

## Theft

by Dr Peter Jepson

# 1

- Come to class prepared – read/précis Chapter 7 of 'Criminal Law' by Diana Roe beforehand (or another text). **PRECIS NOTES WILL BE CHECKED**
- Please do NOT chat in any lecture presentation.
- Raise your hand if you have any questions

## Theft ...

# 2

- The whole of the law of theft can be found in **s1-7 of the Theft Act 1968**.
- **Section 1** – a person is guilty of theft if he '**dishonestly appropriates property belonging to another with the intention to permanently deprive the other of it**'.
- See figure 7.1 page 132.

## Actus reus of theft

# 3

- 'appropriates property belonging to another'
- As per s.3 a person appropriates property when he assumes the rights of a true owner...
- See **Pitham and Heli [1977]**.

## Need all rights be assumed?

# 4

- Lord Roskill in **Morris, Anderton v Burnside 1984** stated that it is enough for the prosecution to prove that ANY of the rights of the owner have been assumed (Later confirmed in Gomez 1993).

## In Morris

# 5

- D had taken some goods from a supermarket shelf and substituted lower price labels on the goods.
- He then went to the checkout desk and paid the lower price and was subsequently arrested.
- **Does that seem logical?**

## In Anderton

# 6

- A shopper had removed the price from a joint of pork and replaced it with a much lower price from another item. He reached the checkout, but was arrested BEFORE he had attempted to pay for the goods. **How has D appropriated property here?**
- **Answer** Setting the price is the owner's right.

**Appropriation takes place the moment D assumes any rights of the real owner. 7**

- Lord Keith (H of L) confirmed in **Gomez 1993** that 'No one but the owner has the right to remove the price label from an article or to place a price label on an article'.
- **What about a prankster – who changes labels for fun?**

**Atakpu and Abrahams [1995] 8**

- D's had devised a plan to hire expensive cars abroad and then bring them to England to sell here. At first instance, it was decided they could commit the theft in the UK.
- However, on the basis of **Gomez**, appropriation had occurred in Brussels – thus they could not be guilty in the UK.

**Appropriation and Consent to taking ... 9**

- In **Lawrence v MPC [1972]**, a taxi driver took £7 from the wallet of an Italian student for a fare worth only £1. The H of L decided that there could be an appropriation 'even though the owner has permitted or consented to the property being taken'. **Do you agree?**

**(s.1) Action for students ... 10**

- 'The Queen agrees that a Butler can "look after some Royal papers". The police raid his home and find Royal papers, a dress and various artefacts. On the basis of **Lawrence, Gomez and/or Hinks** could he be found to have appropriated property belonging to another?'
- Read pages 141-146 on appropriation.

**Property (s.4) 11**

- Money and all other property, real and personal, including things in action and other intangible property.
- **Welsh 1974** – urine sample.
- **Kelly 1998** – body parts.
- *Things in action* – patents, shares, debts etc.

**Oxford v Moss 1978 12**

- University student acquired the proof of an examination paper, intending to read the contents and return it.
- **Q of L** – whether the information in the exam paper amounts to property. Divisional Court decided it was not intangible property as per s.4(1). Therefore he was acquitted.

## Sections 4(3) and 4(4) **13**

- Easy to follow (Diana Roe)
- 4(3) Deals with wild flowers and animals. Thus you can pick mushrooms and flowers growing wild – provided not done for commercial purposes.
- 4(4) Not theft if you capture a wild animal which has not been tamed or reduced to captivity.

## Law Firms - Activity ... **14**

- In pairs, undertake the activities shown on page **148 of 'Criminal Law' by Diana Roe** (3rd edition).

## Belonging to another s.5 **15**

- S.5(1) property shall be regarded as belonging to any person having possession or control of it, or having in it any proprietary right or interest ...
- These words give a very wide meaning – it even means that a person could be guilty of stealing his own property. Example ...

## Stealing one's own property – an example? **16**

- Suppose I lend Joe a 'Criminal Law' textbook for the academic year.
- Then, when Joe is on his tea- break, I simply take the book from his satchel and keep it! Does my action amount to theft?
- Read pages 148-151. The class shall break into law firms – one to prosecute, the other to defend me (remaining students are 'Appeal Panel Members' who will decide the outcome).

## S5(3) Holding money for a particular purpose **17**

- **Davidge v Bennett 1984** – D was given money by her fellow flat-sharers to pay the gas bill. When she bought Xmas presents instead – held to be guilty of theft.
- Similarly in **Floyd v DPP 1999** – what are those facts and why did Diana Roe criticise the decision? Do you agree with her?

## Hall 1972 **18**

- 'Each case turns on its own facts'
- What happened in Hall?
- In Wain 1995?
- Lewis v Lethbridge 1987?
- Klineberg 1998?
- Kumar 1999?
- **Students to produce case notes for each of the above.**

s5(4) Receiving property  
by mistake **19**

- **If D fails to return property to the rightful owner he will be depriving the owner of it.**
- In **Gilks** the D had visited Ladbroke's and placed a bet on a horse. The horse was not placed and another won. By mistake D was paid a sum of £100. He was convicted of theft when he failed to disclose the mistake.

All due to a WPC's  
overpaid wages of £74.74 **20**

- **S5(4) AG's ref (No 1 of 1983) 1985.**
- A person who receives an overpayment of a debt due to him ... by way of credit to his bank account through the direct debit system... and who knowing of that overpayment intentionally fails to repay the amount ... may be guilty of theft.

S5(4) equity and mistake **21**

- **From your case note explain what happened in Shadrokh-Cigari 1988**

s.2 Dishonesty **22**

- While the actus reus must be established – under the Theft Act it is equally important for the mens rea to be fulfilled.
- Essentially this is an issue of 'dishonesty' - which replaces the old term of fraudulently.

s.2(1a) **23**

- States that a person will not be regarded as dishonest if he appropriates property, for himself or a third party, believing that he has a right in law to deprive the other of it.

s.2(1a) **24**

- As per **Holden 1991** it is not necessary to prove it is a reasonable belief, just a genuinely held belief. Though, this belief must be based on law and NOT on morals.
- In Holden, D had taken tyres from his employer. He claimed others had taken them with permission.

s.2(1a) Holden cont'd

**25**

- The Judge directed the jury to ask themselves whether D had a **"reasonable belief"** he had a right to take the tyres.
- Court of Appeal held that a person was not dishonest if he had an **"honest belief"** that he had a right to take the property.

S2(1b)

**26**

- A person will not be considered dishonest if he takes property **believing** that the other would consent to it.
- Example borrowing a fellow student's law book while he is at break.
- Though, taking out of this classroom a law book from the shelves would be theft.

S(1c)

**27**

- A person will not be dishonest if he approp ... property belonging to another believing that the person to whom it belongs cannot be discovered by taking reasonable steps. (this helps protect a finder of property).
- Do you agree with the outcome in **Small 1988**?

The basic test of dishonesty **28**

- This has changed over the years. The problem has been in deciding if it should be objective or subjective.
- This is vital because subjective is through the eyes of D – while objective is what a reasonable man believes is dishonest.

**Ghosh** - the basic test of dishonesty

**29**

- **Ghosh 1982** is the key case on dishonesty.
  - The complicated two-fold tests requires a jury to determine.
1. Whether according to ordinary standards of reasonable and honest people what was done was dishonest. If jury says it was not – that is the end of the matter.

**Ghosh** - the basic test of dishonesty

**30**

2. If, however, the jurors decide that it was dishonest - they should then consider whether D realised what he was doing was by those standards dishonest.

**D can ONLY be convicted if the answer to both questions is YES.**

**Ghosh test and Robin Hood.**

**31**

On the basis of the **Ghosh test** - If Robin Hood honestly believes that people believe he is right to 'rob the rich to feed the poor' - is he likely to be found guilty?

**Ghosh** - the basic test of dishonesty

**32**

- In **Price 1989** Lord Lane stated that there is no requirement for the judge to give the **Ghosh** direction in the vast majority of cases. It is only where D appears to believe his actions were honest and there is doubt as to whether others would share his views.

**Ghosh** - the basic test of dishonesty

**33**

- **J. Martin** claims the **Ghosh test** is not an easy one for juries and indeed students to understand? Do you agree?
- Take the Royal Butler example of earlier. Suppose he simply looked after the items and did not sell them. On the basis of **Ghosh** could he be found guilty easily?

**Law Firms exercise.**

**34**

- Assume that Mrs Anna Lindley has borrowed Dr Jepson's 'Criminal Law' book without asking.
- On the basis of pages 147 and 148 of Criminal Law (and case law included) - is she guilty or innocent of theft?
- **Break into Law Firms - one to prosecute, with another to defend.**

**Thefts or near thefts ...**

**35**

- Suppose I put my hand into the handbag of Emma with the intention of stealing her mobile phone. I search the bag to find no phone and so simply walk away.
- Can I be guilty of theft (use case law to answer)?