

Temporary Use of Movable Property of Another and the Intent of Appropriation in Larceny

*Shih-Hsuan Huang**

Abstract

This Article explores the concept of the intent of appropriation in Larceny, aiming to elucidate the specific criteria that distinguishes the so-called unpunishable "users' theft" from larceny act in the case of temporary use of movable property of another. In the first place, this Article scrutinizes conventional wisdom concerning the Intent of Appropriation in Larceny, and tries to point out the theoretical problem concerning the special subjective element in the Taiwanese criminal code. Furthermore, this Article thoroughly examines the precedents of the high courts in the recent two decades. Through this thorough examination, this article points out theoretical problem of lacking consist criteria between cases of temporary use of tangible object and cases of temporary use of intangible property. This Article points out that the inconsistency is the problem which plagues judicial practice in Taiwan. Based on the analysis, this Article argues that the intent of appropriation should be which the offender has at the stage of attempt of larceny act. The offender must also perceive that the use after taking another's movable property will impinge on the owner's right to recover control over his or her movable property. Finally, based on the reconsideration of the structure of larceny act, this Article points out that the specific criteria that distinguishes unpunishable "users' theft" from larceny act should be whether the offender perceives that after his use of other's movable property, the owner will encounter physical or psychological obstacle when he tries to recover his control over the property.

* Assistant Professor, Department of Law, National Chung-Cheng University.
E-mail: ksklaw@ccu.edu.tw

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