Adverse Possession and Unfair Outcomes: The case for a qualified veto system

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Abstract: This article examines the extent to which the current Irish law on Adverse Possession has the potential to produce unfair outcomes. It explores the circumstances surrounding the most typical of adverse possession claims. There is evidence which suggests that many conflicts involving an adverse possession claim arise between siblings or neighbours. Such relationships are frequently underpinned by trust and goodwill leading to a reluctance on the part of the owner to initiate litigation or to take steps to formalise a consensual occupation arrangement. This article makes a case for the introduction of a qualified veto system of adverse possession to address this unfairness by bolstering the protection afforded by the law to owners and limiting claims by undeserving squatters. Most importantly, however, this new system of adverse possession could be fashioned to preserve the valuable functions currently performed by the doctrine.

Keywords: Adverse possession; law reform; unfairness; roles performed by the doctrine of adverse possession.

Introduction

The doctrine of adverse possession has been described as an 'extraordinary law'[1] which 'appears to sanction illegal activity … and to reward the perpetrators'[2] by extinguishing the true owner's title where adverse possession can be demonstrated for the duration of the limitation period.[3] The controversies generated by the doctrine of adverse possession have been described as giving rise to two branches of literature:

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[1] Northern Ireland Law Commission, *Supplementary Consultation Paper Land Law* (NILC 3, 2010) [2.12].
[2] ibid.
[3] In Ireland, an action to recover land must typically be brought by the owner within 12 years (although if a state authority is seeking to recover land or part of the foreshore is involved, a limitation period of thirty or sixty years is applicable). See Statute of Limitations 1957, s 13.

> One branch deals with what might be referred to as 'fundamental features' of the doctrine. The other deals with more 'technical rules' relating to particular applications of the doctrine.[4]

This article does not focus on the more technical aspects of the doctrine e.g., the parliamentary conveyance theory.[5] Instead, it could be described as falling within the remit of literature dealing with more fundamental features of the doctrine.[6] It engages with a moral/ethical dilemma which has stirred up controversy in Ireland, but also elsewhere, particularly in the last 20 to 30 years. In a nutshell, it seeks to explore two questions: (1) does the current Irish law on adverse possession produce unfair outcomes,? and (2) could the introduction of a qualified veto system address this unfairness but also hone the doctrine's operation to facilitate deserving claims?.

In relation to the first question, it could be argued that 'fairness' is a nebulous concept which, like beauty, lies in the eye of the beholder. Therefore, I will attempt to be more specific. One aim of this article is to examine if the law on adverse possession confers insufficient protection on certain 'vulnerable' owners who lose title to their land and, also, if it occasionally allows 'undeserving' squatters to acquire title to land. I argue that the doctrine currently produces unfair outcomes for family members or neighbours who lose title due to a reluctance to initiate legal proceedings or to formalise a consensual occupation agreement.

In relation to the second question, there appears to be a clear-cut divergence of views in relation to whether there is a need to introduce reforms to the law on adverse possession designed to produce fairer outcomes. While members of the

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[4] Northern Ireland Law Commission (n 1) para 2.3.

[5] Una Woods, 'Adverse Possession of Unregistered Leasehold Land' [2002] 36 Irish Jurist 304.

[6] Martin Dockray, 'Why do we need adverse possession' (1985) Conveyancer and Property Lawyer 272; Jeffrey Evans Stake, 'The uneasy Case for Adverse Possession" (2000-2001) 89 Georgetown Law Journal 2419; Neil Cobb and Lorna Fox, 'Living Outside the System? The (im)morality of urban squatting after the Land Registration Act 2002' (2007) 27(2) Legal Studies 236.

public and the media are often shocked by the doctrine,[7] some academics[8] and many legal practitioners are highly defensive of the law in this area.[9] Proponents of the current law point out the valuable functions performed by the doctrine and consequently argue for the maintenance of the status quo.[10] Even if one accepts that the current law has the potential to produce undesirable outcomes, the task of reforming the law presents certain challenges. I argue that it is possible to preserve the valuable functions performed by the doctrine while also addressing these unfair outcomes.

This article explains how the introduction of a qualified veto system of adverse possession could improve the law in certain key respects by: (1) conferring more protection on the owner (who could veto an application by a squatter); (2) restricting the extent to which undeserving squatters could rely on the doctrine; but also (3) ensuring that the doctrine continues to perform the useful functions that it currently performs (through reliance on the qualifications to that veto). As it is necessary to examine a number of complex features of the law in making the case for reform, I will begin my discussion with a road map to outline the article.

[7] Media coverage of adverse possession cases tends to be negative. See Gabrielle Monaghan, 'Call for reform of squatter's rights law' *Sunday Independent Business* (Dublin, 25 May 2025) 1; Gabrielle Monaghan, 'Squatter's Rights: How to stop someone legally taking ownership of your land' *Sunday Independent Business* (Dublin, 25 May 2025) 8-9. Following the Irish case of *O'Hagan v Grogan* [2012] IESC 8, see T Healy, 'Squatter wins rights to widow's house 30 years after he broke in' *Irish Independent* (Dublin, 17 February 2012).

[8] Cobb and Fox (n 6). See also John Wylie, 'Adverse Possession – Still an Ailing Concept?' (2017) 58 Irish Jurist 1. While Wylie argues in favour of the introduction of reforms to more technical elements of the doctrine (e.g. the implementation of the parliamentary conveyance theory), he argues against the introduction of more fundamental structural reforms (e.g. the abolition of the doctrine or the introduction of a qualified veto system).

[9] Two submissions to the government were made by the Conveyancing Committee of the Law Society of Ireland arguing against the fundamental reforms proposed by the Law Reform Commission in its *Report on Reform and Modernisation of Land Law and Conveyancing Law* (LRC 74 – 2005): *Submission From Conveyancing Committee of the Law Society Re Adverse Possession* (December 2005); *Supplemental Submission From Conveyancing Committee of the Law Society Re Adverse Possession* (January 2006).

[10] The Irish government made a third party submission to the European Court of Human Rights which emphasised the important functions performed by the doctrine in Ireland. See *JA Pye (Oxford) Ltd v United Kingdom* (2008) 46 EHRR 45 [50]– [51].

A Road Map

Part 1 of this article commences with a brief overview of how Ireland and certain other jurisdictions near and far have tackled or resiled from reforming the thorny issue of adverse possession. The qualified veto system of adverse possession introduced in England and Wales pursuant to the Land Registration Act 2002 (the '2002 Act') is of obvious interest. So also, is the *Pye* case which, while winding its way through the English courts,[11], prompted the Irish Law Reform Commission to make certain radical proposals for reforming the Irish law on adverse possession. [12] These reforms were ultimately jettisoned in response to submissions by practitioners that they would be too costly to implement and liable to create undesirable tensions between neighbours.[13] It is possible that the reactions of Irish practitioners to the Law Reform Commission proposals may have prompted the more conservative approach adopted by the Northern Ireland Law Commission in 2010 in its assessment of the need to address ethical concerns relating to the doctrine. [14]

Part 2 of the article explores the existing doctrinal protections for the owner conferred by Irish case law on adverse possession. It has been intimated that Irish case law makes it more difficult to dispossess an owner engaged in minimal actions in relation to the land or an owner with future plans for the land in question.[15] It has also been suggested that the adverse possession claim involved in the *Pye* case would not have been successful if heard before the Irish courts.[16] The veracity of such an argument would considerably undermine a case for reform designed to confer additional protection on owners. Following a substantive review of the case law, this argument is rejected and, instead, I

[11] *JA Pye (Oxford) Ltd v Graham* [2000] Ch 676; *JA Pye (Oxford) Ltd v Graham* [2001] Ch 804; *JA Pye (Oxford) Ltd v Graham* [2002] 3 All ER 865.
[12] Law Reform Commission, *Report on Reform and Modernisation of Land Law and Conveyancing Law* (LRC 74 – 2005) 327-330.
[13] See the submissions by the Conveyancing Committee of the Law Society of Ireland (n 9).
[14] Northern Ireland Law Commission (n 1) [2.45]; Northern Ireland Law Commission, *Report Land Law* (NILC 8-2010), [12.6]-[12.7].
[15] Niall Buckley, 'Adverse Possession at the Crossroads' (2006) 11(3) *Conveyancing and Property Law Journal* 59, 61-64.
[16] ibid.

suggest that it is not beyond the bounds of possibility that a case, on all fours with *Pye*, could succeed before the Irish courts.

If Irish law affords only limited protection to the owner against losing title by adverse possession, it is worth exploring the available empirical evidence to ascertain whether such owners are vulnerable and in need of additional protection. This empirical analysis forms the basis for Part 3 of the article. A review of an internal survey conducted in 2008 by the Property Registration Authority[17] (the '2008 survey') of adverse possession applications and the Irish case law on adverse possession reveals that the majority of claims arise between family members or neighbours. It seems reasonable to assume in this peculiarly familial or neighbourly context that such owners fail to take action out of a desire to avoid conflict or because they imagine and trust that the occupier recognises that their presence is simply tolerated. It is submitted that such owners are vulnerable and would benefit from a system of adverse possession which would warn them if they are in danger of losing title through adverse possession, i.e., a veto system.

Moving away from the emphasis on the position of the owner, Part 4 and Part 5 of the article explore the extent to which the current law facilitates claims by undeserving and deserving squatters and whether the law could be reformed to restrict claims by the former. As discussed in Part 4, the worthiness of a squatter's claim is sometimes assessed by examining whether they possessed 'good faith', i.e., 'a belief in ownership'. A review of the relevant statutory provisions and case law reveals that bad faith squatters are equally as likely to be successful in an adverse possession claim. Part 4 of the article concludes by pointing out that the good faith/bad faith distinction is not always a sufficiently sophisticated mechanism for identifying adverse possessors who deserve to acquire title. Part 5 involves an examination of the categories of squatters revealed by the 2008 survey and how qualifications to a veto system could be best fashioned to preserve worthy claims. Certain categories of 'deserving' squatters are particularly noteworthy in the Irish context given the merits of their claim and/or for utilitarian reasons: good faith possessors of a boundary strip, possessors of abandoned land, informal purchasers, family members with an estoppel claim and owners who hold under a defective unregistered paper title. Part 5 discusses how the

[17] Note that property registration services in Ireland now operate through Tailte Éireann.

introduction of a qualified veto system could preserve the role played by the doctrine in these contexts but also limit claims by undeserving squatters. The conclusion highlights the importance of adverse possession in our modern land law system and reiterates the long overdue case for reform to address the current potential for unfair outcomes.

Part 1: The Need for Reform: Perceptions

To set the context for this discussion, a snapshot is provided of how certain jurisdictions have, over recent decades, either reformed the law on adverse possession or viewed the case for reform. In Ontario, Canada, a prohibition system of adverse possession was introduced in relation to registered land in 1990. Section 51 of the Land Titles Act 1990 prohibits the acquisition of title by adverse possession in relation to land which has been registered. Although 99.9% of titles in that jurisdiction are now registered under the land title system, many of these titles were automatically converted in recent years without a proper investigation of title.[18] In reality, it may be many years before the doctrine of adverse possession is rendered redundant in Ontario. Even at that point, it is not beyond the bounds of possibility that Ontario could be forced in the future to reintroduce adverse possession in a registered land context. New Zealand and a number of Australian territories which also operated a prohibition system of adverse possession in relation to registered land were forced to re-introduce the doctrine to counteract marketability difficulties which arose due to a culture of informal transactions and a high incidence of abandoned land.[19]

[18] This took place as part of the POLARIS programme which involved the automation of all records in relation to land transactions and ownership. Such titles were, therefore, registered subject to qualifiers which specifically preserve the rights of adverse possessors which had accrued prior to conversion. Before the title can be upgraded to absolute, the qualifier must be removed and any adverse claims resolved. Alternatively, the adverse possessor may apply for registration on the basis of a pre-existing possessory title.

[19] New Zealand in 1963, South Australia in 1945, Queensland in 1952 and New South Wales in 1979. See Malcom McKenzie Park, *The Effect of Adverse Possession on Part of a Registered Title Land Parcel* (D Phil thesis, University of Melbourne, 2003) ch 6.

In the U.S. State of Oregon, a mandatory good faith requirement was introduced[20] which applies to adverse possession claims lodged after January 1, 1990.[21] In addition to proving the traditional elements of the doctrine, the claimant must be able to prove that when they or their predecessor first entered into possession of the property they honestly believed that they were the actual owner of the property. They must also be able to prove that this belief continued throughout the limitation period, had an objective basis and was reasonable under the particular circumstances. The proponents of this reform wished to prevent bad faith adverse possessors obtaining title to land and to protect large landowners who cannot keep a close watch on encroaching neighbours. The legislature was also concerned about the friendly neighbour who could lose property after passively assenting to their neighbour's use of the property to avoid animosity.[22]

Closer to home, in England and Wales a qualified veto system of adverse possession was introduced pursuant to the 2002 Act which applies only to registered land.[23] Under the 2002 Act a person who has been in adverse possession of a registered estate in land for at least 10 years[24] is entitled to apply to be registered as proprietor of that estate.[25] The Land Registry must serve the registered proprietor of the estate, or of any charge or any superior registered estate (if the estate is leasehold) with notice of the application[26]

[20] 2013 Oregon Revised Statutes §105.620. For a critique of this approach to reform see Una Woods, 'The 'Undeserving' and the 'Deserving' Squatter under the Irish Law on Adverse Possession' Part 2, in Bjorn Hoops and Ernst Jacobus Marais (eds), *New Perspectives on Acquisitive Prescription* (Eleven International Publishing 2019).

[21] Where the limitation period expired before that date, it is not necessary for the claimant to prove a belief in ownership. See *Liberfreund v Gregory* 206 Or App 484, 136 P3d 1207 (2006).

[22] House Hearings 3195 before the Subcommittee on Civil Law and Judicial Administration of the House Committee on the Judiciary, 65th Or. Leg. (1989) (audiotapes on file with Oregon State Archives).

[23] The Act introduces a divergence between the law governing adverse possession of registered and unregistered land. The Law Commission argued that extending the veto system to unregistered land could weaken the security of title to such land as the doctrine of adverse possession plays an essential role in the investigation of such titles by curing title defects and facilitating transactions in relation to such land. See Law Commission, *Land Registration for the Twenty-First Century: A Conveyancing Revolution* (Law Com No 271, 2001) [14.2].

[24] Note that the limitation period for actions to recover unregistered land continues to be 12 years. See Limitation Act 1980, s 15(1).

[25] Land Registration Act 2002, Sch 6, para 1.

[26] Land Registration Act 2002, Sch 6, para 2.

and any person who receives such a notice is entitled to veto the application by serving a counter-notice.[27] However, the adverse possessor will be entitled to be registered as proprietor of the estate if there is no response to the notices served[28] or if no action is taken to repossess the land within two years of the rejection of the adverse possessor's application.[29] Therefore, the doctrine will continue to play an important role in restoring abandoned land to the market. Also, in three exceptional situations where the Commission felt that the balance of fairness lay with the adverse possessor,[30] the applicant will be registered in spite of an objection by a notice recipient. The first exception/qualification to the veto is where the applicant can prove an equity by estoppel. The second exception permits reliance on the doctrine if the squatter is entitled for some other reason to be registered, e.g., where there was an informal transfer. The third exception facilitates the registration of a squatter who owns adjacent land and who reasonably believed that the land, which is the subject matter of the application, was theirs throughout the limitation period. During the transitional period before the 2002 Act became fully operational, the old law regulating adverse possession continued to govern registered land. It was the old law which had to be applied and considered in *Pye* which wound its way through the English courts over 20 years ago.[31] This litigation could be described as representing the highpoint of disquiet in relation to the doctrine in this part of the world.

The *Pye* litigation originated with an action brought by Pye Ltd to recover possession of 25 hectares of valuable land from the personal representatives of Michael Graham, who had been a neighbouring farmer and claimed to have acquired title to the land by adverse possession. The company had bought the land with plans to develop it in the future. Although the House of Lords ruled in favour of the Grahams, some dissatisfaction with the old adverse possession

[27] Land Registration Act 2002, Sch 6, paras 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.
[28] Land Registration Act 2002, Sch 6, para 4.
[29] Land Registration Act 2002, Sch 6, paras 6 and 7.
[30] Law Com No 271 (n 23) para 14.36.
[31] *JA Pye (Oxford) Ltd v Graham* [2000] Ch 676; *JA Pye (Oxford) Ltd v Graham* [2001] Ch 804; *JA Pye (Oxford) Ltd v Graham* [2002] 3 All ER 865.

regime was apparent. In the House of Lords, Lord Hope observed: 'The unfairness in the old regime which this case has demonstrated lies … in the lack of safeguards against oversight or inadvertence on the part of the registered proprietor.'[32]

Pye Ltd proceeded to bring an application against the UK government pursuant to Article 34 of the European Convention on Human Rights ('ECHR'). The company alleged that the law on adverse possession, through which it had lost land with development potential, violated its right to property as guaranteed by Article 1 of the First Protocol to the ECHR. On 30 August 2007 the Grand Chamber of the European Court of Human Rights delivered its judgment in *JA Pye (Oxford) Ltd v United Kingdom*.[33] It held, by ten votes to seven, that the old system of adverse possession did not violate Article 1 of the First Protocol.

Before the *Pye* case reached the European Court of Human Rights, the Irish Law Reform Commission were in the final stages of drafting proposals which would ultimately form the basis of the Land and Conveyancing Law Reform Act 2009. In a 2005 report[34] the Law Reform Commission reacted to the controversy generated by the *Pye* litigation, noting: 'it must be recognised that on occasion the doctrine may operate unfairly' and 'it appears to exact a very severe penalty on a landowner (the loss of the land) through a mere oversight or mistake.'[35] While the Law Reform Commission included certain radical proposals for reforms in its report, it seems reasonable to speculate that these proposals may have been compiled hastily as a response to *Pye*. Currently, the Land Registry deals with the majority of adverse possession applications (either as section 49 applications or applications for first registration based on possession).[36] The Law Reform Commission proposals would have removed this facility, imposing instead a mandatory requirement for a court application for a vesting order[37] to be granted in certain limited circumstances[38] and subject to the payment of compensation,

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[32] *JA Pye (Oxford) Ltd v Graham* [2002] UKHL [73]; [2002] 3 All ER 886.
[33] (2008) 46 EHRR 45.
[34] *Report on Reform and Modernisation of Land Law and Conveyancing Law* (LRC 74 - 2005).
[35] ibid [2.06].
[36] In the first quarter of 2025, 879 section 49 applications and 668 applications for first registration based on possession (ie Form 5s) were received by Tailte Éireann.
[37] Draft Bill, s 129 contained in the Report (n 34) 327.
[38] Draft Bill, s 130(2) provides that a vesting order shall be made only if one of the following conditions are satisfied: (1) from the lack of response to notices, inquiries, searches,

if appropriate.[39] In two submissions[40] made to the government, the Conveyancing Committee of the Law Society of Ireland was highly critical of these proposals. The Committee argued that requiring a court application would impose disproportionate and unnecessary costs on claimants. It noted that the payment of compensation would be inappropriate in many cases and would clog up the courts or create undesirable tensions between neighbours. It argued strongly in favour of maintaining the status quo and awaiting the Grand Chamber decision in *Pye* before assessing whether reform was necessary. As a result of these submissions, none of the reforms relating to adverse possession found their way into the Land and Conveyancing Law Reform Bill 2006, or ultimately the Land and Conveyancing Law Reform Act 2009. The Grand Chamber decision in *Pye* crushed any possibility that the European Convention on Human Rights would act as a catalyst for the reform of the Irish law on adverse possession, and it could also be argued that this decision nullifies the case for the introduction of reforms to the doctrine in Ireland designed to confer additional protection on the owner.[41] However, in *Dunne v Irish Rail*, Laffoy J noted that the doctrine of adverse possession remains 'controversial'. She commented, '[t]here would seem to be a need for a review of the recommendations made by the Law Reform Commission in 1989, 2002 and 2005 with a view to bringing clarity to the law in this area.'[42]

Finally, it is worth noting that in 2010, the Northern Irish Law Commission expressed the view that the law on adverse possession should not be reformed to accommodate ethical concerns and that it would not be appropriate at this

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advertisements or from statutory declarations or other evidence furnished it is reasonable to assume that the owner has abandoned the land or is unlikely to be found; (2) owing to a mistaken assumption as to the position of the boundary between the applicant's land and the owner's land, the applicant has throughout the period encroached upon part of the owner's land reasonably believing it to be part of the applicant's land; (3) where the application relates to land comprised in a deceased person's estate, it is reasonable to assume that an order in favour of the applicant would accord with the deceased's wishes, or; (4) in any other case, in the interest of settling the title to land in the fairest manner, it is appropriate to make the order. See Report (n 34) 329-330.

[39] Draft Bill s 130(2). See Report (n 34) 330.

[40] *Submission From Conveyancing Committee of the Law Society Re Adverse Possession* (December 2005); *Supplemental Submission From Conveyancing Committee of the Law Society Re Adverse Possession* (January 2006) (n 9).

[41] It is worth bearing in mind that the Convention is designed to guarantee only a minimum standard of protection, particularly in areas, such as property law, where a broad margin of appreciation is afforded to Convention States.

[42] *Dunne v Irish Rail* [2016] IESC 47 [23].

stage to adopt a veto system of adverse possession.[43] It is interesting that the Commission did not definitively reject this option but noted that it would require a more in-depth analysis of the circumstances in which adverse possession arises and whether such a system could be extended to unregistered land.

To conclude, a variety of perceptions have been expressed on the need for reform of the law on adverse possession both here and abroad. A strong case for reform must be based on an investigation of the current protections for the owner and the circumstances in which the doctrine is typically relied on. Any proposed reforms should also be designed to ensure that 'the baby is not thrown out with the bathwater' i.e. that the valuable role performed by the doctrine in certain deserving cases is preserved. The remainder of this article is devoted to addressing this challenge.

Part 2: The Protection Afforded to the Owner Under the Current Law on Adverse Possession

As a first step in examining the case for reform of the law on adverse possession in Ireland, it makes sense to explore the protection currently afforded by the Irish law to the owner.[44] It has been suggested by Buckley[45] and, indeed, intimated in the Land Registry practice direction on adverse possession[46] that the decision in *Pye* would not have been reached in Ireland (i.e., the Grahams would not have been successful in their adverse possession claim). This argument is based on a viewpoint that the owner is less easily dispossessed under Irish law. More specifically, it is argued that in Ireland the owner has to do less to maintain possession, and, also, that future plans on the part of the owner would prevent adverse possession from taking place. The implication is that the actions of company representatives in *Pye* of visiting the land from time to time would have

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[43] Northern Ireland Law Commission (n 1) para 2.45; Northern Ireland Law Commission, *Report Land Law* (NILC 8, 2010) para [12.6]-[12.7].
[44] For a more detailed discussion, see Una Woods, 'The Position of the Owner under the Irish Law on Adverse Possession' (2008) 30 *Dublin University Law Journal* 298.
[45] Niall Buckley, 'Adverse Possession at the Crossroads' (2006) 11(3) *Conveyancing and Property Law Journal* 59 61-64.
[46] Practice Direction on *Adverse Possession – Title by Adverse Possession to Registered Land* <https://tailte.ie/legal-practices-practise-directions-adverse-possession-title-by-adverse-possession-to-registered-land/> (accessed 7 May 2025) [2.1].

sufficed to maintain possession and, also, that the company's plans to develop the land in the future would have prevented its dispossession.

The argument that the owner has to do less to maintain possession is based on the High Court decision in *Feehan v Leamy*.[47] After the plaintiff bought the land there was some drawn out litigation over the title. In the meantime, a squatter started grazing cattle on the land. The only use the owner made of the land was to visit it and look over the hedge or gate into it. He did this on a number of occasions each year. The court held that the owner had not been dispossessed. This very lenient approach contrasts with earlier case law which focused on this issue where the court was able to point to stronger actions which prevented dispossession, e.g., walking over the land,[48] putting up for sale signs or clearing trespassers off the land.[49] According to Laffoy J in an *obiter* comment made in *Dunne,*[50] the lenient approach adopted in *Feehan* may not be followed in future case law. She stated:

> It is not beyond the bounds of possibility that in some future case a different view may be taken of the effect of the legal owner of land merely gazing over a wall or fence on to the land several times in a year and that such action may not be found to be sufficient to prevent a trespasser on the land being in adverse possession.[51]

It would, in my view, be dangerous to rely on *Feehan v Leamy* to assume that an owner's visits to the land (without, at least, walking over it) could be viewed as sufficient to maintain possession.[52]

It has also been argued that the rule in *Leigh v Jack* still applies in Ireland to prevent adverse possession from taking place if the owner has future plans for the land.[53] Two conflicting High Court decisions deal directly with this rule: *Cork*

[47] [2001] IEHC 23.
[48] *Browne v Fahy* (HC, 24 October 1975).
[49] *Mulhern v Brady* [2001] IEHC 23.
[50] [2016] IESC 47.
[51] ibid [21].
[52] For further discussion, see Woods 'The Position of the Owner under the Irish Law on Adverse Possession' (n 44) 310-314.
[53] Buckley argues that the rule in *Leigh v Jack* continues to play a role in Irish law, see Buckley, 'Adverse Possession at the Crossroads' (n 45) 64. In contrast, Woods argues that it cannot be

Corporation v Lynch,[54] and *Durack (Seamus) Manufacturing Ltd v Considine.*[55] The rule was applied in the former, but was rejected in the latter. In *Considine,* Barron J acknowledged that if the squatter is aware of the owner's future plans and this impacts on his intention to possess, so that the owner only intends to possess on a temporary basis, this may prevent adverse possession from taking place. Although the Supreme Court has yet to rule on the issue, a close reading of the case law reveals that the High Court has, for the most part, leaned against the adoption of the rule in *Leigh v Jack.*[56]

However, before the Grand Chamber decision was delivered in *Pye*, Buckley argued that the retention of the rule could be construed as affording additional protection for the owner, thus ensuring that the Irish law would not be deemed to be incompatible with the European Convention on Human Rights.[57] The notion of resurrecting the rule in *Leigh v Jack* to provide more protection for the owner seems surprising given that the Irish Law Reform Commission has twice recommended statutory clarification that it does not apply.[58] If more protection is needed for the documentary owner of the land, the application of this rule is an inelegant and haphazard method of meeting such a need.[59] The rule in *Leigh v Jack* does not tell us how specific the owner's future plans have to be. Also, the rule does not protect the owner who has yet to decide on what he will do with the land in the future or where the original plans of the owner have been forgotten or are unclear.[60]

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confidently asserted that the rule forms part of Irish law. See Woods, 'The Position of the Owner under the Irish Law on Adverse Possession' (n 44) 317-322.

[54] [1995] 2 ILRM 598.

[55] [1987] IR 677.

[56] Woods, 'The Position of the Owner under the Irish Law on Adverse Possession' (n 44) 317-322.

[57] Buckley (n 45) 64.

[58] *Report on Land Law and Conveyancing Law: General Proposals* (LRC 30 - 1989) [52]-[53]; *Consultation Paper on Reform and Modernisation of Land Law and Conveyancing Law* (LRC CP 34 - 2004) [12.04].

[59] For a discussion of this point, see Una Woods, 'Protection for Owners under the Law on Adverse Possession: An Inconsistent Use Test or a Qualified Veto System?' (2020) 57(2) Osgoode Hall Law Journal (2020) 342.

[60] *Tracey Enterprises MacAdam Limited v Drury* [2006] IEHC 381. Although evidence was given that the disputed plot may have been acquired with the intention of extending quarrying onto it, Laffoy J was not convinced of this. She cited, with approval, Barron J's statement in *Considine* that the owner's future plans are only relevant in so far as they may impact on the *animus possidendi* of

As I have argued elsewhere, it cannot be confidently asserted that the owner is less easily dispossessed under Irish law on adverse possession.[61] It is quite possible that the Grahams would have been successful in their claim if the circumstances in *Pye* were presented to the Irish courts.

Part 3: The Case for Additional Protection for Vulnerable Owners

If the current Irish law on adverse possession is not more protective of the owner than the law in England and Wales (operating before the 2002 Act), it is worth considering whether there is a case for reforming the law on adverse possession to provide additional protection for owners. Owners who lose title through the operation of the doctrine do not always evoke sympathy – it seems to depend on whether they are perceived to be guilty of wrongdoing. The case for more protection for owners thus hinges, at least to some extent, on whether such owners are viewed as vulnerable or blameworthy. In an article published in the aftermath of the introduction of the English reforms Cobb and Fox strongly expressed the view that such owners were blameworthy.[62] They argued that the old law on adverse possession (operating before the 2002 Act) was completely justified on the basis that it quite rightly punished the landowner who was a bad land steward and who failed to maintain effective oversight of his land. They felt that such owners essentially got their 'just deserts' under the old law. Cobb and Fox were particularly critical of local authorities who had 'forgotten' whether a property formed part of its portfolio.[63] It is regrettable, however, that Cobb and Fox failed to draw on empirical data to support their conclusions. In contrast, this writer had access to an internal survey conducted by the Property Registration Authority[64] in 2008 which provides a good indication of the most common circumstances of parties to an adverse possession claim in Ireland. The survey involved an analysis of one month's section 49 applications (adverse possession applications in relation to registered land) in respect of two counties (Cork and

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the squatter. However, her views must be considered *obiter* as the case was ultimately decided on the basis that the defendant's acts of possession were insufficient and he did not have the requisite *animus possidendi*.

[61] Woods, 'The Position of the Owner under the Irish Law on Adverse Possession' (n 44) 323.

[62] Cobb and Fox (n 6).

[63] ibid 255-256.

[64] Note that property registration services in Ireland now operate through Tailte Éireann.

Waterford).[65] Although the data is 17 years old, it has been recently confirmed that the results of this survey 'do not appear to be significantly out of line'[66] and they can, I suggest, safely be taken to approximately represent the circumstances of applicants relying on the doctrine at the present time.

The survey revealed that 56% of these claims involved adverse possession between family members, typically in relation to property forming part of an unadministered estate.[67] Although objections are frequently made in relation to section 49 applications, once the limitation period has expired, such an objection has no legal basis and will not prevent registration. Where siblings have entitlements under an unadministered estate and only one enters into possession following the death of the deceased owner, those out of possession are clearly in a very precarious position as the Irish law currently stands.[68] For example, it is easy to imagine a situation where absent members of the family were content to allow a sibling to continue to occupy a property but failed to appreciate that their interests were in danger of being extinguished by neglecting to formalise a consensual arrangement. The fact that family members frequently object to section 49 applications reflects the counter-intuitive nature of the law on this issue. The potential for misunderstanding renders absent family members extremely vulnerable, an argument which has been made to justify the English position which precludes adverse possession in such circumstances.[69] Of course, there may be an ethical justification for allowing the sibling in possession to rely

[65] Note that this internal survey was restricted to registered land and did not include applications for first registration based on possession. I am grateful to the Property Registration Authority, as it was then, for sharing this information with me, particularly CEO Liz Pope, who patiently discussed it with me.

[66] Confirmed on May 22, 2025. I am grateful to Áine Ruddy, Head of Legal Standards and External Liaison, Registration, Tailte Éireann who was helpful in this respect. She did point out that these figures do not account for Bord na Móna and State Property cases, many of which are lost/incomplete transfers.

[67] The survey revealed that 25% of claims involved lost/informal transfers, 12% of applications involved strangers in title (e.g., abandoned land); 6% involved boundary issues and 1% involved commonage. The merits of these claims shall be discussed in the next section.

[68] Una Woods, 'Adverse Possession and Unadministered Estates: An Unfair Solution to a Redundant Irish Problem' (2016) 67(2) Northern Ireland Legal Quarterly 137.

[69] Gareth Miller, 'The Administration of Estates and Adverse Possession' (2000) 150 New Law Journal 940, 946.

on the doctrine. This situation shall be explored below when discussing whether certain squatters deserve to rely on the doctrine.

Although only a minority of adverse possession disputes reach the courts, an analysis of reported Irish case law reveals that most of these disputes arise between family members or neighbouring landowners.[70] The number of adverse possession cases involving family members is unsurprising and reflects the experience of Tailte Éireann in dealing with section 49 applications. Adverse possession disputes typically arise between neighbours where one party encroaches on land which is not being used by the owner. The fact that the dispute has ended up before the courts indicates the contentious nature of the dispute, the entrenched position of the parties and, consequently, the discordant relationship which can be predicted for these parties into the future regardless of the outcome.[71] Therefore, in Ireland owners rarely lose title through adverse possession to a stranger (unless the land has been abandoned); most owners lose title to members of their family and, when the dispute is litigated, a significant number of cases involve neighbours. Although it is impossible to speculate on the circumstances which give rise to every claim, it seems reasonable to assume in this peculiarly familial or neighbourly context that many such owners fail to take action out of a desire to avoid conflict or because they imagine and trust that the occupier recognises that their presence is simply tolerated. Although such owners may be accused of naivety or, in some cases, perhaps a degree of laxity in failing to familiarise themselves with the law, it seems harsh to denigrate them as blameworthy for failing to formalise the arrangement or commence litigation. It is submitted that many owners are vulnerable and would benefit from

[70] 34 cases are listed in the Appendix to Una Woods, 'Protection for Owners under the Law on Adverse Possession: An Inconsistent Use Test or a Qualified Veto System' (n 59) 379-380. In 16 of these cases, there was a family relationship between the parties. 14 cases involved neighbouring landowners, 3 cases involved a pre-existing contractual relationship between the parties, and only 1 case involved strangers. While this review was conducted in 2014, more recent case law reflects this trend.

[71] As Stake points out, the doctrine 'strains neighbourhood relations and could force us away from the most efficient use of the land'. See Jeffrey Evans Stake, 'The Uneasy Case for Adverse Possession' (2000-2001) 89 Georgetown Law Journal 2419 2433. Ackerman and Johnson list the 'creation of division and animosity between neighbours' as a disadvantage/problem of adverse possession. See William G Ackerman and Shane T Johnson, 'Outlaws of the past: A western perspective on prescription and adverse possession' (1996) 31 Land and Water Review 79 94.

a system of adverse possession which would warn them if they are in danger of losing title through adverse possession, namely a veto system.

The merits of the most common adverse possession claims cannot be adequately assessed without also exploring the extent to which the law facilitates claims by 'undeserving' squatters and identifying when an applicant may deserve to be registered as owner. These 'deserving' applications could be facilitated through the formulation of certain qualifications to the veto system. A qualified veto system of adverse possession would, accordingly, hone the operation of the doctrine so that it only facilitates applications by deserving/worthy adverse possessors. This is the focus of the remainder of this article.

Part 4: The Facilitation of Claims by Bad Faith Squatters

The worthiness of a squatter's claim is sometimes assessed by considering whether they possessed good faith or a belief in ownership. Bad faith (sometimes referred to as 'advertent') squatters or those who form the intention of acquiring title without paying for it are frequently regarded as unworthy beneficiaries of the doctrine. Aside from certain references to the impact of fraud [72] or an acknowledgement of title,[73] the Statute of Limitations 1957 is ostensibly neutral when it comes to the impact of bad faith or an acquisitive intention on the running of the limitation period. It is necessary, therefore, to examine how these issues

[72] Section 71(1) of the Statute of Limitations 1957 provides that where the action is based on or concealed by the fraud of the defendant or his agent, the running of the limitation period is postponed until such time as the fraud is discovered or could with reasonable diligence have been discovered. However, section 71(2) provides that once a transaction in favour of a *bona fide* purchaser without notice of the fraud has taken place, it is no longer possible to rely on section 71(1), thus relegating the significance of the squatter's initial fraudulent behaviour once a *bona fide* transaction has taken place and the dynamic security of purchasers becomes relevant.

[73] Section 51 of the Statute of Limitations 1957 provides for the fresh accrual of the right of action if the defendant or his agent makes a written and signed acknowledgment of the title of the owner to that owner (or the owner's agent). Such an acknowledgement of the owner's title could be deemed irrefutable proof that the squatter knew that he was not the true owner of the land and, therefore, a constraint on bad faith adverse possession. However, it may also refresh the limitation period where the squatter 'worthily' intends to enter into a formal transaction in relation to the property if the opportunity presents itself. For example, it is long established that an implicit acknowledgement of the owner's title, such as an offer to purchase the property, will suffice to halt the running of the limitation period. See *Edginton v Clark* [1964] 1 QB 367.

have been treated by the Irish judiciary and whether they prevent a finding of *animus possidendi* on the part of the adverse possessor.[74] Although it was difficult to determine from the facts of some case law whether the adverse possessor believed he was the owner,[75] in the vast majority of the cases which I reviewed,[76] it seems likely that the adverse possessor did not possess the land in good faith.[77] Despite the presence of bad faith, the adverse possessor was equally as likely to succeed.[78] The conclusion reached is that the presence of bad faith will not prevent a successful adverse possession application in Ireland and, counter-intuitively, good faith on the part of the adverse possessor has the potential to create more difficulties in proving *animus possidendi*. For example, in *Kelleher v Botany Weaving Mills Ltd*[79] the High Court ruled that *animus possidendi* could not co-exist with a belief in ownership. However, the court failed to take into account the Irish Supreme Court decision of *Murphy v Murphy*[80] where it was clearly established that an adverse possessor who believes he is the owner can satisfy the requirement for *animus possidendi*.[81] Therefore, the *Kelleher* development is

[74] *Animus possidendi*/an intention to possess (the mental element) is a critical proof, together with strong acts of possession (the physical element), in demonstrating adverse possession in 'Adverse Possession and Subjective Intent' (1983) 61 Washington University Law Quarterly 331, Professor Richard H. Helmholz reached an unexpected conclusion, following a survey of 850 appellate decisions. He noted that a bad faith adverse possessor is less likely to succeed in court despite the absence of an explicit good faith requirement. He deduced that the courts prefer the claims of an honest person over those of a dishonest person and distinguish the claims through the application of the more elastic elements of the doctrine.

[75] In some cases, it was possible to hazard a reasonable guess in relation to the presence of good faith or bad faith based on the circumstances presented. For example, it was assumed that the adverse possessor who went into possession following an intestate death on title was aware of the entitlements of the other next-of-kin. Therefore, these claimants were categorised as bad faith adverse possessors. See, for example, *Martin v Kearney* [1902] 36 ILTR 117 and *Christie v Christie* [1917] 1 IR 17.

[76] See the Appendix to Woods, 'The "Undeserving" and the "Deserving" Squatter under the Irish Law on Adverse Possession' (n 20).

[77] It was only possible to identify two cases where the court seemed to accept that the adverse possessor believed he was the owner: *Murphy v Murphy* [1980] IR 183 and *Kelleher v Botany Weaving Mills Ltd* [2008] IEHC 417.

[78] The results of 34 cases were set out in the Appendix to Woods, 'The "Undeserving" and the "Deserving" Squatter under the Irish Law on Adverse Possession' (n 20). 15 claimants were successful, while 19 were unsuccessful.

[79] [2008] IEHC 417.

[80] [1980] IR 183.

[81] ibid 202.

unlikely to lead to an established precedent.[82] As it currently stands, the Irish law on adverse possession is highly accommodating of applications by bad faith squatters. When reviewing the merits of adverse possession claims it may, on initial consideration, be tempting to argue that the law should be reformed to preclude claims by bad faith squatters.

In this context, it is interesting to consider an article published in 2006 by the Northwestern University Law Review which is frequently cited in academic literature discussing bad faith adverse possession.[83] The author, Lee Anne Fennell, turns the conventional morality argument on its head by suggesting that bad faith squatters, typically viewed as undeserving beneficiaries of the operation of the doctrine, in fact deserve the approbation of the law. Fennell argues that *only* bad faith squatters should succeed under the doctrine.[84] While I would not endorse Fennell's view,[85] it is indubitably the case that certain adverse possessors who are aware that they technically do not own the land could still be considered worthy beneficiaries of the doctrine, for example those in adverse possession of abandoned land or pursuant to an informal transaction/transmission. It is evident that the good faith/bad faith distinction is not always a sufficiently sophisticated mechanism for identifying adverse possessors who deserve to acquire title. As I shall demonstrate below, the presence of good faith should play only a very limited role in filtering deserving claimants from less meritorious claims.

Part 5: How Best to Fashion Qualifications to a Veto System to Preserve Claims by 'Deserving Squatters'

It is helpful at this point to revert to the 2008 survey to identify the extent to which the law currently facilitates claims by (un)deserving squatters and how the qualifications to a veto system could be best fashioned to preserve worthy

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[82] For a more detailed critique of the decision in *Kelleher*, see Woods 'The "Undeserving" and the "Deserving" Squatter under the Irish Law on Adverse Possession' (n 20).
[83] Lee Anne Fennell, 'Efficient Trespass: The Case for "Bad Faith" Adverse Possession' (2006) 100 Northwestern University Law Review 1037. Cobb and Fox (n 6) also imply that the old law on adverse possession was to be praised for facilitating claims by advertent urban squatters in forgotten local authority properties.
[84] For a critique of this argument see Woods 'The "Undeserving" and the "Deserving" Squatter under the Irish Law on Adverse Possession' (n 20).
[85] ibid.

claims. Certain categories of 'deserving' squatters are particularly noteworthy in the Irish context given the merits of their claim and/or for utilitarian reasons. The remainder of this article discusses them in the following order: good faith possessors of a boundary strip; possessors of abandoned land; informal purchasers; family members with an estoppel claim and; owners who hold under a defective unregistered paper title.

A. Boundary Squatters

The 2008 survey revealed that 6% of section 49 applications involve a boundary issue. A broad range of remedies are currently available in Ireland to resolve the disputes that may arise in connection with boundaries.[86] I have argued elsewhere[87] that although adverse possession and the doctrine of proprietary estoppel are valuable remedial options, a mistaken improver (who carries out an improvement on land they believe they own) may fall between two stools when it comes to availing of these remedies. If the improvements were carried out in reliance on a representation by the owner or if the owner acquiesced in a mistake made by a neighbour, the improver may be entitled to a remedy under the doctrine of proprietary estoppel. Alternatively, someone who can prove adverse possession of a boundary plot for the limitation period will acquire title to it. However, if there has been no representation or acquiescence by the owner and the limitation period has not expired, no adequately structured remedy is available to the mistaken improver. It is easy to imagine a scenario where the owner simply has not noticed the building encroachment or improvement until after it takes place but before the expiry of the limitation period, in which case the builder/improver is left without a remedy.[88] Therefore, it could be argued that

[86] For example: the owner may be able to sue for damages or obtain an injunction to prevent a neighbour trespassing; it may be possible to obtain a works order (see Land and Conveyancing Law Reform Act 2009, ss 43 - 47) to carry out repairs or maintenance to a party structure; the equitable remedy of rectification may be available in relation to a transaction if the boundaries were misdescribed in a deed or inaccurately outlined on a map, or; a claim for compensation may be brought against the State if a rectification or refusal to rectify the register arises due to an error originating in the Land Registry. For a more detailed discussion, see Una Woods, 'Adverse Possession and Boundary Disputes: Lessons for Ireland from Abroad' (2016) 8(1) International Journal of Law in the Built Environment 56.
[87] See Woods, 'Adverse Possession and Boundary Disputes: Lessons for Ireland from Abroad' ibid.
[88] Unless an extremely broad application of estoppel principles is taken, as was the case in *McMahon v Kerry County Council* [1981] ILRM 419. The approach adopted in this case, of

legislation should be introduced which is targeted at protecting mistaken improvers/building encroachers akin to the legislation which operates in Australia and Canada. Ideally, this legislation would facilitate the consideration of a broad range of factors and provide for flexible remedies to resolve such difficulties.[89]

It is true that the introduction of such legislation would render the doctrine of adverse possession somewhat redundant if a building encroachment or mistaken improvement has taken place on the boundary plot. However, the doctrine of adverse possession may still have a valuable role to play in the resolution of boundary disputes where no building has taken place but the possessor has developed a 'strong psychological attachment' to the boundary plot.[90] Such an attachment to the land is more likely to develop if the occupier believed themselves to be the owner over a long period of time which is most likely to happen when an error is made over the position of a boundary. More significantly, it could be argued that the complete eradication of the doctrine's role in the resolution of boundary disputes may have a profound impact on the marketability of properties.[91] Currently, the doctrine provides a degree of assurance to purchasers that 'what they see is what they get.' This is particularly important under the Irish registered title system as the conclusive nature of the register does not extend to boundaries.[92] If the physical boundaries appear obvious on the ground, typically purchasers and their solicitors will pragmatically assume that

recognising an estoppel in the absence of any real unconscionability on the part of the legal owner, has been described by Professor John Mee as extreme and an example of a hard case making bad law. It seems unlikely that it will be relied on as a precedent in the future. See John Mee, 'Lost in the Big House: Where Stands Irish Law on Equitable Estoppel' (1998) 33(1) Irish Jurist 187.

[89] For a more detailed discussion, see Woods 'Adverse Possession and Boundary Disputes: Lessons for Ireland from Abroad' (n 86) 68.

[90] For a more detailed discussion, see Woods, 'Adverse Possession and Boundary Disputes: Lessons for Ireland from Abroad' ibid (n 86) 69. In a similar vein, Stake has formulated a loss aversion rationale for adverse possession. See Jeffrey E Stake, 'The Uneasy Case for Adverse Possession' (2000) 89 Georgetown Law Journal 2419. Also, Cobb and Fox (n 6) have attempted to rely on Radin's personhood theory (Margaret Jane Radin, 'Property and personhood' (1982) 34 Stanford Law Review 957) to justify the traditional adverse possession regime which operated in England and Wales before the introduction of the Land Registration Act 2002.

[91] For a more detailed discussion, see Woods (n 86) 72.

[92] Registration of Title Act 1964 s 85 specifies that the outline of the property, as it appears on the Land Registry map, shall not be conclusive as to the precise line of the boundary or the extent of the land unless the boundaries have been entered as conclusive pursuant to the procedure provided by the 1964 Act, ss 87- 88. This facility is rarely relied upon.

they correspond to the boundaries as described in the deed or as outlined on the Land Registry map. If the vendor has been in adverse possession of a boundary strip for at least 12 years, this will resolve most discrepancies. Imposing a requirement for good faith (i.e., an objectively reasonable belief in ownership) in relation to adverse possession of boundary land would ensure that the doctrine is available where the location of the physical boundary fails to coincide with the legal boundary. It would ensure that the doctrine operates in a more targeted fashion to provide a remedy for those who deserve it and cannot be accommodated by other legal mechanisms. I have argued that mistaken improver legislation, the doctrine of proprietary estoppel and 'good faith' adverse possession should operate in tandem to provide alternative methods for settling a boundary dispute.[93] As is the case with the English veto system, a qualification should be included for good faith adverse possession applications in respect of boundary land.[94] This is the only situation where the adverse possessor should be required to demonstrate good faith.

B. Abandoned Land

The 2008 survey revealed that about 12% of section 49 applications involved strangers in title. This is typically the case where land has been abandoned. Where land has been abandoned, awarding title to the resourceful squatter who is fully aware that he was not the owner (i.e., a bad faith squatter) can be justified as a pragmatic response to overarching societal concerns.[95] The squatter can be described as the most deserving recipient of the law's bounty on the same basis that title is awarded to the first possessor of unowned property or a finder who takes possession of a chattel found lying on the ground.[96] An alternative approach would be to award title to the State, as is the case with the estate of a

[93] Woods (n 86) 72-73.
[94] Recently, it was clarified by the English Supreme Court in *Brown v Ridley* [2025] SC 7 that an application can be made at any time where the applicant had 10 years reasonable belief in ownership.
[95] A number of US academics have justified the doctrine on the basis that it operates in cases of imputed or constructive abandonment. See Christopher H Meredith, 'Imputed Abandonment: A fresh Perspective on Adverse Possession and a Defence of the Objective Standard' 29 (2010) Mississippi College Law Review 257 and Scott Andrew Shepard 'Adverse Possession, Private-Zoning Waiver & Desuetude: Abandonment & Recapture of Property and Liberty Interests' (2010-2011) 44 University of Michigan Journal of Law Reform 557.
[96] *Armory v Delamirie* (1722) 93 ER 664 and *Parker v British Airways Board* [1982] 1 All ER 834.

deceased person who dies intestate without next of kin.[97] However, the squatter is more likely to be aware that the land is abandoned and hence more motivated than the State to bring the land back into use and ultimately back onto the market.[98] Also, recognising (and in due course, augmenting) the title of the possessor in this situation builds on the long established common law doctrine of relative title, which recognises a possessory title in the absence of a superior paper title.[99] The veto system of adverse possession provides an effective (if not fool proof – dependant on the owner keeping his contact details up to date) method of conferring extra protection on an owner but also allows abandoned land to be identified (where no response to the notice is received) and brought back onto the market.

C. Informal/Lost Transfers

The 2008 survey revealed that 25% of applications involved informal/lost transfers.[100] In England and Wales, the Law Commission, when deliberating the 2002 reforms, noted that when a dealing takes place 'off the register', the applicant does not represent a 'land thief' and it would be unjust to allow the registered owner to veto the applicant's registration.[101] The possessor in these cases could be described as the 'true' owner of land, often entitled to an equitable interest under an enforceable contract for sale. The informal purchaser would, in any event, be entitled to regularise their position by seeking an order for specific

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97 Succession Act 1965, s 73.

98 If no squatter takes possession, in certain jurisdictions which levy property taxes, the state may ultimately acquire the right to sell the property for non-payment of such taxes. In Ireland, it is currently more likely that the bank would acquire this right due to a failure to make repayments on an outstanding secured loan.

99 *Asher v Whitlock* (1865) LR 1 QB 1, 6 (per Cockburn CJ).

100 The survey included lost transfers in this category. The requirement for registration is an essential legal formality in relation to dealings with registered land which means that if a deed of transfer was lost before it was registered, the transaction can be categorised as an informal one. Where an application for first registration is based on lost/destroyed deeds, it could be argued that strictly speaking this is not an adverse possession application. Typically, an applicant would be required to re-construct the past history of the title, in so far as possible, and supply evidence of possession of the land. In addition, it would be necessary to file an affidavit which detailed the whereabouts of the deeds before their loss/destruction and efforts made to recover them. See Brendan Fitzgerald, *Land Registry Practice* (2nd edn, Roundhall 1995) 375-377.

101 *Land Registration for the Twenty-First Century: A Consultative Document* (Law Com No 254, 1998) para 10.14.

performance of the contract for sale. It would be important to ensure that the doctrine of adverse possession is preserved as a pragmatic and expedient alternative method of regularising their position in certain circumstances. I have argued elsewhere that the reforms to the law on adverse possession introduced in England and Wales by the 2002 Act leave the informal purchaser in possession, who was intended to receive preferential treatment, in a precarious position.[102] Despite certain case law which is typically cited,[103] it is far from clear whether such a purchaser will be able to prove that their possession was adverse. It is submitted that the introduction of a qualified veto system of adverse possession in Ireland should be preceded or accompanied by legislative clarification on when time begins to run in favour of a purchaser in possession against the vendor who has entered into an incomplete but enforceable contract for the sale of land. A right of action should be deemed to accrue on the determination of the vendor's licence or the payment of the purchase price, whichever occurs earlier.[104]

D. Family Members

Finally, it is necessary to revisit the 2008 survey to discuss the 56% of Section 49 applications which involved a family member making an application in relation to land forming part of an unadministered estate following a death on title. While the potential vulnerability of family members who have lost title through adverse possession has already been discussed, it is vital to also assess the merits of such a claim from the perspective of the squatter. The historical justification for the operation of the doctrine in these circumstances was that it enabled the ownership of small farms to be updated in an era when will making was uncommon, emigration was widespread and grants of administration were rarely taken out. One child – typically the eldest son – would go into possession of the

[102] A purchaser in possession must be able to prove that the licence granted by the vendor has been terminated expressly or by implication (e.g., if the entire purchase price has been paid) and that the limitation period has expired. For further discussion see, Una Woods 'Adverse Possession and Informal Purchasers' (2009) 60 Northern Ireland Legal Quarterly 305.

[103] See the critique of *Bridges v Mees* and *Hyde v Pearce* 1 [1982] 1 WLR 560 in Woods 'Adverse Possession and Informal Purchasers' (n 102). See also *Land Registration for the Twenty-First Century: A Consultative Document* (Law Com No 254, 1998) para 10.14.

[104] Woods 'Adverse Possession and Informal Purchasers' (n 102). I recommended the introduction of legislative clarification in England and Wales of when a right of action is deemed to accrue against such purchasers. In 2010 the Northern Ireland Law Commission endorsed this recommendation to clarify the law on adverse possession in this respect (n 1) [2.88], [2.98].

farm, the rest of the children would move elsewhere and after the limitation period the eldest son could regularise his position by making an adverse possession application.[105] The role played by the doctrine of adverse possession in this context was acknowledged in the Oireachtas debates which preceded the enactment of section 126 of the Succession Act 1965 which reduced the limitation period for claims in respect of the estate of a deceased person from 12 years to six years.[106] This amendment was clearly intended to promote reliance on the doctrine to resolve a problem perceived to be unique to rural Ireland at the time. More recently, in its third party submission to the Grand Chamber in *Pye*,[107] the Government of Ireland referred to the role played by the doctrine in facilitating the intergenerational transfer of farms in Ireland[108] and argued that the doctrine represented a proportionate means of achieving this and other legitimate aims, justifying any potential interference with the property rights of owners.[109] In sharp contrast, in England and Wales a co-owner under an unadministered estate is absolutely precluded from relying on the doctrine of adverse possession; it has

[105] The law governing the application of adverse possession where those with co-ownership entitlements go into possession under an unadministered estate is very technical and is explored at length in Woods, 'Adverse Possession and Unadministered Estates: An Unfair Solution to a Redundant Irish Problem' (n 68).
[106] 215 *Dail Debates* Col 2027. Succession Act 1965, s 126, has given rise to confusion and controversy in this area. It amended the Statute of Limitations 1957 Act, s 45, which imposed a 12-year limitation period on actions in relation to any entitlements in the estate of a deceased person. The new limitation period is six years unless the right of action was fraudulently concealed, in which case the 1957 Act, s 71 applies. This amendment was clearly designed to speed up the clarification of title to land which forms part of an unadministered estate. However, a lacuna in the application of the new limitation period was highlighted by the High Court decision in *Drohan v Drohan* [1984] IR 311 and the subsequent Supreme Court decision in *Gleeson v Feehan* [1993] 2 IR 113. The court, in both instances, ruled that s 126 only applies to actions brought by those entitled to a share in the estate and not to actions brought by the personal representative. Therefore, following an intestate death, if a grant has not yet been extracted and one of the next-of-kin has been in possession, another can extract a grant and rely on the 12-year limitation period to bring an action. In the aftermath of *Gleeson*, practitioners called for reform in this area and the Law Reform Commission in its *Report on Land Law and Conveyancing Law (7): Positive Covenants over Freehold Land and Other Proposals* (LRC 70 - 2003) recommended that a uniform limitation period of 12 years should be applied to claims by beneficiaries and by personal representatives. This reform has yet to be implemented.
[107] Third party submission by the Irish government, 23 August 2006. See *JA Pye (Oxford) Ltd v United Kingdom* (2008) 46 EHRR 45.
[108] ibid [13].
[109] ibid [24].

been argued that it would be unfair to allow a strong willed occupying member of the family to obtain title by adverse possession as a result of the generous attitude of other members of the family.[110]

I have argued elsewhere that the peculiarly agricultural role played by the doctrine in updating the ownership of farms following a death on title is no longer significant and may be more myth than reality.[111] The traditionally casual approach to the administration of estates comprising agricultural land may have disappeared during recent decades due to the advent of EU grants. On the death of a farmer, his family will wish to ensure that any outstanding entitlements under the single farm payment scheme are paid into his estate, and they will be conscious of the need to transfer the ongoing entitlements. These entitlements pass separate to the land and in the absence of a specific bequest, they pass to the residuary legatee. The Department of Agriculture requires the submission of a grant of probate or a grant of administration intestate and a valid herd number to secure the transfer of inherited entitlements. Frequently, waivers are also submitted to allow the entitlements to be transferred to the person who is inheriting the farm.[112] Once the grant has been extracted, it is a fairly simple matter to update the land register – which explains why the doctrine may no longer be relied on to the same extent to update farm ownership following a death on title.[113]

However, as the facts of a recent case illustrate, if the putative farming son is farming the land in partnership with his father before his death, the entitlements will continue without any need for a grant. It is a distinct possibility that, in such circumstances, the parties may neglect to update the ownership of the farm. As recently as 2018, in *Hamilton v ACC Loan Management Ltd*[114] the doctrine of

[110] Gareth Miller, 'The Administration of Estates and Adverse Possession' (2000) (150) 6941 New Law Journal 940 946.
[111] Una Woods 'Adverse Possession and Unadministered Estates: An Unfair Solution to a Redundant Irish Problem' (n 68) 149-150.
[112] I am grateful to the Inheritance Enquiry Unit of the Department of Agriculture for discussing these requirements with me.
[113] While there is no guarantee that the person inheriting the farm will update the register following the issue of the grant, it is likely that obtaining the grant would be viewed as the most onerous part of this process.
[114] [2018] IECA 127.

adverse possession was relied on by the plaintiff son to update ownership of a farm following the intestate death of his father. His father had died in 1992 and was survived by his wife and five children. As the plaintiff was farming the land with his father before his death, he had a herd number and was in receipt of grants such as single farm payments, headage payments, and REPS grants. Although the wife, the plaintiff's mother, extracted a grant in 1993, she did not execute an assent until 2006 and then vested the land in herself and quickly transferred it to the plaintiff's brother who used it as security for a loan. When receivers were appointed to take possession of the land, the plaintiff claimed he was entitled to the land by virtue of adverse possession. The plaintiff was successful in the High Court and this ruling was upheld by the Court of Appeal. Although the circumstances of this case portray a sympathetic plaintiff, the case was described as giving rise to a number of curiosities.[115] Peart J noted:

> The facts and circumstances giving rise to the proceedings are unusual, and certainly demonstrate the importance of promptly attending to legal formalities fully and completely upon the death of a landowner.[116]

While the Northern Ireland Law Commission has argued that the doctrine of adverse possession continues to perform a useful function in relation to succession to registered farmland[117] and refers to two recent cases to demonstrate this point: *Renaghan v Breen,*[118] and *Meyler v Ferris,*[119] neither of the cases cited by the Northern Ireland Law Commission involved a family member who had gone into possession of a farm many years ago and was now attempting to update the ownership of land forming part of an unadministered estate.[120]

[115] ibid [8]-[9].
[116] ibid [3].
[117] Northern Ireland Law Commission, *Supplementary Consultation Paper Land Law* (NILC 3, 2010) (n 1) [2.29].
[118] [2000] NIJB 174.
[119] [2009] NICA 16.
[120] In *Renaghan*, the disputed land comprised a house and yard which had been the subject matter of an informal transfer to the plaintiff's great grandfather dating back to the 1880s. It had subsequently passed down through the family line to the plaintiff. The court was satisfied that adverse possession had been established against the registered owner, by the cumulative adverse possession of the plaintiff's predecessors or in the alternative by the plaintiff's 12 years of adverse possession since 1975. Although the disputed land in *Meyler* was a farm, the paper title was completely up-to-date until the death of the owner, Bridie Ferris, in 2005. She had left the land to

On deeper reflection, it appears to be difficult to assess the extent to which the doctrine is relied on to update ownership of farms in modern times. Although there is anecdotal evidence to suggest that the doctrine continues to play a limited role,[121] Tailte Éireann have clarified that it is not possible to provide a breakdown of section 49 applications which would indicate reliance on the doctrine to update farm ownership. It should also be pointed out that, frequently, adverse possession cases between family members will not involve farmland and might involve, for example, a sibling going into possession of the family home or an investment property. It is arguable that it is no longer appropriate to make the remedy of adverse possession automatically available to such siblings. Adverse possession is a crude mechanism to rely on to resolve the disputes which can arise between beneficiaries with an entitlement to land following a death on title. It results in the automatic transfer of ownership to the possessor without any consideration of the circumstances of the other beneficiaries or their vulnerability to a claim when a family member goes into possession. It may be that there are adequate remedies available to a sibling in possession where the merits of the case favour him/her. If, for example, the sibling in possession had been groomed to take over a farm or the family business or they looked after an elderly parent on the understanding that they would inherit the family home they may be entitled to a remedy in proprietary estoppel.[122] Alternatively, they could bring a section 117 application if they can demonstrate that a parent failed to make adequate provision for them by will or otherwise.[123] It should be noted that section 117 is currently unavailable in the case of an intestate death and it would be important to extend it to intestacies as has been recommended by the Law

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her niece but her nephew claimed in these proceedings to have acquired title to the farm by adverse possession. The court was satisfied, however, that any acts of adverse possession by the defendant had only begun in 2001 and, therefore, the limitation period had not expired

[121] I would like to thank Aisling Meehan, a solicitor specialising in agricultural law, who discussed the matter with me. She was of the view that farmers are still relying on adverse possession to update title. She also mentioned that it is often used in the context of informal land swaps between neighbours.

[122] *Naylor v Maher* [2018] IECA 32

[123] *McDonald v Norris* [2000] 1 ILRM 382.

Reform Commission.[124] These remedies, although more expensive to administer, facilitate a tailored and more just response.

Although these alternative remedies exist, they must be sought within a two-year limitation period.[125] Where such a meritorious sibling has stayed in possession for many years it may be pragmatic and fair to fashion a qualification to the veto system of adverse possession to allow them to update the ownership of land in question. When the Law Reform Commission was considering restricting the law on adverse possession by introducing the requirement for a mandatory court application for a vesting order, it envisaged a continuing role for the doctrine in the context of unadministered estates. The court would be permitted to grant a vesting order if the adverse possession application related to land comprised in a deceased person's estate and 'it was reasonable to assume that an order in favour of the applicant would accord with the deceased's wishes.'[126] However, the introduction of an approach which appears to require the court to guess the subjective views of the deceased owner seems unwise, especially when the doctrine of proprietary estoppel provides a much more stable basis for the grant of a remedy in such circumstances[127] It seems likely that in many cases where it was intended that a particular sibling would inherit a property, a representation to this effect would have been made to that child and they would have relied on it to their detriment (by sacrificing an education or a job elsewhere and moving home to care for a parent or work in the family business). It would make sense to provide a qualification to the adverse possession system to cater for an applicant who could prove the additional element of an estoppel.

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[124] Law Reform Commission, *Report on Land Law and Conveyancing Law* (LRC 30 - 1989) 21-24 and, more recently, the Law Reform Commission, *Section 117 of the Succession Act 1965: Aspects of Provision for Children* (LRC 118 – 2017) para 3.52.

[125] It may be necessary to revisit the short limitation period imposed by s 9(2)(b) of the Civil Liability Act 1961.

[126] The court would also have the option of ordering the payment of compensation. The requirement for a court application and the possibility of compensation were criticised by the Law Society of Ireland as they would increase costs and clog up the courts unnecessarily given that the Land Registry procedure has been operating successfully to date.

[127] *Smyth v Halpin* [1997] 2 ILRM 38 where in response to his father's assurance that the family home would be his after his mother's death and at his father's suggestion, the son built an extension to the home at his own expense. When his father left the home to one of his daughters instead, the court ordered a conveyance of the house to the son pursuant to the doctrine of proprietary estoppel.

Following the death of the owner, under a veto system of adverse possession, the veto could be extended to any personal representative appointed and any beneficiaries entitled under the will or the rules on intestacy.[128] If one successor makes an adverse possession application, those out of possession would be able to veto the application unless the successor in possession can demonstrate that they also possess an equity by estoppel.[129] If they fail to exercise their veto, because they have no objection to the registration of the applicant as owner or they have abandoned their interests, the application would proceed. Also, the personal representative's veto would not be effective against an adverse possessor solely entitled under the deceased owner's will or the rules governing intestacies. Therefore, the doctrine would continue to play a very limited role where the unadministered estate involved abandoned interests or an informal transmission.

E. Curing Title Defects in the Context of Unregistered Conveyancing

As the 2008 survey only involved section 49 applications, the extent to which the doctrine of adverse possession is relied on to cure defects in unregistered title remains unknown. Historically, this has been acknowledged as one of the primary purposes of the doctrine. As Ballantine commented in an article published by the Harvard Law Review in 1918:

> The statute has not for its object to reward the diligent trespasser for his wrong nor yet to penalize the negligent and dormant owner for sleeping upon his rights; *the great purpose is automatically to quiet all titles which are openly and consistently asserted, to provide proof of meritorious titles, and correct errors in conveyancing*.[130]

[128] Where such information is not available, notice could be served by posting site notices or advertising in newspapers.
[129] If the veto is exercised, the dispute will have to be resolved between the successors. The adverse possessor may have to negotiate releases from the objectors if he wishes to be registered as the sole owner and if these releases are not forthcoming, and the beneficiaries are not prepared to be registered as co-owners, the property would have to be sold in the course of administration and the proceeds distributed amongst them.
[130] Henry W Ballantine, 'Title by Adverse Possession' (1918) 32 Harvard Law Review 135, 135 emphasis added.

In Ireland it has long been acknowledged that the doctrine of adverse possession plays an essential role in the investigation of title to unregistered land by curing title defects, thereby facilitating transactions in relation to such land. The majority of claims which arise from a conveyancing error are unenforceable following twelve years adverse possession. This provides a comfort blanket to a purchaser's solicitor that a vendor who can establish a chain of title back to a good and sufficiently mature root of title will also have extinguished any such claims. Although it may be that the role played by adverse possession in curing title defects is sometimes exaggerated,[131] nevertheless, in Ireland it remains an important element of a multi-faceted, inter-connected system which achieves a fair result when such defects surface. It is a matter which I have discussed in more detail elsewhere,[132] but a summary of the conclusions drawn are helpful at this point. Issues arising from defects in title tend to be resolved in a satisfactory manner in Ireland through the operation of a combination of doctrines and remedies (e.g., rescission, rectification, and reliance on implied covenants for title), but also through conveyancing practices and the requirement for first registration. Adverse possession plays a role in curing title defects, but only a complementary one. Some adverse claims which are not revealed by a standard investigation of title are defeated by adverse possession, while others are not because of the postponement of the limitation period or the inability to prove adverse possession throughout the limitation period. Other defects may be revealed on an investigation of title by the purchaser's solicitor or the Land Registry and, if they cannot be cured, they may result in a qualified title being conferred on first registration. This qualification may eventually be cured through the passage of time.[133]

[131] Fennell (n 83) 1061–1063. Fennell goes one step further and argues that role played by the doctrine in this context is redundant.

[132] Una Woods, 'Adverse Possession, Unregistered Land and Title Defects: A Fly in the Ointment of Irish Reform' in Conway and Hickey (eds.) *Modern Studies in Property Law: Volume 9* (Oxford: Hart Publishing, 2017) 61.

[133] It is also possible that certain defects may not be revealed on an investigation of title and may survive first registration and perhaps even a transaction in favour of a purchaser for value relying on the register. The defect may give rise to a right to rectify the register and could be converted into an overriding interest binding a purchaser for value if coupled with actual occupation of the land. See *Boyle v Connaughton* [2000] IEHC 28.

It would be important to preserve the role played by adverse possession in facilitating transactions in relation to unregistered land. However, in contrast with the view expressed by the Law Commission of England and Wales,[134] it is submitted that it is not necessary to restrict the veto system of adverse possession to registered land to achieve such a result. Tailte Éireann would be responsible for the administration of the qualified veto system of adverse possession in relation to both registered and unregistered land. In practice, a person claiming a title based on adverse possession of registered or unregistered land would be deprived of the ability to engage in a valuable transaction in relation to such land unless efforts are made to identify and protect the owner by allowing them to veto the adverse possession application.[135]

The extension of the veto system to unregistered land would ensure consistency in the level of protection afforded to the registered and the unregistered owner against the risk of squatting. Including unregistered land within the scope of a new veto system of adverse possession would also mean that practitioners would not have to be familiar with two different systems but, more significantly, it would make the law more accessible to non-lawyers. Finally, many unregistered titles in Ireland relate to very valuable urban land, making it even more important that the owners of such land are adequately protected by the law in this area.

An important qualification to the veto system would operate in the context of an application for first registration of unregistered land where the title is 'less than perfect' but the applicant has been in adverse possession for the duration of the limitation period. This phenomenon is known as 'colour of title' adverse possession and is unique to the United States.[136] The American doctrine was the product of legislative and judicial responses to distinctly American economic and geographic realities in the context of the early settlement of the country. The land

[134] Law Commission (n 23).
[135] For a discussion of the steps which would need to be taken where it is not possible to ascertain the true owner or the title to the land which is being adversely possessed, see Woods, 'Adverse Possession, Unregistered Land and Title Defects: A Fly in the Ointment of Irish Reform' (n 132) 76-77.
[136] Note, however, that a requirement to prove 'just title' to rely on prescription (the civil law equivalent to adverse possession) is widespread in civil law jurisdictions. See, for example, DJ Cusine, 'Adverse Possession of Land in Scots and English Law' (1996) 45(3) International and Comparative Law Quarterly 667.

was wild and uncultivated and was generally granted by the government and resold in large tracts. In the early days, records of state grants were not well kept, and grants were often duplicated or overlapped. Many deeds were defective as few lawyers resided in the back country and speculative trading resulted in land being sold several times over, resulting in great confusion over land titles.[137] The Arkansas Supreme Court adopted the following definition:

> Color of title is in law, no title at all. It is a void paper, having the semblance of a muniment of title, to which, for certain purposes, the law attributes certain qualities of title.... It must purport to pass title. In form, it must be a deed, a will or some other paper or instrument by which title usually and ordinarily passes.[138]

It is submitted that the extension of a veto system of adverse possession to unregistered land could be facilitated by the creation of an exception to cater for the adverse possessor of unregistered land who can also prove a title which approximates 'colour of title' in American terms. This exception would be specifically designed to cure defects or uncertainties in title. Where an application for first registration is made by a person who can prove possession for 12 years which commenced under a defective title, in most cases, a person with technical rights in the land due to a defect in title would not be entitled to object to or veto the application.

In the current compulsory registration environment, this facility would operate in tandem with the option for an applicant to apply for first registration with a qualified title if it is not yet possible to prove adverse possession for the limitation period. In due course, most defects would be cured by the passage of time. This approach emulates what is happening in practice in the Land Registry which adopts a pro-registration approach and where registrations frequently occur on the basis of an imperfect title where the defect cannot be cured if it is accompanied by proof of 12 years possession.

The extension of the veto to unregistered land coupled with this exception to cater for defective titles represents a fundamental distinction between, on the one

[137] In the United States, where the adverse possession has colour of title the claimant benefits from a much shorter limitation period, often only five or seven years.
[138] *Bailey v Jarvis* 208 SW 2d (Ark 1948) 13 15, quoting *State v King* 87 SE 170, 171 (W Va 1915).

hand, the qualified veto system of adverse possession which I propose for Ireland and, on the other, the system introduced in England and Wales which applies only to registered land, and which preserves the old law of adverse possession in relation to unregistered land.

Conclusion

The various roles which have been ascribed to the 'strange and wonderful' doctrine of adverse possession[139] and the 'ideas of right and wrong'[140] which the doctrine raises make it a fascinating topic to study. This article engages with both of these aspects of the doctrine. It examines the importance of adverse possession as a remedy in the resolution of a broad range of land law difficulties and it considers whether the doctrine should be reformed so that it operates in a manner that produces a fairer result.

In his seminal 1985 article, Dockray asked: '[w]hy do we need adverse possession'?[141] Since then, other academics have struggled to locate the doctrine's modern niche.[142] This article confirms that one of the most important functions performed by the doctrine continues to be the one emphasised by Dockray – its role in curing title defects and facilitating the conveyancing of unregistered land. However, it also demonstrates that the doctrine performs a vital, subsidiary, and perhaps under-appreciated role in facilitating the extension of the registered title system.[143] This role is poised to assume even greater importance over the next couple of decades as efforts are made to bring the remaining unregistered titles onto the land register. It is also submitted that the doctrine has a valuable role to play in bringing abandoned land back onto the market and that it offers an expedient and inexpensive solution to address the difficulties which may arise following an informal transaction or circumstances raising an equity by estoppel. Finally, it is maintained that the doctrine may still

[139] Stake (n 71) 2419.
[140] Rosemary Auchmuty, 'Not just a good children's story: A tribute to adverse possession' [2004] Conveyancer and Property Lawyer 291, 307.
[141] Dockray (n 6).
[142] Stake (n 71); Fennell (n 83).
[143] Woods, 'Adverse Possession, Unregistered Land and Title Defects: A Fly in the Ointment of Irish Reform' (n 132).

have a significant role to play in resolving certain boundary disputes. Therefore, it is submitted that there is a strong case for retaining a streamlined version of the adverse possession doctrine within the panoply of Irish property law remedies to resolve the specific issues just mentioned.

The article also engages with the perceptions of unfairness which have emerged in relation to the doctrine in recent times. These rumblings of discontent appear to have been a response to the failure of the law to adequately respond to the 'demerit' of certain possessors,[144] and the vulnerability of many owners. The doctrine of adverse possession has been variously described as 'unprincipled', 'inexpedient',[145] 'title by theft', 'a primitive method of acquiring land without paying for it' and 'an anomalous instance of maturing a wrong into a right'.[146] It is argued that these concerns are justified. The law in Ireland facilitates unmeritorious claims by adverse possessors and affords inadequate protection to the owner. Consequently, it is submitted that reform is warranted; more specifically I maintain that the introduction of a qualified veto system of adverse possession in Ireland would hone the doctrine so that it continues to fulfil the valuable functions mentioned above, while also operating in a manner which is fairer.

The veto system of adverse possession is an effective method of conferring extra protection on an owner. It allows abandoned land to be identified and brought back onto the market. Furthermore, through the formulation of qualifications to the veto, it allows the doctrine to be refined to facilitate applications where appropriate for utilitarian reasons or based on the merits of the claim. The role of administering the qualified veto system of adverse possession over both registered and unregistered land would fall to Tailte Éireann. This would avoid expensive court proceedings and, provided adequate resourcing was made available, would ensure that applications could be completed as expeditiously as possible.

[144] James Barr Ames, *Lectures on Legal History and Miscellaneous Legal Essays* (Harvard University Press 1913) 197. Ames, in contrasting prescription in the civil law with adverse possession under the common law system remarked: 'English lawyers regard not the merit of the possessor, but the demerit of the one out of possession.'
[145] Dockray (n 6) 284.
[146] Ballantine (n 130), 135.

It is submitted that adverse possession is not a 'relic' or 'an ailing concept'[147] but a valuable feature of the modern Irish property law landscape. However, reform is long overdue to address the doctrine's inability to protect vulnerable owners from inadvertently losing title, particularly where a family member or a neighbour has taken possession, and to prevent undeserving squatters from relying on the doctrine. Consequently, this article makes the case for the introduction of a qualified veto system of adverse possession to address the potential for unfair outcomes.

[147] JCW Wylie, 'Adverse Possession: An Ailing Concept?' (1965) 16 Northern Ireland Legal Quarterly 467 489.