ADVERSE POSSESSION: COMPARISON BETWEEN THAI LAW AND ENGLISH LAW

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Abstract - This study aims to compare the law regarding "Adverse Possession" between Thai Law and English Law. Adverse possession is a legal principle permitting someone to assert ownership of land under specific conditions, with notable differences between Thai and English law. In Thailand, adverse possession is regulated by Section 1382 of the Civil and Commercial Code, allowing a possessor to attain title after ten years of peaceful and open possession, irrespective of good faith. This indicates that individuals cognizant of the legitimate owner's claim may acquire legal ownership if they fulfill the stipulated conditions. In contrast, English law, mainly governed by the Land Registration Act 2002 and the Limitation Act 1980, mandates that possessors establish exclusive possession for a duration of 10 years and inform the registered owner when applying for title. The English system prioritizes good faith and offers a process for the original owner to challenge claims, demonstrating a more protective approach to property rights. The issues inherent in both systems involve navigating legal intricacies, resolving ownership disputes, and balancing the rights of possessors with those of original owners. This comparative analysis elucidates the ramifications of adverse possession laws in both nations, clarifying their effect on property ownership and rights.

Keywords - Property and Land Law, Adverse Possession, Thailand, England

I. INTRODUCTION

Adverse possession, a doctrine allowing a trespasser to gain legal title to land by possessing it openly and continuously for a prescribed period, exists in both Thai and English law.[1]However, the nuances of this doctrine, including the requirements for establishing possession, the length of the prescriptive period, and the impact on existing ownership rights, differ significantly.

This article will explore the concept of adverse possession in both jurisdictions, comparing and contrasting the key elements of each system. Understanding these differences is crucial for anyone dealing with land ownership issues in either Thailand or England, as it highlights the varying legal landscapes and the potential pitfalls and opportunities presented by this complex legal doctrine.

This comparison will delve into the specific requirements for adverse possession under each legal system, drawing upon relevant legislation, case law, and scholarly commentary to illuminate the practical implications of these differences. By examining these contrasting approaches, we can gain a deeper appreciation of the underlying principles governing landownership and the role of adverse possession within them.

II. LITERATURE REVIEW

This literature review examines existing scholarly work and legal materials relevant to a comparative analysis of adverse possession under Thai and English law. It explores key themes and identifies areas requiring further investigation.

2.1. General Principles of Adverse Possession

Adverse possession is a legal doctrine that allows a person to claim ownership of land under certain conditions.[2] Here are the general principles:

- Continuous Possession: The possessor must occupy the land continuously for a specified period, which varies by jurisdiction.[2]
- Exclusive Possession: The possession must be exclusive, meaning the possessor is using the land as if they are the owner, without sharing control with others.[3]
- Open and Notorious: The possession must be visible and obvious to anyone, including the legal owner so that the owner has the opportunity to take action if they choose.
- Adverse and Hostile: The possession must be without the permission of the legal owner and in defiance of their rights.
- Statutory Period: The possessor must meet the time requirement set by statute, which is typically between 5 to 20 years, depending on the jurisdiction.

2.2. Adverse Possession in Thai Law

Adverse possession in Thai law is governed by Section 1382 of the Civil and Commercial Code (CCC). Here are the key points: [4]

- Uninterrupted Possession: The possessor must have peacefully and openly possessed the immovable property for an uninterrupted period of 10 years.
- Actual, Visible, and Notorious Possession: The possession must be actual, visible, and notorious, such as erecting fences, constructing buildings, or cultivating the land.

- Registered Owner: The original owner must have been registered as the owner in the land title deed for the adverse possession claim to be valid.
- Peaceful Possession: The possession must be peaceful, meaning it cannot involve intimidation or force.

2.3. Adverse possession in English law

It is regulated by the Land Registration Act 2002. Here are the key points:[5]

– **Registered Land:**

- Factual Possession: The claimant must demonstrate factual possession of the land, meaning they have physically controlled and used the land as an owner would.
- Intention to Possess: The claimant must show an intention to possess the land to the exclusion of others, including the true owner.
- Continuous Period: The claimant must have possessed the land continuously for a period of 10 years for immovable property and 5 years for movable property.
- Application to the Land Registry: The claimant must apply to the Land Registry to be registered as the new owner. The Land Registry then notifies the registered owner, who has the opportunity to object. If the owner does not respond, the adverse possessor may be granted ownership.

– Unregistered Land:

- Factual Possession and Intention to Possess: Similar requirements as for registered land.
- Continuous Period: The claimant must have possessed the land continuously for a period of 12 years.
- Claim and Confirmation: The claimant can claim ownership through possession without a formal application to the Land Registry. If the landowner takes no action within the 12 years, the adverse possessor's claim may be confirmed.

Key Principles:

– Open and Notorious Use: The possession must be open and obvious so the true owner is on notice.
– Exclusion of Others: The possession must exclude the true owner and others.
– No Permission: The possession must be without the permission of the true owner.

III. METHODOLOGY

The author obtained information from national and international publications, journals, books, and theses pertaining to land law. The primary focus of the study is the primary Thai and foreign laws pertaining to Adverse Possession.[6]

IV. RESULTS AND DISCUSSION

Adverse possession, a doctrine allowing a trespasser to acquire legal title to land through prolonged possession, exists in both Thai and English law. However, the application and nuances of this doctrine differ significantly. This comparison highlights key distinctions, drawing upon relevant legal sources. [7][8][9]

4.1. Terminology and Conceptual Basis:

– Thailand: Uses the term "acquisitive prescription" rooted in civil law tradition. It emphasizes the acquisition of ownership through continuous and open possession for a specific period.
– England: Employs the term "adverse possession," derived from common law. It focuses on the dispossession of the original owner by the adverse possessor.

4.2. Requirements for Adverse Possession:

– Thailand (Section 1382 of the Civil and Commercial Code): Requires open, notorious, continuous, and peaceful possession with the intention to own (animus possidendi) for a specific period. The possession must be adversed to the true owner's title. Good faith of the possessor is not explicitly required.
– England (Land Registration Act 2002, Schedule 1): Requires factual possession (exclusive physical control) and an intention to possess (animus possidendi). The possession must be adversed to the paper owner. The 2002 Act significantly altered the landscape, making it much harder to claim adverse possession of registeredland.

4.3. Length of Possession:

– Thailand (Sections 1382 and 1385 of the Civil and Commercial Code): Generally, 5 years for possession of movable property and 10 years for possession of immovable property with title deeds.
– England (Land Registration Act 2002): For unregistered land, 12 years of adverse possession extinguish the original owner’s title. For registered land, the process is significantly different. Adverse possession itself does not extinguish the registered title. Instead, the adverse possessor can apply for registration after 10 years, and the registered proprietor is given notice and an opportunity to object. If they object, the application will usually fail unless the adverse possessor can show one of a very limited number of exceptions applies.

4.4. Impact of Registration:

– Thailand: While registration is important, it does not entirely preclude acquisitive prescription.

Possession for the prescribed period can still lead to ownership, even if the land is registered. The lack of title deed increases the required period of possession to 20 years.

- England: Registration is paramount. The 2002 Act makes it extremely difficult to adversely possess registered land. The process involves application to the Land Registry after 10 years, and the existing registered owner has a strong opportunity to object. This was a deliberate policy choice to protect the integrity of the register.

4.5. Good Faith:

- Thailand: Good faith of the possessor is not explicitly a requirement under the Civil and Commercial Code. However, it might be a factor considered by the court in determining the intention to possess.
- England: Good faith is not a requirement. The focus is on factual possession and the intention to possess, regardless of the possessor's knowledge of the true owner's title. However, deliberately deceiving the registered owner, or concealing the possession, is unlikely to be considered adverse.

4.6. Legal Consequences:

- Thailand: Successful acquisitive prescription results in the adverse possessor acquiring ownership of the land. The previous owner's title is extinguished.
- England: For unregistered land, successful adverse possession extinguishes the previous owner's title. For registered land, it allows the adverse possessor to apply to be registered as the new owner.

V. ANALYSIS

Determining which legal system's adverse possession rules are more effective—Thai or English law—depends on various factors, including the goals of the legal framework, the protection of property rights, and the ease of resolving disputes.[9][10]

5.1 Effectiveness in Protecting Property Rights:

- Thai Law: Thai law requires the adverse possessor to prove that the original owner was registered in the land title deed and mandates a peaceful, open, and notorious possession for 10 years or 5 years (for movable property). This ensures that the original owner's rights are protected, as the adverse possessor must meet strict criteria to claim ownership.
- English Law: English law, under the Land Registration Act 2002, also requires factual possession and an intention to possess for 10 years for registered land. However, the process involves notifying the registered owner, who has the opportunity to object. This system aims to balance the rights of the original owner with the need to resolve long-standing possession issues.

5.2 Ease of Resolving Disputes:

- Thai Law: The requirement for the original owner to be registered in the land title deed can complicate the process, especially if the registration is outdated or inaccurate. This can lead to legal disputes and challenges in proving ownership.
- English Law: The Land Registry's involvement in the process provides a formal mechanism for resolving disputes, with clear guidelines and opportunities for the original owner to respond. This can make the process more straightforward and less prone to prolonged legal battles.

VI. CONCLUSIONS

English law is more effective in terms of legal certainty and protecting true owners' rights, particularly in the context of registered land. Its reforms under the Land Registration Act 2002 strike a balance between rewarding long-term possession and safeguarding property rights.

Thai law is more effective in promoting land use efficiency and addressing practical land disputes, especially in rural and agricultural settings. Its shorter adverse possession period for good faith possessors reflects a pragmatic approach to land management.

Ultimately, the effectiveness of each system depends on the specific goals and values of the society it serves. English law prioritizes the protection of property rights and legal certainty, while Thai law emphasizes land utilization and practical resolution of disputes. Both systems have strengths and weaknesses, and their effectiveness must be evaluated in the context of their respective legal, cultural, and economic environments.

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