

LECTURE 5

ADMINISTRATIVE FORFEITURE

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INTRODUCTION

So far today we have discussed the forfeiture orders that you can obtain as part of a criminal prosecution

- But there are two other ways under Botswana law in which you can obtain a forfeiture order
- One is called administrative forfeiture, and the other is civil forfeiture

We'll talk briefly about administrative forfeiture now, and then I'll explain civil forfeiture in the next session.

- After that, we'll have tea and then do one more practical exercise to end the day

ADMINISTRATIVE FORFEITURE

An administrative forfeiture is essentially a default proceeding that allows certain categories of property to be seized and forfeited to the State without having to initiate a judicial proceeding

- *Provided* that adequate notice of the forfeiture was given to interested parties, and no one filed a claim
- All of this is spelled out in Sections 30-34 of the PICA

Section 30 lists the types of property that may be forfeited administratively

- Currency or bearer instruments

- Precious or semi-precious stones
- Other classes of property “as may be prescribed” by law

To initiate an administrative forfeiture, the investigator needs only to have reasonable grounds for suspecting that the property is the proceeds or an instrument of *either*

- Any crime under Botswana law
- Or any serious foreign crime (penalty of at least 2 years)

Critically, for Customs cases, the law specifically provides that “any cash which is the subject of a false import or export declaration under the Customs and Excise Act shall be deemed to be an instrument.”

- So, if you discover a container with smuggled currency, and the import declaration was false, you can seize the currency as the instrument of the smuggling offense; **§ 30(3)**
- And can commence an administrative forfeiture

To commence an administrative forfeiture, the investigator must send notice to the person from whom the property was seized,

- And to any other person in Botswana who appears to have an interest in the property
- Note that you do not have to send notice to a foreign person
- Which may be important in the case of property seized on suspicion that it is the proceeds of a serious foreign crime

If no one files a claim to the property within 28 days of receiving the notice, the property is forfeited to the Government; **§ 31**

- No further action by the prosecutor or the court is required
- That’s why this is called an administrative forfeiture

Administrative forfeitures are an extremely efficient way of resolving forfeiture cases,

- So you should use this procedure whenever possible

- In the United States, 80 percent of all forfeitures in drug cases are administrative forfeitures

Now, if someone does file a timely claim, the case does have to go to court

- In which case the prosecutor must establish on a balance of the probabilities that the property is the proceeds or the instrument of either a violation of Botswana law or of a serious foreign crime; **§ 33(2)**
- No criminal case is required
- Which means that the case at that point is essentially a civil forfeiture case, which we will be talking about next

There is one interesting provision regarding property that is the instrument or a proceed of a foreign crime

- **Section 33(4)** specifically provides that in that case the determination of the merits “may be adjourned up to six months to permit investigation to be conducted in the jurisdiction where the foreign crime has been committed”
- That’s good news, because frequently you will need time to gather the evidence of the foreign crime
- But it may be that six months is not enough time if the foreign country is not responsive