Criminal Law Theft

The Theft Act 1968 was enacted to simplify the old law on offences against property. The basic definition in s1(1) Theft Act 1968 identifies the elements of the offence. The prosecution must prove all of the elements in order to secure a conviction for theft. You have to identify the main elements of potential theft offences in the question.



ACTUS REUS s. 3 Appropriation

.3(1) Theft Act 1968

The definition of appropriation raises three questions:

- 1. What are the rights of the owner?
- 2. Do all of them have to be assumed for appropriation to take place?
- 3. Is there still appropriation of the owner consents to appropriation of the rights?

'Any assumption' R v Morris [1983] 3 All ER 288

Consent and appropriation Lawrence v MPC [1971] 2 All ER 1253

Theft of gifts R v Mazo [1997] 2 Cr App R 518 R v Hinks [2000] 4 All ER 833

Is appropriation a continuing act?

Atakpu [1994] QB 69, CA

The innocent purchaser R v Adams [1993] Crim LR 72

s. 4 Property

In order to prove theft it must be established that the defendant has appropriated property.

Section 4 Theft Act 1968 defines what property may be stolen.

Generally, all property may be stolen, although there are certain exceptions in relation to land, things growing wild and wild creatures.

Section 4 provides in part:
(1) 'Property' includes money
and all other property, real or
personal, including things in
action and other intangible
property.

(2) A person cannot steal land, or things forming part of land and severed from it by him or by his directions, except in the following cases...

Note that following the decision in *Oxford v Moss* (1979) 68 Cr. App. R. 183, information cannot fall within the definition of intangible property contained in s4(1).

s. 5 'Belonging to another'

The property must belong to someone (s.5.1)

R v Woodman [1974] Parker v British Airways Board [1982]

Can one steal one's own property?

R v Turner [1971]

Property given to another for a particular purpose Section 5(3) Theft Act 1968

R v Dyke and Munro [2002] R v Hall [1972] Davidge v Bunnett [1984] R v Wain [1995] R v Breaks and Huggan [1998] R v Klineberg and Marsden [1999]

Property obtained by another's mistake s. 5(4) Theft Act 1968 Moynes v Cooper [1956]

Section 5(4) will only operate where the accused receives the property by mistake and is under a legal obligation to return it to the person who made the mistake.

s.2 Dishonesty

Defined by the Ghosh test [1982]. "Were the person's actions honest according to the standards of reasonable and honest people?" and then "Did the person concerned believe that what he did was dishonest at the time?"

BUT FIRST

Negative aspect S.2(1) – ...not dishonest appropriation if...

- (a) if he appropriates the property in the belief that he has in law the right to deprive the other of it, on behalf of himself or of a third party;
 (b) if he appropriates the
- (b) if he appropriates the property in the belief that he would have the other's consent if the other knew of the appropriation and the circumstances of it;
- (c) ...if he appropriates the property in the belief that the person to whom the property belongs cannot be discovered by taking reasonable steps

Positive aspect

R v Robinson [1977] Crim LR 173

s.6 Intention to deprive

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'The 'narrow' approach R v Warner [1971] R v Lloyd [1985] R v Cahill [1993]

The 'wide' approach R v Scott [1987] R v Lavender [1994] Chan Man-sin v A.G. for Hong Kong [1988] In Lavender, the court referred to Chan Man-Sin v AG of Hong Hong as authority for the proposition that "to dispose of" included "dealing with".

R v Marshall & Others [1998] 2 Cr App R 282

'Borrowing' money R v Velumyl [1989] Crim LR 299

One of the classic mistakes in the theft question is to assume that theft has not taken place because the property has been appropriated on a temporary basis. The issue is whether the intention to permanently deprived, e.g. by borrowing, is satisfied.