

Property is mainly divided into two parts, namely movable and immovable. Any offence which is committed in regard to any property whether it is movable or immovable is punishable under the provisions of the law of Crimes or the Indian Penal Code [IPC]. These offences and the punishments relating to them are explained in details in sections 378 to 460 of the Indian Penal Code, 1860 (Act No. XLV of 1860).

The offences which are mainly recognized in the IPC are ten in number

1. Theft.
2. Extortion.
3. Robbery and dacoity.
4. Criminal misappropriation of property.
5. Criminal breach of trust.
6. Receiving stolen property
7. Cheating.
8. Fraudulent deed and disposition of property.
9. Mischief.
10. Criminal trespass

Sec. 378: Theft

Whoever, intending to take dishonestly any movable property out of the possession of any person without that persons consent, moves that property in order to such taking, is said to commit theft.

Explanation 1 - A thing so long as it is attached to the earth, not being movable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2 - A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it.

Explanation 3 - A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 4 - The consent mentioned in the definition may be expressed or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

Illustrations

- a. A cuts down a tree on Zs ground, with the intention of dishonestly taking the tree out of Zs possession without Zs consent.
- b. A puts a bait for dogs in his pocket, and thus induces Zs dog to follow it. If As intention be dishonestly to take the dog out of Zs possession without Zs consent, A has committed theft.
- c. A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.

- d. A being Zs servant, and entrusted by Z with the care of Zs plate, dishonestly runs away with the plate, without Zs consent. A has committed theft.
- e. Z, going on a journey, entrusts his plate to A, the keeper of a warehouse, till Z shall return. A carries the plate to a goldsmith and sells it. Here, the plate was not in Zs possession. It could not therefore be taken out of Zs possession, and A has not committed theft, though he may have committed criminal breach of trust.
- f. A delivers his watch to Z, a jeweller, to be regulated. Z carries it to his shop. A, not owing to the jeweller any debt for which the jeweller might lawfully detain the watch as a security, enters the shop openly, takes his watch by force out of Zs hand, and carries it away. Here A, though he may have committed criminal trespass and assault, has not committed theft, in as much as what he did was not done dishonestly.
- g. If A owes money to Z for repairing the watch, and if Z retains the watch lawfully as a security for the debt, and A takes the watch out of Zs possession, with the intention of depriving Z of the property as a security for his debt, he commits theft, in as much as he takes it dishonestly.
- h. Again, if A having pawned his watch to Z, takes it out of Zs possession without Zs consent, not having paid what he borrowed on the watch, he commits theft, though the watch is his own property in as much as he takes it dishonestly.
- i. A takes an article belonging to Z out of Zs possession, without Zs consent, with the intention of keeping it until he obtains money from Z as a reward for its restoration. Here A takes dishonestly; A has therefore committed theft.
- j. A, being on friendly terms with Z, goes into Zs library in Zs absence, and takes away a book without Zs express consent for the purpose merely of regarding it, and with the intention of returning it. Here, it is probable that A may have conceived that he has Zs implied consent to use Zs book. If this was As impression, A has not committed theft.
- k. A asks charity from Zs wife. She gives A money, food and clothes, which A knows to belong to Z, her husband. Here it is probable that A may conceive that Zs wife is authorised to give away. If this was As impression, A has not committed theft.
- l. A is the paramour of Zs wife. She gives a valuable property, which A knows to belong to her husband Z, and to be such property as she has not authority from Z to give. If A takes the property dishonestly, he commits theft.
- m. A, in good faith believing belonging to Z to be As own property, takes that property out of Bs possession. Here, as A does not take dishonestly, he does not commit theft.

Sec. 379: Punishment for Theft

Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Essential Ingredients of Theft

The absence of the persons consent at the time of moving and the presence of dishonest intention in so taking at the time, are the essential ingredients of the offence of theft (K.N. Mehra v. State of Rajasthan AIR 1957 SC 369).

1. Intending to take dishonestly - Dishonest intention exists when the person so taking the property intends to cause wrongful gain (even temporary) to himself or wrongful loss to the other; either is sufficient.
This intention is known as *animus furandi* (intention to steal) and without it the offence of

theft is not complete. Thus, where a respectable person just pinches the cycle of another person, as his own cycle at the time was missing and brings it back, it was held that no theft was committed by him.

Theft by wife: Where a wife removes the property of her husband left in her custody from his house with dishonest intention, she commits theft. However, a Hindu woman does not commit theft by removing her stridhan out of the custody of her husband.

Theft by servant: A servant is not guilty of theft when what he does is at his masters bidding, unless he participates in his masters knowledge of the dishonest nature of the acts.

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2. Any movable property - A boat, valuable security, a Hindu idol, stones or sand or minerals when severed from earth is movable property. There is no theft of wild animals, birds, etc. at large, but there is a theft of tamed animals. A human body, whether living or dead, cannot be the subject of theft.

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3. Taking out of the possession of another person - It does not matter for the purposes of theft that the person from whose possession the property is taken is not the true owner or has an apparent and not real title to the property. Possession and not ownership is the essential element in the offence. A theft is a theft. Thus, where a person steals a thing from a thief he is guilty of theft.

Removing ornaments from a dead body cannot be taking property out of possession of a person and thus not a theft, but it is a criminal misappropriation, as also in the case of picking up a lost property. Where the owner removes a property which has been attached by the court, he has committed a theft.

Taking out of possession of another person may not be permanent or with the intention to appropriate things. In **Pyare Lai v. State** (AIR 1963 SC 1094) held that it would satisfy the definition of theft if he took away any movable property out of possession of another person though he intends to return it later on. However, under the English law, the property must be taken to deprive another permanently. In the above case, the appellant was a Superintendent in a Government office.

He removed a file to his house and made it available to an outsider who tampered with the documents. The appellant returned the file to the office. Held, that a temporary period of deprivation or dispossession of the property of another causes loss to the other. In **K.N. Mehra v. State of Rajasthan** (AIR 1957 SC 369), the accused took out an LAF plane for an unauthorised flight, even temporarily, was held guilty.

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4. Taking without consent - Consent obtained by false representation which leads to a misconception of facts will not be a valid consent.

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5. Moving property in order to such taking - Till the property is moved, no offence of theft can be committed even if the alleged offender had intended to take dishonestly the property out of the possession of any person without his consent.

Aggravated Forms of Theft

- i. Theft in any building, tent or vessel used as human dwelling or for the custody of property: Sec. 380.
- ii. Theft by clerk or servant of property in possession of his master: Sec. 381.
- iii. Theft after preparation made for causing death, or hurt or restraint or fear of death, etc. to any person in order to the committing of such theft, or the effecting of escape afterwards or the retaining of property taken by such theft: Sec. 382.

Sec. 383: Extortion

Whoever, intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits **extortion**.

Illustrations

- a. A threatens to publish a defamatory libel concerning Z unless Z gives him money. He thus induces Z to give him money. A has committed extortion.
- b. A threatens Z that he will keep Z's child in wrongful confinement unless Z will sign and deliver to A, a promissory note binding Z to pay certain thing to A. Z signs and delivers the note. A has committed extortion.
- c. A, by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security, A has committed extortion.

Sec. 384: Punishment for Extortion

Whoever commits extortion shall be punished with imprisonment for a term which may extend to three years, or with fine or with both.

Essential Ingredients of Extortion

The chief elements of extortion (Black mail) are the intentional putting of a person in fear of injury to himself or another and dishonestly inducing the person so put in fear to deliver to any person any property or valuable security.

1. **Puts any person in fear of injury** - The fear must be of such a nature and extent as to unsettle the mind of the person on whom it operates and takes away from his acts that element of free voluntary action which alone constitutes consent.

The threats under this section had nothing to do with the truth of the accusation. The guilt or innocence of the party threatened is immaterial. The word injury under this section is not necessarily physical (it includes reputation or property). Even a terror of a criminal charge whether true or false amounts to a fear of injury.

In **A.R. Antulay v. R.S. Nayak** (AIR 1986 SC 2045), the accused was Chief Minister at the relevant time and the Sugar Co-operatives had some of the grievances pending consideration before the Government. The pressure was brought about on the Sugar Co-operatives to make the donations with a promise that their grievances shall be considered. Held that the ingredients of the offence of extortion not made out. There was no evidence at all that the management of the Sugar Co-operatives had been put in any fear and the contributions had been paid in response to threats.

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2. **Dishonest inducement** - It is not sufficient that there should be wrongful loss caused to an individual but the person putting that individual in fear of injury have the intention that wrongful loss should be caused.

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3. **Delivery of property or valuable security by the person put in fear to any person** - Where a person through fear offers no resistance to the carrying off his property, but does not deliver any of the property to those who carry it away; the offence committed is not extortion but robbery. The offence of extortion is not complete until actual delivery of property by the person put under fear. Further, the threat maybe used by one person and the property may be received by another person.

In **Jadunandan Singh v. Emperor** (AIR 1941 Pat 129), the accused, along with others, assaulted two persons and forcibly took their thumb impressions on three blank papers. The court observed that cases frequently occur which turn on the difference between the giving and taking of thumb impression. The forcible taking of the victims thumb impression does not necessarily involve inducing the victim to deliver papers with thumb impressions. Therefore, the offence of extortion is not established. It is not a case of theft because papers were not taken from the victims possession. It is a case of criminal force or assault (Sec. 325).

Sec. 385: Putting person in fear of injury in order to commit extortion

Whereas under Sec. 384, a person is punishable for extortion if he puts any person in fear of injury and thereby dishonestly induces him to deliver any property, Sec. 385 punishes the very act of putting or the attempting to put any person in fear of any injury for the above purpose.

Aggravated forms of extortion are provided under Sections 386-389

Sec. 386 - Extortion by putting a person in fear of death or grievous hurt (Sec. 387 provides for an attempt to do so);

Sec. 388 - Extortion by threat of accusation of an offence punishable with death or imprisonment for life; and,

Sec. 389 - putting person in fear of accusation of offence, in order to commit extortion.

Distinction between Extortion and Theft

The offence of extortion takes a middle place between theft and robbery. Extortion is different from theft in following respects:

- i. Extortion is committed by wrongful obtaining of owners consent. In Theft, property is taken without owners consent.

- ii. In Extortion, both movable and immovable property may be the subject of an offence. Theft is limited to movable property only.
- iii. In Extortion, there is element of force (fear of injury). In Theft, there is no element of force or fear.
- iv. In Extortion, property is delivered to the offender by the victim. In Theft, property is taken away without the owners consent.

Sec. 390: Robbery

Robbery is an aggravated form of either theft or extortion or of both. According to Sec. 390, theft is robbery if -

- i. in order to the committing of theft, or
- ii. in committing theft, or
- iii. in carrying away, or attempting to carry away property obtained by theft, the offender, for that end, voluntarily causes or attempts to cause to any person death, or hurt, or wrongful restraint, or fear of instant death, or hurt, or wrongful restraint.

Illustration

(a) A holds Z down, and fraudulently takes Zs money and jewels from Zs clothes, without Zs consent. Here A has committed theft, and in order to the committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.

The essence of the offence of robbery is the presence of imminent fear or violence. The expression for that end indicates that death, hurt, or wrongful restraint is caused in order to the committing of theft, or in committing theft, or in carrying away property obtained by theft. Thus, violence may be caused either before, or during or after committing theft but it must be caused for any of the ends stated above.

If force is used for any other purpose, it will not convert theft into robbery. Thus, if a thief, being pursued by the owner, abandons the property and finding himself still chased throws stones to avoid capture, it would be a case of theft and not of robbery. Because the offender threw stones to affect his escape and not to take away stolen property. But, where C and D were stealing mangoes from a tree, and were surprised by B, whereupon C knocked down B, the offence of robbery was held to have committed. The hurt caused by the offender must be voluntarily caused. Thus, accidental injury will not convert theft into robbery. In a case the accused is snatching a nose-ring of a woman wounded her in the nostril and causes her blood to flow, he was held guilty of robbery.

When Extortion is Robbery

According to Sec. 390, extortion is robbery-

- i. When a person commits extortion by putting another person in fear of instant death/hurt/wrongful restraint to that person or to some other person, and
- ii. such a person by so putting another in fear, induces the latter to deliver up the thing extorted, and

- iii. the offender, at the time of committing the extortion, is in the presence of the person put in fear.

Illustrations

- a. A meets Z on the high road, shows a pistol, and demands Zs purse. Z surrenders his purse. Here A has extorted the purse from Z, by putting him in fear, of instant hurt, and being at the time of committing the extortion in his presence. A has therefore committed robbery.
- b. A obtains property from Z by saying, your child is in the hands of my gang, and will be put to death unless you send us Rs. 10,000. This is extortion, and not robbery, unless Z is put in fear of the instant death of his child.

For extortion to become robbery, it is necessary that the offender must be present before the person (sufficiently near) put in fear of injury, and, thus, by reason of his presence is capable enough to carry his threat into effect simultaneously. Where a police officer obtains from a person certain ornament by putting him under the fear that he will immediately be put into prison and will not be released for months, the police officer is guilty of robbery.

Section 390 can be analyzed in a nutshell thus-

Robbery {Theft + violence or fear of instant violence or Extortion + offender present + fear of instant violence + immediate delivery}.

Punishment for Robbery

The punishment for robbery is imprisonment for 10 years and fine. In case of attempt to commit robbery, it is imprisonment for 7 years and fine.

If robbery is committed on the highway between sunset and sunrise, the punishment is imprisonment for 14 years (Sec. 392). If hurt is caused, the punishment is imprisonment for life or 10 years and fine. Lastly, belonging to **gang** of persons associated for the purpose of habitually committing theft or robbery is punishable with imprisonment for 7 years and fine.

Sec. 391: Dacoity

Dacoity is an aggravated form of robbery. Sec. 391 lays down that where 5 or more persons conjointly commit or attempt to commit a robbery, or are present and aid such commission or attempt, everyone of them is said to commit **dacoity**.

This section is one more instance of what is known as constructive criminality (see under Sec. 34, IPC). The word **conjointly** refers to united or concerted action of the persons participating in the transaction. The persons should share the common intention of committing robbery. In counting the number of offenders (thugs), the persons (abettors) present and aiding when the crime is committed are also counted. Thus, one person may commit or attempt to commit robbery, and four other may be present and aiding in its commission or attempt.

Section 396 (Dacoity with murder) enacts that if any one of the dacoits commits murder in

committing dacoity, every one of them is liable for murder. In **Emperor v. Lashkar** (1921) 2 Lah. 275, a gang of five dacoits, one of whom had a gun, raided the house of X. After looting, while they were running away with their booty, they shot down one villager. It was held that the murder committed by the dacoits while carrying away the stolen property was murder committed in the commission of dacoity, and every offender was therefore liable for the murder.

Further, preparation to commit dacoity (Sec. 399), belonging to a gang of dacoits (Sec. 400) and assembling for the purpose of committing dacoity (Sec. 432) is also punishable. Thus, the four stages in dacoity are: assembling, preparation, attempt, actual commission; each stage is punishable.

Punishment for Dacoity

The punishment for dacoity is imprisonment for life, or imprisonment for 10 years and fine. In case of dacoity with murder, it is death, or life-imprisonment, or imprisonment for 10 years and fine.

If the offender uses any deadly weapon at the time of committing robbery or dacoity or causes or attempts to cause death or grievous hurt to any person, he shall be punished with imprisonment for 7 years (Sec. 397). A similar punishment is provided for where the offender attempts to commit robbery or dacoity when armed with a deadly weapon (though did not use them) (Sec. 398).

Distinction between Theft, Extortion, Robbery and Dacoity

Theft, robbery and dacoity resemble each other in that property is taken without the owners consent. However, **theft** can be committed in respect of movable property only, whereas **extortion, robbery or dacoity** can be committed in respect of immovable property also. Further, in theft, there is no use of force by the thief, whereas force may or may not be used according as robbery or dacoity is a form of theft or extortion.

It may be noted that dacoity includes robbery and because robbery is only aggravated form of theft or extortion, therefore, dacoity includes theft and extortion also. Every case of dacoity is primarily a case of robbery but vice versa is not correct.

Theft, robbery, and extortion can be committed by one person, whereas in **dacoity**, the least number must be five.

Extortion is committed by the wrongful obtaining of consent. In **robbery**, the offender takes without consent or by the wrongful obtaining of consent. In dacoity, there is either no consent or consent is obtained wrongfully. The element of fear is clearly present in extortion and **dacoity**, but may or may not be present in **robbery**.

Criminal Misappropriation And Breach Of Trust

Sec. 403: Dishonest Misappropriation of Property

Whoever, dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustrations

- a. A takes property belonging to Z out of Zs possession in good faith believing, at the time when he takes it, that the property belongs to himself. A is not guilty of theft; but if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section.
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- b. A, being on friendly terms with Z, goes into Zs library, in Zs absence, and takes away a book without Zs implied consent to take the book for the purpose of reading it, A has not committed theft. But, if A afterwards sells the book for his own benefit, he is guilty of an offence under this section.
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- c. A and B, being joint owners of a horse, A takes the horse out of Bs possession, intending to use it. Here, as A has a right to use the horse, he does not dishonestly misappropriate it. But, if A sells the horse and appropriates the whole proceeds to his own use, he is guilty of an offence under this section.

Explanation 1- A dishonest misappropriation for a time only is a misappropriation within the meaning of this section.

Illustration

A finds a Government promissory note belonging to Z, bearing a blank endorsement. A knowing that the note belongs to Z, pledges it with a banker as a security for a loan, intending at a future time to restore it to Z. A has committed an offence under this section.

Explanation 2 - A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for, or of restoring it to, the owner, does not take or misappropriate it dishonestly, and is not guilty of an offence; but he is guilty of the offence above defined, if he appropriates it to his own use, when he knows or has the means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner and has kept the property a reasonable time to enable the owner to claim it.

It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it: it is sufficient if, at the time of appropriating it, he does not believe it to be own property, or in good faith believes that the real owner cannot be found.

Illustrations

- a. A finds a rupee on the high-road, not knowing to whom the rupee belongs. A picks up the rupee. Here A has not committed the offence defined in this section.
- b. A finds a letter on the road, containing a bank note. From the direction and contents of the letter he learns to whom the note belongs. He appropriates the note. He is guilty of an offence under this section.
- c. A finds a cheque payable to bearer. He can form no conjecture as to the person who has lost the cheque. But the name of the person, who has drawn the cheque, appears. A knows that this person can direct him to the person in whose favour the cheque was drawn. A appropriates the cheque without attempting to discover the owner. He is guilty of an offence under this section.
- d. A finds a valuable ring, not knowing to whom it belongs. A sells it immediately without attempting to discover the owner. A is guilty of an offence under this section.

Essential Ingredients of Criminal Misappropriation

The offence of criminal misappropriation consists in dishonest misappropriation or conversion to his own use any movable property. It takes place when the possession has been innocently come by, but where, a subsequent change of intention or from the knowledge of some new fact with which the party was not previously acquainted, the retaining becomes wrongful and fraudulent. It is the mental act of fraudulent misappropriation (dishonest intention) that demarcates an act of embezzlement (e.g. suits by beneficiaries against trustees for default of the trustees) which is a civil wrong from the offence of criminal breach of trust.

To **misappropriate** means **improperly setting apart for ones use to the exclusion of the owner**. Converts means appropriation and dealing with property of another without right as if it is his own property. The accused is not guilty when he merely retains or possesses such property. He is guilty only when he appropriates or converts to his own use such property. Further, the property must be a movable property. Thus, a house cannot be misappropriated. Misappropriation or conversion need not be permanently, it may even be for a time (See Explanation 1).

A mere misappropriation or conversion to ones use is not sufficient for the completion of an offence, but that the element of dishonesty is essential. Where a person found a purse and put it in his pocket, but was immediately after arrested, he was not guilty of misappropriation for it could not be assumed that by the mere act of picking up the purse or putting it in his pocket he intended to appropriate its contents to his own use.

The accused would not be guilty of the offence, where there was no information as to the circumstances under which the things were lost and the probability was that property was abandoned by the original owner. Explanation 2 makes it clear that the property must be owned by somebody.

The finder must wait upon a reasonable time to allow the owner to claim the property, before he appropriates it. If the owner is not discovered, then, under certain circumstances, the finder may retain the property, but if he acts with reference to the article found in such a way that the true owner may never discover that it had been picked up by him, then he would be guilty (**Ram Bharosey v. State** AIR 1952 All. 481).

Joint/Partnership property:

One joint owner of property is not guilty if he takes it out of the possession of another [See illustration (c)]. A manager of a joint Hindu family may be liable to a charge of misappropriation if, after a division of property has taken place and shares of each co-parcener ascertained, it is found that the manager has wrongfully applied to his own use the share that belongs to other coparceners. A partner has undefined ownership along with the other partners over all the assets of the partnership. If he chooses to use any of them for his own purposes, he may be accountable civilly to the other partners, but he does not thereby commit any misappropriation.

Sec. 404:

Dishonest misappropriation of property possessed by deceased person at the time of his death. This section deals with an aggravated form of offence of criminal misappropriation committed in respect of property after its owner is dead and before it is taken possession of by his legal

representative.

Illustration - Z dies in possession of furniture and money. His servant A, before the money comes into possession of any person entitled to such possession, dishonestly misappropriates it. A has committed the offence defined in this section.

Distinction between Theft and Criminal Misappropriation

The property in respect of which the offence is committed is movable in both theft and criminal misappropriation. However, in theft, the object of the offender is to take property from another's possession, while in misappropriation, the offender is already in the possession of property. Further, dishonest intention precedes the act in theft, while in misappropriation it is the subsequent (dishonest) intention to misappropriate.

Sec. 405: Criminal Breach of Trust

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits **criminal breach of trust**.

Explanation 1 -A person, being an employer, who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount for the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

Illustrations:

- a. A, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will and appropriates them to his own use. A has committed criminal breach of trust.
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- b. A is a warehouse-keeper. Z, going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse-room. A dishonestly sells the goods. A has committed criminal breach of trust.
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- c. A, residing in Calcutta, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z, that all sums remitted by Z to A shall be invested by A, according to Z's direction. Z remits a lakh of rupees to A, with directions to A to invest the same in Company's paper. A dishonestly disobeys the directions and employs the money in his own business. A has committed breach of trust.
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- d. But if A, in the last illustration, not dishonestly but in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions, A,

not having acted dishonestly, has not committed breach of trust.

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- e. A, a revenue-officer, is entrusted with public money and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.

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- f. A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.

Sec. 406: Punishment for Criminal Breach of Trust Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Essential Ingredients of Criminal Breach of Trust

- i. There should be an entrustment by one person to another of the property, or with any dominion over property;
- ii. such entrustment must be in the trust;
- iii. there must have been a misappropriation or conversion to his own use by the person who received the property in trust;
- iv. such conversion or retention of the property must be against or in violation of any direction, or law prescribing the mode in which such trust is to be discharged, or of any legal contract made touching the discharge of such trust.

This offence consists of any of the four positive acts - misappropriation, conversion, user, or, disposal of property. Negligence is not dishonest intention. If a person commits a criminal breach of trust, the refund of amount misappropriated, when the act of defalcation is discovered, does not absolve him of the offence.

Entrusted with property, or dominion over property:

The expression **entrustment** includes all cases in which property is voluntarily handed over for a specific purpose and is dishonestly disposed of contrary to the terms on which possession has been handed over. The expression **entrustment** contemplates the creation of a relationship whereby the owner of property makes it over to another person to be retained by him until a certain contingency arises. Sec. 405 does not contemplate the creation of a trust with all the technicalities of the law of trust (**JM Akhaney v. State of Bombay** AIR 1956 SC 575). The expression **entrustment** carries with it the implication that the person handing over any property or on whose behalf the property is handed over to another, continues to be its owner (**State of Gujarat v. Jaswantlal Nathalal**, AIR 1968 SC 700).

A person is said to be having a dominion over property when he supervises or exercises control over the property or is in charge of that property. In order to establish entrustment of dominion over property to an accused person the mere existence of that person's dominion on property is not enough. It must be further shown that his dominion was the result of the entrustment.

In **Somnath v. State** (AIR 1972 SC 1490), the accused, a Traffic Assistant in the office of Indian Airlines Corporation, demanded on behalf of the Corporation certain excess amounts for trunk

charges from the passengers for reservation of seats. After the amounts were received, he passed receipts on behalf of the Corporation. He, however, subsequently falsified the counter-foil receipts, fraudulently misappropriated the excess amounts. Held that the accused was guilty of breach of trust.

It may be noted that if money was paid to accused as an extra price for the goods and he received it on behalf of or as agent of the mills, the accused would be guilty of breach of trust. But if he receives the money as his own personal profit it will be a case of illegal gratification (**C.M Narayan Ittiravi v. State of Travancore** AIR 1953 SC 478).

Examples of No Criminal Breach of Trust

- a. In the case of hire-purchase contract, mere failure to pay instalments of hire will not amount to criminal breach of trust.
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- b. Deposit of money to be paid back with interest is merely a loan transaction and in such a case refusal to pay it back does not amount to breach of trust (unless the amount is contracted to be used in a specific sense). The amount deposited is not a trust with the bank; money paid to the bank ceases to be the money of the depositor: it becomes the money of the bank with the only stipulation that the sum equal to the sum deposited with the bank is to be paid by them when asked for
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- c. A mere transaction of sale cannot amount to an entrustment. In **State of Gujarat v. Jaswantlal**, the Government sold 100 bags of cement solely for the construction work in question. The accused after taking delivery of those bags delivered at the work site 60 bags and the remaining 40 bags he delivered to one T. Holding that there was no breach of trust, the court observed that after delivery of the cement, the government had neither any right nor dominion over it.

Similarly, in trade transactions, the property in goods passes to the buyer and the mere fact that he fails to pay the price promised to be paid (e.g. by way of dishonour of cheque), cannot attach any criminality to the buyer. However, where a printer uses certain blocks, entrusted to him to print the complainants catalogue, for the purpose of printing a rival firms catalogue, he would be guilty of criminal breach of trust.

- d. Violation of condition does not amount to breach of trust - Where an accused holding a fair price shop was supplied by the State Government with certain quantity of wheat on payment of its price on condition that it was to be sold to residents of particular villages and the accused sold the wheat to whomsoever he liked, he cannot be convicted of the offence of criminal breach of trust as there was no question of entrustment, the property in wheat having passed to the accused on payment of price.
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- e. In **V. Raghavji v. State of Maharashtra** (AIR 1965 SC 1433), held that in the case of a partnership, every partner has dominion over the partnership property by reason of his being the partner. But it is not dominion of this kind which satisfies the requirements of Sec. 405. In the absence of a special agreement, if a partner receives money belonging to the partnership he cannot be said to have been entrusted with dominion over partnership properties.

Distinction between Theft and Criminal Breach of Trust

1. In theft, there is a wrongful taking of a movable property without the consent of the owner. In criminal breach of trust, the property is lawfully acquired with the consent of the owner, but dishonestly misappropriated by the person to whom it is entrusted.
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2. In theft, the property involved is movable property, but in breach of trust it may be any property.
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3. In theft, the offence is completed as soon as the property is dishonestly taken away. In breach of trust, the offence is completed when the offender dishonestly converts the property to his own use.

Distinction between Criminal Misappropriation and Criminal Breach of Trust

1. In misappropriation, the property comes into the possession of the offender by some casualty or otherwise, and he afterwards misappropriates it. In breach of trust, the offender is lawfully entrusted with the property and he dishonestly misappropriates the same.
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2. In misappropriation, there is no contractual or fiduciary relationship, but in breach of trust, there is a contractual relationship of the offender with regard to the property.//
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3. A breach of trust includes criminal misappropriation, but the converse is not always true.

Secs. 407-409:

Sec. 407 is applicable to criminal breach of trust by a carrier, wharfinger or warehousekeeper and provides punishment of imprisonment up to 7 years. Sec. 408 is applicable to criminal breach of trust by clerk or servant and provides upto 7 years imprisonment.

Sec. 409 reads : Whoever, being in any manner entrusted with property or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for a term which may extend to ten years and shall also be liable to fine.

Receiving stolen property.

This is the subject-matter of section 411 of the code which prescribes that the receiver of stolen property shall be punished with imprisonment for a term which may extent to 3 years or with fine or with both. From this it is clear that the receiver \of stolen property is punished in the same way as the person who actually steals the property vide section 379.

The essential requirements for convicting a person under this section are mainly two, one is dishonest receipt or retention of the stolen property and second is that he had knowledge at the

time of receipt that the property was obtained in one of the ways as laid down in section 410

Section 412 deals with dishonestly receiving property in the commission of dacoity.

Section 413 lays down punishment for a person who habitually deals in stolen property;

Section 414 punishes the person who assists in concealment of the stolen property.

Cheating

This is a very common offence and is generally heard of in the society. It is dealt with in section 412 to 423. Out of this section 416 deals with cheating by impersonation which is punished vide section 419. Section 417 punishes for the offence of cheating and the last section 420 which is very commonly known deals with the offence of cheating and dishonestly inducing delivery of property. The punishment in this section is prescribed as imprisonment for either description for a term which may extend to seven years and also liable to fine.

The main ingredients of the offence of cheating are:

1. Description of any person;
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2. (2) (a) fraudulently or dishonestly inducing that person;
 (i) to deliver any property to any person; or
 (ii) to consent that any person shall retain any property; or

 (b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he was not so deceived, and which act or omission caused or is likely to cause damage or harm to the person in body, mind, reputation or property.

Fraudulent deeds and disposition of property

This subject is covered in sections 421 to 424 and the subject in regard to benami transaction in fraud of creditors, that is, the offence consisted, in dishonest disposition of property with intent to cause wrongful loss to creditors. The offence may be against movable or immovable property. This is given in section 421 of the code. Sections 422, 423 and 424 deal in the same way with an offence which defrauds creditors in different ways.

Mischief

Ingredients of mischief as given in section 405 are as under:

1. Intention or knowledge of likelihood to cause wrongful loss or damage to the public or to any person;
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2. Causing destruction of property or any change in the same or in the situation;
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3. by such change the property must be destroyed or its value is diminished or its utility is marred. The punishment for this offence is inflicted vide section 426 and it is only punishment for 3 months or with fine or with both. Different types of mischievous are dealt in sections 427 to 440.

Criminal trespass

Offences of this type are dealt in sections 441 to 460. The 3 essential heads of this offence are;

1. Entry into the property which is in possession of other person without consent;
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2. if such entry is with permission then staying after the permission is withdrawn, that is , if the said entry was lawful in the beginning, but if one remains there unlawfully afterwards;
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3. The entry and remaining there unlawfully with the intention:

(a) To commit offence; (b) To insult, annoy or intimidate the person who is in possession of property.

This offence is defined in section 440 of the code. There are several types of trespass as house trespass, house breaking, and lurking house trespass.Â Â