

## **THE DOCTRINE OF ADVERSE POSSESSION IN MODERN PROPERTY LAW: A REASSESSMENT**

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### ***Abstract***

*Adverse possession is a legal doctrine that permits a trespasser to acquire title to land by continually occupying it for a prolonged period, usually twelve years, without the authorisation of the land owner. This doctrine occurs when a stranger takes over land he does not own. This situation of possession can happen intentionally or unintentionally, with a squatter or trespasser occupying the land, such as when someone unknowingly encroaches on the land of his neighbour. This doctrine has become rooted in the property law of many jurisdictions. Still, modern intricacies are challenging this age-long rule in a bid to balance the competing interests of adverse possessors and true owners. Against this background, this paper examines the theoretical underpinnings of adverse possession, the evolution of the doctrine through case law and statutory limitations, and the modern challenges and criticism of adverse possession. It renders policy reforms as recommendations for the modification of the doctrine or total expulsion from the realm of modern property law. The paper accentuates the contemporary realities of absentee landlords or land owners and as part of its findings, contends that the social policy considerations of adverse possession are contrary to fairness and justice and tantamount to enabling land grabbing. The article recommends the remedy of compensation for the landowner or abolition of title to land through adverse possession as done in Singapore.*

**Keywords:** Adverse Possession; Landowner; Absentee Landlord; Title to Land; Property law.

### **Introduction**

Title to land is the fountain of all rights that accrue to landowners and it is the crux of ownership and possession in property law. Property law has gone through different evolutions from the 9th-century feudal system of mediaeval Europe, where peasantry was a norm, and landowners were the alpha and omega of their land or estates, to a period where serfdom was decimated, and the

rights to land ownership became accessible to peasants.<sup>1</sup> The thrust of economic activities from the 15th to the 20th century was land, as the people were largely agrarian and pastoralists.<sup>2</sup> The land had diverse functions: it served as an emblem of nobility in traditional African societies and was a system of preserving age-long social structures and caste systems, while the volume and quality of land, to some extent, determined the economic fortunes of a particular family.<sup>3</sup> A family with a larger volume of arable land will be able to produce more food and gain increased respect among the other clans in traditional African societies like the Igbo, Tiv, Yoruba, et cetera.<sup>4</sup>

Land ownership transcends agricultural produce and status symbols; it is the foundation of many prosperous families and countries today that are blessed with enormous mineral deposits and natural deposits. In the United States of America,<sup>5</sup> the qualified and absolute ownership theory of land ownership significantly determines the financial fortunes of individuals and families. Under the absolute ownership theory in Pennsylvania, Texas and Arkansas, the landowner has title to the land and the mineral resources found beneath the land, such as gold, oil and gas, et cetera. During the diamond rush of 1870 to 1902 in South Africa,<sup>6</sup> lands filled with glimmering metal significantly and rapidly changed the transition of relatively poor black South Africans to middle-class and rich

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<sup>1</sup> Njenga GN and SB Clough y RT Rapp, “The Feudal System in Medieval Europe (7th-14th Century A.D.): A Summary” (1986) available at <<https://core.ac.uk/download/83042105.pdf>> accessed 11 April 2025.

<sup>2</sup> Hopcroft RL, “The Social Origins of Agrarian Change in Late Medieval England” (1994) 99 American Journal of Sociology 1559 available at <<https://www.jstor.org/stable/2782584>> accessed 11 April 2025.

<sup>3</sup> Jauro AS and Ibrahim Y, “A Review of the African Traditional Perspective on Land and Its Resources” (2016) 2 International Journal of Social Science and Economics Invention available at <<https://doi.org/10.23958/ijsssei/vol02-i05/01>> accessed 11 April 2025.

<sup>4</sup> Pamoo, “Cultural and Legal Considerations in Family Land And Property Inheritance In Nigeria” (S.P.A. Ajibade & Co, September 21, 2023) available at <<https://spaajibade.com/cultural-and-legal-considerations-in-family-land-and-property-inheritance-in-nigeria/>> accessed 11 April 2025.

<sup>5</sup> Adoga-Ikong JA and Ibekwe AF, “Ownership of Oil and Gas in Nigeria: A Need for Paradigm Shift?” (2021) 5 PINISI Discretion Review 21 available at <<https://ojs.unm.ac.id/UDR/article/download/22015/11375>> accessed 11 April 2025.

<sup>6</sup> Noland M and Spector B, “The Stuff of Legend: Diamonds and Development in Southern Africa” [2006] MPRA Paper available at <<https://ideas.repec.org/p/pramprapa/15575.html>> accessed 11 April 2025.

families. While this was later hijacked by the Afrikaners,<sup>7</sup> who controlled the bulk of the resources in the South African state, it shows the grave importance of land and title to land.

In Nigeria, land ownership is a token of prestige and family history in relation to a particular locality.<sup>8</sup> The affinity of most people in Nigeria to a specific part of the country is done mainly by tracing their forebearers, as founders or early settlers in a particular land. While some people or groups shared close ties with their lands, nomadic groups like the Fulanis favoured moving and settling on parcels of land they deemed uninhabited.<sup>9</sup> The culture of travelling and settling on land was prevalent in the Rustic Age.<sup>10</sup> Still, with clearly defined geographical boundaries and an avalanche of land ownership regimes, the concept of nomadic living started dying a natural death.

Prior to the enactment of any law to regulate land ownership and transactions in Nigeria, different communities and societies operated their traditional and customary land tenure systems.<sup>11</sup> The principle of communal and family landholding was prevalent in pre-colonial Nigeria, and everyone was entitled to some parcels of land for farming purposes, which devolved into family landholding upon passage to offspring at the demise of the landowner. The customary land tenure did not recognise the rights of foreigners to own land, but they could get lands as customary tenants who had to pay customary tenancy.<sup>12</sup> While there was a repulsion of foreigners holding communal land,

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<sup>7</sup> Magubane B, “The Impact of the Mineral Revolution, 1870-1936” (1936) available at <<https://repository.up.ac.za/bitstream/handle/2263/24554/04chapter4.pdf?sequence=5>> accessed 11 April 2025.

<sup>8</sup> Pamoo, *supra* note 4.

<sup>9</sup> Cinjel ND and Oboromeni W, “The Fulani in Nigeria and Their Herding System: Is It an Agro-Business or a Culture?” (2024) 15 *Journal of Policy and Development Studies* 111 available at <<https://doi.org/10.4314/jpds.v15i1.8>> accessed 11 April 2025.

<sup>10</sup> *Ibid*

<sup>11</sup> Okpala CA and others, “Comparative Analysis of Land Use Act Using Traditional Method in Imo-Anambra States, Nigeria,” vol 4 (2022) available at <[https://ijaem.net/issue\\_dcp/Comparative%20Analysis%20of%20Land%20Use%20Act%20Using%20Traditional%20Method%20Nimoanambra%20State,%20Nigeria.pdf](https://ijaem.net/issue_dcp/Comparative%20Analysis%20of%20Land%20Use%20Act%20Using%20Traditional%20Method%20Nimoanambra%20State,%20Nigeria.pdf)> accessed April 12, 2025

<sup>12</sup> Otu MT and Edet J, “The Status of Customary Tenants in Relation to Land Held by Him: An Overview of Customary Law” (2023) 2 *International Journal of Law and Society (IJLS)* 1 available at <<https://doi.org/10.59683/ijls.v2i1.34>> accessed April 12, 2025

some people - either foreigners or locals began to occupy certain portions of land deemed abandoned.

This was particularly true in certain parts of Nigeria, where some lands were designated as "evil forests" and abandoned for decades.<sup>13</sup> Such lands were believed to be accursed or the dwelling place of spirits or mythical creatures, hence, unfit for cultivation or any form of economic activity. This lacuna laid the foundation for certain people or groups, usually unsuspecting migrants, to inhabit these lands. Traditionally, there was a principle of non-disturbance when travelers or sojourners settled on land since they were peaceful and respected the norms, cultures and traditions of their host communities. This was the foundation for the doctrine of adverse possession in local parlance.<sup>14</sup>

The exact origin of the doctrine of adverse possession cannot be pinpointed, but it has been suggested that this concept dates back to ancient Rome.<sup>15</sup> At the same time, some scholars say that the concept originated in ancient Egypt, with a claim that the doctrine was mentioned in the *code of Hammurabi*, which was written approximately 2000 BCE.<sup>16</sup> The first mention of adverse possession under English law is said to be found in the Statute of Westminster (1275).<sup>17</sup> Under the Westminster Statute of 1275, there were limited provisions or remedies for recovering land once it has been possessed and this clearly laid the foundation for adverse possession.<sup>18</sup> At common law,

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<sup>13</sup> Emeasoba URB and Ogbuefi JU, "The Dynamics of Land Ownership by Deities in Anambra State Nigeria." (*Emeasoba | Research on Humanities and Social Sciences*, 2013) available at <<https://iiste.org/Journals/index.php/RHSS/article/view/5583>> accessed April 12, 2025

<sup>14</sup> Onanuga K, 'Adverse Possession in Nigeria, A Legal Practitioner's Perspective' (March 2025) OAL Available at <<https://oal.law>> (accessed 17 April 2025).

<sup>15</sup> Shashi SSK and Judicial Academy, Jharkhand, "Title by Adverse Possession" available at <[https://jajharkhand.in/wp-content/uploads/2023/06/column-003\\_13062023.pdf](https://jajharkhand.in/wp-content/uploads/2023/06/column-003_13062023.pdf)> accessed April 12, 2025.

<sup>16</sup> Verma, L, "Adverse Possession: Origin, Development and Provisions in Modern Law" available at <<https://www.legalserviceindia.com/legal/article-6393-adverse-possession-origin-development-and-provisions-in-modern-law.html#:~:text=Among%20ancient%20Romans%2C%20it%20was,title%20owner%20of%20the%20land.>> accessed 16 January 2024).

<sup>17</sup> *Ibid.*

<sup>18</sup> William; Nash, Howard P., Editors Mack. *Cyclopedia of Law and Procedure*, (1901-1912, New York, Amer. Bk. Co).

there is a presumption of ownership in favour of an adverse possessor after a specified period of possession.<sup>19</sup> This presumption has become a vital aspect of the rules that regulate property law in different parts of the world, including Nigeria, and there has been a plethora of philosophical arguments canvassed for the sustainability of the doctrine of adverse possession in modern property law. These views will now be examined in detail through theoretical foundations on the subject.

## **2. THEORETICAL FOUNDATIONS OF ADVERSE POSSESSION**

Numerous views have attempted to substantiate the legality of adverse possession in the jurisprudence of property law. These theories attempt to rationalise the operation of adverse possession in society and are referred to as the traditional theories<sup>20</sup> The Utilitarian theory, the occupation theory, the personhood theory and the labour theory are some traditional theories on adverse possession which will subsequently be discussed.

Smith, in his doctoral thesis<sup>21</sup> stated that the theoretical underpinnings of adverse possession have moved from just the traditional theories to theories emanating from the peculiar nature of certain land tenure systems, which do not allow for the application of the doctrine of adverse possession.<sup>22</sup>

Other theories have emanated as part of statutory legal inhibitions, like the abolishment of absolute ownership under the Nigerian Land Use Act 1978, where land is now vested in the Governor of a state and said to hold the land in trust for the people.<sup>23</sup> The emergence of these theories challenge the scope and applicability of adverse possession. The greatest contention against the doctrine is that it sets the scene for land grabbing; it is unfair and unjust and can have debilitating effects on

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<sup>19</sup> The limitation laws of various Nigerian States provide for a 20year period for state property/land while 12 years for an individual land before the issue of laches and acquiescence comes up. An example is in s.25 (2) (a) of the Limitation Laws of Lagos State, 2003.

<sup>20</sup> Occupation theory, utilitarian theory, personhood theory, economic theory, and social function of property theory.

<sup>21</sup> Smith I.O, “Application of the Doctrine of Adverse Possession under English and Nigerian Law: A Comparative Study” (2021) A Doctoral Thesis in Law presented to the National University of Ireland. p.70. Available at <<http://hdl.handle.net/10379/16801>> last accessed 23 December 2024.

<sup>22</sup> The relativity theory under the Islamic land tenure system.

<sup>23</sup> S.1, *Land Use Act* (LUA) (1978). Chapter L5 Laws of the Federation of Nigeria 2004.

the poor and marginalised like the less privileged and widows. Similarly, there are arguments that the doctrine of adverse possession is a vestige of colonialism and contrary to what is obtained under Nigeria's customary land tenure system, where landholding is communal and familial.<sup>24</sup> The practice of fallow farming is prevalent. This concern of the usurpation of the original title under the customary land tenure system has reared its head in light of the modern complexities of absentee landlords and the contemporary real estate investment boom. To this end, it is imperative to consider the traditional theories of adverse possession in order to ascertain if they are compatible with trends in modern property law and where inconsistent, highlight the implications of such incompatibility on the veracity of claims made by adverse possession proponents.

## **2.1 UTILITARIAN THEORY**

This theory is deeply rooted in the belief that policies, rules, laws and regulations should achieve the greatest happiness for the greatest number of persons. The utilitarian concept does not regard any policy or rule as inherently draconian or bad.<sup>25</sup> Still, it examines the consequences and results of such actions to determine their efficacy and suitability for the concept it was created.

The utilitarian theories and its ancillaries share four salient elements: consequentialism, welfarism, impartiality and aggregationism.<sup>26</sup> Jeremy Bentham, the father of utilitarianism, posits that resources in a state must be used for the well-being of the people. This position lays a solid foundation for the doctrine of adverse possession as the proponents aver that it is against reasoning to prevent those who use land for productive economic activities to be sent packing from the land.

A core argument of the proponents of this doctrine lies in the fact that adverse possession contributes significantly to the development of the society because lands that are non-occupied either waste away or, in some instances, affect the value of the neighbouring property. The

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<sup>24</sup> Anene C.P and Njoku C.U, "Land Use Act: A Re-Enactment Of Colonial Land Policy In Post-Colonial Nigeria", (2022) *Aku: An African Journal Of Contemporary Research* Vol. 3 No. 1.

<sup>25</sup> Ellickson RC, "Adverse Possession and Perpetuities Law: Two Dents in the Libertarian Model of Property Rights" (1986) 64 *Washington University Law Review* 723 available at <[https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1464&context=fss\\_papers](https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1464&context=fss_papers)> accessed April 12, 2025.

<sup>26</sup> MacAskill, W., Meissner, D., and Chappell, R.Y. (2023). "Elements and Types of Utilitarianism" In R.Y. Chappell, D. Meissner, and W. MacAskill (eds.), *An Introduction to Utilitarianism* available at <<https://www.utilitarianism.net/types-of-utilitarianism>, (accessed 20 January 2024).

utilitarian theory contends that property is not a natural right but a positive one.<sup>27</sup> Hence, if the appropriation of land through adverse possession would serve the interests of the greatest number of persons, it must be allowed to subsist. John Stuart Mill<sup>28</sup> noted that no exclusive right to property should be granted to a man who cannot put it to good use. He notes that ownership of land is birthed on possession of land for a certain period of time without any contention or claim being laid to this property.

However, as Smith points out, no “empirical evidence” shows that adverse possession contributes to the socio-economic advancement of any society. He rightly argues that this notion is based on the assumption that the adverse possessor will use the land productively as opposed to letting it lie fallow.<sup>29</sup> The perception that land which is undisturbed is useless is presumptuous as productive usage is largely subjective, especially in agrarian or rural areas where some lands are deliberately excluded from tilling or conducting any form of activity to enable it to restore and grow to its position of fertility.<sup>30</sup> In the same vein, what is termed "usage" for the purpose of the adverse possessor might be detrimental to the neighbouring or adjacent property. This calls into question whether there is a unique test for determining whether the use of land is significantly positive for society<sup>31</sup> but as Smith notes, productive usage is not a fact to be established for a claim of adverse possession to be successful.<sup>32</sup> While it is true that the utilitarian theory is one way to tackle the abandonment of property, depreciation and the commitment of society's scarce resources to the renovation of property, it falls short of the modern conception of conservation, afforestation and lands earmarked to protect wildlife conservation.<sup>33</sup>

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<sup>27</sup> Legal Maxims “Theories of Property” available at <https://www.legalmaxim.in/theories-of-property/> (accessed 20 January 2024).

<sup>28</sup> John Stuart Mill, *Principles of Political Economy with some of their Applications to Social Philosophy* (London: John W. Parker, West Strand, 7th edition, 1870), p. 23.

<sup>29</sup> Smith, *supra* note 21.

<sup>30</sup> *Ibid.*

<sup>31</sup> Katz L, “The Moral paradox of adverse possession: sovereignty and revolution in property law” (2010) 55 *McGill Journal of law*. Society no longer prefers development and it cannot be seen as the ultimate test of usage.

<sup>32</sup> *Ibid.*

<sup>33</sup> Sprankling J. G, “Environmental Critique of Adverse Possession”. (1993) *Cornell L. Rev.*, 79, 816.

The non-active use of land is usage if the utilitarian theory is anything to go by. The seclusion of certain portions of land in the society as sacred groves protects a group's religious, cultural and traditional heritage. The immense benefits of greenery and trees to the environment in light of climate change and unfolding environmental issues challenges the theorisation of utilitarianism as a valid justification for adverse possession because “abandoned land” has its intrinsic and profound impact on the society.<sup>34</sup>

## **2.2 OCCUPATION THEORY**

The foundation of this theory rests on the belief that property is a natural right. This theory presupposes that ownership of property rests with the first discoverer and settler. This has been the view held from the time of Roman Jurists and affirmed in the thoughts of philosophers like Immanuel Kant and Grotius.<sup>35</sup> Grotius argues that all humans inherently have a right to a portion of the earth and that they share the resources. Thus, he asserts that the first person to seize a property holds the title to that property until another person with a better title dispossesses them. This first occupancy theory somewhat underlies traditional and modern property law. This view can be found in the postulations of the French thinker, Jean Jacques Rousseau,<sup>36</sup> who put forth a first occupation theory based on labour, which is similar to the Lockean labour theory but substantially different as the occupation theory does not impose a duty other than being the first acclaimed occupier of that land or property.

The dividends of the occupation theory include the certainty and security of possession until another person can demonstrate a better title. This philosophy states that once someone has retained possession over a land for a long period of time, then ownership can be inferred. This lays

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<sup>34</sup> Cibele Q, Beilin, R, Folke C, and Lindborg R “Farmland Abandonment: Threat or Opportunity for Biodiversity Conservation? A Global Review.” (2014) 12 *Frontiers in Ecology and the Environment*, p. 288.

<sup>35</sup> Cohen M.R, “Property and Sovereignty” (1927) 13 *Cornell Law Review*. available at <https://scholarship.law.cornell.edu/clr/vol13/iss1/3> (accessed 20 January 2024).

<sup>36</sup> Stanford Encyclopedia of Philosophy, “Jean Jacques Rousseau” (April 21, 2023) available at <https://plato.stanford.edu/entries/rousseau/#:~:text=In%20the%20Discourse%20on%20Inequality,alienation%20from%20his%20own%20self.>> (accessed 20 January 2025).

the foundation for the doctrine of adverse possession, but historically, the earth has never been a thing with no owner. The virgin lands, bushes, hunting forests or pasture have always been regarded as the common patrimony of the community.<sup>37</sup> Hence, unoccupied land has never been without an owner as it is continually owned by the community. How then can one acquire ownership of a property by occupancy when the interests of the true owners - the community, has not been extinguished?

Cicero in his work *De Officiis*<sup>38</sup> wrote on private property and believed that the world is God's gift to mankind and everyone must be allowed to get a portion of their own gift by appropriating land and that man must be able to get what is due to him. This theory, though noble and seeking to create a utopian society where there is equality of opportunities, negates the pervading rule of life that the strong will prevail over the weak and the rich over the poor. The occupation theory is a hard justification for private property in today's world as it can be used to systematically dispossess indigenous communities that have now become a minority of their land and to deny them of the resources attached to the land.

A crucial point that the occupation theory neglects is that the theory is incompatible with modern land tenure and registration systems where title to property is acquired and not found. No one acquires a title in a good by simply discovering it; the person ought to part with some form of consideration before the title can be transferred.<sup>39</sup>

The economic disparity and the hold of capitalism in the modern world means that there would not be equality of outcomes with an application of the first-in-time rule.<sup>40</sup> Since a fundamental element of adverse possession is possession, the occupancy theory is pivotal to any claim of adverse possession. Considering the dynamics of life and power imbalance, should the weak be let

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<sup>37</sup> Abyssinia Law. "Theories of Property Rights" available at <https://www.abysinialaw.com/study-on-line/395-land-law/7893-theories-of-property-rights> (accessed 20 January 2025).

<sup>38</sup> Cicero, M.T, *De Officiis (On Duties, On Obligations, or On Moral Responsibilities)*. 44 BC treatise.

<sup>39</sup> Nicholas T, "Property Law - Occupation Theory" available at <https://prezi.com/mn0giayl9vtd/property-law-occupation-theory/> (accessed 20 January 2025).

<sup>40</sup> Rehbein B, "Capitalism and Inequality" (2020) 35 *Sociedade E Estado* 695 available at <<https://doi.org/10.1590/s0102-6992-202035030002>> accessed April 12, 2025.

to suffer or go without property if the first occupancy theory is to be followed? If three persons are on grassland and one person claims two-thirds of the land, will it be fair to the other two persons for them to leave under this inequitable condition?<sup>41</sup> This theory is anachronistic and has no place in the jurisprudence of modern property law and by extension, does not substantiate the doctrine of adverse possession.<sup>42</sup> Regardless, it must be noted that the law is not idealistic but pragmatic and occupation theory continues to form a bedrock in our property jurisprudence, especially concerning adverse possession.

### **2.3 LABOUR THEORY**

From microeconomics, labour is seen as one of the factors of production and instrumental to the creation of wealth.<sup>43</sup> John Locke was the first scholar to advance arguments for the acquisition of rights in property by exerting labour or expending resources to improve land in his popular and ancient work “Two Treatises of Government” in 1690.<sup>44</sup> He argues that a squatter who has improved the land through labour has an interest in the land over that of the true owner who abandoned it. The reasoning behind this theory is that land exists in its natural state, and anyone who exerts labour over an unowned land has properly appropriated the property. Still, Locke provides a limitation to this theory. He posits that appropriation through labour will only be valid when there is enough land generally left for others to appropriate. Locke contends that no person should be able to appropriate more than what he needs to survive or thrive.

Moreover, Andrew<sup>45</sup> in his work, *Property and Labour*, he provides a quad dimension of labour theory. He identifies the idea of labour being used as an incentive for individuals to contribute to the development of society as espoused by James Mill in his work “Elements of Political

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<sup>41</sup> *Ibid.*

<sup>42</sup> *Supra* note 39.

<sup>43</sup> Popular school of thought held in economics by Adam Smith, John Stuart Mill, Alfred Marshall, and other celebrated economics scholars.

<sup>44</sup> Locke J, “*Two Treatises of Government*” (1824).

<sup>45</sup> Reeve A, *Property and Labour* (1986. Palgrave, London) Pp. 112–151.

Economy”.<sup>46</sup> Second, Andrew identifies the view of John Locke that a labourer is entitled to the fruit of his labour, and if it is property, then he owns an interest in them. Third, he accentuates Hegel's view that property is necessary for true liberty and freedom, which is realised by doing something positive, like labouring on the land. Fourth, Andrew highlights Karl Marx's alienated labour and private property view, where Marx explored the social character of labour and how it impacts his access to own property. Marx recognised that the labourer's sweat is not always rewarded but contends that for true peace in society, the right of the labourer to own property must be preserved. This view clearly emanates from Marx's view of life from the lens of class conflict, and it does hold some relevance when Marx was alive into the 20th century, but modern dimensions of property law do not readily agree with this postulation. The labourer is entitled to be paid for services rendered and is not rewarded for being a developer of a property to which he has no interest in as land is under a registration system and there exists nothing like the “commons” in modern property law.

Marxist economists have criticised the labour theory for providing a springboard of societal alienation where capital accumulation perpetuates dire socio-economic inequalities.<sup>47</sup> Further, they contend that the labour theory fails to consider that the value of a good or property is not determined by the amount of labour exerted in its production. It finds discrepancies between a conception of labour in a society where value is subjective and attempts to vest title by performing some positive acts on the land.

The theory is generally underwhelming as the notion that the labourer can appropriate land as long as there remains some in common or does not prejudice the living of its neighbours lacks a root in modern property law. Under the Nigerian Land Use Act 1978, all land has been appropriated to the Governor, who holds it in trust for the people, except land that operated under the customary land tenure system before the enactment of the Land Use Act.<sup>48</sup> With land now existing under a

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<sup>46</sup> Ball, Terrence and Antis Loizides “James Mill” *The Stanford Encyclopedia of Philosophy*. available at <https://plato.stanford.edu/entries/james-mill/#MilWri> (accessed 20 January 2025).

<sup>47</sup> Bell, Stephanie A “A Chartalist Critique of John Locke’s Theory of Property, Accumulation, and Money: Or, Is It Moral to Trade Your Nuts for Gold?” 62 *Review of Social Economy*, available at <http://www.jstor.org/stable/29770243>. (accessed 2 January 2025).

<sup>48</sup> ss 34(2) and 36(4) of the Land Use Act 1978.

legal regime where appropriation is only by transference of title or divestment of interest, how then can others have land in common to exert labour for the sake of their own appropriation?

## **2.4 PERSONHOOD THEORY**

The personhood theory posits that property, by virtue of prolonged occupation of the squatter or trespasser, forms an attachment to the land as opposed to the landowner who has become detached. The crux of this doctrine rests on the view that for title to be taken away from an adverse possessor, due consideration must be taken regarding what level of difficulty taking it away will cause to the squatter. Even more, if compensation in terms of pecuniary considerations cannot significantly assuage the grief of the adverse possessor, then it can be said that the person has formed a personal attachment to the property.

The proponents of this theory hold that property has more meaning and deep personal significance to people to the extent that it largely determines their identity or the question of self.<sup>49</sup> This property houses memories, aspirations, and bonds, has a significant or nominal impact on the wellbeing of persons. The theory of personhood vehemently rejects the view of property as mere economic assets and contends that humans can have deeper connections to objects or certain places. It avers that the sentimental attachment to property is what sometimes drives people who would otherwise not have any business with a particular location to commit their human and financial resources to develop or carry out long and medium-term investments. Clearly, personhood suggests that property has its own intrinsic value and cannot be confined to only its economic and exchange value. This is a purely strong moral dimension of property rights but the doctrine itself challenges the concept of property rights from purely purpose-driven legal principles that have come to underpin most modern property regimes all over the world.<sup>50</sup>

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<sup>49</sup> Radin M.J. . “Property and Personhood” (1982) 34 *Stanford Law Review*, pp.957-1015.

<sup>50</sup> This aptly captures the rationales and justification of enacting the Land Use Act 1978, where absolute ownership was abolished, and only a right of possession or occupancy now subsists under that regime with the exceptions of the customary land tenure system.

Hegel argues that there is a nexus between property ownership and individual freedom.<sup>51</sup> He asserts that true liberty to express one's self is significantly attached to property ownership. This view is a corollary to the landmark work of Margaret Jane Radin on "Personhood and Property" where she explores the delicate intricacies and overlapping interests of property ownership and self. Margaret stretches the importance of sentimental attachment, especially concerning property that is now considered an heirloom.<sup>52</sup> However, she notes that not all forms of property come under personhood, but those ones are referred to as personal property or property for personal autonomy. She distinguishes what the doctrine of personhood seeks to achieve and fetishes by using a wedding ring and a shoe. A wedding ring holds a more sentimental attachment than regular shoes.

The personhood theory is at the core of driving the conversations around stronger tenant protection rights. It argues that as tenants develop a significant attachment to their homes, the law must shield them from arbitrary eviction and not just keep their fate in the fluctuating hands of economics and market forces. While this theory strongly frowns against commodifying every aspect of personhood, it provides room for legal uncertainty. It hinders economic development as the government is forced to respect property's emotional and psychological significance. However, emotions are not stable, thus potentially leading to inefficiencies in the property regime of states. Regardless, there are stronger reasons for why this theory must be a guiding light in the property regime of any country of the world.

Protecting the rights of indigenous people seems to be at the crux of this doctrine as displacement of indigenous communities is a grave issue under international law and human rights. By extension, there is a valid contention that the preservation of culture and cultural artefacts is an essential reason for this theory to stand. Governments' practice of seizing private property for state use is admonished under this theory. It will be a rarity if the government considers that it has deep personal value to the people. While every man is free to divest or dispose of his property anyway, he deems fit or to subscribe to any type of personal law, this theory can influence inheritance laws to consider sentimental attachment over rules such as primogeniture. A major issue with this theory is balancing the competing individual interests and the broader societal interests. Still, Margaret

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<sup>51</sup> Hegel, G.W.F., *Hegel's Philosophy of Right*, tr. T.M. Knox, Oxford University Press, 1978.

<sup>52</sup>Ibid n.48. An heirloom is a valued possession that has been passed down through different generations.

already provides a solution when she draws a distinction between sentimental attachments and fetishes on the one hand and outlines how this theory should only apply to what she termed "property for personal autonomy".

It seems, and in line with logic and humanity, which this doctrine provides a valid justification for adverse possession especially when one considers the increasing popularity of evictions in gentrifying neighbourhoods.<sup>53</sup> This theory appeals to conscience, humanity, and morality but the law is not always in sync with morality. It is believed that this theory represents the only view that can be reasonably upheld in modern property law and thus, any argument for adverse possession that rests largely on this doctrine is bound to generate controversies and divergent views.

### **3. ELEMENTS OF ADVERSE POSSESSION**

In a practical sense, adverse possession involves obtaining ownership of someone else's property. The underlying principle is that justice should be served to an innocent party who has peacefully possessed the property for an extended period, operating under the assumption of a valid title and having invested resources or efforts, thereby altering their position.<sup>54</sup> When justice and fairness dictate, the justification lies in safeguarding adverse possessors or trespassers. However, there are requirements to be established by evidence from the defendant in an action before the rule can be relied upon. While the elements of adverse possession may vary slightly in terms of wordings used in various jurisdictions, some fundamental elements are common in all jurisdictions.

#### **3.1. FACTUAL POSSESSION**

In all jurisdictions, the element of factual possession is key. There must be exclusive possession of the land for an adverse possession claim to succeed.<sup>55</sup> In *Pye (Oxford) Ltd v Graham*, the House of Lords defined factual possession as "a sufficient degree of physical custody or control".<sup>56</sup> This

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<sup>53</sup> To "gentrify" means renovating or improving something, especially housing, to make it more appealing to the middle class or rich (often with the negative association of pricing out existing residents).

<sup>54</sup> Smith I.O, *Practical Approach to Law of Real Property in Nigeria* (2013: Second Edition), p. 52.

<sup>55</sup> Spanish Civil Code, Article 1941; French Civil Code, Article 2229; Hungarian Civil Code, Section 121; Polish Civil Code, Article 172; Slade J in *Buckinghamshire County Council v Moran* [1990] Ch. 623.

<sup>56</sup> [2003] 1 AC 419 HL, para. 40.

would occur when the original owner had been dispossessed or had discontinued possession of the land (such as when the owner has abandoned the land) and the claimant had taken possession of it.<sup>57</sup> It has been upheld that possession must be “open, notorious and unconcealed,”<sup>58</sup> so that the true owner would notice it upon a reasonably careful inspection of the land. This allows owners to challenge the possession before it becomes a threat to their title.

Adverse possession cannot be consensual and so is never adverse if enjoyed under a lawful title,<sup>59</sup> or by licence.<sup>60</sup> If the scope of the licence is significantly exceeded, the fact that the initial entry was under permission will not prevent commencement of adverse possession. This was also established in the Nigerian case of *Akpan Awo v. Cookey Gam*,<sup>61</sup> where the claim of the plaintiffs to the disputed land failed because the defendants, under a mistaken belief that they were the owners of the land had exercised acts of ownership by entering into agreements with strangers, for many years without any form of interference from the plaintiffs to assert their rights under native law and custom. In elucidating the requirements of adverse possession, it was held that the defendant must establish that he or she qualifies as an adverse possessor, as against being a tenant or licensee or enjoying any form of occupational right within the title of the plaintiff. The adverse possessor must show that his or her interest in land was not derived from the plaintiff.<sup>62</sup> Flowing from this, a claim to title by a customary tenant would fail.<sup>63</sup> In some jurisdictions, it has also been

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<sup>57</sup> Harpum C, Bridge S and Dixon M, Megarry & Wade: *The Law of Real Property* (Sweet & Maxwell, 8th ed, 2012) 1462–3 [35-015].

<sup>58</sup> *Lord Advocate v Lord Lovat* (1880) 5 App. Cas 273, at 291 and 296; D. A. Thomas, *Adverse Possession in Thompson on Real Property*, (2016) p.75.

<sup>59</sup> *BCC v Moran*, [1990] Ch. 623, at 636.

<sup>60</sup> *JA Pye (Oxford) v Graham*, [2003] 1 AC at 37.

<sup>61</sup> (1913) 2 NLR (101).

<sup>62</sup> Cairns W, McKeon, *Introduction to French Law*, (1995, 1st ed.. Routledge-Cavendish). Available at <<https://doi.org/10.4324/9781843142300>> last accessed 30 December 2024.

<sup>63</sup> *Epelle v. Ojo* (1926) 1 NLR 96.

upheld that possession must be peaceful.<sup>64</sup> This means that possession must not be forcefully acquired and must not be kept through violent means.<sup>65</sup>

### **3.2. INTENTION TO POSSESS (*animus possidendi*)**

This is the mental element of possession, and in many common law jurisdictions, including Nigeria, factual possession must be accompanied by an intention to possess as a prerequisite for adverse possession. It involves "the intention, in one's own name and on one's own behalf, to exclude the world, including the owner with the paper title."<sup>66</sup> In *Powell v McFarlane*, the English court declined to find the requisite intention for the claimant who began to graze his cow on another's land at the age of 14. According to Slade, J, the intention of someone so young was not necessarily referable to any intention to dispossess and occupy the land wholly as his own property.<sup>67</sup> It must be noted that this requirement does not mandate a need to demonstrate an intention to own or acquire the land, but simply the intention to possess.<sup>68</sup> It includes both a subjective intention to possess as well as an outward manifestation of such intention.<sup>69</sup> A pertinent question that must be answered in relation to this mental element is whether a line should be drawn between an innocent and a willful trespasser.

#### **3.2.1. THE GOOD FAITH REQUIREMENT**

English law does not distinguish between an innocent and a willful trespasser.<sup>70</sup> This is in a bid to avoid the limitation of the scope of the doctrine. However, bad faith becomes relevant in the case

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<sup>64</sup> French Civil Code, Article 2229; *Browne v Perry* [1991] 1 WLR 1297 at 1301.

<sup>65</sup> *Shaw v Garbutt* (1996) 7 BPR 14816, at 1481.

<sup>66</sup> per Lords Browne-Wilkinson and Hutton in *JA Pye (Oxford) v Graham* [2003] 1 AC, at 43 and 77; Slade L.J. in *Powell v McFarlane* (1977) 38 P&CR 452 at 471-472.

<sup>67</sup> *Powell v McFarlane* (1977) 38 P&CR 452 at 472.

<sup>68</sup> *Buckinghamshire County Council v Moran* [1989] 2 All ER 225.

<sup>69</sup> *Smith v. Waterman* [2003] EWHC 1266 (Ch) at para 19.

<sup>70</sup> *Prudential Assurance Co. Ltd. V Waterloo Real Estate Inc.* [1999] 2 EGLR 85 at 87.

of fraud or concealment of facts. In such instances, the limitation period only begins to run after the discovery of such fraud or concealment of facts on adverse possession.<sup>71</sup>

In some jurisdictions, good faith directly impacts the limitation period. For instance, in the Netherlands, if a person has held uninterrupted possession and has acted in good faith, he may acquire ownership after 10 years.<sup>72</sup> Where good faith is proved to be absent, an uninterrupted possession may give the possessor title after twenty years.<sup>73</sup> In the USA, where the legislation does not require an element of good faith, it remains open to the courts to take evidence of fraud or lack of bona fides into account when considering whether adverse possession has been established.<sup>74</sup>

In Nigeria, as stated in *Akpan Awo v. Cookey Gam*, it must be proven that possession of the land was done under the mistaken belief of having title to the land. Such mistaken belief can play out where the defendant paid the purchase price and entered into possession, on the belief that the requisite consent of the family had been obtained or where the defendant encroached on the land of another on the belief that the land belonged to him or her.<sup>75</sup> Therefore, the defence cannot avail a defendant who knew the land belonged to another or that he or she had no bona fide claim to it.

### 3.2.2 OTHER CONDITIONS

As was stated by the Nigerian Court in *Akpan Awo v Cookey Gam*, the third requirement, the defendant must prove, is that the plaintiff knew about the adverse possession but acquiesced in it. In the case of a family property, the knowledge of important family members suffices.<sup>76</sup> The fourth requirement is that because of the plaintiff's acquiescence, the defendant went on to expend money or resources or altered his or her position. This situation arises when the defendant has gone on to

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<sup>71</sup> LA 1980, s.32(1).

<sup>72</sup> Article 3:99(1), Dutch Civil Code.

<sup>73</sup> Article 3:105(1), Dutch Civil Code.

<sup>74</sup> *Waggoner v Benton Beach Corporation*, 3 April 1998 Conn.

<sup>75</sup> *Aganran v. Olushi* (1907) 1 NLR 66.

<sup>76</sup> *Saidi v Akinwunmi* (1956) 1 FSC 107.

build on the land or exercise overt acts of ownership. The fifth requirement to be proven is that there must be no extenuating or mitigating circumstances that negatively impact acquiescence. The plaintiff's inaction or delay must not be due to a family relationship or intimacy between the parties, which had motivated some sort of settlement that resulted in a late institution of action in court. These requirements are, however, peculiar to a claim for adverse possession under customary land rights. The sixth and final requirement is that the length of time of possession by the trespasser must be long enough to establish prima facie evidence of acquiescence by the plaintiff. Under customary law, the duration a squatter can stay in adverse possession before the owner loses the right to take legal action is important and must be a sufficient and lengthy duration depending on the facts of the case. This is however different from the position where statute of limitations are applicable. According to Section 16 (1) and (2) (a) of the Limitation Law:<sup>77</sup>

‘(1) A state authority has a twenty-year limit to reclaim land from the date the right of action arises, with exceptions in subsections (2) and (3).

(2) In a person's land recovery action –

(a) The time limit is twelve years from when the right of action arises for the person or, if through someone they claim, for that person.’

Section 19 of the Limitation Law also states that adverse possession is a prerequisite for a right of action, triggering the limitation period. Notably, when the legally defined period for initiating land recovery actions expires, the person's title to the land is lost.<sup>78</sup> The length of time is determined on a case-by-case basis. However, in practice, the length of time is shorter when the adverse possessor developed the land than when the land is undeveloped.<sup>79</sup>

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<sup>77</sup> Cap. L67, Laws of Lagos State, 2004.

<sup>78</sup> Ibid, Section 21.

<sup>79</sup> *Okiade v Morayo* (1942) LJR-WACA.

Webber J., further stated in the case of *Akpan Awo v. Cookey Gam*,<sup>80</sup> It is important to remember that the rule was simply on the grounds of equity and that parties should not be permitted to rely on native law principles, which were established during a condition of society that is now distinct from what is in place now. It has to be pointed out that these requirements are cumulative. They all must be met, if one requirement is absent, the defence fails.

#### **4. ADVERSE POSSESSION OF LAND UNDER THE SINGAPORE LAND TITLES ACT**

In Singapore, the Land Titles Act<sup>81</sup> permits limited application of the law of acquiring title by adverse possession of registered land. In addition to the LTA of 1985, the Land Titles Bill 1992 proposed abolishing the acquisition of title by adverse possession altogether regarding registered land. These major amendments are further considered under this segment.

Under the general law, title to land may be acquired by adverse possession through the operation of the Limitation Act.<sup>82</sup> Just like in Lagos State, the basis is the barring of the documentary owner from suing the trespasser after the lapse of twelve years from the time the right of action accrued.<sup>83</sup> This provision implies that time runs against the documentary owner and in favour of the adverse possessor either from the date of dispossession or discontinuance of possession and his title is extinguished by lapse of time.<sup>84</sup> The title acquired by the adverse possessor has been attributed to him on the strength of his own adverse possession. He does not get the title of the person he successfully dispossessed. He has a fee simple or whatever is the greatest interest that can be held in respect of that piece of land.<sup>85</sup> The justification for this method of acquisition of title rests on

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<sup>80</sup> (1913) 2 NLR (101).

<sup>81</sup> Cap. 157, 1985 Ed.

<sup>82</sup> Cap. 163, 1985 Ed.

<sup>83</sup> *Ibid.*, s. 9. and its equivalent section under the Lagos Limitation Law, s.7.

<sup>84</sup> See, *Fong Chong Cheng v. The Public Trustee* [1967] 2 M.L.J. 262.

<sup>85</sup> *Perry v. Clissold* [1907] A.C. 76. Where the person dispossessed has a leasehold interest the adverse possessor will also have to dispossess the reversioner to acquire the freehold

the public policy that the courts should not assist him who sleeps on his rights in the recovery of his property.<sup>86</sup> The LTA accepts the principle of adverse possession but adjusts its operation to suit the context of the land register.<sup>87</sup> This provision is an attempt to effect a compromise between the principle of indefeasibility of title and the policy that the law should not protect documentary owners who sleep on their rights as against persons who have established long possession.<sup>88</sup>

Furthermore, acquisition of title to registered land by adverse possession is permitted only as provided in Division II of the LTA.<sup>89</sup> Specifically, the law provides that a person who would have satisfied the general law that he has acquired land by adverse possession if that land were not under the LTA can apply for a certificate of title to that land provided that twelve years have elapsed from the time the land has been under the Land Titles Act or from the most recent memorial of registration or notification of an instrument. In the case of such land time runs against the documentary owner from the last activity on the register. For instance, where an adverse possessor of registered land has completed five years of adverse possession, and the documentary owner transacts a registered dealing, e.g., mortgage or lease or merely has a reassertion of ownership notified on the register, the adverse possessor's earlier five years possession would be extinguished and time would begin to run afresh from the last registration or notification of an instrument on the register.<sup>90</sup>

Where the documentary owner is not minded to transfer, lease, mortgage or charge the land he may keep his vigilance against would be adverse possessors by lodging a reassertion of his ownership of his interest with the Registrar who shall notify this on the land register. In other

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<sup>86</sup> The concept of acquiring title by adverse possession is not compatible with the regime of registration of title under the Land Titles Act (hereafter LTA) which requires all interests in land to be registered before the interest in land passes and which confers indefeasibility on the registered title.

<sup>87</sup> Clause 50 of the Bill provides that except as provided in clause 172(8) and (9) of the Bill there shall be no acquisition of title to land under the LTA by way of adverse possession and the provisions of the Limitation Act for the extinguishment of title shall be not applicable to land under the LTA.

<sup>88</sup> T.S. YEE, "Adverse Possession of Land Under the Land Titles Act" (1992) *Singapore Journal of Legal Studies*, pp.481 –495

<sup>89</sup> See, s. 42 (1) LTA.

<sup>90</sup> Yee, *Ibid* (n88).

words, only the documentary owner who is uninterested in his land and who is not exercising his rights as owner in any way would be adversely affected.<sup>91</sup> But instead of having to be vigilant regarding the actual use and occupation of the land itself the need for vigilance is transferred to the register. The right of the adverse possessor to complete his twelve-year adverse possession even after the land has been brought under the LTA is recognised by the LTA in section 42(3). However, to extinguish the rights of the proprietor or documentary owner in line with the provision of section 42(3), the adverse possessor is required to lodge a caveat. The purpose of lodging a caveat is to alert the documentary owner of the imminent claim of factual rights over the land by the adverse possessor and see if the documentary owner would then take steps to eject the adverse possessor. If he lodges a caveat and the documentary owner still does not take steps to eject him, then he is truly dormant and deserves to lose his land.

However, the attitude of the land titles legislation to the acquisition of title by adverse possession has been altered by the provision of Clause 50 of the Land Titles Bill.<sup>92</sup> It provides that title to registered land may not be acquired by adverse possession and the provisions of the Limitation Act shall not apply to registered land. Clause 50 reads thus:

Except as provided in section 172(8) and (9), no title adverse to or in derogation of the title of the proprietor of registered land shall be acquired by any length of possession by virtue of the Limitation Act or otherwise, nor shall the title of any proprietor of registered land be extinguished by the operation of that Act.

The above provision implies that no matter the length of adverse possession, the rights of the documentary owner are not extinguished by the adverse claim. However, given the declared

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<sup>91</sup> Ibid.

<sup>92</sup> Now referred to as Land Titles Act 1992. This revised edition incorporates all amendments up to and including 1 December 2021 and comes into operation on 31 December 2021. Available at <<https://sso.agc.gov.sg/Act/LTA1993>> (accessed 17 April 2025).

intention of the Bill to expedite the conversion of land to the LTA, all persons who are in adverse possession of land should have their position regularised under the general law as soon as possible. This is by way of lodging an appropriate caveat to awaken the sleeping or indolent documentary owner whose rights may be extinguished after successful completion of twelve years of adverse possession.

## **5. MODERN CHALLENGES, CRITICISMS, AND POLICY REFORMS OF ADVERSE POSSESSION**

This segment identifies some of the modern challenges and criticisms of adverse possession as a method of proving ownership to a land and offers policy reforms towards the abolition of the doctrine.

### ***5.1. Challenges and Criticisms of Adverse Possession in Modern Property Law***

The doctrine of adverse possession is a very stringent to prove as a means of asserting title to a land or property. With the evolution of property law into registered and unregistered land, it is becoming herculean to assert title to land. Specifically, it is a legal impossibility to claim title to land in Nigeria for an area that is registered or under the Land Use Act and various Land Registration laws of different states.<sup>93</sup>

In Lagos State, Section 112 of the Land Registration Law establishes a structured procedure for adverse possessors seeking to register their titles. The law specifies distinct possession periods for state and individual land being 20 years and 12 years, respectively. The Registrar oversees the registration process, necessitating advertising and subsequent court orders for confirmation.

Adverse possession, as defined in Sections 112(3) and (4) of the LRL, encompasses various elements, including the receipt of rent by a person wrongfully claiming the land in reversion. The law allows an adverse possessor to aggregate possession periods with predecessors or others in physical possession, extending the cumulative claim. While the LRL provides a framework for adverse possession, customary law introduces limitations. Section 68 of the Statute of Limitation

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<sup>93</sup> The doctrine of adverse possession has been abolished in some provinces of Canada and some states in Australia.

excludes customary law from the acquisition of ownership by prescription, restraining the registration of interests against customary titles.

Criticisms against adverse possession under the LRL are multifaceted. Some of the opponents of this doctrine drawn from the relativity theory and grant theory argue that, adverse possession contradicts its intended purpose, serving as a shield against stale claims while ensuring security of title.<sup>94</sup> Sections 278/279 of the Criminal Law of Lagos State deem unjust encroachment of real property an offence, challenging the legitimacy of adverse possession. The Land Use Act (LUA) in Section 37 declares wrongful possession illegal, conflicting with the provisions of Section 112 of the LRL.

Additionally, the Lands Law of Lagos State, particularly Section 32, discredits adverse possession claims to state land, labelling it as an offence. Adverse possession potentially infringes on constitutionally guaranteed property rights and the indefeasibility of title, as outlined in Sections 43/44 of the 1999 Constitution. Furthermore, the concept challenges the core purpose of land registration, undermining the notice-to-the-world principle, especially when the actual owner is unaware of adverse possession.

Proponents of adverse possession argue that it serves to rectify historical injustices and prevent endless land disputes. Additionally, they contend that adverse possession aligns with the general concept under Statutes of Limitations. The case of *Pye Oxford Ltd v Graham* in the UK prompted a re-evaluation of adverse possession laws. The UK Land Registration Act of 2002, in response to *Pye*, introduced a more comprehensive process, including personal notice, counter notice, and a specific time frame for legal action.

Section 66(f) of the LRL establishes the paramountcy of an adverse possessor's title over other interests. The *Majekodunmi v Abina* case further clarifies that registration alone does not confer title, emphasising the need for a thorough investigation by the Registrar. To address criticisms, a restrictive judicial interpretation grounded in unjust enrichment principles could safeguard the

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<sup>94</sup> The oppositionist theories such as relativity and grant theories, according to Smith were developed from the peculiar circumstances of a land tenure system under the customary and Islamic land tenure system or from the emergence of the compulsory State grant. See, Smith, *supra* note 6, p.31.

interests of registered landowners. Considering the flaws in the current registration process, it is advisable to exclude adverse possession registration for registered land and adopt the more comprehensive

### ***5.2. Policy Reforms in the Application of the Doctrine of Adverse Possession***

The doctrine in its present state assumes that the true owner knows about the infraction of the squatter or trespasser, but this is not always true. To this end, it is recommended that any adverse possessor should send a written notification to the true owner seeking their consent. This is to prevent the loss of land inadvertently. The foregoing presumes that the squatter is one without any equitable right as the case with many modern cases of adverse possession is that there are competing interests in the land where someone has invalidly transferred title but later turns out to be a charlatan who has no vested interest in the property. This was prevalent in Nigeria and particularly in Lagos State, where the “*Omo ONILE*”,<sup>95</sup> as they were popularly called, assumed ownership of land which does not belong to them and sold it to unsuspecting buyers.<sup>96</sup>

This situation generates controversy when the true owner of the land discovers that someone is illegally occupying its land or property and tries to eject the squatter. Under this circumstance, it becomes clear that the landowner's consent was not obtained, and the number of years spent on the land is tantamount to years as a tenant and not an adverse possessor. The requirement of notification and consent of the registered owner is done in England and Wales pursuant to the Land Registration Act 2002. This gives the registered owner the opportunity to reject the squatters claim. Registered land is however not amenable to adverse possession under Nigerian law.

In the same vein, it is recommended that the time period for adverse possession for individuals be increased to 20 years to remedy the case of absentee landlords and the rights of children who might have lost parents property to relatives or strangers upon the demise of their parents. Furthermore, in order to provide an equitable balance between the rights of owners and squatters, it is

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<sup>95</sup>The word “Omo-Onile” (a Yoruba term) literally means “child of the original landowners”. See, Owwoye T, ‘Resolving the Omo Onile Land-related Crisis in Lagos, Nigeria’ (2018). Available at <<https://kujengamani.ssrc.org>> accessed 17 (April 2025).

<sup>96</sup>The Omo-Onile constantly encroaches on land that has been lawfully obtained by others and sells the same area of land to many customers. In other instances, they demand unlawful payments, threaten or assault building site workers, and make it impossible for land buyers to take control of their property after purchase. *Ibid*.

recommended that the government introduce a compensation scheme to provide some form of relief to owners who have invested in their land or earned it through inheritance.

Alternatively, every land in contention between an adverse possessor and land owner who cannot reach an amicable settlement should temporarily enter into the registered land domain for 4 to 6 years. The party that pays the land use charge gets the real title. The reasoning behind this is that if someone or a group will contend for land, they must have put the land to good use. Caution is, however, advised as this will inherently polarise the society and make it a world where the rich always have their way. For poor and marginalised communities, they need to show how they have put the land to productive usage and how their usage of the land directly contributes to the economic advancement of their locality, the social value attached to whatever has been created on the land or how the usage of their land holds an intrinsic value to the community. Once this can be established, the true owner must compensate the government for his or her loss.

Additionally, it is suggested that there should be a reformation of how land is administered under the customary land tenure system or in places without a registered land tenure system. The high chief or traditional ruler should have a book that accurately describes property and land in the community and whose family or individual it belongs to. Thus, anyone who relies on the defence of honest belief that it was their land and failed to ascertain whether it belonged to him would not be availed of the defence of adverse possession. This book will function like a log book or register of some sort.

Ultimately, the dichotomy between unregistered and registered land tenure systems should be abolished. This would mean a total abolition of the doctrine of adverse possession from the jurisprudence of modern property law as obtains in Singapore.

## **6. CONCLUSION AND FUTURE DIRECTIONS**

The paper has examined the theoretical underpinnings of adverse possession, its evolution through case law and statutory limitations, and the modern challenges and criticism of adverse possession. It found that the social policy considerations of adverse possession are contrary to fairness and justice and tantamount to enabling land grabbing. The paper thus advocated the need to remodify or expunge the doctrine of adverse possession from the body of property laws, rules, regulations

and principles. The much-needed reform is in the context of contemporary reality of modern times as the doctrine has raised more dust than it brought clarity. The doctrine has proved to be a perfect cover for the rich to usurp the proprietary rights of the poor. Rhetorically, how can a child orphan respond to the issue of a stranger or uncle building on his inheritance? In the circumstance, the remedy the law affords such a child might already be extinguished before he has the mental fortitude to appreciate the usurpation of his rights that has occurred. The paper had contended that, the doctrine of adverse possession no longer has a place in a modern society where there is nothing like abandoned, unowned or unoccupied property. This assertion holds way as the contemporary property system relies on a title registration system where people can trace ownership or how the property came to be with one person. While the rights of poor communities might be called into question, adverse possession is not the right cause of action but an establishment of their case under human rights to assert their rights as indigenous or aboriginal people. By way of specific recommendation to stem the tide of adverse possession, Nigerian legislature at all level, must make specific legislation outlawing the practice of adverse possession. This legislation must ensure adequate mechanism to protect the legitimate interest of the owners of land against adverse possession. Such mechanism should prescribe severe penalties with various prison terms for different offenses to deter others from the practice of adverse possession.