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**STEALING, COUNTERFEITING,  
AND SMUGGLING WINE**

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# STEALING, COUNTERFEITING, AND SMUGGLING WINE

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## Abstract

Our intent in this working paper is to explore the extent of stealing, counterfeiting, and smuggling of wine without exploring in depth the extent to which such illegal practices specifically influence the price and quality of the wine that American consumers are purchasing. Our attention focuses primarily on bottled wine produced in the United States or imported.

As long as there are large ill-gotten gains to be had from stealing, counterfeiting, and smuggling, there will be persons willing to pursue those gains even at the risk of fines, jail time, and public disgrace. Just as hackers are able to penetrate the most secured and encrypted data bases, thieves, counterfeiters, and smugglers will find ways around even the most sophisticated detection and anti-fraud technology. The issue is not how to stop them but how best to limit the damage they do. We suggest nine ways to limit the ill-gotten gains of thieves, counterfeiters, and smugglers.

In wine-tasting and wine-talk there is  
an enormous amount of humbug.<sup>1</sup>

## 1. Introduction

Students of Economics 101 learn that in a market system prices, including wine prices, are determined by supply and demand. Further, on the supply side the intensity of the competition varies depending on the number of suppliers and the control they have over their own wines reflecting such factors as product differentiation and market penetration.

What the introductory student does not learn is that supply depends as well on other factors such as stealing, counterfeiting, and smuggling wine because those factors add to the cost of production.

Our intent in this working paper is to explore the extent of stealing, counterfeiting, and smuggling of wine without exploring in depth the extent to which such illegal practices specifically influence the price and quality of the wine that American consumers are purchasing.

This working paper originates in part from a personal experience some years ago when I imported a case of specially selected Italian wines from a friend's winery in Valpolicello. It went through my friend's regular distributor on the East coast and arrived at my home in Louisiana four bottles short of a full case. The distributor at first said that he thought the shipment contained samples. I had to hassle with that him for some time before the missing wine was tracked down and shipped to me. He admitted no wrongdoing for taking what belonged to me.

This paper also originates with the unmasking of Rudy Kurniawan who with charm and guile amassed a fortune manipulating elite wine collectors into buying bottles of cheap wine that he had altered in his own wine cellar, then rebottled and repackaged as high-end wine. Very high-end wine.<sup>2</sup>

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<sup>1</sup> T.G. Shaw quoted in Peter Hellman. In *Vino Duplicitas: The Rise and Fall of a Wine Forger Extraordinaire*. New York: The Experiment, 2017, p. 24.

<sup>2</sup> Cf. Hellman 2017.

Michael Steinberger. "A Vintage Crime," *Vanity Fair*, June 12, 2012, online, not paginated.

More than bottled wine has been stolen. In France, thieves have uprooted and taken plants along with grapes directly off the vine.<sup>3</sup> In Italy a gang has been arrested for stealing fine wine along with wheels of Parmesan cheese.<sup>4</sup>

In the following our attention focuses primarily on bottled wine produced in the United States or imported. We begin with two requisites that bear on our topic and must be addressed explicitly at the start.

## 2. Two requisites

Two essentials require our attention before we can proceed. The first relates to justice; the second to detection.

Justice. Stealing, counterfeiting, and smuggling are illegal because they are unjust practices. They are unjust because they are zero-sum in nature. What is gotten by the thief is taken from the victim. The laws regarding these practices are straight-forward: they violate the fundamental requirements for exchange to take place in a market system. For both parties to an exchange what is gotten must be more highly valued than what is given up. Both must experience some gain. When stealing, counterfeiting, and smuggling become widespread, the market system tends to break down. For example, wine retailers who experience large losses due to stealing are headed toward failure if the losses wipe out their profits.

In terms of justice, specifically commutative justice, the parties involved in an exchange are required to (1) exchange things of equal value and (2) impose equal burdens on one another. As to their first duty, both must reach agreement with regard to price. At times, the price that is set by the seller may be nonnegotiable. Whether negotiable or not, exchange cannot take place absent that agreement. As to their second duty, the burden for the customer is to make timely payment for the good to be exchanged. For the producer the burden is the timely transfer of the good that has been purchased.

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<sup>3</sup> Elizabetha Licata. "Thieves uproot vines, steal 15,000 pounds of grapes from Bordeaux," The Daily Meal, September 30, 2017, available at <https://www.thedailymeal.com/users/elizabeth-licata?page=4%2C0%2C27>

<sup>4</sup> Rupert Millar. "Gang Arrested in Wine and Cheese Bust," The Drinks Business, March 22, 2017, available at <https://www.thedrinksbusiness.com/2017/03/gang-arrested-in-wine-and-cheese-bust/>

This cheese is so highly valued in Italy that Credito Emiliano accepts it as collateral for small business loans. Cf. Nikolaos Trichakis, Gerry Tsoukalas, Emer Moloney. "Credem: Banking on Cheese," February 9, 2015, available at [https://hbr.org/search?search\\_type=search-all&term=Nikolaos](https://hbr.org/search?search_type=search-all&term=Nikolaos)

Thieves take what is not theirs and impose burdens on their counterparties all the while escaping scot-free from any corresponding burden. Though the law may punish the crime differently in different political jurisdictions, this injustice is the same whether it is carried out by force or surreptitiously.

Detection. With the exception of stealing, counterfeiting, and smuggling where brute force is used, deception often is the key to the thief's success. Deception is particularly noteworthy with regard to counterfeiting fine wines, due to the amount of ill-gotten gain, as for example with the estimated \$550 million taken fraudulently by Kurniawan.<sup>5</sup> Hellman reported that one of Kurniawan victims said the following when he saw pictures of Kurniawan's workshop. "I was more than disappointed. I felt completely betrayed."<sup>6</sup>

The loss of trust, coupled with gross violations of commutative justice, disrupt the normal operations of a highly specialized auction market such as the one for ultra-premium wine. By establishing Chai Consulting<sup>7</sup> in 2005 to authenticate and value fine and rare wines Maureen Downey is helping to rid that market of counterfeit wine and restore it to normal operations.

More generally speaking, to the extent that the thief is successful, the crimes of stealing, counterfeiting, and smuggling are largely undetected and underreported. Merchants are left pondering their losses – known in the trade as “shrinkage” -- with no one to hold accountable. The criminals could be employees, customers, burglars, even wine distributors or other suppliers. As researchers, we are left with data on such crimes that contain an unknown downward bias.

### **3. A limited working paper**

The extent of stealing, counterfeiting, and smuggling wine is definable in terms of physical loss and financial loss. Both types can be measured in absolute terms or relative terms. In absolute terms, how many bottles/cases were stolen, counterfeited, or smuggled; what financial value attaches to those losses. In relative terms, how many bottles/cases were purloined as a percentage of total production, what value attaches to those losses as a percent of the value of all bottles/cases produced.

Comprehensive information that is reliable and readily accessible about either type of loss is difficult to find, not just for reasons of detection but because the victim may be reluctant to admit

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<sup>5</sup> Robert Joseph. “Maureen Downey, the wine detective,” interview, Meininger's Wine Business International, April 3, 2018, online, not paginated.

<sup>6</sup> Hellman, p. 202.

<sup>7</sup> Cf. <http://www.chaiconsulting.com/>.

to the loss.<sup>8</sup> Lecat and his colleagues encountered similar problems with interviews to elicit information on counterfeiting.<sup>9</sup> For lack of reliable estimates of these losses, it is necessary to fall back on anecdotal evidence or (gu)estimates. In that sense, this is a limited working paper.

Included among our sources are numerous trade publications because they are the best source of anecdotal information on stealing, counterfeiting, or smuggling. In citing some of those sources, the reader is directed to a specific website whenever an active URL is available. Whenever there is no reliable link available, the text citation indicates that the material is available online.

In the following we address stealing, counterfeiting, and smuggling in separate sections. Toward the end we have added a few comments on insuring wine.

#### **4. Stealing wine**

Stealing wine can take place anywhere a person who does not own the wine has access to it. For domestic wine, that means whoever bottles the wine, handles shipment from the winery to the distributor or wholesaler, from the distributor/wholesaler to the retailer. At the retail level, the thief could be an employee, customer, vendor, robber, or burglar. For imported wine, stealing can occur at the port of entry.

A national survey of all retailers including those who sell wine and tobacco estimated a 2017 inventory loss due to theft, shoplifting, error, or fraud at 1.33 percent of retail sales, or \$46.8 billion. About 70 percent of that loss was attributed to employees or shoplifters. In addition, security and loss prevention expenses represented 0.74 percent of sales.<sup>10</sup> One apparently extreme case of shoplifting is captured on video that demonstrates the lengths to which a shoplifter resists apprehension by store security officers and was able to break free. Later, the suspect was arrested only after confrontation with several armed police officers.<sup>11</sup>

We were unable to find specific information for wine retailers in part because wine is sold by the bottle in many different retail locations including supermarkets, convenience stores, big box discount stores, wine shops, and liquor stores. A company located in Georgia offers a solution to

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<sup>8</sup> Hellman, p. 184.

<sup>9</sup> Benoit Lecat, Joelle Brouard, Claude Chapuis. “Fraud and counterfeit wines in France: an overview and perspectives,” *British Food Journal*, Volume 119, Issue 1, 2017, p. 85.

<sup>10</sup> National Retail Federation. “National Retail Security Survey,” 2018, pp. 3, 5, 7, available at <https://nrf.com/resources/retail-library/national-retail-security-survey-2018>

<sup>11</sup> YouTube. “Shoplifter Held at Gunpoint at Target in Van Nuys/Sherman Oaks, August 9, 2016, available at <https://www.youtube.com/watch?v=hdIuaN0DYpU>

shoplifting at wine and liquor stores that involves a bottle lock that is removed at the point of sale and electronic article surveillance that triggers an alarm whenever a bottle is taken from the store with the bottle lock intact.<sup>12</sup>

As suggested earlier, the available information typically relates to major heists of wine in restaurants, warehouses, and private collections. The old newspaper cliché applies: “if it bleeds, it leads.” In the following we call attention to just three instances of huge thefts of ultra-premium wine. The three involve a private collection, a storage facility, and a restaurant.

First, Nicolas De-Meyer, an assistant of Goldman Sachs executive David Solomon who was in charge of Solomon’s private collection of wine, was indicted in 2018 for stealing \$1.2 million of rare wine over a two-year period beginning in 2014. The wine was sold and transported to a wine dealer based in North Carolina who picked up the wine bottles in New York.<sup>13</sup> A federal judge in Los Angeles denied De-Meyer bail on grounds that he was a flight risk.<sup>14</sup>

Second, sometime between 2008 and 2012 the father of the manager of Legend Cellars in California that stores investors’ wine before sale at auction or for personal consumption pilfered nearly \$3 million-worth of their wine replacing the stolen bottles with very cheap wine purchased from a local retailer.<sup>15</sup>

Third, in December 2014 thieves broke into the French Laundry restaurant in California and stole approximately \$500,000 worth of wines. They were careful to take only the most expensive wines. The break-in occurred one day after the restaurant closed for renovations. The alarm system had been deactivated.<sup>16</sup>

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<sup>12</sup> Loss Prevention Systems. “Liquor Store Solutions,” no date, available at <http://www.losspreventionsystems.com/liquor-store-solutions/>

<sup>13</sup> Kevin McCoy. “Ex-assistant accused of stealing \$1.2m of wine from Goldman Sachs boss,” USA Today, January 17 and 18, 2018, available at <https://www.usatoday.com/story/money/2018/01/17/ex-assistant-accused-stealing-1-2-m-wine-goldman-sachs-boss/1042497001/>

<sup>14</sup> Liz Moyer and Stephen Desaulniers. “Ex-assistant to top Goldman executive fled to Rome after admitting to wine theft, FBI says,” CNBC, January 18, 2018, online, not paginated.

<sup>15</sup> Rachel Topper. “George Osumi, Cellar Employee, Allegedly Replaced \$3 million-worth of Wine with Trader Joe’s Two Buck Chuck,” Huffington Post, October 11, 2012, available at [https://www.huffingtonpost.com/2012/10/11/george-osumi-wine-theft-two-buck-chuck\\_n\\_1958151.html](https://www.huffingtonpost.com/2012/10/11/george-osumi-wine-theft-two-buck-chuck_n_1958151.html)

<sup>16</sup> Paula Mejia. “How a Gang of Thirsty Thieves Stole Over \$500,000 Worth of Wine,” Atlas Obscura, April 16, 2018, available at <https://www.atlasobscura.com/articles/french-laundry-wine-stolen>

Thieves who have stolen rare wine face the same problem that thieves who steal expensive paintings. Knowing that rare wines are indeed rare, who other than private collectors are likely to buy rare wine that suddenly appears for sale?

We come away with three general comments about stealing rare wine. First, thieves prefer stealing from warehouses rather than restaurants. Second, the thieves know what they're doing. They know which wines are rare and which ones to pass over. Third, they often have insider help.<sup>17</sup>

In a related matter, the FBI uncovered a Ponzi scheme that involved John Fox's store Premier Cru in San Francisco that for years operated as a legitimate retail outlet. However, from 2010 to 2015 Fox sold "pre-arrival wine" to customers in the United States and elsewhere. Fox assured buyers that this wine, which was offered at bargain prices, was yet-to-be produced in France and would be worth much more when it was delivered. He sold or attempted to sell \$20 million worth of wine he did not own. He was forced into bankruptcy and was sentenced to 78 months in prison.<sup>18</sup>

## 5. Counterfeiting wine<sup>19</sup>

Immediately following the guilty verdict in Kurniawan's trial for mail fraud and wine fraud Maureen Downey in December 2013 asserted in a public video-taped interview that an auction house played a protective role in Kurniawan's crimes by assuring prospective buyers that Kurniawan was a "good guy" rather than the swindler that she and others had been claiming for some time.<sup>20</sup> Asked in 2018 "How much Kurniawan wine is still around?" she replied "There is

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<sup>17</sup> Mejia, website. Mike Pomranz. "Stealing Ultra-Premium Wines Is a Crime That Doesn't Pay," Extra Crispy, April 17, 2018 available at <https://www.myrecipes.com/extracrispy/how-wine-thieves-do-themselves-in>

<sup>18</sup> FBI. "Wine Ponzi Scheme: Long-Running Fraud Cost Victims Millions of Dollars," February 9, 2017, available at <https://www.fbi.gov/news/stories/wine-ponzi-scheme>

<sup>19</sup> Holmberg published a heavily documented article on consumption fraud and to a lesser extent collector fraud. We do not utilize his findings here because our interest is with collector fraud and his article predates public awareness of Kurniawan's massive scam that set a benchmark for collector fraud. Cf. Lars Holmberg, "Wine Fraud," *International Journal of Wine Research*, Volume 2, October 27, 2010, pp. 105-113.

<sup>20</sup> Maureen Downey. "Maureen Downey on Rudy Kurniawan's Guilty Verdict with Laurent Ponsot," video, December 20, 2013, available at <https://www.youtube.com/watch?v=Hp1LiBLVrCA>

Not identified in her comments but very likely New York based Acker Merrall & Condit. Hellman stated that

"He [Kapon, head of Acker Merrall & Condit] and Kurniawan had been intimately bound together in public and private ways. Each had nourished the other." Cf. Hellman, p. 162.

At one Acker Merrall & Condit auction in 2006 Kurniawan sold \$24.7 million of his wine. The previous record for a single sale at that auction house was \$10 million. Cf. Ed Cumming. "The Great Wine Fraud," *The Guardian*, September 10, 2016, online, not paginated.

about \$550 million in circulation.”<sup>21</sup> Well before the Kurniawan trial, Laurent Ponsot asserted that 80 percent of pre-1980 Burgundies sold at auction was counterfeit.<sup>22</sup>

Ponsot became suspicious when bottles of his Clos St. Denis, 1945 – 1971 vintage, appeared on the market because his winery first began making wine in 1982.<sup>23</sup> Ponsot was a key witness in the Kurniawan trial,<sup>24</sup> testifying as to the counterfeiting of wines from his family winery Domaine Ponsot. At that time he was one of the owners of that very highly regarded French winery. Though he managed to maintain a minority share of Domaine Ponsot, in 2017 Ponsot confirmed that he was separating from the family business in order to begin a new business and winery with his son.<sup>25</sup>

Counterfeiting has become even more widespread in the years immediately following the Kurniawan trial.<sup>26</sup> Asserting that the problem is “worse than when Rudy was around,” Downey estimated that the global fine wine market is \$15 billion of which about \$3 billion is fake. Most of the sales are executed through auction houses which she has urged should be certain that all wine sold has a “clear and traceable history.”<sup>27</sup>

The ten most counterfeited producers are Château Petrus, Domaine de la Romanée-Conti, Château Lafite Rothschild, Château Mouton Rothschild, Château d’Yquem, Château Lafleur, Domaine Comtes George de Vagüé, Domaine Henri Jayer, Château Haut Brion, Château Cheval Blanc.<sup>28</sup>

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<sup>21</sup> Joseph, online.

<sup>22</sup> Steinberger, online.

<sup>23</sup> Cumming, online.

<sup>24</sup> A transcript of the trial proceedings is available at <http://www.vinography.com/archives/images/Rudy-Kurniawan-day-three.pdf>

<sup>25</sup> Yohan Castaing. “Laurent Ponsot to leave family winery in Burgundy,” Decanter, March 13, 2017, online, not paginated.

<sup>26</sup> A documentary film “Sour Grapes” has been made by Jerry Rothwell and Reuben Atlas about the rise and fall of Rudy Kurniawan. Cf. Bianca Bosker. “A True-Crime Documentary about the Con that Shook the World of Wine,” The New Yorker, October 14, 2016, online, not paginated. Kurniawan even has a listing on Wikipedia available at [https://en.wikipedia.org/wiki/Rudy\\_Kurniawan](https://en.wikipedia.org/wiki/Rudy_Kurniawan)

<sup>27</sup> Patrick Schmitt. “How Much Fake Fine Wine is in the Market?” The Drinks Business, December 7, 2016, online, not paginated. A link to this article appears on Downey’s own website, <http://www.chaiconsulting.com/press/>

<sup>28</sup> Jeannie Cho Lee. “How to Avoid Buying Fake Wine,” Forbes, January 22, 2017, online, not paginated.

As in so many other areas of economic and financial affairs, China is becoming a major world player in the wine business. Wine production in China dropped from a peak of 13.511 million hectoliters in 2012 (356.9 million gallons) to a projected 10.8 million hectoliters in 2017 (285 million gallons). The numbers for consumption, however, are quite different. Projected consumption in 2017 climbed to 17.9 million hectoliters (472.9 million gallons).<sup>29</sup> Quality is a problem with Chinese production of low-end wine. For instance, winemakers there have been known to use lead acetate, diethylene glycol, and methanol as sweeteners.<sup>30</sup>

China has become one of the largest importers of wine in the world. Alarming, the Interprofessional Council of Bordeaux, a trade association of French winemakers, claims that 30,000 bottles of fake imported wine are sold every hour in China. Empty bottles with authentic labels from such wines as Chateau Lafite, Henri Mayer, Petrus, Mouton Rothschild and the burgundies of Domain de la Romanee-Conti sell for as much as \$1000 each.<sup>31</sup>

Charges that certain wines that are offered at auction and are apparently authentic sometimes are themselves challenged, further disrupting the efficient and effective operation of the market. To illustrate, in 2016 six bottles of Romanée Conti Domaine listed for sale at an auction house in Geneva, Switzerland were withdrawn because of a challenge as to their authenticity by a Los Angeles lawyer who is a well-known critic of auction houses.<sup>32</sup> A blog posted by Downey challenged the integrity of the lawyer making those charges. In turn, the lawyer challenged the authenticity of the blog.<sup>33</sup>

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<sup>29</sup> Statista. "Wine consumption in China from 2000 to 2017," no date, available at <https://www.statista.com/statistics/425098/china-wine-consumption/>

Statista. "Wine production in China from 2010 to 2017," no date, available at <https://www.statista.com/statistics/425083/china-wine-production-volume/>

<sup>30</sup> Pamela Ambler. "China is Facing an Epidemic of Counterfeit and Contraband Wine," July 17, 2017, online, not paginated.

<sup>31</sup> Ambler, online.

<sup>32</sup> John Lichfield. "Auction of world's most expensive wine thrown into chaos after claims they're fake," Independent, May 22, 2016, available at <https://www.independent.co.uk/news/world/europe/wine-fraud-most-expensive-bottle-auction-burgundy-romancee-conti-domain-authenticity-geneva-a7042336.html>

<sup>33</sup> Maureen Downey. "Crooked Lawyer Don Cornwell Caught Red-Handed," Winefraud, posted April 18, 2016, available at <http://winefraud.blogspot.com/2016/04/crooked-lawyer-don-cornwell-caught-red.html>

Casting further doubt on the authenticity of wine, Robinson claims that wine gifted by one insider to another “frequently contains particularly exotic olive oil rather than wine.”<sup>34</sup>

There is a clear and obvious need to authenticate rare wines. There are two principal types of solutions: tips and technology. Neither one is fool-proof unless counterfeiters who when successful are able to garner huge ill-gotten gains simply are not able to work around the new barriers to the sale of their fake wines.

As to tips that help identify counterfeit wine Lee offers several. The label on the bottle is the most important clue as to its authenticity. She advises the buyer to examine the label with a magnifying glass to look for “the type of paper . . . , ink, microprinting, textures, cutouts, and layering” because taken together these details are “hardest for counterfeiters to recreate.” Perhaps not so surprisingly, misspelling on the label is an important clue that the wine is not authentic. However, the wine in a bottle with an absolutely authentic label may not be authentic if the bottle has been refilled. Lee says that old wine that is authentic will have an old cork and capsule.<sup>35</sup>

Downey adds three other tips: buy from a trustworthy source; confirm staining and branding on the label (red wines have deep stains); look for sediment.<sup>36</sup>

As to anti-fraud technology there is a wide range of methods and techniques including holograms, optical variable devices, variable inks or films, watermarks, barcodes, and Radio-frequency identification (RFID).<sup>37</sup> Also available is a technology that embeds a chip in the overcap of the wine bottle, which identifies it as authentic, and with a special software application is readable with a smart phone.<sup>38</sup>

Downey’s own solution is based on blockchain technology that collects and records 60 data points for a given wine bottle, each of which is noted in the wine’s encrypted entry in a ledger, and then

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<sup>34</sup> Jancis Robinson. “Tricks of the Trade,” no date, available at <https://www.jancisrobinson.com/learn/drinking-wine/tricks-of-the-trade>

<sup>35</sup> Jeannie Cho Lee. “Fake Wine is a Billion Dollar Market and Here are the Ways to Identify Them,” Forbes, February 17, 2017, online, not paginated.

<sup>36</sup> Shana Clarke. “How You Can Spot Fake Wines,” Wine Enthusiast, February 15, 2018, online, not paginated.

<sup>37</sup> Lecat and others, p. 91.

<sup>38</sup> Selinko & Amcor. “Selinko & Amcor launch InTact, the first capsule offering a unique solution for wine and spirits to fight counterfeiting,” November 29, 2016, available at <https://selinko.com/press/intact/>

added to the Chai Vault blockchain. A chip containing that data is embedded in a plastic casing that covers the cork, is crimped on, and can be removed only when the bottle is opened.<sup>39</sup>

Downey is not alone in using blockchain technology to fight counterfeit wine. In early 2018 OriginTrail introduced its TagItSmart system on a pilot basis that is designed for the same general purpose as Chai Vault.<sup>40</sup>

Downey in 2016 estimated that only 29 percent of wine producers use anti-fraud technology.<sup>41</sup> Given Downey's own promotion of Chai Vault, along with the marketing efforts of other high-tech companies with anti-fraud solutions, the percentage today likely is higher.

At the moment, it is simply too early to say which one of the competing new anti-fraud technologies will become the industry standard. Conceivably, there could be two, one for ultra-premium wine and another for cheaper wine. The payoff to the winner(s) could be huge given the substantial ill-gotten gains from the sale of counterfeit wines.

## 6. Smuggling wine

Six U.S. states control the sale of wine at the wholesale level.<sup>42</sup> Lower prices in a neighboring state where distribution is not state-controlled provide an incentive for the price-conscious shopper, but shopping is not smuggling.

Authorities in Pennsylvania where the sale of wine is state-controlled recently seized 2,447 bottles of wine from a private collector who allegedly was selling wine without a license to private buyers

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<sup>39</sup> Shana Clarke. "A Counterfeit Expert's Solution for Eliminating Fake Wines," SevenFiftyDaily, March 2, 2018, available at

<https://daily.sevenfifty.com/a-counterfeit-experts-solution-for-eliminating-fake-wines/>

A link to this article appears on Downey's own website, <http://www.chaiconsulting.com/press/>

<sup>40</sup> OriginTrail. "Utilizing Smart Sensors to Prevent Wine Fraud – OriginTrail's Pilot with TagItSmart," February 28, 2018, available at

<https://medium.com/origintrail/utilizing-smart-sensors-to-prevent-wine-fraud-origintrails-pilot-with-tagitsmart-1949dc62113f>

<sup>41</sup> Patrick Schmitt. "\$550M Worth of Kurniawan Counterfeit Wines Being Resold Over and Over Again," The Drinks Business, December 8, 2016, online, not paginated.

<sup>42</sup> Maryland (Montgomery County only), Mississippi, New Hampshire, Pennsylvania, Utah, and Wyoming. Cf. Kevin Barry "Control States and Wine," Market Watch, May 14, 2018, available at

<http://marketwatchmag.com/?s=control+states+and+wine>

using a 97-page list of wines.<sup>43</sup> Strictly speaking, this too is not smuggling but it is grounded in the prospect for “shoppers” getting access to wines at prices below the prices at state-controlled stores.

Bringing no more than one liter of imported wine through U.S. Customs duty-free is allowed if the wine is for personal use or intended as a gift and only if the traveler is at least 21 years of age. Larger shipments are handled differently. For instance, a personal wine collection is not duty-free on entry into the United States where U.S. Customs determines its admissibility according to the state where the shipment enters. Regulations regarding permits, licenses, and duties vary from state to state. If the customs officer suspects that the shipment is for resale, the shipper may be required to obtain a permit from the U.S. Alcohol and Tobacco Tax and Trade Bureau.<sup>44</sup>

The incentive for smuggling is self-evident, but we were not able to find any hard evidence as to the extent of any such smuggling either into or out of the United States.<sup>45</sup>

To avoid the high prices of wine served on cruise ships, at concerts, sports events, and other venues, there are a variety of devices worn on the body that allow a wine lover to smuggle a small amount of wine past security. Amazon has several such devices for sale including a bra that is designed to hold as much as 25 ounces.<sup>46</sup>

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<sup>43</sup> Lorenzo Ferrigno and Sonia Moghe. “Police seize man’s high-end wine collection; hospital wants to save it,” CNN, August 27, 2015, online, not paginated.

<sup>44</sup> U.S. CBP. “Bringing alcohol (including homemade wine) to the U.S. for personal use,” U.S. Customs and Border Protection, June 14, 2017, available at [https://help.cbp.gov/app/answers/detail/a\\_id/190/~/bringing-alcohol-%28including-homemade-wine%29-to-the-u.s.-for-personal-use](https://help.cbp.gov/app/answers/detail/a_id/190/~/bringing-alcohol-%28including-homemade-wine%29-to-the-u.s.-for-personal-use)

U.S. CBP. “Moving to the U.S. – How to ship a wine collection / cellar, duty,” U.S. Customs and Border Protection, July 10, 2018, available at [https://help.cbp.gov/app/answers/detail/a\\_id/356/kw/wine](https://help.cbp.gov/app/answers/detail/a_id/356/kw/wine)

<sup>45</sup> There is some dramatic though anecdotal evidence as to the extent of wine smuggling in China where public authorities in recent years seized huge shipments of wines smuggled from Hong Kong and Macau where the tariff on imported wines is zero as compared to the nearly 50 percent tax and tariff imposed in mainland China. In 2018, for example, 13,650 cases were seized in a single bust. One year earlier a single bust yielded 360 tonnes of smuggled wines. Cf. Natalie Wang. “China Busts Biggest Wine Smuggling Ring Since 2017,” The Drinks Business, May 14, 2018, online, not paginated.

<sup>46</sup> Amazon. “The WineRack 200-008 The WineRack, Medium,” 2018, available at <https://www.amazon.com/WineRack-200-008-Wine-Rack-Medium/dp/B001FYZZI2>

For other ways to smuggle small amounts of wine past security points, cf. Last Bottle. “10+ Ways to Master the Art of Smuggling Booze,” February 28, 2017, available at <http://blog.lastbottlewines.com/fun/smuggle-booze/>

In 2010 Tracie Cone reported that for years vintners had been engaging in “suitcase cloning” in which “cane cuttings to clone vines from France’s premier vineyards” were smuggled into the United States in the hope of replicating highly-regarded French wines and to avoid the long delay in U.S. Department of Agriculture quarantine.<sup>47</sup>

For obvious reasons winemakers are reluctant to talk about suitcase cloning. One exception is John Caldwell who in the early 1980s purchased a large number of cloned plants from France that were available at a Canadian nursery. He planted them in his California vineyard and brazenly retells his story.<sup>48</sup> Caldwell Vineyard’s website has a club for persons who purchase wines on a regular basis. He calls his club Society of Smugglers.

## 7. Insuring wine

There are two kinds of insurance policies that are relevant to stealing, counterfeiting, and smuggling wine. A property insurance policy covers physical loss or damage. A provenance insurance policy covers financial loss. A property insurance policy protects the insured for a loss attributable to wine that has been stolen. It does not protect against a loss due to the purchase of wine that turns out to be counterfeit. For protection against that kind of loss the insurer must purchase provenance insurance.<sup>49</sup>

Two types of persons represent the market for wine insurance: wine hobbyists or collectors with large expensive collections and wine investors. Insurance is advisable whenever the asset value of a collection of wine is likely to be diminished by breakage, mechanical breakdown, backed up sewer or drain, natural disaster such as a flood, and cosmetic damage to the label or bottle.<sup>50</sup>

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<sup>47</sup> Tracie Cone. “Moth forces wine country’s secret into the open,” CantonRep.com, March 27, 2010, online, not paginated.

For much more on suitcase cloning, cf. Joel Myers 2012. “Pinot Noir Suitcase Clone ‘828’: An Intriguing Story Revealed,” PinotFile, Volume 9, Issue 14, November 2, 2012, available at <http://www.princeofpinot.com/article/1268/>

<sup>48</sup> At <https://www.caldwellvineyard.com/Smuggling-Story>

<sup>49</sup> Courthouse News. “Certified for Publication in the Court of Appeal of the State of California Fourth Appellate District Division Three, David Doyle v. Fireman’s Fund Insurance Company,” March 7, 2018, available at <https://www.courthousenews.com/wp-content/uploads/2018/03/Wine.pdf>

<sup>50</sup> Don Jergler. “3 Things Insurance Professionals Should Know in Honor of Wine Day,” Insurance Journal, May 25, 2018, available at <https://www.insurancejournal.com/news/national/2018/05/25/490289.htm>

For the person with a home cellar, the main reason for purchasing wine insurance is that maintaining a cellar is difficult. Protection can be purchased with a rider on the homeowner's insurance policy or with a blanket policy. For persons with collections that appraise at \$10,000 or more and whose collection includes some low-price wines, standalone bottle-by-bottle coverage is an option.<sup>51</sup>

## 7. Final words

As long as there are large ill-gotten gains to be had from stealing, counterfeiting, and smuggling, there will be persons willing to pursue those gains even at the risk of fines, jail time, and public disgrace. Just as hackers are able to penetrate the most secured and encrypted data bases, thieves, counterfeiters, and smugglers will find ways around even the most sophisticated detection and anti-fraud technology. Thus the issue is not how to stop them but how best to limit the damage they do.

- As a wine buyer, first and perhaps most important of all, deal only with trustworthy sellers who are known for their due diligence.
- Assume that the wine is not authentic and then proceed to examine as carefully as possible the label, the bottle, the cap, the cork. Caveat emptor.
- As a buyer of ultra-premium wine, deal only with an auction house that has compiled a clear and traceable history for every bottle under the hammer.
- Engage the services of an authenticator.
- If you have a large collection, be sure that you are insured for any financial loss due to the purchase of counterfeit wine.
- If you have opened a bottle of rare wine, destroy the bottle to prevent it from falling into the hands of a person who would refill it with cheap wine and represent it as rare wine.
- If you have a home cellar, be attentive to maintenance issues.
- If you are a retailer of expensive wines, consider adding loss prevention personnel to your payroll.

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<sup>51</sup> Harley Hoffman. "Everything You Need to Know about Insuring Your Wine Collection," Wine Posts, April 4, 2016, online, not paginated.

- If you operate a restaurant that offers rare wines to your guests or own and operate a warehouse that stores collections of rare wines, be certain that your security systems are fully in place and operational when your restaurant or warehouse is closed.

Finally, don't believe everything you hear. In the wine business, there is an enormous amount of humbug.