

Theft/Burglary/Robbery Homework

Potential criminal liability of Helen for theft

The Theft Act 1968 defines the criminal offence of theft as, 'A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it.' For Helen to be criminally liable of theft under the above situation, it would have to be proved beyond reasonable doubt that the actus reus ('appropriates property belonging to another') was fulfilled and that she had the appropriate mens rea (to have appropriated the property belonging to another 'dishonestly' and 'with the intention of permanently depriving the other of it').

Chocolate liqueurs

Firstly, let's address the first scenario in relation to theft where Helen helps herself to two chocolate liqueurs from a dish on Margaret's coffee table. On immediate reaction, according to the definition, Helen could be criminally liable for theft in this situation. The actus reus requires that the defendant 'appropriates property belonging to another' - s 3(1) of the Theft Act states that 'any assumption by a person of the rights of an owner amounts to an appropriation'. The rights of an owner are very wide, including the right to sell, destroy or consume property. Based on this, Helen has appropriated the chocolate liqueurs by assuming the right to consume the items.

The second element of the actus reus is the need to prove that the appropriation was of something that is property within the definition of the Theft Act. In this case, the chocolate liqueurs are personal property of Margaret. Personal property covers all moveable items belonging to a person, from an aeroplane to a single sheet of paper and therefore, a chocolate will clearly fall under this category.

The third and final element of the actus reus is the need to prove that the appropriated property belonged to another. S 5(1) of the Theft Act 1968 states that 'property shall be regarded as belonging to any other person having possession

or control of it'. Since Margaret was the obvious owner of the chocolate liqueurs, she has possession and control of them. Therefore, there is sufficient proof that the actus reus has been fulfilled for this offence of theft.

Following the actus reus however, the mens rea must also be proved beyond reasonable doubt. For this, it must be proved that the appropriation of the property was done 'dishonestly' and 'with the intention to permanently deprive the other person of it'. The matter of dishonesty is not so clear cut as one may think. The Theft Act does not define dishonesty however it does state three situations where the defendant's behaviour would not be classed as dishonest. These are that the person's appropriation of property belonging to another is not to be regarded as dishonest if he appropriates the property in the belief that he has in the law the right to deprive the other of it, on behalf of himself or of a third person, or he would have the other's consent if the other knew of the appropriation and the circumstances of it or the person to whom the property belongs cannot be discovered by taking reasonable steps. These situations depend solely on the belief of the defendant whether a correct or reasonable belief, if the defendant has a genuine belief in one of these situations then according to the Theft Act, he cannot be found guilty of theft. In this case, the second situation may be a possible belief of Helen. She may believe that Margaret would be happy for her to help herself to the chocolate liqueurs; however it is difficult to know. One may also question, if she was of the belief that Margaret would be happy to let her help herself, why she didn't ask when Margaret was available to have been asked. Furthermore, why did Helen wait until Margaret had left the room before helping herself? These things may make Helen seem devious. The *Ghosh* test arose following the case of Ghosh (1982). The Court of Appeal decided that the test for dishonesty should ask two questions, a subjective element and an objective element - was what was done dishonest according to the ordinary standards of reasonable and honest people? And, did the defendant realise that what he was doing was dishonest by those standards? Based on this test, there is a likely chance that a jury may not see Helen's behaviour as dishonest according to the ordinary standards of reasonable and honest people since many people help themselves to things like sweets and chocolates in a person's home especially since they were placed in a dish on Margaret's coffee table which seems like an offering gesture.

The second element of mens rea to be proved is the 'intention of permanently depriving the other of the property'. Clearly, since Helen consumed the chocolate liqueurs, there was the intention of permanently depriving the other of the property. There is no question, consuming a product obviously means that the other will no longer have access to that product.

Based on the above discussion of the actus reus and mens rea required for Helen to be criminally liable for theft of the chocolate liqueurs, it is not so clear whether she would be or not. Strictly speaking, the actus reus has been fulfilled however, the mens rea is slightly more trivial, since Margaret had the items placed in a dish on her coffee table, it seems they were there for guests to consume and there is the possibility that Helen genuinely believed that, in which case, she would not be found guilty of theft of the chocolate liqueurs.

Perfume

In this situation, Helen has placed an expensive bottle of perfume belonging to Margaret in her bag. For the first element of the required actus reus, Helen has appropriated the property by assuming one of the owner's rights of possessing the property. The second element of the required actus reus is fulfilled since the appropriation was of property as defined under the Theft Act. The perfume is personal property of Margaret since it is a moveable item belonging to Margaret. The third element of the actus reus is also found in this scenario since the appropriated property belonged to Margaret and was in the possession and control of Margaret inside her own home. Therefore, all elements necessary for the actus reus to be proved are present.

The mens reas firstly requires dishonesty to be present. If Helen had a genuinely belief for one of the three situations stated under s 2 of the Theft Act then she would not be found guilty however unreasonable the belief may be which is supported by the cases of *Small (1988)* and *Holden (1991)*. The Ghosh test may be used to test for dishonesty, however in this case it seems likely that a jury would find Helen's behaviour to be dishonest according to the ordinary standards of reasonable and honest people and therefore they would have to consider whether the defendant knew it was dishonest by those standards.

The second element of the required mens rea is the 'intention of permanently depriving'. Whilst Helen did not sell, destroy or dispose of the property, she placed it in her pocket which implies she was to take the perfume for her own use as she had already sprayed her wrists with it therefore she obviously wanted to keep the entire product rather than just use it and thus permanently deprive Margaret of the property.

Based on the above discussion of the actus reus and mens rea required for Helen to be criminally liable for theft of the perfume, it seems that she could well be found guilty.

Bicycle

The first element of the required actus reus is present since Helen has appropriated the property by assuming the owner's right to use the bicycle. The second element is present since the item is personal property of Margaret's. The third element is also present since Margaret was the owner of the bicycle and was in possession and in control of the property.

For the mens rea, it is difficult to establish whether Helen appropriated the property dishonestly since she was only borrowing the bicycle to go to the shops for Margaret. She may have had the belief that she would have had Margaret's consent had she knew of the appropriation and circumstances of it and the jury could use the *Ghosh* test to establish whether there was dishonesty. For the second element of mens rea required, Helen did not have the intention to permanently deprive Margaret of the property since she only borrowed it to go to the shops. Section 6 of the Theft Act states that borrowing is not theft unless it is for a period and in circumstances making it equivalent to an outright taking or disposal, this situation clearly does not fall under this definition. Furthermore, the case of *Lloyd (1985)* held that borrowing became theft only when the property was borrowed and kept until 'the goodness, the virtue, the practical value has gone out of the article'. Again, this situation does not fit to this description and therefore this element of the mens rea could not be established.

DVD

In this scenario, Helen has changed the price label of a DVD in the store from the original £14.99 to £9.99. The first element of the actus reus required is present as Helen has assumed the right of the owner to put a price label on the property, this can be supported by the case of Morris (1983) where the facts were very similar and the conviction for theft was upheld. The second element of the actus reus is present since Helen appropriated the property which was the personal property of the store. The third element is also present since the property was 'belonging to another' and was in the possession of and controlled by the store.

For the mens rea, the jury would have to establish whether Helen appropriated the property 'dishonestly'. It is unlikely that the jury would find Helen's behaviour honest according to the ordinary standards of reasonable and honest people under the Ghosh test and therefore would then have to consider whether Helen knew it was dishonest by those standards. For the second element of the mens rea, Helen clearly had the intention of permanently depriving the shop of its property by not paying the correct price for the item. Based on this, Helen is likely to be found guilty of theft as was Morris.

The change

Helen has kept £2.00 of Margaret's change and has bought herself the magazine. She has fulfilled the first element of the actus reus by appropriating the property by assuming the owners right to spend the money. She has appropriated property which falls under the definition of the Theft Act as money and therefore has fulfilled the second element of the actus reus required. The third element of the actus reus is the property 'belonging to another'. In this case Helen received the money under an obligation on the basis that she would deal with the money in the way requested by Margaret. S 5(3) of the Theft Act states that '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 (as against him) belonging to the other'. Based on this, the third element or the required actus reus is present.

The first element of the mens rea requires the appropriation of the property dishonestly. It is difficult to establish whether Helen had a genuine belief in any of the three situations classed not as dishonest under the Theft Act, however if she had, she may be able to rely on this. The Ghosh test could be used for the jury to decide whether Helen's behaviour was dishonest. The second element of the required mens rea is present since Helen clearly intended to permanently deprive Margaret of the property since she spent the money.

Potential criminal liability of Helen for robbery

Section 8 Theft Act 1968 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'. The elements that must be proved for robbery are for the actus reus, theft and force or putting or seeking to put any person in fear of force. There are two conditions attached to the need for force, these are that it must be immediately before or at the time of the theft and it must be in order to steal. For the mens rea it must be proved that the defendant had the mens rea for theft and the intention to use force to steal.

For the chocolate liqueurs, perfume, use of bicycle and the change left from Margaret's money, there cannot be a charge of robbery since Helen used no force nor did she seek to put any person in fear of force which is required element of the actus reus for robbery. However, there could be a question of robbery for the DVD scenario.

DVD

Helen changes the price label on the DVD and proceeds to the till however, she has already been seen on CCTV and so the store manager confronts her. Helen then goes on to use force upon the store manager by way of pushing him. However, it seems that the use of force does not meet the conditions set out under s 8 of the Theft Act. Firstly, the force was not immediately before or at the time of the theft since the force came after she had been caught and was merely an act that would allow her to escape. Secondly, the force was not used in order to steal since it was used to escape but not to gain the property. In terms of the mens rea,

whilst Helen had the mens rea for theft, she did not have the intention to use force to steal. Therefore, it seems unlikely that Helen would be criminally liable for robbery in any of the scenarios.

potential criminal liability of Helen for burglary

Burglary is an offence under s 9 Theft Act 1968 which provides for two different ways in which a burglary can be committed. The first being under s 9(1)(a) where a person is guilty of burglary if he enters any building or part of a building as a trespasser with intent to steal, inflict grievous bodily harm, or do unlawful damage to the building or anything in it. The second way burglary can be committed is under s 9(1)(b) which states that a person is 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. For both types of burglary, the required actus reus to be proved is that there was entry of a building or part of a building as a trespasser. The mens rea required are in respect of entering as a trespasser and the ulterior offence.

Inside Margaret's home

For all the scenarios inside Margaret's home, the chocolate liqueurs, the perfume and the bicycle it is difficult to establish the actus reus required of entering a building as a trespasser. Obviously, Helen was invited into her home; however, she had gone beyond the permission to enter the building by stealing from Margaret. In which case, Helen could be considered a trespasser. In the case of Smith and Jones (1976), Smith and his friend Jones entered Smith's father's house in the middle of the night and took property from the house without permission. Although Smith's father stated that his son would not be a trespasser since he had general permission to enter, the Court of Appeal upheld the defendants convictions for burglary since they had entered in excess of the permission that had been given to them to enter. This could apply to Helen since she had entered in excess of the permission that had been given to her to enter.

In terms of the mens rea, for both types of robbery, Helen must have known or have been subjectively reckless as to whether she was trespassing. In this case, it

is unlikely that Helen thought she was trespassing since she was being invited into Margaret's home to run an errand for her so this element of the mens rea is likely not to be fulfilled. Secondly, for s 9(1)(a), Helen must have had the intention to steal on entering the building, this is unclear. She may have had the intention on entering or she may have just seen the items and decided to steal them then without intending to beforehand. For s 9(1)(b), Helen must have also had the mens rea for theft when committing the actus reus for burglary.

The store

For the actus reus, the case of Smith and Jones could be relevant here too. Shoppers have permission to enter a shop however, entering a shop in order to steal is going beyond the permission granted to enter a shop and buy goods, which would make a person a trespasser however this is difficult to prove since it is difficult to establish whether a defendant intended to steal on entering the shop. This is the case with Helen. If it could be proved that she had the intention to steal by way of swapping price labels on goods when entering the shop, the required actus reus for burglary would be fulfilled.

For the mens rea, it is unlikely that Helen had any idea that she was trespassing since there is a general idea that people have permission to enter a shop. Most people would not be aware that entering for purposes of stealing would make them a trespasser. Helen had the mens rea for theft which is needed for an offence under s 9(1)(b) however for an offence under s 9(1)(a) Helen must have intended to steal upon entering the shop which is difficult to prove.