



Sections of the Theft Act 1968 and what they cover:

- S2 – dishonestly
- S3 – appropriation
- S4 – property
- S5 – belonging to another
- S6 – intention of permanently depriving the other of it

There are two Theft Acts (DO NOT confuse them): the Theft Act 1978 was created so as to fill in all the gaps in law made in the Theft Act of 1968 = this act was considered inadequate for some deception offences so Parliament had to add on another piece of legislation; so many problems with this statute



Lawrence v MPC (1971)

- An Italian student arrived in the UK; he didn't know English
- The student took a taxi and showed the driver a piece of paper with the address he had to be driven to, written on it (taxi driver had to take him to Victoria station)
- However the student didn't understand the English currency => handed his wallet to the driver so that he could take the needed cash to pay for the trip
- Lawrence, the taxi driver took an excessive amount than the price of the trip
- Even though the student consented to the money being taken, in these circumstances it is still appropriation

Appropriation

s.4 of the Theft Act 1968

Any assumption of any of the rights of the owner (taking over control of an object and assuming the rights on it)

Taking property

Destroying property

Selling property

Treating it as your own

R v Morris (1984)

- A man was in a supermarket and wanted to buy ham
- He swapped the label of an expensive ham with the label of a cheaper ham so that he could pay a lesser price for the more expensive ham at the check out
- This was said to be appropriation as he had treated the thing as his own and assumed the rights of the owner when he switched the labels

Consent by false representation

R v Gomez (1993)

- Gomez was an assistant shop manager of a shop
- He persuaded the manager to sell electrical goods worth over £17,000 to an accomplice and to accept payment by two cheques, telling the manager that they were as good as cash
- The cheques were stolen and had no value => Gomez was charged and convicted of the theft of the goods.
- The House of Lords upheld the conviction => they followed Lawrence saying appropriation can occur even with the apparent consent of owner

R v Hinks (2000)

- Hinks was a woman who had befriended a very naïve man with a low IQ
- He was, however, mentally capable of understanding the concept of ownership and of making a valid gift
- D persuaded the man to transfer a total of about £60,000 and the man also gave Hinks a TV set
- Hinks was convicted of theft because she had appropriated the property. This supported the case of Lawrence saying that there can still be appropriation even with consent. Even though the money and the TV was a gift it was considered by the courts not to be a valid gift because D herself realised that ordinary and decent people would regard it as dishonest to accept a gift from him



Unless a person intends to give back the exact same notes and coins they have the intention to permanently deprive a person of those particular notes and coins

Land cannot be stolen except by certain people in certain ways; under s4(1) land can be stolen, but s4(2) states this can be done in three circumstances

Kelly v Lindsay (1998)

- Kelly was a sculptor who asked Lindsay to take body parts from the Royal College of Surgeons where he worked as a Laboratory Assistant
- Kelly made casts of the parts => they were convicted of theft and appealed on the point of law that body parts were not property
- The CA held that, though a dead body was not normally property within the definition of the Theft Act 1968, the body parts were property as they had acquired 'different attributes by virtue of the application of skill, such as dissection or preservation techniques, for exhibition or teaching purposes'

Wild animals cannot be stolen, however if the animals are in captivity and someone steals them, then this is theft

Wild plants are not property unless being picked up with the purpose of reward or other commercial purpose cannot

- A student at Liverpool University obtained a draft copy of his civil engineering paper, noted the contents and then returned the item from where it was taken
- He was taken to court and charged with theft
- The magistrates dismissed the case as there had been no intention to permanently deprive even if the cheating student had actually got all he needed by seeing the draft

Oxford v Moss (1979)

Property

is NOT:

Wild growing mushrooms are not property unless the person picking them on any land does it for reward or sale of other commercial purpose

Body parts

Electricity

Information

- Mrs Akbar was a teacher at a secondary school in Croydon
- Her husband ran a tutorial college where she also taught private students
- She managed to steal five GCSE examination papers from the school where she had worked for 13 years
- The court found her guilty of theft and sentenced her to three months in prison

R v Akbar (2002)

Land is not considered property, however there it can be stolen by certain people in certain ways:

- Someone who severs anything considered part of the land.
- A tenant takes a fixture or structure from the land let to him.
- Can be stolen by someone legally entrusted to look after the land

R v Welsh (1974)

Body fluids can be property

- D, a driver accused of drunk driving, poured his own urine specimen down a sink when the relevant police officer was out of the room
- Although there is a traditional view that human corpses cannot belong to anyone, body fluids can be stolen
- D was guilty of perversion of the course of justice

Billings v Pill (1951)

- Billings was caught taking a shed from some land => hut was attached to the land via some concrete foundations
- Billings argued that this meant the hut was a permanent part of the land and therefore he could not be guilty of theft
- The House of Lords said that the foundations of the hut were permanent but the hut itself was a temporary fixture
- The hut was therefore considered property and could be stolen => Billings was guilty of theft

s.4 of the Theft Act 1968

Property

includes:

Notes and coins

Money

Other intangible property

Real = land and buildings

Real or personal

Personal = all movable items like CDs and books but also large items like tanks and aeroplanes, and small trivial items such as a sheet of paper

All other property

Things in action = intangible property, cannot be touched or seen, but are important to those who possess them

A thing in action means:

A right which can be enforced against another person by an action in law

The right itself is property under definition s(4)

A cheque when it is cashed [R v Kohn (1979)]

In being a piece of paper, a cheque could also be considered property which can be stolen [R v Duru (1973)]

Most recently it is considered 'valuable security' which can also be stolen under the definition of property [R v Preddy (1996)]

Belonging to another

s.5 of the Theft Act 1968

Having possession and control or having in it any proprietary right or interests

Belonging to another does not necessarily mean owning the property in the traditional sense and could mean that a defendant is accused of stealing his own property

R v Turner (1971)

- Turner left his car at the garage for repairs
- The garage left the car outside on the road
- Turner used a spare key and to take the car in the night
- The C/A held that the garage was in possession and control and so Turner was guilty of stealing his own car

Williams v Phillips (1957)

- AA were dustmen employed by Bristol City Council, who took various items from bins (with the intention of selling them) before taking the rest of the rubbish to the tip
- The Divisional Court affirmed their convictions for larceny (theft): AA knew quite well that saleable property was to be handed in and the proceeds divided
- The rubbish was still the householder's property, until it became the property of the Council as soon as the dustmen arrived (abandoned property)

Property can be received: → By mistake

With an obligation

Theft Act 1968 – s.5(3): Where a person receives property from another, and is under an obligation to the other to retain and deal with that property in a particular way, the property shall be regarded as belonging to another"

Davidge v Bennett (1984)

- D was found guilty of theft when she was given money by her flatmates to pay the gas bill but instead used it to buy Christmas presents
- There was a legal obligation in this situation to deal with the money in a particular way

Theft Act 1968 – s.5(4): where a person gets property by another's mistake, and is under an obligation to restore the property then not to return that property may be theft

Att. Gen (No 1 of 1983) (1985)

- Billing was caught taking a shed from some land => hut was attached to the land via some concrete foundations
- Billings argued that this meant the hut was a permanent part of the land and therefore he could not be guilty of theft
- The Hof L said that the foundations of the hut were permanent but the hut itself was a temporary fixture
- The hut was therefore considered property and could be stolen => Billings was guilty of theft

R v Hall (1972)

- There was a legal obligation in this situation to deal with the money in a particular way
- D was a travel agent who received money as deposits from clients for air travel to America; he paid these deposits into the firms accounts but never organised any tickets and was unable to return the money
- D was convicted of theft but on appeal his conviction was quashed
- Court of Appeal (CA) said that Hall was not under any obligation to deal with the money in a particular way
- CA each case was to be decided on its own facts

s.2 of the Theft Act 1968

Dishonesty

Not defined in the theft act, but there are three exceptions of not acting dishonestly:

S2(1)(a) – D believes he has a legal right to the property; D needs to convince the jury that he believes the property was his originally or, he is owed money
In the case of [R v Holden (1991)]

S2(1)(c) – it would be very difficult, or impossible, to find the rightful owner by taking reasonable steps; e.g. a coin on the street and not knowing the owner (obviously if the owner was seen then the exception is not valid); this section helps to protect a finder of property from a conviction for theft, who would otherwise have the actus reus of theft

S2(1)(b) – D believes that the owner would have given consent; for example: borrowing a fellow student's books while that person is away, in the belief that he would approve of this action

R v Small (1988)

- D claimed that a car he had appropriated had been abandoned by its owner
- It had been left in one place for over a week with the keys in the ignition
- Jury did not believe him and he was convicted of theft
- The C/A decided that his conviction should be quashed if he had honestly believed that it was impossible to find the owner

Tests for Dishonesty

Objective

Would a reasonable person of the same sex and age as D, and in similar circumstances as D, take similar actions or act the same as D?

Subjective

Would D be aware that ordinary and honest people would regard his/her actions as dishonest. Therefore, it is not about what D thinks is dishonest but that D is aware others would think they were dishonest.

Originated from R v Ghosh

R v Ghosh (1982)

- A locum surgeon Dr Ghosh claimed fees not actually due to him (for an operation he hadn't carried)
- He was charged with obtaining property by deception, and the Court of Appeal said his conduct should be regarded as dishonest if,
 - (i) it would be considered dishonest by ordinary reasonable and honest people, and
 - (ii) He was aware of that fact



R v Velumyl (1989)

- Mr Velumyl borrowed £1050 from the office safe without authority, intending to return the same amount when a friend repaid a debt
- He was convicted of theft and his appeal failed: he would not have returned the same notes that he had taken, so he had permanently deprived the owners of that property even though he might have replaced it with other property of equal value

R v Warner (1970)

- A shop assistant Mr Warner saw a box of tools standing outside a workshop, and took it and hid it in his own shop; he was charged with theft
- He claimed his act was retaliation for the other workshops lack of cooperation over access to a shared lane, and that he would have returned the tools after an hour or so
- Quashing Mr Warner's conviction, the Court of Appeal said the Chairman of Quarter Sessions had misdirected the jury, and had not sufficiently stressed the need for the prosecution to show an intention permanently to deprive

With the intention of permanently depriving the other

→ s.6 of the Theft Act 1968

When a person is treated as having the necessary intention if they treat the property as their own regardless of the owner's rights; this covers situations where the defendant intends to return the property to its owner e.g. the stealing of a store gift voucher and using it in the store to pay for goods

Borrowing would not normally be an intention to permanently deprive and would not be considered theft under s.6 unless it is for a period and under circumstances making it equivalent to an outright taking or disposal

R v Lloyd (1985)

- Projectionist at a local cinema gave D a film that was showing at the cinema so that D could make an illegal copy
- D returned the film in time for the next screening at the cinema
- Conviction for theft was quashed because by returning the film in its original state, it was not possible to prove an intention to permanently deprive
- 'The goodness, the virtue, the practical value' of the films to the owners has not gone out of them

R v Lavender (1994)

- D took two doors from a council house and used them to replace damaged doors in his girlfriend's house, owned by the same council
- The justices dismissed a charge of theft since he had not shown any intention permanently to deprive the council of their property
- On appeal by the Crown, the Divisional Court remitted the case with a direction to convict: under the first limb of s.6(1) D had treated the doors as his own to dispose of regardless of the owner's rights, and that was enough

Conditional intent (where D's intention to permanently deprive is based upon the condition that V has something worth stealing)

R v Easom (1971)

- D picked up handbag in a cinema, rummaged through the contents and then replaced the handbag without having taken anything
- Theft conviction of the handbag was quashed and the contents of the bag were returned
- No evidence that D had intended to permanently deprive the owner of the bag or items in it so he could not be guilty of theft