

# ***Discussion on Establishment Conditions of Adverse Possession in Different Regions***

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**Abstract:** As a common law legal concept, adverse possession plays an important role in maintaining transaction security, stabilizing economic order, saving transaction costs and reducing waste of resources, but its application is controversial because different regions, have different legal provisions and practices of adverse occupation. At the same time, as some jurisdictions face the balance between the protection of original owners' rights and interests and the promotion of effective resource utilization,, the legal provisions regarding adverse possession are being abolished to meet the development needs of modern society. .These controversies have sparked the reflections and discussions presented in this article. This paper, through the research method of literature review, mainly studies different establishment conditions of adverse possession in different regions. Meanwhile, it explores the demand for social and economic development behind by the virtue of classic cases such as Van Valkenburgh v. Lutz. Evidently, the adverse possession involves legal, economic, social and other levels. Its research is not only helpful to understand the connotation and extension of the specific legal systems, but also has significant guiding implications for China's legal practice and legislative work.

**Keywords:** adverse possession, Establishment conditions, typical case, common law.

## **1. Introduction**

Adverse possession refers to allowing a person who occupies the land without the consent of the landowner to acquire ownership of the land after meeting certain conditions. Different countries and regions have differences in the legal provisions and practices in terms of adverse possession, so the reflections and discussions of this paper are based on this premise.

As a legal concept, adverse possession has been widely used in the legal systems of different countries and regions, but the details of specific implementation and legal effect are different. Thereupon, scholars have put forward various views on the relationship between adverse possession and economic development, legal reform and prescription acquisition. For instance, Itzhak Tzachi Raz notes that, in his study, adverse possession can motivate a higher use of the land by transferring ownership from owners of idle land to actual users, , thus increasing agricultural output. This legal system helps to reduce resource waste, promotes the efficient use of property, and potentially increases access to capital, as well as changes land allocation to increase the proportion of self-cultivating farmers and medium-sized farms. Yun-chien Chang discusses the application of adverse

possession law in different jurisdictions and proposes reform, which shows that scholars are concerned about the implementation of adverse possession law on a global scale, and seek ways to improve and modernize them [1]. In China, some scholars put forward that China should learn from the system of adverse possession, and believe that the prescription system plays an important role in the development of property law under the condition of a market economy. This system helps to protect the transaction security, stabilize the social and economic order, save the transaction cost, reduce resource waste, and promote the efficient use of property.

This paper uses the research method of literature review to study the different establishment conditions of adverse possession in different regions. It also explores the needs of social and economic development behind these by examining classic cases from different areas.

The differences in the legal system of adverse possession in different laws reflect the characteristics of their respective legal culture, social values and economic development level. With the increase of globalization and transnational transactions, the legal application of adverse possession may tend towards unification and clarification to accommodate the communication and coordination between different legal systems. At the same time, the legal provisions concerning adverse possession may also undergo modernization reforms in response to developments in social economy and changes in legal concepts.

## 2. Literature review

Adverse possession can be traced back to the ancient Roman law: if someone picks up an item left behind by another person, after two years of no claims, the finder can become the legitimate owner.

The squatting movement is closely related to the establishment of adverse possession. In fact, as early as the 1960s and 1970s, the squatting movement broke out in Europe and in the United States. It is well-known that Britain belongs to the common law system, and the Netherlands belongs to the civil law system, each of which is representative in their respective legal traditions. Therefore, UK and the Netherlands as examples are followed:

Britain's squatting movement took place after World War II. At that time, some veterans who returned from war found themselves homeless and began occupying empty houses in some big cities in southern Britain. Later, the squatting movement spread, culminating in the 1960s. According to the UK's Limitation Act of 1980, the owner's claim for return must be made within 12 years, while squatters can apply for a change in the property ownership registration after living in a vacant property for 10 years. If there is no dispute during the two-year application period, squatters can acquire ownership of the house, and the original would be barred from taking legal action to reclaim it. However, the act of squatting was a problem, which caused a fierce conflict between the rich and the poor. The wealthy ultimately prevailed, and as a result, squatting was declared illegal after 2012 [2].

The squatting movement in the Netherlands first took place in Amsterdam in 1964. In 1971, squatters were protected by law. At that time, the Supreme Court of the Netherlands ruled in favor of the right to housing security, which is the right to prevent others from entering against the will of the occupant. This right also applies to squatters. It is recognized as a human right by Article 12 of the Constitution of the Netherlands, Article 12 of the European Convention on the Protection of Human Rights, and Article 12 of the Universal Declaration of Human Rights. Human rights take precedence over property rights. So in order to expel the owner, the house owner must go to court and undergo lengthy proceedings. After the verdict, the movement to occupy vacant houses gained momentum. By the 1980s, about 20,000 people were living in occupied housing [3].

Since July 1994, article 429 of the Dutch Criminal Code has added "VI" as the proviso of "V", and the movement of squatting empty house has been legalized in the Netherlands on the grounds that "Use it or lose it".

Based on the history of the squatting movement in the two countries and the research results of the existing literature, as well as the many public security issues arising from the squatting movement—it is clear that establishing and gradually perfecting the system of adverse possession is necessary.

### 3. Case study

#### 3.1. Adverse Possession Cases in Europe and the United States

Some scholars speculate that the reason for the early adverse possession is related to the concept of property [4]. "Property" refers to the right to be enforced by the state, and its most important content is that property cannot go against the will of the owner. The primary purpose of adverse possession's early introduction was to maximize efficiency of property use without violating the will of the owner.

Adverse possession has a long history in the legal system of the Occident, and there are different applications and classic cases in different jurisdictions.

A specific classic case is *Van Valkenburgh v. Lutz*, a famous adverse possession case in the United States. In this case, plaintiff Van Valkenburgh acquired a parcel of land through a city auction, but later discovered that defendant Lutz not only raised the land but also built the house. When Van Valkenburgh brought Lutz to the court, the court of first instance judged the defendant to obtain the land ownership according to the adverse possession. However, after the plaintiffs appealed, he eventually regained the ownership of the land. This case has aroused extensive discussion in both American academia and the judicial practice community.

These cases show the practice and influence of adverse possession in different jurisdictions, and also reflect how different legal systems handle the relationship between land ownership and possession use.

In European and American countries, the constituent conditions of adverse possession usually include the following elements:

**Continuous Use:** The occupier must prove that their possession of the land is continuous. This means that the occupant cannot have any breaks in possession within the statutory time period.

**Open and Notorious Possession:** The possession must be open enough to be visible to anyone who notices, thus making the true owner aware of the existence of the intruder.

**Actual Possession:** The occupant actually occupies the property of others, and the true owner has the right to act on the encroachment, which must occur within the statute of limitation.

**Exclusive:** Occupiers cannot share control of property with others unless there is some connection between them and they exclude possession from others, just as if they were actual owners.

**Statutory Period:** The occupant must occupy the land within a statutory period, which usually varies between jurisdictions. For instance, in some states in the United States, it may be 5 years, 10 years, 20 years, or even longer in other states.

**Payment of Taxes:** In some jurisdictions, occupants may need to prove that they have paid land taxes, which can be used as evidence of possession of land.

#### 3.2. Adverse Possession Cases in Australia

In the Australian legal system, adverse possession applies to unregistered land, and some states retain the concept after implementing the Torrens system of land registration.

In Australia, there are several noteworthy cases of the legal practice of adverse possession. First is the case of *McFarland v. Gertos* from New South Wales. Another case is *Laming v Jennings*, a case in Victoria heard by the county court in 2017 and tried on appeal in 2018. This case affirmed and extended the principles of law governing adverse possession, particularly in terms of how to defend against the claim.

In Western Australia, the Court of Appeal held in the case of *Ben Pelech v Royle* that even if the landowners mistakenly enclose land they believe to be theirs, and regardless of their intent, adverse possession may still arise.

These cases demonstrate Australian legal practice in adverse possession and how the courts can judge based on specific circumstances, whether an individual has acquired legal ownership of land through long, exclusive possession.

First of all, the composition of adverse possession usually includes actual possession (that is, the occupant must act like the legal owner, exercising actual control and use of the property), continuity, hostile possession, exclusive possession, public possession and other conditions.

In terms of the specific statutory time requirements across the states of Australia, New South Wales, Queensland, Western Australia and Tasmania have a statutory period of 12 years, while Victoria and South Australia require a minimum of 15 years. It is worth noting that adverse possession is prohibited in the Northern Territory and the capital region.

In addition, the legal practice of adverse possession is also controversial in Australia. Some cases show that even if the possessor meets the above conditions, the original owner usually acts to defend his rights.

In general, adverse possession is a complex legal process in Australia, which involves many considerations, including the legality of possession, the nature of the possession act and the protection of the rights and interests of the original owners. Although there are successful cases of adverse possession, this does not mean that anyone can easily acquire the property through this means. It usually requires a set of strict legal conditions.

### 3.3. Adverse Possession Cases in Hong Kong

In Hong Kong, there are some classic cases of the legal practice of adverse possession. One of the more famous is a case in Matoujiao Road, Tuguwan. A female tenant successfully obtained ownership of a unit through adverse possession after the owner "vanished" for 26 years. During this period, she paid the rates and maintenance fee of the building. and finally successfully obtained the title of the unit through adverse possession. In this case, the judge held that the tenant had done all her ability to find the landlord but failed, awarding the unit to the tenant under the statute of limitations. Another case of interest is the *Monat Investment Ltd.*

These cases reflect the meticulous handling of adverse possession under Hong Kong law, as well as the application and interpretation of relevant legal principles.

Under Chapter 347, Articles 7 and 17 of the Limitation Ordinance of 1945 in Hong Kong, any person including malicious possessors who continuously occupies the official land for 60 years will cause the Hong Kong government to lose its right to reclaim that land.

A mother and daughter have occupied 10,000 feet of farmland in Tai Po for more than 20 years, and the High Court ruled that the two got the property, against *Henderson Land Development* [5]. *Ho Cheuk-Kei*, chairman of the Civic Education Committee, was accused of illegally occupying the official land for 20 years to build a house at Kwan Yin Mountain No. 9 in Tsz Wan Shan [6]. In the first judgment of the Court of Final Appeal, *FACV 1 / 1997*, it was determined that *Wong Tak Yue* who claimed he could not contact the registered owner while occupying a site in Yuen Long without paying rent, did not establish an intention to occupy because he stated in his affidavit submitted to the court that he was willing to pay rent. Thus, his claim of "adverse possession" could not be established.

In Hong Kong, China, the conditions of adverse possession mainly include the following:

Time requirement: According to the Limitation Ordinance, the limitation of occupation of private land is 12 years (if the commencement date of occupation is after July 1,1991), or 20 years (if the

commencement date is before July 1,1991). The limitation period for the adverse possession of official land (namely government land) is 60 years.

**Factual Possession:** The occupier must show actual control over the land, like the owner. This control is continuous, open, and peaceful, and excludes the use of others.

**Legal act:** The behavior of the occupant should not violate the law, especially criminal offences or violate the Buildings Ordinance, etc. Courts consider a number of factors, including whether the nature and consequences of the violation are commensurate, and whether it conflicts with the law of adverse possession.

**Cumulative:** The possession time of different occupants can be accumulated, as long as the occupation is continuous and uninterrupted.

**Excluding implied concession:** It is not legally considered that the act of the occupier is granted by the owner because of the implied concession by law.

**Excluding voluntary payment of rent:** If the occupant voluntarily pays the rent to the owner, it may lack the necessary intent for adverse possession.

**Exclude the absolute protection of the registered ownership:** Under the registered ownership system, the adverse possession should not absolutely protect the rights and interests of the registered owner.

**Excluding ancestral adverse occupation:** In the case of ancestral land, adverse possession is almost impossible, and there is no legal need to change this point.

These conditions together constitute the legal framework for adverse possession in Hong Kong, aiming to balance the rights and interests of the original owners and occupiers, while ensuring the rational use of land resources and the fairness of the law.

#### 4. Discussion

To sum up, the concept of adverse possession comes from the common law and has existed for many centuries, and the main purpose is to promote the full use of land resources. With the development of society, this concept has been applied in some regions such as Hong Kong, but there is no corresponding legal regulation in the mainland. Under the condition of the market economy, more and more mainland scholars and practitioners believe that it is necessary to establish the system of acquisitive prescription, because it helps to maintain transaction security, stabilize economic order, safeguard public interests, and promote the optimal use of resources.

Adverse possession has many advantages. Firstly, it promotes the effective use of resources. The adverse possession system can encourage the effective management and use of land and other resources as well as avoid the waste of resources. Secondly, it reduces the judicial costs and litigation costs by establishing clear rights of ownership, thereby reducing disputes arising from unclear property rights, which in turn lowers both judicial and litigation costs. Additionally, adverse possession enhances transaction security by protecting the interests of third parties who engage in transactions with long-term possessors. Finally, the system of acquisitive prescription reduces the additional transaction costs caused by property disputes and promotes the clarification of property rights and the convenience of transactions.

But there are disadvantages and loopholes in adverse possession. For example, if the original owners fail to exercise their rights in time for some reason, the adverse possession may cause them to lose the property that should belong to them. This system may be used by some individuals who use improper means to occupy another person's property for an extended period, ultimately obtaining ownership without compensation.

In general, the implementation of adverse possession needs to find a balance between ensuring the effective use of resources and social equity. In some regions, such as Hong Kong, there are clear legal



provisions and implementation cases of adverse possession, while in the mainland, further legal research and discussion are needed.

In light of the insight that adverse possession brings to the mainland legal system, this paper proposes several specific and effective recommendations based on existing literature research and actual situation. These include promoting the reasonable use of resources, maintaining transaction security and economic order, reducing judicial costs, adapting to the needs of a market economy, aligning with international law, and reflecting modern modern property rights concepts. Therefore, it can be seen that the system of adverse possession has great reference significance for China.

## 5. Conclusion

This paper mainly studies the different conditions for the establishment of adverse possession in various regions and explores the underlying social and economic demands that shape these conditions. This study involves multiple dimensions, including legal, economic, and social levels. It not only aids in understanding the connotation and extension of a specific legal system, but also holds significant guiding value for China's legal practice and legislative work.

According to the existing literature and the current actual situation, this study still has some shortcomings. First, it does not fully explore the limitations of adverse possession in the application of law, nor does it deeply analyze the differences in applicability and acceptance across different legal jurisdictions. Then there are the limitations in the case analysis in this article. Although there are some famous cases of adverse possession, studies in these cases may be limited to specific legal contexts and factual contexts, making it difficult to apply them generally to all cases of adverse possession. Additionally, due to ambiguities in defining the essential elements of adverse possession in practice such as the way of possession, time, intention which may vary across different cases. This has resulted in the criteria for possession in this article remaining unclear. Therefore, the author will continue to discuss the definition and conditions of the possession requirements through field research, questionnaire surveys and other methods in the future, in order to achieve the unity of legal fairness, efficiency and social justice.

This study will promote the unification and clarification of the application of adverse possession, prompting some countries and regions to reform their adverse possession legal systems to meet the needs of social development. It aims to help establish clearer, fairer, and more socially adaptive conditions for adverse possession in the future.

## References

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- [2] Wang Changpei, Wang Jingyu: "An Analysis of the Occupation Movement in the UK during the 1960s and 1970s," *Journal of Ludong University (Philosophy and Social Sciences Edition)*, 2019, No. 1, page 17. Reverse possession, acquisition by prescription, the movement to occupy vacant houses, and the obligations of active exercise of ownership.
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