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Citation

SAW, Cheng Lim. The law of abandonment and the passing of property in trash. (2011). *Singapore Academy of Law Journal*. 23, 145-175. Research Collection School Of Law.

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THE LAW OF ABANDONMENT AND THE PASSING OF PROPERTY IN TRASH

This article examines the law of abandonment – primarily in the context of rubbish disposal – from a comparative perspective. It will, in particular, consider whether the owner of moveable property can, in theory, divest himself of ownership rights therein by simply abandoning the chattel in question, and whether the common law recognises such a concept of (unilateral) divesting abandonment. Additionally, the article will examine how, if at all, the notion of abandonment – as it is understood and applied in relation to physical property – may also operate in the realm of intangible property.

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I. Introduction

1 It is trite that outdoor trash bins (or dumpsters) can often be an unintended and valuable source of information. People dispose of waste for a host of reasons, ranging from the mundane to the highly sensitive and covert. This probably explains the impetus behind the commonly-encountered practice known as “dumpster diving” – to rummage through other people’s trash in the hope of finding skeletons in the closet or other forms of private and confidential information. The motives of the dumpster diver are not always oblique. Apart from those who surreptitiously obtain sensitive information (such as passwords, credit card numbers, bank account details and trade secrets) for purposes of committing identity theft or industrial espionage, there are others who dumpster dive (or who engage the services of private investigators to do so on their behalf) as a result of the need for discreet and undetected retrieval of documents/evidence for civil and criminal trials. Such was the case with the defendant in a fairly recent dispute before the Singapore High Court.

* The author owes a debt of gratitude to Professors Michael Furmston and George Wei for having inspired the writing of this article and is also grateful to SMU’s Office of Research for funding this research project.

2 In *Vestwin Trading Pte Ltd v Obegi Melissa*,¹ the defendant had obtained a judgment in New York against a third party, whilst the plaintiff was in possession of certain documents which revealed that the third party (a company allegedly related to the plaintiff) had assets in Singapore. Obviously, these highly relevant documents would come in useful if the defendant tried to enforce the New York judgment in Singapore against the third party. As fate would have it, the plaintiff later disposed of these allegedly confidential documents as waste, which was routinely picked up by contract cleaners and subsequently left at a common rubbish dump for collection and disposal. The defendant then managed, with the help of private investigators, to retrieve these discarded documents (prior to the arrival of the trash collector) and later tendered them as evidence in separate court proceedings against the third party.

3 Unsurprisingly, the plaintiff commenced proceedings against the defendant in the form of an application for summary judgment and argued that the defendant's unauthorised retention and use of the plaintiff's documents amounted to a conversion of the plaintiff's property as well as an equitable breach of confidence.² In relation to the plaintiff's argument on conversion,³ the defendant claimed to be entitled to ownership and possession of those discarded documents on the basis that the plaintiff, in putting them out as rubbish for collection, had abandoned all rights of ownership in them. This line of reasoning was, however, rejected by Andrew Ang J, who granted the plaintiff's application accordingly. On appeal, V K Rajah JA, on behalf of the Singapore Court of Appeal, overturned Ang J's decision,⁴ principally because this particular case involved novel issues of law (*eg*, the doctrine of abandonment) and required a full examination of all the relevant facts.⁵ As such, his Honour decided, "without adjudicating conclusively on the merits of each side's case, that the matter should proceed to trial instead of being summarily determined".⁶

4 The aim of this article, therefore, is to examine the issue of abandonment in the specific context of rubbish disposal – a rather

1 [2006] 3 SLR(R) 573.

2 A discussion of the issues arising from the plaintiff's allegations of breach of confidence is, unfortunately, beyond the scope of this article.

3 The plaintiff has *locus standi* to sue for conversion only if he can establish a wrongful interference with his ownership rights in (or rights to immediate possession of) personal property – see *Marfani & Co Ltd v Midland Bank Ltd* [1968] 1 WLR 956 at 970–971; *The Cherry* [2003] 1 SLR(R) 471 at [58]–[59]. The action in conversion, which is a strict liability tort for the protection of ownership, essentially gives effect to the sanctity of property rights.

4 *Obegi Melissa v Vestwin Trading Pte Ltd* [2008] 2 SLR(R) 540.

5 *Obegi Melissa v Vestwin Trading Pte Ltd* [2008] 2 SLR(R) 540 at [40].

6 *Obegi Melissa v Vestwin Trading Pte Ltd* [2008] 2 SLR(R) 540 at [40].

“mundane matter” which is nevertheless a “necessary and common occurrence in daily life”.⁷ Can it be argued, for example, that a homeowner who puts rubbish out for collection by the curbside has, by this act alone, clearly evinced an intention to completely relinquish his ownership rights therein? Can the homeowner, after discovering that he had disposed of certain documents in error or inadvertently (and before the arrival of the trash collector), subsequently change his mind and recover those documents from the trash bin? In exploring these questions from a multi-jurisdictional perspective, this article will also consider whether it is possible, in theory, for the owner of moveable property to divest himself of his ownership rights by merely abandoning the chattel in question, and whether the common law recognises such a concept of (unilateral) “divesting abandonment”. Additionally, the article will examine how, if at all, the notion of abandonment – as it is understood and applied in relation to physical property (such as trash) – may also operate in the realm of intangible property. For example, how do the laws of copyright and trade marks determine the circumstances under which the intellectual property owner is deemed to have unconditionally abandoned the ownership of his intellectual property?

II. “Abandonment” defined

5 The word “abandonment” may, in law, assume a number of different meanings, depending on the context in which it is used. It is important, at the outset, to distinguish between an abandonment of ownership of property (or title to property) and an abandonment of possession of (or control over) property.⁸ It has been said that the mere relinquishment of “possession” of a thing is not an abandonment in a legal sense, since such an act is not wholly inconsistent with the idea of continuing “ownership”. The act of abandonment must be an overt act (or some failure to act) which carries the implication that the legal owner neither claims nor retains any interest in the subject matter of the abandonment.⁹ This is sometimes known as “divesting abandonment” – an abandonment of both possession and ownership,¹⁰ whereupon the property in question is deemed to be returned to the common pool of unowned resources.

7 *Obegi Melissa v Vestwin Trading Pte Ltd* [2008] 2 SLR(R) 540 at [42].

8 “Property”, in this article and unless otherwise advised, refers to movable or personal property.

9 See *Riverside Drainage Dist. of Sedgwick County v Hunt* 33 Kan App 2d 225; 99 P 3d 1135 (2004).

10 See *State v Pidcock* 89 Or App 443 at 448 (1988): “Abandonment is the voluntary relinquishment of the possession of an object by the owner with the [coterminous] intention of terminating his or her ownership” in that object.

6 From a brief survey of US and Canadian case law, it is apparent that two requirements must be satisfied in order to effect a proper abandonment of property. According to the Ontario Court of Appeal in *Simpson v Gowers*,¹¹ “[a]bandonment occurs when there is ‘a giving up, a total desertion, and absolute relinquishment’ of private goods by the former owner. It may arise when the owner with the specific intent of desertion and relinquishment casts away or leaves behind his property ...”. There must therefore be, in addition to the *overt act* of abandonment itself, a specific *intention/motive* on the part of the original owner to completely relinquish all rights of ownership – voluntarily and, more importantly, without regard as to who may subsequently take possession of the property. It bears repeating that such relinquishment must be to the extent where the former owner is *completely indifferent* as to the fate of the discarded object (*ie*, as to what/who may await the abandoned property).¹² In other words, if anyone else takes and uses the abandoned property in whatever manner, that is a matter of no consequence to him.¹³

7 Proof of “intention” is, of course, a question of fact. Clearly, an intention to abandon property will not ordinarily be presumed.¹⁴ There must, generally, be some direct or affirmative evidence of subjective intent.¹⁵ Alternatively, intention may be established objectively, through the process of inference, from the overt acts and conduct of the proprietor – *eg*, from the circumstances surrounding the proprietor’s treatment of the property, the manner and location of abandonment, as well as the nature and value of the property. There must, in other words, be some explicit conduct which can be taken to indicate, clearly and objectively, that the owner no longer wants his or her property.

11 (1981) 121 DLR (3d) 709 at 711. This was the definition given in R A Brown, *The Law of Personal Property* (Chicago: Callaghan, 2nd Ed, 1955) at p 9, which the court endorsed. Ipp J in the Supreme Court of Western Australia also cited this definition with approval in *Keene v Carter* (1994) 12 WAR 20 at 26.

12 See *Schaffner v Benson* 166 NE 881 at 883 (1929); *Martin v Cassidy* 307 P 2d 981 at 984 (1957). See also *Railroad Commission of Texas v Waste Management of Texas, Inc* 880 SW 2d 835 at 843 (1994): “When applied to personal property, we think the term [‘abandon’] also includes an intent by the owner to leave the property free to be appropriated by any other person.”

13 This, it is submitted, is what distinguishes an “abandonment” from an outright “gift” of property, a point to which we will return below. See, further, J E Penner, *The Idea of Property in Law* (Oxford University Press, 1997) at pp 88–90. See also *Halsbury’s Laws of England* vol 35 (Butterworths LexisNexis, 4th Ed Reissue, 1994) at para 1225: “Abandonment of goods takes place when possession of them is quitted voluntarily without any intention of transferring them to another.”

14 Indeed, the presumption must be that the owner of property intends to preserve his rights in the property.

15 See *Foulke v New York Consol R Co* 228 NY 269 at 273 (1920); *Linscomb v Goodyear Tire & Rubber Co* 199 F 2d 431 at 435 (1952) (“clear, unequivocal and decisive” evidence).

8 To what extent, then, does the act of rubbish disposal (whether in trash bags left by the curbside or in the common rubbish dump of a building awaiting collection) indicate a clear and specific intention on the part of the owner to abandon not just possession of the property, but also ownership thereof? Does “divesting abandonment” ever arise when rubbish is disposed of in this manner? We shall now examine how these questions have been addressed by the courts in different jurisdictions.

III. A general survey of case law developments

9 It may be usefully noted, at the outset, that the law of abandonment is as yet untested in Singapore. As V K Rajah JA has observed,¹⁶ “[t]here is no legislation, case law or authoritative academic view on title to or possession of items which have been disposed of as rubbish”. Case law developments elsewhere have also been far from uniform. V K Rajah JA has, in this regard, noted thus:¹⁷

The positions vary across different jurisdictions, with the courts in Australia, Canada and the US generally recognising, but applying differently, the concept of ‘divesting abandonment’ – *ie*, the abandonment of both ownership as well as possession.

10 Be that as it may, it is hoped that the following review of case law and subsequent analysis of the relevant principles will at least offer some guidance to the courts in Singapore on the applicability of the law of abandonment in the specific context of rubbish disposal.

A. *The US and Canada*

11 The doctrine of abandonment has been employed in the US in two different contexts. In the property law context (involving a civil claim for conversion of personal property and with which this article is primarily concerned), “abandonment” refers to an owner’s voluntary and intentional relinquishment of a proprietary interest in property to the extent that another person may take possession of that property and assert a superior interest to it.¹⁸ On the other hand, “abandonment” in the context of search and seizure (or in the constitutional, Fourth Amendment context)¹⁹ is concerned with whether the defendant, in

16 *Obegi Melissa v Vestwin Trading Pte Ltd* [2008] 2 SLR(R) 540 at [41]. See also Lai Siu Chiu J in *The Best Source Restaurant Pte Ltd v Wan Chai Capital Holdings Pte Ltd* [2009] SGHC 266 at [40].

17 *Obegi Melissa v Vestwin Trading Pte Ltd* [2008] 2 SLR(R) 540 at [41].

18 See, eg, *United States v Shelby* 573 F 2d 971 at 973 (1978).

19 The Fourth Amendment to the Constitution of the United States of America provides that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated ...”.

discarding property, has relinquished his “reasonable expectation of privacy” with respect to the property, so that its search and seizure (usually by the police and without a warrant) is deemed reasonable within the limits of the Fourth Amendment.²⁰

12 Insofar as rubbish disposal is concerned, US cases have consistently held, in the property law context, that property in trash – whether it be documents or other discarded material – is considered abandoned whenever it is placed in trash bags which are then placed in unlocked dumpsters by the curbside (being readily accessible to others). This was the position taken by California’s Court of Appeal for the Third District in *Ananda Church of Self-Realization v Massachusetts Bay Ins Co*,²¹ where Callahan J expressed the following view:²²

Documents which have been placed in an outdoor trash barrel no longer retain their character as the personal property of the one who has discarded [them]. By placing them into the garbage, the owner renounces the key incidents of ownership – title, possession, and the right to control.

13 In another case, the Court of Appeal of Louisiana (First Circuit) cited, as an example of *res derelictae*,²³ items which are “to be removed by garbage collectors”.²⁴ Accordingly, under US law, the removal of documents from an outdoor trash bin (including other forms of dumpster diving) does not amount to a conversion of property. It appears that the courts in Canada, when faced with these facts, are likely to adopt a similar view of the law of abandonment.²⁵

14 Is this, however, a sound and defensible proposition – that personal property which has been discarded as waste, in a place that is accessible to the public, ought to be considered abandoned by the former owner? Can it be consistently maintained that a homeowner, who leaves bags of rubbish in bins outside his home for the specific purpose of garbage collection and disposal, necessarily intends to abandon the rubbish *res derelictae*? These are questions to which we will

20 See, eg, *City of St Paul v Vaughn* 306 Minn 337 (1975).

21 95 Cal App 4th 1273 (2002).

22 *Ananda Church of Self-Realization v Massachusetts Bay Ins Co* 95 Cal App 4th 1273 at 1282 (2002). See also *Long v Dilling Mechanical Contractors, Inc* 705 NE 2d 1022 at 1025 (1999): “[T]here is a widely held and long-standing doctrine that personalty discarded as waste is considered abandoned.” See, further, *Indiana Waste Systems of Indiana, Inc v Indiana Department of State Revenue* 633 NE 2d 359 at 367 (1994); *Meyer Waste Systems, Inc v Indiana Department of State Revenue* 741 NE 2d 1 at 6 (2000). But, cf, *Sharpe v Turley* 191 SW 3d 362 at 367–368 (2006).

23 As to the meaning of *res derelictae*, see para 22 of this article.

24 See *Charrier v Bell* 496 So 2d 601 at 605 (1986).

25 See *Canada (Attorney-General) v Brock* (1991) 59 BCLR (2d) 261; *Stewart v Gustafson* [1999] 4 WWR 695.

return later. It may well be argued that although the homeowner did relinquish “possession” of the trash by placing it in outdoor bins, it was never his intention to relinquish “ownership” of it to the first person who comes along and appropriates it.

15 There is, as mentioned above, another context in which the doctrine of abandonment is relevant in the US (and, indeed, Canada). This relates to the constitutional or Fourth Amendment protection against unreasonable searches and seizures. A discussion of this subject is unfortunately beyond the scope of this article. Suffice it to say, for present purposes, that US federal law in this regard is no different. Just as a homeowner is deemed to have abandoned his ownership rights in trash that is left outside his home for collection, he too is deemed to have abandoned his “reasonable expectation of privacy” in the said trash, and therefore has no grounds of complaint against the police for searching through his trash bags without a warrant.²⁶ But even if we were to accept – as correct – the proposition that a homeowner had indeed abandoned his reasonable expectation of privacy in respect of such trash, does it necessarily follow that he must have also abandoned his ownership rights therein and, accordingly, his right of action against a third party dumpster diver in conversion? The present author thinks not, for reasons which will be furnished below.

B. Australia and New Zealand

16 The courts in Australia did not initially recognise the concept of divesting abandonment. In the early decision of the Tasmanian Supreme Court in *Johnstone & Wilmot Pty Ltd v Kaine*,²⁷ Inglis Clark J, having engaged in a detailed analysis of the relevant jurisprudence, concluded thus:²⁸

On the whole I think I should adopt the rule that the *intentional abandonment of a chattel by the owner of it does not divest him of his ownership*, and that if another person finds the chattel not knowing

26 See, in particular, the US Supreme Court decision in *California v Greenwood* 486 US 35 (1988). Note, however, the powerful dissent by Brennan J, with whom Marshall J concurred. For a critique of the *Greenwood* decision and its implications for trash bag searches conducted (not by police officers but) by civilian dumpster divers (who search, *inter alia*, for valuable trade secrets and confidential information), see H Wingo, “Dumpster Diving and the Ethical Blindspot of Trade Secret Law” (1997) 16 Yale Law and Policy Review 195. It ought to be noted that the law in Canada in this regard tracks very closely to that in the US – see s 8 of the Canadian Charter of Rights and Freedoms, as well as the decision of the British Columbia Court of Appeal in *R v Krist* (1995) 42 CR (4th) 159. See, further, *R v Tessling* (2004) 244 DLR (4th) 541; *R v Patrick* (2005) ABPC 242.

27 (1928) 23 Tas LR 43.

28 (1928) 23 Tas LR 43 at 58.

who the owner of it is, he is in the same position as the finder of a lost chattel who does not know who the owner of it is. [emphasis added]

17 The issue as to whether chattels could be abandoned in law was also left open by Samuels JA in the New South Wales Court of Appeal decision in *Moorhouse v Angus & Robertson (No 1) Pty Ltd*,²⁹ as well as by Angel J in the Supreme Court of the Northern Territory in *Cook v Saroukos*.³⁰ Although Angel J was prepared to accept Inglis Clark J's reasoning in *Johnstone & Wilmot Pty Ltd v Kaine*,³¹ his Honour nevertheless expressed the view that there was "no reason in principle" why title to a chattel could not be extinguished by an act of abandonment.³²

18 Indeed, more recent authorities have confirmed that it is entirely possible, at common law, to abandon one's property and divest oneself of ownership, although cases of such nature will "be relatively rare".³³ Whether or not abandonment is established in any given case will invariably turn on the intention of the original owner, which has to be clear and unequivocal.³⁴

19 In relation to the specific question of rubbish disposal, it is instructive to consider Higgins J's remarks in *Leonard George Munday v Australian Capital Territory*,³⁵ where his Honour opined thus:³⁶

A person 'scavenging' at a public rubbish dump may assume that those discarding goods do not intend in future to assert their title to those goods. If the 'scavenger' then takes possession of those goods, he or she obtains good title against the rest of the world.

20 Although Higgins J specifically referred to a "public rubbish dump", it is plausible, in the context of urban and land-scarce Singapore, to extend the analogy to include all trash bins and receptacles provided

29 [1981] 1 NSWLR 700 at 706.

30 (1989) 97 FLR 33.

31 (1928) 23 Tas LR 43.

32 (1989) 97 FLR 33 at 41.

33 Per Kiefel J in *Re Jigrose Pty Ltd* [1994] 1 Qd R 382 at 386. His Honour also expressed the following view: "It seems to me that if I do not wish to retain the possession or property in goods (perhaps most clearly shown by throwing them away), there is no reason in principle why the common law would require me to remain owner. ... For my part I do not consider that there is a difficulty at law with the notion of abandonment divesting ownership." *Re Jigrose Pty Ltd* was subsequently endorsed by Ipp J in *Keene v Carter* (1994) 12 WAR 20.

34 "The cases make it clear, in Australia at least, that an express intention to abandon coupled with an occupation by a newcomer is required before abandonment is complete." (L Aitken, "The Abandonment and Recaption of Chattels" (1994) 68 ALJ 263 at 272.)

35 (1998) 146 FLR 17.

36 (1998) 146 FLR 17 at [135].

for the convenience and use of the general public to dispose of waste material in public places. Arguably, a scavenger who rummages through such a public facility can reasonably infer that all the trash found therein had indeed been abandoned by their former owners. Such an argument, however, cannot apply *mutatis mutandis* in cases where the rubbish in question has been deposited in bags by the curbside outside one's home (a "private" dwelling) or at the common rubbish dump of a commercial building. It will be explained later that even though the curbside outside a private dwelling and the common rubbish dump of a commercial building are places to which the public can ordinarily gain access (because these premises are typically left unsecured), they are by no means the equivalent of places/facilities which are intended for common, public use. In this sense, these premises are not, objectively speaking, truly "public" in character and it is therefore impermissible to raise the inference that there is present a specific and unequivocal intention to abandon ownership rights in trash which has been left for collection at such premises.

21 The question of abandonment has also been considered in New Zealand in the context of insolvency law, namely, the right of the Official Assignee to abandon property which has passed to him on the adjudication of a bankrupt. In *Edmonds Judd v Official Assignee*,³⁷ Richardson P in the New Zealand Court of Appeal agreed with the view advanced by Blackstone³⁸ and held that abandonment, at common law, "is a recognised mode of losing title to property".³⁹ As always, the same yardstick is applied – there must be "conduct evincing the intention to abandon the right".⁴⁰

C. Roman law

22 Before turning to the common law position in England, it is apposite at this juncture to briefly examine the application of the doctrine of abandonment in Roman law. There were essentially two schools of thought. The first (and more widely accepted) was advanced by the Sabinians, who were of the view that property could be abandoned and could become ownerless from the moment the abandoner manifests his desire to abandon and physically abandons the property in question, whereupon the first person who subsequently acquires possession of the property becomes its new owner. The Sabinian notion of abandonment, as characterised by a clear intention

37 [2000] 2 NZLR 135. As to abandonment in the context of "reasonable expectations of privacy", see *R v Reuben* [1995] 3 NZLR 165.

38 See W Blackstone, *Commentaries on the Laws of England* (Book 2) (Oxford: Clarendon Press, 1766) at p 9.

39 [2000] 2 NZLR 135 at [23].

40 [2000] 2 NZLR 135 at [25].

to divest absolutely and as supported in Roman law by the concepts *res derelicta* and *occupatio* (or *derelictio cum occupatione*),⁴¹ is also sometimes referred to as “unilateral divesting abandonment”⁴².

23 The Proculians, on the other hand, advocated that ownership in property could not be relinquished just by the mere intent/desire to abandon, but only after a transfer or conveyance of the property⁴³ to some other (usually unidentified) person who then becomes the new owner upon taking possession of it. The Proculian school of thought, as supported in Roman law by the maxim *traditio incertae personae*, is also sometimes referred to as “bilateral divesting abandonment”⁴⁴.

24 To illustrate these divergent views on abandonment, consider the following example. Somebody throws money into a crowd, the money being placed at the disposal of anyone who cares to take it. The Proculians would argue that property in the money was extinguished not when it was thrown but only after it was collected by a third party recipient, whereas the Sabinians would maintain that the abandoner had ceased to be owner the very moment the money was thrown from his hands. Notwithstanding these differences in opinion, one commentator has perceptively argued that it “seems to make little difference whether a unilateral or bilateral divesting abandonment model is adopted as the person who takes possession of the abandoned chattel acquires ownership at the moment that he takes possession”.⁴⁵ This observation is particularly germane in the context of the present discussion, since an action for conversion can only be initiated against a third party dumpster diver who, without permission, has obtained actual possession (and hence ownership) of the plaintiff’s property. What is apparent though is that whichever view one takes of divesting

41 In Roman law, *res derelicta* (or *res derelictae*) refers to goods which have been voluntarily and intentionally abandoned by their owners, whilst ownership rights (or title to property) could be acquired by *occupatio*, which is taking actual possession or control of what never had an owner (*res nullius*) or has ceased to have one (*res derelicta*). See, further, *Hawkins v Mahoney* 990 P 2d 776 at 779 (1999).

42 See J Griffiths-Baker, “Divesting Abandonment: An Unnecessary Concept?” (2007) 36(1) *Common Law World Review* 16 at 18; R W League, *Roman Law* (London: Macmillan, 3rd Ed, 1961) at 177–178.

43 Either gratuitously (as a “gift”) or for a fee (as in a “sale”).

44 See J Griffiths-Baker, “Divesting Abandonment: An Unnecessary Concept?” (2007) 36(1) *Common Law World Review* 16 at 18; D Daube, “Derelictio, Occupatio and Traditio: Romans and Rabbis” (1961) 77 *LQR* 382. See also Charles Viner, *A General Abridgement of Law and Equity* (2nd Ed) vol 22 at p 409 (“*Waife*”); C St Germain, *Doctor and Student* (T F T Plucknett & J L Barton eds) (London: Seldon Society, 1974) Book II, ch 51 at pp 290–292. See, further, L Aitken, “The Abandonment and Recaption of Chattels” (1994) 68 *ALJ* 263 at 272: “There is sound moral sense in not depriving the possessor of his or her interest in a chattel until it is positively acquired by someone else.”

45 J Griffiths-Baker, “Divesting Abandonment: An Unnecessary Concept?” (2007) 36(1) *Common Law World Review* 16 at 23 [footnotes omitted].

abandonment, the doctrine itself – *ie*, the absolute relinquishment of both possession and ownership – was already the subject of much discussion, and indeed controversy, in earlier times.

D. England

25 Likewise, there was also a divergence of views in England. English law was, on the one hand, quite reluctant to recognise that property in chattels could be abandoned. As Sir Frederick Pollock famously noted, it is a “high, grave and dubious question whether a man can by the common law so fully disclaim and abandon his own goods that they cease, by the mere declaration of his will, coupled or not coupled with a physical act equivalent to jettison, to be in any sense his property”.⁴⁶ In other words, ownership and possession of goods could never be absolutely vacant in law; instead, “an express abandonment is, in point of law, merely a licence to the first man who will take the goods for his own, which taking will be justified and will finally change the property if complete before the taker has notice that the licence is revoked”.⁴⁷

26 This rather limited view of the law of abandonment – which clearly rejects the notion of a “unilateral divesting abandonment” – merely echoes what Pollock had earlier articulated in his celebrated co-authored work entitled *An Essay on Possession in the Common Law*.⁴⁸ Here, the learned authors expressed the view that there seemed to be “hardly any case in which possession once vested [could] be absolutely extinguished, except by the destruction of the thing either in fact or in law”.⁴⁹ They further explained that the right to possession (or “constructive possession”), being “one of the constituent elements of the complete right of property”, “is said not to be lost, even by a general abandonment of the thing”.⁵⁰ In other words, the physical abandonment (or the mere dispossession) of a chattel, even with the intent to so act, is

46 (1894) 10 LQR 293, a case note on *Arrow Shipping Co Ltd v Tyne Improvement Commissioners* [1894] AC 508. See also J E Penner, *The Idea of Property in Law* (Oxford University Press, 1997) at p 79: under the strict common law position, “property cannot be abandoned *de jure*, if that means that an owner may by his act alone destroy his title in a thing. An owner may only relinquish possession of a thing, whereupon any subsequent person’s possession may give him a good root of title”.

47 F Pollock (1894) 10 LQR 293. See also L Aitken, “The Abandonment and Recaption of Chattels” (1994) 68 ALJ 263 at 272.

48 F Pollock & R S Wright, *An Essay on Possession in the Common Law* (Oxford: Clarendon Press, 1888; FB Rothman & Co, 1985).

49 F Pollock & R S Wright, *An Essay on Possession in the Common Law* (Oxford: Clarendon Press, 1888; FB Rothman & Co, 1985) at p 123.

50 F Pollock & R S Wright, *An Essay on Possession in the Common Law* (Oxford: Clarendon Press, 1888; FB Rothman & Co, 1985) at p 145, citing Charles Viner, *A General Abridgement of Law and Equity* (2nd Ed) vol 22 at p 409 (“Waife”).

insufficient to divest the owner of his proprietary interest in it. The owner who has parted with possession is, nevertheless, by virtue of his right to possession, entitled to sue – in trespass, trover (the old action for conversion) or detinue – a stranger who has taken the chattel without his consent.

27 There is also some support for this view in early English case law. For example, Lord Coke in *Haynes's Case* was of the view that “a man cannot relinquish the property he hath to his goods, unless they be vested in another”.⁵¹ In this case, Haynes had dug up four corpses and took the shrouds with him. It was held that the shrouds remained the property of those who owned them before the burial and the taking by Haynes amounted to larceny (theft). A buried corpse, by extension, remained in the possession of the deceased person's representatives or of the person who had buried the deceased, and is thereby not abandoned. Similarly, in *R v Edwards and Stacey*,⁵² the carcasses of three pigs which had been bitten by a mad dog and therefore buried were held to be still in the possession of the person to whom they had belonged. Arguably, the right to property in “abandoned” goods remains with the original owner, at least until those goods are taken into lawful possession by another person (eg, by way of a gift).⁵³

28 On the other hand, an alternative (and more robust) view of abandonment was proffered by Sir William Blackstone, who, in *Commentaries on the Laws of England*,⁵⁴ maintained that “unilateral divesting abandonment” was an entirely plausible concept at common law. Blackstone asserted thus:⁵⁵

Property, both in lands and moveables, being thus originally acquired by the first taker, which taking amounts to a declaration that he intends to appropriate the thing to his own use, it remains in him, by the principles of universal law, till such time as he does some other *act* which shows an *intention* to abandon it; for then it becomes, naturally

51 (1614) 77 ER 1389.

52 (1877) 13 Cox CC 384.

53 Cf also Charles Viner, *A General Abridgement of Law and Equity* (2nd Ed) vol 22 at p 409 (“*Waife*”); C St Germain, *Doctor and Student* (T F T Plucknett & J L Barton eds) (London: Seldon Society, 1974) Book II, ch 51 at pp 290–292).

54 W Blackstone, *Commentaries on the Laws of England* (4 Books) (Oxford: Clarendon Press, 1765–1769).

55 W Blackstone, *Commentaries on the Laws of England* (Book 2) (Oxford: Clarendon Press, 1766) (“Book 2”) ch 1 at p 9. See also W Blackstone, *Commentaries on the Laws of England* (Book 1) (Oxford: Clarendon Press, 1765) ch 8 at p 285: “[A] man that scatters his treasure into the sea, or upon the public surface of the earth, is construed to have absolutely abandoned his property, and returned it into the common stock, without any intention of reclaiming it; and therefore it belongs, as in a state of nature, to the first occupant, or finder.” See, further, Book 2, ch 26 at p 402, as well as Farwell J in *Attorney General v Trustees of the British Museum* [1903] 2 Ch 598 at 608–609.

speaking, *publici juris* once more, and is liable to be again appropriated by the next occupant. So if one is possessed of a jewel, and casts it into the sea or a public highway, this is such an express *dereliction*, that a property will be vested in the first fortunate finder that will seize it to his own use. [emphasis added]

29 Blackstone's view that an absolute abandonment of property is possible subject to the clear "intentions" of the original owner and subsequent *occupatio* by a third party "finder" also finds support in a number of (albeit dated) judicial authorities in relation to wreck.⁵⁶ Most notably, in *Arrow Shipping Co Ltd v Tyne Improvement Commissioners (The Crystal)*,⁵⁷ the House of Lords held that an owner of a vessel may, at common law, abandon a wrecked/sunken ship and so put an end to his liabilities. It seemed clear to Lord Herschell LC that the owners of *The Crystal* "had abandoned the vessel as derelict on the high seas, without any intention of resuming possession or ownership".⁵⁸

30 Indeed, there appears to be authority in other areas of the law (apart from these early cases on the law of wreck) which supports a more liberal interpretation of abandonment. In criminal law, for example, Professor Hudson observed in a famous article⁵⁹ that several decisions from earlier times had unreservedly endorsed the notion of "divesting abandonment".⁶⁰ In disagreeing with the reasoning and decision in *Haynes's Case* (which, if followed, could well lead to "curious" results), Professor Hudson opined that the treatment of "divesting abandonment" in criminal law "appears to have been markedly more satisfactory than an unqualified application of the rule in *Haynes's Case* would have been and, indeed, on the present state of

56 See *Brown v Mallett* (1848) 5 CB 599 at 617; *White v Crisp* (1854) 10 Ex 312 at 322.

57 [1894] AC 508.

58 *Arrow Shipping Co Ltd v Tyne Improvement Commissioners (The Crystal)* [1894] AC 508 at 519. See also at p 521 (*per* Lord Watson), pp 532–533 (*per* Lord MacNaghten) and p 534 (*per* Lord Morris). It may be usefully noted that the owners in this case had also given notice of abandonment to the underwriters. As such, the owners, having been divested of all proprietary interest in the wrecked vessel, could not therefore be held liable for the wreck removal expenses. For a more recent example, see *Pierce v Bemis (The Lusitania)* [1986] QB 384.

59 A H Hudson, "Is Divesting Abandonment Possible at Common Law?" (1984) 100 LQR 110 at 113 *et seq.*

60 In particular, these cases suggest that ownership in chattels can be abandoned with divesting effect, although strong evidence of abandonment is required and that this would normally be found as regards articles of trivial value – see *R v Peters* (1843) 1 Car & K 245; *R v Reed* (1842) Car & M 307 at 307–308; *R v White* (1912) 107 LT 528 at 529. There is also authority for the view that abandonment is possible in equity – see Lord Browne-Wilkinson's dicta in *Westdeutsche Landesbank Girozentrale v Islington LBC* [1996] AC 669 at 708 ("[i]f the settlor has expressly, or by necessary implication, abandoned any beneficial interest in the trust property, there is in my view no resulting trust: the undisposed-of equitable interest vests in the Crown as *bona vacantia*").

the authorities the case seems to have been repeatedly, if impliedly, overruled in criminal law from which it originated”.⁶¹ The learned author’s conclusion that “not only is divesting abandonment desirable, subject to safeguards of proof, but it is also possible”⁶² further accords with the views of other commentators.⁶³

31 The present author is also inclined to the view that the common law ought to recognise and give effect to the concept of “unilateral divesting abandonment”, as it does the somewhat related doctrine of “waiver” (albeit not without controversy).⁶⁴ Like abandonment, a “waiver” is essentially an unequivocal and intentional relinquishment of a known right and, when properly analysed, operates to cause the right to lapse, rather than to transfer the enjoyment of that right from one person to another. What truly matters in each case is how proof of abandonment (like proof of waiver) is to be established – the factual determination of a specific and unequivocal *intention* to abandon to all and sundry (*derelictio cum occupatione*),⁶⁵ coupled with the *overt act* of abandonment itself. However, given the various safeguards as to strict proof (instances of which will be discussed below in relation to waste disposal), it is envisaged that a finding of “unilateral divesting abandonment”, although plausible in principle, “may well not be of frequent occurrence”.⁶⁶

61 (1984) 100 LQR 110 at 116.

62 (1984) 100 LQR 110 at 119.

63 See J E Penner, *The Idea of Property in Law* (Oxford University Press, 1997) at p 79: “Do we have the right to abandon the things we own? ... Although the legal view [eg, in *Haynes’s Case* (1614) 77 ER 1389] respecting title might suggest otherwise, it is submitted that we do have the right to abandon property. It is surely part of a right to determine how a thing is to be used that one may make no use of it at all, for evermore. One ought not to be saddled with a relationship to a thing that one does not want, and an unbreakable relation to a thing would condemn the owner to having to deal with it. It would indeed be a funny turn of events if ... property in essence gave the things a person owned a power over him.” *Halsbury’s* also maintains that a true owner can “intentionally abandon” a chattel, thereby divesting himself of title to the chattel without having to contemplate a transfer of it to someone else – see *Halsbury’s Laws of England* vol 2 (Butterworths LexisNexis, 4th Ed Reissue, 1991) at para 1811 (on the subject of “bailment by finding”).

64 For a masterful commentary on the law of waiver, see S Wilken, *Wilken and Villiers: The Law of Waiver, Variation and Estoppel* (Oxford University Press, 2nd Ed, 2002).

65 Writing in the field of medical law (and specifically in relation to “surplus” tissue after surgery or diagnostic testing), one commentator notes that the notion of abandonment, although supported by the Nuffield Council and various other commentators (eg, L Skene, “Proprietary Rights in Human Bodies, Body Parts and Tissue: Regulatory Contexts and Proposals for New Laws” (2002) 22(1) LS 102), “is inappropriate in the absence of a *clear intention* to relinquish all interests in the property” [emphasis added] (D Price, “From Cosmos and Damian to Van Velzen: The Human Tissue Saga Continues” (2003) 11 Medical Law Review 1 at 31).

66 A H Hudson, “Is Divesting Abandonment Possible at Common Law?” (1984) 100 LQR 110 at 119.

Perhaps, as one commentator has suggested,⁶⁷ it matters not whether the common law recognises the concept of divesting abandonment because the issue of abandonment can also be explained and resolved by the application of other legal doctrines, such as sale, gift, contract and (in particular) estoppel.⁶⁸ Although there is some force to this argument, it should be mentioned, in retrospect, that not all cases of abandonment will invariably fit within the strict legal contours of a sale, gift or contract,⁶⁹ whilst estoppel is, at heart, an equitable concept that is premised upon rather different considerations (namely, reliance, good faith/conscience and justice). Finally, the point has also been made that the justification for recognising the unilateral nature of abandonment lies rooted in the notion of individual autonomy and empowerment.⁷⁰ It is therefore submitted that it is eminently rational for the common law to independently recognise and give effect to the doctrine of “unilateral divesting abandonment”.⁷¹

32 Be that as it may, it is apposite to observe, in the specific context of rubbish disposal (to which our discussion now turns), that English law has consistently maintained the view that there is no question of abandonment when a homeowner merely puts rubbish out for collection. Indeed, rubbish which has been deposited in domestic waste receptacles or in trash bags left by the curbside belongs to the homeowner until collected, whereupon ownership passes to the waste collection authority. The decision of the English Court of Appeal in *Williams v Phillips*⁷² is the leading authority in this regard.⁷³ Here, the

67 See J Griffiths-Baker, “Divesting Abandonment: An Unnecessary Concept?” (2007) 36(1) Common Law World Review 16 at 23 *et seq.* The author concludes thus (at pp 25–26): “The foregoing analysis suggests that there is no need for the law to employ the concept of divesting abandonment to explain how ownership in abandoned property passes. As the discussion of the Commonwealth cases shows, much can be said for dealing with such situations through the concepts of gift, sale, contract and estoppel, rather than divesting abandonment. ... In conclusion, therefore, the concept of divesting abandonment is unnecessary and has no obvious role to play. This may, in part, explain the dearth of English cases in this area.”

68 For a recent illustration on how the doctrine of proprietary estoppel may be pleaded, albeit unsuccessfully, against a (long overdue) claim for a share of copyright royalties in a musical work, see *Fisher v Brooker* [2009] 1 WLR 1764.

69 See the examples cited by Sir William Blackstone at para 28 of this article.

70 See J E Penner, *The Idea of Property in Law* (Oxford University Press, 1997) at p 79.

71 *Cf* also the judicial sentiments expressed in North America, Australia and New Zealand on this matter, discussed above.

72 (1957) 41 Cr App Rep 5.

73 There are, of course, more recent examples. In December 1992, a private detective was fined £150 for taking a newspaper executive’s domestic refuse as part of an industrial espionage plot (see <<http://www.independent.co.uk/news/uk/private-detective-stole-editors-rubbish-bags-1564956.html>> (accessed 3 January 2011) and <<http://www.independent.co.uk/news/uk/detective-fined-for-rubbish-theft-1565100.html>> (accessed 3 January 2011)). There was also the case of Benjamin Pell (dubbed “Benji the Binman” by the press) that occurred in December 1999 wherein Pell was convicted of theft of confidential waste and fined £20 (see
(*cont’d on the next page*)

defendants, who were employed as refuse collectors, had removed for their own benefit certain commercially valuable items which they found in the rubbish they had collected on behalf of their employer (a practice known as “totting”). The defendants were charged with and convicted of larceny (theft).⁷⁴ The learned Lord Chief Justice, Lord Goddard, was of the following opinion (which merits a full citation):⁷⁵

The first point that is taken here, that the property was abandoned, is on the face of it untenable. Of course, that is not so. If I put refuse in my dustbin outside my house, I am not abandoning it in the sense that I am leaving it for anybody to take it away. *I am putting it out so that it may be collected and taken away by the local authority, and until it has been taken away by the local authority it is my property. It is my property and I can take it back and prevent anybody else from taking it away.* It is simply put there for the Corporation or the local authority, as the case may be, to come and clear it away. Once the Corporation come and clear it away, it seems to me that *because I intended it to pass from myself to them, it becomes their property.* Therefore, there is no ground

<<http://www.independent.co.uk/news/man-obsessed-with-rubbish-fined-for-aitken-papers-theft-1132292.html>> (accessed 3 January 2011)). As the judge said when convicting Pell: “You are well aware now that what people throw away still belongs to someone, and that when they put discarded paper among their rubbish that still belongs to them. I don’t think I need say anything further.” More recently, William Willis admitted to stealing household items from Calderdale Council waste site in Halifax in October 2008. He was subsequently given a community order for 12 months with 50 hours of unpaid work and ordered to pay £60 costs (see <<http://www.halifaxcourier.co.uk/news/Rubbish-thief.4581488.jp>> (accessed 3 January 2011) and <<http://www.halifaxcourier.co.uk/news/Man-caught-stealing-rubbish-from.4638143.jp>> (accessed 3 January 2011)).

- 74 As Lord Goddard CJ famously said in *Ellerman’s Wilson Line Ltd v Webster* [1952] 1 Lloyd’s Rep 179 at 180: “[Y]ou cannot be charged with stealing abandoned property.”
- 75 (1957) 41 Cr App Rep 5 at 8. *Cf* Anstead J, dissenting, in *State of Florida v Schultz* 388 So 2d 1326 at 1330 (1980): “In my view, a homeowner, upon placing items in a closed garbage container and placing the container in a position on his property where the container can be conveniently removed by authorized trash collectors, is entitled to reasonably expect that the container and the trash therein *will be removed from his property only by those authorized to do so*, and that such trash will be disposed of in the manner provided by ordinance or private contract. By sealing the containers in a secure manner and placing the containers on his own property, the owner has done everything within his own means to insure the privacy of the contents thereof, short of delivering the containers to a central disposal site himself.” [emphasis added] *Cf*, further, Ang J’s remarks in *Vestwin Trading Pte Ltd v Obeji Melissa* [2006] 3 SLR(R) 573 at [27]: “Putting rubbish out for collection by refuse collection personnel is not an abandonment because there is no intent to relinquish the goods absolutely but only conditionally for the purpose of such collection.” Also, see [2006] 3 SLR(R) 573 at [31]: “[T]he plaintiffs retained the right to possess the documents even while they were in the bin centre awaiting collection. To my mind, there was no doubt that if, at any stage prior to collection, the plaintiffs had asked for the trash to be returned, they would have been well entitled to the same.” See also A Reed & B Fitzpatrick, *Criminal Law* (London: Sweet & Maxwell, 3rd Ed, 2006) at p 444.

for saying that this is abandoned property. As long as the property remains on the owner's premises, it cannot be abandoned property. *It is a wholly untenable proposition to say that refuse which a householder puts out to be taken away is abandoned.* Very likely he does not want it himself and that is why he puts it in the dustbin. *He puts it in the dustbin, not so that anybody can come along and take it, but so that the Corporation can come along and take it.* [emphasis added]

33 In rejecting the notion of abandonment, Lord Goddard preferred to equate the act of rubbish disposal with the making of a "gift" (which entails an intentional transfer of property by delivery). The homeowner, instead of abandoning his rubbish *res derelictae* to all and sundry, is taken to have made an outright "gift" of it to the trash collector. Accordingly, the trash collector's subsequent collection and disposal of the trash at a designated facility can be viewed simply as an *extension* of the homeowner's own interest and purpose in disposing of his trash by the curbside (which would, in any event, accord with the homeowner's original intentions).⁷⁶

34 The numerous cases of theft in England arising from dumpster diving demonstrate that English criminal law – whilst recognising the existence of the doctrine of "divesting abandonment" – does not so readily infer, from the mere fact that rubbish has been put out for collection, an intention on the part of the homeowner to unconditionally abandon the rubbish.⁷⁷ Indeed, one must assume that homeowners do not ordinarily abandon their rubbish to all and sundry and for all purposes (even if they intend to make no further use of the rubbish themselves), but instead intend for their rubbish to be dealt

76 See also J E Penner, *The Idea of Property in Law* (Oxford University Press, 1997) at pp 88–90. In particular, Penner asserts thus (at p 89): "[W]hen we give something to someone, we treat the use of the donee *as our own use*. A gift constitutes the ultimate adoption of another's use as one's own. ... The important point about gifts is that, even though final and ultimate, they essentially *refer* to the donor's intentions and purposes, and so are to be regarded as dispositions of *his* property." [emphasis in original] And further (at p 90): "Giving is not mere abandonment of property to others, involving no interests of the donor." In making a gift of property (as opposed to merely abandoning it), the donor still retains an interest in the way the donee chooses to deal with the property (even though the donor cannot determine, nor have any control over, precisely how the property ought to be used), because the donee's use/disposition of the property nevertheless implicates the interests of the donor. See, further, *Halsbury's Laws of England* vol 35 (Butterworths LexisNexis, 4th Ed Reissue, 1994) at para 1225: "Abandonment of goods takes place when possession of them is quitted voluntarily without any intention of transferring them to another."

77 Interestingly, s 60 of the UK Environmental Protection Act 1990 (c 43) actually prescribes that it is an offence to interfere with ("sort over or disturb") the contents of waste receptacles provided by a waste collection authority (whether for public or private use), unless prior permission has been obtained from the waste collection authority.

with in the anticipated and usual fashion. In the case of rubbish left in waste receptacles outside one's home or in the common rubbish dump of a building, this would normally entail proper collection and disposal by the local authority.⁷⁸ It is inconceivable, for reasons which will be canvassed below, that a homeowner would have intended to grant a "licence to the first man"⁷⁹ to take these trash bags as his own – *ie*, that the owner of trash is *completely indifferent* as to who may subsequently appropriate the contents of his trash bags. More likely, it is the homeowner's intention to convey property in the rubbish specifically and directly to the trash collector for subsequent disposal at a designated facility.⁸⁰ But up until then, the trash bags remain the property of the homeowner who continues to exercise (not actual but constructive) control over them, thereby retaining the intention to exclude others from interfering with his trash.⁸¹

IV. Rubbish disposal and abandonment in Singapore: A suggested approach

35 Having examined the judicial and academic treatment of the law of abandonment in several different jurisdictions, we now turn to the Singapore context in our attempt to answer the question which was posed at the outset of this article: to what extent does the act of rubbish disposal – whether in trash bags left by the curbside outside one's home or at the common rubbish dump of a residential/commercial building – indicate a clear and specific intention on the part of the owner to abandon not just possession of the property, but also ownership thereof? From the foregoing analysis, there appears to be stark disparities in judicial opinion as to whether there is any incidence of "divesting abandonment" whenever rubbish is disposed of in such a manner. The courts in the US and Canada have consistently answered this question in the affirmative, whilst the converse is true for the English courts. The present author, however, submits that the latter view is more defensible and hence preferable.

78 "Trash bags on the curb might be considered as abandoned property. True, abandoned property is available to anyone who finds it. But trash bags were put on the curb with the reasonable expectation that the municipal trash collection service – and no one else – would pick up the bags and dispose of them anonymously. ... Trash is *not* abandoned property, because it is *not* available to anyone who finds it." [emphasis in original] (see <<http://www.rbs2.com/privacy.htm>> (accessed 3 January 2011))

79 Adopting the language of Sir Frederick Pollock in (1894) 10 LQR 293.

80 This view arguably accords with the Proculian notion of *traditio incertae personae* in Roman law.

81 Cf Pollock and Wright's explanation of "constructive possession" in F Pollock & R S Wright, *An Essay on Possession in the Common Law* (Oxford: Clarendon Press, 1888; FB Rothman & Co, 1985) at p 145.

36 It may well be that when trash is deposited in receptacles by the curbside for subsequent collection and disposal, the intuitive feel is that such property must be deemed abandoned by its original owner, who takes no further interest in what actually happens to it. After all, as Justice White reminds us, “[i]t is common knowledge that plastic garbage bags left on or at the side of a public street are readily accessible to animals, children, scavengers, snoops, and other members of the public”.⁸² However, this perception is likely to have been premised upon a mere gut reaction, without more. It is plausible, as this author respectfully suggests, that the views adopted by the US judiciary insofar as the doctrine of abandonment in the property law context is concerned have been coloured somewhat by their own views *vis-à-vis* abandonment in the constitutional, Fourth Amendment context. Because the owner of trash which has been made accessible to members of the public (such trash being placed for collection in an unsecured, public area) cannot reasonably claim to possess a legitimate expectation of privacy thereto,⁸³ the owner must likewise be taken to have unconditionally abandoned all proprietary rights in the trash to all and sundry.⁸⁴

37 To this argument that depositing trash bags by the curbside or in unsecured waste receptacles would seriously jeopardise the homeowner’s proprietary claim in conversion against a third party dumpster diver, the response is fairly pragmatic. The rubbish has been so deposited by the homeowner – albeit in a manner that is accessible to the public – for the *specific* purpose of garbage collection. Indeed, would it be practicable for trash collectors to discharge their responsibilities if these trash bags had instead been left within the property confines of the home (or, otherwise, in an area which is not readily accessible to others)? As one online commentator perceptively pointed out:⁸⁵

The reason that trash bags are placed outside the curtilage is that municipal ordinances *require* trash to be placed at the curb, for the convenience of collection personnel, so trash can be collected in an efficient and orderly way. The choice of location is *not* an expression of residents’ desires to forfeit any privacy interest in the contents of their trash. [emphasis in original]

38 Therefore, a homeowner who puts rubbish out for collection does not evince a clear and specific intention to abandon it as much as he needs to accomplish a *practical and necessary step* for the garbage to be taken away for disposal. Putting rubbish out for collection represents

82 *California v Greenwood* 486 US 35 at 40 (1988).

83 See *California v Greenwood* 486 US 35 (1988).

84 See the discussion of US case law at paras 11–15 of this article.

85 See <<http://www.rbs2.com/privacy.htm>> (accessed 3 January 2011). See also *Sharpe v Turley* 191 SW 3d 362 at 368 (2006).

the most practical means of waste disposal, particularly for the domestic waste generator.

39 On further reflection, there may indeed be other compelling reasons why homeowners are not always entirely indifferent as to the fate of their domestic waste (*ie*, as to who may come along and appropriate the contents of their trash bags). Conventional wisdom dictates that property which has been abandoned as utter trash is generally regarded as having no commercial value (or zero economic value) in the hands of the original owner.⁸⁶ It is obviously much more difficult to infer that there is an intention to abandon a valuable chattel as opposed to a less valuable one. However, not all domestic waste is necessarily valueless or worthless. The homeowner may well have disposed of documents (even if economically worthless to him) which contain private or confidential information, or information that is otherwise of some personal value or importance to him. Some examples may include identity card numbers, dates of birth, credit card bills with credit card numbers, bank account details, passwords, medical history and medical prescriptions, personal letters and photographs, *etc.*⁸⁷ The intrinsic value in such forms of information can serve as a significant commodity in its own right and this is particularly true as regards

86 "Putting material in the garbage signifies that the material is no longer something of value or importance to the person disposing of it, and that there is no reason or need to retain it." (*per* Rowles JA in the British Columbia Court of Appeal in *R v Krist* (1995) 42 CR (4th) 159 at [28])

87 An online commentator has compiled a (non-exhaustive) list of items in household trash which people would routinely regard as private or personal (see <<http://www.rbs2.com/privacy.htm>> (accessed 3 January 2011)):

- (1) empty prescription medicine bottles, which are always labelled with the individual's name and may be labelled with the name and dosage of the drug, so that someone who searches the trash may infer the individual's medical condition. Particularly in the case of sexually-transmitted diseases or psychiatric disorder, disclosure of the individual's medical condition could cause embarrassment;
- (2) credit card receipts, which have the person's name and credit card data; someone who searches the trash could use these data to order merchandise by telephone;
- (3) letters that contain confidential information on financial, political, religious, family, or romantic topics;
- (4) empty containers of alcoholic beverages, which could be embarrassing in a town with a substantial number of people who disapprove of alcohol for religious or moral reasons;
- (5) empty boxes for condoms, birth control pill packages, empty containers of spermicide, and other contraceptive materials that could be embarrassing, but are legal to possess and use;
- (6) telephone invoices, with a list of all long-distance numbers called, with the date and duration of the call;
- (7) paper indicating membership in political or religious groups.

private and sensitive information concerning celebrities and other public figures.⁸⁸

40 The retort to this might well be that if a homeowner truly wants to retain ownership of his trash, he ought to have taken affirmative steps to do so. Insofar as private and sensitive information is concerned, it may be argued that even more effort and vigilance is required to protect such information from abandonment – eg, by ensuring that all confidential documents are shredded or destroyed prior to disposal.⁸⁹ The question, of course, is whether the generator of trash ought to be saddled with such a duty. Must individual homeowners, over and above all corporate tenants in commercial buildings, adopt such costly and cumbersome security measures (such as investing in a paper shredder) or be otherwise penalised for their nonchalance and deprived of their property rights in trash which has been put out for collection?⁹⁰ Notably, the UK has an answer to this conundrum in the guise of s 11(1) of the Torts (Interference with Goods) Act 1977, which states that “[c]ontributory negligence is no defence in proceedings founded on conversion, or on intentional trespass to goods”. This, it is submitted, must be the right approach to adopt as the carelessness of the garbage generator should in no way affect his (common law) ownership rights in property.⁹¹

88 As the anonymous reviewer rightly pointed out, resolving dumpster diving issues through the vehicle of property law is certainly not the most ideal proposition in every case, especially given the varying approaches to the application of the doctrine of abandonment. This is perhaps where the law of privacy (or the law protecting private/personal, as opposed to confidential, information) – as yet undeveloped in Singapore – may have a useful role to play. However, owing to constraints of space, an exploration of this fascinating area of the law in relation to dumpster diving will have to be undertaken elsewhere.

89 “When people place ... personal items in an opaque plastic bag on the curb for trash collection, they are expressing their continuing expectation of privacy. However, the holdings of [US] courts that there is no expectation of privacy for garbage means that, to protect their privacy, individuals must purchase and routinely use a paper shredder to destroy receipts and letters, before placing them in the trash. Other materials, such as containers of prescription medicine, are more difficult to destroy beyond recognition. Instead of requiring such contortions from individuals, the law should recognize the wrongfulness of such intrusions into garbage.” (see <<http://www.rbs2.com/privacy.htm>> (accessed 3 January 2011))

90 “A common way for people to steal credit card numbers (in the days before electronic processing of credit card transactions) was to rummage through the trash of retail merchants and find the carbon paper from credit card receipts. Who has committed the greater wrong: (1) the business who carelessly discarded confidential information or (2) the punk who deliberately searched through garbage in search of the confidential information to use for unlawful purposes?” (see <<http://www.rbs2.com/privacy.htm>> (accessed 3 January 2011))

91 The garbage generator’s carelessness in failing to safeguard the confidentiality of the information found in trash should only, if at all, affect his claim in equity against the third party dumpster diver for breach of confidence. See, in this regard, *Faccenda Chicken Ltd v Fowler* [1987] Ch 117; *Malone v Metropolitan Police* (cont’d on the next page)

41 Let us reconsider the above retort. If it were true that a homeowner who wants to retain ownership of his trash must take affirmative steps to do so, then, logically, the clearest manifestation of this intention to exclude others from interfering must take the form of a notice/label (to be pasted on the waste receptacle) to the effect that all trash bags deposited therein remain the property of the homeowner until their collection by the trash collector and have not, in fact, been abandoned. Is it, however, necessary for the homeowner to go to such lengths to notify the public of his intentions regarding the fate of the rubbish of which he has disposed? This would appear to be a ludicrous proposition.⁹² The analogy to this, by extension, would be to argue that just because a copyright owner – who has uploaded a copyright work on the Internet for others to access (thereby making the work available to the public) – has not explicitly declared on his website that he intends to assert copyright in the work (eg, by clearly displaying the relevant © notice), he is deemed to have abandoned his copyright such that any internet user can then gain unencumbered access to the work and exploit it for all purposes. Again, an absurd proposition.

42 Therefore, the better view must be that putting rubbish out for collection – contrary to US case authorities – does not amount to an abandonment of ownership rights in trash. In addition to all the reasons cited above, it could further be argued that the act of rubbish disposal, in and of itself, is far too *equivocal* in establishing a specific intention on the part of the original owner to abandon property. Unsurprisingly, rubbish disposal can be effected by someone other than the true owner himself – eg, by people over whom the owner has control or influence, such as a domestic helper (in the case of private dwellings) or an office secretary (in a commercial setting). Let us assume that the domestic helper or office secretary had inadvertently discarded a bag full of confidential documents, thinking that it was a pile of wastepaper. Fortunately, the owner discovers the mistake prior to refuse collection. Is it, however, right to suggest that the mere act of putting trash bags out for collection (not by the owner himself but by his mistaken domestic helper or office secretary, as the case may be) is a sufficiently strong and,

Commissioner (No 2) [1979] Ch 344; *Francome v Mirror Group Newspapers Ltd* [1984] 1 WLR 892. See also *United States v Thomas* 864 F 2d 843 at 845 (1989); *City of St Paul v Vaughn* 306 Minn 337 (1975).

92 Cf the dicta of Justice Lang-Miers in *Sharpe v Turley* 191 SW 3d 362 at 368 (2006): “Sharpe contends that the items were in a publicly accessible dumpster, that the Diocese did not post a ‘No Trespassing’ sign, did not object to his removal of the items until after his deposition had been taken, did not order confidential disposal to protect privacy, and did not prosecute Sharpe for taking the items. But whether or not a ‘no trespassing’ sign was posted on the dumpster is not determinative of whether the items were abandoned. The absence of a ‘no trespassing’ sign on private property does not mean that the owner gives the public permission to enter and remove items from that property.”

more importantly, unambiguous indication of the owner's intention to voluntarily abandon ownership of those documents? Surely not. Indeed, if the very act of rubbish disposal so clearly indicates an abandonment of property rights in trash, then why is there a need for dumpster divers and private investigators to adopt such surreptitious and covert measures in obtaining information from the trash bin?

43 Because proof of an intention to abandon property is, ultimately, a factual inquiry, an arbiter of fact may well reach a different conclusion if the homeowner, instead of depositing trash bags at the curbside just outside his home, chooses to dump them on a public street some distance away, in the middle of a public highway or right into the open sea. It must be fairly common to observe, in many parts of the world, pieces of worn-out furniture (eg, sofas and chairs) or dilapidated and broken-down vehicles left along the roadside in some rural part of town. The circumstances surrounding the discarding of these chattels should raise the irresistible inference that the original owners had clearly abandoned them – both possession and ownership. In any event, it is reasonable to assume that someone who discards a chair in the middle of nowhere can envision any passer-by picking it up, and to this, he has no objections at all.⁹³ The same, however, cannot be said for trash bags left in waste receptacles outside residential property, especially when the “finder” arguably knows to whom those bags belong.

44 If the preferable approach for Singapore is that there is no question of abandonment whenever rubbish is put out for collection, then it must follow that all the rubbish deposited in domestic waste receptacles or at the common rubbish dump of a residential/commercial building, pending collection, remains the property of the original owner. This view is, of course, in keeping with the general approach taken by the English courts.⁹⁴ Ownership in trash will pass only at the point of collection, as it must be the garbage generator's intention to convey property in the rubbish directly to the trash collector – and to no one else – for subsequent disposal.

45 There is also additional legislative support for this proposition in Singapore. Reference may be made to the Environmental Public Health Act 1987⁹⁵ and specifically to ss 8(2)(a) and 16(1)

93 This is similar to the case where a finder chances upon and appropriates property which appears to have been “lost” by its original owner (who cannot be identified and located), whereupon it becomes the property of the finder – see *Armory v Delamirie* (1722) 1 Stra 505; *Bridges v Hawkesworth* (1851) 21 LJQB 75; *Moffatt v Kazana* [1969] 2 QB 152; *Parker v British Airways Board* [1982] 1 All ER 834.

94 See, in particular, *Williams v Phillips* (1957) 41 Cr App Rep 5, as well as the discussion of English case law at paras 25–34 of this article.

95 Cap 95, 2002 Rev Ed. Cf also s 60 of the UK Environmental Protection Act 1990 (c 43).

thereof.⁹⁶ Section 8(2)(a) provides that “no person other than a waste collector licensee whose specified area in its licence includes premises in the area shall collect or remove any refuse or waste”, whereas s 16(1) states that “[a]ll refuse, waste and filth of every sort and any matter or thing collected by the employees, contractors or agents of the Agency from streets, buildings or any premises or place or brought by any person to any public disposal facility shall be the property of the Agency which may sell or dispose of the refuse, waste and filth as it thinks fit”.⁹⁷ In other words, there is existing legislation in Singapore to the effect that only the authorised trash collector (and no one else, let alone a dumpster diver) is allowed to collect and remove refuse from designated premises, and that the refuse so collected becomes, by law, the property of the local authority (namely, the National Environment Agency).

V. Abandonment of intellectual property rights

46 The discussion in this next part of the article focuses on how the notion of abandonment – as it is understood and applied in relation to physical property – may also operate in the realm of intangible property. For example, under what circumstances can it be said that an owner of intellectual property (“IP”) has unconditionally abandoned the ownership of his IP? We will briefly examine this question in the context of the law of trade marks and the law of copyright. We have seen, from the earlier analysis, that the burden of proof for the defence of abandonment is a relatively onerous one. Much turns on whether the defendant is able to establish, on the facts, a specific and unequivocal intention on the part of the original owner to abandon the property in question. It appears that the same exacting standard is required for the abandonment of IP rights.

47 According to Chitty J in *Mouson & Co v Boehm*,⁹⁸ “the question of abandonment [of a trade mark] is one of intention to be inferred from the facts of the particular case”. And although the non-use of a trade mark *per se* cannot be equated with an act of abandonment, it has been held that lengthy periods of non-use (21 years in this instance) may, by inference, support a claim that the trade mark in question has

96 See also s 12(1) of the Environmental Public Health Act (Cap 95, 2002 Rev Ed) which suggests that it is the homeowner who assumes responsibility for the refuse generated in the home and, by extension, for the refuse that is subsequently deposited in waste receptacles left by the curbside, at least until the time of refuse collection.

97 Section 2 of the Environmental Public Health Act (Cap 95, 2002 Rev Ed) defines “Agency” to mean “the National Environment Agency established under the National Environment Agency Act 2002 (Act 4 of 2002)”.

98 (1884) 26 Ch D 398 at 405.

been abandoned.⁹⁹ These judicial sentiments also find support in statute law. Insofar as registered trade marks are concerned, it is possible for a proprietor to abandon and lose these registered rights by the non-use of a trade mark for a continuous period of five years.¹⁰⁰

48 Turning to the law of copyright, the courts in the US have long recognised that a copyright owner may voluntarily abandon his copyright. Whilst it is true that the provisions of the US Copyright Act 1976 are silent on this matter, there is a widely held judicial view of abandonment.¹⁰¹ For example, the 9th Circuit in *Hampton v Paramount Pictures Corp* was of the following opinion:¹⁰²

Rights gained under the Copyright Law ... may be abandoned. Abandonment of such rights, however, must be manifested by some overt act indicative of a purpose to surrender the rights and allow the public to copy.

49 What is, however, more controversial under US law is whether there is any possibility of a limited or partial abandonment of copyright, “such as an abandonment only in a particular medium, or only as regards a given mode of presentation”.¹⁰³ The courts have generally either rejected the doctrine of limited abandonment without explanation or determined that the doctrine need not be addressed because of insufficient evidence to support a finding of abandonment by the copyright owner.¹⁰⁴

50 The law in England appears to mirror that in the US. According to *Copinger and Skone James on Copyright*,¹⁰⁵ “an author may by his conduct, or by his express desire, abandon his copyright, and give to the public a right to publish his work before the time when his copyright

99 See *Re Fortuna-Werke Spezialmaschinenfabrik AG's Application* [1957] RPC 84 at 88. See also *Silverman v CBS Inc* 870 F 2d 40 at 45–47 (1989).

100 See, eg, Singapore Trade Marks Act (Cap 332, 2005 Rev Ed) s 22(1)(a).

101 See the discussion of US case law in M B Nimmer & D Nimmer, *Nimmer on Copyright* (Matthew Bender, Rev Ed) at para 13.06 (“The Defence of Abandonment of Copyright”).

102 279 F 2d 100 at 104 (1960). See also *National Comics Publications, Inc v Fawcett Publications, Inc* 191 F 2d 594 at 598 (1951).

103 M B Nimmer & D Nimmer, *Nimmer on Copyright* (Matthew Bender, Rev Ed) at para 13.06.

104 See, eg, *Paramount Pictures Corp v Carol Publishing Group* 11 F Supp 2d 329 at 337 (1998). *Contra* L P Loren, “Building a Reliable Semicommons of Creative Works: Enforcement of Creative Commons Licenses and Limited Abandonment of Copyright” (2007) *Geo Mason L Rev* 271 (especially at p 319 *et seq*), who argues – by relying on the 9th Circuit’s decision in *Micro Star v Formgen, Inc* 154 F 3d 1107 (1998) – for a doctrine of limited or partial abandonment of copyright for works which have been placed in the Creative Commons.

105 *Copinger and Skone James on Copyright* (London: Sweet & Maxwell, 15th Ed, 2005) at para 6-85.

would expire". However, akin to the difficulties in proving an abandonment of physical property, the proof of a copyright owner's intention to dedicate his copyright to the public is not so easily established.¹⁰⁶ Indeed, and unlike the law of trade marks,¹⁰⁷ the mere non-exploitation by the copyright owner of his exclusive rights will not suffice for this purpose.¹⁰⁸ The House of Lords recently affirmed this proposition in *Fisher v Brooker*,¹⁰⁹ where the claimant – the composer of the famous organ solo in the song "A Whiter Shade of Pale" – finally achieved the recognition that he deserved notwithstanding the extraordinary delay in making his claim for a share of future copyright royalties in the musical work (of which the claimant was a joint author).¹¹⁰ Apparently, the claimant's wait for 38 years before asserting his copyright in the work did not constitute an abandonment of copyright, despite the various equitable defences raised by the defendant (including laches, proprietary estoppel and acquiescence) which the House, of course, rejected.

51 To further illustrate the difficulties in ascertaining precisely what an outright abandonment of copyright entails, consider the following example. Let us assume that the owner of copyright in a computer program voluntarily decides to share this piece of software with the public without any restrictions upon its use, eg, by making it available as "freeware"¹¹¹ on the Internet (with explicit notification to this effect). It may be argued, on one view, that there is in this instance a clear intention to "abandon" copyright in the computer program to the world at large, coupled with an overt act by which such an intention is carried into effect. Does this, however, mean that the copyright owner cannot later change his mind and "retrieve" his computer software from the Internet, thereby reasserting his copyright in the work?¹¹²

106 *British Leyland Motor Corp v Armstrong Patents Co Ltd* [1982] FSR 481 at 492; *Plix Products Ltd v Frank M Winstone (Merchants)* [1986] FSR 63 at 87–88.

107 Understandably so, since the primary function of trade marks is to serve as indicators of source in trade and commerce.

108 See *Weldon v Dicks* (1878) 10 Ch D 247 (no abandonment of copyright by the non-publication of a book for a period of 12 years, during which time the book was allowed to remain out of print).

109 [2009] 1 WLR 1764.

110 The House of Lords affirmed Blackburne J's finding at trial that the claimant was a joint owner of the musical copyright in the work, with a share of 40%.

111 But not pursuant to a Creative Commons licence, since different considerations may apply – see L P Loren, "Building a Reliable Semicommons of Creative Works: Enforcement of Creative Commons Licenses and Limited Abandonment of Copyright" (2007) *Geo Mason L Rev* 271.

112 For a US perspective on the various copyright issues raised by public domain software and shareware, see E Samuels, "The Public Domain in Copyright Law" (1993) 41 *Journal of the Copyright Society of the USA* 137. See also L P Loren, "Building a Reliable Semicommons of Creative Works: Enforcement of Creative Commons Licenses and Limited Abandonment of Copyright" (2007) *Geo Mason L Rev* 271.

52 In this author's view, there is no reason, in principle, why the copyright owner cannot subsequently reassert his copyright thus. Of course, this is only possible in the *prospective* sense as against those internet users who continue to download and use the software with the knowledge – actual or constructive – that copyright has been reclaimed by the author. There can, obviously, be no retrospective claim to copyright because of the invocation of several possible defences (namely, waiver, express/implied licence, as well as the equitable doctrines of reliance and estoppel). It is perhaps only in this limited sense that the copyright owner can loosely be said to have “abandoned” his copyright in the computer program – where abandonment operates as a form of “suspension” of rights and the copyright owner is merely estopped from enforcing his copyright retrospectively.

53 Therefore, the alternative view in such an instance is that the owner of copyright in the computer software did not quite “abandon” his copyright (as the word is traditionally understood in the legal sense) when he made the software available to the public on the Internet as “freeware”. Rather, in retaining copyright all along, the copyright owner had merely granted an open and unencumbered *licence* to all Netizens to access and use his computer software at no cost and without the need to seek permission. As such, the copyright owner can always, subject to arguments of reliance and estoppel in equity, revoke this licence at a later time (with explicit and adequate notice) and subsequently reassert his copyright, prospectively.

54 Finally, let us consider the intriguing observation made by Whitford J at first instance in the well-known decision of *Catnic Components Ltd v Hill & Smith Ltd*,¹¹³ in which the defendant (in two design drawings of lintels) was alleged to have infringed the plaintiff's copyright in the drawings of lintels in their brochures (which drawings subsequently formed the subject of their product patent). The learned judge posed the question thus: what “is the effect, if any, of the publication of the patent drawings on the enforceability by the plaintiffs of their independent copyright in substantially identical drawings?”¹¹⁴ It is incontrovertible that by applying for and procuring the publication of a patent, a patentee is deemed to have dedicated his invention to the public, subject only to his 20-year monopoly under the patent if it is confirmed. And after the expiration of the patent monopoly, public policy arguably dictates that any independent copyright subsisting in drawings that were reproduced in the patent specification ought to cease and be likewise dedicated to the public, or, in the words of Whitford J, “there must on the expiry of the patent be an implied licence by the

113 [1978] FSR 405.

114 [1978] FSR 405 at 427.

patentee covering any use made of the patent drawing”.¹¹⁵ What remains unclear, though, is whether the artistic copyright in these separate and independent drawings should continue to subsist alongside the patent whilst the patent is still in force. Interestingly, Whitford J expressed the view that once the patent specification is published, a patentee is deemed to have abandoned his copyright in drawings which are the equivalent of the patent drawings.¹¹⁶

55 With respect, the present author does not share this view. The patentee ought to retain his independent copyright to these drawings (*ie*, no abandonment) despite the grant of the patent – he should not be put to an election between two concurrent and legitimate rights.¹¹⁷ In the event of an infringement, the patentee’s preference is, of course, to bring suit under the patent (which confers stronger monopoly rights) rather than to rely upon coterminous copyright protection (which, *inter alia*, requires proof of copying). It may also not be worthwhile for the patentee to pursue his claim in copyright (against three-dimensional copies of the two-dimensional artistic works which have been reproduced in the patent specification)¹¹⁸ since the defendant may arguably raise the defence of public interest provided for in s 171(3) of the UK Copyright, Designs and Patents Act 1988.¹¹⁹ However, notwithstanding the veracity of these arguments, the patentee cannot and should not be deemed to have abandoned his copyright in the drawings upon the publication of the patent specification because of the distinct possibility that the patent, even if it were to be granted, may still be subsequently invalidated (*eg*, for want of novelty or inventive step).¹²⁰ If this were to happen, the patentee’s only recourse would be to fall back on his co-existent copyright protection in these separate and independent drawings, or be otherwise left without any remedy against the alleged infringer. Surely, the nullity of the patent coupled with the

115 [1978] FSR 405 at 427. See also the recommendation of the 1977 Copyright Committee, Cmnd 6732 at para 915, as well as the decision of Walsh J in the Canadian Federal Court in *Rucker Co v Gavel’s Vulcanizing Ltd* (1985) 7 CPR (3d) 294 at 312.

116 [1978] FSR 405 at 427–428.

117 See, *eg*, *Werner Motors Ltd v AW Gamage Ltd* (1904) 21 RPC 621.

118 There is no infringement of artistic copyright in these two-dimensional drawings where a published patent specification is reproduced in two dimensions – see the Singapore Patents Act (Cap 221, 2005 Rev Ed) s 108(6).

119 It may be argued, on grounds of public interest, that “... a patentee necessarily makes an election accepting that, in return for a potential monopoly, upon publication, the material disclosed by him in the specification must be deemed to be open to be used by the public ...” (*Catnic Components Ltd v Hill & Smith Ltd* [1978] FSR 405 at 427, *per* Whitford J). Although the Singapore Copyright Act 1987 does not contain an identical provision, it is submitted that the generic fair dealing defences in the statute are sufficiently broad to encompass considerations of public interest.

120 See, *eg*, Singapore Patents Act (Cap 221, 2005 Rev Ed) ss 80 and 82.

deprivation of any form of copyright protection would be too costly a price for the inventor to pay.¹²¹ In any event, it was pointed out in *Copinger and Skone James on Copyright* that Whitford J's views, which have not been subsequently endorsed in the courts of England and indeed elsewhere, were "*obiter* to the actual decision in the case, and the Court of Appeal, whilst upholding the learned judge's finding of non-infringement, declined to comment on the question of abandonment".¹²² The better view, therefore, is that it is not at all appropriate to infer an intention on the part of the patentee to abandon copyright just by the mere application for a patent or publication of the patent specification.

VI. Conclusion

56 It has been argued in this article that there is no good reason why the common law should not independently recognise the doctrine of (unilateral) "divesting abandonment". However, given that it is difficult to predict with any certainty how much proof is required to establish a specific and unequivocal intention on the part of the original owner to abandon the property in question, it is envisaged that the courts (especially in the UK) will be slow to make any finding of abandonment except in the clearest of cases.

57 In the context of trash bags which have been left by the curbside or at a common rubbish dump for collection, the better view is that notwithstanding the absence of physical control or actual possession, there is still no definite intention on the part of the owner to abandon all rights of ownership in the rubbish (*res derelictae*) to the world at large; property in trash remains with the original owner who can always reclaim possession. Instead, the deposit of trash bags in such a manner

121 Unless, of course, the copyright statute has expressly provided thus – for example, as was the case in Singapore in respect of industrially applied designs (which are also two-dimensional artistic works) of a functional nature: see Copyright Act (Cap 63, 2006 Rev Ed) s 70. This view is also shared by the learned authors in S Ricketson & C Creswell, *The Law of Intellectual Property: Copyright, Designs and Confidential Information* (Sydney: Law Book Company, looseleaf) at para 14.450: "[T]he most appropriate solution is by way of legislative amendment rather than by seeking to stretch and distort existing legal doctrines to achieve this result." See, further, ss 73 and 74 of the Copyright Act which were enacted to prevent or reduce the overlap between the protection conferred by copyright and registered designs.

122 See *Copinger and Skone James on Copyright* (London: Sweet & Maxwell, 15th Ed, 2005) at para 6-85. Indeed, Buckley LJ in the Court of Appeal called this an "interesting question" but did not wish to express any concluded view on the matter (see [1979] FSR 619 at 628). See, further, *House of Spring Gardens Ltd v Point Blank Ltd* [1983] FSR 213 at 269–270 (High Court of Ireland); *Ogden Industries Pty Ltd v Kis (Australia) Ltd* [1983] FSR 619 at 634–636 (Supreme Court of New South Wales); *Wham-O Manufacturing Co v Lincoln Industries Ltd* [1982] RPC 281 at 297–299 (High Court of New Zealand); *Interlego AG v Tyco Industries Inc* [1987] FSR 409 at 455–457 (Court of Appeal of Hong Kong).

and in an environment that is accessible to the public represents the only practical means to facilitate refuse collection and disposal, and also signifies the garbage generator's intention to transfer property in the rubbish – much like delivering a “gift” – directly to the trash collector at that time (*traditio incertae personae*). It is therefore submitted that there is no abandonment of trash under such circumstances and a third party dumpster diver may well be faced with an action for conversion or a charge of theft. May it also be mentioned in passing that the act of dumpster diving involves, particularly in cases of competitive intelligence gathering and industrial espionage, serious ethical considerations, such that it may be preferable to discourage such behaviour in the first instance as a matter of public policy.¹²³

58 Insofar as the abandonment of IP rights is concerned, it appears that the courts are generally reluctant, again except in the clearest of cases, to arrive at the conclusion that the proprietor has unequivocally abandoned his ownership rights in IP, particularly where copyright is at issue. The legal position in this regard is therefore not dissimilar to that concerning the abandonment of property rights in tangibles. In the recent decision of the House of Lords in *Fisher v Brooker*,¹²⁴ Lord Hope underscored the sanctity of property rights in these terms:¹²⁵

[I]t would be a very strong thing, in the absence of a proprietary estoppel, to deny [a claimant] the opportunity of exercising his right of property in his own share of the copyright. The law of property is concerned with rights in things. The distinction which exists between the exercise of rights and the obtaining of discretionary remedies is of fundamental importance in any legal system. *There is no concept in our law that is more absolute than a right of property.* Where it exists, it is for the owner to exercise it as he pleases. He does not need the permission of the court, nor is it subject to the exercise of the court's discretion. The benefits that flow from intellectual property are the product of this concept. They provide an incentive to innovation and creativity. A person who has a good idea, as Mr Fisher [the claimant] did when he composed the well-known organ solo that did so much to make the song in its final form such a success, is entitled to protect the advantage that he has gained from this and to earn his reward. *These are rights which the court must respect and which it will enforce* if it is asked to do so [even if the claimant had waited for such a long time to assert his legal right of property]. [emphasis added]

123 See *Tennant Co v Advance Machine Co Inc* 355 NW 2d 720 (1984); H Wingo, “Dumpster Diving and the Ethical Blindspot of Trade Secret Law” (1997) 16 Yale Law and Policy Review 195; A Crane, “In the company of spies: When competitive intelligence gathering becomes industrial espionage” (2005) 48 Business Horizons 233.

124 [2009] 1 WLR 1764.

125 [2009] 1 WLR 1764 at 1768.

59 A very timely reminder indeed. By way of a postscript, it may be apposite to ask whether the private investigators hired by the defendant in *Vestwin Trading Pte Ltd v Obegi Melissa*,¹²⁶ notwithstanding the issue of abandonment, had themselves committed a *trespass* (both a civil wrong as well as a criminal offence) in surreptitiously entering the common rubbish dump – which is arguably the “private” property of the building’s landlord – and retrieving the plaintiff’s trash bags. This question was not raised before the Singapore courts and may well attract attention and further inquiry on another occasion.

126 *Vestwin Trading Pte Ltd v Obegi Melissa* [2006] 3 SLR(R) 573.