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Abuse of Process and Judicial Stays of Criminal Proceedings

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Oxford University Press UK (2008)



Abstract

The criminal courts have a power to stop a prosecution from proceeding altogether where it would be inappropriate for it to continue. This power to stay proceedings which constitute an abuse of the process of the court has assumed great practical significance and is potentially applicable in many situations. There is at least one consideration of the abuse of process doctrine in virtually every major criminal trial today. This fully updated second edition of *Abuse of Process and Judicial Stays of Criminal Proceedings* blends doctrinal discussion with a thorough consideration of the underlying theory to provide a searching analysis of the theory and practice of abuse of process in England and Wales, with comparative examinations of many other jurisdictions including The USA, Canada, Australia, and New Zealand. This edition focuses in particular upon the profound impact of the European Convention on Human Rights in this area.

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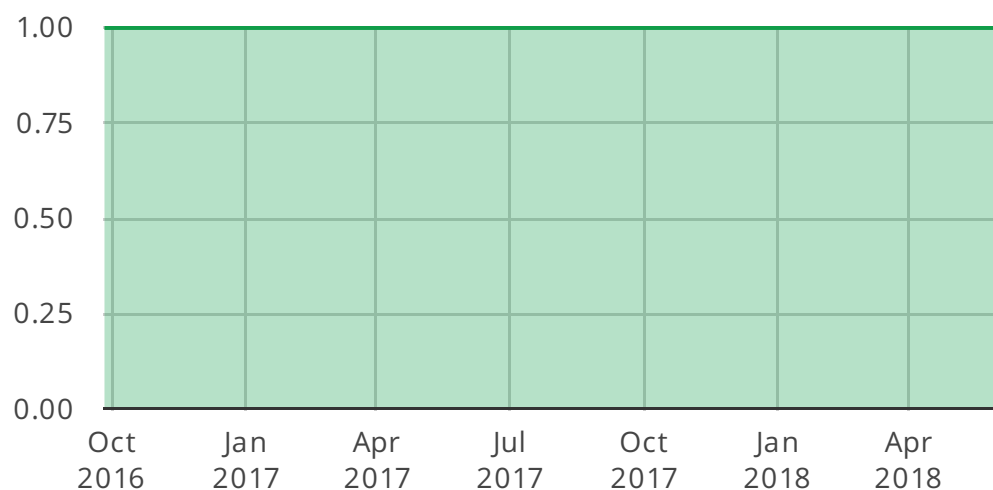
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This study presents a fresh perspective on judicial stays of criminal proceedings by examining discretion in the context of the law of criminal evidence. Previously, evidence scholars have demonstrated that every exclusionary rule and discretion in the law of criminal evidence can be explained in reference to the protection of the innocent from wrongful conviction and/or the protection of the moral integrity of the criminal process.⁹ Many of the questions raised -- such as, whether abuse of process should ever lead to an automatic stay of process or always to judicial discretion; when, if there is evidence of police malpractice, this doctrine should apply rather than the court's discretion to exclude evidence -- are of interest to practitioners as well as to academic lawyers. 9. In general, see Choo, Andrew, *Abuse of Process and Judicial Stays of Criminal Proceedings* (1993); in the present context, pp.78-87. Choo, at p.185, favours a principle which acknowledges the injury to the defendant, rather than one which penalises the errant executive. 10. Choo, , *International Kidnapping, Disguised Extradition and Abuse of Process* (1994) 57 *Modern Law Review* 626, at 632-633, says that Lord Griffiths puts forward a non-discretionary view of abuse of process. 11. Bennett, above n.4, p.150f. 12. *Idem*, p.155g.

Under s. 579 the Crown may direct that a proceedings be stayed. This is a right of the crown on the basis that all criminal proceedings are on behalf of the queen. This form of stay is separate and apart from a judicial stay of proceedings. Courts have jurisdiction to stay criminal proceedings under s. 24(1) where putting a person on trial would amount to an "abuse of process" and violate the "principles of fundamental justice" under s. 7. The principle of abuse of process arises from the common law Abuse of Process defined and explained with examples. Abuse of Process is the act of using a legal process to harass another party to the suit. Initiating criminal proceedings without probable cause to believe the defendant might be found guilty, is generally considered sufficient evidence for an abuse of process claim. Such an abuse of the system might also be considered malicious prosecution. Proving that the prosecution did not have probable cause might be tricky, as it must be shown that it did not have a reasonable belief that the allegations can be proven true. The Supreme Court found that arbitration is indeed a judicial proceeding in such a matter, and restated the requirements to prove malicious abuse of process