Editorial

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As in previous years, the past twelve months have yielded a diverse and challenging harvest of litigation. Some old stories reached their final chapter, while the book opened on some new ones. In England, the application by the J Paul Getty Museum for judicial review of the decision of the Secretary of State for National Heritage to grant a further deferment of a licence for the export of The Three Graces failed, both at first instance before Mr Justice Law and in the Court of Appeal. The work will now remain in England and has already been exhibited at the V&A, although there are rumours that it may travel on loan to Spain. The United States Supreme Court has rejected an appeal whereby it was sought to compel the Government to return to a geological research institute a 65 million year old dinosaur fossil, seized by FBI agents two years ago. An application to the Tribunal de Grande Instance by Paris by three of Peggy Guggenheim's grandchildren, seeking damages from the Solomon R Guggenheim Foundation in respect of poor administration, was dismissed. Westminster City Council failed in its legal attempt to secure the return by the US publishers Time-Life of some Henry Moore sculptures removed from the Time-Life offices at New Bond Street. The claim by Madame de Balkany against Christie's in respect of a heavily overpainted Egon Schiele work (*Youth Kneeling before God and Father*) succeeded in the High Court on the ground that the work constituted a 'forgery', reasonably discoverable by the auction house within the terms of its specific undertaking of responsibility in clause 11 of the standard conditions. The general tenor of the decision was, however, favourable to Christie's contention (as stated elsewhere in clause 11) that, forgery aside, statements by the auction house as to authorship and kindred matters carry no legal force.

Less active, but perhaps no less controversial, were the legislators. Some reforms, admittedly, were universally welcomed. The United Kingdom Parliament finally abolished the market overt exception to the general common law principle *nemo dat quod non habet*, repealing with effect from January 1st 1995 the embodying provision, section 22(1) of the Sale of Goods Act 1979. The path of the Earl

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of Perth's Treasure Bill (which passed the House of Lords) has proved more laborious and formal objections were originally made at its early stages in the Commons, but the prospect remains (albeit faintly) that the measure will proceed as a Government Bill in the Commons. France is reported to be considering legislation to immunise loaned works of art from restitutionary litigation, such as the unsuccessful (1993) claim instituted by Irina Shchukina at Paris in respect of the two Matisse pictures claimed by her as property inherited from her father.

The last mentioned litigation is revealingly depicted in our current issue by Mark Boguslavskij of the Institute of State and Law at Moscow. The author was involved in the preparation of the defence case and is exceptionally qualified to analyse the proceedings. In the light of his account, it is instructive to consider the merits and demerits of legislation which immunises works of art from judicial process while they are the subject of a cross-border loan. Is such legislation, for example, compatible with the EU Directive on the Return of Cultural Objects Unlawfully Removed from the Territory of a Member State (1993)? Does it involve an insupportable affront to property rights, or can it be justified on grounds of public interest? To what extent should the inclination for enhanced public appreciation of art eclipse our respect for private property? There are echoes of this tension in our last issue.

No less delicate, in some spheres, is the balance between property and promise: the unfettered liberty of disposal that may be required by an institutional owner of cultural property against the respect that is due to the wishes of its donors, from whom it acquired that property. In most jurisdictions, the question seems to have attracted surprisingly little judicial authority. In England, as elsewhere, reductions in public funding have drawn the issue into sharp focus, for the more limited an institution's revenue the greater the temptation to draw on its bequeathed and donated property. The disposals by the Royal Holloway College in London attracted wide condemnation, the Reviewing Committee for the Export of Works of Art suggesting that every such disposal should attract a corresponding reduction in public funding. Others have emphasised the damage to collections and to founders' concepts which can follow from a policy of opportunistic disposals, and the moral imperative of the institution's promise. The problem is not a novel one, as Selby Whittingham, in a scholarly and committed paper on Breach of Trust over Collections, demonstrates. Here, as in so many fields of cultural endeavour, the contest between God and Mammon continues.

Legislation forms the core of two further articles, Hugh Jamieson's paper on The Protection of Australia's Movable Cultural Heritage and J David Murphy's on Hong Kong, 1997, and the International Movement of Antiquities. The second of these speaks for itself. The first paper offers a timely review of the Australian Protection of Movable Cultural Heritage Act, which entered into force on

July 1st 1987. The author draws important contrasts between the policy and technique of this legislation towards the export of art and the approach taken in Canada and the United Kingdom. The Ley Report, and the prolonged controversy over the John Glover painting 'The Bath of Diana, Van Diemen's Land, 1837', make the author's treatment particularly timely. Once again, the issue of protection for private property is a significant element in any evaluation of this measure: does an export prohibition, for example, constitute an expropriation of property? The author's conclusion that "in the end it is all a matter of money" has a familiar ring.

I conclude this Editorial on a personal note, for it is my last. The financial burdens of the editorship are such that it is time for me to retire. I do so with sadness and regret. Editing the first eight issues has been a privilege and has given me much pleasure. The experience has left me with an unfailing belief in the value of our enterprise. We have played our part in law reform, and I believe, fostered understanding among cultures and disciplines. I have received wonderful support from friends, old and new, who have given liberally of their time to make this Journal a success. To them, and to my excellent staff and assistant editors, I am unremittingly grateful. To others, I offer the valedictory message of a Somersetshire yeoman from his final resting place:

He gave to none design'd offence
So Honi Soit qui Mal y Pense