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Author post-print (accepted) deposited in CURVE March 2012

**Original citation & hyperlink:**

Panesar, S. and Wood, J. (2009) Adverse possession and Article 1 of the European Convention. *Liverpool Law Review*, volume 30 (1): 77-88.

<http://dx.doi.org/10.1007/s10991-009-9050-4>

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# Land Law

## Adverse Possession and Article 1 of the European Convention

*J.A. Pye (Oxford) Ltd & J.A. Pye (Oxford) Land Ltd v United Kingdom*, decision of the Grand Chamber of the European Court 30 August 2007.

Sukhninder Panesar\* and Jane Wood\*

### Introduction

One of the authors of this short article wrote sometime ago that ‘given the reforms made by the Land Registration Act 2002 in respect of adverse possession, it is unlikely that the deprivation of ownership in circumstances where the owner of the land is given the opportunity to object to the adverse possession will be seen as violating the provision of Article 1, Protocol 1 of the European Convention on Human Rights.’<sup>1</sup> This is because the new law, although allowing the squatter to apply to be registered as owner of the dispossessed land after 10 years of continued possession, requires the registered owner to be given an opportunity to claim his land back. The registered proprietor has two years in which to regularize his possession of the land by evicting the squatter. Where the registered owner fails to exercise his right to evict the squatter, the squatter’s subsequent claim to the land is not disproportionate and therefore not a violation of Article 1, Protocol 1. Prior to the Land Registration Act 2002, a registered owner’s title could simply be extinguished after 12 years of sustained possession by the squatter. There was no mechanism to alert the registered owner of the fact that his title to land may be automatically extinguished after the 12 year period.

In the post-human rights era it was inevitable that the question would arise as to whether such automatic and arbitrary termination of the registered owner’s title was contrary to the Article 1, Protocol 1 of the European Convention. The matter fell to be decided in *J.A. Pye (Oxford) Ltd v United Kingdom*<sup>2</sup> where the European Court of Human Rights held that the automatic termination of a registered owner’s title after 12 years possession was indeed a violation of Article 1, Protocol 1. The decision of the Court did question some of the established principles of English land law, particularly, the relevance of possession in the common law tradition and principle of relativity of title. More recently, the decision of the European Court has been overturned by the Grand Chamber of the European Court of Human Rights where the Grand Chamber has held that a squatter’s right to another person’s land are not disproportionate.<sup>3</sup> This short article examines the decision of the Grand Chamber and

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<sup>1</sup> S. Panesar, ‘The Importance of Possession in the Common Law Tradition’. *Hong Kong Law Journal*

<sup>2</sup> [2005] 3 EGLR 1.

<sup>3</sup> *J. A. Pye (Oxford) Ltd and Another v United Kingdom (Application No. 44302/02)* The Times, October 1<sup>st</sup> 2007.

welcomes it on the grounds that it gives recognition to some of the fundamental and long established principles of the English land law.

## **The Facts**

The applicants were two United Kingdom Companies, J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd. These applicants were the registered owners of agricultural land, title to which they had lost in the English courts by a successful claim to adverse possession by the personal representative of the late Michael Graham along with Caroline Graham (*the Grahams hereafter*) who had claimed rights to 25 hectares of agricultural land belonging to JA Pye (Oxford) Ltd (*Pye hereafter*). The action was commenced by J.A Pye (Oxford) Ltd against the United Kingdom Government on the basis that it should be compensated by the Government on the grounds that it was the Government's failure to ensure that legislation was in conformity with the European Convention on Human Rights. Particularly, that the combined effect of the Land Registration Act and the Limitation Act 1980 was to deprive them of their rights under the Convention.

In the English courts the Grahams based their argument on s.15 of the Limitation Act 1980, which provides that no action shall be brought by a landowner to recover his land after the expiration of 12 years from the date on which the right of action accrued to him. Schedule 1, paragraph 1 provides that the right of action to recover land is deemed to have accrued to the landowner when the land owner has been either dispossessed of his land or has discontinued use of his land. Dispossession usually refers to an ouster by the squatter, for example, where the squatter has fenced in land belonging to the paper owner and has since then not allowed the paper owner to enter on the land. The Grahams argued that since 1984 they had taken possession of the land belonging to Pye and as a result they had established a successful claim of adverse possession. Pye counter argued that the land had at all time belonged to them and that they had an intention to build on the land. More importantly, however, they argued that the Grahams had at no time dispossessed them of the land. This is because firstly, in 1983 the Grahams had entered into an agreement with Pye to use the land until 31<sup>st</sup> December 1983 for the payment of a sum of £2000. Secondly, when that agreement expired the Grahams continued to use the land, there use of it was not inconsistent with the paper title of Pye because they were willing to pay for the use of land and as such were not acting as owners of it. After 1986 Pye did very little in so far as the disputed land. Pye brought proceedings in the English courts in 1998 to recover the land. In order to understand the decision of the Grand Chamber, it is important to revisit the developments that took place in the English Courts and the European Court of Human Rights.

## **The Decisions of the English Courts**

At first instance the judge held that the Grahams had established a successful possessory title to Pye's land and that time began to run against Pye since 1984 after

the expiration of the licence agreement.<sup>4</sup> The Court of Appeal reversed this finding and held that no successful adverse possession claim could be found simply because the Grahams had not dispossessed Pye from the land.<sup>5</sup> One of the main arguments in the case was that, even though Pye had done very little in the period between 1986 and 1998, they were still within the limitation period to claim the land back. In so far as the period between 1984 and 1986, the Court of Appeal held that there could be no finding of dispossession simply because the Grahams were using the land in the hope that a new licence agreement might be forthcoming. This subjective intention was held to be crucial by the Court of Appeal because it was indicative of a form of implied licence by Pye that the Grahams could use the land. The decision of the Court of Appeal begged the question whether a successful claim to adverse possession rested on the subjective intentions of both the squatter and the paper owner or whether on the objective intention to possess land for the requisite period of time required by the Limitation Act 1980? Furthermore, were subjective factors such as the willingness of the squatter to pay for the use of land and his subjective belief that he was not the owner relevant? These matters fell to be decided by the House of Lords.

The leading judgment in the House of Lords was delivered by Lord Browne-Wilkinson, who explained that the matter was simply one of whether the adverse possessor had dispossessed the paper owner by going into ordinary possession of the land without his consent.<sup>6</sup> In so far as the requisite acts needed for possession, his Lordship explained that this required two elements. Firstly, a sufficient degree of physical custody and control, this requires factual possession. Secondly, an intention to exercise such custody and control for his own benefit. In so far as a need to have an intention to own, his Lordship referred to the words of Slade LJ in *Buckingham County Council v. Moran*<sup>7</sup> who said that what was required was ‘not an intention to own or even an intention to acquire ownership but an intention to possess.’<sup>8</sup> On the basis of these principles, Lord Browne-Wilkinson explained that the Grahams had established a satisfactory possessory title to the land belonging to Pye. Furthermore, their willingness to pay for the occupation of the land did not matter providing that they had the necessary possession at all times. Their willingness to pay did not alter the fact that they had the necessary factual possession for the period of time prescribed by the Limitation Act 1980.

Lord Browne-Wilkinson explained that whilst the statutory provisions founded in the Limitation Act 1980 were relatively straightforward, much of the confusion in this area of the law had been caused by the decision of the Court of Appeal in *Leigh v. Jack*.<sup>9</sup> In this case Bramwell LJ held that for a successful claim of adverse possession ‘...acts must be done which are inconsistent with the enjoyment of the soil for the purpose for which [the true owner] intended to use it.’<sup>10</sup> According to this so called ‘implied licence theory’ there could no claim to adverse possession if the squatter merely possessed the land without interfering with the future intentions of the real

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<sup>4</sup> *Pye (Oxford) Ltd (JA) v Graham* [2000] Ch 676.

<sup>5</sup> *Pye (Oxford) Ltd (JA) v Graham* [2001] Ch 804.

<sup>6</sup> *Pye (Oxford) Ltd (JA) v Graham* [2003] AC 419.

<sup>7</sup> [1990] Ch 623

<sup>8</sup> *Ibid.* at 643.

<sup>9</sup> (1879) 5 Ex D 264.

<sup>10</sup> *Ibid.* at p27.

owner. It mattered not how much intention and how much control the squatter had exerted to the disputed land. Lord Browne-Wilkinson, however, explained that the line of reasoning in *Leigh v. Jack* had been rejected by the Court of Appeal in *Buckingham County Council v. Moran*.<sup>11</sup> After approving of the principles set out by Slade LJ in *Buckingham County Council v. Moran* his Lordship went on to explain the concepts of the possession, dispossession and adverse possession. In so far as the concept of possession, his Lordship explained that it was to be given its traditional meaning, which simply meant ‘that degree of occupation or physical control, coupled with the requisite intention commonly known as *animus possidendi*, that would entitle a person to maintain an action for trespass in relation to the relevant land’.<sup>12</sup> Moving on to the meaning of dispossession, his Lordship gave a simplistic meaning to the word, explaining that it simply meant the taking of possession from another without the other’s consent.<sup>13</sup>

The decision of the House of Lords in *J A Pye (Oxford) Ltd v. Graham* did not only reaffirm the importance of possession in the common law tradition as had been understood historically, but it also explained that it was long sustained possession that is the root of a successful claim to adverse possession. It does not matter that the adverse possessor does not have an actual subjective belief that he is acting as the owner.<sup>14</sup> Neither does it matter that the possessor is willing to pay for the occupation of the land, providing that there is possession which is inconsistent with the paper owner’s title.<sup>15</sup> Much of the confusion in *J A Pye (Oxford) Ltd v. Graham* arose from the decision of Bramwell LJ in *Leigh v. Jack*<sup>16</sup> where his Lordship explained that possession of the paper owner could not be disturbed by a squatter if the paper owner could show a future intention to use the land. This so-called ‘implied licence theory’ meant that the squatter’s possession, not matter how strong and continuous, could not disturb the paper owner’s title. However, this rule had been rejected by the Court of Appeal in *Buckinghamshire County Council v. Moran*<sup>17</sup>

### **Adverse Possession, Human Rights and Article 1 of the European Convention.**

In the post-Human Rights Act era the question has arisen whether the deprivation of ownership of land through the principles of adverse possession is in violation of the European Convention on Human rights. Put quite simply, is the cumulative effect of the Limitation Act 1980 in respect of claims for the recovery of land and the consequential denial of the right to claim land after 12 years a deprivation of a person’s property contrary to Article 1, Protocol 1 of the Convention. Section 3(1) of the Human Rights Act 1998 imposes a duty on a domestic court to read and give effect to primary and subordinate legislation in a manner which is compatible with the

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<sup>11</sup> [1990] Ch 623

<sup>12</sup> [2002] 3 WLR 221 at 231.

<sup>13</sup> *Ibid.*

<sup>14</sup> [2002] 3 WLR 221 at 234.

<sup>15</sup> *Ibid.* at 237.

<sup>16</sup> (1879) 5 EX D 264.

<sup>17</sup> [1990] Ch 623.

Convention. Article 1, Protocol 1 of the European Convention on Human Rights provides:

‘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 by law and by the general principles of international law.’

The loss of ownership through adverse possession falls quite neatly into the second rule of Article 1, Protocol 1. In the words of one leading commentator, ‘that an owner can be effectively deprived of his or her land without the payment of compensation and without due legal process raises the question as to the compatibility of s.15 of the Limitation Act 1980 with Article 1, Protocol 1.’<sup>18</sup> If it is incompatible the impact of possession as a means of extinguishing a former title in land and creating a new one as discussed in this article is reduced to a meaningless concept.

The question of whether s.15 of the Limitation Act 1980 and the consequential denial of ownership through adverse possession was considered by the High Court and Court of Appeal in *J.A. Pye (Oxford) Ltd v. Graham*.<sup>19</sup> In the High Court Neuberger J, although coming to the conclusion that the Grahams has established a successful claim to adverse possession of land, was nevertheless sympathetic to the human rights arguments presented on behalf of Pye. In the course of his judgment, Neuberger J commented that ‘the result is disproportionate, because, particularly in a climate of increasing awareness of human rights, including the right to enjoy one’s own property, it does seem draconian to the owner, and a windfall for the squatter, that the owner should lose 57 acres of land to the squatter with no compensation whatsoever.’<sup>20</sup> The Court of Appeal, however, took a rather different approach to the compatibility of the Limitation Act 1980 with the protection of property guaranteed in the Convention. Mummery LJ was of the opinion that the Limitation Act 1980, in particular s.15, which provides that no right of action to recover land shall be brought after 12 years after the right of action accrued to the legal owner, was not incompatible with the protection afforded in Article 1, Protocol 1 of the Convention. His Lordship explained that the effect of s.15 was not to deprive the legal owner of land his possessions or peaceful enjoyment of them, rather the effect of the Act was to deny access to the courts for a remedy recovering the land. In his Lordship’s words, ‘...the relevant provisions of the 1980 Act...do not deprive a person of his possessions or interfere with his peaceful enjoyment of them. They deprive him of his right to access the courts for the purpose of recovering property if he has delayed the institution of legal proceedings for 12 years or more...’<sup>21</sup>

It is not altogether clear whether the distinction between a deprivation of property and a deprivation of a right to bring an action for the recovery of property is a satisfactory one in the context of property rights. One of the crucial incidents of a person’s

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<sup>18</sup> D. Rook, *Property Law and Human Rights*, (London, Blackstone Press 2001) at p. 205.

<sup>19</sup> [2000] Ch 676, [2001] Ch 804 (Court of Appeal).

<sup>20</sup> [2000] Ch 676 at 710.

<sup>21</sup> [2001] Ch 804 at 822.

ownership of a thing is the right to be put in possession of a thing and remain in possession if he so chooses.<sup>22</sup> An equally important incident of ownership is the right to security, which involves an expectation on behalf of the owner that he will remain owner indefinitely if he so chooses. This expectation amounts to immunity from expropriation except where just compensation is given to the legal owner. In this respect, the right to commence an action for the recovery of property is a central ingredient of a person's ownership. The deprivation of a person's right to commence an action to recover his property is a deprivation of one of the very basic ingredients of his ownership. The matter is explained by one commentator who writes, 'is the ability to commence court proceedings to recover property from a trespasser a fundamental characteristic of property ownership? If it is, the loss of the right to commence court action impinges upon the very nature of property ownership and cannot be artificially dissected from it and treated as separate from it.'<sup>23</sup>

Whilst the matter in *J A Pye (Oxford) Ltd v. Graham* was referred to the European Court of Human Rights the English Courts had the opportunity to examine whether the law of adverse possession contrary to the Article 1, Protocol 1. In *Beaulane Properties Ltd v Palmer*<sup>24</sup> Deputy Judge Strauss QC held that the effect of s17 of the Limitation Act 1980 was to deprive the registered owner of land of all of his right to it. As a result of this, he was clearly of the view that such a deprivation was in violation of the rights under the Convention. The judge did, however, go on to say that the new law of adverse possession founded in the Land Registration Act 2002 did not produce a disproportionate result and therefore was not contrary to the principles of the Convention.

### **The Decision of the European Court of Human Rights**

The opportunity to examine whether the law of adverse possession was incompatible with the provisions of the European Convention fell to be decided by the European Court in *J.A. Pye (Oxford) Ltd United Kingdom*.<sup>25</sup> The action was commenced by J.A Pye (Oxford) Ltd against the United Kingdom Government on the basis that it should be compensated by the government on the grounds that it was the Government's failure to ensure that legislation was in conformity with the European Convention on Human Rights. The European Court of Human Rights held that the rights of J.A. Pye (Oxford) Ltd had been violated and they were entitled to compensation. The United Kingdom Government had put the value of the land at £2.5million. J.A Pye (Oxford) Ltd disputed this and put the value of the land nearer the region of £10million. In coming to its conclusion, the European Court considered a number of questions. Firstly, the Court considered whether the law of adverse possession in England amounted to an interference with the applicant's rights under the Convention. The Court held that the combined effect of the Land Registration Act 1925 and the

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<sup>22</sup> See A.M. Honoré, 'Ownership' in A.G. Guest (ed), *Oxford Essays In Jurisprudence*, (1961) at p129 where the author identifies main incidents of ownership.

<sup>23</sup> D. Rook, *Property Law and Human Rights*, (London, Blackstone Press 2001) at p. 207.

<sup>24</sup> [2006] Ch 79

<sup>25</sup> [2005] 3 EGLR 1.

Limitation Act 1980 was to deprive the applicants of their right to peaceful enjoyment of their property and therefore contrary to Article 1, Protocol 1 of the Convention. The Court explained that the under Article 1, deprivation of peaceful enjoyment could only be justified on the grounds of public interest and the question was whether the law of adverse could be justified in such a way. The Court explained that the national authorities were better placed to decide what was in the public interest. The Court noted that the law of adverse possession had been retained by the Land Registration Act 2002 and this was proof that United Kingdom Parliament deemed the law of adverse possession to be in the public interest.<sup>26</sup>

The Court then addressed the question as to whether the law of adverse possession produced a disproportionate result. The Court explained that this matter could only be answered by weighing the interests of the registered owner against the general public interest. The United Kingdom Government strongly counter argued that the law of adverse possession pursued a legitimate objective and was proportional to it. In particular the Government pointed out that the law of adverse possession had been established for a long time and that the registered owners were fully aware that they ran the risk that their title would be extinguished. Furthermore, the Government argued that the law of adverse possession did not violate Article 1, Protocol 1 because the matter was simply one of a limitation period rather than a taking of property. These arguments were rejected by the court, which concluded that the net effect of the law was to produce a very harsh result on the registered owner of the land that lost title by adverse possession. This, therefore, meant that the law produced a disproportionate result and violated the principles under the Convention.

### **The Decision of the Grand Chamber**

After the Chamber judgement, the case was referred to the Grand Chamber, under Article 432 of the Convention and Rule 73 of the Rules of the Court at the request of the United Kingdom Government. The Grand Chamber delivered its judgement on August 30<sup>th</sup>.<sup>27</sup>

The Grand Chamber overturned the Chamber's decision by 10 votes to 7 and confirmed that the balance of interests required under Article 1 of the Protocol was not upset and that the Grahams had not violated the Companies' right to the peaceful enjoyment of their possessions.

The basis of the argument from Pye now centred on three main issues. First that there was no justification for them to lose their right of ownership of registered land, second that there no justification that could justify depriving them of their land without compensation and thirdly that there was no justification in depriving the them of their land without procedural protection that would allow them the opportunity to respond to any such claims. In addition, in support of their case, Pye argued that in many other European States the limitation period was often considerably longer than

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<sup>26</sup> [2005] 3 EGLR 1 at para. 67.

<sup>27</sup> *J.A. Pye (Oxford) Ltd and Another v United Kingdom (Application No. 44302/02)* The Times 1<sup>st</sup> October 2007.

the 12 years applicable in their case and many other jurisdictions required additional criteria to be satisfied, for example, a notion of good faith.

In response, the United Kingdom Government also put forward three distinct arguments for the Chamber's consideration. They argued that the case should have been brought under Article 6 and not Article 1 of the Protocol since the limitation period effectively denied a claimant a means of enforcing his or her rights at the end of the statutory period and that in any event the United Kingdom Government had not deprived the Pye of their land by appropriating it for their own use but that 'the outcome of the proceedings was dictated by the applicant companies own inaction' (para 43). In relation to Pye's claim for compensation, therefore, they argued that this should be addressed under Article 6. Article 1 was not appropriate; why should the Government have to look after the applicant company when they have found themselves in this position through their own inaction?

The United Kingdom Government also considered that the Chamber should, when considering the Government's position, take into account that land was a limited resource and therefore the emphasis in relation to land should be that it be 'used maintained and improved' This implied that a finite time limit for recovery of land would encourage landowners to make use of their land.

Whilst Pye argued that the domestic law relating to adverse possession was out of line with other European states, the Government in response put forward to the Chamber that there was no European 'norm', that the limitation periods differed, that in some states good faith was irrelevant whilst others took it into account together with a substantial number of other factors.

In coming to its decision, the Grand Chamber considered the representations given by the parties as well as the earlier decisions in the domestic courts as well as the lower Chamber and, in its judgment, responded to each of the arguments put forward and separated out its response to deal with each of the issues.

On the point of whether the matter should be dealt with under Article 1 of Protocol 1, the Grand Chamber concluded that Article 1 was applicable stating clearly that "there was nothing in principle to preclude the examination of a claim under Article 1 of Protocol 1 where the complaint is directed against legislation concerning property rights". Accordingly, the relevant legislation –the 1925 Law of Property Act and the 1980 Limitation Act- was part of the general land law created by the United Kingdom Government that regulated the use of land ownership between individuals.

After establishing the relevance of Article 1 of Protocol 1, the Grand Chamber then came to the conclusion that the relevant domestic legislation – in particular the Limitation Act 1980 - was effectively a means of regulating title rather than depriving a paper owner of title. The law, therefore, did not deprive a person of his possessions as defined under the first paragraph of Article 1 but the legislation was there as a means of ensuring that there was an ultimate control of the use of land. Indeed the Judges noted that the domestic courts in the earlier decisions had considered that the extinguishment of title at the end of an action of adverse possession was a "logical

and pragmatic consequence.” Furthermore, Pye had never argued that the conclusions of the domestic courts on this point were unreasonable or unforeseeable in the light of the legislation. Indeed, both parties had used examples from other European States that had incorporated similar concepts of the limitation period in relation to adverse possession of land and in response the Grand Chamber agreed that the comparative material provided by both sides had shown that other European Union states had a similar mechanism of transferring titles using the mechanism of adverse possession (also without payment of compensation to the original owners).

So, the Grand Chamber concluded that the case before them fell within the provisions of the second paragraph of Article 1 Protocol 1 namely:

“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 or to secure the payment of taxes or other contributions or penalties”

Having decided that the case, therefore, came within this second paragraph of Article 1 it was then for the Grand Chamber to decide whether or not there existed a “reasonable relationship between the means employed and the aim sought to be realised”. In other words, was there a fair balance between this general interest in having a limitation period and the subsequent extinguishment of title and the interests of the original individual landowners themselves?

In coming to its decision when weighing up the ‘fair balance’ argument the Grand Chamber noted that on more than one occasion very little action was required by Pye to stop time running (for example, by asking for rent, commencing an action for recovery) and, in addition, the relevant legislation had been in force many years prior to the extinguishment of title in this case. (It should also be noted that during the relevant period the ownership of the property ‘technically’ changed giving the opportunity of questions of any potential overriding interests to be raised, even when the parties involved may be associated companies)

The Grand Chamber decided that the ‘fair balance’ had not been upset. There was effectively no violation of Article 1 of Protocol 1 in that the English law on adverse possession as a means of control on the use of land (acknowledging at the same time that land was a scarce resource) was proportionate. Pye had argued that the loss of the land was so great and the windfall to the Grahams so significant that in this case the balance had been upset. The Grand Chamber, nevertheless, took a clear objective stance (in comparison to some of the earlier decisions in the case, perhaps) by directing that if the limitation periods were to achieve their purpose they had to apply regardless of the size of the claim

In response, therefore, to Pye’s claim for compensation, which was the fundamental aim of the case being brought to the European Courts, the Grand Chamber sided with the United Kingdom Government. It noted that ‘the requirement of compensation by a party who fails to observe the limitation period sits uneasily alongside the concept of limitation periods and thereby legal certainty’. To further emphasise the point the General Chamber referred to the Land Registration Act 2002 where no compensation

is payable under these provisions by any person who becomes the registered owner at the end of the limitation period.

## Commentary

The decision of the Grand Chamber is to be welcomed on a number of grounds. The law of adverse possession in England is deeply rooted in some of the fundamental principles of land law. The common law tradition in respect of ownership in land often turns more to the question of fact than right; in particular, the fact of sustained possession.<sup>28</sup> One leading commentator writes, 'the pre-eminent position accorded to de facto possession in English law ensures that there is no such thing as absolute title to land. All title is ultimately relative: the title of the present possessor will customarily be upheld unless and until a better claim is advanced on behalf of somebody else.'<sup>29</sup>

As well as legal justifications for original acquisition through adverse possession of land, there are important social and economic justifications for the rules. Certainty of title is one of the important social objectives behind rules of adverse possession.<sup>30</sup> If claims to land which have been based on long possession are nevertheless allowed to be defeated by others showing that they were owner some time in the past, it is inevitable that title to land becomes uncertain. Such titles are not conducive to a liberal market engaged in exchange and bargain. The basic premise must be that long unchallenged possession of land should not be disturbed. Of course some sort of wrongful possession of land should be disallowed, however, the Limitation Act operates in an arbitrary way in providing a cut off point when the true owner cannot challenge the title of another possessor of the land to which the original title pertained. The resulting uncertainty over title has impact not only on the person who has been in possession of land but, also third parties such as purchasers and mortgagees who may have interests in the land. In other words, title in real property law must be seen as operating in a multitude of transactions concerning the same piece of land. Uncertainty over title is undesirable because the effects are not only far reaching but they also affect more than one transaction. It is only on reliance of title that some of these transactions are entered into; therefore subsequent uncertainty is a bad thing. In this sense the law of adverse possession pursues a legitimate objective and is proportional to it.

It is interesting to note that that the Grand Chamber in the course of its judgment appears to acknowledge that a domestic state should be given leeway in interpreting

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<sup>28</sup> This is not something which is new, it originates from the concept of seisin-possession. This concept is at the roots of real property law and emphasizes that proprietary rights in land are based on physical possession rather than on abstract title. The concept of seisin possession is examined in chapter 6. For a more detailed account of the concept of seisin see, A.W.B. Simpson, *An Introduction to the History of English Land Law* (1961).

<sup>29</sup> K. Gray, *Elements of Land Law*, (1987), at p.64.

<sup>30</sup> See, M. Dockray, 'Why Do We Need Adverse Possession', [1985] *Conveyancer* 272.

paragraph 2 of Article 1 and any consequential legislation. As specifically stated by the Grand Chamber in their judgment “states enjoy a wide margin of appreciation with regards both to choosing the means of enforcement and to ascertaining whether the consequences of enforcement are justified for the purpose of achieving the object of the law in question.”

The relevant provisions of the Land Registration Act 2002 relating to adverse possession were largely in response to government and judicial fears of the applicability of Article 1 on domestic decisions. It would be interesting to speculate that, had the Grand Chamber issued this decision prior to the drafting of the Land Registration Act 2002, would its provisions have swung so much in favour of property owners “seeking protection from the Government against the consequences of their own inattention.”?