

## **Theft/Burglary/Robbery Homework**

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.

[OCR, Jan 2003 as adapted by Dr Peter Jepson and Mrs Anna Lindley.]

## **Theft, Burglary, Robbery Problem Question**

### **Introduction**

In this essay I am going to discuss Helen's potential criminal liability in the scenario above. As the first part of the question is regarding Helen's liability in relation to theft, burglary and robbery, it is necessary to look at the Theft Act 1968 in order to know what the law is on these areas before I can apply it to the present situation. I will also look at any possible defences that Helen could plead. Afterwards, I will be able to establish Helen's criminal liability for her actions.

### **Theft Act 1968**

Under the Theft Act 1968, the required sections to look at are 1-9, thus it is important to look at each. Section 1 is the actual offence of theft whereas sections 3-5 are part of the *actus reus* and sections 2 and 6 are part of the *mens rea*. For robbery, the necessary section to look at is 8 and for burglary it is section 9.

### **The Offence - Theft**

Section 1 defines the meaning of theft stating that:

*"A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it."*

So, in other words, a person is guilty of theft if he takes a person's property without their permission or knowledge with the intention of not returning it.

### **The Actus Reus of Theft**

The *actus reus* of theft can be classified as either appropriation (s3), property (s4) or belonging to another (s5).

Appropriation is defined under s3 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 a owner."*

This is illustrated by the cases of Pitham v Hehl (1977) and Morris (1983).

Property is defined under s4(1) as:

*" 'Property' includes money and all other property real or personal, including things in action and other intangible property."*

The five items defined as 'property' are money, real property, personal property, things in action, other intangible property.

For there to be a theft of the property that property has to 'belong to another'.

Under s5(1) of the Theft Act 1968, 'belonging to another' is defined as:

*"Property shall be regarded as belonging to any person having possession or control of it, or having in it any proprietary right or interest..."*

### **The Mens Rea of Theft**

The *mens rea* of theft is classified under s2, as dishonesty and s6, with the intention of permanently depriving the other of it.

Dishonesty is the first point to be proven for the mens rea of theft. It needs to be proved that the defendant appropriated the property dishonestly, *"it is immaterial whether the appropriation is made with a view to gain, or is made for the thief's own benefit."* However, if the defendant did not realise he was not unlawfully taking another person's property, then the defendant would not be liable.

The final element for theft that has to be proved is that the defendant had the intention permanently to deprive the other of the property under s6. This means that the defendant intended to take the property with the intention of keeping it and not returning it.

### **Robbery**

Robbery is an offence under s8 of the Theft Act 1968 and is defined as:

*"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 subjected to force."*

The *actus reus* of theft requires that the defendant commits the theft and that he used force or put or sought to put any person in fear of force. The *mens rea* is fulfilled if the defendant had the *mens rea* for theft and intended to use force to steal.

### **Burglary**

S9 of the Theft Act 1968 holds the offence of burglary. There are two different ways in which burglary can be committed, the first is under s9(1)(a). If a defendant enters any building or part of a building as a trespasser with the intent to steal, inflict grievous bodily harm, or to do an unlawful damage to the building or anything in it, then he is guilty of burglary. Under s9(1)(b), a person can be guilty of burglary if having entered a building or part of a building as a trespasser, he steals or attempts to steal anything in the building or inflicts or attempts to inflict grievous bodily harm on any person in the building.

## **Helen's Criminal Liability**

In order to establish Helen's criminal liability for theft, robbery and burglary, it is necessary to look at each act she committed. The five acts committed by Helen were in relation to the chocolates, the perfume, the bike, the DVD and the change.

### **The Chocolates**

If we look at the facts of the case it states that "Helen helps herself to two chocolate liqueurs from a dish on Margaret's coffee table." Now it is clearly evident that under s1 of the Theft Act 1968 theft is defined as when:

*"A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it."*

Chocolates can easily be classified as property and in this case, Helen took Margaret's chocolate (property), therefore appropriating it as in the case of Lawrence (1971). In Lawrence, it was decided that where the victim does not validly consent to the taking there can be an appropriation even though V apparently consented to it.

The *actus reus* is apparent, however, without the *mens rea*, the offence of theft cannot be fulfilled. In order to establish Helen's criminal liability we need to see if Helen had the necessary *mens rea* (dishonesty). Thus we need to look at the Ghosh Test created by the Court of Appeal in Ghosh (1982) to find if the defendant had been dishonest. This test has both an objective and subjective element to it. The two questions that have to be answered are:

1. Was what was done dishonest according to the ordinary standards of reasonable and honest people?
2. Did the defendant realise that what he was doing was dishonest by those standards?

If the jury find the answer to question one to be 'no' then the defendant is not guilty. If they say 'yes' then the jury would move on to the second question. In order for dishonesty to be established both questions need to be satisfactorily answered 'yes' by the jury.

It can be argued and inferred that Margaret had invited Helen in to her home and the chocolate liqueurs were left on the table to be eaten and were therefore an open invitation. Thus there was no unlawful appropriation of property and consequently no dishonesty. On the other hand, it could be argued that as there was no direct invitation from Margaret to Helen, then the appropriation was unlawful as per Lawrence (1971). It could also be said that Helen had the intention to permanently deprive Margaret of the chocolates as once they were eaten they could not be returned, thus Margaret has been deprived of her property. In addition to this, the first question of the Ghosh Test could be fulfilled as the act

may be perceived to be dishonest by the standards of a reasonable and honest person as there was no invitation to take the property (the chocolates). The second question is debatable as Helen may have been under the genuine belief that she was allowed to have the chocolates and did not consider that her actions were dishonest and therefore she would not be guilty. Alternatively, it can be said that there was no direct invitation and therefore it was wrong and dishonest for her to take the chocolates without asking.

Common sense would suggest that a jury would not find Helen guilty for this act as it is trivial and would be unreasonable. It is highly probable that the jury would trust that Helen was likely to believe that she was allowed the chocolates as they were put out on the table and she was an invited guest. I believe that the jury would acquit Helen and she would not be criminally liable for eating the chocolates.

### **The Perfume**

The facts of the case state that “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.” In relation to the perfume we have to look at s1 and s9 of the Theft Act 1968 as Helen’s actions can arguably be theft as well as burglary. S1 states:

*“A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it.”*

S9(1)(a) states that burglary is committed where the defendant enters a building or part of one as a trespasser with the intent to steal, inflict grievous bodily harm, or do unlawful damage to the building or anything inside it.

S9(1)(b) states that burglary can also be committed where a person steals or inflicts grievous bodily harm on another after he has entered as a trespasser or attempts to do either of these things.

If we look at the possibility of Helen’s actions in taking the perfume as theft following the definition of s1 of the Theft Act 1968, it is clear that Helen has dishonestly appropriated property belonging to another. She clearly took the perfume bottle without any permission and has therefore appropriated the property as per s3(1) of the Theft Act 1968, as she has made the “*assumption of a right to it by keeping or dealing with it as owner.*” With regards to dishonesty, under the Ghosh Test, it would be easy for a jury to answer the first question as yes, as according to the ordinary standards of reasonable and honest people taking the perfume would be dishonest. For the second question, it would be exceptionally difficult for Helen to prove that she did not realise what she was doing was dishonest. Unlike the chocolates there is no possibility of an invitation or anything to suggest that Helen could have the perfume. It can also be inferred that Helen had the intention to permanently deprive Margaret of her perfume as she has stolen it from her; it is unlikely that she would

return it now that she has taken it. Also Helen has already sprayed herself with some of the perfume, thus the contents of the perfume bottle has been reduced. Therefore, Margaret has been deprived of her property as the missing perfume has now gone without her permission even if Helen was to return the rest of the bottle.

With regards to burglary, Helen has entered Margaret's house with permission. When Margaret asked Helen to go to her bedroom to get her purse, she gave Helen permission to go into the room. However, Helen was not invited to go into the bathroom and therefore it can be argued that she trespassed into that part of the building. The Court of Appeal in Smith and Jones (1976) stated that:

*"a person is a trespasser for the purpose of s9(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."*

Clearly Helen entered the bathroom in excess of the permission she was granted, in addition to this she clearly stole the perfume bottle and is therefore guilty. Helen is clearly liable for her actions in relation to the perfume.

### **The Bike**

The facts of the case state that, "without asking, Helen borrows Margaret's bicycle to go to the store". Again, to see whether or not Helen's actions constitute a theft, we must look at theft under s1 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 can clearly be seen from the facts of the case that Helen has unlawfully taken the property of another, therefore appropriating it. However it is unlikely that Helen was "*permanently depriving*" Margaret from the bike, it is most likely that Helen would argue that she was simply borrowing the bike and intended to return it. As there was no permanent deprivation of the bike from the owner, it is unlikely Helen would be charged for the theft of the bike as this element of the crime has not been satisfied. In DPP v Lavender (1994), the defendant had taken the doors of his council property to replace his girlfriend's doors. The doors belonged to the Council and were therefore Council property. The defendant had the intention of permanently depriving the council of its property, thus constituting a theft. It is important to note that Helen's actions were wrong in that she did not ask for permission to borrow the bike; hence, it is understandable that her actions seem to be theft, although it is unlikely she would be charged with the theft of the bike.

### **The DVD**

Looking at the facts of the case, it states that “While at the store she sees a DVD which is expensive at £14.99 so decided 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.” It is evident that Helen has tried to commit a theft under s1 of the Theft Act 1968 as she is appropriated the property belonging to another with the intention of permanently depriving the other of it. In addition to this case law reaffirms she is guilty of theft as per Morris (1983). In this case, the defendant switched the price label of a cheap product with the label of a more expensive product that he wanted to buy. He was then arrested at the checkout and his conviction was upheld. Lord Roskill in the House of Lords stated that:

*“It is enough for the prosecution if they have proved...the assumption of any of the rights of the owner of the goods in question.”*

Helen could clearly be charged with the theft of the DVD without being able to claim any defence to her actions.

Other than theft, it is possible for Helen to be charged with robbery under s9 of the Theft Act 1968. The definition of a robbery states that:

*“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 subjected to force.”*

It has clearly been established that Helen has tried to steal the property; however, she has gone further as she has used force. The facts of the case clearly show that “pushes the Manager to one side in order to escape”. Thus the application of force along with her attempts to steal constitutes a robbery. Following Dawson and James (1976), it would be left to the jury to decide if there had been force. Helen could easily be charged with theft and it is quite possible for her to be charged with robbery.

Helen could try to defend herself from a robbery charge and say that her force was a result of fear and not a direct result of her stealing but such a defence would probably not be accepted as she was clearly stealing. Also it would be left to the jury to decide.

### **The Change**

After leaving the first store, Helen then went to another store to buy Margaret’s groceries for her “but she 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.” Helen’s actions clearly amount to theft under s1 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.”*

Helen has obviously taken the £2, therefore appropriating the property, she has been dishonest about it, she knows the change is not hers to take and she has lied to Margaret saying there was no change, and it is clearly her intention to permanently deprive Margaret of her money as she has spent the change. All elements of a theft have been satisfactorily fulfilled and a jury would have no difficulty in finding Helen guilty.

However, Helen could try to put forward a defence under s5 of the Theft Act 1968. Under s5 it states that:

*“Property shall be regarded as belonging to any person having possession or control of it, or having in it any proprietary right or interest...”*

Although the money is originally Margaret’s, Margaret handed it over to Helen. In doing so it could be argued that the property was then in Helen’s “*possession or control*” and that she had a “*right or interest*” in it as she was given it to spend for Margaret’s groceries.

If Helen were to claim a defence under s5 it is unlikely to succeed as although Margaret gave Helen the money, she did so for Helen to buy groceries not a magazine. In addition to this, a reasonable and honest person would naturally give back the change, not to do so would be deemed criminal under the Ghosh Test of dishonesty. In Wain (1995), the defendant raised over £2000 for charity in an event organised by Yorkshire Television and paid it into a separate bank account. He made several excuses for not sending the money to the television company and was eventually allowed to pay the money into his own account and to send a cheque drawn on that account. The cheque was subsequently dishonoured and the defendant was convicted of theft. He appealed against the conviction but it was rejected. McCowan LJ stated:

*“It seems to us that by virtue of s5(3), the appellant was plainly under an obligation to retain, if not the actual notes and coins, at least their proceeds, that is to say the money credited in the bank account which he opened for the trust with the actual property. When he took the money credited to that account and moved it over to his own bank account, it was still the proceeds of the notes and coins donated which proceeded to use for his own purposes, thereby appropriating them...”*

From the case of Wain it is clear that Helen was under a duty to return the money that did not belong to her back to the rightful owner, her failure to do so makes her guilty of theft as she has appropriated property.

## **Conclusion**

The Theft Act 1968 holds the offences of theft (s1-6), robbery (s8) and burglary (s9). Under the Theft Act 1968, Helen is criminally liable for at least three actions: the stealing of the perfume, the change and the DVD. It is unlikely that Helen would be charged for eating the chocolates and taking the bike as it probably would be considered unreasonable to do so.