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### **A2 Law LA2-3**

#### **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.

## Plan

### Introduction

The case above concerns the concepts of theft burglary and robbery.

What is the Law on theft robbery and burglary?

How criminally liable is Helen for her actions.

## Main

The law on TRB can be found under the theft Act 1968

Section 1-6 is theft, dishonestly, appropriate, property, belonging to another, intention to permanently deprive.

Section 8 is robbery

Section 9 is burglary

Before I apply the law to the facts of Helens case I am going to explain each of the three.

## Theft

The Theft act 1968 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; and 'thief' and 'steal' shall be construed accordingly.

**Outline each of the sections and make appropriate comments on them, add in cases.**

## Robbery

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.

## Burglary

A person is guilty of burglary if –

(a) he enters any building or part of a building as a trespasser and with intent to commit any such offence as is mentioned in sub-s (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 that part of it or inflicts or attempts to inflict on any person therein any grievous bodily harm.

The criminal liability of the case is split between separate acts. These are as follows:

The chocolates,

the perfume,

the bike,

the DVD

the change.

## Conclusion

... Helens liability in the hypothetical situation.

### Introduction

The hypothetical situation outline in the problem question refers to the law on theft robbery and burglary. This essay will explore the potential criminal liability that Helen may face as a result of her actions. Her series of events cover these 3 areas of Law. The 3 offences are all outlined under the Theft Act (1968).

### Main

The Theft Act (1968)

The law on Theft, Burglary and Robbery can be found under the Theft Act 1968. Theft is found between sections 1 to 6, while section 8 pertains to robbery and section 9, burglary.

### Theft

Section 1 of the Theft Act 1968 states 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; and 'thief' and 'steal' shall be construed accordingly."

This evidently separates the law on theft into many different elements. Divided obviously into the mens rea and actus reus element.

We must now concern ourselves with firstly, Dishonesty (mens rea) outlined in section 2, which refers to the fact that D cannot be liable if he had an honest belief that he was lawfully allowed to take another's property.

As displayed by the Gosh test (Gosh 1982). I will go into more detail on this point in the course of the essay.

Section 3 of the Theft Act 1968 refers to Appropriation which is part of the actus reus of the crime. This section states that:

"Any assumption by a person of the rights of the 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."

As shown by the case of Morris (1983)

Section 4 of the Theft Act 1968 refers Property, again part of the actus reus of the crime. Property refers to "...the inclusion of money and all other property real or personal, including things in action and other intangible property." For example, the case of Oxford v Moss (1979), where a student of oxford university appropriated the answers to an upcoming test with the intention of returning them. There was no intent to permanently deprive but he was charged on the theft of the knowledge gained by the questions. He was deemed not guilty.

Section 5 of the Theft Act 1968 refers to the law on the item belonging to another. It is laid down that property will fall under this term when it belongs to any:

"...person having possession or control of it, or having in it any proprietary right or interest..."

The final issue with regard to Theft is that of the "intention to permanently deprive the other of the property" which is outlined in section 6 of the Theft Act (1968).

This area of law concerns borrowing or lending which is very important in light of the current situation.

### Robbery

Robbery is outlined in section 8 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 and with intent to commit any such offence and
- (b) Having entered any building or part of a building as a trespasser he steals or attempts to steal anything in the building or that part of it or inflicts or attempts to inflict on any person therein any grievous bodily harm.

Any Defendant must therefore have committed the offence of theft and used force, then committed the mens rea of theft and have used unlawful force to steal.

### Burglary

A person is guilty of burglary if:

- (a) He enters any building or part of a building as a trespasser and with intent to commit any such offence as is mentioned in sub-s (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 that part of it or inflicts or attempts to inflict on any person therein any grievous bodily harm.

There is a major evident difference between robbery and burglary as we can see.

These three areas of law are integral to the aesthetics of the case.

**The criminal liability of the case is split between separate acts. These are as follows:**

**The chocolates, the perfume, the bike, the DVD and the change.**

### The Chocolates

Helen without the consent of Margaret helped herself to "two chocolate liqueurs from a dish on Margaret's coffee table."

It is evident that the current law on theft is as follows:

"A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it; and 'thief' and 'steal' shall be construed accordingly."

Let us first consider the appropriation of property; it is evident that the chocolates can be deemed as property. It is also logical to suggest that the property has been appropriated as shown by the case of Gomez.

It is dishonesty that we must consider primarily. This is concerned with the Ghosh Test via the case of Ghosh (1982). This was established in the Court of Appeal and it is a two fold test whereby both parts need to be established to discover whether the defendant has in fact been dishonest. The test for this is as follows. The first part of the test asks the jury whether; "According to the standards of reasonable and honest people, do you believe that what the defendant did was in fact dishonest by ordinary standards?"

The second part of the test is as follows:

"This part of the test asks the jury that if they do believe the D was dishonest, do they believe that; "the D realised that what he was doing was dishonest by those standards"?"

This means that the jury must be sufficiently satisfied that both parts of the test was fulfilled.

#### Applying the law to the case at hand

To begin we can infer that the fact that the sweets were available to be eaten on the table and this was an invitation. Therefore it could indeed be defended that the act was not dishonest and was merely an innocent appropriation of the sweet. I believe that it is very unlikely that a jury would consider her actions to be unreasonable or dishonest. It is more than likely that they would take the view that Helen was likely to believe that she would be allowed to consume the chocolates, because she was there as a guest to Margaret.

Therefore I believe that it would be likely that the jury would acquit her. If however the jury did believe that it was a dishonest action then it is more than possible that they would believe that in her eyes (the subjective element), what she was doing was not in fact dishonest, and therefore I believe she would be acquitted.

#### The Perfume

The law concerned with the perfume situation is

For Theft:

"A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it; and 'thief' and 'steal' shall be construed accordingly."

For Burglary:

"A person is guilty of burglary if:

- (a) He enters any building or part of a building as a trespasser and with intent to commit any such offence as is mentioned in sub-s (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 that part of it or inflicts or attempts to inflict on any person therein any grievous bodily harm. "

In relation to burglary Helen must have entered a building or part of a building as a trespasser. It can be argued with case law that Helen was indeed a trespasser (whether it be knowingly or recklessly) as Helen was only invited to enter Margaret's bedroom and not the bathroom.

In the case of Jones and Smith 1976 D entered his father's house and appropriated 2 television sets. The courts held that despite his father's unreserved permission to enter the house it did not extend to the appropriation of property within it.

These cases support Helen's conviction as it is arguable that even if she wasn't held to have exceeded her permission to enter the bathroom that she certainly did not have permission to do so in order to steal and thus would be convicted.

In terms of theft, should burglary for some reason fail to succeed. Here Helen assumes the right of the owner which under S3 of the Theft Act, and as per precedent in the cases of Morris and Gomez amounts to appropriation via the initial spraying let alone the outright taking of the bottle. Also it would be near to impossible to convince the jury that Helen was not dishonest. The Ghosh test provides that Helen must not have recognised that what she was doing was dishonest; the jury is not likely to believe this to be the case. Finally it is clear that Helen intends to permanently deprive the owner of the perfume, and even should

she claim an intent to return it, it is feasible to suggest that after the perfume had been used (to any extent) some of its value was reduced thus constituting deprivation anyway.

### The Bike

Helen takes Margaret's bike without permission.

The law concerned with the bicycle situation is

For Theft:

"A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it; and 'thief' and 'steal' shall be construed accordingly."

Helens main arguments will simply be that she did not intend to permanently deprive and merely wanted to borrow the bike.

As shown by the case of Dpp v Lavender (1994)

D took doors from a council property which was being repaired and used them to repair his girlfriend's house. D was charged because he had intent to permanently deprive the council.

Hence Helen is unlikely to be charged because she had not intent to permanently deprive.

### The DVD

The law for the DVD has regards to Robbery section 8 of the Thefts Act 1968.

I will first consider how she qualifies for theft under the theft act and then go on to explain why such amounts to robbery.

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.

Helen has the necessary mens rea and actus reus of theft because she has firstly, appropriated property by switching the tags and attempting to buy the product for a lower price.

Morris (1983) The facts of the case are similar to Helens act. D switched the labels of two items on a shelf on a supermarket, he then placed one of the items which now had a lower price on it into a basket provided by the store. His conviction for theft was upheld.

The available precedent from this case means that Helen is directly liable for switching the price of the DVD.

We have now determined that she has amounted to the actus reus and mens rea for theft. It is the application of direct force that leads her actions to robbery. Her pushing of the store manager amounts to the ordinary word force.

In the case of Dawson and James (1976) the court of appeal held that force was an ordinary word and it was for the jury to decide if there had been force.

Therefore in the case at hand it would be up to the jury to determine whether or not the application of force is appropriate in this situation and whether or not she should be charged with robbery.

## The £2 Change

The final act that must be considered is that Helen kept the £2 change which was left over when she purchased the groceries for Margaret.

There are no qualms about the dishonesty here as she has appropriated Margaret's money. Money constitutes property and she evidently intends to permanently deprive this property. However could she claim that the money actually belongs to her. Section 5 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". The money is originally Margaret's however Helen may claim that she is holding money for a particular usage and therefore she was dealing with the money.

In the case of Wain it was held that the D who had raised money for a charity and then failed to pay them the money was, "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 ...when he took 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 he proceeded to use for his own purposes, thereby appropriating them..."

Therefore it is obvious that Helen is under an obligation to return the money however has failed to do so and is therefore guilty of appropriating the property and committing theft. She may claim that she is willing to pay the change back however under S2.2 of the Theft Act

## Conclusion

In conclusion, Helen is liable for a range of offences as enacted by the Theft Act 1968, these are primarily the Perfume, the Change and the DVD.

I would assume that her appropriation of property has meant that she classifies under the mens rea and actus reus of theft and burglary.

## Bibliography

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<sup>1</sup> Roberto Kehinde A2 Law