

## Answers to self-test questions

### Chapter 9

**1. Identify the *actus reus* and *mens rea* elements of theft.**

*Actus reus*: appropriation, property, belonging to another

*Mens rea*: dishonesty, intention to permanently deprive

**2. How is appropriation defined under the Theft Act 1968? Under which section?**

Under s.3(1), appropriation is partially defined as any assumption of the rights of the owner.

**3. Does an authorised taking of property amount to appropriation? Refer to case law in your answer.**

Yes. An authorised assumption of the owner's rights amounts to appropriation. Consent is irrelevant to appropriation. This was confirmed in the House of Lords' decision of *Gomez* (1993), which resolved the conflict between *Lawrence* (1972) and *Morris* (1984).

**4. Explain the effect of the decision in *Hinks* on the law of theft.**

*Hinks* (2000) is the leading authority on gifts in which the House of Lords held that it was possible to be guilty of theft of a valid gift. The *actus reus* of theft is now incredibly wide, which means that liability depends largely upon proof of the *mens rea* element of dishonesty. This decision also highlights a conflict between criminal law and civil law because although under civil law title passes upon receipt of a valid gift, the recipient could be guilty of theft of the gift under the criminal law.

**5. How is property defined and under which section of the Theft Act 1968?**

A partial definition of “property” is given under s.4(1), Theft Act 1968. Property is defined as including money, real and personal property, things in action, and other intangible property.

**6. What is a thing in action?**

A “thing in action” or “choses in action” is a form of intangible property, e.g., a share in a company, a debt, a copyright, a trademark, a credit in a bank account, and an agreed overdraft. A thing in action is a right which can be enforced by legal action, and as property under s.4(1) it may be the subject of a charge of theft.

**7. Explain how ss.5(3) and 5(4) operate within the law of theft.**

Where title to the property passes to the defendant before the dishonest appropriation, the property does not belong to another.

Sections 5(3) and 5(4) deal with two situations where the property is deemed to belong to another. Section 5(3) applies where there is a legal obligation on the defendant to deal with the property in a particular way. Section 5(4) applies where a defendant obtains property by mistake and is under an obligation to make restoration.

**8. What is the negative aspect of dishonesty?**

Section 2(1) provides a partial, negative definition of dishonesty. It provides three scenarios in which the defendant is not deemed to be dishonest.

Under s.2(1)(a) a defendant is not dishonest if he honestly believes he has a right in law to the property. Section 2(1)(b) requires an honest belief that he would have the owner’s consent, and s.2(1)(c) requires an honest belief that the owner could not be found by taking reasonable steps.

**9. What is the current test for dishonesty?**

In *Ivey v Genting Casinos (UK) Ltd* (2017), the Supreme Court re-examined the test used for dishonesty in criminal law and disapproved of the second limb of *Ghosh*. The Court made *obiter* comments about the meaning of dishonesty in criminal law but intended its judgment to be followed. In *R v Barton* (2020), the Court of Appeal confirmed that *Ivey*

will now be followed. Thus, the test for dishonesty is an objective one which asks whether ordinary decent people would find the defendant's conduct dishonest. The defendant's conduct must be considered objectively but in the context of the defendant's knowledge or honest belief as to the facts affecting his conduct.

**10. When does an intention to temporarily deprive the owner of property amount to theft? Explain with reference to case law.**

Section 6(1), Theft Act 1968 deals with the issue of when an intention to temporarily deprive the other of the property will amount to an intention to permanently deprive the other of it. In *Fernandes* [1996] 1 Cr App R 175, the Court of Appeal held that the important question in s.6(1) is whether the defendant treated the property as his own to dispose of regardless of the other's rights.

Where a defendant demonstrates an intention to treat the property as own to dispose of regardless of the other's rights, he will be regarded as having an intention to permanently depriving the other of the property. According to *DPP v Lavender* (1994), "to dispose of" was construed widely and meant "to deal with". By contrast, in *Cahill* (1993), "dispose" meant "To deal with definitely; to get rid of; to get done with, finish. To make over by way of sale or bargain, sell".

A borrowing or lending may amount to theft if it is for a period and in circumstances making it equivalent to an outright taking or disposal. In the case of *Lloyd* (1985), Lord Lane CJ took a much narrower approach and held that a mere borrowing is "never enough to constitute the necessary guilty mind unless the intention is to return the thing in such a changed state that it can truly be said that all its goodness or virtue was gone".