

**PLANTILLA OFICIAL PARA LA PRESENTACIÓN DE TRABAJOS
II CONVENCIÓN CIENTÍFICA INTERNACIONAL
“II CCI UCLV 2019”**

**DEL 23 AL 30 DE JUNIO DEL 2019.
CAYOS DE VILLA CLARA. CUBA.**



**NOMBRE DEL SUB-EVENTO
SIMPOSIO INTERNACIONAL “DESAFIOS DEL DERECHO EN EL
SIGLO XXI”
EJE TEMÁTICO: DERECHO CIVIL Y DE FAMILIA**

**Título: THE “INNOCENT OWNER” DEFENCE TO CIVIL RECOVERY OF
ASSETS LINKED TO CRIME**

1-Nombre y Apellidos. Dr. Richard Alexander

Email: ra30@soas.ac.uk

School of Finance and Management, SOAS University of London

Telephone: +44 20 7898 4644; +44 7810 893503

Summary

Criminal assets; civil recovery; “innocent owner”

An increasingly number of jurisdictions are making use of civil recovery (termed civil forfeiture in the United States) as a weapon to seize property that is linked to crime. A key feature is that the holder of the property need not have been convicted of having committed the crime to which the property is said to be linked – or indeed of any crime at all. This gives rise to the question: what protection, if any, should be given to the holder where there is no evidence that they knew or even suspected that the property was linked to crime? Different jurisdictions have different answers to this. It is therefore argued that a balance needs to be drawn. The mechanism for seizing the proceeds of crime – and possibly also the instrumentality of it – must be effective, but equally, this should not mean undue hardship for those who had no knowledge of the

Información de contacto
convencionuclv@uclv.cu
www.uclv.edu.cu

**PLANTILLA OFICIAL PARA LA PRESENTACIÓN DE TRABAJOS
II CONVENCIÓN CIENTÍFICA INTERNACIONAL
“II CCI UCLV 2019”**

**DEL 23 AL 30 DE JUNIO DEL 2019.
CAYOS DE VILLA CLARA. CUBA.**



crime in question, let alone any part in it. Finding an appropriate balance may not be easy, but it is important. The attempt by the United Kingdom to strike such a balance has not been satisfactory, as the English High Court confirmed in *National Crime Agency v Azam (No. 2)* (2014), and therefore does not provide a useful model. The paper recommends an alternative balance which may be recommended to jurisdictions as they continue to develop their own provisions.

**PLANTILLA OFICIAL PARA LA PRESENTACIÓN DE TRABAJOS
II CONVENCIÓN CIENTÍFICA INTERNACIONAL
“II CCI UCLV 2019”**



**DEL 23 AL 30 DE JUNIO DEL 2019.
CAYOS DE VILLA CLARA. CUBA.**

FRANÇAIS

LA DÉFENSE JURIDIQUE DU « PROPRIÉTAIRE INNOCENT »
CONTRE LA CONFISCATION CIVILE DES BIENS MAL ACQUIS

Dr. Richard Alexander

École de Finance et de Gestion, SOAS Université de Londres

Adresse électronique: ra30@soas.ac.uk

Téléphone: +44 20 7898 4644; +44 7810 893503

Résumé

Avoirs criminels ; confiscation civile ; « propriétaire innocent »

De plus en plus d’États utilisent la confiscation civile comme moyen pour saisir tout bien qui soit lié à la criminalité. Une caractéristique fondamentale est celle liée au propriétaire, qui ne doit pas avoir commis de crime lié à la propriété, ni même aucune infraction. Ceci nous emmène à poser la question suivante: quelle protection, si nécessaire, devrait être accordée au propriétaire s’il n’y a aucune preuve qu’il avait connaissance, ou bien même soupçonneait, que le bien qu’il possède est lié à un crime. Les réponses à cette question sont différentes d’une juridiction à une autre. Il est donc proposé d’établir un équilibre. Il faut s’assurer que les moyens utilisés pour saisir les biens mal acquis, soient efficaces, mais il faut également s’assurer qu’un préjudice injustifié ne soit pas attribué à un propriétaire qui n’était pas informé du crime et n’y a certainement pas participé. Trouver un équilibre n’est pas facile, mais reste important. Le Royaume-Uni a tenté d’établir un certain équilibre, qui n’a pas été satisfaisant, comme l’a souligné la Haute Cour de Justice Anglaise lors du jugement de l’affaire *National Crime Agency v Azam (No. 2)* (2014) et ne fournit donc pas un modèle à suivre. L’article propose une alternative équilibrée qu’on peut proposer aux états qui continuent à développer ses propres dispositions.

Información de contacto
convencionuclv@uclv.cu
www.uclv.edu.cu

**PLANTILLA OFICIAL PARA LA PRESENTACIÓN DE TRABAJOS
II CONVENCIÓN CIENTÍFICA INTERNACIONAL
“II CCI UCLV 2019”**

**DEL 23 AL 30 DE JUNIO DEL 2019.
CAYOS DE VILLA CLARA. CUBA.**



Justification, Methodology and Results

The paper is justified by the increased focus on asset recovery, both criminal and civil, as a weapon in the fight against organised and economic crime. The Financial Action Task Force recommends that states consider the adoption of non-conviction-based asset recovery and an increasing number of jurisdictions are doing so. It is therefore of highly topical importance that the provisions introduced be appropriate. The objective of the paper is therefore to establish what provisions may provide an appropriate balance between the public interest in controlling economic crime and the equally important interest in ensuring that innocent parties are not unduly prejudiced. The methodology consists of analysing key provisions relating to civil recovery/forfeiture in the United States (at Federal level as well as in the contrasting states of Florida and Illinois), the United Kingdom and one or more selected other jurisdictions in order to assess the level of protection that they give to innocent owners. Relevant case law will be considered.

The results of the investigation relate closely to the objective. A proposal for an “innocent owner” defence will be presented that provides an adequate level of protection for innocent owners without unduly undermining the state’s ability to remove property linked to crime, whether proceeds of crime or instrumentality. It is anticipated that this will provide a useful model which jurisdictions can follow; as such, the paper will have relevance both to Cuba and to the United Kingdom, the author’s home jurisdiction, as well as others represented at the Symposium.