

THEFT

Theft is the main non-fraudulent property offence, and is defined in s. 1 of the Theft Act 1968:

'A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it. . .' It is a triable either way offence and the maximum sentence is 7 years.

Actus Reus

The actus reus of theft has three elements: 'property', 'appropriation' and 'belonging to another'.

a) Appropriation S. 3(1)

This means doing something with the property that the owner has a right to do e.g. selling, keeping, damaging, or destroying the property. It has a very wide definition. It also covers the situation whereby someone gains possession of property without stealing it but later assumes some right of the owner e.g. A borrows a book from B

and then A refuses to return it. The appropriation occurs at that point. R v Pitham and Hehl 1977 - no need to touch the property

D offered to sell furniture in a house belonging to a friend who was in prison. The offer to sell was an assumption of rights of the owner and the appropriation took place at that point. It did not matter whether the furniture was removed from the house or not, even if the owner was never deprived of the property, D had still appropriated it by assuming the rights of the owner to offer the furniture for sale.

i) Does the thief have to assume all the rights of the owner?

R v Morris

D switched the price labels of two items on the shelf in a supermarket. He had then put one of the items, which now had a lower price on it, into a basket provided by the store for shoppers and took the item to the checkout, but had not gone through the checkout when he was arrested. His conviction for theft was upheld as the owners right to put a price label on the goods was a right that had been assumed.

ii) When does appropriation take place?

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R v Gomez the D worked as a ship assistant. He had persuaded the manager to accept in payment for goods, two cheques which he knew to be stolen. The court stated that an act expressly or impliedly authorised by the owner of goods consented to by him could amount to an appropriation of the goods within the meaning of the Theft Act 1968

R v Atakpu and Abrahams The D's hired cars in Germany and Belgium using false driving licenses and passports. They were arrested at Dover and charged with theft. The CoA quashed their convictions because the moment of appropriation under the law in Gomez was when they obtained the cars. So the theft had occurred outside the jurisdiction of the English courts and as the D's had already stolen the cars in Germany and Belgium, keeping and driving them in England was not an appropriation. Appropriation is one point in time but there is a different view taken for robbery

iii) If the owner appears to be giving his consent has appropriation taken place?

R v Lawrence An Italian student, who spoke very little English, arrived at Victoria Station and showed an address to Lawrence who was a taxi driver. The journey should've costed 50p but Lawrence told him it was expensive. The student got out a £1 note and offered it to the driver. Lawrence said it wasn't enough so the student opened his wallet and allowed Lawrence to help himself to another £6. Lawrence put forward the argument that he had not appropriated the money as the student had consented him to taking it. The court stated that there was appropriation in this situation

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Conflicting civil and criminal law principles: Consent without deception - **R v Hinks** A woman befriended an older man of limited intelligence and accepted daily cash payments from his building society over 8 months, claiming them to be gifts. She

withdrew money. The total was about £60,000 and this money was deposited into D's account. The man also gave D a TV set. The courts decided that for the purposes of the Theft Acts the acceptance of a gift can constitute "appropriation". The question remained as to whether an ordinary member of the public sees the act as dishonest.

Criticisms of appropriation p.51 -52 – set these out

- Width of appropriation – wide variety of acts can be considered as appropriation e.g., physical picking up of an item, destroying property, throwing items away, selling property, switching price labels on items, giving worthless cheques in payment of goods, receiving a gift, and deciding to keep an item. These are all considered to be the assumption of right of the owner. The Theft Act 1968 uses the phrase 'any assumption of the right of an owner'. It can be argued that by interpreting the phrase, the courts have gone beyond what was intended by Parliament.
- Assumption at one point in time – e.g., Atakpu and Abrahams, they stole cars and brought them to the UK to sell them. Surely this is an ongoing part of the theft? Why should appropriation be regarded as only continuing when they hired the cars in Germany? The D's were still assuming the right of an owner by continuing to drive the cars and by bringing them to the UK. Seems more sensible to say that the appropriation was continuing
- Consent to appropriation – major criticism is that there can be an appropriation, even though the owner of the goods consented to the act the D has done in relation to the goods.
- Theft of gifts – e.g., in Hinks. It is difficult to understand how a D can have assumed the rights of an owner when the property has actually been given to him
- Conflict of civil and criminal law – because the civil law of gifts involves the conduct of the owner who transfers the ownership of the gift to the donee. Once this is the the gift now belongs to the donee. The donee doesn't have to do anything for the gift to become his property. It isn't even necessary for the donee to be aware of the gift e.g., bank transferring money
- Reliance on dishonesty to prove theft - because of the problems arising from making appropriation so wide, proof of dishonesty is now the only distinguishing point between theft and honest appropriation. This causes further difficulties as the law on dishonesty also causes problems
- Need for clarity and certainty in the law – law on theft isn't clear

b) Property S.4

S.4 includes 5 different items that amount to property

1. Money – means **coins and banknotes of any currency**

2. Real Property

Real property – Land and buildings

Under s.4 (1) land can be stolen but s.4 (2) states this can only be done in 3 circumstances. Set these out:

- a) **A trustee or personal representative takes land in breach of his duties as a trustee or personal representative**
- b) **Someone not in possession of the land severs anything forming part of the land from the land**
- c) **A tenant takes a fixture or structure from the land let to him**

3. Personal Property -tangible Items

There can be theft of a human body if it is used for medical purposes and so has a financial value as in *R v Kelly and Lindsay (1998)*.

Similarly hair, blood and urine can be classed as property.

Kelly was a sculptor who asked Lindsay to take body parts from the royal college of surgeons where he worked as a laboratory assistant. Kelly made casts of the parts. They were convicted of theft and appealed on the point of law that body parts were not property. The CoA held that though a dead body was not normally property within the definition of the Theft Act 1968, the body parts were property as they had acquired different attributes by virtue of the application of skill, such as dissection or preservation techniques for exhibition or teaching purposes

4. Things in Action

This includes a bank account. Does it include a cheque? **A cheque itself is a thing in action, but it is also a piece of paper – this is property which can be stolen, and it is a ‘valuable security’ which can also be stolen under the definition of property**

5. Intangible Property

What does this include? **This refers to other rights which have no physical presence but can be stolen under the Theft Act e.g., intangible property. Things you can’t touch but own e.g. a trademark, copyrights etc**

Can information be stolen? Refer to *Oxford v Moss* **D was a uni student who acquired a proof of an examination paper he was due to sit. It was accepted that D did not intend to permanently deprive the uni of the piece of paper on which the questions were printed, so he was charged with theft of confidential information. He was found not guilty as the confidential information contained in the paper did not**

amount to intangible property for the purposes of the theft act 1968. Knowledge of questions. Knowledge doesn't amount to theft.

Things which cannot be stolen- s.4 (3) and s.4 (4)

Under s.4(3) it does not include mushrooms, flowers, fruit or foliage growing on wild land unless they are taken for commercial purposes, reward or sale and then it will be theft. If fruit/flowers are taken from residential land i.e. not wild land then this will be theft e.g. picking up fruit from someone's garden.

Finally S.4 (4) under this section wild animals such as deer if taken from a country estate will not amount to theft (but would be the offence of poaching) but it is theft if the deer was taken from a zoo as it would be ordinarily kept in captivity.

c) Belonging to another S.5

s.5 (1) Possession or control

The property appropriated must belong to another at the time of the appropriation and this has been given a wide definition.

R v Turner The defendant took his car in to a service station for repairs. When he went to pick it up, he saw that the car was left outside with the key in. He took the car without paying for the repairs. He was liable for theft of his own car since the car was regarded as belonging to the service station as they were in possession and control of it.

R v Woodman a company had sold all the scrap metal on its site to another company, which arranged for it to be removed. However, a small amount of the scrap had been left on the site. The company wasn't in control of the site itself as it had put a fence around it and had notices warning trespassers to keep out. D took the remaining scrap metal. He was convicted of theft even though the company was unaware there was any scrap left

R (Ricketts) v Basildon Magistrates Court D took bags containing items of property from outside the charity shop. He argued that the original owner abandoned the property and therefore, it didn't belong to another. The court ruled that the goods had not been abandoned – the giver had attempted to deliver them to the charity and delivery would only be complete when the charity took possession. Until then they were the property of the giver. D also took bags of goods from a bin at the rear of another charity shop. These goods were still in possession of the charity at the time they were appropriated by D

Proprietary Interest - R v Webster 2006 D was an army sergeant who had served in Iraq. He had been awarded a medal for his service there. by mistake the Ministry of

Defence had sent him a second copy of the medal. The D sold this second medal on eBay. He was convicted of theft of the medal. On appeal his conviction was upheld on the basis that the Ministry had retained an equitable interest in the medal – still had proprietary interest in the medal

S.5 (2 and 3) deal with the situation where the owner hands over their property to someone else and that person keeps the property where there is a moral obligation to hand it back.

Davidge v Bunnett (1984) D was given money by her flatmates to pay the gas bill but instead she used it on Christmas gifts. There was a legal obligation to deal with the money in a particular way and as she had not, she was guilty of theft. Contrast *R v Hall* 1972 A travel agent received money from clients for deposits for their holidays. He paid these monies into the general current account for the business. The business collapsed before he paid the money to book the holidays and the clients lost their deposit. Held: The travel agent was not liable for theft as there was no obligation to deal with the money in a particular way under s.5(3) Theft Act 1968.

with *R v Klineberg and Marsden* 1999 2 D's operated a company which sold timeshare apartments. Each purchaser paid the purchase price on the understanding that the money would be held by an independent trust company until the apartment was ready for them to occupy. Over £500,000 was paid to the D's company but only £233 was actually paid into the trust company's account. The D's were guilty of theft as it was clear that they were under an obligation to the purchasers 'to retain and deal with that property or its proceeds in a particular way', and that they had not done this.

S.5 (4) deals with receiving property by mistake.

R v Gilks 1972 D placed a bet on a horse race. The bookmaker made a mistake about which horse D had backed and overpaid the D. D realised the error and decided not to return the money. The ownership of the money had passed to D so the only way he could be guilty of theft was if s5(4) applied. It was held that as betting transactions are not enforceable at law, s5(4) did not apply and D not guilty

Attorney-General's Reference (No 1 of 1983) (1985) The D, a policewoman, had received an overpayment of wages when her pay went into her bank account. She recognised it was an overpayment. She didn't withdraw any part of the money but didn't return it. She was convicted of theft of property as she was under an obligation to return in

Criticisms set these out from p.52

The word property has not caused any real problems. The definition in the act is also very wide, it includes almost everything. The act itself sets out detailed rules on when land, animals and plants cannot be stolen. 'belonging to another' the Act states that this phrase includes situations where property is in possession or control of another, or where the person had any proprietary right or interest in the property. This wide definition is needed since in many cases it might be difficult for the prosecution to prove that the victim is the legal owner

Mens Rea

The mens rea of theft has two elements

a) dishonestly S.2 - Genuine and honest belief. If the jury decides that D did have a genuine belief, even though it is an unreasonable one, then in the following 3 situations D must be found not guilty.

Set out the law:

i) S.2 (1) (a) s/he has in law the right to deprive the other of it, on behalf of him/herself or of a third person

R v Holden 1991 D was charged with the theft of scrap tyres from where he worked. He claimed that other people had taken tyres with the permission of the supervisor. However, taking tyres was a sackable offence. The CoA quashed his conviction. As the test is subjective a person was not dishonest if he believed, reasonably, or not, that he had a legal right to the property, providing that the belief is genuinely held R v Robinson

ii) S. 2 (1) (b) s/he would have the other's consent if the other knew of the appropriation and the circumstances of it

iii) S. 2 (1)(c) the person to whom the property belongs cannot be discovered by taking reasonable steps

R v Small 1988 The appellant took a car which he believed had been abandoned. It had been left in the same place for two weeks with the keys in the ignition. His conviction for theft was quashed as he believed the owner could not be found. There is no requirement that the defendant's belief is reasonable so it was immaterial that a reasonable person would have known to contact the DVLA to discover the owner.

iv) S 1(2) not for gain or benefit and 2(2) willing to pay

v) The test for dishonesty

R v Ghosh 1982 D was a doctor acting as a locum consultant in a hospital. He claimed fees for an operation he had not carried out. He said that he was not

dishonest as he was owed the same amount for consultation fees. He was convicted and appealed against the conviction. The CoA decided that the test for dishonesty has both a subjective and objective element to it: was what was done dishonest according to the ordinary standards of reasonable and honest people? Did the D realise that what he was doing was dishonest by those standards? **DPP v Gohill 2007** Two employees did favours for customers at the expense of the company. This involved small amounts of money and was infrequent but involved making false computer entries. What was done was not permitted by the company's rules but in a loose sense could be described as customer service ultimately for the benefit of the company. A Magistrates Court dismissed charges of theft and false accounting on the basis that they were not satisfied beyond reasonable doubt that by the standards of reasonable and honest people, the employees had acted dishonestly.

Ivey v Genting Casinos 2017 definition of dishonesty is modified here. Ivey concerned a claim brought by Phil Ivey, a professional poker player, against Genting Casinos. The casino had refused to pay him his winnings of £7.7million because they said he had cheated. Mr Ivey used a technique called 'edge-sorting' where he would observe the unintentional differences on the backs of some types of card and then manipulate the placement of high value cards in the "shoe". He did this by asking the croupier to place certain cards in a different direction, ostensibly on the grounds of superstition. The croupier humoured him, acceding to his request because he was a known and valued high-stakes player. The parties agreed that a contract for betting included an implied term that neither party would cheat. Mr Ivey argued that 'cheating' required an element of dishonesty, which he said the casino had not established. We reported on the 2014 High Court first instance decision here. Mr Justice Mitting concluded that Mr Ivey was cheating and found against him. The Court of Appeal agreed. Mr Ivey appealed to the Supreme Court. Objective test. **R v Barton and Booth 2020**

Criticisms Set these out from p.52-54

There is criticism of the Ghosh test for dishonesty. The main criticism that it leaves too much to the jury so that there is a risk of inconsistent decisions with different juries coming to different decisions with similar cases

Another criticism is that it places too much emphasis on objective views of what is dishonest rather than the D's intention. The Ghosh test leads to longer and more difficult trials, the idea of standards of ordinary reasonable and honest people is a fiction, the Ghosh test is unsuitable in specialised cases. The complicated nature of the Ghosh test means that trials take longer. The jury must first decide if the D realised that what they were doing was dishonest by those standards. This is a difficult point as evidence of a state of mind is not easy to prove. Using a test of ordinary standards of reasonable and honest people assumes that there is a common standard. Society is very diverse and different sections of community may have varying standards. It creates problems when the jury must

decide on ordinary standards. The jurors are likely to come from different backgrounds with different experiences of life. They also vary in age from 18 to 70. All these factors may mean the jury may disagree on what the ordinary standards are

b) The second part of the MR is intention permanently to deprive S.6. The victim need not actually be deprived permanently of the property as long as the prosecution can prove that the defendant intended permanent deprivation.

R v Velumyl D a company manager took £1050 from the office safe. He said that he was owed money by a friend and that he was going to replace the money when that friend repaid him. The CoA upheld the conviction for theft as he had the intention of permanently depriving the company of the banknotes which he had taken from the

safe, even if he intended replacing them with other banknotes to the same value later

DPP v Lavender 1994 D took doors from a council property which was being repaired and used them to replace damaged doors in his girlfriend's council flat. The doors were still in the possession of the council but had been transferred without permission from one council property to another. Here he is dealing with doors as his own by moving them from one property to another without permission **R v Zerei 2012** D and another man approached V, whom they knew and told him they were going to take his car. D pulled out a knife, punched V, took his car keys and drove off. The car was found abandoned. D convicted of robbery, but conviction quashed on appeal. The CoA held that the trial judge had misdirected the jury on the issue of intention to permanently deprive that a forcible taking was enough to show intention for permanently depriving

Borrowing or lending (photocopier card/bicycle/car)

R v Lloyd 1985 the projectionist at the local cinema gave D a film that was showing at the cinema so that the D could make an illegal copy. D returned the film in time for the next screening at the cinema. His conviction for theft was quashed because

by returning the film in its original state, it was not possible to prove an intention to permanently deprive.

Conditional intent

R v Easom 1971 D picked up a handbag in a cinema, rummaged through it and replaced the handbag without taking anything. His conviction for theft of the handbag and the contents of it was quashed. There was no evidence that the D intended to permanently deprive the owner of the bag or the items so he couldn't be found guilty of theft.

R v Hussey 1977 Defendant loitered near van containing sub-aqua equipment but ran off when saw police. Defendant was not convicted as he had no intention to steal particular items

AG's Ref (Nos 1 and 2) of 1979

Criticisms Set these out from p.54-55

Whether it is necessary to include it as part of the law of theft. If someone dishonestly takes property belonging to another, does it matter whether the intended permanently depriving the person of their property? This would make it possible to convict theft e.g., Lloyd and return it 'conditional' intention to deprive where a D examines property to see if it is worth stealing. If he determines that it's not worth stealing and returns it, there is no theft