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CASES ON THEFT

THE ACTUS REUS OF THEFT

1. APPROPRIATION

Lawrence v MPC [1972] AC 626.

An Italian student took a taxi ride for which the proper fare was about 50p. He offered the defendant a œ1 note, but the defendant said more money was needed and proceeded to take a further œ1 note and a œ5 note from the student's open wallet. The defendant was convicted of theft and appealed unsuccessfully to the House of Lords. The defendant argued that he had not stolen the money because the victim had consented to its being taken by him. Viscount Dilhorne rejected this argument because the student only consented to the legal amount being taken and also the defendant's contention that he should have been charged under s15 (obtaining property by deception) and not s1.

R v Morris, Anderton v Burnside [1984] AC 320.

Morris took two items from supermarket shelves and replaced the correct labels with ones showing lower prices. He took the items to the checkout, paid the lower price and was then arrested. *Burnside* took the label off a joint of meat and placed it on a more expensive joint. His act was discovered and he was arrested before he got to the checkout. Both defendants were convicted.

Lord Roskill explained that the switching of price labels amounted to appropriation because it was an assumption by the defendant of the owner's right to determine what price the goods were to be sold at. If accompanied by *mens rea* it would be theft. Lord Roskill envisaged appropriation as any assumption of *any* right of an owner which amounted to adverse interference with, or usurpation of, those rights.

R v Gomez [1993] 1 All ER 1.

The defendant, an assistant manager of an electrical goods shop, lied to the manager of the store that two cheques presented by a friend were valid, with the result that £16,000 worth of goods were supplied to a rogue. The defendant and the rogue were convicted of theft. The defendant's appeal was allowed by the Court of Appeal but rejected by the House of Lords.

Lord Keith stated that a person could be guilty of theft, contrary to s1(1) TA 1968, by dishonestly appropriating goods belonging to another if the owner of the goods was induced by fraud, deception or a false representation to consent to or authorise the taking of the goods. *Lawrence* makes it clear that consent to or authorisation by the owner of the taking by the rogue is irrelevant. It was also held that it was irrelevant that the taking of the goods in such circumstances could also constitute the offence of obtaining propertyby deception under s15(1) TA 1968. (*Note*: However, this is the more appropriate charge.)

2. PROPERTY

Oxford v Moss [1979] Crim LR 119.

A student borrowed an advance copy of an examination paper, copied the questions and then returned the paper. The Divisional Court held that he was not guilty of theft on the basis that information could not be stolen. Clearly the

paper on which the exam questions were typed was property belonging to Liverpool University, but there was no evidence that the defendant intended to permanently deprive the University of it.

3. BELONGING TO ANOTHER

R v Turner (No 2) [1971] 1 WLR 901.

The defendant removed his car from outside the garage at which it had been repaired, intending to avoid having to pay for the repair. The Court of Appeal held that the car could be regarded as 'property belonging to another' as against the owner, since it was in the possession and control of the repairer. (*Note*: were the same facts to present themselves today, a charge of making off without payment contrary to s3 TA 1978 would be more appropriate.)

Williams v Phillips (1957) 41 Cr App R 5.

A householder put refuse out for collection by the local authority refuse workers. It was held by the Divisional Court that such refuse remained property belonging to the householder until collected, whereupon property passed to the local authority. Hence, refuse workers helping themselves to such property could be convicted of theft, on the basis that the property never became ownerless.

R v Woodman [1974] QB 758.

A sold all the scrap metal on certain disused business premises to B, who removed most of it but left some as being too inaccessible to be worth the expense of removal. The defendant then entered the premises to take some of this scrap and was held to have been rightly convicted of its theft. A continued to control the site and his conduct in erecting fences and posting notices showed that he intended to exclude others from it.

R v (Adrian) Small [1987] Crim LR 778.

The defendant was charged with theft of a car. He claimed that he thought that it had been abandoned by the owner because it had been left for over a week with the keys in it. The Court of Appeal ruled that he could not be guilty of theft if he had an honest belief to that effect, as if the car had been abandoned, the owner would not be 'deprived' of it.

R v Hall [1973] 1 QB 496.

The defendant was a travel agent who had taken money for securing airline tickets for customers and not booked them. The defendant paid all the monies into the firm's general trading account. His business collapsed and the money was lost. He was convicted of theft of the money when the tickets failed to materialise. The Court of Appeal however, held that he was not under an obligation under s5(3). Although the defendant had a general obligation to fulfil his contract he did not have to deal with those specific notes and cheques in a particular way. He was free to use it as he pleased, and was therefore not guilty of theft when he was later unable to provide the tickets required. Edmund-Davies LJ stated:

"… when a client goes to a firm carrying on the business of travel agents and pays them money, he expects that in return he will, in due course, receive the tickets and other documents necessary for him to accomplish the trip for which he is paying, and the firm are "under an obligation" to perform their part to fulfil his expectation and are liable to pay him damages if they do not. But, in our judgment, what was not here established was that these clients expected them to "retain and deal with that property or its proceeds in a

particular way," and that an "obligation" to do so was undertaken by the appellant.

We must make clear, however, that each case turns on its own facts. Cases would, we suppose, conceivably arise where by some special arrangement (preferably evidenced by documents), the client could impose upon the travel agent an "obligation" falling within section 5(3). But no such special arrangement was made in any of the seven cases here being considered."

R v Brewster (1979) 69 Cr App R 375.

It was held that an insurance broker could be guilty of theft of insurance premiums collected by him for which he had to account to the insurance company. A determining factor was that the contract between the defendant and the insurance company stated that at all times the premiums were to be the property of the company.

Davidge v Bunnett [1984] Crim LR 297.

The defendant shared a flat with several other people who gave her cheques on the understanding that a communal gas bill would be paid with the proceeds. In fact, the defendant spent the proceeds on Christmas presents and left the flat without giving notice. The Divisional Court held that the defendant was under a legal obligation to use the proceeds of the cheques in a particular way (for the discharge of the gas bill) and therefore they were property belonging to another by virtue of s5(3). This was therefore theft.

R v Wain [1995] 2 Cr App Rep 660

The defendant, by organising events, raised money for a company which distributed money among charities. He paid what he had raised into a special bank account and thereafter, with the consent of the company, into his own bank account. He then dishonestly dissipated the credit in his account. The Court of Appeal held that he thereby appropriated property belonging to another because the jury were entitled to find that he was a trustee of the money collected and had therefore received it subject to an obligation to retain its proceeds (the successive bank accounts) and deal with them in a particular way (to hand them over to the company).

A-G' Reference (No 1 of 1983) [1985] QB 182.

The defendant, a policewoman, was overpaid. The money was credited to her bank account as a result of an error by her employer. The evidence suggested that having discovered the overpayment, the defendant simply allowed the money to remain in the account. She was charged with theft of the sum overpaid but the trial judge directed the jury to acquit. The question of whether a charge of theft was possible in such a situation was referred to the Court of Appeal.

It was decided that provided there was sufficient evidence of *mens rea*, a charge of theft could succeed in such a situation. The defendant had got property (the excess payment) by another's mistake and was under an obligation to restore the debt (a chose in action) to her employer. Further, Lord Lane CJ suggested that s5(4) only started to operate from the moment the defendant became aware of the overpayment.

R v Shadrokh-Cigari [1988] Crim LR 465.

The defendant, who was the guardian of a child to whose bank account approximately £286,000 had been credited in error instead of £286, persuaded the child to sign authorities instructing the bank to issue drafts credited to him. The defendant spent most of the excess money before he

was discovered, and was convicted of theft of the drafts on the basis that they remained property belonging to another, namely the issuing bank.

The Court of Appeal expressed the view that the conviction for theft was sustainable on two grounds: (1) under s5(1) as the bank still had an equitable interest in the drafts; therefore the drafts could still be regarded as property belonging to another; and (2) under s5(4) as the defendant had obtained the drafts as a result of the bank's mistake, and was under an obligation to restore the property or its proceeds.

R v Stalham [1993] Crim LR 310.

The defendant was notified that he would be receiving a pay rise of œ4,080, payment to be in instalments. A transfer of the total sum was made to the defendant in error, and he was told that a stop would be put on the transfer, and a cheque for the first instalment issued. The cheque was issued, but a stop was not put on the transfer. When queried by a wages clerk, the defendant expressed the view that he believed it to be a tax rebate. The defendant signed a blank cheque which, with his brother's involvement, was subsequently made out to a woman who paid it into her accountand gave the proceeds of the cheque to the defendant's brother. On a charge of theft, the defendant had contended that the money had not been property belonging to another. He was convicted and appealed.

The appeal was dismissed. The Court of Appeal held that it was bound to apply its previous decision in *A-G's Reference (No 1 of 1983)*. As in that case, the property (the chose in action represented by the right to draw on the account) had been transferred as the result of a mistake by the employer. The result was that it remained, as against the employee, property belonging to another, because there was a legal obligation to make restoration, thus the provisions of s5(4) could apply.

THE MENS REA OF THEFT

1. DISHONESTY

s2(1)(a) - BELIEF IN LEGAL RIGHT

If D mistakenly believes that he owns V's umbrella, his appropriation of it would not be dishonest whether his mistake, or ignorance, is of fact or law. Moreover, D will not commit theft where he appropriates V's umbrella in the belief that it belongs to X on whose behalf he is acting. Similarly, D would have a defence if he took a bicycle belonging to V, in order to recoup a debt, under the erroneous belief that the law permitted debts to be recovered in this way.

The D's belief merely has to be honestly held, it does not have to be reasonable. As with all subjective tests, the more outlandish the D's honest belief is, the less likely he is to be believed.

s2(1)(b) - BELIEF IN THE OTHER'S CONSENT

This might apply where D's car has run out of petrol, and D takes a can of petrol from his next-door neighbour V's garden believing that V would have consented had he known. Again the test is subjective.

But D must believe not only that V would have consented to the appropriation but that V would have consented to the appropriation in the particular circumstances. D may believe that his next-door neighbour would consent to his appropriating a pint of milk from his doorstep when D himself had forgotten to leave an order for the milkman; but may believe that his neighbour would not consent to D's appropriating the milk in order to sell it at a profit to a thirsty hitch-hiker who is passing by.

s2(1)(c) - BELIEF THAT PROPERTY HAS BEEN LOST
Again the test for the D's belief is subjective. As regards the question of what might be required by taking reasonable steps to discover ownership will depend partly on the identification available, the location in which it is found, and the value of the property.
A person finding a £10 note in the street may well come within this subsection, unless he has just seen it fall from the pocket of V who is walking in front of him. Similarly, if D finds a suitcase containing £1m in the street one would expect him to make considerable efforts to locate the owner. It should be kept in mind that s2(1)(c) is concerned with what the D views as reasonable steps.

S2(2) - WILLINGNESS TO PAY
For example, where D sees V's newspaper poking out of his letterbox, knowing that he would not wish to sell it, pulls out the newspaper, and leaves its price on V's doormat, D could be guilty of theft.

R v Ghosh [1982] QB 1053.

The defendant was a consultant at a hospital. He falsely claimed fees in respect of an operation that he had not carried out. He claimed that he thought he was not dishonest by his standards because the same amount of money was legitimately payable to him for consultation fees. The judge directed the jury that they must simply apply their own standards. He was convicted of an offence contrary to s15 TA 1968 (which uses the same concept "dishonesty" and appealed against his conviction). The appeal was dismissed by the Court of Appeal. Lord Lane CJ stated:

"In determining whether the prosecution has proved that the defendant was acting dishonestly, a jury must first of all decide whether according to the ordinary standards of reasonable and honest people what was done was dishonest. If it was not dishonest by those standards, that is the end of the matter and the prosecution fails.

If it was dishonest by those standards, then the jury must consider whether the defendant himself must have realised that what he was doing was by those standards dishonest. In most cases, where the actions are obviously dishonest by ordinary standards, there will be no doubt about it. It will be obvious that the defendant himself knew he was acting dishonestly. It is dishonest for a defendant to act in a way which he knows ordinary people consider to be dishonest, even if he asserts or genuinely believes that he is morally justified in acting as he did. For example, Robin Hood or those ardent anti-vivisectionists who remove animals from vivisection laboratories are acting dishonestly, even though they may consider themselves to be morally justified in doing what they do, because they know that ordinary people would consider these actions to be dishonest."

2. INTENTION TO PERMANENTLY DEPRIVE

R v Warner (1970) 55 Cr App R 93.

The defendant took a tool-box to annoy the owner but panicked and hid it when the police were called. He claimed that he intended to replace it as soon as he could do so undetected, but the judge directed the jury that an intention to keep property indefinitely could amount to theft. The Court of Appeal quashed the conviction. (Note: presumably in practice a jury simply might not believe such a story.)

R v Velumyl [1989] Crim LR 299.

The defendant had taken money from his employer's safe and claimed that he intended to pay it back after the weekend. The Court of Appeal held that he had not intended to return the exact coins and notes, and that therefore he

was properly convicted of theft. (Note: in such cases it would be far better for the defendant to contend that he was not dishonest given his intention to replace the money with an equivalent fund.)

s6(1) - INTENTION TO USE OR DISPOSE OF THE GOODS

* Where D abandons property belonging to another he may be deemed to intend to permanently deprive that other of it, if the circumstances are such that there is little likelihood of the owner ever having the property returned to him. For example, D takes V's book and leaves it in a dustbin or on a park bench. D may hope that it is returned to V, but it is likely to be regarded as a disposal regardless of V's rights.
* D may be deemed to have an intention to permanently deprive where he borrows another's property for a period and in circumstances amounting to an outright taking. The commonest example given is that involving a season ticket: V owns a season ticket entitling him to enter a football match for 21 home league games and D takes the ticket at the beginning of the season, uses it to attend the games, and returns it to V at the end of the season. Clearly V gets his ticket back, but the borrowing of it by D has taken the 'value' out of it, and such conduct would amount to theft by virtue of s6(1). (Note: Where D uses the ticket to get into one of the 21 games, he may be charged with obtaining services by deception contrary to s1(1) TA 1978.)

R v Lavender [1994] Crim LR 297.

The defendant removed doors from one council property undergoing repairs and used them to replace damaged doors at another council property. It was held that this was a "disposal" under s6(1) because the defendant intended to treat the doors as his own, regardless of the councils rights".