Margaret, an elderly lady, invites Helen, her next-door neighbour, to come into her house as she would like Helen to run an errand for her. While Margaret goes out of the lounge to fetch her purse from the kitchen, Helen helps herself to two chocolate liqueurs from a dish on Margaret's coffee table.

Margaret returns from the kitchen and says that she must have left her purse upstairs in her bedroom and would Helen mind fetching it for her. Whilst on the upstairs landing, Helen notices an expensive bottle of perfume in the bathroom. She goes into the bathroom to spray some on to her wrist, but then decides to take the whole bottle which she slips into her pocket.

When Helen gets back downstairs with the purse she gives it to Margaret who hand her a £20 note and asks Helen to go to the local store and buy her a few groceries. Without asking, Helen borrows Margaret's bicycle to go to the store. While at the store she sees a DVD which is expensive at £14.99 so decides to switch price labels with one priced at £9.99. In doing so, she is watched on CCTV by the Store Manager who confronts her as she is approaching the till with the DVD in her hand. Helen panics and pushes the Manager to one side in order to escape.

She goes to another store and buys the groceries but keeps £2 change, which she uses to buy herself a magazine. She returns to Margaret's house and delivers the groceries, telling her that there is no change.

Discuss the potential criminal liability of Helen for theft, burglary and robbery, together with any possible defences that she could plead.
PLAN

Introduction

• discuss the potential criminal liability of Helen for theft, burglary and robbery, together with any possible defences she could plead.

Helens helps herself to two chocolate liqueurs THEFT

• By helping herself to two chocolate liqueurs, Helen has committed theft which is defined in section 1 of the Theft Act 1968.
• Helen has appropriated under section 3(1) which gives a wider definition of appropriation as “any assumption by a person of the rights of an owner amounts to an appropriation, and this includes, where he has come by the property (innocently or not) without stealing it, any later assumption of a right to it by keeping or dealing with it as owner.”
• Lawrence v Metropolitan Police Commissioner 1972,
• Chocolate liqueurs, falls under this definition as personal property.
• Kelly and Lindsay 1998
• Section 5(1) of Theft Act 1968 provides that property shall be regarded as belonging to any person having possession or control of it, or having any proprietary right or interest
• R v Turner(No 2) 1971,
• Dishonestly is not defined in the Theft Act 1968 other than a partial definition in section 2(1) relating to certain beliefs and a willingness to pay in section 2(2).
• Issue of dishonesty is purely a matter of fact but in some circumstances the jury will also need to be directed in the Ghosh test.
• The second element of mens rea which must be proved against Helen in accordance with section 1 of the Theft Act 1968 is the intention to permanently deprive another of property.
• Nedrick 1986 and Woollin 1998
• Therefore Helen would be guilty of theft but a jury wouldn’t convict her on the bases that it’s such a trivial appropriation of chocolate liqueurs.

Sprays perfume on her wrists + Takes whole bottle BURGLARY

• Helen is guilty of burglary under section 9(1) (b) of the Theft Act 1968 as she enters the bathroom and sprays perfume on her wrists.
• The term entry is not defined and a jury will need to exercise common sense when deciding whether the defendant has actually entered a premises.
• R v Collins 1972,
• The Theft Act 1968 gives an extended meaning to the word building to include some inhabited places. A defendant may have permission to be in part of a building but no other parts of the building.

• Walkington 1979, 9(1)(a)

• There must be entry as a trespasser which is a civil law concept denoting voluntary entry which can be committed with any mental state such as intention, recklessness or negligence.

• It could be argued that Margaret invited Helen into her home and therefore there is implied consent of the use of its facilities whether in the kitchen, bathroom or other areas of the house. However where a defendant is given permission to enter but then goes beyond permission granted to enter.

• Smith and Jones 1976

• As a result, Helen is guilty of burglary as she fulfils all elements. When Helen proceeds to take the whole bottle of perfume, this confirms the crime of burglary. This is because having entered as a trespasser, she steals the bottle of perfume from the bathroom. Mens rea is present as her intention arose later on after entry into the bathroom.

**Borrows Margaret's bicycle without asking NOT THEFT**

• Helen borrowing Margaret’s bicycle without asking is not theft under the Theft Act 1968 which is defined under section one as a person who “dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it.”

• Helen has appropriated the bicycle as per section 3 of the Theft Act 1968, by assuming the rights of the Margaret over the bicycle.

• R v Gomez 1993, and Morris 1984,

• Helen is not guilty of theft as she has belief in consent under section 2(1)(b) of the Theft Act 1968

• R v Ghosh 1982 and R v Feely 1973 - Helen had the belief that Margaret would have consented to her borrowing the bicycle therefore she is not dishonest in her actions.

• The final element of theft that must be proven is that the defendant intents to permanently deprive the victim of property - section 6(1) of the Theft Act 1968

• R v Lloyd 1985, - Helen simply borrows the bicycle with no intention to permanently deprive Margaret of it. The virtue and practical value of the bicycle had no disappeared and therefore Helen has not fulfilled the second part of mens rea for theft. Helen borrowing the bicycle was not for a period, or in such circumstances, as made it equivalent to an outright taking or disposal.

• Accordingly, Helen is not guilty of theft as the elements have not been proved.

**Switches labels THEFT**

• By switching the labels of the DVD from £9.99 to £14.99, Helen has committed theft.
• She has appropriated property belonging to another within the definition of section 3 of the *Theft Act 1968* by assuming the rights of the owner to alter the prices of items in the store.

• *Morris 1984* - Counsels in Morris argued that section 3 related to all of the rights however Lord Roskill said “it is enough for the prosecution if they have proved...the assumption by the defendant of any rights of the owner of the goods in question.”

• On a literal interpretation of section 3, an appropriation or assumption of ownership does not need to be without the consent of the owner as those exact words were not included in the definition. The question arises as to whether there can be appropriation where the owner consents to the removal of his/her property

• Consequently Helen would be guilty of theft.

**Pushes Manager ROBBERY**

• For Helen to be convicted of robbery, section 8(1) of the *Theft Act 1968* states 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 seeks to put any person in fear of being then and there subject to force.

• Theft must be proven which must be completed as if any elements of theft do not exist, there is no robbery.

• *Robinson 1977* - demonstrates that if all elements of theft are not complete then there can be no robbery

• There are three ways in which robbery can be committed; using force, putting someone in fear of force or seeking to do so - there needs to be a causal connection between the use of threat of force and theft.

• *Hale 1979* - Court of Appeal held that as appropriation is a continuing act, it was a matter of fact for the jury to decide whether or not the appropriation upstairs had finished by the time the force was used. Since the intention to deprive the owner permanently was a continuing one, the defendant was in the course of stealing and the force was used in order to steal

• decision was followed in *R v Lockley 1995*

• The mens rea of theft must be proven and dishonesty will be determined according to the Ghosh test as previously mentioned. In addition, accidental, negligent or reckless force is insufficient as the use of force must be intentional. Helen intentionally pushes the manager to one side in order to escape and therefore has the necessary mens rea.

**Keeps £2 change THEFT**

• When Helen keeps to £2 change and uses it to buy herself a magazine, she has committed theft. Helen has appropriated property by assuming the rights of Margaret’s change as per *Lawrence 1972*. Helen has appropriated property as money is listed as property under section 4 of the *Theft Act 1968*. 
• There are many situations in which property is handed over to the defendant on the basis that the defendant will keep it for the owner or will deal with it in a particular way. Subsection 5(3) of the \textit{Theft Act 1968} makes sure that such property is considered to belong to the other for the purposes of the law of theft. It states “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 shall be regarded (as against him) as belonging to another.

\textit{Davidge v Bunnett 1984}

• It must then be proved that Helen appropriated the property dishonestly. Section 1(2) of the \textit{Theft Act 1968} states that “it is immaterial whether the appropriation is made with a view to gain, or is made for the thief’s own benefit. By telling Margaret that there was no change, Helen is dishonest under section 2 of the \textit{Theft Act 1968}. - Ghosh test

• The final element is the intention to permanently deprive the other of the property under section 6 of the \textit{Theft Act 1968}.

\textit{DPP v Lavender 1994}

• Helen has the intention to permanently deprive Margaret of the change of £2 as she uses it to buy a magazine and informs Margaret that there was no change.

Conclusion

• Helen will be criminally liable for three accounts of theft when she helps herself to two chocolate liqueurs, switches the labels of the DVD and keeps Margaret’s change of £2. She is guilty of burglary as she takes Margaret’s perfume bottle from the bathroom and of robbery as she switches the labels in the store and uses force to push the Manager

• Helen’s acts of borrowing Margaret’s bicycle doesn’t amount to theft as she doesn’t fulfil all the required elements of the \textit{Theft Act 1968}.
Introduction

The following will discuss the potential criminal liability of Helen for theft, burglary and robbery, together with any possible defences she could plead.

Helens helps herself to two chocolate liqueurs THEFT

By helping herself to two chocolate liqueurs, Helen has committed theft which is defined in section 1 of the Theft Act 1968. Helen has appropriated under section 3(1) which gives a wider definition of appropriation as “any assumption by a person of the rights of an owner amounts to an appropriation, and this includes, where he has come by the property (innocently or not) without stealing it, any later assumption of a right to it by keeping or dealing with it as owner.” In the case of Lawrence v Metropolitan Police Commissioner 1972, an Italian student, Occhi, showed Alan Lawrence a piece of paper with an address in Ladbroke Grove. The journey should have cost 50p however Lawrence said it would be expensive. Occhi opened his wallet and Lawrence helped himself to a further £6. He was convicted of theft and on appeal the argument that he had not appropriated as he took it with Occhi’s consent was rejected by both the Court of Appeal and a unanimous House of Lords.

Under section 4 of the Theft Act 1968, property includes money and all other property real or personal, including things in action and other intangible property. Chocolate liqueurs, falls under this definition as personal property. An example of a case involving personal property is Kelly and Lindsay 1998 where the defendant, a sculptor, was accused of stealing various body parts from the Royal College of Surgeons where he worked as a laboratory assistant. When arrested, he told police that he wanted to understand death, and that he had treated all the body parts with respect. He was convicted and on appeal it was argued that parts of bodies were not, in law, capable of being property and therefore could not be stolen, these appeals however were dismissed by the Court of Appeal.

Section 5(1) of Theft Act 1968 provides that property shall be regarded as belonging to any person having possession or control of it, or having any proprietary right or interest. In the case of R v Turner (No 2) 1971, the defendant took his car the garage for repairs and told the garage proprietor that he would return the next day to settle his bill. Using a spare key, the defendant took the car parked on the roadway outside the premises and drove away without paying for the repairs. It was held that the defendant could be guilty of stealing his own car. In the judgement, Lord Parker CJ said “that it was sufficient if it is found that the person from whom the property is taken, or to use the words of the Act, appropriated, was at the time in fact in possession or control.” As Helen was invited into Margaret’s home, it could be argued that there was implied consent given to her. Despite this, the chocolate liqueurs were in the possession of Margaret at the time it was taken by Helen.

Dishonestly is not defined in the Theft Act 1968 other than a partial definition in section 2(1) relating to certain beliefs and a willingness to pay in section 2(2). Ordinarily the issue will be
left to the jury as a question of fact and in the majority of cases requires no legal explanation at all. The jury will be free to apply their common sense to the issue. In cases falling within the section 2 (1) statutory definitions, or the Ghosh test, the issue will require legal guidance but the final decision rests with the jury. According to section 2 (1)(b) of the Theft Act 1968 a person’s appropriation of property is not to be regarded as dishonest “ if he appropriates the property in the belief that he would have the other’s consent if the other knew of the appropriation and the circumstances of it. The belief of Helen to take the two chocolate liqueurs was honest and genuine. This issue of dishonesty is purely a matter of fact but in some circumstances the jury will also need to be directed in the Ghosh test.

The second element of mens rea which must be proved against Helen in accordance with section 1 of the Theft Act 1968 is the intention to permanently deprive another of property. Helen must be dishonest in the appropriation of property belonging to another and must also intend permanently, not temporary, to deprive at the time of appropriation. Deprivation may in fact be temporary, but only an intention permanently to deprive will satisfy this requirement. Intention is given its ordinary meaning or is defined in accordance with Nedrick 1986 and Woollin 1998, i.e. foresight of a virtual certainty of deprivation and therefore foresight of a possibility or probability is not enough. By eating the two chocolate liqueurs, Helen has the intention to permanently deprive Margaret from the chocolate liqueurs. Helen’s intention to permanently deprive Margaret of her property at the time of appropriation is clear and may be inferred from the facts.

Therefore Helen would be guilty of theft but a jury wouldn’t convict her on the bases that it’s such a trivial appropriation of chocolate liqueurs.

Sprays perfume on her wrists + Takes whole bottle BURGLARY

Helen is guilty of burglary under section 9(1) (b) of the Theft Act 1968 as she enters the bathroom and sprays perfume on her wrists. This requires proof of entry as a trespasser and of the actual or attempted omission of either of two offences; “having entered as a trespasser he steals or attempts to steal anything in the building or that part of it or inflict on any person therein any grievous bodily harm.”

The term entry is not defined and a jury will need to exercise common sense when deciding whether the defendant has actually entered a premises. This is a question of facts, and the facts from this scenario clearly show that Helen entered the bathroom of Margaret’s house. In the case of R v Collins 1972, the defendant having quite a lot to drink decided he wanted sexual intercourse and saw an open window. He climbed up and saw there was a naked girl asleep in bed, as he was on the window sill she woke up, assumed it was her boyfriend and helped him in the room where they had sexual intercourse. She could not remember whether he was on the outside or the inside of the window, this was a significant omission. The vital question of entry as a trespasser had not been considered by a court before and the Court of Appeal needed to be satisfied of this point in order to determine the correctness of the conviction. The Court of Appeal considered that any entry for the
purposes of burglary had to be effective and substantial. These are not prescriptive terms and are a question of fact in each case.

The *Theft Act 1968* gives an extended meaning to the word building to include some inhabited places. A defendant may have permission to be in part of a building but not other parts of the building. In the case of *Walkington 1979*, the defendant went into a counter are in a shop and opened a till. This area was clearly marked by a three-sided counter. The defendant’s conviction for burglary under section 9(1) (a) was upheld as he had entered part of a building as a trespasser with the intention of stealing. The critical point in the case according to Jacqueline Martin, was that the counter was not an area where customers were permitted to go as it was an area for the use of staff therefore the defendant was a trespasser.

There must be entry as a trespasser which is a civil law concept denoting voluntary entry which can be committed with any mental state such as intention, recklessness or negligence. Helen was given permission to enter one part of the house for a specific purpose confined to the bedroom. Thus you can trespass from one part of a building to another. Essentially, in order for Helen to trespass, entry to the bathroom had to be without consent. It appears to be that Helen was given consent to go upstairs to the bedroom to fetch Margaret’s purse.

It could be argued that Margaret invited Helen into her home and therefore there is implied consent of the use of its facilities whether in the kitchen, bathroom or other areas of the house. However where a defendant is given permission to enter but then goes beyond permission granted to enter, it may be considered as trespassing. In the case of *Smith and Jones 1976*, the defendants went to Smith’s father’s house in the middle of the night and took two television sets without the father’s knowledge. The father states that his son would not be a trespasser in the house; he had a general permission to enter. The Court of Appeal upheld their convictions for burglary, ruling that; “a person is a trespasser for the purpose of section 9(1) (b) of the *Theft Act 1968* if he enters premises of another knowing that he is entering in excess of the permission that has been given to him to enter, or being reckless whether he is entering in excess of that permission.”

In the case of *Collins 1972*, it was held that no trespass could become potential burglary unless it was either intentional or reckless at the point of entry. The defendant must actually know he has no right to enter to know that he might not have such a right. There was no equivalence in criminal law to the civil concept of trespass ab initio, i.e. entering lawfully and then exceeding authority to become a trespasser or trespassing by mistake. The mens rea for the offence under section 9(1) (b) may consist of recklessness. This is not a crime of ulterior intent. There needs to be proof of mens rea for the offences of theft or grievous bodily harm, or an attempt of either following entry. A conditional intent will suffice.

As a result, Helen is guilty of burglary as she fulfils all elements. When Helen proceeds to take the whole bottle of perfume, this confirms the crime of burglary. This is because having
entered as a trespasser, she steals the bottle of perfume from the bathroom. Mens rea is present as her intention arose later on after entry into the bathroom.

**Borrows Margaret’s bicycle without asking NOT THEFT**

Helen borrowing Margaret’s bicycle without asking is not theft under the Theft Act 1968 which is defined under section one as a person who “dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it.”

Helen has appropriated the bicycle as per section 3 of the Theft Act 1968, by assuming the rights of the Margaret over the bicycle. In *R v Gomez 1993*, the assistant manager of the shop was asked by an acquaintance, Bailey, to accept payments by two stolen building society cheques. The defendant convinced his manager that the cheques were as good as cash. Gomez was arrested and convicted of theft. The trial judge rejected the argument that there had been no appropriation because the manager had authorised the transactions or on the authority of *Morris 1984*, there had been no adverse usurpation or interference with a right of ownership. The Court of Appeal quashed the convictions and Lord Lane CJ concluded saying that “there was de facto, albeit voidable, contract between the owners and Bailey; that it was by virtue of that contract that Bailey took possession of the goods; that accordingly the transfer of the goods to him was with consent and express authority of the owner and that accordingly there was no lack of authorisation and no appropriation.”

Helen is not guilty of theft as she has belief in consent under section 2(1) (b) of the Theft Act 1968. This states that a person’s appropriation of property is not to be regarded as dishonest if he appropriates the property in the belief that he would have the other’s consent if the other knew of the appropriation and the circumstances of it. The belief must be honest and genuine but need not be reasonable. The circumstances of their relationship and conduct towards each other may provide a basis for a genuine belief. As Helen takes the bicycle to go to the store to purchase items for Margaret, her belief to appropriate the bicycle can be classed as genuine. Other than under section 2(1), the issue of dishonesty is purely a matter of fact yet at times the jury will need to be directed on the Ghosh test established in *R v Ghosh 1982*. This test includes the following question; was what was done dishonest according to the ordinary standards of reasonable and honest people and must the defendant have realised that what he was doing was dishonest according to those standards. Under the test, if yes is answered to both questions then the defendant must be considered dishonest however if no is answered to either questions then the defendant is not regarded as dishonest. The Ghost test was confirmed in *R v Feely 1973* where a firm of book keepers sent round a circular to all managers saying that the practice of borrowing from tills was to stop. Knowing this, the defendant took £30 and placed a note stating his intention to repay it. A belief that his employers would not have consented to the taking meant that he was dishonest. Helen had the belief that Margaret would have consented to her borrowing the bicycle therefore she is not dishonest in her actions.
The final element of theft that must be proven is that the defendant intends to permanently deprive the victim of property. Section 6(1) of the *Theft Act 1968* gives a partial definition of intention to permanently deprive. It states that treating somebody else’s property as your own and disposing of it will amount to such an intention as an borrowing. “An intention to permanently deprive is deemed to arise in certain situations of temporary deprivation. Deprivation may be temporary but only an intention permanently to deprive will satisfy this requirement. In *R v Lloyd 1985*, films were removed from a cinema for a few hours and private copies were made as pirate copies for resale. The original films were replaced and the defendant was convicted of conspiracy to steal and appealed. Lord Lane CJ held that since there was only an intention to temporary deprive the owners of the film, this was opposite of an intention to permanently deprive. A mere borrowing is never enough to constitute a guilty mind unless the intention is to return the thing in such a changed state that all the goodness or virtue has gone. Helen simply borrows the bicycle with no intention to permanently deprive Margaret of it. The virtue and practical value of the bicycle had no disappeared and therefore Helen has not fulfilled the second part of mens rea for theft. Helen borrowing the bicycle was not for a period, or in such circumstances, as made it equivalent to an outright taking or disposal.

Accordingly, Helen is not guilty of theft as the elements have not been proved.

**Switches labels THEFT**

By switching the labels of the DVD from £9.99 to £14.99, Helen has committed theft.

She has appropriated property belonging to another within the definition of section 3 of the *Theft Act 1968* by assuming the rights of the owner to alter the prices of items in the store. One fundamental question which arises from section 3(1) is whether this relates to all rights or any of the rights. In *Morris 1984*, the defendant switched the price labels on two items on the shelf in a supermarket. He had put one of the lower priced items in his basket and taken the item to the checkout. He hadn’t gone through with the transaction when he was arrested with his conviction for theft upheld. Counsels in Morris argued that section 3 related to all of the rights however Lord Roskill said “it is enough for the prosecution if they have proved...the assumption by the defendant of any rights of the owner of the goods in question.”

On a literal interpretation of section 3, an appropriation or assumption of ownership does not need to be without the consent of the owner as those exact words were not included in the definition. The question arises as to whether there can be appropriation where the owner consents to the removal of his/her property. This is important as the scheme of the *Theft Act 1968* was to keep a clear distinction between deception and fraud offences on one hand and theft on the other. Until 1993, there were two conflicting House of Lords authorities on the issue of consent as *Morris 1984* said that an appropriation had to be without the owner’s consent whilst *Lawrence 1972* said consent was irrelevant. The effect of this judgement was that one could appropriate and steal property with or without the
consent of the owner. Lord Roskill’s comments in *Morris 1984* that “in the context of section 3, the concept of appropriation in my view involves not an act expressly or impliedly authorised by the owner but an act by way of adverse interference with or usurpation of those rights” were obiter and not ratio as the facts of the case of *Morris* was concerning unauthorised appropriations. *Morris* was regarded as binding in preference to *Lawrence* in most subsequent appeals however *Morris* couldn’t overrule Lawrence. Consequently Helen would be guilty of theft.

**Pushes Manager ROBBERY**

For Helen to be convicted of robbery, section 8(1) of the *Theft Act 1968* states 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 seeks to put any person in fear of being then and there subject to force.

Theft must be proven which must be completed as if any elements of theft do not exist, there is no robbery. The case of *Robinson 1977* demonstrates that if all elements of theft are not complete then there can be no robbery. In this case, the defendant ran a clothing club to which the victim’s wife owed £7. The defendant and others met the victim and threatened him. In the fight, £5 fell from the victim’s pocket and the defendant took this and claimed he was still owed £2. His conviction was quashed because of his honest belief in entitlement to the money. It follows that any other defence to theft will work in the same way therefore it may be possible to assert not only lack of dishonesty but also there was no intention permanently to deprive, subject to the deeming provisions of section 6 of the *Theft Act 1968*. Theft is proven for Helen as she switches the labels of the DVD from £14.99 to £9.99.

There are three ways in which robbery can be committed; using force, putting someone in fear of force or seeking to do so. There needs to be a causal connection between the use of threat of force and theft. If the force was independent of a subsequent theft, or if the theft following the use of force was spontaneous, the causal link will not be established and robbery will be defeated. Problems arise in deciding the point at which a theft is complete so that the force not at the time of stealing. This was considered in *Hale 1979* where two men entered the victim’s house in order to steal. One of the men stayed downstairs and tied up the owner whilst the other went upstairs to steal a jewellery box. Their argument on appeal was that the other might have appropriated the jewellery box upstairs before he used force against the owner and that therefore the force would not have been immediately before or at the time of stealing and in order to do so. The Court of Appeal held that as appropriation is a continuing act, it was a matter of fact for the jury to decide whether or not the appropriation upstairs had finished by the time the force was used. Since the intention to deprive the owner permanently was a continuing one, the defendant was in the course of stealing and the force was used in order to steal. The decision was followed in *R v Lockley 1995*. In this case the defendant took cans of beer from an off licence
and when approached by the shop keeper used violence. He appealed against a conviction of robbery and submitted that theft had been completed before he used force. It was held that Gomez did not preclude the conclusion that appropriation was a continuing act and that therefore the force was used in order to steal. These two cases arguably extend the concept of robbery beyond the clearly defined incident of theft. Applying this to Helen’s scenario where she panics and pushes the manager, the force used against the manager is enough to constitute to robbery as per Hale and Lockley.

The mens rea of theft must be proven and dishonesty will be determined according to the Ghosh test as previously mentioned. In addition, accidental, negligent or reckless force is insufficient as the use of force must be intentional. Helen intentionally pushes the manager to one side in order to escape and therefore has the necessary mens rea.

**Keeps £2 change THEFT**

When Helen keeps to £2 change and uses it to buy herself a magazine, she has committed theft. Helen has appropriated property by assuming the rights of Margaret’s change as per Lawrence 1972. Helen has appropriated property as money is listed as property under section 4 of the Theft Act 1968.

There are many situations in which property is handed over to the defendant on the basis that the defendant will keep it for the owner or will deal with it in a particular way. Subsection 5(3) of the Theft Act 1968 makes sure that such property is considered to belong to the other for the purposes of the law of theft. It states “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 shall be regarded (as against him) as belonging to another. There can be obligations in less formal situations as shown by Davidge v Bunnett 1984. In this case, the defendant was given money by her flatmates to pay the gas bill but used it to buy Christmas presents. There was a legal obligation to deal with the money in a particular way and, as she had not she was guilty of theft. This can be applied to Helen as she was given £20 to buy her a few groceries and although Helen fulfilled this she used part of the money for her own personal expenses. She was under a clear obligation to deal with the money in a particular way and therefore has appropriated property belonging to another.

It must then be proved that Helen appropriated the property dishonestly. Section 1(2) of the Theft Act 1968 states that “it is immaterial whether the appropriation is made with a view to gain, or is made for the thief’s own benefit. By telling Margaret that there was no change, Helen is dishonest under section 2 of the Theft Act 1968. The Ghosh test established in Ghosh 1982 is used to define dishonesty. The question, ‘was what was done dishonest according to the ordinary standards of reasonable and honest people’ with regards to Helen is left to the jury to decide objectively. The second part of the test is not totally subjective as he defendant is judged by what he realised ordinary standards were. This prevents a defendant from saying that, although he knew that ordinary people would regard his actions
as dishonest, he did not think that those standards applied to him. In the trial the judge will use the Ghosh test to direct the jury only where there is an issue about dishonesty.

The final element is the intention to permanently deprive the other of the property under section 6 of the *Theft Act 1968*. In *DPP v Lavender 1994*, the defendant took council property which was being prepared and used them to replace damaged doors in his girlfriend’s council flat. The doors were still in possession of the council but had been transferred without permission from one council property to another. The Divisional Court held that the question was whether he intended to treat the doors as his own, regardless of the rights of the council. The answer to this was yes so the defendant was guilty of theft.

Helen has the intention to permanently deprive Margaret of the change of £2 as she uses it to buy a magazine and informs Margaret that there was no change.

**Conclusion**

To conclude, Helen will be criminally liability for three accounts of theft when she helps herself to two chocolate liqueurs, switches the labels of the DVD and keeps Margaret’s change of £2. She is guilty of burglary as she takes Margaret’s perfume bottle from the bathroom and of robbery as she switches the labels in the store and uses force to push the Manager. Helen’s acts of borrowing Margaret’s bicycle doesn’t amount to theft as she doesn’t fulfil all the required elements of the *Theft Act 1968*.

**Bibliography**