

THOMAS · MORE · CHAMBERS

# CONFISCATION

**“Organized crime in America takes in over forty billion dollars a year and spends very little on office supplies”**

**Woody Allen**

**Tuesday 17<sup>th</sup> June  
6.30pm to 7.30pm**

# CRIMINAL PRACTICE GROUP



7 Lincoln's Inn Fields London WC2A 3BP

T 020 7404 7000 F 020 7831 4606

DX 90 Chancery Lane E clerks@thomasmore.co.uk

www.thomasmore.co.uk

## Confiscation – Defence Perspectives

### **Restraint proceedings**

1. Client care.
2. Negotiation with the prosecution.

### **Structure of Confiscation Process**

3. Basic structure:
  - (i) Stage 1 – Determining criminal lifestyle.
  - (ii) Stage 2 – Has the defendant benefited from criminal conduct?
  - (iii) Stage 3 – Determining the recoverable amount.
  - (iv) Stage 4 – Determining the available amount.
  - (v) Stage 5 – Encompasses post order e.g. enforcement, appeal.

### **Benefit**

4. A consideration of – May [2008] UKHL 28; Jennings [2008] UKHL 29 and Green [2008] UKHL 30, recent House of Lords decisions.

5. Reconsideration of Stanley [2007] EWCA Crim 2857 and the position of “tail-end Charlies”.
6. The impact of May; Jennings and Green in large fraud and money laundering cases.
7. The value of a mortgaged property in calculating benefit – Nadarajah [2007] EWCA 2688; Walls [2002] EWCA Crim 2456; Glatt [2006] EWCA Crim 605; Olupitan [2007] EWHC 162.
8. The perils of compensation – Nield [2007] EWCA Crim 993.
9. Profit or gross payments? – Banks [1997] 2 CrAppR(S) 110.
10. The important decisions of Green and Gabriel.

### **The Available Amount**

11. What is the available amount?
12. Process by which the court determines the available amount.

13. Market value and meaning – s.79 POCA.
14. Illicit items – The cases of Dore (1997) 2CrAppR(S); Ajibade [2006] EWCA Crim 368; Hussain [2006] EWCA 621.
15. Hidden assets – The cases of Wright [2006] EWCA Crim 1257; Barnham [2005] EWCA Crim 1049; Phillips v UK.
16. Draconian decisions to be aware of – Barwick [2001] 1 CrAppR(S) 129; Cukovic [1996] 1 CrAppR(S) 131; McQueen [2002] 2 CrAppR(S) 9.

## **Enforcement**

17. Magistrates Court powers
18. Voluntary satisfaction and the benefits of doing so.
19. Interest – CPS v City of London Magistrates Court [2007] EWHC 1924

20. Difficulties for the defendant in satisfying the order.
  
21. Reasonable time requirement and human rights perspectives – Lloyd v Bow Street Magistrates Court [2004] 1 CrAppR 11; Stone v Plymouth Magistrates Court [2007] EWHC 2519 (Admin); Crowther [2005] ECHR 53741/00; Attorney General's Reference No.2 of 2001 [2004] 1 CrAppR 132.
  
22. Enforcement receivers – Re B 1995 unreported.

### **Third Party Interests**

23. s.69 POCA and the protection of the “value” of third party interests.
  
24. Tainted gifts – Tighe [1996] 1 CrAppR(S); Lemmon 1992.
  
25. Matrimonial home – Qureshi [2005] 1 WLR 122; Re B [2008] EWHC 690 (Admin).

26. Concurrent family proceedings – Customs & Excise v A [2002] EWCA Civ 1039; CPS v Grimes; Grimes v Grimes [2003] EWCA Civ 1814; CPS v Richards [2006] EWCA Civ 849; Webber v Webber [2006] EWHC 2893 (Fam).
27. Third Parties.