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Announcements

Offences Against Property: Theft and Deception: Conceptual issues Relating to Offenders and to things Capable of being Stolen: Papers by Professor ATH Smith, Pro Vice-Chancellor and Dean of Law, Victoria University of Wellington

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"Stealing the Body and Its Parts"
[1976] Crim LR at 622.
Victoria University of Wellington Legal Research Paper No. 67/2014

A. T. H. SMITH, Victoria University of Wellington - Faculty of Law
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What constitutes property is not defined by the Theft Act 1968, meaning that the courts have followed the common law "no property" rule, as evident in the Welsh case. This article looks at that common law rule and its use, noting that there are different approaches taken in other countries and differences between the criminal and civil law approach. The no property rule should be confined within narrow limits because it is anomalous and not in line with the civil law. On a more practical note, parts of the body are useful and valuable and should be protected by the common law. Abstract by Rose Goss.

"Theft by Persons Required to Account"
(1980) Canta LR at 15
Victoria University of Wellington Legal Research Paper No. 68/2014

A. T. H. SMITH, Victoria University of Wellington - Faculty of Law
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Section 222 of the Crimes Act 1961 is a complex provision which raises a number of issues. This article discusses the history of the provision and the state of the present law, with a focus on fiduciary elements and the nature of the payment. Other important aspects include the nature of the protected interest, and the overlap of this area of law with that of common theft. A number of issues remain unresolved and need to be addressed by the courts. Abstract by Rose Goss.

"Shoplifting and the Theft Acts"
[1981] Crim LR at 586.
Victoria University of Wellington Legal Research Paper No. 69/2014

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This article examines the application of the Theft Acts 1968 and 1978 to different forms of shoplifting. Leaving without paying can fit easily into the offense of theft, although that may raise some issues of timing of the offense. Leaving without paying can also fall within the offenses of burglary and making off without payment. Switching price tags has been classed as theft, but the passing of ownership makes this area complex and there are numerous objections to the application of theft to this scenario. It can also fall within obtaining property by deception, a more appropriate offense. Finally, cases where the shopper acts in collusion with a sales assistant have been classed as theft, but this raises similar objections to the issue of the label switcher who is charged with theft.

"The Idea of Criminal Deception"
[1982] Crim LR at 586.
Victoria University of Wellington Legal Research Paper No. 70/2014

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Recent decisions have extended the concept of criminal deception and it is now similar to the concept of fraud. Deception was not defined in the Theft Act 1968 and it has been defined by the courts, usually with a focus on the victim being induced into an affirmative belief which causes him or her to behave in a certain way. This article examines three situations where deception by conduct may case difficulties. These illustrate that the requisite belief has been extended to include assumptions, a stretch from principle. The author concludes that a notion of constructive deception would be inconsistent with principle. Further, mere silence is not deception, and if a duty of disclosure is to be imposed it needs to be expressed. The concept of deception should be narrowed to ensure consistency with underlying principles.

"Gifts and the Law of Theft"
(1999) 58 Cambridge Law Journal at 10
Victoria University of Wellington Legal Research Paper No. 71/2014

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The Theft Act has been applied literally by the House of Lords, which ensures conviction of the dishonest but has also led to more confusing results. Earlier decisions held that if gifts were valid, there could be no conviction of theft. The Hinks case changed this, convicting a woman of theft even though she had received valid gifts, the House holding that the validity of a gift is irrelevant to the framework of the Theft Act. This issue needs to be readdressed, as the Hinks decision extends liability too far and ignores the golden rule of statutory interpretation.

"Theft or Sharp Practice: Who Cares Now?"
(2001) 60 Cambridge Law Journal at 1
Victoria University of Wellington Legal Research Paper No. 72/2014

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The House of Lords has upheld, by a majority, the decision of the Court of Appeal in Hinks [2000] 3 W.L.R. 1590 (noted (1999) 58 C.L.J. 10), giving a positive answer to the certified question: “Whether the acquisition of an indefeasible title to property is capable of amounting to an appropriation of property belonging to another for the purposes of section 1(1) of the Theft Act 1968”. The appellant had persuaded a somewhat simple-minded man to make her the “gift” of a quite considerable sum of money. No deception was alleged to have been employed, and so far as the civil law was concerned, the “gift” might well have been a perfectly valid transaction; the question was never determined by the jury, because it was deemed to be irrelevant by the trial judge. But the decision of the House of Lords is to the effect that she was properly convicted of theft however that question might have been answered. So, it would seem, a person may become the indefeasible owner of property and nevertheless be accounted a thief of that very same property, and by the very act of acquiring the ownership of it.

"Can Proscribed Drugs Be the Subject of Theft?"
(2011) 70 Criminal Law Journal at 289
Victoria University of Wellington Legal Research Paper No. 73/2014

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Before the case of R v Smith, it was generally accepted that an interest in proscribed drugs was protected by the law of theft. This was challenged in Smith, but it was held that proscribed drugs do come within the definition of property outlined in the Theft Act, even though possession is prohibited by other legislation. The clear position prior to this case makes it surprising that these arguments were permitted to be raised.
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About this eJournal

The Victoria University of Wellington was founded in 1899 to mark the Diamond Jubilee of the reign of Queen Victoria of Great Britain and of the then British Empire. Law teaching started in 1900. The Law Faculty was formally constituted in 1907. The first dean was Richard Maclaurin (1870-1920), an eminent scholar of both law and mathematics. Maclaurin went on to lead the Massachussetts Institute of Technology as President in its formative years. Early professors included Sir John Salmond (1862-1924), still one of the Common Law's leading scholars. His texts on jurisprudence and torts have gone through many editions and remain in print.

Alumni include Sir Robin Cooke (1926-2006), one of the leading judges of the British Commonwealth. As Baron Cooke of Thorndon, he sat on over 100 appeals to the Judicial Committee of the House of Lords, one of very few Commonwealth judges ever appointed to do so.

Since 1996 the Law School has occupied the Old Government Building in central Wellington. Designed by William Clayton and opened in 1876 to house New Zealand's then civil service, the building is a particularly fine example of Italianate neo-Renaissance style. Unusually among large colonial official buildings of the time it is constructed of wood, apart from chimneys and vaults.

The School is close to New Zealand's Parliament, courts, and the headquarters of government departments. Throughout Victoria's history, our law teachers have contributed actively to policy formation and to law reform. As a result, in addition to many scholarly articles and books, the Victoria SSRN pages include a number of official reports.

Victoria graduates approximately 230 LLB and LLB(Hons) students each year, and about 60 LLM students. The faculty has an

increasing number of doctoral students. Ordinarily there are ten to twelve students engaged in PhD research.

Victoria University observes the British system of academic ranks. In North American terms, lecturers and senior lecturers are tenured doctrinal scholars, not legal writing teachers. A senior lecturer corresponds approximately to a North American associate professor in rank.

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