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

Table of Contents

Stealing the Body and Its Parts

A. T. H. Smith, Victoria University of Wellington - Faculty of Law

Theft by Persons Required to Account

A. T. H. Smith, Victoria University of Wellington - Faculty of Law

Shoplifting and the Theft Acts

A. T. H. Smith, Victoria University of Wellington - Faculty of Law

The Idea of Criminal Deception

A. T. H. Smith, Victoria University of Wellington - Faculty of Law

Gifts and the Law of Theft

A. T. H. Smith, Victoria University of Wellington - Faculty of Law

Theft or Sharp Practice: Who Cares Now?

A. T. H. Smith, Victoria University of Wellington - Faculty of Law

Can Proscribed Drugs Be the Subject of Theft?

A. T. H. Smith, Victoria University of Wellington - Faculty of Law
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.

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.

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.

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 cause 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.
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

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

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.

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 Massachusetts 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.

Submissions

To submit your research to SSRN, sign in to the SSRN User HeadQuarters, click the My Papers link on left menu and then the Start New Submission button at top of page.

Distribution Services

If your organization is interested in increasing readership for its research by starting a Research Paper Series, or sponsoring a Subject Matter eJournal, please email: RPS@SSRN.com

Distributed by

Legal Scholarship Network (LSN), a division of Social Science Electronic Publishing (SSEP) and Social Science Research Network (SSRN)

Directors

LAW SCHOOL RESEARCH PAPERS - LEGAL STUDIES

BERNARD S. BLACK
Northwestern University - School of Law, Northwestern University - Kellogg School of Management, European Corporate Governance Institute (ECGI)
Email: bblack@northwestern.edu

RONALD J. GILSON
Stanford Law School, Columbia Law School, European Corporate Governance Institute (ECGI)
Email: rgilson@leland.stanford.edu

Please contact us at the above addresses with your comments, questions or suggestions for LSN-LEG.

Links: Subscribe to Journal | Unsubscribe from Journal | Join Site Subscription | Financial Hardship

Subscription Management

You can change your journal subscriptions by logging into SSRN User HQ. If you have questions or problems with this process, please email Support@SSRN.com or call 877-SSRNHelp (877.777.6435 or 585.442.8170). Outside of the United States, call 00+1+585+4428170.

Site Subscription Membership

Many university departments and other institutions have purchased site subscriptions covering all of the eJournals in a particular network. If you want to subscribe to any of the SSRN eJournals, you may be able to do so without charge by first checking to see if your institution currently has a site subscription.

To do this please click on any of the following URLs. Instructions for joining the site are included on these pages.

• Accounting Research Network
• Cognitive Science Network
• Corporate Governance Network
• Economics Research Network
• Entrepreneurship Research & Policy Network
• Financial Economics Network
• Health Economics Network
• Information Systems & eBusiness Network
• Legal Scholarship Network
If your institution or department is not listed as a site, we would be happy to work with you to set one up. Please contact site@ssrn.com for more information.

**Individual Membership** *(for those not covered by a site subscription)*

Join a site subscription, request a trial subscription, or purchase a subscription within the SSRN User HeadQuarters: [http://www.ssrn.com/subscribe](http://www.ssrn.com/subscribe)

**Financial Hardship**

If you are undergoing financial hardship and believe you cannot pay for an eJournal, please send a detailed explanation to Subscribe@SSRN.com

To ensure delivery of this eJournal, please add LSN@publish.ssrn.com *(Prebble/Lincoln/Crawford)* to your email contact list. If you are missing an issue or are having any problems with your subscription, please Email Support@ssrn.com or call 877-SSRNHELP (877.777.6435 or 585.442.8170).

**FORWARDING & REDISTRIBUTION**

Subscriptions to the journal are for single users. You may forward a particular eJournal issue, or an excerpt from an issue, to an individual or individuals who might be interested in it. It is a violation of copyright to redistribute this eJournal on a recurring basis to another person or persons, without the permission of Social Science Electronic Publishing, Inc. For information about individual subscriptions and site subscriptions, please contact us at Site@SSRN.com

Copyright © 2014 Social Science Electronic Publishing, Inc. All Rights Reserved