



THE CAYMAN ISLANDS LAW REFORM COMMISSION



FINAL REPORT

ADVERSE POSSESSION

10 MARCH, 2025

THE CAYMAN ISLANDS LAW REFORM COMMISSION

Chairman	Mr. Hector Robinson, KC
Commissioners	Hon. Justice Alexander Henderson, KC, (retd.)
	Mr. Vaughan Carter, Attorney-at-Law
	Mr. Abraham Thoppil, Attorney-at-Law
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	Mr. Simon Davis, Director of Public Prosecutions
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TABLE OF CONTENTS

INTRODUCTION.....	1
BACKGROUND.....	1
RESEARCH AND CONSULTATION PROCESS	1
DISCUSSION PAPER - AREAS OF EXAMINATION.....	3
History and purpose of adverse possession	3
Adverse possession in the Cayman Islands.....	4
Justifications for the doctrine of adverse possession.....	5
Options examined for reform	6
PUBLIC AND STAKEHOLDER RESPONSES TO THE DISCUSSION PAPER.....	6
RECOMMENDATIONS FOR REFORM.....	7
PROPOSED LEGISLATIVE FRAMEWORK.....	8
CONCLUSION.....	10

ACKNOWLEDGEMENTS

The Law Reform Commission extends thanks to all stakeholders and the general public for the valued contributions leading to the conclusion of this Final Report.

FINAL REPORT
ADVERSE POSSESSION

INTRODUCTION

In accordance with section 12 of the *Law Reform Commission Act (2019 Revision)*, the Law Reform Commission (the “Commission”) submits for the consideration of the Honourable Attorney General its Final Report entitled “**Adverse Possession**”.

This Final Report contains recommendations which seek to respond to issues that relate to the doctrine of adverse possession in the Cayman Islands and is supported by the proposed *Registered Land (Amendment) Bill, 2025* (Appendix 1).

BACKGROUND

1. On 1st July, 2021, the Commission resolved to consider whether the doctrine of adverse possession should be retained in the Cayman Islands. This followed an initial consideration of reforms in other Commonwealth jurisdictions to restrict or abolish the doctrine.
2. The Commission conducted a comprehensive review of the law of adverse possession in the Cayman Islands with a view to determining whether reform is necessary and, if so, the shape that reform should take.

RESEARCH AND CONSULTATION PROCESS

3. The research of the Commission included an examination of –
 - (a) the history and existing law of adverse possession;
 - (b) the justifications for the doctrine (and corresponding counter-arguments); and
 - (c) reforms undertaken in other jurisdictions.
4. The research findings of the Commission resulted in the formulation, for public consultation, of a Discussion Paper titled “**Adverse Possession**”. The Paper is attached as Appendix 2.

5. The Discussion Paper was subsequently published for public comment and also forwarded to the following institutional stakeholders –

- Office of the Governor;
- Judicial Administration;
- Members of Parliament;
- Ministry of District Administration and Lands;
- Registrar of Lands and Survey;
- Ministry of Planning, Agriculture, Housing and Infrastructure;
- Portfolio of Legal Affairs;
- Office of the Ombudsman;
- Truman Bodden Law School;
- Cayman Islands Legal Practitioners Association;
- Cayman Islands Association of Mediators and Arbitrators;
- Cayman Islands Bankers Association;
- Cayman Islands Chamber of Commerce;
- Cayman Islands Real Estate Brokers Association;
- Cayman Islands Institute of Professional Accountants;
- Cayman Society of Architects, Surveyors and Engineers;
- Cayman Islands Civil Service Association;
- Society of Trusts and Estates Practitioners Cayman Islands; and
- Cayman National Cultural Foundation.

6. Stakeholders and members of the general public were invited to respond to the issues and questions identified in the Discussion Paper. The consultation period for the Discussion Paper commenced on 24th July, 2023 and concluded on 27th October, 2023. The Commission received responses from the following stakeholders and members of the public –

- Registrar of Lands and Survey;
- Cayman Islands Bankers Association;
- Professor Simon Cooper, Truman Bodden Law School;
- Patricia Bryan;
- Jimmy Carter;
- Francelia Dixon-McCoy;
- Rannielee Hyde;
- Erick Irving;
- D. Lee;
- James Moore;
- Natalia Coe-Moore;
- Rebecca Moore;
- Roseta Moore;

- Roylee Moore;
- Giovanni Myrie-Smith;
- Ezmie Smith;
- Danny Soto; and
- Robin Vaz.

DISCUSSION PAPER - AREAS OF EXAMINATION

7. In the Discussion Paper, the Commission assessed the case for reforming the law of adverse possession in the Cayman Islands with reference to the history and purpose of the doctrine of adverse possession, the existing law of adverse possession, the arguments advanced for and against the doctrine of adverse possession, and recent reforms in other jurisdictions.

History and purpose of adverse possession

8. The Commission noted that the doctrine of adverse possession developed in the context of a system of relative title to land based on possession. Physical possession was fundamental to the early common law principle of seisin, or possessory title. The uncertainty and instability of this system, in which a person's interests could be overturned at any time by an earlier possessor, was remedied by the introduction of statutory limitation periods barring a claim by an earlier possessor who "slept" on his or her rights.
9. The Commission summarised how the doctrine of adverse possession developed in the United Kingdom with the introduction of title by registration. The *Land Registration Act 1925* (UK) (the "1925 UK Act") sought to apply the principles of adverse possession to registered land "in the same manner and to the same extent" as they apply to unregistered land. However, the existence of the register presented a technical obstacle to the identical treatment of registered and unregistered land – the title of the registered proprietor cannot be extinguished without a change to the register. The 1925 UK Act attempted to overcome this obstacle by stipulating that the registered proprietor's title would not be extinguished by an adverse possessor, but that the land would be held by the registered proprietor on trust for the adverse possessor. This remains the position in the Cayman Islands.

Adverse possession in the Cayman Islands

10. The Commission outlined the statutory basis for the doctrine of adverse possession in the Cayman Islands –

- (a) the *Limitation Act (1996 Revision)* provides the basis for limiting a landowner's right to recover land after specified periods of time;
- (b) the *Registered Land Act (2018 Revision)* confirms the application of the doctrine of adverse possession to registered land, and prescribes the procedure for acquiring title to registered land on this basis; and
- (c) the *Land Adjudication Act (1997 Revision)* prescribes the procedure for acquiring title to unregistered land by possession.

11. The *Limitation Act (1996 Revision)* provides (in summary) –

- (a) that a person cannot bring an action to recover land after the expiry of 12 years from the date on which the right of action accrued (section 19(1));
- (b) the person's right of action to recover land accrues on the later of:
 - (i) the date they are dispossessed of the land or discontinue possession (section 20(1)); or
 - (ii) the date another person takes adverse possession of the land (section 20(9));
- (c) in the case of Crown land, the limitation period is 30 years rather than 12 years (section 21(1)); and
- (d) in the case of unregistered land, the expiry of the limitation period before which a person must bring an action to recover land extinguishes the title of the person to the land (section 23, read with section 135 of the *Registered Land Act (2018 Revision)*).

12. The *Registered Land Act (2018 Revision)* provides (in summary) –

- (a) registered land is subject to rights acquired or in the process of being acquired by virtue of any law relating to the limitation of actions, without those rights being recorded on the Land Register (section 28(f));
- (b) the *Limitation Act (1996 Revision)* applies to both registered and unregistered land, but in the case of registered land, the expiry of the limitation period does not operate

- to extinguish the title of the registered proprietor – instead, the registered proprietor holds the land on trust for the adverse possessor (section 135);
- (c) an adverse possessor who claims to have acquired title to registered land by virtue of the expiry of the limitation period may apply to the Registrar to be registered as the proprietor of the land (section 136); and
 - (d) on application by an adverse possessor for registration as proprietor of registered land –
 - (i) the Registrar must advertise the application and give notice of the application to the proprietor of the land (section 137(1) and (2));
 - (ii) if the Registrar is satisfied of the applicant’s title after 1 month has elapsed since notice of the application was given, the Registrar may register the applicant as proprietor of the land, either with absolute or provisional title (section 137(3)); and
 - (iii) either the proprietor or the applicant may apply to the court for the determination of any question arising in relation to the application.

Justifications for the doctrine of adverse possession

13. The Commission examined the grounds on which the existence and retention of the doctrine has been justified, including –
- (a) to facilitate conveyancing in unregistered land;
 - (b) to protect against stale claims;
 - (c) to prevent land becoming unmarketable and to encourage the upkeep, improvement and development of land; and
 - (d) to prevent hardship to an adverse possessor in cases of a reasonable but mistaken belief as to ownership.

Reforms in other jurisdictions

14. The Commission examined reforms to the law of adverse possession in other Commonwealth jurisdictions. In particular, the Commission focused on reforms undertaken in the United Kingdom. These reforms limited the circumstances in which a person can gain title to land by adverse possession by requiring notice of a claim to be given to the registered proprietor of the land and introducing a restricted range of

conditions under which such a claim will succeed. The Commission also noted reforms in Bermuda that significantly curtail a person's ability to acquire registered land by adverse possession.

Options examined for reform

15. The Discussion Paper outlined two options for reform in the Cayman Islands –
 - Option 1. Abolish the doctrine of adverse possession entirely.
 - Option 2. Amend the law to restrict the circumstances in which title to registered land can be acquired by adverse possession.

16. For option 2, the Commission outlined a model for reform (based partly on the reforms undertaken in the United Kingdom) consisting of the following elements –
 - (a) abolishing the limitation period for causes of action to recover land;
 - (b) strengthening the procedure to be followed when a person applies for registration based on adverse possession to more fairly balance the rights of registered proprietors;
 - (c) limiting the circumstances in which a person can succeed in a claim for registration based on adverse possession; and
 - (d) requiring an applicant for registration based on adverse possession to establish their entitlement to registration even when the registered proprietor does not respond to notice of the application.

PUBLIC AND STAKEHOLDER RESPONSES TO THE DISCUSSION PAPER

17. The responses to the Discussion Paper from members of the public and stakeholders indicated broad support for the abolition of the doctrine of adverse possession. A number of submissions highlighted the importance of the land registration system in ensuring certainty for land owners and expressed the view that the doctrine of adverse possession is outdated in the context of land registration. Many respondents expressed strongly held views that acquiring land by possession constitutes theft or, at the very least, wrongdoing. Concerns were also raised that the doctrine of adverse possession creates uncertainty for investors, deters property development and threatens the rights of generational landowners.

18. The Registrar of Lands made an extensive submission outlining a number of justifications for abolishing adverse possession, including improved land security, enhanced legal certainty, preserving the integrity of the Land Register and aligning with international trends. In the event that adverse possession is not abolished entirely, the Registrar recommended increasing the limitation period to 20 years.
19. Conversely, a minority of submissions recommended retaining the doctrine. One submission recommended expanding the application of adverse possession so that informal arrangements as to possession of different parts of land jointly owned by family members can be formalised. Another submission recommended retaining adverse possession and reducing the limitation period to 7 years, on the basis that monitoring possession of land is straightforward given the geographical size of the Islands.
20. A summary of the submissions received in response to the Discussion Paper can be found in Appendix 3.

RECOMMENDATIONS FOR REFORM

21. The Commission considered all comments and options emerging from the consultation process and the legislative approaches adopted by other jurisdictions.
22. The Commission acknowledges the many valid concerns raised in the submissions opposed to adverse possession and accepts that the doctrine is conceptually difficult to reconcile with modern notions of land ownership. In particular, the Commission recognises that the integrity of the Land Register is fundamental to the certainty that underpins the system of land ownership in the Cayman Islands. However, the Commission also accepts that there are circumstances in which adverse possession provides a means for ensuring that land does not become unmarketable (such as where there have been unregistered dealings) and for preventing hardship in cases of genuine mistake (such as where land has been improved by a person acting in good faith as a result of a mistaken boundary).
23. As such, the Commission considers that there remains a limited role for the doctrine of adverse possession in the Cayman Islands land system. However, the law should be modernised so that the application of adverse possession is limited to the narrow set of

circumstances that merit its retention. In addition, the procedures for obtaining ownership of land by way of adverse possession should be strengthened significantly to protect the interests of registered proprietors and provide them with ample opportunity to respond to claims.

24. The Commission therefore supports option 2 outlined in the Discussion Paper –
- (a) abolishing the limitation period for causes of action to recover registered land;
 - (b) strengthening the procedure to be followed when a person applies for registration based on adverse possession to more fairly balance the rights of registered proprietors;
 - (c) limiting the circumstances in which a person can succeed in a claim for registration based on adverse possession; and
 - (d) requiring an applicant for registration based on adverse possession to establish their entitlement to registration even when the registered proprietor does not respond to notice of the application.

PROPOSED LEGISLATIVE FRAMEWORK

25. The proposed legislative framework to give effect to the reforms recommended by the Commission consists of amendments to the *Registered Land Act (2018 Revision)*.
26. The *Registered Land (Amendment) Bill, 2025* would amend the *Registered Land Act (2018 Revision)* to disapply the limitation periods in relation to recovery of registered land under section 19 of the *Limitation Act (1996 Revision)*. The amendments would also outline the basis and procedure for an adverse possessor to acquire title to registered land as follows –
- (a) a person may apply to be registered as the proprietor of registered land if the person has been in adverse possession of the land for 12 years and satisfies one of the following criteria –
 - (i) the applicant is entitled to be registered as the proprietor as a result of an unregistered dealing between the applicant and the registered proprietor; or
 - (ii) the applicant is able to establish that all the following circumstances apply –

- (A) the land to which the application relates is adjacent to land belonging to the applicant;
 - (B) either the boundary line between the two parcels of land is undemarcated or the applicant had a reasonable but mistaken belief that the boundary line was different to the demarcated boundary line;
 - (C) the applicant reasonably but mistakenly believed that the land to which the application relates belonged to the applicant; and
 - (D) the applicant, to the knowledge or acquiescence of the registered proprietor, made lasting improvements to the land in reliance on the reasonable but mistaken belief of ownership;
- (b) if the registered proprietor fails to respond to the application within 30 days having been served a first time, the registered proprietor must be served again and given a further 30 days to respond;
 - (c) if the registered proprietor does not respond to the application, the applicant must establish, to the satisfaction of the Registrar, that he or she –
 - (i) has in fact been in adverse possession of the land for the required period; and
 - (ii) satisfies one of the criteria for registration; and
 - (d) if the registered proprietor objects to the application, the applicant may apply to the Grand Court for determination of the matter.

27. The service requirements in the Bill are designed to be robust, to ensure every effort is made to alert the registered proprietor of an application. Personal service is required unless the Registrar approves an alternative method. In addition to the registered proprietor, anyone holding a registered charge on the land (such as a bank) is also required to be served with the application and has an opportunity to object.

CONCLUSION

- 28 The Commission recommends for consideration the *Registered Land (Amendment) Bill, 2025*.

APPENDIX 1

REGISTERED LAND (AMENDMENT) BILL, 2025

CAYMAN ISLANDS



REGISTERED LAND (AMENDMENT) BILL, 2025

A BILL FOR AN ACT TO AMEND THE REGISTERED LAND ACT (2018 REVISION) TO DISAPPLY LIMITATION PERIODS FOR RECOVERY OF REGISTERED LAND; TO REPLACE THE PROCEDURE AND GROUNDS FOR REGISTERING TITLE ACQUIRED BY POSSESSION; AND FOR INCIDENTAL AND CONNECTED PURPOSES

PUBLISHING DETAILS

Sponsoring Ministry/Portfolio: Ministry of District Administration and Lands (DAL)

CAYMAN ISLANDS



REGISTERED LAND (AMENDMENT) BILL, 2025

Arrangement of Clauses

Clause	Page
1. Short title	5
2. Amendment of section 2 of the Registered Land Act (2018 Revision) – definitions	5
3. Repeal and substitution of sections 135, 136 and 137 – acquisition of title by possession; application to register title acquired by possession; procedure on application	6
4. Transitional provisions	9

CAYMAN ISLANDS

**REGISTERED LAND (AMENDMENT) BILL, 2025**

A BILL FOR AN ACT TO AMEND THE REGISTERED LAND ACT (2018 REVISION) TO DISAPPLY LIMITATION PERIODS FOR RECOVERY OF REGISTERED LAND; TO REPLACE THE PROCEDURE AND GROUNDS FOR REGISTERING TITLE ACQUIRED BY POSSESSION; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

Short title

1. (1) This Act may be cited as the Registered Land (Amendment) Act, 2025.
- (2) This Act comes into force on such date as may be appointed by Order made by the Cabinet and different dates may be appointed for different provisions of this Act and in relation to different matters.

Amendment of section 2 of the Registered Land Act (2018 Revision) – definitions

2. The *Registered Land Act (2018 Revision)*, in this Act referred to as the “principal Act”, is amended in section 2 by inserting, in the appropriate alphabetical sequence, the following definition —

““adverse possession” has the meaning given in section 135;”.

Repeal and substitution of sections 135, 136 and 137 – acquisition of title by possession; application to register title acquired by possession; procedure on application

3. The principal Act is amended by repealing sections 135, 136 and 137 and substituting the following sections —

“Meaning of “adverse possession”

- 135.** A person is in adverse possession of land if, but for section 136, a period of limitation under section 19 of the *Limitation Act (1996 Revision)* would run in the person’s favour in relation to the land.

Disapplication of periods of limitation

- 136.** No period of limitation under section 19 of the *Limitation Act (1996 Revision)* runs against any person, other than a chargee, in relation to registered land.

Right to apply for registration by possession

- 137.** (1) A person may apply to the Registrar to be registered as the proprietor of land if the person has been in adverse possession of the land for a continuous period, ending on the date of the application, of —
- (a) twelve years; or
 - (b) in the case of Crown land, thirty years.
- (2) A person may also apply to the Registrar to be registered as the proprietor of land if —
- (a) the person has ceased to be in adverse possession of the land because of eviction by the registered proprietor of the land in the period of six months ending on the date of the application;
 - (b) on the day immediately before the eviction, the person was entitled to make an application under subsection (1); and
 - (c) the eviction was not in accordance with a judgment for possession.
- (3) However, a person may not make an application under this section if —
- (a) the person is a defendant in proceedings which involve asserting a right to possession of the land; or
 - (b) judgment for possession of the land has been given against the person within the preceding two years.

Service of application

- 137A.**(1) An applicant for registration under section 137 must serve the application on —
- (a) the registered proprietor of the land;
 - (b) the proprietor of any registered charge on the land; and
 - (c) any other person required by the rules to be served.
- (2) If the registered proprietor does not respond to the application within thirty days after it is served, the applicant must serve the application on the registered proprietor a second time.
- (3) Despite section 153, the application must be served personally on the registered proprietor of the land.
- (4) However, if the applicant satisfies the Registrar that personal service is impracticable, the Registrar may approve an alternative method of service.
- (5) If the applicant satisfies the Registrar that the registered proprietor cannot be served (whether personally or in another way), the Registrar may —
- (a) direct the applicant to advertise the application in a specified manner; and
 - (b) direct the applicant to take other specified steps to notify the registered proprietor of the application.
- (6) A person required to be served with the application may object to it —
- (a) within thirty days after service; or
 - (b) in the case of the registered proprietor, within thirty days after the requirements of subsection (2) or (5) are met.
- (7) The Registrar may dismiss an objection if —
- (a) the objection is made by a person other than the registered proprietor of the land or the proprietor of any registered charge on the land; and
 - (b) the Registrar considers the objection to be frivolous or vexatious.

Requirements for registration

- 137B.**(1) An applicant for registration under section 137 may only be registered as the proprietor of the land if the requirements of subsection (2) or (3) are satisfied.

- (2) The applicant may be registered as proprietor if they are so entitled as a result of an unregistered dealing between the applicant and the registered proprietor.
- (3) The applicant may be registered as proprietor if all the following circumstances apply —
 - (a) the applicant is the registered proprietor of land that is wholly or partly adjacent to the land to which the application relates;
 - (b) either —
 - (i) the boundary line between the two parcels of land is undemarcated; or
 - (ii) for at least ten years of the period of adverse possession, the applicant reasonably but mistakenly believed that the boundary line between the two parcels of land was different to the demarcated boundary line;
 - (c) for at least ten years of the period of adverse possession, the applicant reasonably but mistakenly believed that the land to which the application relates belonged to the applicant; and
 - (d) the applicant, with the knowledge or acquiescence of the registered proprietor, made lasting improvements to the land in reliance on the applicant's reasonable but mistaken belief of ownership.

Treatment of application – no objection

137C.(1) This section applies if —

- (a) no objection to an application for registration is made under section 137A(6); or
 - (b) any objection made is dismissed under section 137A(7).
- (2) The applicant may be registered as proprietor of the land if the Registrar is satisfied that the applicant —
- (a) meets the requirements specified in section 137 for making the application; and
 - (b) satisfies the requirements for registration specified in section 137B(2) or (3).

Treatment of application – objection

137D.(1) This section applies if —

- (a) an objection to an application for registration is made under section 137A(6); and
- (b) the objection is not dismissed under section 137A(7).

APPENDIX 2

DISCUSSION PAPER – ADVERSE POSSESSION



THE CAYMAN ISLANDS LAW REFORM COMMISSION



DISCUSSION PAPER ADVERSE POSSESSION 24 JULY, 2023

THE CAYMAN ISLANDS LAW REFORM COMMISSION

Chairman	Mr. Hector Robinson, KC
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	Mr. Vaughan Carter, Attorney-at-Law
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	Mr. Simon Davis, Director of Public Prosecutions
Director	Mr. José Griffith, Attorney-at-Law
Senior Legislative Counsel	Ms. Catriona Steele, Attorney-at-Law
Paralegal	Ms. Felicia Connor
Administrative Secretary	Ms. Milicia Bodden

CAYMAN ISLANDS LAW REFORM COMMISSION

Public Submissions

Stakeholders and members of the general public are invited to comment on the issues identified in this Discussion Paper and, in particular, to submit their views on the recommendations presented for discussion.

The Paper may be viewed on the following website: www.lrc.gov.ky or www.gov.ky or a copy may be collected from the Offices of the Law Reform Commission.

Submissions should be forwarded no later than **27th October 2023** to the Director of the Law Reform Commission, 4th Floor Government Administration Building, Portfolio of Legal Affairs, 133 Elgin Avenue, George Town, Grand Cayman, P.O. Box 136, Grand Cayman KY1-9000 either electronically to cilawreform@gov.ky, or in writing, by post or hand delivered.

TABLE OF CONTENTS

1	INTRODUCTION.....	1
2	THE DOCTRINE OF ADVERSE POSSESSION	2
2.1	The elements of adverse possession	2
2.2	The development of the doctrine of adverse possession.....	3
2.3	Leading adverse possession cases	5
3	ADVERSE POSSESSION IN THE CAYMAN ISLANDS.....	9
3.1	History of land registration in the Cayman Islands.....	9
3.2	The current Cayman Islands scheme	10
4	JUSTIFICATIONS FOR THE DOCTRINE OF ADVERSE POSSESSION.....	13
5	REFORM OF ADVERSE POSSESSION IN THE UNITED KINGDOM	16
5.1	Law Commission process	16
5.2	Land Registration Act 2002 (UK)	19
5.3	The 2002 UK Act in practice.....	21
6	ADVERSE POSSESSION IN OTHER COMMON LAW JURISDICTIONS.....	24
6.1	Australia	24
6.2	Canada	26
6.3	Bermuda.....	27
6.4	Barbados	28
7	OPTIONS FOR REFORM AND RECOMMENDATIONS	29
7.1	Is reform necessary?	29
7.2	Should the doctrine of adverse possession be abolished?.....	30
7.3	Options for reform.....	30
8	CONCLUSION.....	34
	APPENDIX A.....	35
	LEGISLATIVE PROVISIONS GOVERNING ADVERSE POSSESSION IN THE CAYMAN ISLANDS.....	35
	LIST OF REFERENCES	41

1 INTRODUCTION

1.1 Adverse possession is the process by which a person can obtain title to land belonging to someone else by continuously occupying it in a way that is inconsistent with the rights of the owner. The doctrine of adverse possession is often referred to as “squatter’s rights”, a somewhat emotive term with negative connotations. The label “squatter” conjures visions of an aggressive incursion tantamount to land theft, and the notion of such a “squatter” having “rights” to the land they have invaded may be met with alarm. The concept of a person legally acquiring another’s property simply by using it without permission runs contrary to the modern understanding of property ownership.

1.2 While there are examples of the doctrine of adverse possession operating to reward an undeserving squatter, the more common scenario is more nuanced. Claims to adverse possession frequently occur in the context of encroachments on neighbouring land, many of which are the inadvertent result of mistakes as to boundary. As Lord Hope explained –

“At first sight, it might be thought that the word 'adverse' describes the nature of the possession that the squatter needs to demonstrate. It suggests that an element of aggression, hostility or subterfuge is required. But an examination of the context makes it clear that this is not so. It is used as a convenient label only, in recognition simply of the fact that the possession is adverse to the interests of the paper owner or, in the case of registered land, of the registered proprietor.”¹

As such, any reform of the law relating to adverse possession must be undertaken with care to ensure that there are no unintended consequences that would unfairly disadvantage a person with a deserving claim.

1.3 This Paper will outline the history and existing law of adverse possession, assess the justifications for the doctrine (and corresponding counter-arguments) and examine the law and recent reforms in other common law jurisdictions. Finally, the Paper will propose two options for reform in the Cayman Islands.

¹ *JA Pye (Oxford) Ltd v Graham* [2000] Ch 676, [69].

2 THE DOCTRINE OF ADVERSE POSSESSION

2.1 The elements of adverse possession

2.1.1 The doctrine of adverse possession consists of statutory elements and common law elements. As summarised by Butt –

“The law governing possessory title is a mixture of common law and statute. Common law determines the required nature of possession. Statute determines the required duration of possession.”²

2.1.2 The statutory elements are primarily found in statutes of limitation,³ which stipulate the period after which a person’s right to recover land of which they have been dispossessed ends. The prescribed period varies between jurisdictions, and frequently varies depending on whether the land concerned is privately held or held by the Crown. The limitation period operates to bar the exercise of the prior rights of the documentary owner of the land. However, the person claiming adverse possession must meet the common law requirements of possession to gain title.⁴

2.1.3 In order to succeed in a claim for adverse possession, a person must establish two elements of possession –

1. Factual possession – the person must demonstrate a sufficient degree of physical control of the land in a way that is conclusive and exclusive of others.⁵
2. Intention to possess (*animus possidendi*) – the person must establish an intention to possess the land to the exclusion of all others, including the owner.⁶

These elements are explored further at 2.3 below.

² Butt, *Land Law* (Lawbook, 6th ed, 2010), p. 896.

³ Depending on the jurisdiction, there may also be statutory provisions governing the process of acquiring title to registered land by adverse possession.

⁴ Burns, “Adverse Possession and Title-by-Registration Systems in Australia and England”, (2011) 35(3) *Melbourne University Law Review* 773, p. 781.

⁵ *Powell v McFarlane*, [1977] 38 P & CR 452, 470.

⁶ *Buckinghamshire County Council v Moran* [1990] Ch 623, 643.

2.2 The development of the doctrine of adverse possession

2.2.1 When considered in the modern context, the doctrine of adverse possession may seem to be entirely at odds with accepted notions of property ownership. However, it is important to understand how land ownership developed as a legal concept. Physical possession was fundamental to the early common law principle of seisin, or possessory title.⁷ Gray and Gray observe –

“Much of the genius of the common law derives from a rough-and-ready grasp of the empirical realities of life. According to this perspective the identification of 'property' in land is an earthily pragmatic affair. There is a deeply anti-intellectual streak in the common law tradition which cares little for grand or abstract theories of ownership, preferring to fasten instead upon the raw organic facts of human behaviour. This perspective is preoccupied with what happens on the ground rather than with what emerges from the heaven of concepts. Accordingly, the crude empiricism of this outlook leaves the recognition of 'property' to rest upon essentially intuitive perceptions of the degree to which a claimant successfully asserts *de facto* possessory control over land. On this view 'property' in land is more about fact than about right; it derives ultimately not from "words upon parchment", but from the elemental primacy of sustained possession.”⁸

2.2.2 A consequence of the primacy of possession to ownership was that the possession could not be temporary or ambiguous. In order to claim seisin, a person's possession of land had to be consistent, open to the world and exclusive. In addition to physical possession, the possessor was required to demonstrate the intention to possess the land.⁹ Importantly, an entitlement to land based on seisin did not constitute absolute ownership of property – seisin could be displaced by a claimant with an earlier and better seisin.¹⁰

⁷ Burns, p. 773.

⁸ Gray & Gray, “The Idea of Property in Land” in Bright & Dewar (eds), *Land Law: Themes and Perspectives* (Oxford University Press, 1988), p. 18-19.

⁹ Burns, p. 778.

¹⁰ Burns, p. 778.

- 2.2.3 The doctrine of adverse possession developed in this context. The uncertainty and instability created by a system of relative title based on possession, in which a person's interests could be overturned at any time by an earlier possessor, was remedied by the introduction of statutory limitation periods, beginning with the *Limitations Act 1623* (UK). This quietened title when an earlier possessor had "slept" on his or her rights.¹¹
- 2.2.4 This position was not seriously challenged until the concepts of possession and relativity of title were diminished in importance by the introduction of title by registration.¹² Adverse possession of registered land was not always permitted in the United Kingdom. The *Land Transfer Act 1875* (UK) did not allow it, but the position changed with the enactment of the *Land Transfer Act 1897* (UK). Under this Act, a person could obtain rectification of the register to be registered as proprietor of land under their possession after the expiry of the limitation period. However, at any time before the person obtained that rectification, their interest could be displaced by the sale of the land.¹³ In this way, the Act differentiated between registered and unregistered land.
- 2.2.5 This position was criticised by the Royal Commission on the Land Transfer Acts in 1911, which concluded that the Statutes of Limitation should not distinguish between registered and unregistered land. However, this conclusion was reached without considering the basis for the distinction – that ownership of unregistered land is founded on possession, and ownership of registered land is founded on the register itself.¹⁴
- 2.2.6 The *Land Registration Act 1925* (UK) (the "1925 UK Act") reflected the view of the Royal Commission. The 1925 UK Act sought to apply the principles of adverse possession to registered land "in the same manner and to the same extent" as they apply to unregistered land.¹⁵ However, the existence of the register presented a technical obstacle to the identical treatment of registered and unregistered land – the title of the registered proprietor cannot be extinguished without a change to the register. The 1925 UK Act attempted to overcome

¹¹ Burns, p. 780.

¹² Burns, p. 780.

¹³ *Land Transfer Act 1897* (UK), section 12.

¹⁴ United Kingdom Law Commission, *Land Registration for the Twenty-First Century: A Consultative Document* (Law Com No. 254), p. 210.

¹⁵ *Land Registration Act 1925* (UK), s 75.

this obstacle by stipulating that the registered proprietor's title would not be extinguished by an adverse possessor, but that the land would be held by the registered proprietor on trust for the adverse possessor.¹⁶ This remains the position in the Cayman Islands.¹⁷

2.3 Leading adverse possession cases

2.3.1 Two leading United Kingdom decisions comprehensively outline the common law elements of adverse possession.

*Powell v McFarlane*¹⁸

2.3.2 The High Court decision in *Powell* clarified a number of important principles of the law of adverse possession. Powell lived on his grandfather's farm (which later became his). The disputed land was next to the farm. McFarlane bought the disputed land but soon afterwards moved abroad for several years. Powell, then aged 14, began to use the land to graze a cow, used the land for shooting, repaired fences and kept a goat there. These activities were spaced out over many years. Powell sought a declaration to the effect that he had been in adverse possession for more than 12 years. This claim was rejected on the grounds that the relevant actions were too trivial to constitute the requisite degree of possession.

2.3.3 Slade J summarised the elements of adverse possession as follows:

- “(1) In the absence of evidence to the contrary, the owner of land with the paper title is deemed to be in possession of the land, as being the person with the prima facie right to possession...
- (2) If the law is to attribute possession of land to a person who can establish no paper title to possession, he must be shown to have both factual possession and the requisite intention to possess (“*animus possidendi*”).
- (3) Factual possession signifies an appropriate degree of physical control. It must be single and conclusive possession...The question what acts constitute a sufficient degree of exclusive physical control must depend on

¹⁶ *Land Registration Act 1925* (UK), s 75.

¹⁷ *Registered Land Act (2018 Revision)*, s 135.

¹⁸ [1977] 38 P & CR 452.

the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed...It is impossible to generalise with any precision as to what acts will or will not suffice to evidence factual possession...Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no-one else has done so.

- (4) The *animus possidendi*...involves the intention, in one's own name and on one's own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow...[A] person seeking to dispossess an owner must, in my judgment, at least make his intentions sufficiently clear so that the owner, if present at the land, would clearly appreciate that the claimant is not merely a persistent trespasser, but is actually seeking to dispossess him."¹⁹

*JA Pye (Oxford) Ltd v Graham*²⁰

2.3.4 The House of Lords considered the doctrine of adverse possession in the well-known case of *Pye*. The case concerned a farming family, the Grahams, who had occupied registered land owned by JA Pye (Oxford) Ltd ("Pye") under a grazing agreement. After the agreement expired in 1983, the Grahams remained in occupation despite requests to vacate, and without making further payments. Although the Grahams offered to enter into a further agreement, this did not occur, and, after 1986, Pye did little in relation to the land until 1998, when proceedings to recover the land were commenced.

2.3.5 The first instance judge held that time had begun to run against Pye when the grazing agreement expired, even though Pye had made requests for the Grahams to vacate, and the Grahams had offered to enter into a further agreement. The Court of Appeal overturned

¹⁹ [1977] 38 P & CR 452, 470-480.

²⁰ [2000] Ch 676 (Ch D); [2002] UKHL 30; [2003] 1 AC 419 (HL).

this, finding that the limitation period did not start running until 1986, after Pye had apparently abandoned attempts to recover the land.

2.3.6 The House of Lords reversed the decision of the Court of Appeal and held that the Grahams had established the required elements of actual possession and intention to possess for the required period. Lord Browne-Wilkinson confirmed that the two elements necessary for legal possession are:

1. A sufficient degree of physical custody and control ("factual possession").
2. An intention to exercise such custody and control on one's own behalf and for one's own benefit ("intention to possess").

Lord Browne-Wilkinson emphasised that what is required to satisfy the requisite intention element is not an intention to own or even an intention to acquire ownership, but simply an intention to possess.

2.3.7 The *Pye* case eventually made its way to the Grand Chamber of the European Court of Human Rights, which considered whether the statutes governing adverse possession (comprised, at the relevant time, of the *Limitation Act 1980* (UK) and the *Land Registration Act 1925* (UK)), violated the right to peaceably enjoy property under Article 1 of Protocol No. 1 to the European Convention on Human Rights. The Court held²¹ that –

“The statutory provisions which resulted in the applicant companies' loss of beneficial ownership were...not intended to deprive paper owners of their ownership, but rather to regulate questions of title in a system in which, historically, 12 years' adverse possession was sufficient to extinguish the former owner's right to re-enter or to recover possession, and the new title depended on the principle that unchallenged lengthy possession gave a title. The provisions of the 1925 and 1980 Acts which were applied to the applicant companies were part of the general land law, and were concerned to regulate, amongst other things, limitation periods in the context of the use and ownership of land as between individuals. The applicant companies were therefore affected, not by a “deprivation of possessions” within the

²¹ Application No 44302/02, 30 August 2007, *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom* (2008) EHRR 45.

meaning of the second sentence of the first paragraph of Article 1, but rather by a “control of use” of land within the meaning of the second paragraph of the provision.”²²

2.3.8 Notably, the Court considered and endorsed the general policy underlying statutes that allow registered land to be subject to adverse possession –

“It is a characteristic of property that different countries regulate its use and transfer in a variety of ways. The relevant rules reflect social policies against the background of the local conception of the importance and role of property. Even where title to real property is registered, it must be open to the legislature to attach more weight to lengthy, unchallenged possession than to the formal fact of registration. The Court accepts that to extinguish title where the former owner is prevented, as a consequence of the application of the law, from recovering possession of land cannot be said to be manifestly without reasonable foundation.”

2.3.9 The decision of the Grand Chamber of the European Court of Human Rights was not unanimous. The dissenting opinion emphasised the distinction between registered and unregistered land in the context of adverse possession –

“...[I]t is not in dispute that limitation periods for the recovery of land may be said to pursue a legitimate aim in the public interest. However, as was pointed out in the Consultative Document of the Law Commission, the law of adverse possession, which does not merely bar claims but has the effect of extinguishing title, can only be justified by “factors over and above those which explain the law of limitations”.

The present case concerns the law of adverse possession as it applies to registered land in which...the reasons traditionally advanced to justify the transfer of beneficial title to the adverse possessor at the end of the limitation period have much less cogency than in the case of unregistered land...[W]here land is registered, it is difficult to see any justification for a legal rule which compels such an apparently unjust result as to deprive the owner of his beneficial title in favour of an adverse possessor.

²² (2008) EHRR 45, [66].

.....

In the case of registered land...title depends not on possession, but on registration as the proprietor. A potential purchaser of land can ascertain the owner of the land by searching the register, and there is no need for a potential vendor to establish title by proving possession.”²³

3 ADVERSE POSSESSION IN THE CAYMAN ISLANDS

3.1 History of land registration in the Cayman Islands

3.1.1 A comprehensive system of land registration was introduced to the Cayman Islands with the enactment of the *Registered Land Law, 1971*, the *Land Adjudication Law, 1971*, and the *Land Surveyors’ Law, 1971*. The enactment of this package of legislation allowed for the determination of boundaries, adjudication of ownership, and registration of land.²⁴

3.1.2 The first step in creating a land registry was to determine boundaries and ownership of existing unregistered land. Under the *Land Adjudication Law, 1971*, land was divided into adjudication areas for the purpose of determining boundaries and ownership of parcels of land within each area. Disputes as to ownership were heard and determined, and an adjudication record compiled for each parcel of land.²⁵ While most boundaries were recorded as demarcated, it was not always possible to determine the actual boundary of a parcel of land on the ground. In these cases, an undemarcated (that is, unadjudicated) boundary was recorded. The process of adjudicating land was completed by September 1977.²⁶

3.1.3 The land adjudication process reflected the deep connection between possession and ownership in the early common law, and the common law principles applicable to adverse possession. This was expressed in the principles of adjudication set out in section 16 to the *Land Adjudication Law, 1971*, which remain in the Act today.

²³ (2008) EHRR 45, [7], [11].

²⁴ Lands & Survey Department, Cayman Islands Government, *Land Registry Procedure Manual*, 2010, p. 20.

²⁵ Lands & Survey Department, p. 21.

²⁶ Lands & Survey Department, p. 22.

- 3.1.4 In preparing the adjudication record, the Records Officer was permitted to record a person's title as either absolute or provisional. To grant an absolute title to land, the Records Officer was required to be satisfied that the person claiming ownership –
- (a) had been in open and peaceful possession of the land for an uninterrupted period of 12 years or more; or
 - (b) had a good documentary title to the land that had not been disturbed by a competing claim.²⁷
- 3.1.5 If the Records Officer was satisfied that a person was in possession of land or had a right to it, but was not satisfied that the person was entitled to an absolute title, a provisional title could be granted. In the case of provisional title, the Records Officer would record any other right or interest affecting the title, or any other qualification to the title.²⁸ A provisional title can be converted to an absolute title under section 29 of the *Registered Land Act (2018 Revision)* if the applicant satisfies the Registrar that –
- (a) the qualification to which the provisional title is subject has ceased to be of effect; or
 - (b) the holder of the provisional title has been in possession for 12 years and there is no effective qualification to which the title is subject.
- 3.1.6 The land adjudication process resulted in the registration of all land in the Cayman Islands. The statute law relating to adverse possession continues to provide a process for acquiring title to unregistered land. However, these provisions have no practical application as no unregistered land remains.

3.2 The current Cayman Islands scheme

- 3.2.1 The doctrine of adverse possession is incorporated into the statute law of the Cayman Islands by way of three Acts:

²⁷ *Land Adjudication Act (1997 Revision)*, s 16(1)(a).

²⁸ *Land Adjudication Act (1997 Revision)*, s 16(1)(d).

- (a) the *Limitation Act (1996 Revision)* provides the basis for limiting a landowner's right to recover land after specified periods of time;
- (b) the *Registered Land Act (2018 Revision)* confirms the application of the doctrine of adverse possession to registered land, and prescribes the procedure for acquiring title to registered land on this basis; and
- (c) the *Land Adjudication Act (1997 Revision)* prescribes the procedure for acquiring title to unregistered land by possession.²⁹

3.2.2 The *Limitation Act (1996 Revision)* provides (in summary):

- (a) that a person cannot bring an action to recover land after the expiry of 12 years from the date on which the right of action accrued (section 19(1));
- (b) the person's right of action to recover land accrues on the later of:
 - (i) the date they are dispossessed of the land or discontinue possession (section 20(1)); or
 - (ii) the date another person takes adverse possession of the land (section 20(9));
- (c) in the case of Crown land, the limitation period is 30 years rather than 12 years (section 21(1)); and
- (d) in the case of unregistered land, the expiry of the limitation period before which a person must bring an action to recover land extinguishes the title of the person to the land (section 23, read with section 135 of the *Registered Land Act (2018 Revision)*).

3.2.3 The *Registered Land Act (2018 Revision)* provides (in summary):

- (a) registered land is subject to rights acquired or in the process of being acquired by virtue of any law relating to the limitation of actions, without those rights being recorded on the Land Register (section 28(f));

²⁹ See 3.1 above.

- (b) the *Limitation Act (1996 Revision)* applies to both registered and unregistered land, but in the case of registered land, the expiry of the limitation period does not operate to extinguish the title of the registered proprietor – instead, the registered proprietor holds the land on trust for the adverse possessor (section 135);
- (c) an adverse possessor who claims to have acquired title to registered land by virtue of the expiry of the limitation period may apply to the Registrar to be registered as the proprietor of the land (section 136); and
- (d) on application by an adverse possessor for registration as proprietor of registered land:
 - (i) the Registrar must advertise the application and give notice of the application to the proprietor of the land (section 137(1) and (2));
 - (ii) if the Registrar is satisfied of the applicant’s title after 1 month has elapsed since notice of the application was given, the Registrar may register the applicant as proprietor of the land, either with absolute or provisional title (section 137(3)); and
 - (ii) either the proprietor or the applicant may apply to the court for the determination of any question arising in relation to the application.

3.2.4 As has been discussed,³⁰ the European Court of Human Rights has considered whether the UK law of adverse possession operates to violate the right to peaceably enjoy property under Article 1 of Protocol No. 1 to the European Convention on Human Rights. It should be noted that, in the Cayman Islands, a law will not violate the right to peaceful enjoyment of property contained in section 15 of the Bill of Rights³¹ to the extent that the law makes provision for the interference with, taking of possession or acquisition of any property in consequence of a limitation of actions.³²

³⁰ See 2.4.4-2.4.6 above.

³¹ Cayman Islands Constitution Order 2009 (S.I. 2009/1379), Schedule 2, Part 1.

³² Cayman Islands Constitution Order 2009 (S.I. 2009/1379), Schedule 2, s 15(2)(a)(viii).

3.2.5 The legislative provisions summarised above are presented in their complete form in Appendix A to this Paper.

4 JUSTIFICATIONS FOR THE DOCTRINE OF ADVERSE POSSESSION

4.1 Allowing land to be acquired by way of possession may first appear to run contrary to the accepted understanding of ownership. The existence and retention of the doctrine has been justified on a number of grounds.

To facilitate conveyancing in unregistered land

4.2 The most straightforward justification for the doctrine of adverse possession is relevant only to unregistered land. Ownership of unregistered land is based on possession, and adverse possession can extinguish earlier rights to possess. Limitation periods in relation to real property appear to have been created in order to facilitate conveyancing in a possession-based system of land ownership.³³ This principle was articulated by Lord Macnaghten in *Perry v Clissold*³⁴ –

“a person in possession of land in the assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner. And if the rightful owner does not come forward and assert his title by process of law within the period prescribed by the provisions of the Statute of Limitations applicable to the case, his right is forever extinguished, and the possessory owner acquires an absolute title.”

4.3 This justification is not relevant to a discussion of adverse possession in the Cayman Islands, since all land is registered.

To protect against stale claims

4.4 Another justification is aligned to the policy underlying statutes of limitation in general – to protect defendants from stale claims and encourage plaintiffs not to “sleep on their rights”. A limitation period provides certainty.³⁵ However, by allowing a person to obtain

³³ Law Com No. 254, p. 204.

³⁴ [1907] AC 73, 79.

³⁵ Law Reform Commission of Hong Kong, *Report: Adverse Possession*, October 2004 (HKLRC 2014), p. 22.

title to land, the doctrine of adverse possession has a positive effect that goes much further than simply barring claims. As a result, it cannot be justified purely on the same basis as the policy of limitations.³⁶

- 4.5 Further, the owner of the land may not know that the possession is taking place. Knowledge of the possession is not required for the limitation period to run against the owner.³⁷ Conversely, the person in possession may have full knowledge of their fault (that is, that they are not entitled to occupy the land) and this knowledge will not bar their claim. Even if the owner of the land does know that the occupation is occurring, there may be justifications for not taking action to resume their own occupation –

“[T]he acts of trespass may not be obvious, or may be trivial and entirely harmless. Further, the owner may not know the law, and may not realise that the failure to take steps to put an end to the situation which is doing him no harm may be prejudicing his position. There may be little or no fault involved. On the other side, the trespasser will usually know that he is trespassing, will already have benefited from the acts of trespass, and will have done nothing whatsoever to deserve the windfall of being given the property in return for having illegitimately used it for a long time. There is no justification for what is essentially a transfer of property without compensation from the deserving to the undeserving...”³⁸

- 4.6 In the case of registered land, it is difficult to argue that a registered proprietor should be expected to exercise vigilance to protect their title from adverse possession – unregistered title is rooted in possession, but registered title is not.³⁹ The basis of title to registered land is the registration itself, and a change in legal ownership requires a change in the register. The integrity of a system of registered title can only be maintained if registered owners can rely on the registration to safeguard their ownership without any further action. It can be argued that the doctrine of adverse possession stands in direct conflict with the fundamental principle of indefeasibility of title that underpins the modern system of registration-based

³⁶ Law Com No. 254, p. 204.

³⁷ Dockray, “Why do we need adverse possession?” [1985] *Conveyancer and Property Lawyer* 272, p. 274.

³⁸ *Beaulane Properties Ltd v Palmer* [2005] 4 All ER 461, at 512, per Deputy High Court Judge Strauss KC.

³⁹ Law Com No. 254, p. 204.

land ownership.⁴⁰ Nonetheless, several justifications for the doctrine of adverse possession in its application to registered land have been advanced.

To prevent land becoming unmarketable

- 4.7 One such justification is that land may become unmarketable if the ownership of the land no longer reflects the reality of the possession of the land and the person in possession has no way to acquire title. This justification has its foundation in the principle that land should not be “wasted”, and that the doctrine of adverse possession allows land that would otherwise be unmarketable to be put to productive use.⁴¹ It is generally accepted that it is in the public interest to encourage the upkeep, improvement and development of land rather than allowing it to be left neglected and unused.⁴²
- 4.8 For example, the registered proprietor of land may abandon the land and be untraceable, or die in circumstances in which no steps are taken to wind up his or her estate. In such a case, the land would be incapable of being dealt with. However, if a squatter were to obtain ownership by virtue of the doctrine of adverse possession, the land would remain “useful”, in the sense that it would remain marketable.⁴³
- 4.9 Another example of a situation in which adverse possession can ensure that land remains marketable is where there have been unregistered dealings with the land. Unlike the previous example, in such a case there is no “theft” of the land. However, the person in possession would be unable to deal in the land unless the reality of their possession is recognised and reflected in a change to the register.⁴⁴

To prevent hardship in cases of mistake

- 4.10 A further justification for applying the doctrine of adverse possession to registered land is that it can prevent hardship in cases of mistake. A squatter may have taken possession of land under a reasonable but mistaken belief that he or she is the true owner. This most commonly occurs if the squatter owns neighbouring land and is under a mistaken belief as

⁴⁰ Law Com No. 254, p. 206.

⁴¹ Law Com No. 254, p. 205.

⁴² HKLRC 2014, p. 22.

⁴³ Law Com No. 254, p. 206.

⁴⁴ Law Com No. 254, p. 207.

to the correct boundary between the two parcels of land. Relying on this mistaken belief, the squatter may have made improvements to the land or otherwise incurred expenditure. If the true owner of the land knew of the squatter's mistake and did not do anything to bring the mistake to the squatter's attention, the squatter may have a claim in proprietary estoppel, but this will not always be the case.⁴⁵ Nonetheless, it has been argued that, in protecting the adverse possessor from hardship, the traditional doctrine of adverse possession does not sufficiently balance the hardship to a landowner who is unaware that his or her land is under the possession of another, and that the limitation period is running.⁴⁶

5 REFORM OF ADVERSE POSSESSION IN THE UNITED KINGDOM

5.1 Law Commission process

- 5.1.2 On 16 September 1998, the Law Commission of England and Wales published a consultative document examining all aspects of the land registration system in the United Kingdom.⁴⁷ The Commission highlighted that while the basis of title to registered land is not possession, but the register itself, this fundamental principle was not reflected in the rules governing adverse possession.⁴⁸
- 5.1.3 The Commission criticised the approach taken by the 1925 UK Act to registered land acquired under the rules of adverse possession (that is, specifying that the registered proprietor holds the land on trust for the adverse possessor). The Commission considered the trust-based system to have created unnecessary uncertainty and confusion,⁴⁹ and suggested that it would have been preferable to protect the adverse possessor's estate in the land as an overriding interest that binds anyone who gains a later interest in the land.⁵⁰
- 5.1.4 The Commission did not simply object to the mechanism by which the 1925 UK Act dealt with adverse possession of registered land. They also considered the very premise of the existing law to be flawed –

⁴⁵ Law Com No. 254, p. 205.

⁴⁶ Dockray, p. 275.

⁴⁷ Law Com No. 254.

⁴⁸ Law Com No. 254, p. 12.

⁴⁹ Law Com No. 254, p. 219.

⁵⁰ Law Com No. 254, p. 214.

“The main weakness of the present law is that the principles which determine whether a registered proprietor will lose his or her title by adverse possession were developed for a possession-based system of title and not one founded on registration. If a system of registered title is to be effective, those who register their titles should be able to rely upon the fact of registration to protect their ownership except where there are compelling reasons to the contrary. All that should be required of them is to keep the Registry informed of their address for service.”⁵¹

5.1.5 The Commission concluded that compelling grounds are required to justify overriding the fact of registration by possession, and identified four such situations –

1. Where the registered proprietor has disappeared and cannot be traced.
2. Where there have been dealings “off the register” so that the register does not reflect the reality of title.
3. Where the register is inconclusive, such as in the case of a boundary dispute.
4. Where a person has entered into possession under a reasonable mistake as to their rights.⁵²

5.1.6 The Law Commission published its Final Report⁵³ on 6 July 2001. In it, the Commission tested the justifications for the doctrine of adverse possession, stating –

“[I]t is frequently said that the doctrine is an embodiment of the policy that defendants should be protected from stale claims and that claimants should not sleep on their rights. However, it is possible for a squatter to acquire title by adverse possession without the owner realising it. This may be because the adverse possession is either clandestine or not readily apparent. It may be because the owner has more land than he or she can realistically police. Many public bodies fall into this category....But the owner may not even realise that a person is encroaching on his or her land. He or she may think that someone is there with permission and it may take an expensive journey to the Court of Appeal to discover whether or not

⁵¹ Law Com No. 254, p. 206.

⁵² Law Com No. 254, p. 206-207.

⁵³ Law Commission, *Land Registration for the Twenty-First Century: A Conveyancing Revolution* (Law Com No. 271).

this is so. In none of these examples is a person in any true sense sleeping on his or her rights. Furthermore, even if a landowner does realise that someone – typically a neighbour – is encroaching on his or her land, he or she may be reluctant to take issue over the incursion, particularly if it is comparatively slight. He or she may not wish to sour relations with the neighbour...In any event, even if the policy against allowing stale claims is sound, the consequences of it under the present law – the loss forever of a person’s land – can be extremely harsh and have been judicially described as disproportionate.

There are other grounds for the doctrine of adverse possession that have greater weight. Land is a precious resource and should be kept in use and in commerce. A person may be in adverse possession where the true owner has disappeared and there is no other claimant for the land. Or he or she may have acquired the land informally so that the legal ownership is not a reflection of the practical reality. A person may have innocently entered land, quite reasonably believing that he or she owned it, perhaps because of uncertainties as to the boundaries.”⁵⁴

5.1.7 The Commission confirmed its earlier view⁵⁵ that, while adverse possession has a necessary place in relation to unregistered land, its unqualified application to registered land is not justifiable –

“The principles of adverse possession do in fact presuppose unregistered title and make sense in relation to it. This is because the basis of title to unregistered land is ultimately possession. The person best entitled to the land is the person with the best right to possession of it...[T]he investigation of title to unregistered land is facilitated (and therefore costs less) because earlier rights to possess can be extinguished by adverse possession. However, where title is registered, the basis of title is primarily the fact of registration rather than possession...[T]he doctrine of adverse possession does have benefits and we do not therefore favour outright abolition in relation to registered land. However, we consider that the balance

⁵⁴ Law Com No. 271, p. 31.

⁵⁵ Law Com No. 254, p. 208.

between landowner and squatter needs to be adjusted to overcome some of the deficiencies outlined above, while maintaining the advantages it can offer.”⁵⁶

5.2 Land Registration Act 2002 (UK)

- 5.2.1 The *Land Registration Act 2002* (UK) (the “2002 UK Act”) gave effect to the Law Commission’s recommendations and made it significantly more difficult for a claim to title of registered land to succeed against the wishes of the registered proprietor. The relevant provisions relating to adverse possession commenced in stages between 13 October 2003 and 13 October 2004.
- 5.2.2 Section 96 of the 2002 UK Act disapplies the limitation periods specified in sections 15 and 16 of the *Limitation Act 1980* (UK) in relation to registered land. Section 96(3) expressly states that section 17 of that Act does not operate to extinguish the title of a person. However, this does not abolish the right to claim title to registered land by way of adverse possession entirely. The Act sets out the procedure for registration of an adverse possessor in Schedule 6.
- 5.2.3 Under the new scheme, a person in adverse possession of land for at least 10 years may apply to be registered as the proprietor of the land, but the registered proprietor must be given notice of the application and an opportunity to respond to the application.⁵⁷ In itself, this change to the law places registered proprietors in a much stronger position to defend their title against claims by adverse possessors.
- 5.2.4 If the registered proprietor does not respond to the notice, the applicant is entitled to be registered as proprietor of the estate without establishing anything further. However, if the registered proprietor responds to the notice by objecting to the application and the Registrar is unable to dispose of the objection by agreement between the parties, the matter must be referred to the First-tier Tribunal for determination. The adverse possessor will only succeed in their application if one of three conditions are met.⁵⁸

⁵⁶ Law com No. 271, p. 32.

⁵⁷ Land Registration Act 2002 (UK), Schedule 6, paragraphs 1, 2 and 3.

⁵⁸ Land Registration Act 2002 (UK), Schedule 6, paragraphs 4 and 5.

Condition 1

The following circumstances apply:

- (a) it would be unconscionable because of an equity by estoppel for the registered proprietor to seek to dispossess the applicant; and
- (b) the circumstances are such that the applicant ought to be registered as the proprietor.

Condition 2

The applicant is for some other reason entitled to be registered as the proprietor.

Condition 3

The following circumstances apply:

- (a) the land to which the application relates is adjacent to land belonging to the applicant;
- (b) the exact line of the boundary between the two has not been determined under rules made under the Act;
- (c) for at least 10 years of the period of adverse possession ending on the date of the application, the applicant (or any predecessor in title) reasonably believed that the land to which the application relates belonged to them; and
- (d) the estate to which the application relates was registered more than one year prior to the date of the application.

5.2.5 An adverse possessor who fails in an application for registration may apply again after the expiry of 2 years, but only if they:

- (a) remain in possession;
- (b) are not defending an action for possession by the registered proprietor;
- (c) have not been subject to a judgment for possession against them; and

(d) have not been evicted following a judgment for possession.⁵⁹

5.2.6 If the adverse possessor meets these criteria and makes a new application, they are entitled to be registered as proprietor of the estate.⁶⁰ This essentially puts the registered proprietor who has defeated an application for registration by an adverse possessor on notice – they must take action to obtain possession of the land within 2 years after the application was rejected, or risk a further application which will result in their title being extinguished.

5.2.7 In addition to the obvious protections the new scheme affords to registered proprietors, there are more subtle consequences that address some of the concerns raised by the Commission in relation to neighbouring land. Because the limitation period no longer applies to registered land, the registered proprietor's title will never be barred simply by the passage of time. As such, the adverse possessor is required to take the initiative to extinguish the registered proprietor's title. The Commission noted that –

“This is a significant point in a case involving neighbours. A neighbour cannot be criticised for objecting to such an application and acting upon it, where he or she might have been regarded as a trouble maker if he or she had taken steps on his or her own initiative against the encroaching neighbour.”⁶¹

5.3 The 2002 UK Act in practice

*Baxter v Mannion*⁶²

5.3.1 This case concerned a field purchased by Mr. Mannion in 1996. Mr. Baxter, who lived nearby, applied to be registered as the proprietor of the field on the basis that he had used the field as a pasture for his horses (without payment) since 1985. Mr. Mannion failed to respond to the notice of the application, and as such Mr. Baxter was not required to establish that one of the conditions in Schedule 6, paragraph 5 of the 2002 UK Act was met. Mr. Baxter was registered as proprietor of the field. Mr. Mannion then applied under Schedule 4, paragraph 5(a) of the Act for the Registrar to alter the register to correct a

⁵⁹ Land Registration Act 2002 (UK), Schedule 6, paragraph 6.

⁶⁰ Land Registration Act 2002 (UK), Schedule 6, paragraph 7.

⁶¹ Law Com No. 271, p. 33 at note 149.

⁶² [2010] 1 WLR 1965; [2010] All ER 173.

mistake, on the basis that Mr. Baxter had not actually been in possession of the field to the extent required to satisfy the elements of adverse possession. Mr. Mannion's application was successful and the register was altered. Mr. Baxter appealed on the basis that the register could only be altered to correct a mistake of a procedural nature, and that the application for registration based on adverse possession had been made and decided in accordance with the requirements of the Act.

5.3.2 Mr. Baxter's appeal was unsuccessful, with Henderson J taking a purposive approach rather than accepting the strict compliance with procedural requirements demonstrated by Mr. Baxter –

“42. First, the general policy of the 2002 Act was severely to limit the circumstances in which a squatter could acquire title to registered land, and to offer greater security of title for a registered proprietor than existed under the previous law...In the light of this policy, it would be very strange if a registered proprietor could, for the first time, be at risk of irrevocably losing his land to a squatter who had never in fact been in adverse possession. It would also be a wholly disproportionate penalty for failure to serve a counter notice, especially where (as in the present case) there are extenuating circumstances, which help to explain, even if they do not fully excuse, the failure.

43. Secondly, Mr Baxter's interpretation of the 2002 Act would be an invitation for fraud. It would potentially reward a dishonest applicant who succeeded in persuading the registrar that he had been in adverse possession by telling lies about the nature and extent of his use of the land...”⁶³

5.3.3 This case highlights a possible gap in the scheme prescribed by the 2002 UK Act. If a registered proprietor fails to respond to the notice of application for registration by the adverse possessor, nothing further needs to be established in order for the possessor to gain registration. Mr. Baxter's use of the land did not satisfy the elements of factual possession and requisite intention that have long been part of the settled law of adverse possession.

⁶³ [2010] All ER 173, [42], [43].

The goal of the 2002 UK Act was to strike a fairer balance between the rights of registered proprietors and adverse possessors – it does not achieve this if a registered proprietor can lose their title purely as a result of failing to respond to a notice. It would be preferable to require a further step to be taken – that the Registrar must assess whether or not the person claiming title has in fact met the basic requirements of possession. A registered proprietor who fails to respond to notice of the application would still be at a disadvantage, as they would be unable to present evidence to contradict the applicant’s claim. However, a situation in which the claimant is registered despite having a patently baseless claim to possession would be avoided.

*Dowse v City of Bradford*⁶⁴

- 5.3.4 This case concerned a dispute over 2 acre parcel of land located between the rear gardens of a row of residential houses and a railway with adjacent allotment land. The applicants, Mr. and Mrs. Dowse, owned one of the houses and their rear garden adjoined the disputed land but was separated from it by a fence. Their boundary with the disputed land had not been determined, but comprised only a small part of the entire boundary of the disputed land, which ran all along the rear gardens of the row of houses.
- 5.3.5 Mr. and Mrs. Dowse claimed to have been in adverse possession of the disputed land since 1974. They had previously applied unsuccessfully for registration of title to the land under the pre-2002 UK Act scheme. That application was rejected on the basis that they had only used the disputed land for grazing and that it was not in their exclusive possession (in other words, they failed to establish the required factual possession and intention). The Dowses proceeded to increase their use of the land, including by parking a caravan on the land and making access to the land more difficult. They then re-applied for registration under the new 2002 UK Act, which was disputed by the Bradford Council.
- 5.3.6 The Dowses relied on the third condition contained in Schedule 6, paragraph 5(4) of the 2002 UK Act (and outlined in paragraph 5.2.4 above). They argued that they held a reasonable belief that the land belonged to them, but not as a result of a disputed boundary.

⁶⁴ [2020] UKUT 202 (LC).

Rather, they believed that they owned the land in addition to their own land. The Dowses' application was dismissed by the First Tier Tribunal and they appealed unsuccessfully to the Upper Tribunal.

5.3.7 The case clarified an important issue of interpretation regarding the wording of paragraph 5(4). The provision does not expressly require the applicant to believe that the legal boundary between their land and the disputed land is in a different location to that shown on the Land Register. However, the Upper Tribunal found that this is implied, and that "the exception [in paragraph 5(4)] is to the effect that the applicant was justified in believing that the true position of the boundary was where he believed it to be".⁶⁵

5.3.8 In addition, the Upper Tribunal held that paragraph 5(4)(a) required "whole (or substantially the whole)" of the disputed land to be "capable of being described as 'adjacent to' the applicant's land".⁶⁶ This was not the case with the land in question, where only a small part of the disputed land adjoined the applicant's land.

5.3.9 The Upper Tribunal also clarified an important issue relating to the interpretation of the paragraph 5(4) requirement that the adverse possessor reasonably believe that "the land to which the application relates belonged to him". The First Tier Tribunal held that the Dowses did not meet this requirement because they did not believe that they held paper title to the disputed land. The Upper Tribunal rejected this interpretation, finding that the words "belonged to" were deliberately used to convey a broader meaning than ownership in the sense of holding the paper title.⁶⁷

6 ADVERSE POSSESSION IN OTHER COMMON LAW JURISDICTIONS

6.1 Australia

6.1.1 Land law in Australia is a state and territory matter. As such, the law of adverse possession varies to some degree between the eight states and territories.

⁶⁵ [2020] UKUT 202 (LC), [41].

⁶⁶ [2020] UKUT 202 (LC), [42].

⁶⁷ [2020] UKUT 202 (LC), [46].

Unregistered Land

6.1.2 Adverse possession is not part of the land law of the Australian Capital Territory or the Northern Territory. Section 5 of the *Limitation Act 1985* (ACT) expressly prohibits limitation periods from applying to actions to recover land, and the *Limitation Act 1981* (NT) does not provide for a limitation period in relation to such actions.

6.1.3 All the states allow for adverse possession in relation to unregistered land. In most cases, the relevant limitation period is 12 years,⁶⁸ while in two states it is 15 years.⁶⁹ In relation to Crown land, no adverse possession claim is permitted in Queensland, Victoria and Western Australia, while the limitation period in relation to Crown land is 30 years in New South Wales⁷⁰ and Tasmania,⁷¹ and 60 years in South Australia.⁷² The expiration of the limitation period has the effect of extinguishing the owner's title to the land.⁷³

Registered land

6.1.4 Adverse possession in relation to registered land has been retained as part of the land law of all the states, but not the two territories (as mentioned above). In South Australia, Queensland, New South Wales, Victoria and Western Australia, a successful claim to adverse possession results in the title of the registered proprietor being extinguished. This occurs after a process that differs slightly between jurisdictions but essentially takes the form of the following steps –

1. The person in possession applies to the Registrar for title to the land.
2. Notice of the application is published and given to the registered proprietor and anyone else with an interest in the land.

⁶⁸ *Limitation Act 1969* (NSW), s 27(2); *Limitation of Actions Act 1974* (QLD), s 13; *Limitation Act 1974* (Tas), s 10(2); *Limitation Act 2005* (WA), s 19 & *Limitation Act 1935* (WA), s 4.

⁶⁹ *Limitation of Actions Act 1936* (SA), s 4; *Limitation of Actions Act 1958* (Vic), s 8.

⁷⁰ *Limitation Act 1969* (NSW), s 27(1), (4).

⁷¹ *Limitation Act 1974* (Tas), s 10(1).

⁷² *South Australian Co v City of Port Adelaide* [1914] SALR 161.

⁷³ *Limitation Act 1969* (NSW), s 65(1); *Limitation of Actions Act 1974* (QLD), s 24(1); *Limitation of Actions Act 1936* (SA), s 28; *Limitation Act 1974* (Tas), s 21; *Limitation of Actions Act 1958* (Vic), s 16; *Limitation Act 2005* (WA), s 75.

3. If, after the expiration of a period specified in the notice, no-one has lodged a caveat on the land, the Registrar may issue the title to the land to the applicant.
4. If a person lodges a caveat during the period specified in the notice, the Registrar must determine the entitlement of the caveator and, if not satisfied with the caveator's claim, notify the caveator that they may take proceedings in court to establish title within a specified period.
5. If the caveator fails to commence proceedings, or fails to establish title in such proceedings, the Registrar may issue title to the possessor.⁷⁴

The person claiming possession is also required to demonstrate the common law requirements of actual possession and requisite intention.

6.1.5 Tasmania takes a stricter approach, under the *Land Titles Act 1980* (Tas), in the following ways:

1. The procedure established by the Act applies to both registered and unregistered land.⁷⁵
2. In determining the period of possession, any period during which the owner of the land has paid local council rates is disregarded.⁷⁶
3. The expiry of the limitation period does not extinguish the title of a registered proprietor, but where the title would have been extinguished had the land not been registered, the registered proprietor holds the land on trust for the adverse possessor.⁷⁷

6.2 Canada

6.2.1 Some provinces in Canada use a deeds registration system of land conveyancing, rather than a land titles system. Only the provinces and territories that use a land titles system will be examined here.

⁷⁴ *Real Property Act 1900* (NSW); *Land Title Act 1994* (Qld); *Real Property Act 1886* (SA); *Transfer of Land Act 1958* (Vic); *Transfer of Land Act 1893* (WA).

⁷⁵ s 138H.

⁷⁶ s 138U(1).

⁷⁷ s 138W(2).

- 6.2.2 The only land titles jurisdictions in Canada that allow adverse possession in relation to registered land are Alberta, the Northwest Territories and Nunavut.⁷⁸ In each case, adverse possession applies only in relation to privately owned land, and in each case the limitation period is 10 years.⁷⁹
- 6.2.3 The Alberta Law Reform Institute recently undertook a lengthy project examining the law of adverse possession. The Institute concluded that there are no longer compelling policy reasons to retain adverse possession in Alberta, and recommended the inclusion of a positive statement in the *Land Titles Act*⁸⁰ that no title or interest in land may be acquired by adverse possession, and amendments to the *Limitations Act*⁸¹ to abolish the limitation period for claims to recover possession of real property.⁸² However, the Institute recommended a corresponding amendment to section 69 of the *Law of Property Act*,⁸³ which provides for a person who makes lasting improvements to land under the mistaken belief that the land was the person's own to receive compensation from the owner of the land. The Institute recommended removing the requirement for the improver to establish their belief that they owned the land, broadening the category of cases in which compensation would be payable under the provision.⁸⁴

6.3 Bermuda

- 6.3.1 Section 16 of the *Limitation Act 1984* (Bermuda) provides for a limitation period of 20 years in relation to land. Section 18 provides that expiration of the limitation period results in the owner's title being extinguished. The First Schedule to the Act (clause 9) provides that the limitation period in relation to Crown land is 60 years.

⁷⁸ *Land Titles Act*, RSA 2000, c L-4, s 74; *Limitation of Actions Act*, RSNWT 1988, c L-8, ss 2(1)(e), 18, 19, 43; *Limitation of Actions Act*, RSNWT 1988 (Nu), c L-8, ss 2(1)(e), 18, 19, 43 (the Northwest Territories Act applies as a law of Nunavut, having been duplicated by the *Nunavut Act*, SC 1993, c 28, s 29).

⁷⁹ *Limitations Act*, RSA 2000, c L-12, s 3(1)(b); *Limitation of Actions Act*, RSNWT 1988, c L-8, s 18; *Limitation of Actions Act*, RSNWT 1988 (Nu), c L-8, s 18 (the Northwest Territories Act applies as a law of Nunavut, having been duplicated by the *Nunavut Act*, SC 1993, c 28, s 29).

⁸⁰ RSA 2000, c L-4.

⁸¹ RSA 2000, c L-12.

⁸² Alberta Law Reform Institute, *Adverse Possession and Lasting Improvements to Wrong Land: Final Report 115*, April 2020 (ALRI FR 115), p. 103.

⁸³ RSA 2000, c L-7.

⁸⁴ ALRI FR 115, p. 104.

6.3.2 However, the *Land Title Registration Act 2011* (Bermuda) significantly curtails a person's ability to acquire registered land by adverse possession. Section 108(2) specifies that no right of action accrues under section 16 of the *Limitation Act 1984* in relation to registered land unless –

- (a) the land in question has an area no greater than one fifth of the area of all the land in the relevant parcel; and
- (b) the adverse possessor is the owner of an estate in other land that is adjacent to that land, or is entitled to be registered as the owner of a registered estate in other land that is adjacent to that land.

6.3.3 These restrictions reflect the adjacency requirement of the 2002 UK Act, but severely restrict the amount of registered land that can be acquired in this way to just one fifth of the total parcel. As such, this provision appears to be targeted quite precisely at rectifying situations in which prolonged possession has occurred as a result of mistaken boundaries between neighbouring parcels of land.

6.4 Barbados

6.4.1 Section 25 of the *Limitation of Actions Act*, Cap. 231 (Barbados) provides for a limitation period of 10 years in relation to private land, and 30 years in relation to Crown land. Section 37 of the Act provides that, subject to the *Land Registration Act*, Cap. 229 (Barbados), the expiration of the limitation period results in the owner's title being extinguished.

6.4.2 The procedure under the *Land Registration Act*, Cap. 229 for acquiring title to registered land by adverse possession is similar to the current procedure in the Cayman Islands under the *Registered Land Act (2018 Revision)*. Notice of the application is required to be published and given to all affected persons, following which the Registrar may issue title without further steps being taken.

7 OPTIONS FOR REFORM AND RECOMMENDATIONS

7.1 Is reform necessary?

- 7.1.1 Many of the jurisdictions studied in this Paper have a long history of contentious adverse possession cases proceeding to the highest levels of the judicial system. Such cases gain significant publicity and prompt concern and disquiet in the community regarding the concept of adverse possession and its implications for landowners. While the courts of the Cayman Islands have not been similarly exercised, a small number of applications for registration based on adverse possession are made under section 136 of the *Registered Land Act (2018 Revision)* each year. As land values increase and vacant land becomes increasingly scarce, it is reasonable to predict an increase in such applications over time. Some of these applications will, no doubt, be contested and culminate in court proceedings. As such, a lack of contentious adverse possession cases at the present time is not a justification for inaction.
- 7.1.2 In addition, it is important to recognise that the historical basis for the doctrine of adverse possession no longer applies in the Cayman Islands. The Law Reform Commission accepts that ownership of unregistered land is rooted in possession. This is reflected in the *Land Adjudication Act (1997 Revision)*, which provided the foundation for the modern land ownership system in the Cayman Islands. The justifications for maintaining the doctrine of adverse possession as it applies to unregistered land in other jurisdictions are sound. However, they are not relevant in a jurisdiction in which all land is registered.
- 7.1.3 As has been discussed in this Paper, there are cogent policy reasons to reconsider the law of adverse possession as it applies to registered land. There is a global trend towards reform and, in some cases, abolition of the doctrine in relation to registered land. There is a fundamental conflict between the concept of indefeasibility of title and adverse possession, and its retention in its current form compromises the primacy of the Land Register as the foundation of our system of title by registration. The existing system attempts to shoehorn a historical doctrine based on a system of ownership by possession into a modern system of title by registration.

RECOMMENDATION
<i>The Law Reform Commission recommends reforming the law of adverse possession.</i>

7.2 Should the doctrine of adverse possession be abolished?

7.2.1 While some jurisdictions have taken the step of abolishing the doctrine of adverse possession in relation to registered land entirely, there are arguments for its retention in a modified form. There are limited circumstances in which the abolition of the doctrine of adverse possession could result in land becoming unmarketable, or a person being unfairly disadvantaged, such as those identified by the Law Commission of England and Wales⁸⁵ –

1. Where the registered proprietor has disappeared and cannot be traced.
2. Where there have been dealings “off the register” so that the register does not reflect the reality of title.
3. Where the register is inconclusive, such as in the case of a boundary dispute.
4. Where a person has entered into possession under a reasonable mistake as to their rights.

7.2.2 The Law Reform Commission considers that much of the perceived and actual unfairness of the existing system of adverse possession can be remedied by amendments to the law to more fairly reflect the rights of registered proprietors and protect the integrity of the system of title by registration. However, the Commission also acknowledges the strong argument that the doctrine of adverse possession is fundamentally at odds with a system of title by registration, and that a person disadvantaged in the circumstances identified by the Law Commission of England and Wales has access to other remedies, such as proprietary estoppel.

7.3 Options for reform

7.3.1 The Commission presents two options for reform for consideration –

⁸⁵ Law Com No. 254, p. 206-207.

1. Abolish the doctrine of adverse possession entirely.
2. Amend the law to restrict the circumstances in which title to registered land can be acquired by adverse possession.

Option 2: Proposed scheme

7.3.2 If option 2 is pursued, the Commission proposes the following scheme, which is a modified version of the scheme introduced by the 2002 UK Act. It consists of 4 main elements –

1. Abolishing the limitation period for causes of action to recover land.
2. Strengthening the procedure to be followed when a person applies for registration based on adverse possession to more fairly balance the rights of registered proprietors.
3. Limiting the circumstances in which a person can succeed in a claim for registration based on adverse possession.
4. Requiring an applicant for registration based on adverse possession to establish their entitlement to registration even when the registered proprietor does not respond to notice of the application (but not if the registered proprietor expressly consents to the application).

7.3.3 The abolition of the limitation period would require the following amendments –

1. Section 19 of the *Limitation Act (1996 Revision)* specifies that no action can be brought for the recovery of land after the expiration of 12 years from the date on which the right of action accrues. In other words, 12 years after a person is dispossessed of their land by a squatter, they lose their right to take action to recover the land. Section 19 would be amended to specify that it does not apply to an action to recover registered land. The effect of this amendment would be that a registered proprietor would never be barred only by passage of time from recovering land from an adverse possessor.
2. Section 135 of the *Registered Land Act (2018 Revision)* provides that, in the case of registered land, the expiry of the limitation period does not extinguish the

registered proprietor's title, but the registered proprietor is deemed to hold the title on trust for the adverse possessor. This section would be repealed to reflect the disapplication of the limitation period in relation to registered land.

3. Section 23 of the *Limitation Act (1996 Revision)* provides that, subject to section 135 of the *Registered Land Act (2018 Revision)*, the expiry of the limitation period in relation to land extinguishes the title of the owner of the land. A consequential amendment would be required to reflect the repeal of section 135 of the *Registered Land Act (2018 Revision)*.

7.3.4 Sections 136 and 137 of the *Registered Land Act (2018 Revision)* would be repealed and replaced with provisions outlining the basis and procedure for an adverse possessor to acquire title to registered land. The provisions would provide as follows –

1. A person may apply to the Registrar to be registered as the proprietor of registered land if the person –
 - (a) has been in adverse possession of the land for a specified period; and
 - (b) satisfies one of the criteria for registration.
2. The required nature of possession (factual possession and requisite intention) that constitutes adverse possession would be articulated.
3. The criteria for registration would be as follows –

Criteria 1

The applicant is entitled to be registered as the proprietor as a result of an unregistered dealing between the applicant and the registered proprietor. This criteria would only apply in a very narrow set of circumstances, such as where the registered proprietor, after exhaustive efforts, cannot be located.

Criteria 2

The applicant is able to establish that all the following circumstances apply:

- (a) the land to which the application relates is adjacent to land belonging to the applicant;
 - (b) either –
 - (i) the boundary line between the two parcels of land is undemarcated;
or
 - (ii) the applicant had a reasonable but mistaken belief that the boundary line was different to the demarcated boundary line;
 - (c) for the entire period of adverse possession, ending on the date of the application, the applicant reasonably but mistakenly believed that the land to which the application relates belonged to the applicant; and
 - (d) the applicant, to the knowledge or acquiescence of the registered proprietor, made lasting improvements to the land in reliance on the reasonable but mistaken belief of ownership.
4. The registered proprietor must be given notice of the application and a period of 30 days to respond to the application. If the registered proprietor fails to respond, the registered proprietor must be given the notice again and a further 30 days to respond. This ensures the registered proprietor is given sufficient opportunity to respond.
5. If the registered proprietor does not respond to the notice, the applicant must establish, to the satisfaction of the Registrar, that he or she –
- (a) has in fact been in adverse possession of the land for the required period;
and
 - (b) satisfies one of the criteria for registration.
6. If the registered proprietor responds to the notice by objecting to the application and the Registrar is unable to dispose of the objection by agreement between the parties, the matter must be referred to the Grand Court for determination.

7.3.5 The Commission leaves the question of the required period of adverse possession open for discussion, but recommends a period of at least 12 years.

8 CONCLUSION

8.1 The options for reform outlined in this Discussion Paper provide the basis for consultation to determine the best option for reform in the Cayman Islands. The Commission invites submissions on the issues identified in this Paper and the recommendations made in Part 7.

APPENDIX A

LEGISLATIVE PROVISIONS GOVERNING ADVERSE POSSESSION IN THE CAYMAN ISLANDS

Limitation Act (1996 Revision)

19. Time limit for actions to recover land

- (1) An action shall not be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.
- (2) Subject to subsections (3) to (6), where —
 - (a) the interest claimed was an interest in reversion, remainder or any other future interest, and the right of action to recover the land accrued on the date on which the interest fell into possession by the determination of the preceding interest; and
 - (b) the person entitled to the preceding interest (not being a term of years absolute) was not in possession of the land on that date,

no action shall be brought by the person entitled to the succeeding interest after the expiration of twelve years from the date on which the right of action accrued to the person entitled to the preceding interest or six years from the date on which the right of action accrued to the person entitled to the succeeding interest, whichever period last expires.
- (3) No person shall bring an action to recover any interest in land under an assurance taking effect after the right of action to recover the land had accrued to the person by whom the assurance was made, some person through whom he claimed or some person entitled to a preceding interest, unless the action is brought within the period in which the person by whom the assurance was made could have brought such an action.
- (4) Where any person is entitled to any interest in land in possession and, while so entitled, is also entitled to any future interest in that land, and his right to recover the interest in possession is barred under this Law, no action shall be brought by that person or by any person claiming through him, in respect of the future interest, unless in the meantime possession of the land has been recovered by a person entitled to an intermediate interest.
- (5) Section 20 contains provisions for determining the date of accrual of a right of action to recover land in the cases therein mentioned.

- (6) Section 21 contains provisions modifying this section in its application to an action brought by, or by a person claiming through, the Crown.

20. Provisions with respect to actions to recover land

- (1) Where the person bringing an action to recover land or some person through whom he claims has been in possession of the land, and has while entitled to the land been dispossessed or discontinued his possession, the right of action shall be treated as having accrued on the date of such dispossession or discontinuance.
- (2) Where any person brings an action to recover any land of a deceased person and that deceased person was —
 - (a) on the date of his death in possession of the land; and
 - (b) the last person entitled to the land to be in possession of it,the right of action shall be treated as having accrued on the date of his death.
- (3) Where any person brings an action to recover land, being an interest in possession assured otherwise than by will to himself or to some person through whom he claims and —
 - (a) the person making the assurance was on the date when the assurance took effect in possession of the land; and
 - (b) no person has been in possession of the land by virtue of the assurance,the right of action shall be treated as having accrued on the date when the assurance took effect.
- (4) The right of action to recover any land shall, in any case where —
 - (a) the interest claimed was an interest in reversion, remainder or any other future interest; and
 - (b) no person has taken possession of the land by virtue of the interest claimed,be treated as having accrued on the date on which the interest fell into possession by the determination of the preceding interest.
- (5) A tenancy from year to year or other period, without a lease in writing, shall, for the purposes of this Law, be treated as being determined at the expiration of the first year or other period; and accordingly the right of action of the person entitled to the land subject to the tenancy shall be treated as having accrued at the date on which, in accordance with this subsection, the tenancy is determined:

Provided that, where any rent has subsequently been received in respect of the tenancy, the right of action shall be treated as having accrued on the date of the last receipt of rent.

- (6) Where —
- (a) any person is in possession of land by virtue of a lease in writing (other than a lease granted by the Crown) by which a rent of not less than twenty dollars a year is reserved;
 - (b) the rent is received by some person wrongfully claiming to be entitled to the land in reversion immediately expectant on the determination of the lease; and
 - (c) no rent is subsequently received by the person rightfully so entitled,
- the right of action to recover the land of the person rightfully so entitled shall be treated as having accrued on the date when the rent was first received by the person wrongfully claiming to be so entitled and not on the date of the determination of the lease.
- (7) Subject to subsection (8), a right of action to recover land by virtue of a forfeiture or breach of condition shall be treated as having accrued on the date on which the forfeiture was incurred or the condition broken.
- (8) If any right referred to in subsection (7) has accrued to a person entitled to an interest in reversion or remainder and the land was not recovered by virtue of that right, the right of action to recover the land shall not be treated as having accrued to that person until his interest fell into possession, as if no such forfeiture or breach of condition had occurred.
- (9) No right of action to recover land shall be treated as accruing unless the land is in the possession of some person in whose favour the period of limitation can run (referred to in this subsection and in subsections (10), (11) and (12) as “adverse possession”); and where under subsections (1) to (8) any such right of action is treated as accruing on a certain date and no person is in adverse possession on that date, the right of action shall not be treated as accruing unless and until adverse possession is taken of the land.
- (10) Where a right of action to recover land has accrued and after its accrual, before the right is barred, the land ceases to be in adverse possession, the right of action shall no longer be treated as having accrued and no fresh right of action shall be treated as accruing unless and until the land is again taken into adverse possession.
- (11) For the purpose of determining whether a person occupying any land is in adverse possession, it shall not be assumed by implication of law that his occupation is by permission of the person entitled to the land merely by virtue of the fact that his

occupation is not inconsistent with the latter's present or future enjoyment of the land:

Provided that this subsection shall not be taken as prejudicing a finding to the effect that a person's occupation of any land is by implied permission of the person entitled to the land in any case where such a finding is justified on the actual facts of the case.

- (12) For the purposes of subsections (9) and (10), receipt of rent under a lease by a person wrongfully claiming to be entitled to the land in reversion immediately expectant on the determination of the lease shall be treated as adverse possession.
- (13) Where any land to which the Settled Land Law [Cap. 156] applies or any land held on trust for sale is in the possession of a person entitled to a beneficial interest in the land or in the proceeds of sale (not being a person solely or absolutely entitled to the land or the proceeds), no right of action to recover the land shall be treated for the purposes of this Law as accruing during that possession to any person in whom the land is vested as tenant for life or trustee, or to any other person entitled to a beneficial interest in the land or the proceeds of sale.

21. Modifications of s.19 re Crown

- (1) Subject to subsections (2) and (3), section 19(1) applies to the bringing of an action to recover any land by the Crown as if "thirty years" were substituted for "twelve years".

23. Extinction of title to land

Subject to —

- (a) section 24; and
- (b) section 135 of the Registered Land Law (1995 Revision),

at the expiration of the period prescribed by this Law for any person to bring an action to recover land, including a redemption action, the title of that person to the land shall be extinguished.

Registered Land Act (2018 Revision)

28. Overriding interests

Unless the contrary is expressed in the register, all registered land shall be subject to such of the following overriding interests as may for the time being subsist and affect the same, without their being noted on the register —

- (a) rights of way, rights of water and any easement or profit subsisting at the time of first registration under this Law;

- (b) natural rights of light, air, water and support;
- (c) rights of compulsory acquisition, resumption, entry, search, user or limitation of user conferred by any other law;
- (d) leases or agreements for leases for a term not exceeding two years, and periodic tenancies within the meaning of section 2;
- (e) any unpaid moneys which, without reference to registration under this Law, are expressly declared by any law to be a charge upon land;
- (f) rights acquired or in process of being acquired by virtue of any law relating to the limitation of actions or by prescription;
- (g) the rights of a person in actual occupation of land or in receipt of the rents and profits thereof save where inquiry is made of such person and the rights are not disclosed; and
- (h) electric supply lines, telephone and telegraph lines or poles, pipelines, aqueducts, canals, weirs and dams erected, constructed or laid in pursuance or by virtue of any power conferred by any law:

Provided that the Registrar may direct registration of any of the liabilities, rights and interests hereinbefore defined in such manner as he thinks fit.

135. Acquisition of title by possession

The Limitation Law (1996 Revision) shall apply to registered land in the same manner and to the same extent as it applies to land not registered, except that where, if the land were not registered, the estate, right or interest of the owner therein would be extinguished, such estate, right or interest shall not be extinguished but shall be deemed to be held by the proprietor for the time being in trust for the person who, by virtue of the said law, has acquired title against any proprietor, but without prejudice to the rights and interests of any other person interested in the land whose right or interest is not extinguished by the said law.

136. Application to register title acquired by possession

Any person claiming to have acquired a title to registered land by virtue of the Limitation Law (1996 Revision) may apply to the Registrar to be registered as proprietor thereof.

137. Procedure on application

- (1) On application by any person for registration as proprietor under section 135, the application shall be advertised by the Registrar at the expense of the applicant in such manner as the Registrar may direct.

- (2) The Registrar shall give notice of any such application to the proprietor of the land affected and to any other persons who may, in his opinion, be affected thereby.
- (3) After one month has elapsed from the date of giving notice under subsection (2), the Registrar, on being satisfied as to the applicant's title, may allow the application and register him as proprietor of the land claimed, either with absolute or provisional title, as the case may require, but without prejudice to any interests protected by any entry on the register which may not have been extinguished under the Limitation Law (1996 Revision).
- (4) The proprietor or the applicant or any other persons interested, may apply to the court for the determination of any question arising under this section or sections 136 and 137.

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APPENDIX 3

DISCUSSION PAPER – ADVERSE POSSESSION PUBLIC AND STAKEHOLDER SUBMISSIONS

DISCUSSION PAPER ON ADVERSE POSSESSION – PUBLIC AND STAKEHOLDER RESPONSES

<p>Cayman Islands Bankers' Association</p>	<p>CIBA 's position would be in favor of Option 2.</p>
<p>Patricia Bryan</p>	<p>Apparently many of our local generational people but also hardworking investors who invested in property here for retirement and vacations, have lost properties through this avenue and it is unfair. If anyone is going to benefit from certain aspects of "adverse possession" that one should be the Cayman Islands Government-- who can use these properties for housing/housing developments for Caymanians. There should also be a period of time (a year) and proof of efforts made to notice all property owners--and their relatives/heirs before the Government can apply for "adverse possession".</p>
<p>Jimmy Carter</p>	<p>I believe that this law should be abolished. Not only will it create risk for land investors. It will also cause a spike in crimes relating to persons defending their property. This law gives too much power to the "perpetrators" over someone who maybe worked hard every day of their lives to acquire the property. The department of environment and the planning department would rather land remain untouched until development is eminent at which a permit may be granted. This law if not abolished will have people going deeper into the heart land and illegally clearing property and start the wait game until they have rights to claim it.</p>
<p>Natalie Coe-Moore</p>	<p>It is my view that this law opens legal loopholes that give undue advantages to people with ill intentions regarding land ownership. This law is old and worked when there was no proper land registry. In too many cases it allows individuals who have ill intentions to try to steal land even when the property owners have titles established through a modern system like land registries.</p>
<p>Prof. Simon Cooper, Truman Bodden Law School</p>	<p>One key aspect of 'sleeping on one's rights' is that if a landowner were to litigate at a long time after the events in question, then evidential difficulties might arise. Documents might have been lost, witnesses might have died. For example, the possessor might claim that he was given a transfer which he has now lost, or the landowner might claim that he gave permission to occupy which nobody is alive to confirm. These are really important reasons why litigation should be cut off after a certain period. They are very important justifications for having a law of limitation. I</p>

DISCUSSION PAPER ON ADVERSE POSSESSION – PUBLIC AND STAKEHOLDER RESPONSES

recommend that the reform policy should explicitly discuss the importance of these evidential difficulties which justify retaining adverse possession.

In every registration system, there are one or more grounds which are capable of defeating a registered title. The significance of this is that the all registration systems involve a policy-led determination of what grounds should be capable of defeating the register. Cayman has plenty - they include all of the grounds listed in s.28 as overriding interests, along with some others. It is not right to say that Cayman titles are indefeasible. And it is certainly not right to say that, because Cayman titles are indefeasible, there should be reform to make them even more indefeasible. It is simply a matter of what preferred policy balance the country wants between the effect of registering a title on the one hand, and on the other hand the circumstances in which off-register matters should prevail. That is a simple policy choice and it is not closed off by saying all registered titles have to be indefeasible.

You can have a perfectly functioning and operational system of registered land which allows off-register facts to be used as grounds to defeat the registered title. This is exactly what is done by s.28 overriding interests in Cayman, and it is exactly what is achieved by the exceptions to indefeasibility in Torrens countries. It is wrong to say that the 'integrity' of the system is destroyed by having them. In fact a registration system would very quickly lead to abhorrent results if you removed all of the overriding interests or exceptions to indefeasibility. Their existence merely reflects a particular preferred policy balance between the register and off-register matters. Elsewhere in the DP, there are references to concerns that adverse possession diminishes the degree of protection for registered titles in a way that might be detrimental to landowners and cause undesirable consequences. That is quite different from the 'indefeasibility' and 'integrity' arguments. It constitutes an entirely valid justification for preferring a policy balance which suppresses adverse possession.

The DP does not consider whether there are any circumstances in which it might be desirable to expand the application of adverse possession.

It is well known that family dealings in the Cayman Islands are not always registered. This is often exacerbated by failure to obtain probate upon an owner's death. A typical example might arise where a person owns an acre of bush. The owner dies leaving three children as heirs. They do not obtain probate and they do not inform the land registry. They agree between themselves to allocate one third of the land to each of them. The problem is that each will be unable to say that he or she is owner of the allotted land. The problem could be magnified if the same thing happens to the next generation. This could be solved by adverse possession. The actual possession of distinct allotted land parts would then be formalised automatically by the law.

DISCUSSION PAPER ON ADVERSE POSSESSION – PUBLIC AND STAKEHOLDER RESPONSES

Adverse possession is probably not available under the current law in this situation because it is probably the law that one informal co-owner cannot adversely possess against another informal co-owner. But expanding adverse possession to cover this case would provide a very convenient route to recognise the arrangements that the family members made.

The land adjudication process did not deal with foreshore or seabed or public roads. No registers were opened for foreshore, seabed and public roads. They therefore remain unregistered land. This is an important issue. The Limitation Law currently applies to them. If the proposed reform is to abolish the Limitation Law, then there would remove altogether the law of limitation applying to those types of land. Whether that would be desirable policy should be discussed in the DP, or else the Limitation Law should be left intact for unregistered land.

I do not support total abolition. However, if that is what the LRC chooses, then it should remember that there is unregistered land in the Cayman Islands, as explained above, and so the Limitation Law should be retained for that unless the LRC also has distinct justifications for abolishing adverse possession of unregistered land.

The DP considers the reforms contained in the Land Registration Act 2002 of England as a potential model for reform in Cayman. I think they represent a supportable reform option.

However, the DP does not go into depth on the problems that have emerged in England when applying these provisions and whether they might be improved upon.

First, the DP at para. 5.3.8 mentions the *Dowse* case and the reference to 'adjacent' land. This is a terribly vague test and it inevitably leads to litigation. I recommend that the LRC consider an alternative, clearer formula.

Second, the DP at para. 7.3.4(3) proposes that the applicant could be entitled to register as a result of an unregistered dealing. This seems intended to reflect Land Registration Act 2002, Sched. 6, para. 5(2)(b). What is meant by an unregistered dealing? Does it require a formal registrable transfer? If so, then the parties are likely to be aware of the need to register and will do so; and anyway the party can simply give the land registry the transfer instead of going through adverse possession. If the 'dealing' is intended to allow dealings without a formal registrable transfer, such as an oral statement of intention to transfer, then is the LRC concerned at the absence of formalities and their protective function?

Third, the DP does not mention the problems that England has encountered in respect of the period during which the relevant mental state must be proved for a successful adverse possession claim in respect of boundaries. This is the

DISCUSSION PAPER ON ADVERSE POSSESSION – PUBLIC AND STAKEHOLDER RESPONSES

requirement of mistaken belief under Land Registration Act 2002, Sched. 6, para. 5(4)(c). I recommend that the LRC considers ways to avoid the difficulties caused by this clause.

The DP at para. 5.3.3 suggests that there may be a gap in the English scheme which is considered as a possible model.

This is explained as occurring when a person claiming adverse possession becomes registered in default of response by the proprietor. We can expect this to be a common occurrence in Cayman if the reforms are copied. The 'gap' identified is that 'nothing further needs to be established in order for the possessor to gain registration', and so the person may be registered despite not having actually having undertaken adverse possession.

It is my understanding that the land registry in England requires the applicant to supply the registry with an affidavit stating all the facts that are necessary for a successful adverse possession claim. The affiant is therefore at risk of an offence if he or she knowingly deceives the registry. That provides some safeguard and the same procedure should be adopted if the English model is adopted in Cayman.

The DP perceives this as a gap because a baseless claim succeeded. But it can be regarded as a perfect example of the intended operation of the system. The English system was designed to be bureaucratically easy to administer and to avoid the registrar being caught up in disputes. That is achieved by allowing the registrar to operate unilaterally, in the absence of the proprietor's response, on the strength of an affidavit. It is not a gap but a policy decision based on administrative convenience.

The DP at para. 7.3.4(5) goes on to recommend that the registrar should not act until satisfied that the applicant really has carried out adverse possession for the required period. I support this. It matches what I understand to be the practice in England and applied in *Baxter v Mannion*.

Perhaps the LRC should also consider, as a further measure, giving the land registrar in the Cayman Islands a power (or duty) to publicly advertise that a claim to adverse possession is being made.

Part of the LRC's concerns in the DP about the possibility of registering a baseless claim spring from the facts of *Baxter v Mannion*. To some extent, the LRC's concerns should be quelled by noting that the applicant there was promptly removed from the register when it was discovered that he had made untrue statements in his affidavit. However, there are justifiable concerns that if the facts of *Baxter* occurred in the Cayman Islands under the new reforms reflecting the English model, then a risk could arise. The risk is that the applicant becomes registered proprietor and then sells before the problem is discovered. The innocent buyer would be immune from rectification, the wrongly

DISCUSSION PAPER ON ADVERSE POSSESSION – PUBLIC AND STAKEHOLDER RESPONSES

	<p>displaced proprietor would be restricted to the state indemnity and would not be able to recover the registered ownership. That risk could justify the introduction of some procedural precautions by the land registry to ensure that false claims to adverse possession can be weeded out.</p> <p>The DP does not offer an option of retaining adverse possession in its current form. But if that option is ultimately taken, I strongly recommend the LRC to make two reforms which are essential to fixing defects in the existing adverse possession system.</p> <p>First, s.135 Registered Land Law imposes a statutory trust. This is problematic for many reasons, as noted in the DP at para. 5.1.3. The best remedial step would be to abolish the trust and protect the adverse possessor's estate in the land as an overriding interest that binds anyone who gains a later interest in the land.</p> <p>Second, s.136 Registered Land Law refers to 'Any person claiming to have acquired a title to registered land by virtue of the Limitation Law (1996 Revision)'. That is based on a false assumption. Title is never acquired by virtue of the Limitation Law. It is acquired by the act of taking adverse possession. The Limitation Law extinguished the proprietor's title but it does not confer a title on the possessor. The section should be redrafted accordingly.</p>
Francelia Dixon-McCoy	<p>While the intention behind these laws or rights may have been to address certain social and economic issues, it is my belief that they have become outdated and are no longer serving their intended purpose. One of the main reasons why adverse possession should be abolished is because they undermine the fundamental principles of property rights and ownership. It is a well-established principle in society that individuals have the right to own and control their property. However, adverse possession allows individuals to essentially steal someone else's property through illegal occupation. This not only violates the rightful owner's rights but also creates an environment where property rights are not adequately protected.</p> <p>Furthermore, adverse possession often leads to a lack of accountability and responsibility on the part of the squatters. They have little incentive to maintain or improve the property they are occupying. This can result in the degradation of the property, ultimately affecting the surrounding community and diminishing property values.</p> <p>Additionally, adverse possession can have detrimental effects on the housing market and broader economic stability. Property owners may be discouraged from investing in properties or putting them on the market due to the fear of potential squatters. This can lead to a decrease in property supply, driving up prices and making housing less</p>

DISCUSSION PAPER ON ADVERSE POSSESSION – PUBLIC AND STAKEHOLDER RESPONSES

	<p>affordable for aspiring homeowners. The uncertainty and instability caused by squatter's rights can also deter foreign investment and economic growth.</p> <p>Instead of perpetuating a system that rewards illegal occupation, we should focus on strengthening property rights and ensuring fair and equitable access to housing. This can be achieved through robust legal frameworks, efficient dispute resolution mechanisms, and proactive measures to address homelessness and housing affordability.</p>
<p>Rannielee Hyde</p>	<p>1) Property Rights Protection: Adverse Possession undermines the fundamental principles of property rights of the registered landowner. Property owners should have the peace of mind that their ownership is secure and protected and no one can take or claim another person property, property that they had to work so hard for to try and have for their children/grandchildren. By allowing someone to gain ownership of land by simply occupying it without the owner's permission or consent undermines the basic concept of property ownership and the security it provides.</p> <p>2) This allows someone else to steal/theft property from a hard-working citizen because it is the easiest way to get property. Tell me where or how this is fair? This law only provides for the thefts and not the real property owners. It encourages land disputes. Adverse possession often leads to continuous and protracted legal battles and disputes.</p> <p>3) The process of establishing adverse possession can be complex and require substantial evidence which can be costly and time consuming to the registered landowners which is so unjust and unfair.</p>
<p>D. Lee</p>	<p>Recommend a comprehensive review to develop alternative measures that protect property rights, promote fairness and address the social and economic implications of land possession in the modern era.</p>
<p>James Moore</p>	<p>In short this is stealing, intent, theft but this law encourages unscrupulous person to get away with this type of crime, because at end of the day this is a crime that is unjust to the real land owner. Adverse possession can lead to unfair outcomes, such as losing property to a neighbor who knowingly encroached on the land. Some individuals may be tempted to occupy and claim property that does not belong to them, knowing that they could gain ownership over time through adverse possession. Fighting adverse possession claims can be expensive and legally complex, involving court battles and potential damage to relationships with neighbors. Adverse possession laws can provide serious difficulties, especially for our tiny islands. First of all, these rules may cause tension in close-knit groups, resulting in strained personal ties and unrest within the community. The possibility of losing property due to adverse possession</p>

DISCUSSION PAPER ON ADVERSE POSSESSION – PUBLIC AND STAKEHOLDER RESPONSES

	<p>can worsen already-existing tensions and damage the social fabric in tiny, close-knit communities. This can eventually shatter the trust that is the foundation of community cohesiveness. As a result, this may cause a decline in the kind of communal cooperation and solidarity that our tiny islands need to survive.</p> <p>Furthermore, in situations when resources are scarce, adverse possession rules may unintentionally encourage land exploitation and snatching. The possibility of obtaining property rights by adverse occupation might potentially incentivize unscrupulous persons to infringe on valuable land in our tiny islands with limited land resources, therefore neglecting the rights of the legitimate proprietors. Potential investors may be turned off by this and economic progress may be hampered as a result of the atmosphere of uncertainty and instability. Furthermore, the deprivation of land without sufficient compensation can have a detrimental effect on people and families' quality of life, escalating socioeconomic inequality and building a divide between the rich and the rest. Adverse possession rules, then, might worsen already-existing vulnerabilities and inequality in these situations, hindering the general advancement and development of our tiny islands.</p> <p>What's worse, these laws might make people greedy for land. In a small place where there isn't much land to go around, if someone can just take your land by squatting on it for a while, it could lead to a free-for-all land grab. This can create chaos and make it tough for anyone who has legally documented paper works and paid the relevant government fees and duties. It's like taking the ground right out from under your feet, leaving you feeling insecure and worried about your future. This can hurt the whole country, making it harder for people to invest or make a living, and pushing some folks even further behind.</p>
<p>Rebecca Moore</p>	<ol style="list-style-type: none"> 1) Property Rights Protection: Adverse Possession undermines the fundamental principles of property rights of the registered landowner. Property owners should have the peace of mind that their ownership is secure. Allowing someone to gain ownership of land simply by occupying it without the owner's consent undermines the basic concept of property ownership and the security it provides. 2) Encourages Land Disputes: Adverse possession often leads to contentious and protracted legal disputes. The process of establishing adverse possession can be complex and require substantial evidence, which can be costly and time-consuming to the registered landowners which is unjust. 3) Incentivizes Trespassing: Adverse possession laws can provide an incentive for individuals to trespass on others land intentionally. Knowing that they may eventually obtain legal ownership. This incentivizes trespassing and creates a culture where illegal occupation is potentially rewarded. This law was unknown to the vast population of the Cayman

DISCUSSION PAPER ON ADVERSE POSSESSION – PUBLIC AND STAKEHOLDER RESPONSES

	<p>Islands, me included until the publication in July. I do believe that if this law stays in place the number of adverse possession cases will rise and could hinder further development. Developers may be detoured to invest in land or properties because they fear that someone could claim ownership through adverse possession.</p> <p>I think that the Cayman Islands should consider aligning its property laws with the modern legal principles and international standards. Many jurisdictions have either abolished or severely restricted adverse possession of due to its potential for abuse and its inconsistency with the principle of the property rights. In the Cayman Islands most, if not all land is registered therefore there is no reason that this law should still be in place.</p>
<p>Roseta Moore</p>	<p>I feel that the Adverse Possession Law serves no purpose in current times as we have a land registry for genuine landowners who obtained their land through the legal processes of law.</p> <p>Furthermore, it opens the door to abuse, deception, and hardship along with encouraging people to become squatters by choice in order to steal individuals' land.</p> <p>Many jurisdictions have abolished or restricted the use of this law. Cayman needs to do the same and abolish the law. Only honest property owners (who brought or inherited their lands) same to be the ones who are suffering from such laws.</p>
<p>Roylee Moore</p>	<p>While this principle may have had valid historical justifications, I firmly believe that it is an outdated and problematic concept that should be abolished for the following reasons:</p> <ol style="list-style-type: none"> 1. Undermining Property Rights: Adverse Possession pose a significant threat to the fundamental concept of property rights. The ability of an individual to claim ownership of a property merely by occupying it without the owner's consent undermines the principles of private property ownership and the rule of law. Property rights are the cornerstone of a functioning society, providing individuals with security, investment incentives, and a basis for economic growth. Adverse Possession create uncertainty and erode this essential foundation. 2. Inequitable Treatment: Adverse Possession often result in inequitable treatment of property owners. It is unfair to reward individuals who knowingly and intentionally occupy someone else's property without consent.

DISCUSSION PAPER ON ADVERSE POSSESSION – PUBLIC AND STAKEHOLDER RESPONSES

	<p>Property owners have invested their time, money, and effort into acquiring and maintaining their properties, and they should not be subjected to the risk of losing their ownership rights due to the actions of squatters.</p> <ol style="list-style-type: none">3. Legal Complexities and Costs: Adverse possession laws and disputes can lead to complicated legal proceedings, protracted litigation, and substantial financial burdens for property owners. These legal complexities and associated costs can be a significant deterrent for property owners seeking to protect their rights. Abolishing squatter's rights would simplify the legal landscape and reduce the burden on property owners by ensuring clear and unambiguous ownership rights.4. Deterrent to Property Development: Adverse Possession can discourage property development and investment. When potential property owners are uncertain about their rights and the security of their investments, they may hesitate to develop or improve their properties. This can have a detrimental effect on urban revitalization, economic growth, and the overall well-being of communities.5. Encouragement of Unlawful Behavior: Adverse Possession creates a perverse incentive for individuals to occupy properties unlawfully, contributing to an increase in squatting incidents. This not only violates the rights of property owners but also leads to social disturbances, reduced property values, and increased strain on law enforcement resources. Abolishing Adverse Possession would discourage such unlawful behavior and promote a more harmonious and law-abiding society. <p>It is crucial that we revisit and reform these laws to ensure the preservation of property rights and the functioning of a fair and just society. I kindly request your consideration and support in advocating for the abolishment of Adverse Possession entirely. Under no circumstances should the law be amended to accommodate squatters.</p>
Giovanni Myrie-Smith	<p>A fair and just law should have protections for the adverse possessor and in our current system the registered proprietor. I believe that the Cayman Islands can have the most just reform on adverse possession in the Commonwealth. In our jurisdiction the timing of years for an AP to be in possession of land should be reduced to 7 years. Due to the small size of the island and ability to police possessions through friends, family or businesses. If you do not realise that someone has taken factual possession of land that you are registered as intent to possess within seven years then you do not own the land it is registered to you and your right to possess should be quieted.</p>

DISCUSSION PAPER ON ADVERSE POSSESSION – PUBLIC AND STAKEHOLDER RESPONSES

Ezmie Smith

Our Registered Land Act applies to those owing registered land. This should be so as to prevent adverse possession as the wrongdoer is there without a title to the property. The squatter has no documentary title to the property. Any such application should not be appropriate for a claim. The statute of limitations is used to get ownership of a property without paying anything. This is bad for a land owner and very unfair. Adverse possession is not considered a theft. However, if the owner of the property has no idea that a person has been squatting on his land and makes a claim which is believed to be an unfair claim. A good example is an old person say in West Bay or even having property in East End or even in Cayman Brac and has not been visiting the property frequently. Some of the lands involved are of great value. Such an example cannot stop the time from running and preventing occupation of the property and the trespass is allowed to run on.

The wrongdoer causes expense to an innocent land owner by squatting illegally on his/her rightful owned property. It is so wrong that a person can come unto and claim a rightful owned property then gain ownership of that parcel of land illegally. A crying shame. It should be abolished. Persons should not have to inspect the property or baby sit the property constantly to ensure that no one is squatting on the land if that person is a legally the registered owner. Not because the system has been in place throughout the ages that it must continue if there is a registered land act in place as that person has obtained a legal title to his or her land. This seems to be odd with the fundamental principles of our land registration system. It is wrong for someone else to obtain your property just because that person is not cutting down the property each year. There is a lot of overgrown property in the Cayman Islands for this to happen. The squatter should not occupy the land because he feels it is unattended in order to make a claim. It is trespass for one to take advantage by keeping a property that has become overgrown to acquire that property as he or she would not be a registered owner. In many cases there are local persons living abroad and their land has gone to a squatter since they were off island. Persons have taken advantage of this. A squatter has no right to enter on the land to exercise physical control over the land as using it as his own. The law should be to prevent such squatters claim such as this.

Adverse possession should not be treated as a gift to a squatter as it only encourages such an unacceptable act when there is a Registered Land Act that governs our registered titles in the Cayman Islands. It must go because it will allow more squatters to take away from a rightful registered owner right to lose title to his/her land. There are persons in this island that have never heard of adverse possession.

As for a rightful access over land this too must be examined as persons need access to their land. If an individual has had a sole uninterrupted access by grant of easement or whatever over a certain parcel of land it should then give rise

DISCUSSION PAPER ON ADVERSE POSSESSION – PUBLIC AND STAKEHOLDER RESPONSES

	<p>to claim it as their own since a pass is given to reach their own parcel. This may lessen some of the disputes especially in local neighborhoods.</p>
<p>Danny Soto</p>	<p>This law may have been designed for years ago when there was allot of unclaimed property in the island, when people first settled in our island, however this law should have been abolished when the new Land Registration System of registration was introduced to the Cayman Islands.</p>
<p>Sophia Williams, Registrar of Lands</p>	<p>Based on the experiences of British Columbia and New Zealand, there are several compelling grounds to support the abolition of adverse possession in the Cayman Islands, which has a fully registered land system:</p> <ul style="list-style-type: none"> • Improved Land Security: Like British Columbia and New Zealand, eliminating adverse possession will grant landowners in the Cayman Islands greater assurance regarding their property, promoting a secure and favorable climate for property investments. • Preserving register Integrity: To uphold the accuracy and reliability of the land register system in the Cayman Islands, it would be wise to eliminate adverse possession. This would prevent any potential inconsistencies and conflicts that may arise from conflicting ownership assertions. • Alignment with International Trends: The abolition of adverse possession is in line with international trends and best practices in land registry management. This sets a precedent that promotes clarity in land ownership and rights. • Enhanced Legal Certainty and Diminished Litigations: Eliminating the concept of adverse possession would establish a more unequivocal legal structure for land ownership, resulting in a decrease in the frequency of property disputes brought to court. <p>Based on the experiences of British Columbia and New Zealand, it is advisable for the Cayman Islands to eliminate the idea of adverse possession in order to promote a land register system that is more safe, transparent, and efficient. This action has the ability to stimulate investments, reduce conflicts, and protect the idea of property rights, which is essential in a contemporary and forward-thinking society.</p>

DISCUSSION PAPER ON ADVERSE POSSESSION – PUBLIC AND STAKEHOLDER RESPONSES

When landowners in the Cayman Islands are untraceable, have vanished, and lack any relatives to assume ownership or management of the land, it is essential to establish a strong legal framework and administrative procedures to handle potential complexities and land disputes that may emerge. Given the diverse population of the Cayman Islands, with people from other jurisdictions living there, often only temporarily, it is crucial to establish systems that deal with the possible abandonment of properties when owners move away or cannot be located. Below are few recommendations:

- **Statutory Period of Absence:** Enact a legally mandated timeframe in which the official recognition of a landowner's absence is recorded. Following this timeframe, precise measures can be undertaken to ascertain the current state of land ownership.
- **Government Trusteeship:** Upon the expiration of the legally mandated timeframe, if the proprietor remains unlocatable, the government may assume a fiduciary responsibility for the property. This entails the government taking on the task of managing and safeguarding the land, ensuring it is not unlawfully occupied or encroached upon.
- **Legal Notifications:** Prior to undertaking any significant measures concerning the property, it is imperative for the government to exert considerable efforts in locating the owner, which may involve disseminating notifications through local and international publications as well as online platforms.
- **Escheat Laws:** Reinforce escheat legislation in the Cayman Islands, wherein, in the event of all efforts to locate the owner being exhausted, the property is transferred back to the ownership of the state. This guarantees that the land does not deteriorate and may be utilized for useful purposes, thereby benefiting the community.
- **Community Engagement:** Involve the community in the procedure, urging them to provide any information they may have concerning the location of the absent landowner. Active participation in the community can frequently yield valuable information that may be overlooked by formal channels.
- **Land Use Planning:** The government ought to formulate land use strategies for such properties, with the aim of utilizing them for the betterment of the community, such as establishing parks, community centers, or other public facilities, until the owner reemerges.

DISCUSSION PAPER ON ADVERSE POSSESSION – PUBLIC AND STAKEHOLDER RESPONSES

- **Provision for Reclaiming Property:** Provisions should be established to enable the landowner to regain possession of their property upon their return or discovery, including a fair period of time in which they can verify their identity and assert their ownership rights.
- **Alternative Dispute Resolution:** If conflicts arise about the recovery of property by a previous owner, the presence of alternative dispute resolution (ADR) processes can aid in achieving peaceful settlements, thereby protecting the interests of all parties concerned.
- **Compensation Fund:** Create a compensation fund that would be funded by the earnings generated from the property while under the state's management or from sale of the properties. This fund would be utilized to provide recompense to the original owner in the event that they resurface.

Enforcing these extensive processes will guarantee that properties without owners are managed in a responsible and ethical manner, while also providing a mechanism for the original owners to regain their property whenever they resurface. Furthermore, it facilitates the effective upkeep and efficient exploitation of the land, so avoiding unauthorized occupation or improper usage, and according to the contemporary ideals of property rights that are being embraced worldwide.

When there are off-the-register dealings that do not reflect the actual title situation, it creates a legal and administrative quagmire. It challenges the integrity of the land registration system and can foster disputes and litigation. Addressing this issue robustly is critical to maintaining faith in the land administration system. Drawing from the practices in jurisdictions like Jamaica where concepts of vesting are employed if receipts and agreements for sale can be produced, here are some recommendations that can be considered for the Cayman Islands:

- **Provision for Off-the-Register Dealings:** Include clauses in the land registration laws to allow for off-the-record transactions, allowing parties with provable agreements and receipts to seek correction of the land register from the Registrar.
- **Comprehensive Inquiry:** Prior to making any modifications to the registration, it is imperative to conduct a comprehensive investigation to confirm the legitimacy of the transaction. This may entail corroborating with witnesses, scrutinizing bank transactions, and analyzing other relevant details that substantiate the assertion of the off-register transaction.

DISCUSSION PAPER ON ADVERSE POSSESSION – PUBLIC AND STAKEHOLDER RESPONSES

- **Implementation of a Vesting Mechanism:** Implement a formal vesting process that allows individuals to request the legal transfer of property ownership in their name by providing genuine receipts and sales agreements as evidence. Stringent examination would be applied to prevent any fraudulent activities.
- **Public Notice:** Prior to any alterations being implemented to the register, it is imperative to issue a public notice that solicits objections or claims from any interested parties pertaining to the property. This procedure would facilitate the identification of additional possible claimants and the resolution of potential conflicts.
- **Stamp Duty:** In addition to the aforementioned recommendations, it is crucial to highlight that even when transactions are corrected or regularized under the provisions for off-the-register dealings, any sale of property will still be subject to the requisite stamp duty under the Act. It is essential for all parties involved to understand and account for this financial obligation as part of the transactional process. Ensuring compliance with this payment is paramount, not only for legal conformity but also for the sustenance of the land administration infrastructure.
- **Dispute Resolution:** Create a dedicated dispute resolution process to address instances that arise from off-the-register transactions. This mechanism should be equipped with the capability to effectively manage intricate situations and guarantee equitable dispensation of justice to all parties involved.
- **Probative Value Documents:** Enact legislation that establishes the specific requirements that papers must follow in order to be deemed as having evidential value in confirming the truthfulness of off-the-record transactions. Implementing this would establish a uniform procedure and mitigate the risk of potential abuse.
- **Enhanced Penalty:** Introduce enhanced penalties for fraudulent transactions and for professionals who facilitate such transactions to deter future occurrences.
- **Community Awareness and Education:** Undertake community awareness and education campaigns to inform the public about the perils of off-the-register transactions and encourage them to regularize such transactions.

Implementing such measures would help in rectifying the discrepancies in the land register, making it a true reflection of the on-ground realities. This would improve the credibility and dependability of the land registration system in the Cayman Islands.

DISCUSSION PAPER ON ADVERSE POSSESSION – PUBLIC AND STAKEHOLDER RESPONSES

Boundary disputes frequently involve the application of the law of adverse possession. Nevertheless, these disputes can be resolved through methods that protect the entitlements of the first property proprietors while also considering the practicalities of continuous occupancy.

Where the reality on ground does not match the land registry records, particularly in border disputes, it may be possible to consider a modified version of the adverse possession concept, making necessary adjustments to accommodate the specific circumstances of such conflicts. The following are the recommendations:

- **Elucidated Statutory Provisions:** Formulate precise legislation to address boundary disputes, delineating the procedures and conditions for asserting a claim of adverse occupancy, as well as establishing measures for original property owners to safeguard their rights.
- **Mediation and Conflict Resolution:** Implement mandatory mediation or conflict resolution procedures prior to litigation in order to facilitate the amicable resolution of issues between neighbors, potentially leading to a mutually satisfactory outcome.
- **Survey and Demarcation:** In case of disputes, require a professional survey to be conducted to ascertain the exact boundaries and the extent of any encroachments.
- **Remuneration and Adaptation:** In cases of encroachment, it is advisable to promote negotiations between the parties involved, aiming to reach an agreement that involves compensation or land adjustment to resolve the issue, rather than resorting to the transfer of title through adverse possession.
- **Grace Period for Rectification:** Implement a designated length of time in which any encroachments must be resolved (either through removal or agreement) before a claim of adverse occupancy may be brought.
- **Participation in the community:** Promote community engagement to facilitate the mediation and resolution of such conflicts, as local perspectives can occasionally offer solutions that formal legal procedures may fail to consider.

Ultimately, it may be worth considering the preservation of the doctrine of adverse possession in border disputes. However, a more equitable approach would involve adapting it to encompass contemporary ideas of conflict resolution and safeguarding property rights.

DISCUSSION PAPER ON ADVERSE POSSESSION – PUBLIC AND STAKEHOLDER RESPONSES

In situations where an individual enters possession under a genuine mistake, it seems especially harsh to punish them by disallowing a claim of adverse possession. However, such genuine errors may be difficult to distinguish from deliberate trespass or opportunistic encroachment.

A system that recognizes genuine mistakes could introduce more equitable considerations into the land registration system. It's worth considering a middle ground where the law recognizes genuine mistakes without opening the door to vexatious claims.

To prevent genuine mistakes, the Government should prioritize educational initiatives to ensure the public understands land rights and boundaries, including identifying and ensuring your boundaries by a licensed land surveyor.

Encourage disputing parties to consider mediation as a first resort, ensuring that genuine mistakes can be addressed without costly litigation.

The involvement of land surveyors in property transactions is customary in jurisdictions such as Jamaica, Australia, and Canada. They do boundary identifications or generate surveyor's ID reports to establish distinct demarcations.

The participation of a competent surveyor guarantees the clear and unambiguous definition of borders. This can greatly decrease occurrences when individuals erroneously assume they have entitlements to specific plots.

Conducting regular boundary surveys helps establish definitive land ownership boundaries, thus averting adverse possession claims based on real misunderstandings.

By enlisting the services of a land surveyor, buyers can strengthen their assurance, as they can rely on precise and officially recognized boundary delineations to support their purchase.

Encourage all land dealings, especially purchases, to include a comprehensive boundary survey by certified land surveyors. This technique would replicate the effective mechanisms implemented in Jamaica and other jurisdictions.

The Land Registry should give precedence to public education, with a focus on highlighting the significance of surveyor involvement in land transactions to avoid any misinterpretations.

DISCUSSION PAPER ON ADVERSE POSSESSION – PUBLIC AND STAKEHOLDER RESPONSES

	<p>Should the decision be taken to implement a hybrid system the Lands & Survey Department recommends the following:</p> <ol style="list-style-type: none"><li data-bbox="607 304 1921 368">1. Adverse possession of land for twelve 12 years by itself would be insufficient for the application being completed.<li data-bbox="607 408 1962 440">2. It is suggested that the time should be the same as claiming prescriptive easement which is twenty years.
Robin Vaz	I opt for abolishing adverse possession entirely.