

Objective Determination, Behavioral Typologies, and Hierarchical Inferences of "Intention to Possess" in Adverse Possession – A Typological Analysis Based on Hong Kong Case Law

Sitong Wu

*School of Arts and Law, Harbin University, Harbin, China
wst20060526@outlook.com*

Abstract. The requirement for adverse possession necessitates that the possessor simultaneously possesses the property in fact, has the intention to possess, and exhibits an adverse nature. The subjective state of mind represented by "possession intention" cannot be directly observed, and the court can only infer it through objective behavior. Existing research has listed the strength or weakness of behaviors or provided binary conclusions, but there is no particularly clear conclusion on how different combinations of behaviors correspond to different levels of presumption strength, nor on the integration of the influence of time and land type. This article focuses on 16 core cases involving disputes over "intent to possess" in Hong Kong, employing a typological analysis. By overlaying five variables: the nature of the act, physical exclusivity, clarity of declaration, duration of possession, and land type, a three-dimensional framework is constructed, linking "act type-time-land type" with presumption strength. The results indicate that physical boundaries are strongly presumed as watersheds, with duration only playing a moderating role in intermediate disputed behaviors, while the physical structure of land types and social customs influence the threshold for proving exclusivity. This framework provides operational tools for lawyers to anticipate evidence-presenting strategies and for judges to limit their discretionary space and establishes benchmarks for subsequent case verification.

Keywords: Objective determination, behavioral typologies, hierarchical inferences, intention to possess

1. Introduction

Adverse possession is a long-established system in common law, referring to a situation where a person occupies land for a prolonged period without the consent of the original owner. After the statutory prescription period has elapsed, the original owner's right to sue an ownership of the land are extinguished, and the occupier may acquire possessory title to the land. The 2014 "Report on Adverse Possession" by the Law Reform Commission of Hong Kong, while reviewing the existing 12-year limitation framework under the Limitation Ordinance, made a core recommendation to

abolish the adverse possession system applicable to private land, sparking long-standing academic debate [1, 2].

Among them, "intent to possess" is the most controversial element, as it refers to the subjective state of the possessor's mind. However, a person's inner intentions cannot be directly observed, and the court must infer them through the possessor's objective actions.

However, after the establishment of this methodology, the core issues remain unresolved. What objective behaviors does the court rely on to form presumptions of varying strengths? Are there differences in the strength of presumptions based on the nature of the behavior? Should the same behavior produce different presumptions on different types of land? Will the combination of multiple behaviors produce a cumulative effect?

Existing research only provides a list of behavioral strengths and weaknesses, as well as binary conclusions of "established/not established", lacking a correspondence between behavioral combinations and presumption strength. This article attempts to establish such a correspondence framework.

In cases involving adverse possession, it is difficult for lawyers to predict which combination of actions will be sufficient to win the case, and judges have a relatively large discretionary space. The typification framework presented in this article helps to understand the court's reasoning logic and reduce uncertainty.

2. Literature review

Regarding the identification of "intent to possess" in adverse possession, existing research generally proceeds along three dimensions: the establishment of principles in English common law, the delineation of boundaries in Hong Kong precedents, and attempts at typification in academic literature and reform documents. The three types of literature, namely English common law precedents, local judgments in Hong Kong, and Law Reform Reports, all remain at the level of factual description, without integrating to form a unified and quantifiable hierarchical system for presumption of possession intention. However, they have consistently failed to answer a core question: What "combination" of objective behaviors does the court rely on to form presumptions of varying strengths?

Firstly, English common law lays the methodological foundation. The Powell case and the JA Pye case jointly established the core rule of "presuming animus possidendi based on objective behavior"; however, these two cases only roughly distinguished between strong and weak behaviors, without constructing a standardized presumption hierarchy that takes into account the superposition of multiple behaviors and different land types.

Secondly, Hong Kong precedents attempt to fill in specific scenarios, but they still present fragmented binary conclusions. Cheung Yat Fuk confirmed that the collection of rent can establish intent; Wong Tak Yue pointed out that willingness to pay rent actually negates intent; Monat Investment clarified that illegal occupation does not affect. These precedents have contributed to defining the boundaries of "established/not established", but they have not answered the following questions: between established and not established, are there different degrees of "weak presumption", "moderate presumption", and "strong presumption"? Should the intensity of the same behavior vary across different land uses?

Thirdly, the Law Reform Commission (2012/2014) and academic literature further attempted to categorize behavior types [3-5]. The Law Reform Commission enumerated stronger behaviors such as "permanent fencing" and "comprehensive cultivation", as well as weaker behaviors such as "piling up debris" and "temporary construction" [6]. However, this list is flat - it does not define the

criteria for distinguishing between "strong" and "weak", does not explain the cumulative effect of behavior combinations, and does not provide differentiated levels for different land types.

Therefore, this paper establishes a three-dimensional framework of "behavioral nature - behavioral intensity - land type", assuming three levels: weak, moderate, and strong. It aims to answer the question: which combinations of behaviors with different natures and intensities form which level of presumption under different land types.

3. Sorting and summarizing Hong Kong cases

This chapter takes the relevant cases of adverse possession in Hong Kong from 2015 to 2019 as research samples. By searching the two major legal databases, HKLII and Westlaw, and excluding duplicate appeals and documents that only discuss Crown land or factual possession without involving intention to possess, 16 core cases were ultimately selected, all focusing on disputes over intention to possess. The entire process of case selection adheres to reproducible standards, and each excluded case is annotated with reasons for exclusion, ensuring the research norms are traceable.

3.1. Analysis of weak presumption cases

The core criterion for weak presumption is that the possessor's control behavior is insufficiently strong, unable to clearly convey the exclusive signal of monopolizing the land to others. There are mainly three typical situations. The first is sporadic and low-intensity use. The prevailing judicial rule established in *Powell v McFarlane* (1979) holds that short-term behaviors such as temporary grazing and partial fence repairs can be reasonably interpreted as borrowing or temporary use, but are not sufficient to infer possession intent. This standard is widely adopted in Hong Kong's judicial system. The second issue is insufficient evidential support. In the *Tsang Kwong Kuen* case, the party involved claimed a 30-year cultivation practice but lost the case due to the lack of credibility of the evidence. Another party constructed structures but could not prove the starting time of possession, thus also failing to establish their claim of possession. The third is the use behavior with limited rights boundaries. In the case of *In Re Li Sing Kui*, the occupant only obtained a limited residence permit based on the will, and all use behaviors did not exceed the scope of the permit. Objectively, the original complete property rights were recognized, and no presumption of exclusive possession could be formed. The commonality among the three types of cases lies in the questionable visibility and continuity of the behavior, or the limited rights basis. The court can determine the absence of possession intent without considering multiple dimensions of facts.

3.2. Analysis of medium-level presumption cases

The core contradiction in cases of medium presumption lies in the fact that the parties involved have engaged in continuous use and maintenance activities, yet there is a lack of clear measures for enclosure. This behavior possesses dual interpretative space, making judicial decisions prone to disagreement [7]. The first category involves only long-term use without enclosed facilities. In the case of *JA Pye v Graham* [2002] UKHL 30, the parties had grazed their livestock for decades without erecting fences. The House of Lords held, by a narrow majority, that the intention to possess was established. There were significant internal disagreements among the judges regarding whether grazing could achieve exclusive control. The second category involves neutral maintenance behavior. In the *Cheung Kwong Yuen* case, the first-instance court denied the intention to possess based solely on the payment of utility bills. However, the appellate court corrected this decision,

holding that the payment behavior can be interpreted as both possession and recognition of the original owner's rights, and cannot be used as the sole basis for judgment. The third type of fencing is not fully enclosed. In the Yeung Yuen Ying case, the parties involved cultivated land with fencing, but the judgment did not specify whether the fencing was locked or had exclusive entrances and exits, making it impossible to determine the exclusive effect. The judge could only carefully weigh the evidence and make a judgment based on each item. Such behaviors cannot uniquely point to exclusive control, which is the fundamental source of judicial disagreement.

3.3. Analysis of strong presumption cases

The characteristics of the case are clearly established: the parties engaged in a long-term and complete encirclement behavior, multiple facts formed a complete evidence chain, and the court's judgment conclusion is highly unified, with two identification paths. First, there is the physical enclosure approach. In multiple precedents such as Lo Chun Yam, Choi Tak Man, and Woo Sai Mui, the parties involved achieved physical exclusivity through various means such as fully enclosed iron nets, exclusive locks, long-term land reclamation for building construction, and property modification and lock replacement, which are directly presumed to be exclusive possession. Second, the alternative path of rural community recognition. The Li Pui Yin case is located in a familiar rural area of Yuen Long, where villagers rely on community consensus to divide land plots, forming a de facto exclusive control without physical fences. The court recognizes that community recognition is equivalent to the effectiveness of physical enclosure. Both paths can lead to a highly probable presumption of possession, and the original owner can only overturn this conclusion by submitting strong counterevidence.

By synthesizing all precedents, three core laws can be summarized. Firstly, the presumption of possession intention is divided into three levels: weak, medium, and strong, based on the degree of behavioral exclusivity and the completeness of evidence. Secondly, the exclusivity of behavior is the key to classification. Weak presumption of behavior allows for multiple interpretations, medium presumption has two interpretations, and strong presumption of behavior can only point to exclusive possession. Thirdly, land types adjust the judicial proof standard. Rural agricultural land has lower requirements for the completeness of fencing, and rural community consensus can replace physical enclosure. Due to their proximity to public space, the proof standard for exclusive control in rooftops and shared commercial and residential areas is significantly elevated.

4. Typical framework

The third chapter summarised the precedents of Hong Kong's counter-power control into three levels according to the presumptive results: weak presumption, controversial interval and strong presumption, and distills the typical behaviour patterns at each level. Based on this, this chapter ranks the three dimensions of behavior, time, and land type separately, and then combines them into a comprehensive table to answer the question of which level of presumption intensity corresponds to different combinations of behavior, duration, and land type.

4.1. Behavioral intensity

The hierarchy of behavioral intensity is divided based on the degree to which possessive behavior objectively conveys "exclusive possession" to the outside world. This article adopts two core indicators. As shown in Table 1, based on the degree of these two indicators, the possession behavior

in Chapter 3 can be classified into seven levels (L1-L7), corresponding to weak presumption (L1-L3), disputed interval (L4-L5), and strong presumption (L6-L7), respectively.

Table 1. Classification of conduct intensity

Level	Behavioral Description	Physical Exclusivity	Clarity of Manifestation	Interpretative Consistency
L1	Sporadic, occasional use	None	Low	Interpretable as temporary borrowing / abandonment
L2	Single neutral maintenance act	None	Low	Interpretable as with the owner's consent
L3	Possession based on limited rights	None	Low	Interpretable as use within the scope of rights
L4	Long-term use, without any enclosure	Weak	Weak	Susceptible to two interpretations
L5	Incomplete enclosure	Medium	Medium	Interpretable as symbolic demarcation
L6	Physical enclosure	High	High	The sole exclusivity interpretation
L7	Physical enclosure + use/maintenance	High	High	Exclusivity interpretation from combined conduct

The summary is as follows. Firstly, physical exclusivity is positively correlated with declarative clarity, both of which together determine whether behavior is uniquely directed towards exclusive possession. Both indicators L1-L3 are low, and there are multiple reasonable explanations; The L4-L5 indicators are at a moderate level, leading to two opposing interpretations; Both indicators L6-L7 are high, which can only be explained as exclusive possession.

Secondly, physical enclosure behavior (L6) is the watershed for estimating strength. Once the implementation of fencing + locking/changing locks (or changing locks for independent spaces on rooftops) reaches a "high" level of physical exclusivity and declaration clarity, the court almost unanimously recognizes it as a strong presumption. On the contrary, for behaviors that do not reach L6, at least one of the two indicators is "weak" or "medium", which cannot form a stable strong inference.

Using behavior and neutral behavior alone cannot improve either indicator. Simple long-term grazing and cultivation only have time sustainability and no physical barriers. Both indicators are at a moderate level, and there are multiple reasonable interpretations, so they are classified as controversial.

4.2. Duration length

The hierarchical division of duration is based on two benchmarks: statutory limitations and actual nodes appearing in precedents.

Article 7 of the Hong Kong Limitation Ordinance stipulates that the prescription period for adverse possession of private land is 12 years. The 12-year period in the Limitation Ordinance serves as an objective threshold for obtaining full ownership; intention to possess is a subjective

element that must be present from the commencement of the act of possession. The time points for examination and the standards of proof for the two are independent of each other.

As shown in Table 2, based on case observations, around 20 years is the time point when the court's attitude begins to soften. If possession has continued for more than 30 years, forming a long-term stable control fact, the court can make a highly probable presumption of possession intent based on this.

Table 2. Time level division table

Level	Duration	Basis for Classification
T1	Less than 12 years	The statutory period has not been reached; this does not affect the inference of intention per se, but since limitation has not expired, adverse possession cannot be established.
T2	12–20 years	The statutory period has been satisfied; this may reinforce the probative value of use-based conduct.
T3	20–30 years	Courts begin to show a more lenient attitude in case law; this may cure minor defects in conduct.
T4	Over 30 years	Courts show a clear tendency to find in favor; this can elevate L4-level conduct from contestable to a strong inference.

The summary is as follows. Possessive duration does not possess the effect of creating presumptions independently. It can only serve as a reinforcement for moderately disputable behaviors in L4 and L5, and cannot elevate low-intensity behaviors in L1-L3 to the disputable level

4.3. Land type dimension

This article involves three types of land: agricultural land, construction land, and rooftops. Among them, rooftops are further categorized into independent enclosed spaces and open platforms based on their physical structures [8]. Agricultural land has no natural boundaries, and its exclusivity must be proven through physical fencing or traditional rural community recognition; building land and enclosed rooftops already have fences or building boundaries, and only the entrances and exits need to be controlled; open platforms have no independent boundaries and belong to public passages, and the only passage must be controlled to prove exclusivity [9].

The summary is as follows. Firstly, the physical structure determines the basic threshold for exclusion. For land with existing boundaries (building land, independent enclosed space), controlling the entrances and exits is sufficient; for land without boundaries (agricultural land, open platforms), additional boundaries or controlled passages need to be established.

Secondly, relying on community cognition to replace the rules of fencing is only applicable to old-style farming villages; in cities and new towns, land property rights are fully registered, and there is no collective land cognition, so this lenient standard cannot be applied by analogy .

The nature of a rooftop depends on its physical structure, rather than the "rooftop" label itself. In the Lok Kin Chuen case, the rooftop storage room was treated by the court on an equal footing with building land due to its independent enclosed boundary.

4.4. Three-dimensional overlay table: combination presumption and instructions for use

The rows in table 3 represent the division of behavior intensity, while the columns represent land types. Within each land type, there are two sub-columns: short-term (less than 20 years) and long-term (more than 20 years). Each cell corresponds to a combination of "behavior + land + time", and the presumed intensity (weak/disputable/strong) of that combination is filled in.

Table 3. Typical three-dimensional table based on case presumptions

Behavioral Type	Time	Agricultural Land	Built-up Land	Enclosed Rooftop	Open Platform
Sporadic/occasional use (temporary dumping, grazing, use)	12–20 years	Weak	Weak	Weak	Weak
	Over 20 years	Weak	Weak	Weak	Weak
Single neutral maintenance (payment of utilities/maintenance fees)	12–20 years	Weak	Weak	Weak	Weak
	Over 20 years	Weak	Weak	Weak	Weak
Possession based on limited rights (residing under agreement without exclusive acts)	12–20 years	Weak	Weak	Weak	Weak
	Over 20 years	Weak	Weak	Weak	Weak
Long-term use, no enclosure (long-term cultivation/grazing without fencing/structures)	12–20 years	Contestable	N/A	N/A	N/A
	Over 20 years	Contestable → Strong	N/A	N/A	N/A
Incomplete enclosure (fences erected but not locked / not fully enclosed)	12–20 years	Contestable	Contestable	Weak	Weak
	Over 20 years	Contestable → possibly strong	Contestable → possibly strong	Weak	Weak
Physical enclosure (fencing + locking/changing locks)	12–20 years	Strong	Strong	Strong	Strong
	Over 20 years	Strong	Strong	Strong	Strong
Physical enclosure + use/maintenance (fencing + cultivation/residence/utility registration, etc.)	12–20 years	Strong	Strong	Strong	Strong

Table 3. (continued)

	Over 20 years	Strong	Strong	Strong	Strong
--	------------------	--------	--------	--------	--------

First, the basis for time demarcation. The table categorizes the duration of possession into two ranges: "12-20 years" and "over 20 years". The former encompasses situations where the statutory limitation has been reached but is less than 20 years; the latter covers situations ranging from over 20 years to more than 30 years. The demarcation at 20 years is due to the divergence in court attitudes towards disputable acts before and after 20 years in judicial precedents, with a notable strengthening of the presumption [10].

Secondly, the progressive logic of Table 4 is embodied in the superposition of three dimensions. The intensity of behavior increases progressively from L1 to L7, the duration extends from short-term (12-20 years) to long-term (over 20 years), and the requirements for proof of exclusivity decrease sequentially from farmland to building land, enclosed rooftops, and open platforms. These three factors jointly drive the presumption result to progress from "weak" to "disputable" and then to "strong". The purpose of this table is as follows: the weak presumption zone (L1-L3) helps quickly eliminate untenable claims; the disputable zone (L4-L5) prompts lawyers to focus on supplementing details related to time, community recognition, or enclosure to strive for strong presumption; the strong presumption zone (L6-L7) provides parties with clear evidential targets, namely, to prioritize achieving physical enclosure and maintaining it for over 20 years; meanwhile, the land type column can be used to adjust proof strategies in different scenarios, such as using rural customs to substitute fences for agricultural land, while open platforms must control the only access. Overall, this table provides both a hierarchical analysis framework for judges and a predictive tool for litigation strategies.

Third, precautions during use. The "disputable to possibly compelling" in the table only indicates a logical possibility and does not equate to a stable rule. Lawyers or judges should focus on whether the specific intensity and duration of the possession behavior truly reach "far exceeding 20 years". For the "open platform" column, all conclusions are based on logical inference and cannot serve as practical basis, pending further case supplementation. Meanwhile, in terms of land types, this table is only applicable to cases of adverse possession of private land in Hong Kong, excluding crown land. Finally, it should be noted that this table is a typification and refinement of existing precedents, rather than a mandatory constraint on court decisions; comprehensive judgment based on all facts is still required in actual litigation.

Fourth, suggestions on evidence presentation strategy. To obtain a strong presumption, priority should be given to proving physical occupation or physical occupation combined with maintenance and utilization, ensuring that the occupation lasts for more than 20 years. If the behavior falls within the "disputable" category (such as long-term utilization without physical occupation or incomplete physical occupation), the focus should be on extending the occupation period to over 20 years, while also supplementing with other exclusive evidence (such as community recognition, control channels, etc.) as much as possible [11].

5. Conclusion

This article conducts a typological study on the objective behavioral presumption of "intent to possess" in Hong Kong's adverse possession cases. Compared to the previous research model in Hong Kong, which focused on a single list of plane behaviors and binary judicial conclusions, this

article introduces new moderating variables such as duration of possession and land type, constructing a multi-level presumption judgment tool. By separating and re-overlapping the three dimensions of behavioral intensity, duration, and land type, this article builds a three-dimensional cross-correspondence judgment table, clearly outlining the presumption gradient of intent to possess under different factual combinations. This provides a standardized reference for practical evidence presentation and uniform discretion in similar cases.

The core contribution of this article lies in providing, for the first time, an operable three-dimensional typological framework for the presumption of "possession intention" in adverse possession in Hong Kong. This framework fills the gap in existing research regarding the "correspondence between behavioral combinations and presumption strength" - lawyers can predict evidential strategies based on it, judges can limit their discretionary space accordingly, and subsequent precedents can also test and revise the framework.

The precedents primarily cover agricultural land, with a lack of direct precedents regarding open platforms on rooftops; the foundation of local precedents in Hong Kong within the contentious area is weak; and some quantitative thresholds (such as the precise threshold for "over 20 years") require clarification in subsequent precedents.

References

- [1] Xing, G. W. (2023). *New theory of acquisitive prescription system: Also on adverse possession*. Law Press China.
- [2] Hoops, B. (Ed.). (2022). *The acquisition of immovables through long-term use*. Cambridge University Press.
- [3] McFarlane, B., Hopkins, N., & Nield, S. (2024). *Land law: Text, cases, and materials* (6th edn). Oxford University Press.
- [4] Nield, S. (1997). *Hong Kong land law* (2nd edn). Pearson.
- [5] Chen, L., & Sng, B. C. G. (2014). Whither adverse possession in Hong Kong? A comparative and statistical study. *The Conveyancer and Property Lawyer*, 78(5), 413.
- [6] Low, K. F. K. (2012). Demystifying the doctrine of encroachment. *Hong Kong Law Journal*, 42(3), 687.
- [7] Cheung, D., & Chan, V. (2025). *Adverse possession in Hong Kong* (1st edn). LexisNexis.
- [8] Tse, J. S. L. (1998). Adverse possession in the New Territories. *Hong Kong Law Journal*, 28: 195.
- [9] Harpum, C. (1998). Adverse possession and statements against interest. *Hong Kong Law Journal*, 28: 329.
- [10] Mak, A. (2023). *Conveyancing and property litigation in Hong Kong* (3rd edn). LexisNexis.
- [11] Sihombing, J. (2022). *Hong Kong conveyancing law* (9th edn). LexisNexis.