language from the *Newell* opinion, and its syllabus, necessarily applies to adverse possession as well as to ejectment. Although it is true that ejectment and adverse possession are two sides of the same coin, the difference between heads and tails is not always insignificant. In the case of *Newell*, the cited language only makes sense in the unique context of an ejectment action, where a party is subject to damages. It would be perverse, to say the least, if, as the majority suggests, the law were to require a wrongful intent before *rewarding* a party with legal title to land.

Even if there were a legal requirement that cotenants be aware of the cotenancy before ouster can occur, which I believe there is not, it would still be true that a cotenant may be ousted once the cotenancy is discovered, and that in such cases ouster may be more readily established than when the parties knew of the cotenancy from the outset. In a cotenancy that arises with the knowledge of all parties, the status quo involves an expectation that one cotenant possesses with the consent and for the benefit of all, so that a cotenant seeking to possess exclusively bears the burden of notifying his cotenants thereof. By contrast, when the status quo has been such that both parties believe the cotenant in possession to be the exclusive owner, and when that party's relationship to the land and the other cotenants does not change upon their discovery of the cotenancy, the most reasonable assumption under the circumstances may be that the possession remains adverse. See *Ricard* v. *Williams*, supra, 20 U.S. 116; *Lucas* v. *Crofoot*, supra, 95 Conn. 626; *Bryan* v. *Atwater*, supra, 5 Day (Conn.) 191. In that case, the burden shifts to the ousted cotenants actively to press their possessory rights, consistent with the holding in *Newell* that the allegedly ousted cotenant bore the burden of clearly asserting his right to the land. *Newell* v. *Woodruff*, supra, 30 Conn. 498.

[18] The majority, having alleged that Connecticut law unequivocally bars adverse possession between cotenants in ignorance, relies on a single Superior Court opinion; see *Diamond* v. *Boynton*, 38 Conn. Sup. 616, 618, 458 A.2d 18 (1983); to dismiss all four cases in which this court found, or permitted a trial court to find, adverse possession under precisely those

circumstances. I fail to understand the majority's reasoning here. The argument appears to be that the purported *Newell* rule does not apply under the "special circumstances" where the cotenant in possession holds under color of title. But that theory is fundamentally inconsistent with the majority's reading of *Newell*. If, as the majority contends, *Newell* stands for the proposition that ouster of a cotenant is possible only when the party in possession knowingly and wrongly intends to dispossess his cotenants, then why should that rule not apply when his is the only name on the land records? This flies in the face of the very language from *Newell* on which the majority relies: "[T]here can be no . . . adverse holding, where one is in the enjoyment of that which he honestly supposes is his . . . ." *Newell* v. *Woodruff*, 30 Conn. 492, 498 (1862).

I would further emphasize that in the cases in which this court has permitted a finding of adverse possession among cotenants in ignorance, the court's reference to the land records was merely by way of noting that the possessory cotenant held the property under color of title. That is precisely my claim in *this* case. Although it is true that in the present case the plaintiff's name was not the only name on the land records, there was undisputed testimony at trial that neither the plaintiff nor the defendant was aware of that. Because the law is clear that ouster requires only that the parties *believe* that the would-be adverse possessor is holding exclusively, that is a distinction without a difference.

The majority's further efforts to distinguish the four subsequent cases in which this court has implicitly rejected the purported *Newell* rule are unavailing. First, the majority contends that *Ruick* v. *Twarkins*, supra, 171 Conn. 158, was not in fact a case of cotenants in ignorance, because the plaintiff in that case knew that she had defrauded her husband of his share in the land. The majority ignores the fact that the case was not between the plaintiff and her late husband. Rather, the defendants were three of their four daughters, who, as in the present case, had unknowingly acquired their father's share through the law of intestate succession. Id., 151. The opinion makes quite clear that the plaintiff did believe that she was the sole owner of the property upon her husband's death, and that she was not aware of her daughters' claims until the statutory period for adverse possession had passed. Id., 154–55, 159.

Second, the majority contends that in the case of *Harrison* v. *International Silver Co.*, supra, 78 Conn. 417, the court did not reach any conclusion as to the defendant adverse possessor's knowledge of his ownership of the property when the ouster commenced. Although it is true that the court in *Harrison* never expressly stated that the defendant held the land in ignorance of the cotenancy, the facts of the case, as recited by the court, make it clear that the defendant could not have been aware of the cotenancy. The land in *Harrison* was conveyed in 1873 by the plaintiffs' guardian by a deed reciting that he was duly authorized to make such conveyance by an order of the Court of Probate. Id., 418. The plaintiffs themselves did not discover until 1886 that certain defects in the appointment of the guardian rendered the 1873 conveyance invalid, and they did not inform the defendant until sometime between 1898 and 1900. Id. On the defendant's side, the land had passed from the 1873 purchaser to the defendant through a series of conveyances, including a mortgage foreclosure. Id. Given that record, if there were a rule barring adverse possession among cotenants in ignorance, the court surely would have addressed the matter.

Third, in the case of *Standard Co.* v. *Young*, supra, 90 Conn. 133, the majority relies on the fact that this court did not decide whether there had been an ouster, but rather remanded the case for a jury trial. The majority misses the point here. The trial court in *Young* found that the plaintiff, a cotenant in ignorance, had acquired the disputed property by adverse possession. This court, on appeal, while assuming that adverse possession had been properly found, remanded the case because it had been improperly tried to the court rather than before a jury. Id., 138–39. If, however, the majority was correct in its view that, as a matter of law, adverse possession is impossible as between cotenants in ignorance, the court in *Young* would have neither assumed that adverse possession was properly found nor remanded the matter for a jury trial, because the plaintiff could not ultimately have prevailed.

Finally, the majority declares the remaining case, *Hagopian* v. *Saad*, supra, 124 Conn. 256, to be an "outlier." This conclusion is problematic because *Hagopian*, a cotenant case decided more than seventy-five years after *Newell*, explicitly states that "[a] wrongful intent to disseize the true owner is not a necessary element of adverse possession." *Hagopian* v. *Saad*, supra, 259. Where an express statement of the law in a later case conflicts with what can at best be described as an implied legal principle contained in an earlier case, it seems odd to say that the later, more explicit case is the outlier. Adopting the majority's view of the law requires not only reading into *Newell* a legal rule that is inconsistent with the court's reasoning in that case, but also ignoring the law as we have subsequently stated and

applied it over the past century.

[19] The majority emphasizes that the plaintiff and her husband appear to have planted trees in the early 1980s so as to wall off the lot from their *own* home. The record does not reveal their original intent in this regard, or whether, for instance, they initially may have planned to delineate the lot boundaries so as to facilitate its later sale to a third party. In any event, throughout the course of litigation between the parties, it has never been suggested that the plaintiff was aware of the cotenancy prior to 1987.

[20] The plaintiff's complaint refers to the memorandum of decision from the prior litigation in which the trial court concluded that "the evidence supports a finding that all parties believed [Doris Percoski] was the owner" of Constanty Percoski's lands. *Larocque* v. *Percoski*, Superior Court, judicial district of Tolland at Rockville, Docket No. CV 97-0063927S (February 18, 2003).

[21] The assessment records of the town of Somers identified only the plaintiff and her husband as the owners of the property.

[22] In the face of the plaintiff's clear trial testimony that her claim of adverse possession is based on the fact that all parties believed that she had acquired sole possession of the lot in 1980 and that she had acted as though she were the sole owner from that time forth, I am at a loss to understand the majority's continued insistence that there is "no evidence in the record that the plaintiff had the requisite intent [to exclude the defendant] in 1987," or that it is the plaintiff's position that the defendant was not on notice thereof until 1997.

[23] The plaintiff's claim to hold the lot under color of title is not negated by the fact that, upon discovering the cloud on the title in 1987, she sought, with varying success, to obtain her siblings' interests therein. Because the law encourages the peaceable and expeditious resolution of property disputes, efforts to settle such disputes need not undermine a claim of exclusive ownership. Annot., supra, 82 A.L.R.2d §§ 81 and 84; *Ruick* v. *Twarkins*, supra, 171 Conn. 154 (affirming trial court's finding of adverse possession where plaintiff had asked defendants to sign papers relating to their interests in land); *Bryan* v. *Atwater*, supra, 5 Day (Conn.) 186 (finding adverse possession where plaintiff subsequently acquired quitclaim deeds from three of five cotenants). In its articulation in the present case, the trial court expressly found that the plaintiff sought and—in some cases—obtained her siblings' interests in the lot "in an effort to reach a settlement of the property issues between the parties" and not as "an admission of ownership . . . ." This was a question of fact, on which we must defer to the trier. Annot., supra, 82 A.L.R.2d § 84. Moreover, the defendant's unwillingness to grant her share of the lot to the plaintiff supports, rather than undermines, the plaintiff's claim, because it indicates the hostility of the plaintiff's possession. See *Bryan* v. *Atwater*, supra, 189 ("[i]f [the possession] be without the [owner's] consent, and against his will, it is adverse").

[24] In fact, we adopted *Prosser* in the earlier case of *Bryan* v. *Atwater*, supra, 5 Day (Conn.) 188.

[25] See annot., supra, 82 A.L.R.2d 134 ("[t]he initial, and leading, decision, recognizing, defining, and applying the principle of presumed or inferred ouster, is [*Prosser*]").

[26] Although I agree that the fact that the property in *Camp* was actively used as a parsonage strengthened the defendants' claim of ouster, nothing in that case indicates that such a specific use of the land is a precondition for applying the *Prosser* rule. Similarly, in *Bryan* v. *Atwater*, supra, 5 Day (Conn.) 188, although the property in question was in fact developed land, this court recited the *Prosser* rule in quite general terms, without any reference to the use of the property: "[I]f one tenant in common, has been in possession a great number of years, without any accounting to his fellow commoners, this is proper evidence, from which the jury may infer an adverse possession." Nothing in *Bryan* suggests that, in adopting *Prosser* as Connecticut law, this court imposed an additional requirement that the land be used for any particular purpose. Rather, the court suggested that the *Prosser* rule is simply an example of the general principle, equally applicable to landlord-tenant law, that "[i]f [possession] unaccompanied with any other acts . . . has been of long standing, without accounting for the rents and profits, it may be evidence to the jury, of an adverse possession." Id.

[27] In *Bryan*, the plaintiffs and their siblings inherited the land in question from their father on his death. Several years after entering the land pursuant to a bond, the defendant's predecessors obtained by quitclaim deed the interests of the father's widow and two of the four siblings, but the plaintiffs

refused to relinquish their interests. *Bryan* v. *Atwater*, supra, 5 Day (Conn.) 182–83 (recitation of facts).

[28] Indeed, in *Prosser* itself several justices implied that a briefer occupancy could have supported the result. See *Doe ex dem. Fishar* v. *Prosser*, supra, 98 Eng. Rep. 1053–54 (Ashhurst, J.) (implying that jury might have found ouster based on twenty-six years of possession); id., 1053 (Mansfield, Lord) (relating case to hypothetical in which tenant pur autre vie holds over for twenty years).

[29] In *Hewitt* v. *Beattie*, 106 Conn. 602, 610, 138 A. 795 (1927), we cited *Ricard* among a list of "our decisions . . . ." See also *Hewitt* v. *Sanborn*, 103 Conn. 352, 372, 130 A. 472 (1925) (relying on *Ricard* for Connecticut law).

[30] Significantly, even though the prior litigation took place in 1997, the defendant's allegations in that prior case, on which the plaintiff and the trial court relied in the present case, hearkened back to 1980. In other words, if the defendant claimed in 1997 that her holding had always been openly hostile to the plaintiff, then she cannot contend that she had been unaware that the plaintiff's mirror-image holding was likewise hostile to her during that same time period.

[31] In closing argument, the plaintiff's counsel specifically referenced the history of litigation between the parties as evidence that the defendant must have been on notice of the plaintiff's hostile intent, and further noted that the defendant must have been aware of the plaintiff's claims based on the defendant's own position in the prior action. It is therefore reasonable to infer that the court had this theory of the case in mind in finding that ouster had occurred.