Goff J. in *Barclays Bank Ltd.* v. *Simms* [1980] Q.B. 677, where the facts were similar, although the claim for restitution succeeded because it was found that the customer had not authorised the payment to be made to the defendant. But what is important about the *Independent Insurance* case is the way the judges characterised "good consideration". For Waller L.J., restitution was denied to the bank because the discharge of the debt constituted a change of the defendant's position. For Peter Gibson L.J., however, good consideration and change of position were distinct, and he went on to state that, where the mistaken payment had discharged a debt owed to the defendant, it followed that the defendant could not be found to have been enriched. This must be correct because, where the effect of the payment is to discharge a debt, the defendant will not have a received a net benefit. It follows that the good consideration restriction is properly characterised as a bar rather than a defence. This is important since it means that the burden is on the claimant to show that the defendant has not provided good consideration and, where good consideration has been provided such as where a debt has been discharged, the defendant is not liable to make restitution simply because he or she will not have been unjustly enriched at the claimant's expense.

GRAHAM VIRGO

HUNTING RIGHTS AND HUMAN RIGHTS

THE decision of the European Court of Human Rights in *Chassagnou* v. *France* (judgment of 29 April 1999) has wide legal and practical implications of which only some can be explored here.

In some *départements* of France there are laws under which owners of small landholdings below a certain size are compulsorily required to transfer the hunting rights over their properties to an approved hunters' association. They thereby become members of the association and, as such, may hunt anywhere within the lands over which it has pooled hunting rights. Compensation is normally available only where the landowner can show that he has suffered a loss of profits by deprivation of income. It is practically impossible to escape from the compulsory regime except at considerable expense, *e.g.* by acquiring additional land to increase the holding above the relevant size threshold, or by constructing an unbroken fence around the property that will withstand both man and beast. These laws were challenged under the European Convention on Human Rights by certain landowners who were opposed to hunting and who refused to allow hunting on their properties. Although their claims failed before the French *Conseil d'État*, they were successful both before the Commission and the Court of Human Rights in Strasbourg. The Court found that there had been breaches of two provisions of the Convention: Article 11 (right to freedom

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of association) and Article 1 of Protocol 1 (right to peaceful enjoyment of possessions). This note is only concerned with the latter.

So far as relevant, Article 1 of Protocol 1 provides that—

> Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law… The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest…

The Court accepted that the applicants had not been deprived of their right to use or alienate their properties. However, the right of members of the association to come on to their lands to hunt constituted a restriction on the user of those lands within the second paragraph of Article 1: see §75. According to well-known principles, the interference could be justified only if it achieved a fair balance between "the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights". There had to be a "reasonable relationship of proportionality between the means employed and the aim pursued". In determining whether this was so, a State enjoyed a "wide margin of appreciation" as to how it gave effect to its social and economic policies. The Court accepted that the legislation *was* in the general interest, namely "to avoid unregulated hunting and encourage the rational management of game stocks": §79. However, the requirement of proportionality was not met. The essence of the legislation was for each landowner to transfer his hunting rights in return for the right to hunt anywhere within the lands controlled by the hunting association. However, that compensation was valuable only for those landowners who hunted or accepted hunting. It constituted a disproportionate burden for those who were opposed to it. It followed that there had been a violation of Article 1. There had also been a violation of the Article taken in conjunction with Article 14. Article 14 requires that the freedoms set out in the Convention "shall be secured without discrimination on any ground". The legislation was found to be discriminatory because there was no objective and reasonable justification for allowing owners of larger landholdings to retain the hunting rights for their exclusive use while requiring smaller landowners to transfer their rights to hunting associations.

The decision on Article 1 of Protocol 1 raises some intriguing questions. It is well established that where a person is *deprived* of his property in the public interest, that will almost always constitute a breach of the Article unless compensation is paid: see *Lithgow* v. *U.K.* (1986) 8 E.H.R.R. 329, 371, §120. However, in cases of *control* by a State, "a right to compensation is not inherent": *Banér* v. *Sweden*, 60 D.R. 128, 142 (1989). Thus, for example, rent control legislation has been upheld even though landlords

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received considerably less than a market rent without receiving any compensation in lieu: *Mellacher* v. *Austria* (1989) 12 E.H.R.R. 391. After *Chassagnou*, it appears that in cases of control, the social and economic aims of the legislation will be a very significant factor in determining whether there is the necessary proportionality between ends and means. The Court has recently indicated that it will accord particular respect to a State legislature's view "in spheres such as housing, which plays a central role in the welfare and economic policies of modern societies": *Immobiliara Saffi* v. *Italy* (judgment of 28 July 1999, §49). *Chassagnou* suggests that, in relation to other matters, the margin of appreciation will be less generous. The case contrasts strikingly with the earlier decision of the Commission in *Banér* v. *Sweden* (above). In that case, public rights to fish free of charge in Swedish waters were extended. Compensation was only payable if loss of income could be proved by adjoining landowners. The absence of economic loss by the claimant proved fatal to his claim.

If, as it seems, *Chassagnou* heralds a change of direction, the implications for the development of English law could be considerable. It seems likely that the courts will develop a domestic doctrine analogous to the margin of appreciation once the Human Rights Act 1998 is brought into force. However, even if they do, it is difficult to see how, after *Chassagnou*, it will be possible (for example) to enact Convention compliant legislation which imposes a general right of open access to the countryside on unwilling landowners, without making provision for compensation.

CHARLES HARPUM

FOR SALE: CAVEAT EMPTOR!

THE system of land registration was, according to Lord Wilberforce in *Williams & Glyn's Bank* v. *Boland* [1981] A.C. 487, 503, "designed to free the purchaser from the hazards of notice—real or constructive—which, in the case of unregistered land, involved him in enquiries, often quite elaborate, failing which he might be bound by equities". The hapless purchaser of land may well consider the remedy just as hazardous as the complaint. Certainly, in the light of *Ferrishurst Ltd.* v. *Wallcite Ltd.* [1999] 2 W.L.R. 667, no obituary can yet be written for elaborate enquiries.

The case concerned an acrimonious dispute about an option to purchase. Ferrishurst occupied a suite of offices under a sub-underlease which had also granted them an option to purchase the reversion. The reversion, however, was not confined to the offices but extended to a neighbouring garage, and the whole was part of a single registered title. Wallcite purchased the title, and then opposed Ferrishurst's subsequent application to exercise the option. No entry relating to the option appeared on the regis-

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