

LECTURE 6

CIVIL FORFEITURE

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Stefan D. Cassella
Asset Forfeiture Law, LLC
www.AssetForfeitureLaw.us
Cassella@AssetForfeitureLaw.us

INTRODUCTION

The final topic is civil forfeiture, and the critical role that it plays in the enforcement of the criminal laws.

- not all countries have civil forfeiture laws
- it is well-recognized in the common law countries
- there are civil forfeiture provisions in the UK, Canada, Australia, Ireland and many African countries including South Africa
- in the U.S., we have been doing civil forfeitures since the 18th Century

In other countries with a civil law system, the idea of forfeiting property without bringing a criminal prosecution is foreign

- it has recently been enacted in some countries, like Latvia and Malta, but is unknown in others

Botswana, like other English-speaking countries in Africa does have a robust civil forfeiture law

- it is found in Part VI of Chapter II of the PICA, Sections 25-27
- it is a critically important part of the law that you will want to know how and when to use it

So, we're going to talk about the details of the statutes, but first I want to explain the concept of civil forfeiture

- how is it possible to take someone's property without convicting him of a crime?
- Why is it necessary, and when would you use it?

Civil forfeiture cases are *in rem* actions against the proceeds and instruments of a criminal offense

- they are actions against the property, not against the property owner
- that's why in the United States our civil cases have funny names, like *United States v. \$125,000*, or *United States v. Property Located at 123 Main Street*

Naming the property as the subject of the proceeding doesn't mean that the property has done something wrong or that it has to defend itself in court

- it is just a convenient way of letting the world know that this is the subject of the forfeiture action
- that this is the property that the Government believes was derived from or was otherwise involved in a criminal offense

If the Government wants to confiscate \$1 million as drug proceeds, it brings an action naming the \$1 million

- if it wants to forfeit a building as property involved in money laundering or as property traceable to corruption, it brings an action naming the building

In fact, it is best to view civil forfeiture as simply a procedural device designed to get everyone with an interest in the property that the Government thinks is subject to forfeiture in the courtroom at the same time

- *United States v. Ursery*, 518 U.S. 267, 295-96 (1996) (Kennedy, J. concurring) (proceedings in rem are simply structures that allow the Government to quiet title to criminally tainted property in a single proceeding in which all interested persons are required to file claims contesting the forfeiture at one time);
- *United States v. Real Property Located at 475 Martin Lane*, 545 F.3d 1134, 1144 (9th Cir. 2008) ("in rem actions are generally considered proceedings against the world" in which "the court undertakes to determine all claims that anyone has to a thing in question");

\$90,000 Example

Let me give you the simplest, most basic example, which happens to come from a real case

Suppose a drug dealer has been murdered and the police find \$90,000 in cash in his car:

- The Government would like to confiscate the money but it cannot do that as part of a criminal case
- Why? Because the person who sold the drugs and received the \$90,000 is dead
- So, what do you do?

Asserting that the cash is drug proceeds, the Government files an action against the \$90,000 and asks, “who claims this?”

- And anyone who responds – anyone who claims the \$90,000 – comes into court and litigates his claim
- Maybe his widow will claim that the money was marital property and so it belongs to her
- Maybe his child will claim the money as the drug dealer’s heir
- Maybe his business partner will claim that they were in the landscaping business, not the drug business, and the money was the proceeds of their legitimate activity

The idea behind civil forfeiture is to get all of these people into the courtroom at the same time to litigate their claims when there is no criminal proceeding

In such a case,

- the Government is the plaintiff,
- the property is the *res* or thing subject to confiscation, and

— anyone wishing to contest the action is an intervenor who can intervene to contest the action by showing that he has an ownership interest in the property

- *United States v. \$822,694.81 in U.S. Currency*, 2019 WL 4369936, *1 n.1 (D. Conn. Sep. 12, 2019) (“In a civil forfeiture case, the Government is the plaintiff, the property is the defendant and the claimant is an intervenor seeking to challenge the forfeiture”, quoting *Asset Forfeiture Law in the United States* at 324 (2d ed. 2013);

So, in the case of the \$90,000, the Government would be the plaintiff, the \$90,000 would be the *res* subject to confiscation, and if the dead drug dealer’s widow, or child, or business partner – or all of them – wanted to lay claim to the money, they would be intervenors

— For the Government to prevail, it will have to prove that the \$90,000 was drug proceeds, and any of the intervenors who can show that he has a legal interest in the property – *i.e.*, anyone who has standing -- would have the right to contest it and put the Government to its proof.

The same structure would apply in a much more complicated situation:

Suppose an international arms trafficker, or person engaged in the trafficking of young women, has laundered the proceeds of his crime – a crime committed in another country -- by investing in property in Botswana

— Or he commits a crime in Botswana but then flees to another country, but leaves the property – land, a bank account, cryptocurrency, or whatever it is – behind when he flees

— Either way, you’re not going to be able to bring a criminal case because the bad guy is not here and you do not have jurisdiction over him

— But *the property* is here, and you do have jurisdiction over it.

— So just as in the case of the \$90,000 in the dead drug dealer’s car, you bring an action – a civil forfeiture action – against the property

— The land, the bank account, the cryptocurrency, or whatever --

— Asserting that it the proceeds and instruments of a crime (including a foreign crime) are subject to forfeiture to the state

- And inviting anyone with an interest in the property to file a claim contesting the forfeiture

Maybe the international arms trafficker files a claim

- Or maybe a claim is filed by a shell company that is the nominal owner of the property, or maybe one is filed by a trust to which the property has been transferred
- In such a case, just as in the case of the \$90,000, the Government would be the plaintiff, the property in Botswana would be the *res* subject to confiscation, and if the bad guy, or his corporation, or his trust – or all of them – wanted to lay claim to the money, they would be intervenors
- And for the Government to prevail, it would have to prove that the property – the land, the bank account, the cryptocurrency, or whatever – was the proceeds or the instrument of a crime
- a foreign crime or a domestic crime --
- and any of the intervenors who can show that they have a legal interest in the property – *i.e.*, anyone who has standing -- would have the right to contest it and put the Government to its proof.

So, that's the idea:

- there is no criminal case but a crime was committed and the property derived from or used to commit the crime is in your hands
- so, you bring an action against the property, invite anyone with an interest in it to contest its forfeiture, and if you are able to prove that the property is in fact tainted by crime, title to the property is forfeited to the state.

Two important things

There are two important things to know about civil forfeiture

- The first is that it doesn't require a conviction or even a criminal case

- The Government could file a civil forfeiture action before criminal charges are filed, while they are pending, after they are resolved, or if there is no criminal case at all
- Nevertheless, it is still a law enforcement action, and the Government still has to prove that a crime was committed *and* that the property was derived from or used to commit that crime

The second thing is what I've already mentioned

- that the focus is on the property, not on the property owner
- The question is whether the property is derived from or used to commit the offense, not whether the owner of the property is the one who committed the crime
- You have to prove a crime was committed but you don't have to prove that the property owner is the one who committed the crime
- I could use someone else's property to commit a crime, making that property subject to forfeiture in a civil forfeiture case
- I might use someone else's gun to commit a murder
- The important thing is to confiscate the gun because it is the instrument used to commit the crime, regardless of who the owner is

When it comes to establishing that the property is subject to civil forfeiture, the law doesn't care who the owner is

- *Bennis v. Michigan*, 516 U.S. 442, 446 (1996) (innocent property owners have no protection from civil forfeiture under the Due Process Clause; unless the legislature enacts an innocent owner defense by statute, property may be forfeited based solely on its use in the commission of an offense);
- The law may give some protection to a person whose property was used by someone else to commit a crime and who did not know it
- We'll talk about that in a few minutes
- But otherwise the ownership of the property is irrelevant

In the United States we do have what is called an innocent owner defense,

- So, if I use my wife's car to commit a crime but she knew nothing about it, the Government must return the car to the wife and pay her attorney's fees
- That's because she has an innocent owner defense to the forfeiture
- but if my wife knew all about the crime and let her property be used to commit it, the Government could forfeit the car in civil case even though my wife has not been charged with any crime
 - 18 U.S.C. § 983(d) (creating a statutory innocent owner defense for civil forfeiture cases);
- Why? Because at that point the Government will have already proved that a crime occurred and that the property was used to commit it,
- and my wife, who will have had an opportunity to participate in the case and to contest the evidence, was not an innocent owner
- again, we'll talk about how this works in Botswana in a few minutes

History

Civil forfeiture is not a new concept in the United States

- It grew out of the American experience in the 18th Century with vessels being used for piracy and slave trafficking
- It was often possible to lay hands on the vessel and its crew, but not on the vessel's owner
- To prevent the vessel from being used again to commit a criminal offense, but without the possibility of obtaining a conviction against the vessel's owner in a criminal case, the Government would bring an action in court against the vessel itself,
- and invite anyone who wished to lay claim to the vessel to come into court and do so
- If someone did file a claim, we would litigate the merits of the case in court

- If no one filed a claim, the Government would acquire title to the property by default

That is still how civil forfeiture works in the US and many other countries today

- it is used to recover the proceeds and the instrumentalities of crime in virtually all categories of cases
- From drug trafficking to public corruption, fraud and other white collar crimes, sex trafficking and child pornography and so forth
- It's the tool the Government is using right now to seize yachts and airplanes owned by Russian oligarchs and maintained in violation of international sanctions
- It is used any time recovering the property through a criminal prosecution is not possible or feasible for one reason or another
- It fills the gap that occurs when a criminal prosecution is not possible or not appropriate

Procedure

So, how does all of this work?

Civil forfeiture cases typically begin with the seizure of property

- The seizure gives the Government the right to temporarily maintain custody of the property while the forfeiture action is pending
- It is not the end of the process; it is the beginning
- In fact, many civil forfeiture cases begin as administrative forfeiture cases, and become civil forfeiture cases when someone files an application contesting the forfeiture
- In that case, the case goes before the court as I described earlier

If there is no administrative forfeiture, the Government must file an action naming the property (a boat, an airplane, a gun, a pile of cash, a bank account, or whatever) as the property to be forfeited

- It then sends notice of the forfeiture proceeding to all persons with a potential claim to the property, inviting them to file a claim

In Botswana, this is spelled out in **Section 26**, more or less

- The prosecutor files an application for the forfeiture of the property with a magistrate's court or the High Court
- Oddly, there is nothing in Section 26 about giving notice to third parties, but because that is required in criminal forfeiture cases, administrative forfeiture cases, and where the Government is seeking a restraining order, I assume that it is required in civil forfeiture cases as well
- In any event, if the court finds on a balance of the probabilities that the property is the proceeds or the instrument of an offense for which civil forfeiture is available
- It will issue a forfeiture order; **§ 27**

For what crimes is this procedure available?

- As we discussed yesterday, it is available for any domestic or foreign crime for which the penalty is at least 2 years
- For a domestic crime, the forfeiture order may be issued against any property anywhere in the world
- For a foreign crime, the property must be in Botswana

So, for example, if someone commits a serious crime in Botswana and disappears, but you find the property in South Africa

- The court can make a civil forfeiture order against the property in South Africa
- And because South Africa recognizes civil forfeiture, there is a good chance that a South African court would recognize and enforce the order

On the other hand, suppose someone commits a crime in South Africa, and remains there, but invests the proceeds in Botswana

- In that case, the court may make a civil forfeiture order against the property in Botswana based on the violation of South African law
- Provided that the offense would be a crime punishable by at least 2 years incarceration if it had occurred in Botswana

No tracing to specific crime

There is one other provision in **Section 27** that is particularly important

- To obtain a civil forfeiture order against property as the proceeds or the instrument of a crime, you do not have to link the property to a specific criminal offense
- It is enough to show that the property was derived from or used to commit “some form” of serious criminal activity; **§ 27(4)**

For example, you may seize property at the border or in Botswana under circumstances that would prove, on a balance of the probabilities, that it is the proceeds of some serious crime

- But you are unable to identify exactly what crime that was
- As long as the court is satisfied that the property is the proceeds or an instrument of “some form of serious crime related activity,” it may issue the civil forfeiture order

Standing

Now, as you can imagine, there are instances in which persons who have no connection to the property attempt to intervene and contest the forfeiture action

- maybe someone who happened to be walking down the road when the police were searching the dead drug dealer’s car saw them find the \$90,000 and says, if anyone can lay claim to the money and put the Government to its proof, why not me?
- that is indeed a significant problem
- because the focus is on the property, the Government is not accusing anyone in particular of committing a crime

- it is saying that the property was involved in a crime and asking who wants contest its forfeiture
- all sorts of people who have no real interest in the property might file claims
- these can range from mere passers-by or to nominees or straw owners, to the property owner's creditors who say, hey, that money didn't belong to me, but that guy owed me money and here's my chance to collect the debt

The Government should not have to litigate with a person who has no interest in the property,

- so there is usually a procedure in civil forfeiture actions for challenging such claims as a threshold matter
- In the US, we call that a motion to dismiss for lack of standing
- It puts the burden on the person attempting to intervene to show that he or she really has some interest in the property
- Only after the intervenor establishes that interest does the case go to trial

I did not see any provision on this in the PICA, but it must have been implicit

The merits: establishing forfeitability

Once the court is satisfied that one or more intervenors has standing, it turns to the merits of the case

- It must order the property confiscated if the Government proves two things, on a balance of the probabilities, that a crime occurred and that the property was derived from or was an instrument of that crime

I should emphasize that point:

- As I said before, a civil forfeiture action is not a criminal prosecution
- It is an entirely separate action against the property; (note: the definition of "serious crime related activity" in § 1 makes clear that no criminal conviction is required)

- But the Government nevertheless bears the burden of proof on both requirements: that a crime was committed and that the property was derived from or was otherwise involved in that crime

No value-based judgments or substitute assets

Civil forfeiture is a wonderful law enforcement tool

- As I will point out in a moment, there are instances where it is essential because there is no criminal case that could result in a criminal forfeiture order
- But it is also a limited tool

Remember that it is an *in rem* action: the focus is *on the property*, not on the property owner

- That means that the Government must not only show that a crime occurred, but that *this property* was involved in that crime
- If the Government cannot connect the particular asset to the underlying crime, there can be no forfeiture

For example, the Government may be able to prove that someone committed a one million dollar fraud and that he has \$1 million in his bank account

- But if the Government cannot trace the money in the bank account to the fraud, there is no civil forfeiture

That is the major limitation to civil forfeiture

- If the Government cannot trace the property to the underlying crime, there can be no forfeiture
- There are no value-based judgments in civil forfeiture cases, and no substitute assets

Now, in Botswana, you have something called a civil penalty order; **§§ 11-15**, which you may be able to use in that situation

- But that is not a forfeiture order, and it is not what we're talking about here
- To get a civil forfeiture order, you have to prove not only that a serious crime occurred, but also that this particular property was the proceeds or an instrument of that offense

Affirmative defenses

Now we come to the question I deferred earlier

- Suppose you show that a crime occurred and that the property was the proceeds of that crime, but it has been transferred to a third party
- Or suppose you show that a person committed a crime using the property as an instrument, but the instrument belonged not to the bad guy, but to a third party

For example, someone sells illegal drugs and gives the proceeds to his girlfriend (by buying her jewelry)

- Or suppose some uses his brother's truck to smuggle contraband
- Would the girlfriend or the brother have the right to intervene and defeat the forfeiture action on the ground that they were an innocent owner of the property

Oddly, **Sections 25-27** don't say anything about this

- Nothing expressly exempts property from forfeiture once the court finds that it is an instrument or the proceeds of a serious offense, even if the owner is an innocent third party

When we talked earlier about restraining orders, however, we mentioned that there is some limited exemption for third parties there

Section 44(6) says that when a restraining order is sought in a civil forfeiture case, the court should not enter the order if a third party is able to show . . .

- that the property belongs to him,
- That he was not in any way involved in the commission of the serious crime giving rise to the forfeiture, and

- That he acquired the property “at the time of or after the commission” of the serious crime without knowing, and without reason to suspect, that the property was a proceed or an instrument

We are really speculating that this provision – which applies to the making of a restraining order in a civil forfeiture case – applies to *the merits* of a civil forfeiture case

- I assume that if the legislature allowed an innocent third party to oppose a restraining order, it must have intended to allow such a third party to oppose the forfeiture order as well
- But I could be entirely wrong about that

But even assuming **Section 44(6)** applies to the merits, it raises more questions than it answers

- Suppose the third party acquired the proceeds as a gift
- Like the girlfriend who was given a hoard of jewelry purchased with proceeds
- If she’s really innocent – clueless as to where the property came from – is she able to oppose the forfeiture on that ground?
- Did the legislature intend to allow criminals to protect their property from civil forfeiture by giving it away to their girlfriends?
- Who has the burden of proof regarding the third party’s lack of knowledge?
- And if complete ignorance is a defense, why wouldn’t criminals just give their proceeds to a minor child
- Other countries avoid that by limiting the defense available to third parties who acquire proceeds to those who acquire it as a bona fide purchaser for value in an arm’s length transaction
- But there is no such provision in the Botswana law

With respect to instruments, if the smuggler uses his brother’s truck to smuggle contraband, is the brother protected?

- It is not clear

- **Section 44(6)** refers to persons who acquired the property “at the time of, or after the commission” of the serious offense
- Does that mean that the brother is not protected because he acquired the truck *before* the offense?
- Or is he protected as long as he can show that he was “not, in any way, involved in the commission” of the offense? **§ 44(6)(b)**

These questions are all unanswered in the legislation.

Proportionality

The civil forfeiture provision also does not say anything about proportionality

Recall that the entry of a criminal forfeiture order is discretionary with the court;
§19

- And there is a provision that talks about the factors the court may consider in deciding whether to exercise that discretion; **§ 19(6)**
- **Section 33**, however, makes the entry of a civil forfeiture order mandatory
- Nothing suggests that the court may exercise discretion in determining whether to enter a civil forfeiture order even if the forfeiture might seem to be disproportional to the offense

For example, suppose the dead or fugitive drug dealer used his girlfriend’s house to store a quantity of drugs worth 10 euros, and the girlfriend knew all about it

- The house would be subject to confiscation an instrument of the crime
- And if the girlfriend knew all about the crime, she presumably would not be an innocent owner
- But the confiscation of her house because of its role in concealing drugs worth 10 euros would be “grossly disproportional to the gravity of the offense”
- This is another issue that the courts will likely have to address

WHY DO CIVIL FORFEITURE?

At this point, it would be reasonable for you to ask, when does the Government bring forfeiture actions as civil forfeiture actions, and when does it instead forfeit the property as part of the sentence in a criminal case

Or stated differently, if civil forfeiture is so wonderful, why doesn't the Government forfeit everything that way instead of including it as part of a criminal case?

First, it would be a lot of extra work – not to mention a burden on the judiciary – to bring a separate action to recover something in a civil case that could be recovered easily if there were a criminal case

— also, civil confiscation has a serious limitation

As I have already mentioned, the Government must prove the particular property that the Government is seeking to forfeit was derived from or used to commit the crime

- because it is an *in rem* action against specific property, there are no substitute assets or value-based judgments in civil forfeiture cases
- so, if the criminal proceeds have already been spent on wine, women and song
- Or if the Government cannot establish the connection between the particular asset and the underlying crime,
- there can be no forfeiture

So civil forfeiture should be reserved for cases where there is not likely to be a criminal case, where bringing a criminal case would not be appropriate for some reason, or where a criminal case is not ready to indict

— I've given you a few examples already, but here is a more or less comprehensive list of situations in which it makes sense to use civil forfeiture to recover criminally-tainted property

When would you use civil confiscation?

1. when the property is seized but the forfeiture is unopposed; administrative forfeiture

2. when the wrongdoer is dead or is incompetent to stand trial, or if he has been pardoned;
 - I started this discussion with the example of the dead drug dealer who had \$90,000 in cash in his car
 - a few years ago in the United States, Jeffrey Epstein, a person accused of running a sex-trafficking operation, committed suicide while awaiting trial
 - if the Government wanted to recover the property that he used to run his operation – including a mansion in New York, a ranch in New Mexico, and an island in the Caribbean – it would have had to bring a civil forfeiture case
3. when the defendant is a fugitive or a foreign national beyond the jurisdiction of the courts in Botswana;
 - recall my example of the first civil forfeiture cases from the 1700s when the pirates or the slave traffickers were beyond the jurisdiction of the courts in the US
 - the same is true today: money or other property may be in your country that was derived from public corruption in Nigeria or the theft of money in Russia,
 - or it may have been left behind in Botswana by a person who committed a crime in Botswana and then fled to South Africa or Namibia
 - a few years ago I had a case in the United States where a woman was indicted for fraudulently selling worthless medicine to terminally ill cancer patients
 - she was indicted by fled to Mexico but left her property behind in Oklahoma
 - so the Government filed a civil forfeiture action against the property to recover it, and to use it to reimburse the surviving family members of the victims of her fraud
4. when the statute of limitations has run on the criminal case; under **§ 26(2)**, you have 12 years after the date of the serious crime to bring the civil forfeiture action

- in many cases, that might be well after it is too late to bring a criminal case against the wrongdoer and to recover the property in a criminal case
 - so civil forfeiture would be the only option at that point
5. when we have recovered the property but do not know who committed the crime giving rise to the forfeiture or cannot link it to a specific offense;
- If weapons, flight simulators, contraband electronics, or money is intercepted while on the way to a country designated as a supporter of terrorism, but it is unclear who the exporter or recipient of the property might be, there is no one to prosecute and hence no one to convict.
 - The same is true if money is seized from a courier who is unable (or unwilling) to identify the owner of the property
 - Or if a cultural artifact or work of art is recovered from an auction house but no one knows who stole it or imported it
 - or if a pile of money is intercepted in a container being imported into your country
 - In all of those instances, a civil forfeiture order will reach the property and force the property owner to come forward to contest the forfeiture proceeding.
6. when the defendant is convicted of a crime different from the one giving rise to the forfeiture;
- I do not know if the Botswana courts are able to apply the concept of 'extended confiscation' whereby a conviction for a given offense will give rise to a forfeiture order directed at the proceeds of all other crimes that the same defendant has committed.
 - if not – if a criminal forfeiture order must be limited to the proceeds and the instruments of the particular crime for which the defendant is convicted -- the Government must bring a civil forfeiture action to recover any property involved in other offenses.
7. when there is no criminal case because the defendant has already been convicted in some other court;
- suppose the crime was committed outside of Botswana, the perpetrator has been convicted in the foreign country, but the property is now in the

Botswana and the foreign country has not (for whatever reason) been able to obtain a confiscation order that Botswana courts are able to enforce.

- In that instance, even if the bad guy committed a second crime in Botswana (such as money laundering), and even if you could extradite him and prosecute him here, there may be no reason to prosecute him a second time
- but with a civil forfeiture order they could recover the proceeds of the foreign crime and return them to the foreign state.
- In the United States, cases in which the Government brings civil forfeiture actions to recover the proceeds of foreign crimes – including public corruption – at the behest of the victim country are quite common.

8. when the evidence is insufficient to prove that the defendant committed the offense beyond a reasonable doubt;

- This issue arises all the time in cases where the forfeiture action is based on laundering the proceeds of a foreign crime
- In a civil forfeiture action, the Government would still have to prove – generally with circumstantial evidence – that the property in question was the proceeds of a foreign crime
- But proving that on a balance of the probabilities is much easier than proving it beyond a reasonable doubt, particularly when foreign evidence is needed to prove the case
- Moreover, in a civil case, the Government only has to prove that the crime was committed by someone; unlike a criminal case, it does not have to prove beyond a reasonable doubt that *this particular person* committed the crime
- Which again, makes a civil case much easier to prove

9. when there is no criminal case because the interests of justice do not require a conviction even though there was a clear violation of a criminal law;

- suppose someone uses his wife's car to rob a bank, telling her, as he goes out the door, that that is what he is going to do, and asks her to help him do it

- maybe he asks her to make sure there is gas in the car before he goes out, or maybe she helps him hide the money when returns
- In that case, the wife has clearly violated the law and would be subject to criminal prosecution, but faced with the choice between doing nothing and bringing criminal charges against a woman who played a minor role in the offense, the Government might decide that confiscating the car pursuant to a civil forfeiture order is the right thing to do.

This brings us to Number 10, which is ...

10. When the defendant uses someone else's property to commit the crime and that person is not an innocent owner.

- I have already given the example of the defendant who used his wife's car to rob a bank
- There are many other examples: the defendant may have laundered his money through a third party's bank account, concealed women forced into the sex trade as employees of a third party's business, or distributed drugs using a third party's airplane.
- And suppose the defendant has been convicted
- in such a case you might ask, why would it be necessary to bring a separate civil action when someone has in fact been convicted of the crime
- If the husband has been convicted of bank robbery, why not confiscate the car as part of the sentence in his criminal case?
- As we have discussed, the court in a criminal forfeiture case has the discretion to decline to order the forfeiture of property that belongs to a third party
- One reason to do so might be that the third party had no right to participate in the criminal trial

A third party who is not able to participate in a criminal trial could not call witnesses, object to the state's evidence or cross-examine its witnesses, or otherwise contest the evidence that led to the conviction

- In other words, she would be prohibited from participating in the very proceeding that, in the end, was going to result in the confiscation of her property

- In many countries, it would be a violation of the due process rights of third parties to attempt to confiscate their property in a proceeding in which they were not able to participate;
 - But civil forfeiture can reach third-party property, because in that setting the third party has the right to intervene and defend his property interest by contesting the Government's proof on the merits
 - So, the way to avoid the due process problem is to bring a civil forfeiture action against the property, and allow the property owner to contest all of the Government's evidence in that proceeding
11. When the criminal investigation will take a long time, and there is a danger that the property will disappear
- This turns out to be a key reason for enacting civil forfeiture provisions in civil law jurisdictions, where the investigation of politically exposed persons involved in corruption cases can take years to resolve