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Methods of Reforming Adverse Possession of Registered Land: A Critique

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Abstract: In spite of the various justifications advanced to support the law on adverse possession, the doctrine has been variously interrogated especially its capability of defeating the notion of indefeasibility of title which is a fundamental characteristic of land registration. The problems have sparked up waves of reform of the doctrine across jurisdictions and works by various scholars. The aim of any such reform is tailored towards conferring additional protection on the registered land owners against undeserving adverse possession claims, in a manner which preserves certain valuable functions performed by the doctrine. This work, using the doctrinal methodology interrogates some existing alternative methods of reform of adverse possession but finds that none of the existing methods of reform can adequately protect the interest of registered land owners. The work in its contribution to knowledge proposes restitution as a workable solution to deal with the negative effects of adverse possession of registered land, and concludes that the best way to protect the interest of registered land owners is through the application of restitution principle founded on unjust enrichment to the operation of adverse possession.

Keywords: Adverse Possession; Land Registration; Security of Title; Reform; Unjust Enrichment and Restitution Standards

1. Introduction

Several scholars have criticised the usefulness of the application of doctrine of adverse possession to registered land arguing that the doctrine has outgrown its usefulness. According to Mani (Mani, 2006):

The Law of adverse possession, which ousts the owner on the basis of in action within limitation, is irrational, illogical and wholly disproportionate. The law as it

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exists is extremely harsh for the true owner and a windfall for a dishonest person who had illegally taken possession of the property of true owner. The law ought not to be benefit a person who in a clandestine manner takes possession of the property of the owner in contravention of law.

On his part, Sprankling (Sprankling, 1994) stated that:

This image of adverse possession, however, is more mirage than reality. The doctrine is instead dominated by a prodevelopment nineteenth century ideology that encourages and legitimates economic exploitation and thus environmental degradation of wild lands. This "development model" is fundamentally antagonistic to the twentieth century concern for preservation.

"Adverse possession means a hostile possession which is expressly or impliedly in denial of title of the true owner"[1]. "Adverse possession allows for a 'wrongful' possessor of land to have their interests ripen into a title" (Merrill, 1984).

It is on the bases problems associated with adverse possession which sees the law as seeking to punish a non-diligent title holders for failure to assert their rights within the limitation period, by denying their claim, but the same law on the converse side rewarding wrong doers and trespassers by confirmation of the title by adverse possession upon fulfillment of the stipulated condition (Mani, 2006), that sparked up the wave of reform of the doctrine especially in its application to registered land which many view as being problematic as it practically defeats the whole essence of registered title and calling for outright abolition of the doctrine.

In seeking reform of the doctrine of adverse possession, Mani concludes that:

On the basis of above discussion it can be said that the Parliament should consider abolishing the law of adverse possession or at least amending and making substantial changes in the law in the larger public interest.

The increasing pressure[2] to reform the law on adverse possession of registered land due to its unfairness led to the introduction of the Land Registration Act 2002[3], which limited the scope of the doctrine for registered land in England and Wales.

[1] *Annasaheb vs B.B.Patil AIR 1995 SC 895*.

[2] Following the years of the litigation process and the highly-publicised decision in *JA Pye (Oxford)* v *Graham [2003] 1 AC 419.*

[3] See the Long Title: The Land Registration Act 2002 is an Act of the Parliament of the United Kingdom which repealed and replaced previous legislation governing land registration, in particular the Land Registration Act 1925, which governed an earlier, though similar, system which came into force in 13 October 2003.

Also, certain states in the United States of America have recently attempted to make the doctrine fairer by introducing reforms to the doctrine which impose a good faith requirement on the adverse possessor[1], while some other jurisdictions like Hong Kong have adopted inconsistency use test.

The objective of the work is to establish the inadequacies in the existing methods of reform of adverse possession regarding registered to show that none of the existing methods of reform can adequately protect the interest of registered land owners against undeserving adverse possessors, and to formulate a reform that will give better protection to the registered land owners while preserving the operation of the law of adverse possession.

Several literature exist on alternative methods of reform of adverse possession which include Fennell's case for bad faith adverse possession (Fennell, 2006), the payment of compensation by adverse possessor to the registered land owner as advanced by scholars like Elfant, Stake and Merill (Elfant, 1984-1985; Stake, 2000-2001; Merrill, 1984-1985), the adoption of the inconsistent use model of adverse possession as advanced by Katz (Katz, 2010), the Qualified Veto Rule as advanced by Smith (Smith, 2017), and the mandatory court application as adopted by the Land Registration Law of Lagos State (LRL) 2015[2]. A review of the literature on the alternative methods of reform of adverse possession shows that none of the alternative options of reforming the concept of adverse possession is capable of adequately protecting the interest of registered land owners against undeserving adverse possessors which is in the remedy proposal put forward by the work.

The primary methodology used by the work is doctrinal in analysing certain existing alternative methods of reform of the law on adverse possession in its application to registered land and finds that the application of the principles of restitution founded on unjust enrichment as the best protection for registered land owners against undeserving adverse possessors while preserving the doctrine.

[1] For example, Oregon introduced a mandatory good faith requirement in 1989 while New York introduced a more limited good faith requirement in 2008.
[2] Section 112(2) Land Registration Law of Lagos State 2015.

2. Existing Methods of Reform of Adverse Possession

1) Fennell's Case for bad Faith Adverse Possession

Fennell asserts that only the bad faith possessor should be able to claim ownership by adverse possession[1]. Following that protocol, she declares, would accomplish the only remaining useful goal of the adverse possession doctrine, namely, to give ownership to the one who values the disputed property more highly when the parties valuations are very disparate and a market solution is unavailable[2]. Fennell would add two requirements to the adverse possession doctrine to accomplish the stated goal: (1) to acquire property through adverse possession, trespassers must know they are trespassing, and (2) they must document that knowledge when they first trespass by offering to buy the property from the landowner[3]. These requirements would add the element of 'documented knowledge' to the adverse possession requirements[4].

Fennell recognizes the moral objection to advantaging the 'bad faith' possessor but justifies the position by asserting that it encourages the efficient transfer of property which is the only remaining purpose of the adverse possession doctrine.[5] Her argument is reasonable to the extent that it dismisses the historical reasons for the doctrine as no longer being useful; however, it is unreasonable to support a change in the law that would specifically support the 'land thief'[6]. Although it is true that economists have often dismissed notions of fairness and morality in the law in favor of efficiency (Fischel, 1991; Chiarella, 1982; Macey, 1984), but if a legal system is to work, then citizens must respect it as being fair. Lay people are more concerned about fairness than efficiency. It is further submitted that Fennell's argument for the introduction of a mandatory bad faith requirement and her insistence that other more suitable remedies adequately protect the good faith

[1] Fennell for example, Oregon introduced a mandatory good faith requirement in 1989 while New York introduced a more limited good faith requirement in 2008.
[2]Fennell for example, Oregon introduced a mandatory good faith requirement in 1989 while New York introduced a more limited good faith requirement in 2008, at 1040.
[3]Fennell for example, Oregon introduced a mandatory good faith requirement in 1989 while New York introduced a more limited good faith requirement in 2008, at 1041.
[4]Fennell for example, Oregon introduced a mandatory good faith requirement in 1989 while New York introduced a more limited good faith requirement in 2008, at 1041.
[5]Fennell for example, Oregon introduced a mandatory good faith requirement in 1989 while New York introduced a more limited good faith requirement in 2008, at 1044.
[6] Fennell objects to calling the knowing trespasser a 'thief' because adverse possession is a legally acceptable way to acquire property. Ibid. at 1053.Nevertheless, intentionally taking someone else's property without permission falls within the layperson's idea of theft. That conflict between the law and public perception can contribute to a general public disdain for the law.

adverse possessor are unconvincing in jurisdictions where the doctrine continues to play a vital role outside the narrow context of dealing with abandoned land which seems to be Fennell's primary concern. The requirement for documented knowledge or an improvement as a technique for putting the owner on notice of the adverse possession and evidencing the unavailability of a market transaction is certainly a cumbersome process and does not offer any meaningful protection whatsoever to a registered land owner.

2) Payment of Compensation

A number of scholars like N. Elfant, J. E. Stake and T. Merill have argued that the law in this area should be reformed by making provision for the payment of compensation by adverse possessor to the registered land owner[1]. The squatter who cannot or will not pay the compensation ordered would not acquire title by adverse possession. In considering this reform option it is helpful to bear in mind that the squatter has already benefited from the free use of the property throughout the limitation period, which is a windfall in itself. Such a reform would effectively result in the squatter acquiring a right of pre-emption in relation to the property on the expiry of the limitation period.[2] This approach recognises the physical relationship which the squatter may have developed over time in relation to the land[3] but it also recognises that the absent owner may be deeply attached to its financial value (Stake, 2001). In addition to achieving a fairer balance between the squatter and the owner making a title by adverse possession conditional on the payment of compensation has the potential to achieve a number of efficiencies: it lessens the burden on the owner to inspect for trespassers; it allows development to be postponed until it will yield the best return; it permits a tolerated squatter to use the land in the meantime; and it gives the squatter the opportunity to purchase the property on the expiry of the limitation period.

However Stake notes that in many cases a squatter will not be able to afford to compensate the true owner. Either the squatter will be forced to sell the land in question in order to pay the compensation or, particularly in the case of boundary

[1] Fennell for example, Oregon introduced a mandatory good faith requirement in 1989 while New York introduced a more limited good faith requirement in 2008, at 1041.

[2]Fennell for example, Oregon introduced a mandatory good faith requirement in 1989 while New York introduced a more limited good faith requirement in 2008, at 1041.

[3]As Oliver Wendell Holmes commented in a letter to William James (April 1, 1907), 'The true explanation of title by prescription seems to me to be that man like a tree in the cleft of a rock, gradually shapes his roots to his surroundings, and when the roots have grown to a certain size, can't be displaced without cutting at his life.

dispute, the legal costs of determining value would outweigh the value of the land itself (Stake, 2001). Stake also points out that such a requirement would be perceived as unjust where the squatter was the 'true' owner. He concludes that the compensation requirement should be limited to cases of bad faith adverse possession. Indeed, he declares that justice demands compensation in such circumstances, as the adverse possessor knows he is in the wrong. Stake maintains that the increase in the fairness of the doctrine would be worth its costs in terms of the judicial time required to listen to evidence on the issue of bad faith (Stake, 2001). Although Stake only indirectly alludes to it, it seems likely that the presence or absence of good faith would be of most relevance when the property in question is on or near the boundary with a neighbour's property[1].

While Stake's discussion of a compensation requirement makes a case for the fairness of such a reform, it fails to set out any theoretical basis for its introduction. Furthermore, though this work acknowledges that the introduction of a compensation requirement, by lessening the burden on the owner to inspect for trespassers and permitting the squatter to purchase the property on the expiry of the limitation period, does, to a certain extent appear to render the doctrine more efficient and also fairer, the practical implications of the introduction of a compensation requirement must be considered. Even if the compensation requirement was restricted to certain situations and the Lands Registry was vested with the power to determine such claims, it would dramatically increase the costs and delays in processing adverse possession applications. It would also result in many more appeals being made to court. It seems to be accepted that in many circumstances compensation may not be appropriate.

3) The case by Katz for the adoption of the inconsistent use model of adverse

Katz (Katz, 2010) advocates the adoption of the inconsistent test use[2] which is otherwise known as the rule in *Leigh* v *Jack*. The rule states that there cannot be adverse possession if the purposes to which adverse possessor puts the land is not inconsistent with the future plan that the true land owner has for the land. She claims that the inconsistent use test has been wrongly maligned. She argues that the inconsistent use model of adverse possession recognizes the authority of the owner to set an agenda for the land and to remain tile owner without maintaining

[1]He refers to a compensation requirement which is limited to bad faith extensions of an adverse possessor's boundaries, ibid.
[2] As applicable in Canada.

possession but allows for a vacancy in ownership to be filled where the owner is no longer exercising his/her authority and the land has become agenda-less. She draws an analogy between the position of the successful adverse possessor and a government which has taken over as a result of a bloodless *coup d'état*. Katz maintains that this model of adverse possession solves the problems of agenda-less objects just as the recognition of the existing government solves the problem of stateless people. She also maintains that this model of adverse possession permits the radical transformation of squatters into owners without collapsing into a moral paradox where the law appears to reward the theft of land[1].

Katz's preferred model of adverse possession is attractive as she presents it. However, as she herself acknowledges, the inconsistent use model of adverse possession has not been perfectly articulated in any jurisdiction[2]. The judicial quagmire of approaches which the test generated in Ontario is illustrative of the practical difficulties which it presents. Even if the test is restricted to apply only when an owner has future plans for the property, the presence or absence of such an agenda for the property may not be easy to establish in practice. As has been pointed out by the judiciary, an owner could always claim an intention to develop or sell the property in the future (Muldrow, 1957).

Also, assessing the inconsistency of the squatter's acts of possession may not be as straightforward as Katz suggests. In reality, developer owners do not require the land to remain vacant in the interim and Katz does not give a true sense of the difficulties facing an adverse possessor who occupies the land in such circumstances. At the very least, the case law indicates that the erection of some sort of permanent building would be required (Muldrow, 1957). The speculator-owner with a plan to sell the land when the time was right is also in a strong position when it comes to the application of the test. Katz, however, seems to draw quite an arbitrary distinction between the speculator-owner and the owner who plans to develop the land him/herself. She states that the speculator-owner should be treated as having discontinued possession by failing to exercise agenda-setting authority. A failure to set an agenda for the land renders the inconsistent user test

[1]S 17(2) of the Irish Statute of Limitation 1957) provides that in the case of a periodic tenancy with no written lease, the tenancy is deemed to determine on the expiry of the first period for which no rent is paid and the right of action accrues at that point.

[2]Limitation Act 1980, sch 1, para 9. In Ireland, it is easier for a co-owner to acquire title by adverse possession against another co-owner, but this position may have been necessary to facilitate the informal administration of certain estates in the past.

inapplicable[1]. She seems to equate a plan to sell the land with an intention to it which is surely an extremely harsh view to take of property speculation and again fails to reflect the case law where such owners benefited from the application of the inconsistent use test (Elfant, 1984-1985; Stake, 2000-2001; Merrill, 1984-85).

It is submitted that the inconsistent use test creates unnecessary complications in the law on adverse possession. Katz assumes ambivalence on the part of English jurists in relation to the morality of the doctrine. In summary, problems associated with the inconsistent use model include: difficulties in establishing subjective intention, how specific must the owner's plans be?, inconsistent user test may not be straightforward to apply, doesn't protect the owner with no plans, Katz pre-supposes ambivalence on the part of English jurists in relation to the morality of the law. It is submitted that a judicial or legislative reincarnation of the rule in *Leigh* v *Jack* would be an extremely flawed method of reforming the law on adverse possession to afford more protection to the owner, particularly given the pragmatic alternative of introducing restitution and unjust enrichment in dealing with adverse possession.

4) Qualified Veto Rule

Smith (Smith, 2017), asserts that to obviate the kind of injustice brought forth by the statutory provisions on adverse possession[2], the law should either exclude the monstrous interest of the adverse possessor from registration thereby making the squatter liable to eviction at the instance of the registered proprietor at any time., or envision a rigorous regime which makes it much harder for a squatter who is in possession of registered land to obtain title to it against the wishes of the registered proprietor. This other option is to oblige the adverse possessor registration in extreme circumstances. Thus, while an exercise of adverse possession for a fairly long period of time without more may extinguish the title of an unregistered owner, such a claim has to be streamlined in its application to registered land. He stated that the idea that a squatter acquires title over registered land through adverse possession after the limitation period by merely serving notice or posting an advertisement and subsequently, proceeding to court for an order of rectification of the register in his favour, runs counter to the basic realities of registration in modern times. Apart from assisting a squatter to defeat the main objectives of land

[1]See *Teis v Ancaster (Town)* (n 41) [24].
[2] Referring particularly to the Land Registration Law of Lagos State 2015

registration, the provisions of section 112 of the LRL 2015 put the interest of third parties such as the mortgagee in jeopardy for, the interest of the adverse possessor constitutes an overriding interest against all registered land[1]. He stated that in n applying the second option, the principles of qualified veto rule entrenched in the Land Registration Act of the United Kingdom (LRA) 2002, provide a useful guide.

Under the LRA 2002 an adverse possessor who has been in adverse possession of a registered estate in land for at least 10 years is entitled to apply to be registered as proprietor of that estate[2]. The Land Registry must serve the registered proprietor of the estate, any charge and any superior registered estate (if the estate is leasehold) with notice of the application[3] and any person who receives such a notice is entitled to veto the application[4]. However, the adverse possessor will be entitled to be registered as proprietor of the estate if there is no response to the notices served[5] or if no action is taken to repossess the land within two years of the rejection of the adverse possessor's application[6]. Also, in three exceptional situations where the Commission felt that the balance of fairness lay with the adverse possessor[7], the applicant will be registered in spite of an objection by a notice recipient. The first exception preserves the doctrine's operation where the applicant can prove an equity by estoppels and the circumstances are such that he/she ought to be registered as the owner[8]. The second exception permits reliance on the doctrine where the applicant is for some other reason entitled to be registered as the owner of the estate[9] (e.g. if the adverse possessor is entitled to the land under the will or intestacy of the owner or if the adverse possessor had contracted to buy the land and paid the purchase price but the legal estate was never transferred to him or her[10]). The third exception facilitates the registration of an applicant who owns adjacent land and who reasonably believed for at least ten years ending on the date

[1] LRL No. 8 2015, s.66(f).
[2] Land Registration Act 2002, Sch 6, para 1.
[3] Sch 6, para 2.
[4] Sch 6, para 3 and 5. The veto is exercisable by requiring that the application be dealt with under para 5 which only allows the applicant to be registered if one of the three conditions set out therein is met.
[5] Sch 6, para 4.
[6] Sch 6, para 6 and 7.
[7] Law Commission, Land Registration for Twenty First Century: A conveyancing Revolution (Law Com No. 271 2001) para 14.36.
[8] Sch. 6, para 5(2)
[9] Sch 6, para 5 (3)
[10] The Law Commission provided these examples in its Report, see Law Com No 271 (n 1) para 14, 43.

of the application that the land, which is the subject matter of the application, belonged to him/her[1].

This procedure provides the land owner with an opportunity to recover possession of the property before the squatter's occupation has given rise to any claim on the title to the land. On the whole, these reforms have been presented as, and accepted as being, wholly justified in the context of a modern regime of 'title by registration'. However, the reform of adverse possession also implements a contentious moral agenda in relation to advertent squatters and to absent landowners. While these provisions of the LRA 2002 will have important practical and philosophical consequences, the Law Commission has attempted to close off any prospect of further debate on the subject, without explicit consideration of current social and housing issues associated with urban squatting, or of the matrix of moral issues at stake in such cases. So far as the legal academy is concerned, the effective abolition of the doctrine of adverse possession has attracted surprisingly little critical attention. Martin Dixon, for example, has described himself as being: '(possibly in a minority of one) [in that he] regards the reform of the process of adverse possession by the LRAA 2002 as an unnecessary and economically unjustified 'bolt on' to the reform of registered land (Cobb & Fox, 2007).

The Commission's analysis of the law of adverse possession should have provided the perfect opportunity to analyse in depth the vast body of theory evaluating both the efficiency and morality of the doctrine. On the one hand, it might have led to a consideration of the many theoretical economic justifications (beyond the simple matter of certainty of title) that have been put forward by various commentators in recent years. On the other hand, it might also have allowed the Commission to engage with the broad range of philosophical arguments that have traditionally been thought to justify the acquisition of title through adverse possession on moral grounds, including desert-labour theory, personhood and moral utilitarianism. However, the Commission failed to carry out anything like an adequate assessment of the vast body of literature on this subject, resorting instead to a "common sense" approach to the issue that revolved around the key importance of the Land Register in ensuring certainty of title in a system of registered land and the ethical distinction that was drawn between 'good faith' and 'bad faith' squatters. To illustrate the limits of the Law Commission's economic and moral analysis this Cob and Fox argues that the Law Commission has (unhelpfully) essentialised the problem of squatting. It has failed to consider fully the wide variety of types of

[1] Sch. 6, para 5(4)

squatter and the varying types of moral and economic arguments that relate to each of these categories (Cobb & Fox, 2007) in coming to the conclusions that led to the LRA 2002 reforms.

5) Mandatory Court Application

In an attempt to reform the doctrine of adverse possession, the LRL 2015[1] also provides that a person claiming title by adverse possession would have to obtain court order. The fact that the court is expected to pronounce on the fact of adverse possession under the LRL 2015[2] after hearing both parties is of no moment, since the court's inquiry is as to the validity of the claim in adverse possession and not affording the registered owner the opportunity of reversing the illegally acquired status of the adverse possessor by initiating legal proceedings.

It is worthy of note that the principles underlining adverse possession do not give room for the court to inquire into the question whether the squatter acquired adverse possession in good faith or whether the registered owner had knowledge of the squatter's presence on the registered land.[3] The question is whether the squatter was in *de facto* adverse possession of the land for the limitation period devoid of all extenuating circumstances. It thus appears that the position under the LRL 2015 is not that protective of the existing registered proprietor or actual owner.

Since the court's inquiry is limited to the validity of the claim in adverse possession as to the limitation period and not affording the registered owner the opportunity of reversing the illegally acquired status of the adverse possessor by initiating legal proceedings. It thus appears that the position under the LRL 2015 is not that protective of the existing registered proprietor or actual owner.

3. Restitution Principles Founded on Unjust Enrichment

The best way to deal with the claim of an adverse possessor of a registered land and to eliminate the unfairness associated with the adverse possession doctrine, is for the legislatures or courts to modify its results by applying restitution standard founded on unjust enrichment. Unjust enrichment is based on the concept that one person is enriched at the expense of another person's actions. To successfully claim

[1] See the Long Title: A Law to Make Provisions for the Registration of Title To Land in Lagos State and for Connected Purposes.
[2] Section 112(2) LRL 2015.
[3] Criminal Law of Lagos State, supra note 10 17-18.

unjust enrichment, three factors must be proved: (a) the defendant must have received an enrichment, (b) the claimant has been deprived or suffered a loss because of it, and (c) There is no legal reason for the enrichment. Once the ingredients above resolved in favour of the plaintiff, he will be entitled to the restitution founded on a reversal of unjust enrichment (Emiri, 2013) and the remedy may include a constructive trust (Emiri, 2013) Constructive trust is a mechanism of trust employed by equity in order to compel the "trustee" to convey property to the 'beneficiary' where quite apart from the intentions of the parties, the rules of equity decide that property is in wrong hands. The constructive trust arises by operation of law in a number of circumstances including where defendant has received property unconscionably[1].

The device has been extensively developed in the United State of America where such trust is regarded as 'purely a remedial institution' (Pound, 1920). Where the adverse possessor would be unjustly enriched by a successful claim, and the burden on the titled owner would be harsh or oppressive, causing hardship and unfair surprise, and violating reasonable expectations, then adjustments should be made by applying proprietary restitutionary claims based on unjust enrichment to balance the interests of the parties.

Not only did adverse possession cases cause observers to see innocent people being violated by the law, but guilty people being rewarded. Observers of the *Pye Ltd v Graham* are likely to describe the case 'legal theft'. Such conclusions undermine confidence in the law in general. Recognizing that, the law has always attempted to prevent 'unjust enrichment'. The concept of unjust enrichment appears in Roman law and early French and German law (Paternoster, et al, 1997). It generally applies when one party receives a benefit to the other party's detriment in violation of the principles of justice, equity, and good conscience[2]. Although quasi-contract, which is closely associated with the development of unjust enrichment, is historically a legal issue, unjust enrichment has long been viewed as an equitable issue, an issue of fairness (Sherwin, 2004). It is a principle that can be applied when legal rules produce results in particular cases that appear unfair (Sherwin, 2004). For example, one commentator has suggested that the principle of unjust enrichment is too often 'underutilized' and 'overlooked' and should be used by consumers who are the victims of price-fixing when the law does not provide them

[1] [1996] A. C. 669, 71. See *also Papamichael v National Westminster Bank [2003 1 Llyod's Rep. 341, 372*.

[2] See e.g., *HPI Health Care Serv., Inc. v. Mt. Vernon Hosp., Inc., 545 N.E.2d 672, 679 (Ill. 1989*); (Lepinskas, 2003).

with a fair or adequate remedy (Karon, 2005; Sherwin, 2006; Kanner, 2005). This use of unjust enrichment could be particularly important in evaluating the doctrine of adverse possession because the reasons for it are, for the most part, anachronistic, elevating the importance of fairness. If unjust enrichment is viewed as 'a principle of individualized, fact-specific decision-making, capable of overriding otherwise applicable rules'(Karon, 2005; Sherwin, 2006; Kanner, 2005), it could have been applied in *Pye Ltd v Graham* without rebuffing the doctrine of adverse possession as a general rule. The appropriate way of looking at that case would have been to apply the rules of adverse possession by the court, and then conclude that, in spite of satisfying the requirements of the adverse possession law, the ownership of the property should remain with the Pye Ltd unless Graham was willing to pay them the market value of the property and reimburse them for the taxes they paid during Graham's years of possession. This decision would respect the adverse possession rules by giving Graham an opportunity to continue in possession of the property, but it would respect the doctrines of fairness and unjust enrichment by not allowing Graham to have this valuable piece of property for nothing and by not punishing the Pye so severely when they acted the way any reasonable citizens would and did not act to the detriment of society in general. Seavey and Scott, the Reporters for the original Restatement of Restitution, opined that one "person is not permitted to profit by his own wrong [that is, be unjustly enriched[1] at the expense of another"[2]. The broad proposition of seeing unjust enrichment "as a more general authorization for courts to depart from legal rules when the rules produce unjust results –an authorization that would cut across the substantive fields of private law," was articulated by Professor Sherwin in connection with the field of restitution[3]. She noted that the notion of preventing unjust enrichment is 'useful as [an] outlet[] for common sentiments of comparative justice' (Sherwin, 2004). This analysis is particularly applicable to the doctrine of adverse possession; however, individualized decisions can be problematic because of the possibility that the rule will disappear under ad hoc decision-making[4]. If that were to happen to the adverse possession doctrine, it might be a good thing. The doctrine as discussed above does not any longer serve the purposes for which it

[1] Restatement of Restitution 1 (1937).
[2] Restatement of Restitution 1 (1937).
[3] The Law Commission provided these examples in its Report, see Law Com No 271 (n 1) para 14, 43.
[4] The Law Commission provided these examples in its Report, see Law Com No 271 (n 1) para 14, 43.

was intended; nevertheless, suddenly eliminating it without a simultaneous movement to a registration system would create new problems of ownership.

Having the rules of adverse possession bounded by an unjust enrichment standard would eliminate the perception of unfairness that adverse possession decisions have engendered in observers. This use of the unjust enrichment principle would be in keeping with its interpretation as a vehicle for 'cover[ing] conduct that was morally wrong although sanctioned by law' (Sherwin, 2004). An appropriate time for the rules of adverse possession to be limited by unjust enrichment occurs when strict adherence to the legal rules would be harsh or oppressive, creating unfair surprise and hardships for title holders by violating their reasonable expectations (Parkinson, 1993; McConvill & Bagaric, 2002). Our society no longer considers letting land lie fallow to be imprudent, unproductive, or unreasonable. In fact, it is common knowledge that farmers are given monetary incentives not to use their land under certain circumstances. Furthermore, many localities buy, at taxpayer expense, parcels of land for the specific purpose of keeping them undeveloped. Given such situations, it is unreasonable to expect landowners to be aware of a doctrine premised on the anachronistic notion that use of land is more highly valued than nonuse, especially when there is no issue about who is the titled owner.

4. Conclusion

The current methods of reforming adverse possession as demonstrated above, though have attempted to proffer solutions that could be adopted to deal with the failure of the adverse possession to defend or insulate registered title to land from adverse possession but they do not completely solve the problem. The insecurity of title to registered land created by the law on adverse possession and the need to provide protection to the registered land owner.

Seeking to reform adverse possession of registered land by applying the restitution principles is premised on the conclusions reached in this work that adverse possession is a violation of the property right unlike all other methods of reform discussed, restriction of adverse possession of registered land by restitution principles is an all-inclusive remedy capable of providing stronger protection for registered land owner because of the its benefits. The benefits offered by restitution include: claim of tracing against recipient of the property, claiming specific property in priority to the claims of general creditors where the recipient is insolvent, where true owner traces his property into investments bearing interest,

he will be entitled to claim interest, the true owner can obtain the restitution of value from direct recipient of the property (Chitty, 2008; Chitty, 1934-1935).

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