Proceedings of ICGPSH 2026 Symposium: Global Governance, Digital Politics, and the Transformation of Public Policy Systems
DOI: 10.54254/2753-7048/2026.ZJU33730

Institutional Details and Application Differences Between Adverse Possession in Common Law and Acquisitive Prescription in Civil Law

Xilin Jin

East China University of Political Science and Law, Shanghai, China
selina_jin18@163.com

Abstract. Adverse possession under common law and acquisitive prescription under civil law are core legal mechanisms for acquiring real rights through possession, shaped by their distinct legal traditions and historical evolutions. With the globalization of transactions and digitalization of property rights, conflicts in their application, particularly in cross-border disputes and emerging property fields, have become increasingly prominent. Existing research mainly offers horizontal comparison of institutional elements, lacking an in-depth analysis grounded in systematic methodologies. This paper adopts comparative, normative, and case analysis methods to explore the essential differences between the two institutions in terms of constitutive elements and legal effects, and to explore how their distinct institutional orientations produce functional divergences differ in practice. The study finds that due to differing value priorities—"efficiency" in common law versus "fairness and order" in civil law—adverse possession and acquisitive prescription diverge in requirements for the possessor's subjective state, prescription periods, and the attainment of legal effects. By analyzing their functional connotations and practical boundaries, this paper enriches comparative research on property law and provides insights for the improvement of possession-based real right acquisition regimes and the harmonization of international property law rules.

Keywords: Adverse Possession, Acquisitive Prescription, Comparative Law, Real Right Acquisition, Property Law

1. Introduction

The possession system is a fundamental component of property law and plays an irreplaceable role in modern social governance. It clarifies factual control over property, provides a legal basis for its use and protection, and helps minimize disputes. While promoting efficient use of property, it also safeguards the legitimate rights and interests of possessors, maintains social order, and ensures transaction security [1]. In both common law and civil law systems, the possession system balances static property security with the efficiency of its dynamic transfer. Based on different legal traditions and value orientations, the two systems have developed distinct forms of possession-based acquisition. Common law adopts adverse possession, which emphasizes objective facts of long-

© 2026 The Authors. This is an open access article distributed under the terms of the Creative Commons Attribution License 4.0 (https://creativecommons.org/licenses/by/4.0/).

DOI: 10.54254/2753-7048/2026.ZJU33730

term, open and exclusive possession, while civil law adopts acquisitive prescription, which requires both objective possession and subjective good faith [2, 3].

Despite the significance of these doctrines, existing comparative research remains limited. Most studies focus on superficial comparisons of elements such as prescription periods and constitutive requirements, lacking a unified analytical framework [4]. Moreover, they often separate doctrinal analysis from judicial practice, resulting in a disconnection between theory and application [5]. This paper seeks to answer the following questions: What are the essential normative differences between adverse possession and acquisitive prescription? How do their different functional orientations affect their application in practice? And what challenges do they face in the context of digitalization and globalization? By addressing these questions, this paper enriches comparative property law research and offers practical insights for legal reform and cross-border rule coordination.

2. Theoretical framework

This paper takes functional comparative law as the core theoretical framework, supplemented by normative analysis and case comparison methods, to conduct in-depth and systematic research on adverse possession under common law and acquisitive prescription under civil law. The three research methods complement one another, forming a complete analytical system, which ensures the comprehensiveness of the research.

3. Normative differences

3.1. Conceptual foundations

In the common law system, although the term "adverse possession" does not formally exist, it recognizes this concept in practice, referring to the acquisition of property rights by possessing another's property for a statutory period. The acquisitive prescription of possessory rights is called adverse possession and the acquisitive prescription of non-possessory rights is called "prescription." There is no strict distinction between acquisitive prescription and extinctive prescription in the common law system [1, 6].

In contrast, acquisitive prescription in civil law originated from ancient Rome, referring to a system where a possessor places himself in the same position as the owner, possesses another's property peacefully, non-violently, openly, and non-concealably [2, 7]. Extinctive prescription, on the other hand, refers to the occurrence of a right of defense after a certain factual state lasts for a statutory period. This system is a mandatory provision in China's civil law, which cannot be excluded by the will of parties, nor can it be shortened or extended by agreement between both parties [8].

3.2. Constitutive elements

In common law, adverse possession is primarily determined by objective factual conditions. The possession must be actual, "open, notorious, and visible," exclusive, and continuous for the statutory period. Subjectively, the possessor must meet the conditions hostile possession, claim of right, and possession for a period exceeding the statutory limit [1, 6].

Civil law adopts a more structured and dual-element approach, requiring both objective possession and subjective conditions. Possession refers to the actual control and domination of the subject matter. A possessor can only apply for this system if he meets the conditions of "having an autonomous will, non-violent, and non-concealed" at the same time. The possessor must have an

DOI: 10.54254/2753-7048/2026.ZJU33730

autonomous intent to possess—i.e., the intent to hold the property as his own. Simultaneously, he must initiate or maintain the factual state of possession in a "peaceful manner" and not conceal this factual state from others to be deemed in possession [2, 7]. Acquisitive prescription essentially protects a long-maintained factual state. Therefore, in addition to meeting the above elements, the possessor must also reach the statutory prescription period to acquire the corresponding rights [2, 9].

3.3. Prescription period and legal effects

The common law generally adopts a relatively unified and non-classified model, stipulating a unified statutory period of 10-20 years exclusively for immovable property, without distinguishing between the possessor's good faith or bad faith, or property types, and without rules for suspension or interruption of prescription, highlighting the efficiency of real right confirmation [5, 7]. In contrast, civil law adopts a classified, differentiated model: the prescription period for movables is generally 10 years, and for immovables 20–30 years; the period is shortened for bona fide possession and extended for mala fide possession; the period for unregistered immovables is shorter than that for registered ones to promote the publicity of real rights [2, 3]. At the same time, the civil law has clear rules for the suspension and interruption of prescription, balancing the interests of all parties [2, 9].

In common law, once the possessor satisfies the requirements, he may directly acquire the ownership of immovables without registration, and the original owner loses both substantive ownership and the right to judicial remedy [1, 6]. In civil law, for movables, the possessor acquires the ownership or other rights of the possessed property after the expiration of the period. For immovables, if they are not registered, the possessor obtains the right to apply for registration after the completion of the prescription; if the registration is incorrect, the possessor directly obtains the corresponding rights after the expiration of the period; for other registered immovables, the possessor also obtains the right to apply for registration modification [2, 7].

4. Functional analysis and institutional orientation

4.1. Functional commonness

Despite the significant normative differences between adverse possession and acquisitive prescription, as possession-based real right acquisition systems in the two legal traditions, they share core functions in resolving social disputes and upholding legal order.. Both systems represent institutional responses to the need for certainty in real right attribution and the effective utilization of property resource [10, 11].

First, both systems contribute to stabilizing economic order. They consolidate the attribution of rights through long-term possession and protect the reliance interests of third parties derived from the appearance of possession. Such long-term possession forms an "appearance of possession," on which third parties establish legal relations such as lease or transfer. Denying this factual state would undermine transaction security. By transforming unstable possession into legally recognized real rights, both systems maintain the economic order built upon possession [10, 11].

Second, both systems aim to optimize the utilization of property. By linking legal consequences to the expiration of a statutory period, they urge right holders to actively defend their rights while preventing the idleness of resources. At the same time, they vest property in possessors who actually utilize it, thereby promoting efficient resource utilization [10, 12]..

DOI: 10.54254/2753-7048/2026.ZJU33730

Third, both systems serve to clarify the attribution of rights and resolve the problem of "right vacuum." Dilemmas such as the long-term separation of ownership and power, and the emptiness of ownership are reflected in both legal systems. The original obligee, although enjoying legal ownership, cannot exercise the power due to non-actual possession; the possessor, although actually dominating the property, lacks a legal basis. Adverse possession and acquisitive prescription fill the right vacuum and achieve the core goal of "resolving disputes and defining rights" by confirming the rights of the possessor [11, 12].

4.2. Institutional differences

In contrast, the two systems differ significantly in their institutional orientations. Adverse possession in common law takes objective possession as its core. Its constitutive elements emphasize actual, open, exclusive, and hostile possession, and do not mandatorily require the possessor to have subjective good faith.The unified prescription period and its legal effects are rooted in the common law tradition of emphasizing factual determination. It focuses more on quickly clarifying title defects and encouraging property utilization, reflecting the value orientation of "efficiency priority" [1, 6].

Acquisitive prescription in civil law adheres to the principle of combining objective and subjective factors, and clearly stipulates rules for the suspension and interruption of prescription to protect the original obligee. In terms of legal effects, the possessor of immovables needs to register to assert rights against third parties after acquiring real rights, while the original right holder still retains real right claims. This design originates from the logical rigor of civil law codified laws, focuses more on balancing the interests of the possessor and the original obligee, and maintains the stability of real right order, reflecting the value orientation of "fairness and order priority" [2, 7].

5. Representative cases and practical implications

5.1. Representative case of adverse possession: *Pye v. Graham* (2002, UK house of lords)

Pye v. Graham is a landmark case in the field of adverse possession in the UK. This case clarified the judicial standard for identifying the core element of adverse possession, namely "*animus domini*" (intention to possess as owner), confirmed the binding force of the statutory prescription period, and reflected the functional orientation of adverse possession toward efficiency and a focus on objective possession [9].

In this case, the House of Lords treated objective possession as the central criterion and did not regard the possessor's good faith or lawful title as necessary requirements, a position consistent with the normative design of adverse possession. The court clarified that "*animus domini*" only requires the possessor to have the subjective will to regard the property as his own, without the need for a legitimate claim to ownership, thereby providing a clear judicial reference for subsequent cases.At the same time, the court strictly upheld the binding effect of the statutory limitation period, reflecting the principle of "not sleeping on one's rights" and the value orientation of efficiency priority [6, 9].

5.2. Representative case of acquisitive prescription: German Federal Court of Justice (2019)

A 2019 case decided by the German Federal Court of Justice represents a typical case of acquisitive prescription in civil law. This case clarified the application of acquisitive prescription to mala fide possession of registered immovables, confirmed the mandatory requirement of registration to assert

DOI: 10.54254/2753-7048/2026.ZJU33730

rights against third parties, and fully reflects the functional orientation of acquisitive prescription —"fairness and order priority" with an emphasis on balancing interests [2].

In this case, the court strictly applied the classified prescription period rules of civil law, applying a 30-year prescription period for mala fide possession of registered immovables, which reflects the protection of the original owner's rights and the authority of the real estate registration system. The court held that mala fide possession does not invalidate acquisitive prescription but only extends the prescription period, thereby balancing the interests of the mala fide possessor and the original right holder and avoiding long-term uncertainty in real right relations [2, 7]. In addition, the court ordered the completion of real right registration, clarifying the mandatory requirement of registration to counteract third parties in the acquisitive prescription of immovables, which is consistent with the principle of real right publicity in civil law and maintains the stability of real right transaction order [2, 9].

5.3. Practical implications

The comparative analysis of these typical cases demonstrates the close connection between the normative design and functional orientation of the two institutions. It suggests that judicial application should adhere to the internal logic and value orientation of each system, rather than adopting external rules without adaptation. At the same time, both legislation and judicial practice should strengthen the interaction between norms and practice by drawing on typical cases to refine the identification standards of key institutional elements and form a positive interaction [10-12].

6. Contemporary challenges and reform debates

Despite their longstanding roles in stabilizing property relations, both adverse possession and acquisitive prescription face significant challenges in the contemporary legal landscape. These challenges arise from changes in property forms, shifts in state–private ownership structures, the emergence of digital assets, and growing tensions between private rights and human rights protections. While the two institutions were originally designed to address factual possession of tangible property, their application to modern contexts often reveals gaps, ambiguities, and conflicts that call for legislative and judicial responses.

One prominent challenge concerns urban land idleness and state land management. In many jurisdictions, land owned by the state or local governments is either explicitly excluded from possession-based acquisition or subjected to special rules. For example, in England and Wales, Land Registration Act 2002 significantly restricted adverse possession of registered land, particularly where the land is owned by public authorities [5]. This reflects a policy preference to protect public assets from being lost through mere possession. However, such exclusions also create problems: large parcels of urban land may remain vacant or underutilized for decades, contributing to urban decay and reducing housing supply. In Germany, while acquisitive prescription can apply to private land, state-owned land is often exempted, and the stringent requirements for good faith and registration limit its practical use [2]. These restrictions, while intended to safeguard public interests, may hinder efforts to activate idle land for social purposes. Moreover, in cases where long-term possessors have invested in and improved such land, denying them any right to acquire title raises fairness concerns. European courts have occasionally grappled with the human rights dimension of such cases, particularly under Article 1 of Protocol No. 1 to the European Convention on Human Rights, which protects the right to property [13]. In some instances, the

DOI: 10.54254/2753-7048/2026.ZJU33730

complete denial of acquisitive relief to possessors of public land has been challenged as disproportionate [14].

Another emerging challenge relates to the applicability of these institutions to digital assets. With the rise of cryptocurrencies, virtual real estate in metaverses, and tokenized assets, traditional notions of "possession" become ambiguous. Digital assets are often characterized by decentralized control, cryptographic ownership, and the absence of physical occupation. For instance, if a person holds a private key to a cryptocurrency wallet for an extended period without the legal owner's intervention, can that constitute "possession" for the purpose of acquisitive prescription? Civil law systems, which traditionally require "peaceful, open, and continuous" possession of a corporeal object, face conceptual difficulties in extending acquisitive prescription to intangible assets [3]. Common law systems, with their more flexible and fact-based approach, might be more adaptable, yet they also lack clear precedents. Some scholars suggest that new forms of "digital possession" may require either statutory reform or a reinterpretation of existing elements such as control and notoriety [6]. Without such adaptation, these institutions risk becoming obsolete in an increasingly digital economy.

Taken together, these challenges highlight the need for a balanced approach that respects the original functions of adverse possession and acquisitive prescription while adapting to new social realities and safeguarding fundamental rights. Future reforms should consider not only doctrinal coherence but also the broader social and economic contexts in which these institutions operate.

7. Conclusion

By adopting functional comparative law, normative analysis, and case comparison methods, this paper systematically explores the institutional differences and practical logic between adverse possession in common law and acquisitive prescription in civil law. The research shows that, due to their respective value orientations of "efficiency priority" and "fairness and order priority", the two institutions form fundamental divisions in conceptual foundations, constitutive elements, prescription periods, and legal effects. The former focuses on objective possession facts and the efficiency of real right confirmation, while the latter emphasizes the combination of objective and subjective factors and interest balance. The UK case Pye v. Graham and the 2019 German acquisitive prescription case further verify the internal linkage between such normative design and functional orientation. Although both have functional commonalities in stabilizing economic order, enhancing property utilization efficiency, and defining right attribution, they both need to address the adaptive challenges brought by contemporary digitalization and globalization. This study not only enriches the theoretical dimension of comparative law research on property law and clarifies the application boundaries of the two institutions but also provides practical references for the improvement of relevant legislation, the unification of judicial decisions, and the coordination of cross-border property rules in various countries, and offers useful insights for the cross-system integration and contemporary development of possession-based real right acquisition systems.

References

[1] Burn, E. H. (2019). Cheshire, Burn & Carter's Modern Land Law (20th ed.). Oxford University Press.
[2] German Civil Code (BGB). Federal Ministry of Justice and Consumer Protection of Germany, 2002.
[3] French Civil Code (CC). Direction Générale de la Justice et des Affaires Juridiques, 2016.
[4] Fang, X.Y. (2011) A Comparative Study on the System of Acquisitive Prescription. Times Finance, (10): 1-3.
[5] Limitation Act 1980. UK Parliament, 1980.
[6] Smith, S. A. (2018). Adverse Possession: Principles and Practice. Hart Publishing.

DOI: 10.54254/2753-7048/2026.ZJU33730

[7] Savatier, R. (2005). The Law of Property in Civil Law Systems. Transnational Publishers.
[8] Sun, D.L. (2020) On the Basis and Path for Establishing the System of Acquisitive Prescription. Kunming: Yunnan University.
[9] Pye v. Graham [2002] UKHL 30.
[10] Zweigert, K., & Kötz, H. (2017). An Introduction to Comparative Law (3rd ed.). Oxford University Press.
[11] Van der Walt, A. (2020). Comparative Perspectives on Acquisitive Prescription and Adverse Possession. Journal of Comparative Law, 15(2), 89-112.
[12] Wang, Y. (2022). The Functional Comparison of Adverse Possession and Acquisitive Prescription. Chinese Journal of Comparative Law, 8(3), 102-121.
[13] European Convention on Human Rights, Protocol No. 1, Art. 1.
[14] Land Registration Act 2002. UK Parliament, 2002.