

Tangible property v intangible property

The word property connotes ownership. As a corollary, the human mind instantly links ownership of property as holding or having something that can be held or can be witnessed as being built or having the potential of being built. The "sweat and brow" doctrine truly applies to tangible property -- that type of property above-mentioned as capable of being instantly held or seen or built or with the potential thereof.

But in more cases than not tangible property will remain in its infancy as intangible property and unfortunately, under certain circumstances, will not be considered property in the sense above defined. In fact the laws of some countries do not regard intangibles as property, thus theft (*defined in Black's Law Dictionary as "the felonious taking and removing of another's property with the intent of depriving the true owner of it"*) of intangibles are not subject to penalty or criminal conviction but recourse is limited to the civil courts.

Theft therefore, as defined, ought clearly apply to intangibles. However it is this author's view that one of the primary reasons for the lack of recognition of intangibles as property, is the ignorance of the extant economic value therein.

Clearly it is easier to put a value on a vehicle, a computer, a piece of land or indeed, on jewelry. However the intangible nature of assets -- being creations of the human mind -- like information, trade marks, copyright, trade secrets, design rights and patents, as dually complex and facile as they are, remain distant to the human brain and therefore the linkage between property ownership in intangibles and the capability to deprive the rightful owner of such intangibles is yet to be formed.

Interestingly in many cases, intangible property is more valuable than tangible property. For example although real property has a tendency to increase in value over time, vehicles commence to depreciate from the moment of purchase. But the value in intangibles, given their volatile nature, will always increase. Thus the loss, through theft, will be of more significant economic detriment while the gain to the 'taking party' will be of tremendous economic benefit.

It is precisely this economic benefit and economic loss scenario which warrants and requires the law to impose criminal penalties and or conviction on takers of intangible property who possess the necessary intent to deprive the rightful owner of his intangible property.

Indeed, in very much the same way that owners of real property and other intangibles who take necessary measures to ensure protection of same, while being reassured by the law, so to must owners of intangibles -- for whom the "sweat and brow" doctrine equally apply -- who take the necessary measures to secure their property, be reassured that any unlawful taking with intent to deprive the lawful owner, have the reassurance that the unlawful takers of such property will be severely dealt with in the criminal courts.

Perhaps therefore the solution lies in going back to the drawing board and obtaining -- and keeping at the fore -- the definition of property. The Chambers Dictionary defines property as *"that which is proper to any person" (an inalienable right) and also as "an asset, something which brings a profit or income"*.

In taking the Chambers Dictionary definition of property, it is indisputable that intangible property could, in many cases, be more valuable than tangible property and therefore ought rightfully obtain criminal protection against theft of same.

The saying "what's mine is NOT yours" is apt and ought thus be applied to the protection of intangible property.

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