

W201 The Individual and the State

Study notes on theft and robbery

Theft

Definition

“A person is guilty of theft if he dishonestly appropriates property belonging to another, with the intention of permanently depriving the other of it” Section 1 Theft Act 1968.

Punishment 7 years.

Actus reus

- 1 Appropriation
- 2 Property
- 3 Belonging to another

Mens rea

- 4 Dishonestly
- 5 With intent permanently to deprive

1. Appropriation

Definition

“any assumption of the rights of an owner” Section 3(1). (This means any **one** of the rights and not all of them - **Morris**).

Leading cases (**Lawrence v MPC** 1972 Lords **R v Morris** 1984 Lords and **R v Gomez** 1993 Lords) focus on whether appropriation must be without the consent of the owner. Gomez decided the consent of the owner is **not** required.

Prior to 1968 the Larceny Act required any taking of property to be ‘without the consent of the owner’. The issue in the three cases was - has the Theft Act changed the law? Based on statutory interpretation there were respectable arguments for both positions.

A typical situation is where a rogue buys goods with a dud cheque (the facts of Gomez). The rogue would commit the offence of deception. Theft was problematic. Because of the deception with the cheque the owner parted with his goods willingly. Does the fact of the owners consent prevent there being a theft?

The problem arose in the past where prosecutors charged theft and not deception and Courts had to choose between acquitting or interpreting theft to cover the situation.

Lawrence 1972

In Lawrence an Italian student in order to pay a taxi fare paid £1 then offered his wallet to the taxi driver who helped himself to a further £6. The fare was 10s 6d. The taxi driver was charged with theft of £6. The not guilty plea was based on the fact that the student consented to the taking of the £6.

The House of Lords held that absence of consent was **not** an ingredient of theft.

This meant that the offence of theft now covered most offences of deception too.

Morris 1984

Two accused swapped price labels on goods in a supermarket. Both were convicted of theft. The House of Lords held that this act was an appropriation but defined appropriation as “an adverse interference or usurpation of the owners rights”. They had chosen a definition that was wider than necessary and it meant that absence of the owner’s consent was again relevant.

Gomez 1993

The confusion was resolved by Gomez (electrical goods purchased with dud cheque) where a majority held that the Theft Act was intended to simplify the law- it was not necessary for an appropriation to be without the consent of the owner. Lawrence was rightly decided and Morris went further than it needed to on the facts of the case.

The practical outcome was that most deceptions would also be thefts. Many people regarded this as a sensible outcome. It meant that people who were clearly dishonest would not escape because the ‘wrong’ offence had been charged.

Gifts

What if an accused says the ‘stolen’ property was **given** to me (the defence put forward by the taxi driver in Lawrence). If there is a valid gift can there still be an appropriation by the accused?

At first the Court of Appeal in **R v Mazo** 1996 (elderly lady gave £37,000 to her maid) said that a valid gift (based on the owner’s consent) meant there was no appropriation and thus no theft.

Now however the Lords in **R v Hinks** 2000 (backward man gives £60,000 to forward lady) relying on **Lawrence** and **Gomez** has repeated that consent is irrelevant to appropriation. The court said that appropriation was not to be narrowly construed and was a neutral word. There can be theft of a gift if the recipient is dishonest.

The Court of Appeal has recently imposed some limit on the meaning of appropriation in **R v Briggs** 2004 C A (accused fraudulently obtained an authority from elderly relatives for the transfer by conveyancers of £49,950 to allow for the purchase of a property in the accused’s name). The Court (without considering **Hinks**) said that the act whilst

dishonest was too remote. Silber J said that appropriation “is a word which connotes a physical act rather than a more remote action triggering the payment which gives rise to the charge”.

Definition continued

You can also appropriate property you come by innocently if you later assume the rights of an owner (Section 3(1)) unless you obtain the property for value when acting in good faith (Section 3(2)).

2. Property

Defined in Section 4 as

- money
- all other property real or personal (eg chattels)
- things in action (eg contractual rights shares insurance cover debts)
- intangible property (patents)

Exceptions

- land (subject to exceptions)
- wild flowers fruit foliage (unless for commercial purposes)
- wild creatures (unless reduced into possession)
- information **Oxford v Moss** 1979 QB
- electricity **Low v Blease** 1975

3. Belonging to another

Defined in Section 5 - you can steal from someone who has control possession or ownership.

If property is abandoned you can't steal it.

Companies have a separate legal personality so that an employee director or shareholder can steal from a company.

You can steal your own property if you have loaned it or jointly own it or have created a lien (**R v Turner** 1971 dispute with garage owner over car repairs - car owner stole his own car when he took it back without paying).

You can steal property you are under an obligation to deal with in a particular way - Section 5(3). **R v Hall** 1973 (travel agent did **not** steal as there was no obligation to deal with customers' money in a particular way).

You can steal money/property you are paid by mistake - Section 5 (4) eg if your employer overpays you and you keep it!

Under Section 5 the test is who does the property belong to at the moment of the dishonest appropriation. If property has already passed to the accused there is no offence. **Edwards v Ddin** 1976 (attendant at garage filled car with oil and petrol, accused drove off without paying - no offence as property passed when the car was filled - the driving off was the dishonest appropriation and property had already passed). This would now be an offence of 'making off' under Section 3 of the Theft Act 1978.

4. Dishonesty

Dishonesty in theft is **partly** defined in Section 2 (note that Section 2 does **not** apply to dishonesty in fraud or making off). Always check to see if any of the four examples given in Section 2 apply **before** considering the test in Ghosh.

The first three examples are of appropriations that are **not** dishonest.

Section 2(1)(a) the accused believes he has a right in law

Section 2(1)(b) an accused believes he has the other's consent

Section 2(1)(c) an accused believes the owner can't be discovered by reasonable steps

All three subsections only require an honest belief (ie a wholly subjective test).

Section 2(2) provides that an appropriation **may** be dishonest notwithstanding a willingness to pay.

If relevant a judge will tell a jury about these subsections of the Act.

Dishonesty has also been separately defined in **R v Ghosh** 1982 C A in a two part test which is used together with Section 2 or on its own where Section 2 is not relevant.

The objective part

"a jury must first of all decide whether according to the ordinary standards of reasonable and honest people what was done was dishonest".

The subjective part

"if it was dishonest by those standards then the jury must consider whether the defendant must have realised that what he was doing was by those standards dishonest".

5. Intent permanently to deprive

Not all legal systems require this additional intent. Some treat intent to temporarily deprive as sufficient (eg Canada). Larceny however required intent to permanently deprive and this has been carried over into the Theft Act.

The purpose of the partial definitions in subsections 6(1) and (2) is to extend the

definition to some situations of temporary deprivation.

Section 6(1)

Applies where the intention of the accused is to treat the thing as his own to dispose of regardless of the other's rights. An example would be where an accused sells property to the owner from whom he has taken it (so there would be no permanent deprivation).

The subsection also covers where property is borrowed or lent for a period or in circumstances equivalent to an outright disposal.

R v Lloyd 1985 C A (projectionist at the Odeon Barking 'borrowed' the film so pirate copies could be made then returned it in time to be shown at the performance. Held - **not** equivalent to an outright disposal so no theft).

Contrast 'borrowing' a railway ticket and returning it after the journey is completed. This would be equivalent to an outright disposal.

Section 6(2)

This tries to cover where an accused pawns property he has taken and claims he intended to retrieve it. The section says it amounts to a disposal regardless of the owner's rights (and therefore intent permanently to deprive will exist).

Historical note (no need to learn this)

Pre 1968

Larceny

(Origin in common law and Victorian statutes)

An offence against **possession** ie fraudulently taking and carrying away without the owner's consent.

Fraudulent conversion (Origin statute 1901)

Stealing property already lawfully in the offender's possession (and therefore incapable of being taken and carried away by larceny).

Embezzlement

(Stealing by servant of master's property in servant's possession)

Both these were offences against ownership as well as possession.

Obtaining by false pretences

(old fashioned swindling)

This was an offence against ownership or possession and there was generally no overlap with larceny as the swindler will obtain ownership or possession or both with the owner's consent albeit obtained by false pretences.

Post 1968

Theft

Theft

Theft

Deception
or Theft

Robbery

Definition

“a person is guilty of robbery if he steals, and immediately before or at the time of doing so, and in order to do so, he uses force on any person or puts or seeks to put any person in fear of being then and there subject to force” Section 8(1) Theft Act 1968.

Punishment life.

Actus reus

1. Theft
2. Use of force or putting or seeking to put any person in fear of subjection to force in order to steal immediately before or at the time of stealing

Mens rea

3. Theft
4. Intent or recklessness as to the use or threat of force

1. Actus reus of theft

Appropriation of property belonging to another is required or there is no robbery.

2. Use of force

Force replaces the word ‘violence’ used prior to 1968. The jury is left to decide what ‘force’ means. Juries have convicted when minimal force has been used. **R v Dawson** 1976 C A (accused nudged victim and then stole wallet - robbery upheld). The victim does not have to be scared **R v DPP** 2007 Div Ct.

When is a theft complete? If force is used **after** a theft eg to escape there is no robbery. **R v Hale** 1978 C A (burglars enter house and seize jewellery box then tie up occupant before leaving - appropriation (and therefore theft) was still continuing when occupant tied up - robbery upheld). In **Hale** the court made it clear that it was a matter for the jury to decide whether the appropriation was still continuing. The force or threat must also be used **in order to** steal.

Handbag snatching frequently results in a robbery charge. If the owner is unresisting there is an argument that there is no force used ‘on the person’ and the offence committed is theft. Juries are still free to convict (and do) if they feel the definition of ‘force’ is satisfied. **R v Clouden** 1987 C A (accused snatched shopping basket with both hands and ran off - robbery upheld).

3. Mens rea of theft

Dishonesty and intent permanently to deprive must be proved.

4. Intent or recklessness (subjective) as to use or threat of force