

A REVIEW OF THE EXISTING KNOWLEDGE ON ADVERSE POSSESSION OF REGISTERED LAND*

Abstract

This study critically examines some of the existing literature on the doctrine of adverse possession in the context of registered land, exploring its rationale, critiques, and implications under the Lands United Kingdom's Lands Registration Act 2002 (LRA 2002) and Lagos State Lands Registration Law 2015 (LRL 2015). It highlights the dichotomy between the perception of squatters as trespassers and the legal framework that allows them to acquire ownership through prolonged occupation. Judicial opinions, including those of Lord Denning and Neuberger J., emphasize the inherent conflict between adverse possession and the principle of indefeasibility of title central to modern land registration systems. The LRA 2002 in England is analyzed as a significant reform, offering a model for balancing the rights of registered proprietors and adverse possessors. Comparisons are drawn with LRL, which retain outdated provisions that undermine legal certainty and equity. The article critiques justifications for adverse possession, such as preventing stale claims and encouraging land use, arguing that these rationales are less applicable in systems where registration provides conclusive proof of ownership. It concludes by advocating for reforms that align adverse possession laws with the principles of fairness, transparency, and the integrity of registered land systems.

Keywords: Adverse possession, Registered Land, Land Registration Act 2002, Indefeasibility of title, Lagos State Lands Registration Law 2015

1. Introduction

The doctrine of adverse possession occupies a paradoxical space in property law, where it simultaneously disrupts and upholds the integrity of land ownership. At its core, adverse possession allows a person who occupies land without the owner's consent to acquire legal title after a prescribed period, provided certain conditions are met. This seemingly anachronistic principle, rooted in the maxim *vigilantibus non dormientibus jura subveniunt*—the law aids the vigilant, not the indolent—has been a subject of enduring controversy. While it ostensibly rewards industrious use of land and prevents the perpetuation of stale claims, it also poses a direct challenge to the sanctity of registered titles, particularly in systems premised on the indefeasibility of title. In jurisdictions with advanced land registration systems, such as England, the tension between adverse possession and the principle of indefeasibility has prompted significant reforms. The Land Registration Act 2002 stands as a landmark in addressing this tension, introducing mechanisms that protect registered proprietors while acknowledging the need to resolve conflicts over long-term occupation.¹ LRA 2002 significantly reformed adverse possession laws for registered land, aligning with the principle of title indefeasibility. The reforms prioritize protecting registered proprietors' rights while introducing safeguards for adverse possessors. Key features include a notification and consent mechanism, where adverse possessors must apply to the Land Registry after 10 years, notifying the registered proprietor and allowing them to object within two years. Adverse possessors are no longer automatically registered as proprietors after the limitation period expires. Exceptions permit adverse possession in limited cases, such as boundary disputes or unconscionable denial of claims. The LRA 2002 also modified the Limitation Act 1980, superseding its limitation period rules for registered land and subjecting adverse possession claims to stricter requirements. Additionally, the Act introduced a new regime for adverse possession, reducing the limitation period from 12 to 10 years. Ultimately, these reforms ensure greater protection for registered landowners against unnotified claims, striking a balance between the rights of landowners and the interests of adverse possessors.² Conversely, LRL 2015³ retains traditional adverse possession rules in such a way that it will automatically override and terminate the interest of the registered land owners upon making application to the Court where the land has been adversely possessed by the adverse possessor without more for a period of twelve (12) years. This more or less conflicts with modern land registration principles, leading to legal uncertainty and inequities.

This study undertakes a critical examination of adverse possession in the context of registered land, juxtaposing its application under LRA 2002 and LRL 2015. It interrogates the justifications for the doctrine, its evolution through judicial interpretations, and its impact on registered land systems. By drawing on key case law, academic discourse, and statutory analysis, the article explores whether adverse possession remains a necessary tool for balancing competing interests in property law or an outdated relic in need of reform. It concludes by advocating for a recalibration of adverse possession laws to ensure they align with the overarching principles of fairness, legal certainty, and the integrity of land registration systems.

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¹ Schedule 6 LRA 2002

² Ibid

³ Sections 66(f), 100, 112 of the LRL 2015

2. Review of the Existing Knowledge

The debate surrounding the rationale for adverse possession of registered land is both contentious and intellectually significant, especially in light of recent legal developments in this area across various jurisdictions. The characterization of squatting as a form of land theft, juxtaposed with the notion of the first in possession, represents a dichotomy frequently discussed by both judicial authorities and legal scholars.⁴ Squatters are often portrayed as outsiders infringing upon protected spaces⁵—invaders⁶ described by Lord Denning⁷ as ‘itinerants, drifters, and the antitheses of a stable, homogenous, identifiable community.’ Lord Denning further expounded that squatters are culpable of both a criminal offence,⁸ as captured under the Forcible Entry Act of 1381,⁹ and a civil wrong, being trespassers from the moment of entry and throughout their occupation. This perception underpins much of the discourse on adverse possession, with the law paradoxically requiring that ‘a successful adverse possession claimant must have committed the tort of trespass over the true owner’s land.’¹⁰ Denning’s views are echoed in subsequent judicial commentary. For instance, in *Buckinghamshire County Council v Moran*,¹¹ Nourse LJ defined adverse possession as ‘possession of wrong,’¹² a perspective endorsed by the Law Commission in its 1998 consultative document,¹³ which described adverse possession as ‘tantamount to sanctioning a theft of land.’¹⁴

Neuberger J., in *Pye v Graham*,¹⁵ offered particularly incisive criticisms. He argued that merely because an owner had no immediate plans for their land and allowed another to trespass temporarily, it did not justify the trespasser acquiring ownership for nothing.¹⁶ He deemed the doctrine ‘incompatible with justice’ and unsupported by practical considerations. Neuberger emphasized that the traditional justification of adverse possession—avoiding uncertainty in land ownership—was largely obsolete in the context of registered land, where ownership could easily be ascertained from the Land Register.¹⁷ He considered the notion that an owner ‘slept on his rights’ illogical, as the existence of the 12-year limitation period was the very reason for such a characterization. Without this limitation, the owner could reclaim possession at will. Neuberger’s critique hints at the implied license doctrine, introduced by Lord Denning in *Wallis Cayton Bay Holiday Camp Ltd v Shell-Mex and BP Ltd*,¹⁸ where occupation by a squatter was seen as implicitly consented to by the owner. Although this doctrine has faced attempts at eradication, it remains a recurring consideration in adverse possession discussions.

Lord Bingham, in his concurring judgment, highlighted the inapplicability of adverse possession in the context of registered land, where the LRA 2002 addresses the risk of title loss through inadvertence. He argued that requiring compensation for the dispossessed owner would be more equitable, as registration removes the uncertainties that previously justified the doctrine. Dockray¹⁹ identified three traditional justifications for adverse possession: (1) Protection from Stale Claims: Long-term possessors are shielded from the evidentiary difficulties associated with litigating ancient disputes, thereby reducing litigation risks. (2) Encouraging Vigilance by Owners: Owners are incentivized to actively manage their property, with the law implicitly punishing neglect. (3) Securing Possessors’ Confidence: Adverse possession prevents hardship and ensures land remains marketable by denying owners the ability to reclaim land after extended periods. Dockray also recognized that adverse possession remedies defects in formalities of ownership transfer, particularly when land registration formalities have not been fulfilled. However, he critiqued the law’s apparent disregard for the moral culpability of trespassers, questioning why the law should protect wrongdoers, sometimes equating their actions to theft. The Law Commission contended that these justifications lose relevance for registered land,²⁰ as the Land Register provides conclusive proof of ownership. It argued that possession forms the basis of title for unregistered land, whereas in registered land, title

⁴ According to Lord Denning in *McPhail v Persons unknown* [1975] Ch 447, 456B, a squatter ‘is one who, without colour of right, enters an unoccupied house or land, intending to stay there as long as he can.

⁵ D.R. Klick, ‘This Other Eden: Lord Denning’s Pastoral Vision’ (1994) 14 *Oxford J Legal Studies*, 46.

⁶ *Lamb v Camden Borough Council* [1981] QB 625, 633C

⁷ Lawshel Educational Media ‘Acquisition by Adverse Possession’ available at <https://lawshel.com> (accessed 28 December 2024). See section 9 of the Limitation Law of Lagos State, 2003

⁸ *McPhail v Persons unknown* [1975] Ch 447, 456F.

⁹ 5 Ric 2 St 1 c 7.

¹⁰ A. Goymour, ‘Squatters and the criminal law: can two wrongs make a right?’ (2004) *CLJ*, 484.

¹¹ [1990] Ch 623.

¹² *Supra note 7*

¹³ Law Commission for England and Wales, *Land Registration for the Twenty First Century: A Consultative Document* (Law Commission No. 254, 1998).

¹⁴ *Ibid at 10.5*

¹⁵ [2000] 3 WLR 242.

¹⁶ *Supra note 7 at 710*

¹⁷ *Pye v Graham supra note 15*

¹⁸ [1975] QB 94.

¹⁹ M. Dockray, ‘Why do We Need Adverse Possession?’ (1985) *Conveyancer* 272.

²⁰ *Land Registration for the Twenty-First Century: A Conveyancing Revolution – Number 271* (July 2001) paras 2.70, 14.3, 14.54; *Land Registration for the Twenty-First Century: A Consultative Document – Number 254* (September 1998) paras 10.9-10.10.

is conferred through the register. Consequently, the LRA 2002 rendered registered land virtually ‘squatter-proof,’ requiring squatters to apply to the Registrar, with the registered owner having the right to object and evict them. Despite Dockray’s skepticism, English law continues to justify adverse possession as promoting legal certainty and reducing unnecessary litigation. However, these rationales seem most compelling for unregistered land. In the context of registered land, as Neuberger J. observed, ‘it becomes hard to see what principle of justice entitles the [adverse possessor] to acquire the land.’²¹

Omotola²² raises the question of whether an adverse possessor under the Limitation Law obtains a fee simple estate at the end of the statutory period. He explains that the aim of the Registration of Titles Act is the regularisation of land titles to reduce fraudulent dealings. The Act addresses two key questions: who is entitled to deal with a piece of land, and which title should be registered. He notes that the Act prioritises persons with the power of sale and, when referring to ‘any other person entitled at law or in equity to an estate in fee simple,’ it means only those with a valid claim to the fee simple. Omotola²³ argues that after the statutory period lapses under the Decree, the adverse possessor becomes the sole individual capable of dealing with the land. He concludes that, as the original owner’s title is barred by law, the adverse possessor should have the right to register his title under the Registration of Titles Act, having acquired an absolute right once time runs in their favour. However, Omotola overlooks the fact that adverse possession conflicts with the fundamental concept of indefeasibility of title—a cornerstone of registered land law. Adverse possession, when applied to registered land, should no longer extinguish ownership because the justifications for the doctrine in unregistered land do not entirely translate to registered land. Indeed, the perception of unqualified adverse possession in registered land appears to some as an endorsement of ‘land theft.’

Martin Dixon²⁴ examines how adverse possession initially operated uniformly across registered and unregistered land. The introduction of the LRA 2002 sought to address the perceived arbitrariness of acquiring title through adverse possession in registered land, aiming to align the doctrine with the principle of title by registration. Dixon²⁵ notes that under the previous regime, possession was the foundation of title for both unregistered and registered land, but he questions the rationale for applying the same rules to registered land, given the fundamentally different bases of title. He analyses the landmark judgment of Nicholas Strauss QC in *Beaulane Properties Ltd v Palmer*,²⁶ describing it as potentially transformative for adverse possession and its intersection with human rights law. Dixon highlights how the case brought into focus the potential incompatibility of the law of adverse possession, as applied before the LRA 2002, with Article 1 of Protocol No.1 of the European Convention on Human Rights. In *Beaulane*, the argument was straightforward: the pre-LRA 2002 law deprived property owners of their land without sufficient public interest justification and disproportionately interfered with their rights. Consequently, the Human Rights Act 1998 required the common law to be interpreted in a manner consistent with the Convention wherever possible.²⁷

Strauss QC demonstrated that the Limitation Act 1980’s departure from the *Leigh v Jack*²⁸ line of authority resulted from historical accidents, such as the need to address uncertainties in unregistered titles and the rise of title registration, rather than deliberate policy choices. While Parliament’s intention as expressed in the Limitation Act 1980 should be respected, Dixon suggests that the public interest in secure titles must also consider economic and social factors, such as encouraging landowners to use or forfeit underutilised land. Dixon further observes that the *Pye v United Kingdom*²⁹ judgment limits *Beaulane*’s significance, as it applies only to the law before the LRA 2002. Under the LRA 2002, the process of acquiring title through adverse possession has been fundamentally altered to ensure compliance with human rights standards. The new process prevents the automatic loss of title unless the paper owner is unfairly negligent or inattentive. However, Dixon questions whether this change suffices to make the LRA 2002 fully compliant with Article 1 of Protocol No.1. If, as *Beaulane* implies, registered title eliminates the public interest justification for deprivation of title based on limitation, why should it matter if the paper owner fails to respond to a Land Registry notice? The applicant’s claim to title relies on the owner’s inaction rather than uncertainty of ownership. Dixon argues that this manufactured uncertainty undermines the public interest rationale for awarding title to an adverse possessor.³⁰

²¹ *Supra* note 19

²² J.A. Omotola, J.A., *The Place of Possession in the Acquisition of Title to Land* (The Conveyancer, Vol. 37, 239-258)

²³ *Ibid*

²⁴ M.J. Dixon, ‘Land Registration, Adverse Possession and the Nature of a Registered Title’ (2020) 79 *Cambridge Law Journal*, 415.

²⁵ M.J. Dixon, ‘The Reform of Property Law and the Land Registration Act 2002: A Risk Assessment’ (2003) *Conveyancer*, 136

²⁶ [2005] EWHC 817 (Ch)

²⁷ M.J. Dixon, ‘Adverse Possession and Human Rights in Registered Land’ (2005) *Conveyancer* 345.

²⁸ [1879] 5 Ex D 264.

²⁹ [2005] ECHR 921.

³⁰ *Supra* note 27

Pawlowski and Brown,³¹ in their insightful analysis, highlight the legal distinctions and practical implications of adverse possession under the Limitation Act and LRA 2002. They begin by underscoring the trite principle that unregistered land subjected to adverse possession for 12 years leads to the automatic barring of the paper owner's title.³² In contrast, registered land operates differently: an adverse possessor must apply for registration as proprietor after ten years of possession, with no automatic barring of the paper owner's title.³³ This distinction, they argue, raises critical challenges for adverse possessors, especially given the limited grounds on which such applications may succeed under the LRA 2002. The authors contend that the procedural hurdles and risks of opposition by registered proprietors discourage adverse possessors from applying for registration. For instance, while an abandoned piece of land might present lower risks of objection, contested cases involving occupied properties significantly deter applications. This reluctance, they suggest, is amplified by the principle of the relativity of title, which holds that possession confers better rights against the world save for those with superior legal claims. In registered land, however, this principle becomes less relevant as successive possessors cannot aggregate their periods of possession to meet the ten-year threshold required for registration under the LRA 2002. Pawlowski and Brown critically examine the three exceptional grounds under Schedule 6 of the LRA 2002, focusing particularly on the equitable estoppel exception. They argue that this ground is inherently limited, as possessors occupying land under circumstances giving rise to proprietary estoppel typically do so with the paper owner's consent, negating adverse possession. Thus, this provision likely applies only to specific cases, such as mistaken building on disputed land or informal transactions lacking perfected title. Moreover, even where proprietary estoppel is established, the Land Registry retains discretionary power to deny registration, further complicating the process for claimants. The authors argue that while the LRA 2002 ostensibly allows squatters to apply for registration after ten years of adverse possession, the practical obstacles make successful applications rare. Consequently, many possessory estates persist indefinitely, creating a tension with the policy goal of limiting 'off-the-register' dealings with registered land. To address this, they propose a legislative amendment introducing a limitation period for squatter applications following ten years of adverse possession. Failure to apply within this extended period would extinguish the squatter's possessory estate, precluding indefinite claims and aligning with the overarching principles of the LRA 2002.

The proposed amendment, according to Pawlowski and Brown, would mirror the automatic extinguishment of the paper owner's title in unregistered land under the Limitation Act. However, unlike the current law, which allows a squatter's fee simple to ripen into ownership, a failure to apply within the specified period under the amended LRA 2002 would render the squatter a mere trespasser. This would eliminate any defense against the registered proprietor's claim and preclude reliance on the three grounds in Schedule 6, thus ensuring the integrity of the register. Pawlowski and Brown further argue that the existence of possessory estates enduring indefinitely off the register undermines the core principle of land registration—that title is based on registration, not mere possession. They cite the Law Commission's emphasis on this principle, which underpins the LRA 2002. The authors propose that the limitation period for squatter applications could also commence upon written notice from the registered proprietor, ensuring fairness and prompt action. Such an approach, they argue, would achieve a dual effect: compelling legitimate claims to be registered promptly while extinguishing unmeritorious claims. In conclusion, Pawlowski and Brown assert that their proposed amendment would enhance the integrity of the land registration system by curbing the proliferation of possessory estates existing outside the register. By aligning with the rationale of the LRA 2002, this reform would reduce the 'dark market' of possessory estates, ensure timely conversion of valid claims into registered titles, and solidify the public's confidence in the land registration framework. Their analysis invites a reevaluation of current policies to reconcile the competing interests of possession and registration, ultimately fostering a more transparent and equitable system of land ownership.³⁴

Park³⁵ observes that virtually all legal systems recognize adverse possession as a mechanism for acquiring interests in land, with such interests often arising and continuing without formal recordation. This unrecorded status, Park argues, contravenes the foundational principles of registered title systems, which emphasize certainty and transparency. Park elaborates that the essence of title registration lies in the precise recording and continual updating of details about individual parcels, ensuring that boundaries and ownership are accurately reflected. He invokes Ruoff's³⁶ 'mirror' and 'curtain' principles, which collectively aim to provide an unassailable record of title that obviates the need to examine prior transactions. Yet, Park contends, adverse possession disrupts these principles by creating a situation where the dispossessed titleholder remains recorded as the proprietor,

³¹ M. Pawlowski and J. Brown, 'Adverse Possession and the Transmissibility of Possessory Rights: The Dark Side of Land Registration?' (2017) *Conveyancers Journal* 116

³² See English Limitation Act 1980, s. 15

³³ See LRA 2002, s.96.

³⁴ See M. Pawlowski, 'Criminal Squatting and Adverse Possession: A Case of Interpretative Logic' (2015). 24 *Nott. L.J.* 129.

³⁵ M.M. Park, *The Effect of Adverse Possession on Part of a Registered Title Land Parcel*. 29 (Barbara Bogusz, Roger Sexton, 2003)

³⁶ T.B. Ruoff and R.B. Roper, *On the Law and Practice of Registered Conveyancing*. 4th ed. (Sweet & Maxwell: London, 1979)

undermining the mirror principle and fostering conflicts between recorded and unrecorded rights. Griggs³⁷ extends the analysis by situating adverse possession within the framework of the Torrens system of title registration in Australia. He critiques the doctrine as antiquated, arguing that its justification diminishes under modern registration systems that prioritize indefeasibility of title. Griggs highlights the adverse implications of adverse possession, including its potential to undermine the functional utility of registration systems and the economic markets that rely on them. Analyzing *Pye v Graham*, he characterizes adverse possession as a violation of registered owners' rights, fostering squatting and eroding confidence in the legal formalism of registration. However, Griggs's critique of the Grand Chamber of the European Court of Human Rights in *Pye* has been contested. Critics argue that the equitable framework provided under English law, including the Limitation Act of 1980, aligns with human rights standards by balancing the interests of registered proprietors and adverse possessors. Restrictive judicial interpretation, guided by restitution principles, is advocated as a means to protect registered owners and uphold the integrity of registration systems.

Smith³⁸ examines the Nigerian context, focusing on the LRL 2015. He critiques the law's provisions for registering adverse possession, highlighting the challenges they pose to the indefeasibility of registered title and the broader principles of fairness and constitutional property rights. Smith notes that the LRL provisions enable squatters to acquire title through adverse possession³⁹ in a manner that jeopardizes the interests of third parties, such as mortgagees, and undermines the objectives of modern registration systems. He proposes excluding adverse possessors from registration or instituting a rigorous regime to make it exceedingly difficult for squatters to acquire title against the wishes of registered proprietors. Drawing comparisons with the qualified veto rule under the LRA 2002 in England, Smith suggests adopting similar safeguards in Lagos State to protect legitimate titleholders. Ojo⁴⁰ contributes to the discourse by emphasizing the transformative impact of the LRA 2002 on the doctrine of adverse possession in England and Wales. He highlights that the Act shifts the burden to the squatter, ensuring that the mere passage of time cannot bar the rights of registered proprietors. Ojo strongly advocates for the abolition of adverse possession in Nigeria, describing the doctrine as outdated and morally indefensible. If retained, he recommends adopting the English model, which incorporates robust checks and balances to safeguard the interests of registered proprietors.

A review of the literature reveals a consistent focus on the principle of legal certainty as the cornerstone of land registration systems across jurisdictions. While the rationale for adverse possession has evolved, its application remains contentious. In England, the enactment of the LRA 2002 represents a paradigm shift, demonstrating how modern legal frameworks can reconcile the doctrine with the imperatives of registration. By contrast, LRL grapples with outdated frameworks that fail to align with contemporary expectations of fairness, transparency, and property rights protection. The prevailing consensus among scholars underscores the need for legislative reform to address the tensions inherent in the coexistence of adverse possession and title registration.

Dockray⁴¹ critiques the Limitation Act for its failure to provide a comprehensive rationale for its policies, arguing that it only incentivizes landowners to protect their interests if they are aware, or should reasonably be aware, that time is running against them. However, he notes that neither actual nor constructive knowledge of the accrual of a cause of action is required for the statute's operation. Doctray⁴² and Omotola⁴³ provide contrasting justifications for adverse possession in the context of registered land. Doctray defends the doctrine as a mechanism to protect long-term possessors from stale claims, promote the quieting of title, discourage landowners from neglecting their rights, and ensure that possessors can rely on their claims after a statutory period has elapsed. Omotola, meanwhile, ties the doctrine to the aims of the Registration of Titles Act, which seeks to regularize land titles and reduce fraudulent dealings. He argues that once the title of the original owner has been barred by the limitation law, there is no basis for denying the adverse possessor the right to register under the Registration of Titles Act. Both scholars anchor their arguments on principles of equity and fair play, asserting that legal rights are not perpetual but must be exercised within statutory limits. However, Doctray's justification overlooks the transformative role of title registration in providing certainty and conclusiveness of ownership. For registered land, the act of registration itself removes ambiguity and serves as definitive proof of ownership, unlike unregistered land, where possession forms the basis of title. Omotola's stance similarly fails to reconcile the doctrine of adverse possession with the principle of indefeasibility of title, a cornerstone of registered land systems. Allowing adverse possession to override registered title fundamentally undermines the philosophy of land registration by introducing uncertainty into a system designed to eliminate it.

³⁷ L. Griggs, 'Possession, Indefeasibility and Human Rights' (2008) *QUT Law Review*, 2201.

³⁸ I. O. Smith, *Essays on the Lagos State Lands Registration Law 2015*, (Department of Private & Property Law, Faculty of Law, University of Lagos, 2017)

³⁹ See the combined effect of Sections 66(f), 100 and 112 of LRL 2015

⁴⁰ G. Ojo, 'Acquisition of Title to Land by Adverse Possession: Need to Stop Endorsement of Land Theft' (2016) *The Gravitas Review of Business & Property Law*, 1.

⁴¹ *Supra* note 16

⁴² *ibid*

⁴³ *Supra* note 19

Dixon,⁴⁴ Pawlowski and Brown,⁴⁵ Park,⁴⁶ Griggs,⁴⁷ Smith,⁴⁸ and Ojo⁴⁹ critique adverse possession in registered land systems on various grounds. They argue that the doctrine contradicts the concept of indefeasibility of title, perpetuates unfairness, and effectively legalizes land theft. The notion that title is relative rather than absolute has particularly troubling implications in cases involving successive adverse possessors, where each squatter's claim rests on their occupation of the land. For registered land, such scenarios are even more problematic because the transfer of a possessory estate between successive squatters cannot be registered. Smith⁵⁰ highlights the injustices inherent in the LRL 2015 provisions on adverse possession in Lagos State, proposing that the law should either exclude adverse possessors' claims from registration—making them susceptible to eviction—or adopt provisions akin to the LRA 2002, which impose stringent requirements on the registration of adverse possession claims. Such measures would better protect registered owners and uphold the integrity of the registration system.

The academic consensus overwhelmingly condemns the doctrine of adverse possession in registered land systems, identifying it as morally and legally problematic. By unjustly enriching adverse possessors at the expense of registered owners, the doctrine undermines the principles of fairness and equity that underpin land registration systems.

3. Case Law Overview

English Case Law Perspective

The inconsistency test, as articulated in the case of *Leigh v Jack*⁵¹, establishes that acts by an adverse possessor must be inconsistent with the title owner's enjoyment of the land for its intended purposes. In this case, the plaintiff's predecessor had designated parts of his estate as proposed streets, namely Grundy Street and Napier Place. The intention to use these adjoining lands as streets was evident to all parties involved. During the limitation period, the defendant had encroached upon these areas, placing old graving dock materials and other refuse on them, and eventually enclosing the land. Despite these actions, the defendant did not acquire title under the Limitation Act 1833. This ruling introduced complexities into subsequent interpretations of adverse possession, as it failed to provide clear boundaries for assessing inconsistency in possession claims. The case of *Pye v Graham*⁵² further highlighted the challenges of interpreting adverse possession. The Grahams, under a grazing agreement with Mr. Pye, continued to occupy 23 hectares of land valued at £10 million after the agreement expired. When Pye failed to take possession, the Grahams sought ownership through adverse possession. Neuberger J, at the High Court, ruled in their favor under the Land Registration Act 1925. However, the Court of Appeal overturned this decision, reasoning that the Grahams' occupation was linked to the grazing agreement. Ultimately, the House of Lords unanimously reinstated the High Court's ruling, underscoring the principle that non-action by the registered owner could enable an adverse possessor's claim. This case signaled the inherent tension between adverse possession and the principles of land registration, particularly regarding registered land. In *Beaulane Properties Ltd v Palmer*,⁵³ Nicholas Strauss QC sought to address this tension by reviving the rule in *Leigh v Jack*. He concluded that the pre-2002 regime for registered land contravened the true owner's rights under the European Convention on Human Rights (ECHR). Invoking Section 3 of the Human Rights Act 1998, Strauss QC applied the *Leigh v Jack* principle to protect the owner's title from being overridden by adverse possession, marking a judicial shift toward aligning property law with human rights obligations.

The Law Commission of England and Wales, in its 1998 consultative document,⁵⁴ characterized adverse possessors as 'land thieves' whose actions undermined the security of registered titles. This critique informed the enactment of the LRA 2002, which sought to safeguard registered proprietors by restricting adverse possession to situations justified by fairness or marketability of land. However, LRL 2015, despite drawing inspiration from the LRA 2002, failed to replicate its safeguards, allowing adverse possession to override registered titles—a significant legislative inconsistency. The case of *Paine v Sexton*⁵⁵ further elucidated the requirements for adverse possession, emphasizing a 'totality of circumstances' approach. The plaintiffs, who operated a campground on disputed land for over 20 years, successfully demonstrated their open, notorious, and exclusive use of the property.

⁴⁴ *Supra* notes 24, 25, 27

⁴⁵ *Supra* note 31

⁴⁶ *Supra* note 36

⁴⁷ *Supra* note 38

⁴⁸ *Supra* note 39

⁴⁹ *Supra* note 41

⁵⁰ *Supra* note 39

⁵¹ [1879] 5 Ex D 264,

⁵² [2002] UKHL 30

⁵³ [2006] Ch 79

⁵⁴ *Land Registration for the Twenty-First Century: A Consultative Document*, Law Com No 254

⁵⁵ 20 LCR 292

The court's reliance on precedents like *Kendall v Selvaggio*⁵⁶ and *Sea Pines Condominium II v Steffens*⁵⁷ underscored the weight given to visible acts of occupation. However, the decision prioritized the adverse possessor's interest over the registered owner's rights, perpetuating the conflict between adverse possession and the principle of indefeasibility inherent in land registration systems. This judicial approach disregards the foundational rationale of land registration, which is to eliminate uncertainty and provide conclusive proof of ownership. By privileging adverse possessors, courts undermine the registered owner's security of title.

Nigerian Case Law Perspective

The Nigerian judiciary has consistently held that adverse possession cannot override registered title. In *Atunrase v Sunmola*,⁵⁸ *Mogaji v Cadbury*,⁵⁹ and *Ngene v Igbo*⁶⁰ courts affirmed that adverse possession is incompatible with land registration principles. Similarly, in *Bello v Birma*⁶¹ the Court of Appeal unequivocally stated that 'adverse possession, however long, does not confer title against the rightful holder.' Post-LRL 2015, courts have maintained this stance. In *Jauro v Danmaraya*⁶² the court reiterated that long-term adverse possession cannot mature into ownership. Likewise, in *Akanbi v A.G. Federation*,⁶³ the court held that adverse possession does not confer title by prescription. These rulings reveal a judicial consensus rejecting adverse possession's applicability to registered land, yet statutory inconsistencies persist, leaving registered owners vulnerable.

4. Statutory Inconsistencies

The LRL 2015's provisions on adverse possession conflict with Lagos State statutes, such as Land Use Act 1978⁶⁴, the Lagos State Criminal Code 2011⁶⁵, and the Property Protection Law of Lagos State 2016,⁶⁶ which criminalize adverse possession. This raises a critical question: if adverse possession is illegal under these statutes, can it confer ownership? The answer, clearly, is negative. Adverse possession, once a vital mechanism in land law, now faces challenges in adapting to modern land registration systems. Traditionally justified by the need to quiet titles and encourage diligent land use, the doctrine appears increasingly outdated within regimes that prioritize the principle of indefeasibility of title. The reforms introduced by the LRA 2002 in England and Wales highlight a more balanced approach, incorporating procedural safeguards that protect the interests of registered proprietors while addressing long-term possession claims. In contrast, retention of adverse possession, particularly in the face of legislative inconsistencies such as the LRL 2015, undermines the reliability of its registration system. While the judiciary has consistently upheld the primacy of registered titles, as seen in landmark cases like *Atunrase v Sunmola* and *Jauro v Danmaraya*, the absence of coherent statutory reforms perpetuates insecurity and inequity.

5. Conclusion

The gap between Nigerian case law and the statutory framework highlights the inadequacies of Lagos State's legislative protections for registered title owners. To secure land ownership and uphold the principles of equity and fairness, legislative reform is imperative. Adverse possession must be reconciled with the core tenets of land registration to ensure the integrity of property rights in Lagos State. A shift in approach is necessary for Lagos State to align its land laws with global best practices. Legislative reforms should aim to abolish or limit adverse possession in registered land systems, incorporating safeguards similar to those in the LRA 2002. The evolving jurisprudence and legislative reforms surrounding adverse possession reflect a growing recognition of its incompatibility with registered land systems. While the LRA 2002 has mitigated some of the doctrine's shortcomings, further refinements are necessary to align adverse possession with principles of fairness and human rights. In jurisdictions like Lagos State, adopting safeguards akin to those under the LRA 2002 would enhance the integrity of land registration systems and protect legitimate titleholders. Ultimately, the future of adverse possession lies in striking a balance between practical considerations and the imperatives of legal certainty and transparency. By reconciling these competing interests, policymakers can foster a more equitable and efficient framework for land ownership.

⁵⁶ 413 Mass. 619 (1992) 602 N.E.2d 206

⁵⁷ 61 Mass. App. Ct. 838

⁵⁸ [1985] 1 NWLR (Pt. 1) 105

⁵⁹ [1985] 2 NWLR (Pt. 77) 383

⁶⁰ [2000] 4 NWLR (Pt. 651) 133,

⁶¹ [2014] LPELR-23969,

⁶² [2016] LPELR-40328,

⁶³ [2017] LPELR-43121

⁶⁴ Section 37, Land Use Act 1978

⁶⁵ Section 280 of the Lagos State Criminal Code 2011

⁶⁶ Section 4 of the Property Protection Law of Lagos State 2016