

# INTEGRATING JUDICIAL PROCEDURES AN OFFENSE OF INTANGIBLE LARCENY IN THAI COURTS

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## ABSTRACT

*The research purposes of the judicial guidelines of the Thai court of an offense of larceny, a case study of intangible larceny were 1) to study the theoretical concepts of an offense of larceny component according to the article 334 of the Penal Code relating to intangible larceny, and 2) to study and analyze the judicial guidelines of the Thai court in the case of intangible larceny through comparison of the Supreme Court judgment and related documents. This research study is a qualitative research. The information has been collected from documents, related research, the law, and Supreme Court judgment. This is a descriptive report which is analyzed from the obtained information. The research revealed as follows: 1) The court ruling on the offense of intangible larceny, but with an electrical component or can be converted into electricity. It can be considered in 2 cases, which is the case of guilty and the case of not guilty. 2) The court ruling on the offense of intangible larceny and does not have an electrical component or can be converted into electricity such as computer data, virtual properties or digital currency. The court is unable to convict on the offenders of larceny under Section 334 of the Penal Code.*

**Keywords:** Integrating, Judicial, Offense of Larceny, Intangible Larceny

## INTRODUCTION

The way of people life in Thailand and the world society today have always changed, especially the way of life where digital technology has been applied to facilitate life in terms of work, communication, even leisure through Internet network. Digital information is essential and valuable to both the government and the public, as can be seen from the policy of preparing Thailand for the digitalization of Thailand, which helps to increase the competitiveness of the country economically, stimulate quality of life and create equality for people in society. In the field of information and services (Sukato, 2018), the change has resulted in the creation of many digital information systems such as the transformation of the Internet network to be easily accessible and the connection of information through a wide variety of data storage systems in cloud computing that have access to the public through the applications and focus on Big Data management. It results in the public able to use various services from the government Operators more easily, including the convenience for keeping information of transactions with you and make use of them (Kittikun, 2016), both in terms of the Internet signal system, the use of applications for financial

transactions. It holds of digital-currencies including various valuable digital information and can be acquired to get benefit which as the way of life of the people began to fully transition into the digital age society. The value of money can be used conveniently, thus money becomes the motive of the values of success and the passion for self-desires and can lead to the offense of larceny (Pongtham, 2013). Interpreting both in terms of internet signal, computer data, or even digital currencies are all assets that are intangible objects which may have a price and may be equated as in Civil and Commercial Code, Section 138, when we considered in line with the judgment of the Thai court for the offense of intangible larceny. The author is interested in studying the judgment of the Supreme Court on such issues, when considering the verdict the Supreme Court found that both cases decided not to be larceny such as the Supreme Court Judgment No. 5161/2547, computer data theft is not a larceny offense (Uiphanit, 2010) and some cases have a judgment that such action is a larceny offense. For example, the Supreme Court Judgment 877/2501 ruled that the electric current theft was a larceny offense (Research Justice Division of the Supreme Court, 1958). In addition, there are arguments that sneaking the "Wi-Fi" (Wireless Fidelity) of others without permission 'is it a larceny offense under the Criminal Code?'

This article presents the judicial guidelines of the Thai court of an offense of larceny. This is a case study of intangible larceny through analysis and comparison of Supreme Court judgments and related documents that there is a theoretical or principle in considering the composition of a larceny offense under the Criminal Code, Section 334. It is a base for analytical thinking and deployment law to match the facts arising in the case of intangible larceny, to interested people who can continue the knowledge.

## **RESEARCH OBJECTIVES**

1. To study the theoretical concepts of an offense of larceny component according to the article 334 of the Penal Code relating to intangible larceny,
2. To study and analyze the judicial guidelines of the Thai court in the case of intangible larceny through comparison of the Supreme Court judgment and related documents.

## **RESEARCH METHODS**

This research is a qualitative research. To study from documents research by researching, collecting data from the first documents, including the law, namely the Criminal Code, Section 334, Civil and Commercial Code, Section 137, 138, 140 and the Supreme Court Judgment 887/2501, Supreme Court Judgment 5354/2539, Supreme Court Judgment No. 1880/2542 (General Meeting), Supreme Court Judge No. 8177./2543 Judgment of the Supreme Court No. 2286/2545. Judgment of the Supreme Court No. 5161/2547 and Judgment of the Supreme Court 4944/2549. Secondary documents are research papers, books, texts, academic articles, theses, as well as information from online documents that are content related to the research issue and then interpreted for meaning by analyzing the content as specified in the objectives, by a descriptive report.

## **RESEARCH RESULTS**

In determining the offenses of larceny studies in the case of an intangible object, it is necessary to take into account the essential elements in determining the commission of the following offenses:

Composition of larceny offense under the Criminal Code, Section 334 related to the intangible larceny because in an offense of larceny under the Criminal Code, Section 334 states that the external component is an offense of stealing, what has been stolen must be "property". The criminal law, Ror,Sor. 127 Section 6(10) defines the meaning of property as "property you mean all things that a person can have ownership or can hold ownership; for example, money and all things that have just moved from it and move from where it is not, counted as a property mentioned in this article", but the current criminal code in force does not have a specific definition of the word property causing the need to take the definition of the word property according to Civil and Commercial Code used *mutatis mutandis* (Sugsuwan, 2017), which under the Civil Code, Section 137 has provided the definition of property that "property means that an object has a tangible", which, if considering such definition would result to an intangible object; therefore, it may not be property according to the law at all. But for intangible objects, they have been set the definition of property according to the Civil and Commercial Code, Section 138 states that "property means property and intangible objects which may have a price and may be equated". It is necessary to consider the meaning of the word property in the Criminal Code. How much is the interpretation of the definition consistent with the Civil and Commercial Code? The consideration can be divided into the following issues:

A tangible object refers to things that can be seen and touched which could be both moved or not moved (Bouvier, 1856: 467), but must be something that has a tangible, shape, identity, proportion (Jumpa, 2008: 15), such as houses, cars, etc., but for objects that can be seen, but not tangible, such as domain name, amount of money stored in digital format, not being held in a shaped object because they cannot touch them (Moore, 1998: 365).

An intangible object means something that has no tangible or shape, and cannot be touched. This will be the opposite of a physical object (Emerich, 2018: 186), which includes debt rights, property rights and intellectual property rights (Srisawat, 2017: 1).

Having a price means something that has value in itself where this price could be an economic or mental value (Kongthep, 2000) such as lotteries, leaseholds, etc.

Equates means things that can be taken to show ownership, including preventing others from interfering with them (Jumpa, 2008).

Composition of larceny offenses under the Criminal Code, Section 334 states that "any person who has dishonestly owned the property of another person or owned by others has done so. The offense of larceny shall be liable to imprisonment for a term not exceeding three years and a fine not exceeding sixty thousand baht or both, specifically related to the issues studied as follows:

## **External Elements**

Taking means taking property from the owner or occupier by cutting ownership or taking possession which the method of taking will be done in any way that can disrupt possession (Chaum, 2018).

Property refers to the object of an act of stealing offense. The property must be an offense must have important characteristics: 1) It must be a physical object 2) must have an owner 3) must be movable 4) It must be property of others or included in the ownership of others (Yapanan, 2005).

### **Internal Elements**

Normal intention refers to an act with a real awareness of the action and at the same time the doer wishes to the effect or is aware of the effect of that action (Tingsaphat, 2010).

Dishonest special intention means wrong exploitation with law in order to take the property as one's own, taking the property of others will be the offense of stealing property must also have dishonest intention. If there is no dishonest intention, it is not a larceny offense (Na Nakhon, 2000).

### **The Judicial Guidelines of the Thai Court in the Case of Intangible Larceny through Comparison of the Supreme Court Judgment**

A study of the Supreme Court judgments and related academic documents. Guidelines on the trial of the Thai court against an intangible larceny offense can be considered separately as follows:

#### **Judgment of the Supreme Court**

Theft of electricity is a larceny offense. According to the court judgment Supreme Court No. 877/2501 in the judgment of the Supreme Court has ruled as the norm that Theft of electricity is a larceny offense under the Criminal Code, Section 334 or 335, as the case may be, in which the general meeting of the Supreme Court has a majority vote that stealing electricity is a larceny offense without finding a diagnosis on the issue of property or not, make this judgment, many legal scholars have provided reasons for both of them in agreement, such as

Jitti Tingsaphat, who commented in the final verdict, concluded that in the Civil and Commercial Code and the Criminal Code, there is an intention to use the word property with different assets. However, both laws still contain the words property and property mixed. In addition, larceny refers to mobile burglary which the Civil and Commercial code called chattel that includes the forces of nature, such as electric forces, although electricity is considered to be an intangible object, but it is affordable and can be taken away from the owner, and able to measure the amount taken as follows: The Supreme Court interprets that electrification is, therefore, the offense of the theft of property should be likened to the aforementioned reasons.

Thaweekiat Meenakanit concluded that electricity is an object of conductivity which can be measured with a measuring scale, electricity can;

therefore, be controlled and can be taking possible under the law. Since we can feel the electric current when we touch it, the electric current is property under the Civil and Commercial Code and the parties that disagreed, including Yut Saengutai, Kanit Na Nakorn, Associate Professor Dr. Somsak Singhaphan, Sophon Rattanakorn and Paiboon Peanrukdee, had a consistent conclusion that electric current is an intangible object, not property but it is a property (Suesuwan, 2017)

Telephone signal stealing according to the Supreme Court Judgment No.5354/2539, 1880/2542, 8177/2543, 2286/2545 and 4944/2549 on issues of property or property of a telephone signal according to the Supreme Court in 1880/2542, the Supreme Court has placed the principle that telephone signals from a public phone booth that is an electric current converted from a moving voice, followed the wires from one place to another, so a telephone signal is a type of electricity It can be stolen and is an offense of larceny (Kongthep, 2000), but there are considerations according to the verdict related to the phone signal. There is a line of judgment of the Supreme Court that the judgment is a larceny offense and not a larceny offense with interesting issues explained in the form of a table as follows:

<b>Court Judgment Petition</b>	<b>Rulings</b>	<b>Internal elements</b>
5354/1996	It is not larceny.	The defendant brought a mobile phone for tuning and copying the signal waves floating in the weather is hijacking the signal of the phone from the owner without rights. It is not taking the property of the victim dishonestly (Suesuwan, 2017).
1880/1999	It is larceny.	Telephone is a way to convert speech into electricity and send the electric current back into the voice once more, the telephone signal is converted into electricity coming from the speech, moving along the wires from one place to another. The defendant stealing the telephone signal from the telephone booth of Thailand used for fraudulent of the defendant. It is a larceny offense, just like an electrification stealing (Kongthep, 2000).
8177/2000	It is not larceny.	The defendant brought with them a mobile phone that was adjusted signal and the number of other phone numbers to communicate, make or receive calls through stations and telephone exchanges. The victim's cellular system is hijacking the telephone signal without that right; therefore, It is not taking the property of the victim dishonestly (Thianjaroonkul, 2015).
2286/2002	It is larceny.	That the defendant stole the phone signal from telephone line in possession of the victim person to use for the benefit of the defendant dishonestly; therefore, it is an offense of larceny (Thianjaroonkul, 2015).
4944/2006	It is larceny.	The defendant used a telephone which had two wires connected to it with the phone in the victim's public phone booth. Then the phone goes out that the defendant secretly used the signal of the victim's phone is an offense of larceny (Office of the Judicial Affairs, 2006).

From the comparison table of the Supreme Court's judgment, the case of phone signal theft shows the difference between the case in which the Supreme Court ruled that the defendant committed a larceny offense and the theft of a larceny. Such action is not an offense of the theft. When considering the judgment, it was found that the offense of stealing a telephone signal through a telephone line was the leading signal, the Supreme Court viewed it as taking a telephone signal. The speech is converted into electricity and transmitted. The electric current returns to the voice again through the telephone line; therefore, it was taken in dishonest way that can be an offense of stealing, but in the case that the Supreme Court ruled that such action was not a larceny offense, when considering the judgment, it was found that there was an act of using a mobile phone tuning of the phone signal suspended in the air; therefore, scrambling to use telephone signals without that right, not taking away the property dishonestly. It is different from the case of steal electricity or steal a telephone signal in the form of electricity in the telephone line.

Computer data stealing according to the Supreme Court Judgment No. 5161/2547 in which the Supreme Court has placed the principle that data is not an intangible object, but characters, images, diagrams, and instruments are just symbols that convey the meaning of the information on the memory card, so these things are not the shape of the data either. When computer data is not property, the defendant brought a blank record sheet, copying the information of the co-plaintiff; therefore, it is not an offense of larceny. Later, Thailand has announced its enforcement about Act on deeds Computer offenses in the year 2007 to fill the gaps in the law (Uiphanit, 2010).

For the study of relevant academic documents, was found important information as follows:

Virtual larceny in the virtual world in which the virtual world is considered an environment that is built with software by allowing players to use characters created by Software, like that, comes to life in this virtual world, and virtual assets are; therefore, created as well as with software and display through electronic screens (Khaosaeng, 2019). When considering virtual assets, if compared with the Supreme Court Judgment No. 5161/2547, the Supreme Court has laid down the norm that computer data is not an intangible object; therefore, not property and cannot be a larceny offense under the Criminal Code because the virtual property would be just an expression of information through the screen of an electronic device. Thus, an offender cannot be punished for a larceny offense because the items in the online game are shapeless objects; therefore, not property under the code of Civil and Commercial Law, Section 137 (Dechai & Pisitchinda, 2019).

Larceny of digital currencies: When considering digital currencies such as Bitcoin, according to the Bank of Thailand data, digital currencies are considered only electronic information, based on the interpretation of Supreme Court No. 5161/2547, it can be determined that digital currency is not a physical object and therefore cannot be property under the Civil and Commercial Code. Even with the price and can be considered, if there is a theft of digital currency, it cannot be punished for a larceny code of the Criminal law (Wiriyakuakool, 2018).

## RESEARCH DISCUSSION

From the information mentioned above, it is possible to analyze the approaches of the judicial guidelines of the Thai court of a larceny offense of a case study of intangible larceny, which can be discussed as follows:

Diagnosis of larceny offenses in the case of intangible objects, but with an electrical component or can be converted into electricity. It can be considered in 2 cases:

A case is a larceny offense in the trial of the larceny offense in which the stolen intangible object, but the body itself has an electric current component or can be converted to electricity, A court with the jurisdiction of the case can raise the line. The ruling in the Supreme Court Judgment 1880/2542 to be used as a guideline for determining that the object even without a shape, but it can also be stolen and it is a larceny offense; however, it is necessary to prove the composition of the larceny which will be explained in the next topic

In the case that it is not a larceny offense which the court considered that the object was stolen. If there is an electrical component or if it can be converted to electricity which could have been stolen, but when considering the elements of a larceny offense in the external components are absolutely where the property must be taken or taken from the owner, if the amorphous object is not passed through a channel according to the Supreme Court 1880/1999,2286/2002 and 4944/2549, in which the fact it appears that telephone signaling was performed through a telephone line that was a carrier is regarded as taking the property dishonestly which is an offense of stealing. But if the intangible object has been stolen, and it is a signal that floats in the air according to the Supreme Court No. 5354/2539 and 8177/2543, the court must consider the larceny behavior by tuning a mobile phone can take a signal floating in the air which such actions are only the scramble to use the signal without rights only it is not dishonestly taking the property of others and not an offense of larceny.

Diagnosis of the court ruling on the offense of intangible larceny and does not have an electrical component or can be converted into electricity. The current communication system and transmitting signals are mostly used in digital or electronic information systems which does not contain transmission current. It can make the interpretation of the theft, the court was; therefore, unable to bring Supreme Court Judgment 877/2501 and 1880/2542 as the norm in the ruling has resulted in the stolen intangible objects. There is no property under the Civil and Commercial Code and cannot punish the offender of larceny according to the ruling of the Supreme Court Judgment 5161/2547. Computer data theft are result in the larceny in other intangible objects as electric current, or it can be converted to electricity, such as real estate or digital currency. Therefore, the court cannot convict the offender for larceny offense according to Section 334 of the Penal Code.

As for the issue that remains controversial is weather the stealing of the use of someone else's "Wi-Fi" (Wireless Fidelity) signal without permission is a larceny offense under the Criminal Code or not. The researcher thought that the principle of diagnosing such problems must consider whether the signal "Wi Fi" -

(Wireless Fidelity) means property or not by law. It is a shapeless object, but has the component of the electricity or not. It also needs to be considered that the signal "Wi-Fi (Wireless Fidelity) floating in the air can be taken, take possession or not, accompany the diagnosis which guidelines for judging by the court. Researchers believe that Judgment No. 5354/1996 and Judgment No. 8177/2000 are the basis for the judgment that it is just scrambling to use a telephone signal without rights; therefore, not taking away the property of victims dishonestly.

## **CONCLUSION**

Even though the intangible property cannot be touched and shapeless, these objects are still possessive and equitable. It may be valuable to users and has a commercial price resulting in value in today's digital economy. Virtual wealth is a commodity or object of significant value in the real world. It is not a property within the meaning of Section 137 of the Civil and Commercial Code. A property that has no shape is; therefore, not an object of Act in a criminal offense with "property" as the object of action, so when the property is not a shape is not a property by the definition of law. Stealing other people's intangible objects, or misrepresenting the formless property of others. Courts in Thailand may consider these acts not to be a larcenous offense or embezzlement under criminal law. Criminal protection against intangible property is important to individuals that create value and financial benefits from shapeless property in the possession of one's possession. In addition, criminal protection about the terms of shapeless property effect on the credibility of the digital economy, so criminal law on property should be amended to allow for adoption of Criminal law covering offenses against properly intangible assets. Correction of the law may be done in two ways, namely (1) the provision of criminal liability on an offense committed against an intangible property is a specific provision or (2) interpretation of the laid down rules with a new law reinterpretation to be consistent with current human actions and social conditions, that is, a legal analysis of the criminal word "property" should not be attached to Section 137 of the Civil and Commercial Code, but the term "property". Criminal "property" should be reinterpreted to include abusive acts of intangible property or for the purpose of protecting the rights of that person in order to use benefit both personally and in the economic exploitation of intangible property in their possessive power and to maintain order and peace in society.

## **RESEARCH SUGGESTION**

Suggestions for applying the research results

Consideration of larceny offenses in the case of intangible objects need to consider the components of an unshaped object along with the concept, theory of common fault composition in determining criminal liability under Section 334 of the Criminal Code.

In the analytical study and comparison of the judicial guidelines of the Thai court of an offense of a case study of intangible larceny should specifically study the intangible objects that compose of an electrical component or can be



converted to electricity or not for the correctness in considering the correct and complete issues.

Suggestions for the next research

It should study the guidelines for the correction of the law to be able to punish the offender of larceny in the case of an intangible object in a complete and equitable manner.

It should study the legislation models related to intangible larceny that appeared in foreign law to study and compare in determining guidelines for the correction of the law in the country.

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