

論時效取得地上權

張 瑋 心*

目 次

- 壹、時效取得地上權的概念
 - 一、時效取得的爭辯
 - 二、時效取得之合憲理由
- 貳、時效取得之要件
- 參、時效取得之限制
- 肆、我國實務裁判適用情形
 - 一、請求確認地上權登記
 - 二、請求遷讓房屋等
 - 三、請求拆屋還地
 - 四、請求返還土地等
 - 五、請求容忍地上權登記
- 伍、美國法上的思辨
 - 一、附帶條件之遺產衝突
 - 二、Nielsen v. Gibson 案
- 陸、結論

關鍵詞：時效取得、逆權侵占（佔）、登記制度、財產權、不動產物權。

Keywords：The Statute of Limitations; Adverse Possession; Recording System; The Right of Property; Immovable Property.

責任編輯：張煥熙

* 中國文化大學財經法律學系副教授；Professor, School of Law, Henan University of Science & Technology.

摘要

英美普通法下的「時效取得地上權」，係與刑法原則相衝突的一個概念，中國大陸、香港稱之「逆權侵占」(adverse possession)、或「敵意占有」，指土地房屋的非權利人未經所有權人同意，持續占用土地房屋超過一定期間後，非法占用者可以合法取得該筆不動產物權。既財產權為憲法所明文保障，而時效取得制度乃國家透過立法手段干預所有權人及占有人間之財產權利關係，此項剝奪個人處理財產的自由權制度，有否違背憲法之虞，素來論辯不絕。本文爰比較我國與美國針對時效取得之法理基礎、經濟效益、以及從財產繼承的角度提出新的思考觀點，並就臺、美就時效取得的要件分析，實務上裁判之適用情形，以及一般大眾普遍誤解時效取得之要素意涵進行比較討論，藉以強調法律不保護讓自己權利睡著的人之概念，同時透過美國加州 *Nielsen v. Gibson* 案之裁判結果，呼籲地上所有權人應善盡義務關心名下土地房產有無被占用之情形，方能適時主張權利。

A Discussion on Adverse Possession

Wei-Hsin Chang

Abstract

The acquisition of land after statute of limitations is recognized in all the civil and common law jurisdictions, which has been called *adverse possession* or known as *hostile possession* in Hong Kong and China, but it is somehow a concept in conflict with criminal law principles. It refers to non-rights holders of land and housing without the owner's consent, actually continue to occupy the land over a certain period of time, then the illegal occupants can lawfully acquire the real estate property. Although the rights of property are expressly guaranteed by the Constitution, the doctrine of adverse possession deprives personal freedom to dispose of property in a passive way, by means of legislative intervention and readjusts the relations of property rights between the true owner of the land and the occupant. This thus leads to a question about the danger of violating the Constitution and has long been a debate without a break. The Paper aims to compare how adverse possession applies between Taiwan and United States from the aspects of economic effects, then to propose a new point of views from the angle of inheritance, next to analyze the required elements, as well as a general misunderstanding about the factors of true owner's unknowing and mental incompetence for further discussion, in which the concept is to be delivered that laws do not protect those who let their rights sleep through the decision made in *Nielsen v. Gibson* (2009) in California. In brief, the land owner should take good care of immovable property to avoid his land being adversely occupied in order to claim rights in due course.