

## **Half Term Homework Essay - Theft, Robbery, and Burglary Problem Question**

Hypothetically, Helen's acts can be split into separate offences, which have properties similar to the definitions of the crimes of theft, robbery and burglary. It may be possible that Helen would not be found criminally liable for all of her actions, but it is likely that she would be for some, as this essay will discuss.

### The Theft Act 1968

This act is split into nine sections, each of which outlines a different specification for the elements of theft, robbery and burglary. The law on theft is designed to protect rights in relation to property, possession, ownership etc. so can be very technical as the concepts are defined by civil law, which can be quite complicated. This was emphasised by Lord Justice Bingham's comments in the case of Dobson v General Accident Fire and Life Assurance Corp plc 1989, where he stated that crucial issues, such as the interpretation of 'property belonging to another' for the purposes of theft is '*a question to which the criminal law offers no answer and can only be answered in reference to civil law principles*'. Courts have generally tried to use the literal rule which interpreting this act, aiming to give words and expressions their ordinary meaning so to avoid further complexity.<sup>1</sup>

Sections 1 to 7 surround the elements of the offence of theft- s1 is the basic whole definition; s2 outlines the definition of 'dishonesty', therefore setting the mens rea for the offence; s3-5 are on 'appropriation', 'property', and 'belonging to another' respectively, which outline the actus reus; s6 describes the mens rea element of the 'intention to permanently deprive'; and s7 sets out the boundaries on punishment if a person is found guilty of theft<sup>2</sup>.

Section 8 is for the offence of robbery, and Section 9 for burglary. These two sections rely on the definitions and elements set out by the previous sections, as they are effectively theft combined with other offences.

These sections will be used and discussed as this essay debates whether Helen would be criminally liable for her actions in this situation by applying the current law. The main points of possible offences are eating two of Margaret's chocolates, taking her perfume whilst upstairs, using her bicycle without permission, attempting to switch prices on the DVD and keeping Margaret's change. There is obvious potential for Helen's criminal liability, but it may emerge that she has a defence or a point of law could find her not guilty in some aspects.

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<sup>1</sup> *Criminal Law: Cases and Materials*, Smith and Hogan, Oxford University Press 2009

<sup>2</sup> *Criminal Law for A2*, Diana Roe, Hodder Education, 2005

## Taking the Chocolates

Under Section 1 of the Theft Act, a person is guilty of theft if he or she 'dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it'. By looking at the ordinary meanings of each of these words or phrases, it is clear that Helen fulfils some of the elements of this offence. However it is important to consider whether she has the full elements of the actus reus and the mens rea in order to be found guilty.

The actus reus is set out in sections 3, 4 and 5 of the Theft Act. Section 3 states that:

*'Any assumption by a person of the rights of an owner amounts to an appropriation.'*

This definition goes on to include situations where a person has 'come by' property without actually stealing it, but then going on to treat the property as his own<sup>3</sup>. An appropriation can take place even if the victim has consented, as shown in the case of Lawrence 1972. The defendant was a taxi driver who took money out of a foreign tourist's wallet after they offered him money for the journey. He tried to argue that the victim had consented to him taking further money by holding the wallet open. Viscount Dilhorne stated that *'Belief or absence of belief that the owner consented to the appropriation may be relevant to the issue of dishonesty but not to the issue of appropriation'* so Lawrence was found guilty.

The current precedent on the law of appropriation is set out in a number of cases. The House of Lords decided in Morris 1984 that appropriation will be satisfied if just one of the rights of the owner is assumed. The court also decided in Gomez 1993 that an appropriation takes place the first time any of the rights of the owner are assumed, but will not take place where there is no physical act and is considered too remote (Briggs 2003).<sup>4</sup>

Section 4 goes on to say that the word 'property' is widely defined as *'money and all other property, real and personal, including all things in action and other intangible property'*.<sup>5</sup>

Section 5 defines 'belonging to another' is where a person has *'possession or control'* over that property.<sup>6</sup>

It is clear that from the literal interpretation and of these definitions and the precedent through case law that Helen would be found guilty of fulfilling the actus reus for theft by taking the chocolates. She has assumed the rights of the owner by

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<sup>3</sup> <http://www.legislation.gov.uk/ukpga/1968/60/section/3>

<sup>4</sup> *Criminal Law for A2*, Diana Roe, Hodder Education, 2005

<sup>5</sup> <http://www.legislation.gov.uk/ukpga/1968/60/section/4>

<sup>6</sup> <http://www.legislation.gov.uk/ukpga/1968/60/section/5>

treating the chocolates as hers to consume, although the chocolates are Margaret's property. However Helen may not have the mens rea for this crime, as defined under section 2 and 6. She would have had to have taken the chocolate's dishonestly with the intention of depriving Margaret from them.

Helen's has obviously intended to deprive Margaret of the chocolate, as there can be no way she could give them back. The word 'dishonesty' is not actually defined under this act, but it does state in s2(1)(b) that a person will not be considered dishonest if they took the property believing that the other person would consent to this action. It could be said that Helen believed Margaret would have allowed her to take a chocolate, especially if they are openly displayed in her kitchen. The current test for establishing dishonesty in relation to a theft was decided in the case of Ghosh 1982. It asks the jury to consider to questions;

*'1) Do you believe that according to the standards of reasonable and honest people what the defendant did was dishonest?*

*2) If yes, do you believe that the defendant realised that what he did was dishonest by those standards?'*<sup>7</sup>

This test is a mixture between an objective and a subjective approach, which can cause complications and confusion for a jury. In Price 1989 Lord Lane stated that it is not necessary in all cases to use the Ghosh test to establish dishonesty. In Helen's case, if this test was used she could not be found guilty, as her actions may have been dishonest but she may not have realised that this was so. The problem with this test is that it is up to the jury decide whether Helen realised her actions were dishonest. It should be considered, as Helen is a guest of Margaret's, leaving the chocolates out could be seen as an open invitation for her to have one, so Helen could have honestly believed she was entitled to one.

It is likely to be seen by the court that the taking of the chocolates is quite a trivial matter, so Helen probably would not be criminally liable.

### Taking the Perfume

Using the elements of theft as set out under the Theft Act (as depicted above), and the facts of the case, it is clear to see that Helen could be found criminally liable for taking the perfume. She has appropriated this possession of Margaret's- the appropriation starting from the moment she sprays the first squirt on her wrist- and has put it in her pocket with the intention of permanently depriving Margaret of it.

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<sup>7</sup> *Criminal Law for A2*, Diana Roe, Hodder Education, 2005

However it may also be possible for the jury to find Helen guilty of burglary as well as theft. In order show this it is essential to look at the elements of burglary as defined under s9 of the Theft Act 1968:

*'A person is guilty of burglary if:*

- a) *He enters any building or part of a building as a trespasser with intent to commit any such offence as is mentioned in subsection 2 below; or*
- b) *Having entered any building or part of a building as a trespasser he steals or attempts to steal anything in the building or part of it...'*<sup>8</sup>

Burglary can be committed in one of two ways as seen above, but both require a trespass by the defendant. This includes situations where the defendant has acted in excess of any permission given to him, such as in the case of Smith and Jones 1971. The defendants removed two television sets from the home of Smith's father during the night and were both convicted of burglary, even though the father attempted to protect his son by saying he had permission to enter the house<sup>9</sup>.

This case can be directly applicable to Helen, as she has had permission to be in Margaret's house, but this might not have extended to the bathroom (even though Margarte asked her to go upstairs). As Helen has also taken the perfume whilst trespassing, she fulfils the elements of burglary as set out under s9(1)(b), and therefore would be found criminally liable.

#### 'Borrowing' Margaret's bicycle

The key word in the facts of the case is 'borrows'. Helen could be found guilty of theft under the requirements of the Theft Act for committing the actus reus- she has appropriated property belonging to another. However, as she has 'borrowed' the bicycle and not 'taken' it, it could be inferred that she has not got the necessary intention to 'permanently deprive'. This phrase is stated under the Theft Act as being an *'intention...to treat the thing as his own to dispose of regardless of the other's rights...'*<sup>10</sup>

Cases of borrowings in the law are mostly associated with borrowing money, where the defendant claims intention to pay it back. For example, in the case of Velumyl 1989 a company manager borrowed £1050 from safe at work without authority and contrary to company rules and lent it to a friend. He intended to return the money on the following Monday. However it was held that his intention to repay the money (with different notes or coins) could not be used as a defence. He

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<sup>8</sup> <http://www.legislation.gov.uk/ukpga/1968/60/section/9>

<sup>9</sup> *Criminal Law for A2*, Diana Roe, Hodder Education, 2005

<sup>10</sup> <http://www.legislation.gov.uk/ukpga/1968/60/section/6>

had the intention permanently to deprive and no intention to return the objects he had taken (the exact money taken).<sup>11</sup>

This case would not specifically apply to Helen though, as she has returned the property (the bicycle) the way it was when she took it. It was held by the Court of Appeal in the case of Lloyd, Bhuue and Ali 1985 that there could be intention to permanently deprive even though the goods were returned but only in cases where the value of the item stolen was affected<sup>12</sup>. As Helen has not treated the property as hers to dispose of, the value of the bicycle of the has not been affected, and she has returned it, it is unlikely that she would be found criminally liable of theft. I would say, however, that this would be reversed if she had damaged the bicycle in any way, therefore reducing its value.

#### Attempting to steal the DVD

In the facts of the case, it is stated that Helen switches the price labels of two DVDs in order to get the one she wants for a lower price. There are similar cases that set out precedent for this kind of crime- for example, in Morris 1884, the defendant took some goods from a supermarket and switched the price labels, but was arrested after he had paid the lower price. Also in Anderton v Burnside 1984, the defendant had done the same thing with a joint of pork. The House of Lords decided in both of these cases that the defendants had assumed the rights of the owner, and switching the price labels amounted to an appropriation.<sup>13</sup> Therefore, following House of Lords precedent, Helen would be found criminally liable. As her actions have been thwarted, she would probably be convicted for attempted theft, as she has the mens rea, but the full crime has not been carried out.

It could also be argued that Helen should be found guilty of robbery for her actions at the store, as she 'pushes' the store manager when he goes to confront her about the theft. Under s8 of the Theft Act 1968:

*'A person will be found 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 seeks to put them in fear of there and then being subjected to force.'*

It may be debated that Helen's actions could not be equated to using 'force'. However, in the case of Dawson 1976 it was held that even a 'mere jostling' could be seen as force, therefore a charge of robbery could still apply in Helen's case. It also should be noted that there is no requirement for her to have gone ahead and

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<sup>11</sup> [http://sixthformlaw.info/02\\_cases/mod3a/cases\\_70\\_property\\_theft.htm#Velumyl, R v \(1989\) CA](http://sixthformlaw.info/02_cases/mod3a/cases_70_property_theft.htm#Velumyl, R v (1989) CA)

<sup>12</sup> *Criminal Law for A2*, Diana Roe, Hodder Education, 2005

<sup>13</sup> *Criminal Law for A2*, Diana Roe, Hodder Education, 2005

taken the DVD after these events, as seen in Corcoran v Anderton 1980.<sup>14</sup> The defendant had snatched a bag from his victim, but it fell out of his hands as he tried to get away. The Court of Appeal held that an appropriation had taken place as soon as the defendant had taken the bag, so he was guilty of theft regardless of whether he got away with the property.

It is of my opinion that because of this precedent Helen could be found criminally liable of both attempted theft and the crime of robbery.

### Keeping Margaret's change

Based on the literal interpretation of s1 of the Theft Act, Helen would be found guilty of stealing Margaret's £2 change. She has appropriated the property of Margaret (the change), lied that there was no change (amounting to dishonesty under s2), and has the intention to permanently deprive Margaret of it, as she has spent it on a magazine. Therefore she has fulfilled the elements for this crime, having clearly shown the mens rea and carried out the actus reus.

Helen could attempt to argue that as Margaret has given the money to her, it is rightfully Helen's do with as she likes- the literal interpretation of s5(1) of the Theft Act would support this argument, as it states '*property shall be regarded as as belonging to any person having possession or control of it, or having in it any proprietary rights or interest*'. As Margaret has transferred her control of the money over to Helen, it could be said that the property is legally in Helen's possession and that it is in her 'interest' to get the groceries for Margaret.

However, this defence would not be likely to gain Helen an acquittal, as the same section then goes on to say:

*'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.'*<sup>15</sup>

It is likely, therefore, that a jury would see that Helen had an obligation whilst the money was in her possession to get the groceries for Margaret, and that legally the money still belongs to Margaret, as she has given the money to Helen in order to 'deal with in a specific way' (buy the groceries).

This was seen in the case of Davidge v Bennett 1984, where the defendant was entrusted with some money for her flatmates gas bill, but instead spent it on Christmas presents. In Floyd v DPP 2000, the facts of the case were similar- the

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<sup>14</sup> *Criminal Law for A2*, Diana Roe, Hodder Education, 2005

<sup>15</sup> <http://www.legislation.gov.uk/ukpga/1968/60/section/5>

defendant collected weekly premiums from her colleagues at work so she could purchase food hampers, but did not pass the money along to the supplier. She tried to correct the deficit by presenting various cheques, but these were dishonoured, so she was convicted of theft. The point of law that arose was the debate as to whether the money belonged to the hamper company or her colleagues. The Divisional Court ruled that the defendant had had an obligation to get the money to the hamper company, so therefore was guilty of theft.<sup>16</sup>

This kind of liability was also seen in Wain 1995. The defendant raised over £2000 for charity but put the money into a separate bank account from the one which he was supposed to. He attempted to put the money into his own account before sending it to the television company, who were organising the charity event, but the cheque he withdrew to repay the money was dishonoured and he was convicted of theft. Lord Justice McCowan's comments stated that Wain had had an '*obligation to retain, if not the actual notes and coins, at least the proceeds*' of the charity earnings, and by not passing them along, he was guilty of an appropriation.

From this it may be clear that Helen could be found guilty of not handling the money in which she was put in control of in the right way, and she has not respected her obligation to use that money for what it was intended for.

### Conclusion

In my opinion, Helen is likely to be found guilty of stealing the perfume, the DVD and the £2 change. She has clearly demonstrated the elements of theft (the mens rea and actus reus) for all of these actions. It is unlikely that she would be found guilty of taking the chocolates or borrowing the bike, as the intention to dishonestly deprive Margaret of these possessions is not present. She could be found criminally liable for robbery in the grocery store as the pushing of the store manager would amount to the use of 'force', and she may be guilty of burglary by entering the bathroom and then proceeding to steal.

I think Helen would be guilty of the above if the court looked at these actions as separate incidents. However it may be the case that she would be found guilty of more if the court looked at all of her actions over the course of this day and interpreted her dishonesty as a continuing act- looking at the facts of the case, because her dishonest actions, it may be decided to give her a harsher sentence.

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<sup>16</sup> *Criminal Law for A2*, Diana Roe, Hodder Education, 2005

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