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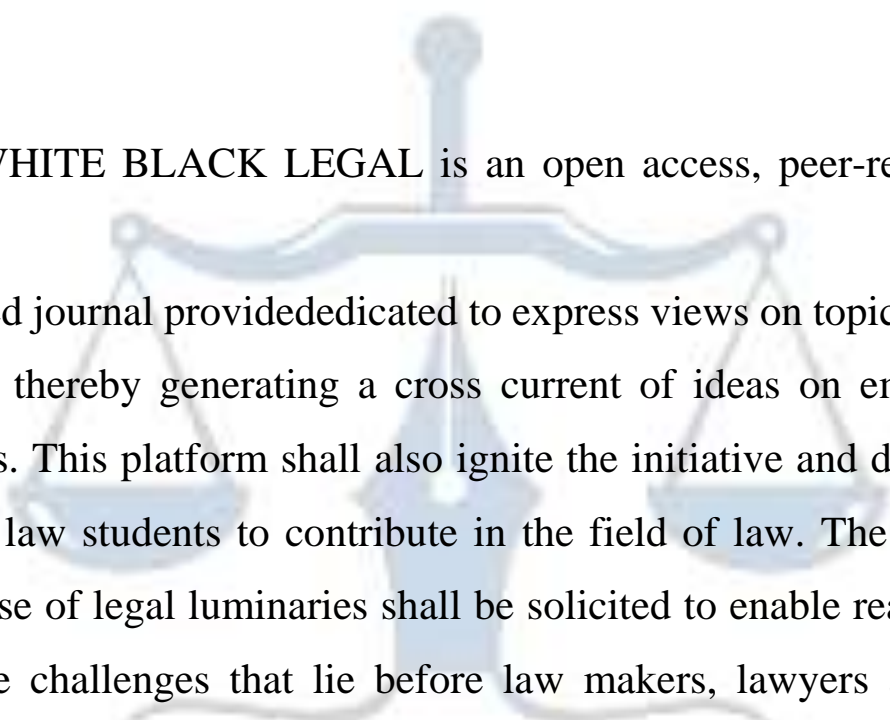


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With this thought, we hereby present to you

# **ADVERSE POSSESSION: HOW SQUATTERS CAN LEGALLY ACQUIRE PROPERTY RIGHTS**

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## **ABSTRACT**

Traditional property rights are uniquely challenged by the legal notion of adverse occupation, which permits squatters to obtain legal ownership of land by the fulfilment of certain requirements over an extended period of time. The interests of landowners and people who have been in long-term, unapproved possession of property are balanced by this notion. Adverse possession, albeit contentious, accomplishes a larger goal of public policy by guaranteeing that land is not left undeveloped. It recognizes the rights of those who have used neglected or abandoned land productively while simultaneously encouraging property owners to keep an eye on and maintain their assets.

Adverse possession laws are applied in many legal systems, and their application necessitates a close analysis of various elements, including continuous possession, possessor intent, and owner knowledge or inaction. In most cases, courts are faced with the challenging challenge of balancing these factors against the legitimate owners' property rights, which are nevertheless protected by the constitution. Adverse possession has important societal ramifications, especially in situations where there is intense pressure for urban development or if land ownership is disputed.

This essay examines the relationship between adverse possession and contemporary property law, emphasizing the ways in which courts handle these cases' intricacies. In response to modern issues including housing shortages, rising property values, and squatting movements, it also looks at how judges' views regarding adverse possession are changing. In the end, the theory of adverse possession illustrates the conflict between private property rights and larger public interests in effective land use, highlighting the moral and legal difficulties associated with acquiring land through extended occupancy.

**Keywords:** Traditional property rights, Adverse possession, Squatters, Legalownership, Long-term unapproved possession.

### **Introduction:**

It might come as a surprise that someone with no legal claim to the title of a property could obtain the right to legally possess it simply by occupying and using it continuously for a certain period of time. However, this concept is established under the doctrine of adverse possession. According to a legal theory known as "adverse possession," someone who occupies land or property without the original owner's consent may eventually become the legitimate owner of that property. This idea, which is a part of many legal systems across the world<sup>1</sup>, frequently brings up difficult issues pertaining to property rights, landowner protection, and the wider social ramifications of granting squatters legal claims to land.

Adverse possession has its origins in centuries-old legal customs designed to make sure absentee owners don't leave their land unoccupied. The Code of Hammurabi<sup>2</sup>, which goes back to approximately 2000 BC, established the theory of adverse possession. It said that if a man left his house, garden, or field and someone else took possession of it and used it for three years, the newcomer would keep the land.

In the early days of England, the King held much of the land, but when disagreements arose between private citizens, the best proof of ownership was frequently considered to be the actual possession of the land. The title to real estate was therefore cleared by the adverse possession concept. The idea of adverse possession is not an exception to the rule that English law forms the basis of much Indian law. With the passage of time, the English laws originally set a twenty-year statute of limitations for these kinds of lawsuits. However, the Limitation Act of 1963<sup>3</sup> in India, which adopted the doctrine of adverse possession, also set a limitation period for similar lawsuits.

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<sup>1</sup> Adverse possession is recognized in common law systems, including the United States, United Kingdom, Canada, Australia, and India, though the requirements and timeframes differ by jurisdiction.

<sup>2</sup> The Code of Hammurabi, one of the earliest known legal codes, included a provision where land could be claimed by someone who possessed and used it for three years if the original owner abandoned it.

<sup>3</sup> The Limitation Act, 1963 governs the time limits for filing lawsuits in India, including a 12-year limit for filing claims related to adverse possession.



## **Research Questions:**

1. How has the concept of adverse possession evolved across different legal systems, and what are the historical and philosophical justifications for its continued existence in modern property law?
2. What are the key differences in the judicial interpretation of the essential elements of adverse possession (e.g., hostile possession, continuity, openness) across common law and civil law jurisdictions?
3. How do courts balance the property rights of landowners against the claims of adverse possessors, and what role does public policy play in shaping judicial attitudes towards squatter rights?
4. What are the socio-economic impacts of adverse possession laws, and how do they affect marginalized communities, particularly in urban settings where land disputes and informal settlements are common?

## **Research Methodology:**

The research adopts a **doctrinal methodology**, focusing on the analysis of legal principles, statutes, and judicial interpretations concerning adverse possession across different legal systems. By reviewing primary sources such as case law, statutes, and legal codes, as well as secondary sources including legal commentaries, journal articles, and historical texts, the study explores the evolution of adverse possession, its key elements, and its socio-economic impacts. Comparative analysis is used to identify differences between common law and civil law jurisdictions. The methodology emphasizes a critical examination of how courts balance property rights with public policy considerations, particularly in urban context

## **Research Advanced:**

**How has the concept of adverse possession evolved across different legal systems, and what are the historical and philosophical justifications for its continued existence in modern property law?**

The concept of **adverse possession** has evolved across various legal systems, with its roots in Roman law, which established the principle of *usucapio*<sup>4</sup>, allowing someone to gain legal

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<sup>4</sup> The concept of *usucapio* allowed individuals in Roman law to acquire ownership of property through continuous possession over a set period, typically one or two years, for movable or immovable property, respectively.

ownership of property through long-term, uninterrupted use. This principle was carried forward into English common law, where it was formalized through statutes such as the Limitation Act of 1623. English courts justified adverse possession on practical grounds: it encouraged active use of land, prevented disputes from arising long after memories had faded, and penalized landowners who neglected their property. Civil law jurisdictions, such as France and Germany, similarly adopted adverse possession under the idea of *prescription*, requiring that land be occupied for a specific period before ownership could be claimed. These systems stressed economic efficiency, recognizing that land should not remain idle and unproductive for long periods.

In the U.S., adverse possession laws, derived from English common law, include specific criteria like the possession being "open," "hostile," and "continuous," further refining the doctrine to ensure that claimants genuinely treat the land as their own. India, with its colonial legal legacy, also adopted the doctrine, but recent judicial developments have led to debates over its fairness, particularly in relation to marginalized landowners.

Philosophically, adverse possession is largely justified through **utilitaria**<sup>5</sup> principles, emphasizing economic efficiency and public order. It encourages the productive use of land, minimizes legal disputes over dormant ownership, and seeks to regularize longstanding informal possession. Additionally, some view it as a tool of **legal certainty**—over time, continuous possession reflects a de facto control that the law should eventually recognize to prevent uncertainty. While modern property law increasingly balances individual rights with broader social considerations, the continued existence of adverse possession reflects its historical roots as a way to manage land use, discourage absentee ownership, and provide clear ownership to those who have cared for and used the land over time.

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<sup>5</sup> Utilitarian philosophers, particularly Jeremy Bentham, have argued that laws should promote the greatest good for the greatest number. Adverse possession serves this purpose by ensuring that land is used efficiently and by providing legal certainty to long-term possessors.

**What are the key differences in the judicial interpretation of the essential elements of adverse possession (e.g., hostile possession, continuity, openness) across common law and civil law jurisdictions?**

The judicial interpretation of the essential elements of adverse possession—**hostile possession, continuity, and openness**—varies significantly across **common law** and **civil law** jurisdictions, reflecting differences in legal tradition and social values.

**Hostile Possession:**

- In **common law jurisdictions**, particularly in the U.S. and the U.K., **hostile possession** typically requires that the possessor holds the property without permission from the legal owner. In many cases, "hostile" means that the possession is against the owner's interest, though it does not necessarily imply ill will. U.S. courts, for instance, have developed different interpretations of hostility, with some jurisdictions requiring that the possessor know they do not have legal title, while others allow claims based on the possessor's belief that they are the rightful owner (good faith). In contrast, English courts have generally emphasized the need for intent to possess, without focusing heavily on the possessor's mental state regarding ownership.
- In **civil law systems**, like France and Germany, the concept of hostility does not have the same significance. Instead, adverse possession, or *prescription*, may focus more on whether the possessor is acting in good faith. In these jurisdictions, good faith possession is often required for shorter prescription periods, meaning that the possessor must believe they have a valid legal right to the property. Hostility is not central to the doctrine; rather, the focus is on uninterrupted and uncontested possession.

**Continuity:**

- In **common law** countries, continuity requires that the possessor maintain possession without significant breaks throughout the statutory period. U.S. courts strictly interpret this, allowing only brief, excusable interruptions, such as temporary absence due to illness or travel, provided the possessor's intent to return is clear. English courts similarly demand uninterrupted possession for the statutory period, usually 12 years. Shared possession or intermittent control would break the continuity and reset the clock.
- In **civil law** systems, continuity is also essential, but courts in countries like France

are sometimes more flexible, allowing for longer absences if the possessor's intention to retain control is evident. The focus in civil law systems<sup>6</sup> tends to be more on the overall quality of possession rather than strict adherence to an unbroken physical presence.

### **Openness:**

- In **common law**, possession must be **open and notorious**, meaning it is visible to anyone, including the legal owner. This ensures that the owner is aware, or should be aware, that someone is occupying their property. U.S. courts enforce this principle to prevent "secret" possession, where a person hides their use of the property to later claim ownership. The idea is that the true owner has an opportunity to take action before the statute of limitations expires. English courts similarly require that the adverse possession be open and visible, without concealment or attempts to deceive the owner.
- In **civil law** jurisdictions, openness is less emphasized, but possession must still be public enough for others to observe the possessor acting as the owner. In France, for instance, it is important that the possession be "unequivocal," meaning the possessor's actions clearly demonstrate their claim to the property. However, the degree of openness required may not be as stringently enforced as in common law systems, reflecting civil law's focus on the passage of time and peaceful possession over the visibility of the possessor's actions.

In **common law** systems, the interpretation of adverse possession elements like hostility, continuity, and openness tends to be more stringent, with courts emphasizing the adversarial nature of possession and ensuring that the rightful owner is on notice. **Civil law** systems, on the other hand, focus more on the possessor's good faith and the peaceful, uncontested nature of the possession, with less emphasis on hostility or visibility. These differences reflect the broader distinction between common law's focus on protecting individual property rights and civil law's emphasis on stability and order in property relations.

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<sup>6</sup> Under the French Napoleonic Code and the German Civil Code, adverse possession, known as prescription, required that property be possessed for 30 years, although this could be reduced to 10 years if the possessor was in good faith and believed they had title.

## **How do courts balance the property rights of landowners against the claims of adverse possessors, and what role does public policy play in shaping judicial attitudes towards squatter rights**

Article 19(1)(f)<sup>7</sup> of the Indian Constitution, which guaranteed the Right to Property as a fundamental right, was repealed in 1978<sup>8</sup>. While the Right to Property is no longer a fundamental right, it continues to exist as a constitutional right<sup>9</sup>, ensuring protection for property owners. Consequently, courts must carefully balance the property rights of landowners with the claims of those asserting adverse possession, ensuring fairness and adherence to legal principles.

The courts do so by following the essentials that need to be fulfilled while claiming adverse possession. The trespasser or stranger in hostile possession must prove or meet the following requirements for it to be considered adverse possession:

1. The property must be in actual possession –

The act of actually occupying land to keep it exclusively for oneself is known as adverse possession. It is insufficient to merely claim the land or pay taxes on it without really owning it. Whether permitted or not, entry into the land is necessary. A violation could begin with adverse possession; however, there needs to be a minimum of the trespasser's brief usage of the land for unfavorable possession must be proven. Physical actions must demonstrate that the owner is using their lordship over the land in the same way as a typical owner of comparable property would. Actual possession is indicated by the regular use of the land, such as cultivating and harvesting crops or gathering and selling wood.

2. Such ownership ought to be well-known and accessible for the use of the land –

Land must be openly possessed by an adverse possessor for everyone to see as a rightful owner, to see. Taking over someone else's land covertly does not confer any legal rights on the occupant. Fencing, clearing, enhancing, or farming the land exhibits transparent and well-known ownership, however, the most transparent use of the land is for actual habitation infamous ownership of everything. The proprietor needs to be well informed.

Either the claimant's possession or the unfavorable usage must be so well-known that those

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<sup>7</sup> Article 19(1)(f) was a part of the Indian Constitution that guaranteed the Right to Property as a fundamental right before its repeal by the 44th Amendment in 1978.

<sup>8</sup> The Right to Property was removed as a fundamental right by the 44th Constitutional Amendment Act, 1978.

<sup>9</sup> After the 1978 amendment, the Right to Property was recognized as a constitutional right under Article 300A of the Indian Constitution.

in the public or those working in the locality.

3. Exclusive use and possession of the land -

Unless the claimant has enjoyed exclusive use of the land, adverse possession will not develop into title. To have exclusive possession is to have only one physical location. In defiance of all other claims, the claimant must maintain ownership of the property. The erection of dwellings or fences, for example, constitutes a physical improvement of the land and proves exclusive control.

4. The genuine owner should be hostile or adversely affected by such possession -

For the title to develop from adverse possession, the possession must be hostile, also known as adverse. To be in hostile possession, the claimant must occupy the property against the rights of the legitimate owner. When a claimant enters and stays on property under the colour of title, that is one instance of hostile possession. The appearance of title as a result of a deed that, despite its language appearing to grant the claimant genuine title, actually does not because of some flaws, is known as the colour of title. In the event where an individual performed a deed while experiencing a legal incapacity, for instance, the grantee-claimant does not obtain genuine title. However, the grantee-claimant owns the colour of title since the deed gives the impression to anyone reading it that a good title has been passed. A claimant's colour of title will turn into actual title as a result of adverse possession if they possess the land as required by law for the entire statutory period.<sup>10</sup>

5. This kind of possession needs to remain unbroken and ongoing -

For a claim to be successful, all requirements of adverse possession must be fulfilled during the statutory period. To properly assert "adverse possession," the claimant must keep the land for the whole of the statutory period, sometimes known as the "statute of limitation." The defendant cannot get title to the encroached suit land simply by their prolonged possession of the contested land for a period exceeding 12 years, without the defendant's knowledge or intent to hold the suit land in a manner that would be detrimental to the plaintiff's title. Adverse possession only occurs when someone seizes ownership of property by contesting the lessor's title, displaying animosity toward them by actions or words, or, in the event of trespassing, by taking action against the lessor or another property owner.

In modern times, some courts and policymakers have become more cautious about

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<sup>10</sup> The statutory period for adverse possession in India typically ranges from 12 to 30 years, depending on the property and local laws.

awarding adverse possession, especially in urban areas where land values are high and property rights are more contentious. The balance between protecting private property rights and recognizing legitimate adverse possession claims continues to evolve, influenced by factors like housing shortages, squatting movements, and changing land use priorities

**What are the socio-economic impacts of adverse possession laws, and how do they affect marginalized communities, particularly in urban settings where land disputes and informal settlements are common:**

Adverse possession laws can have significant **socio-economic impacts**, particularly on marginalized communities, and these effects are often more pronounced in **urban settings** where land disputes and informal settlements are prevalent. While adverse possession can bring stability and formalize ownership for long-term occupiers of land, it can also exacerbate inequality and result in the dispossession of vulnerable populations.

**Formalization of Informal Settlements:**

In many urban areas, particularly in developing countries, marginalized communities often live in informal settlements on land that they do not legally own. Adverse possession laws can offer a path to formal ownership for these residents, helping them secure property rights after living on the land for a significant period. This formalization can improve their **economic stability**, access to public services, and legal protection from eviction. In countries like Brazil, where land reform and adverse possession (or *usucapiao*) are used to address informal settlements, these laws have been instrumental in reducing housing insecurity and integrating informal dwellers into the formal property market.

**Displacement of Vulnerable Populations:**

However, adverse possession laws can also lead to the **displacement of marginalized groups**. In cases where land is informally occupied by poor communities, wealthier or more powerful individuals or entities may use the law to take control of the land by claiming long-term possession. These groups may assert adverse possession over land that had been neglected or abandoned, thereby excluding the original inhabitants or informal settlers. This is particularly concerning in gentrifying urban areas, where land values are rising, and developers seek to capitalize on previously "unused" or underutilized land. The result is often the forced eviction

of lower-income residents, compounding socio-economic inequality.

### **Perpetuation of Inequality:**

Adverse possession can sometimes **entrench existing inequalities**, particularly when it is used by those with more resources and legal knowledge to claim land from weaker or less informed communities. Marginalized groups, such as the urban poor, often lack the legal resources or financial capacity to defend their rights against adverse possession claims. In urban settings where property disputes are frequent and land titles unclear, those with access to legal representation can manipulate adverse possession laws to their advantage, further marginalizing already vulnerable populations.

### **Land Use and Economic Productivity:**

On a broader scale, adverse possession laws can encourage **productive land use**, especially in urban areas where absentee landownership is common. By ensuring that land cannot remain idle indefinitely, these laws incentivize occupiers to develop, maintain, or improve the property, contributing to urban development and economic growth. This can be particularly beneficial for marginalized communities who use the land for housing, small-scale farming, or small businesses. However, the benefits of such development are often unevenly distributed, with wealthier individuals and corporations more likely to exploit the advantages of adverse possession than poorer residents.

### **Legal Certainty and Informal Economies:**

In settings where land titles are unclear or where there is a significant informal economy, adverse possession laws can help bring **legal certainty** to ownership disputes. This is particularly important in areas where formal registration systems are weak or inaccessible to marginalized communities. By providing a legal framework for long-term occupiers to claim ownership, adverse possession can integrate informal economies into the formal legal system, offering greater protection and security to individuals who previously had none. However, without proper safeguards, this process can also lead to the erosion of informal networks and traditional landholding patterns that sustain marginalized communities.



### **Impact on Indigenous Communities:**

Adverse possession laws have also been criticized for their impact on **indigenous communities**, who may hold land based on customary law rather than formal legal titles. In some cases, settlers or developers have claimed indigenous lands<sup>11</sup> through adverse possession, undermining traditional land rights and displacing indigenous populations. This is particularly problematic in countries where legal systems fail to recognize customary ownership or where indigenous groups face discrimination in the legal process. The application of adverse possession in these contexts can lead to the dispossession and marginalization of entire communities, exacerbating historical injustices.

While adverse possession can provide a pathway to secure land tenure for long-term occupiers, its socio-economic impacts are complex and often negative for marginalized communities in urban settings. The law's application can either empower or dispossess, depending on the socio-political context and the balance of power between claimants. In urban areas where land is scarce and valuable, the potential for abuse of adverse possession laws by wealthier individuals or corporations poses a serious threat to vulnerable populations. To mitigate these risks, governments must carefully regulate the use of adverse possession and provide legal protections for marginalized communities, ensuring that the law serves its original purpose of promoting justice and productive land use, rather than perpetuating inequality.

### **Conclusion**

The concept of adverse possession has evolved significantly across various legal systems, shaped by historical, philosophical, and socio-economic factors. Initially, it emerged as a pragmatic solution to encourage productive land use, resolve disputes over neglected property, and provide legal certainty in ownership. As legal systems developed, adverse possession adapted to reflect these practical goals while also incorporating philosophical justifications, such as utilitarian ideals of maximizing land use efficiency and promoting societal stability.

While the core elements of adverse possession, such as hostility, continuity, and openness, remain consistent across legal systems, their interpretation varies significantly between common law and civil law jurisdictions. Common law courts often emphasize the adversarial nature of

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<sup>11</sup> Adverse possession has been used to undermine indigenous land rights in various countries, particularly where legal systems fail to recognize customary land ownership or where indigenous communities face systemic discrimination in asserting their claims

possession and the importance of visible, uninterrupted use. In contrast, civil law systems focus less on hostility and more on good faith possession. These differences highlight the adaptability of adverse possession to the specific values and social needs of different legal systems.

In recent years, courts have increasingly considered public policy considerations when balancing the property rights of legal owners with the claims of adverse possessors. While property rights are fundamental, courts may take a more nuanced approach when dealing with long-term occupiers, particularly in cases where formal ownership is unclear or the land has been abandoned. Judicial attitudes toward squatter rights are influenced by broader social concerns, including housing shortages and urban development. Courts may favor adverse possessors when it serves the greater public good, such as when land is put to productive use or when it addresses long-standing informal settlements.

The socio-economic impacts of adverse possession are profound, particularly in urban settings. While it can provide a legal pathway for marginalized communities to secure land rights, it can also be exploited by more powerful individuals or entities to displace vulnerable populations. The law can perpetuate inequality when those with greater legal knowledge and resources use adverse possession to acquire land from disadvantaged groups. However, it can also serve as a tool for formalizing informal land use and integrating marginalized communities into the formal property market. To ensure that adverse possession promotes justice and economic fairness, careful regulation and judicial oversight are essential.

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