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A public official receives a bribe to award a contract. Does the bribe "belong" to the official or to the state that he or she represents? The answer to the question can matter a great deal to the success of a claim. But the issue has been controversial and the answer unclear in English law, particularly in recent years, because of conflicting decisions going back to 1890.

The English position was conclusively resolved last year by the judgment of the United Kingdom's Supreme Court in the case of FHR European Ventures LLP and others v Cedar Capital Partners LLC [2014] UKSC 45. Although it does not concern a bribe paid to a public official, the reasoning of the case is directly applicable to such bribes. A Court comprising seven members of the Supreme Court decided that, in English law, the bribe will belong to the state. The decision ensures that English law is identical to other major common law jurisdictions. A summary appears here.

The legal concepts in issue are complex and involve (often unnecessarily) complicated language. This note will attempt, as far as possible, to avoid the use of technical terms. It is also concerned only with claims against the bribed officials. Other claims are, of course, available against bribe-payers, including claims for the amount of the bribes or losses suffered, and for the setting aside of contracts obtained by bribery.

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