Traditionally, the human body was not regarded as property by the common law. This corresponds to our intuition regarding our bodies being unique objects. A person may refer to “My Body”, but it is doubtful they mean this in the same way as when they say “My Car” or “My Phone”. The distinction was of little importance until recently given that bodies had little value. A corpse, for instance, was regarded as no different to a lump of clay and was not thought capable of constituting property. The next-of-kin of the deceased had limited rights to take possession of a dead body to ensure its prompt burial, but that was it.

Recent and rapid technological development in biotechnology has radically altered the utility and potential value of parts of the body formerly considered waste products only fit for disposal. The rights to cell cultures developed to treat disease can have billion dollar values. Inevitably, legal disputes follow as to who should have ownership of these products.

The common law rule that there is no property in the body has been used by some to justify denying the source of these materials any rights in them. However, this has not prevented third-party researchers from acquiring such rights. This creates the incongruous situation where anybody can potentially enjoy ownership (including the right to the commercial rights) of a human biological product, except the person who was its source.

An example of such a dispute is the famous case of Moore v. Regents of the University of California 793 P 2d 479 (Cal. 1990), where the plaintiff had his spleen removed in the course of cancer treatment. While he consented to the operation, he didn’t consent to the use of his cells in subsequent research. Nonetheless, his cell line was developed into a treatment with great commercial value. Moore claimed conversion of property seeking to join in the lucrative profits of the research. He succeeded at first instance, but the California Supreme Court rejected his claim stating that he could not enjoy property in his own cells. The court saw no difficulty with recognising that third party researchers had such rights, however. The case settled before it could be appealed further but the question of property rights in the body is far from settled as is evident from the voluminous judicial and academic writing on the topic since the Moore case.

These two articles attack the conceptual basis for arriving at such a skewed result. They contend that judicial and academic reasoning justifyingvesting property in such owners is applied inconsistently and is consequentialist, i.e. results focussed. Furthermore, there is a critique of the reasoning that the source of such materials has abandoned all interest in them once they become separated from the body. The author argues for recognition of limited property rights vesting in the source of human biological materials, and dismisses many of the objections to so doing.
The Law of Abandonment

When one describes a person ‘abandoning’ their property (or their tissue, blood or sperm sample for that matter), it is not always clear what is meant. It can mean the abandonment of all claims in respect of a thing, or be employed as a legal term of art to refer to ‘divesting abandonment’ a concept derived from property law, whereby an owner loses all ownership of his property if divesting abandonment is found to have occurred. The value of an object can help determine if one has intended to divest oneself of ownership of an object: a newspaper left behind is likely abandoned, whereas a wallet is likely lost. Every cell in the human body contains a person’s complete genetic code which can reveal a wealth of information about them. In such circumstances, they can hardly be presumed to have abandoned all rights over their lost strands of hair or flakes of skin when one really thinks about what that entails.

The classic case is Venner v. State of Maryland [1976] 30 Md. App. 599, a case concerning a ‘drug mule’ who had passed his drugs in the bathroom which were subsequently seized and used in evidence against him. The admissibility of this evidence was challenged and the net question for the court to determine was whether he had “abandoned or otherwise relinquished” the drug packets, ultimately finding that he had. Given his semi-conscious state at the relevant time, this conclusion can be questioned.

Cases Analysed

Moore v. Regents of the University of California 793 P 2d 479 (Cal. 1990).


Greenberg v. Miami Children’s Hospital 244 F. Supp.2d 1064 (S.D. Fla.2003)


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