

OFFENCES AGAINST PROPERTY (1): THEFT



BY THE END OF THIS UNIT, YOU SHOULD BE ABLE TO EXPLAIN [A01]:

- The elements of mens rea and actus reus involved in the definition of Theft under s.1 Theft Act 1968
- Be able to explain each of the following key terms, with reference to relevant case law:
 - dishonesty
 - appropriation
 - property
 - belonging to another
 - intention to permanently deprive

YOU SHOULD ALSO BE ABLE TO DISCUSS [A02]:

- The meaning of appropriation and its interpretation by the court
- The meaning of dishonesty and the interpretation by the courts
- The current areas of criticism and reform in the law on theft.

HOMEWORK:

You are reminded that homework is a key component of the course. It is the means by which your understanding and critical appreciation of the topic is assessed. You should be aware that failure to complete homework to the required deadlines and standards may result ultimately in you being removed from the course:

Complete the 'tick' box cases exercise and assign each case one area of the law on theft

End of Unit Test.

You will have a DRAG test on the entire topic of offences against property. This will take place after we have looked at burglary and robbery as well. You will also complete the following problem question **at the end of the next section.**

While shopping, Susan places some items of food in the wire basket which is provided. She also hides a bottle of perfume in her coat pocket. She then takes a price label off an expensive CD, switches it with the price label from a reduced price CD, and places the expensive one in the basket. She goes to the checkout and only pays for the items in the basket.

Outside the shop, Susan sees a bike which was there when she went in and which she remembers seeing there for several days. She rides home on it alongside a caravan park. She notices a personal CD player on a table inside one of the caravans. She goes inside and takes the CD player. She leaves the bike at the end of her road and goes home.

Discuss Susan's potential criminal liability for the above incidents

June 2008

THEFT

- What type of offence is theft? _____
- What is the maximum that you may be sentenced to, if tried on indictment? _____

Definition *You **MUST** know this*.

The Theft Act 1968 was a consolidating statute and is the one you will need for both this, and burglary and robbery.

If you turn to the **back** of the handout you will find s.1-6 reproduced for you. Your first task is to look at the definition in section 1 and identify the aspects of actus reus and mens rea

ACTUS REUS OF THEFT	MENS REA OF THEFT

What problems with the offence can you spot at this stage?

Why is it important that you know this is a codifying statute? What will the courts be concerned with?

Is it a **basic** or **specific** intent crime? _____

What does this mean regarding the defence of **intoxication**? _____

ACTUS REUS OF THEFT

Appropriation (s.3)

The typical theft involves some physical taking – the stealing of your purse, the taking of your computer. These sort of events are easy to classify as ‘appropriation’. You are taking the object from the owner and assuming some or all of their rights.

However, the word when used here means assuming any of the rights of the owner and the courts have interpreted them very widely

What **rights** do you have over your property?
What can you do with your property?

R v Pitham & Hehl 1977

FACTS



RATIO:

WHAT IF V CONSENTS TO THE TAKING? IS D STILL LIABLE? *All four of these are key cases and you must know them!*

Oh yes, it's the 'court can't make up their minds' time again..



Lawrence v Metropolitan Police Commissioner 1972

FACTS:

RATIO: Viscount Dilthorne "Parliament, by the omission of these words [*consent*] has relieved the prosecution of establishing that the taking was done without the owner's consent.

Keith LJ "An act may be an appropriation, notwithstanding that it is done with the consent of the owner"

D's conviction upheld by both CA & HL

R v Morris 1983

FACTS:

RATIO: Roskill LJ: It is enough for the prosecution if they proved... the assumption of any of the rights of the owner of the goods in question.

They also said that there must be 'adverse interference' with the rights of the owner.

D's conviction was upheld

So, let's pause here.

Why is *Morris* a sensible decision?

How does it contradict *Lawrence*?

So, the courts now have to make a choice....

FACTS:

D was the assistant manager of an electrical store. He persuaded the manager to accept cheques from X, which he knew to be worthless. £17,000!!!

RATIO:

So, V (or V's agent) had consented...

- Is there an offence?
- Has there been an 'appropriation'?

Clear now? Well, the courts weren't really sure how to approach *Gomez* – with a wide or narrow interpretation. In *Mazo 1997*, the CA stressed that D's deception was key to the decision in *Gomez*. This seemed like a very narrow interpretation! The courts seem to have now decided that wide is the way to go!

What if you give a **gift**?

R v Hinks 2000

FACTS:

RATIO: By a majority of 3:2, the HL upheld the conviction.

Yes, they were gifts (and indeed in civil law they were valid gifts) but there was still appropriation!

Steyn LJ said he was "*not willing to depart from the clear decisions of this House in Lawrence and Gomez*".

So, what does this mean? Well, you might acquire something without stealing it. However, your decision not to return it might turn your appropriation into theft.

[NB: remember that appropriation is only one of the elements you need to prove]

The most recent case on appropriation?

R v Briggs 2004 CA

Facts:

D fraudulently obtained authority from elderly relatives for the transfer by conveyancers of £49,950 to allow for the purchase of a property in D's name.

Ratio:

But: note of caution!

This was decided without reference to *Hinks/Gomez*

e.g. *You borrow a DVD from Blockbusters... it's so good you decide to keep it. How many of you have an old school or library book which you have never returned?*

PROPERTY (S.4)

The issue here is precisely what is meant by 'property'. Does it include the human body? What about electricity?

R v Kelly & Lindsay 1998

FACTS:

RATIO:

Their convictions were upheld. The court argued that while body parts could normally be property, here their "essential character and value has changed".

Do you agree with the court's decision? Do you think it makes sense or is it a spurious distinction?

1. Real or personal property & land

Real property includes buildings and land. Apart from that, it is as straight forward as it sounds – anything which belongs to you, including money and is 'tangible' i.e. can be touched. 'Land' can include the taking of turf or dismantling a wall for the bricks. There was a case where a man was prosecuted for stealing a railway station... which he had dismantled.

2. Things in action & intangible property

This includes money in accounts, debts, shares and intellectual property including patents. These are all things over which people have legal rights but can't physically hold them...

Oxford v Moss 1979

FACTS:

RATIO:

So, there are certain things you can't steal. Bad news? Most of them are now covered by other statutes! E.g. Computer Misuse Act 1990

3. Animals

So, take a wild rabbit and (technically) that is not 'property' within the meaning of section 4. However, if you decide that your little sister's rabbit is just too cute to belong to her and free it from its cage to come and live with you, that would be 'property'

4. Picking wild flowers or fruit

BELONGING TO ANOTHER. (S.5)

This means that someone has ownership or control over the item 'any proprietary interest or right'. They do not have to be the lawful owner.

A has a bag. B steals it. C then steals it from B. C may now be charged with the theft of the item from

...who??????

Why is the test so wide?

LESSON ONE: BE CAREFUL WHO YOU CHARGE D WITH STEALING FROM!

R v Dyke & Munro 2002 CA

FACTS:

DD were charged with stealing money intended for the *Hands of Hope Children's Cancer Fund*. They were charged with stealing the money from 'person or persons unknown' [*the donators*].

RATIO:

Powell v McRae 1977 OBD

FACTS:

RATIO:

Possibly: has been overruled by the PC in a later case, (*AG for Hong Kong v Reid 1993*) where they ruled that making an illegal profit from your employment is theft! *Extra information.*

R v Marshall, Coombes and Eren 1998

FACTS:

RATIO: The tickets remained the property of Transport for London, regardless of the fact that they had been willingly donated.



LESSON TWO: CAN YOU STEAL FROM YOURSELF?

R v Turner (No.2) 1971 CA

FACTS:

RATIO:

Do you agree with this approach by the courts? Why do you think they came to this conclusion?

LESSON THREE: WHAT IF YOU DON'T KNOW THAT YOU'RE IN POSSESSION OF SOMETHING? CAN YOU STILL HAVE A 'PROPRIETARY RIGHT OR INTEREST'?

R v Woodman 1974

FACTS:

RATIO: There was evidence that V was in control of the site (barbed wire fencing).

D's conviction was upheld by CA

LESSON FOUR: WHAT ABOUT LOST OR ABANDONED PROPERTY?

Well, simply put, you can't steal it! The only problem is that the courts are quite reluctant to declare property as 'abandoned' completely by the owners... This is normally a question of _____ for the jury.

Oh, and the more expensive the item, the less likely it is to be abandoned!

R v Rostron 2003

FACTS:



RATIO:

R v Small 1988 – remember the car?

LESSON FIVE: Even if you have it legally... you might have to be careful what you do with it!

[Other rules on treating 'property belonging to another' ... from the statute]

1. OBLIGATION TO USE IN A PARTICULAR WAY (S.5(3))

If you give me £200 to spend on lovely interactive whiteboards for the class, and I decide that really the best way to spend it would be to buy blue mountain coffee beans instead... this is what is mentioned in the section. I have not used the money in the 'right' way, so it is theft.

Davidge v Bunnnett 1984

Facts:

Ratio:

Ok, so the next case is a little odd. What you need to bear in mind is that the money has to be held for a **specific reason**.

*R v Hall 1972 *Key Case**

FACTS:

RATIO: CA overturned conviction, holding that S.5(2) did not apply in this case and “every case turns on its facts”.

They argued that the money was paid into the general account as deposits, they were not intended specifically to book flights etc. Therefore, there was no obligation to use the deposit to book.

R v Klineberg & Marsden 1999

FACTS:

DD operated a timeshare scheme in Lanzarote. V paid a price on the understanding that the money was held on trust until the property was ready to purchase-occupy.

RATIO:

How do you distinguish these cases?

*R v Wain 1995 CA *Key Case**

FACTS:



RATIO:

Upholding the conviction, CA said that the money belonged to the organiser.

When they let him transfer it, they *expected* it to be used in a certain way, which it wasn't, **therefore** D was liable.

2. PROPERTY ACQUIRED BY MISTAKE (S.5(4))

Well, then according to the section, there is a duty to make restoration (i.e. give it back!) However, not in all cases will the obligation exist.

*Attorney-General's Reference (No. 1 of 1983) 1985 *Key Case**

FACTS:

RATIO:

D was overpaid by her employers by about £75.
The Trial Judge directed the jury to acquit.

CAREFUL: the obligation must be a legal one.

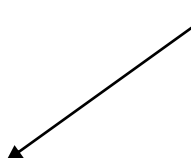
*R v Gilks 1972 *Key Case**

FACTS:

RATIO:

There was no legal obligations as gambling contracts are not enforceable legally (TRUE!)

“It would be quite wrong to construe that word [obligation] so as to cover a moral or social obligation as distinct from a legal one.”



How far do you think that this statement is a correct statement on the law? Why?

MENS REA

There are two elements of MR which must be proven:

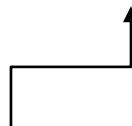
- Dishonesty; AND
- Intention to permanently deprive.

DISHONESTY (S.2)

This section is slightly odd as it does not say what is dishonesty, but rather gives examples of what is not dishonesty.

TASK: Read the section and then use that information to match each subsection to the example:

s. 2 (1) (a)	Found 10p in the street.
s. 2 (1) (b)	You thought it was yours e.g. pick up a coat identical to yours.
s. 2 (1) (c)	You borrowed something you thought the owner would let you have e.g. a textbook from my classroom!



It is immaterial that D is willing to pay for it or whether or not it is done for D's own gain...

R v Ghosh 1982 *Key key key case!!!!*

FACTS:

RATIO:

The CA established the following test which should be put to the jury.:

1. Has D been dishonest by the standards of the ordinary, honest and reasonable person?
2. If the answer is yes, then did D realise that they were dishonest by those standards?

Only if the answer to both these questions is yes can D be legally dishonest.

This question will only arise if the dishonesty of the D is in question. Basically: if D thinks he acted honestly. *R v Price 1989* (LCJ)

R v Small 1988 s. 2(1)(c)

FACTS:

RATIO:

The CA quashed his conviction.

They held that abandonment can affect MR, and it was up to the jury to decide whether D believed the owner couldn't be found after D has ***taken all reasonable steps.***

INTENTION TO PERMANENTLY DEPRIVE [S.6]

R v Velumyl 1989 CA

FACTS:

D was a company director who took money from the safe.

He intended to pay it back! £1050

RATIO:

DPP v Lavender 1994

FACTS:

RATIO: The DC held that the question was whether D intended to treat the door as his own, and therefore he was guilty, despite the fact that they were both council properties.

'Disposal' has a wider meaning than 'get rid of', but means more than just using someone else's stuff! Really, it means that you are treating the property as your own.

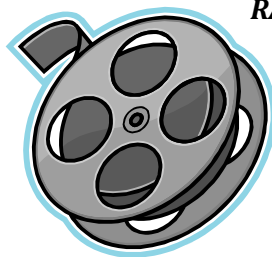
Such as?

HMMMMMMM..... SO, WHAT IF YOU BORROW SOMETHING WITHOUT PERMISSION, BUT RETURN IT IN ITS EXACT STATE? HAVE YOU STOLEN IT?

R v Lloyd & Others 1985

FACTS:

RATIO:



A2 Law

G153 Criminal Law

WHAT, THEN, ISN'T AN 'INTENTION TO PERMANENTLY DEPRIVE'.

R v Easom 1971

FACTS:

RATIO:

EVALUATION OF THEFT

You should already have an idea of the main areas of difficulty when looking at this topic...

As the Theft Act 1968 is a consolidation act, the courts are mostly concerned with the 'technical' interpretation of the language.

Therefore it could be argued that it is very easy to find the contradicting argument and there may be **no** consistency by the courts. *Can you think of cases which might illustrate this?*

'APPROPRIATION'		
'PROPERTY'		
'BELONGING TO ANOTHER'		
DISHONESTY	<p>Reasonable & Honest People</p> <p><i>Ghosh</i> test is complicated</p> <p>Lack of Guidance</p> <p>Subjective part of the test.</p>	

INTENTION TO PERMANENTLY DEPRIVE	
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The **Law Commission Report in 2002** comments that we live in a 'heterodox and plural society' which means that juries in applying their contemporary standards of morality.

QUESTIONS

So, the multimillion pound question: will it show up on the paper? Well, the short answer is **yes**. It is **most** likely as part of a **problem** question or **objective**.

However: dishonesty could also come up as an essay question [*the chief examiner doesn't think appropriation is likely until Hinks is overturned or modified*]

WHICH CASE COVERS WHICH ASPECT OF THEFT?

	DISHONESTY	INTENTION TO PERMANENTLY DEPRIVE	PROPERTY	APPROPRIATION	BELONGING TO ANOTHER
<i>R v Small</i>					
<i>R v Wain</i>					
<i>Oxford v Moss</i>					
<i>R v Roston</i>					
<i>R v Velumyl</i>					
AG's Ref No. 1 of 1983					
<i>R v Turner No.2</i>					
<i>Lawrence v MPC</i>					
<i>R v Kelley & Lindsay</i>					
<i>R v Gomez</i>					
<i>R v Morris</i>					
<i>Powell v McRae</i>					
<i>R v Ghosh</i>					
<i>R v Gilks</i>					
<i>R v Hall</i>					
<i>R v Lloyd & others</i>					

END OF UNIT REVISION QUESTIONS

Remember that you should use cases as appropriate.

1. What are the three AR elements of theft
2. What are the two MR elements of theft
3. Why was D in *Hinks 2000* found guilty, even though the victim gave his consent?
4. Can you be guilty of stealing your own property?
5. What is the test for dishonesty?
6. Which section of the Theft Act 1968 deals with appropriation?
7. How did D appropriate in *Morris*?
8. Explain s.5(4) Theft Act 1968.
9. Which section of the Theft Act 1968 deals with property belonging to another?
10. Has D stolen property in the following situations:
 - a. Albert decided to connect his home electricity to the supply from the street lights.
 - b. Bob picked flowers for his mother from a local field
 - c. Carol decided that she wants a pet rabbit and takes one from the local field
 - d. David sees an exam on the teacher's desk. He copies the questions and leaves.
 - e. Egbert notices an empty field at the end of her road. She puts a fence round it and puts up a notice claiming ownership.

THEFT ACT 1968

Basic definition of theft

(1) A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it; and 'theft' and 'steal' shall be construed accordingly.

(2) It is immaterial whether the appropriation is made with a view to gain, or is made for the thief's own benefit.

(3) The five following sections of this Act shall have effect as regards the interpretation and operation of this section (and, except as otherwise provided by this Act, shall apply only for purposes of this section).

2. 'Dishonestly'

(1) A person's appropriation of property belonging to another is not to be regarded as dishonest-

(a) if he appropriates the property in the belief that he has in law the right to deprive the other of it, on behalf of himself or of a third person; or

(b) if he appropriates the property in the belief that he would have the other's consent if the other knew of the appropriation and the circumstances of it; or

(c) (except where the property came to him as trustee or personal representative) if he appropriates the property in the belief that the person to whom the property belongs cannot be discovered by taking reasonable steps.

(2) A person's appropriation of property belonging to another may be dishonest notwithstanding that he is willing to pay for the property.

Cases:

3. 'Appropriates'

(1) Any assumption by a person of the rights of an owner amounts to an appropriation, and this includes, where he has come by the property (innocently or not) without stealing it, any later assumption of a right to it by keeping or dealing with it as owner.

(2) Where property or a right or interest in property is or purports to be transferred for value to a person acting in good faith, no later assumption by him of rights which he believed himself to be acquiring shall, by reason of any defect in the transferor's title, amount to theft of the property.

Cases:

4. 'Property'

(1) 'Property' includes money and all other property, real or personal, including things in action and other intangible property.

(2) A person cannot steal land, or things forming part of land and severed from it by him or by his directions, except in the following cases, that is to say-

(a) when he is a trustee or personal representative, or is authorised by power

A2 Law

G153 Criminal Law

of attorney, or as liquidator of a company, or otherwise, to sell or dispose of land belonging to another, and he appropriates the land or anything forming part of it by dealing with it in breach of the confidence reposed in him; or

(b) when he is not in possession of the land and appropriates anything forming part of the land by severing it or causing it to be severed, or after it has been severed; or

(c) when, being in possession of the land under a tenancy, he appropriates the whole or part of any fixture or structure let to be used with the land.

For purposes of this subsection 'land' does not include incorporeal hereditaments;

'tenancy' means a tenancy for years or less period and includes an agreement for such a tenancy, but a person who after the end of a tenancy remains in possession as statutory tenant or otherwise is to be treated as having possession under the tenancy, and 'let' shall be construed accordingly.

(3) A person who picks mushrooms growing wild on any land, or who picks flowers, fruit or foliage from a plant growing wild on any land, does not (although not in possession of the land) steal what he picks, unless he does it for reward or for sale or other commercial purpose.

For purposes of this subsection 'mushroom' includes any fungus, and 'plant' includes any shrub or tree.

(4) Wild creatures, tamed or untamed, shall be regarded as property; but a person cannot steal a wild creature not tamed nor ordinarily kept in captivity, or the carcase of any such creature, unless either it has been reduced into possession by or on behalf of another person and possession of it has not since been lost or abandoned, or another person is in course of reducing it into possession.

5. 'Belonging to another'

(1) Property shall be regarded as belonging to any person having possession or control of it, or having in it any proprietary right or interest (not being an equitable interest arising only from an agreement to transfer or grant an interest).

(2) Where property is subject to a trust, the persons to whom it belongs shall be regarded as including any person having a right to enforce the trust, and an intention to defeat the trust shall be regarded accordingly as an intention to deprive of the property any person having that right.

(3) Where a person receives property from or on account of another, and is under an obligation to the other to retain and deal with that property or its proceeds in a particular way, the property or proceeds shall be regarded (as against him) as belonging to the other.

(4) Where a person gets property by another's mistake, and is under an obligation to make restoration (in whole or in part) of the property or its proceeds or of the value thereof, then to the extent of that obligation the property or proceeds shall be regarded (as against him) as belonging to the person entitled to restoration, and an intention not to make restoration shall be regarded accordingly as an intention to deprive that person of the property or proceeds.

(5) Property of a corporation sole shall be regarded as belonging to the corporation

Cases:

Cases:

Obligation to use in particular way:

Property acquired by mistake:

notwithstanding a vacancy in the corporation.

6. 'With the intention of permanently depriving the other of it'

(1) A person appropriating property belonging to another without meaning the other permanently to lose the thing itself is nevertheless to be regarded as having the intention of permanently depriving the other of it if his intention is to treat the thing as his own to dispose of regardless of the other's rights; and a borrowing or lending of it may amount to so treating it if, but only if, the borrowing or lending is for a period and in circumstances making it equivalent to an outright taking or disposal.

(2) Without prejudice to the generality of subsection (1) above, where a person, having possession or control lawfully or not) of property belonging to another, parts with the property under a condition as to its return which he may not be able to perform, this (if done for purposes of his own and without the other's authority) amounts to treating the Handout property as his own to dispose of regardless of the other's rights.

Cases: