

***Degampathi Jayasekra* [2018] NSWDC 59 (23 March 2018) – New South Wales District Court**

‘Appeal against conviction’ – ‘Damaging property’ – ‘Gifts’ – ‘Presumption of advancement’ – ‘Property ownership’ – ‘Trusts’

Charges: Destroy or damage property x 1.

Appeal type: Appeal against conviction.

Facts: In the course of an argument with the complainant, his wife, the appellant damaged a laptop and mobile phone ([4]). The appellant’s case was that he was the sole owner of the items, and thus could not be convicted of the offence ([5]). The appellant had purchased the items and had given them to his wife and did not say they were gifts ([6]). The complainant had day to day use of both items ([7]).

Issues: Whether the items were the property of the appellant or another person.

Decision and reasoning: In reliance on the law of trusts, Scotting J inferred from the actions of the parties that the items were intended to be gifts ([21]-[26]). The presumption of advancement could not be rebutted. The Magistrate’s decision that the items belonged to both the appellant and complainant was affirmed ([28]). Therefore, the appellant’s conviction for property damage is upheld.