

Chapter 8

A mother visiting her son at university is concerned that he is not eating enough green vegetables or fresh fruit and gives him a £10 note, saying, 'you must spend this note on fresh fruit or vegetables and on nothing else'. He spends the money on beer. Has he committed theft?

The key issue here is section 5(3) which states that if a person receives property from another and is under an obligation to deal with it in a particular way then for the purposes of theft the property is treated as still belonging to the person who gave the money. That could apply here and hence (if there is dishonesty) support a theft conviction. However, the application of section 5(3) is not beyond dispute. First, there is the question of whether the mother really intended to impose an obligation on the son to deal with *that particular note* in the way she indicates. If he had used a different £10 to buy fresh fruit would she really have minded? Second, for section 5(3) to operate it is necessary to show there was a legal obligation, rather than just a moral obligation. Here it unlikely the mother was intending to impose a legal obligation on her son.

Davina knocks on the door of an elderly man and offers to mow his small lawn for £100. The man thinks the price sounds high but likes the look of Davina and so agrees. She mows the lawn and he gives her £100. Is this theft?

Following *Hinks* this could be theft. The only issue would be whether or not there is dishonesty. Even if there is no effective deception and the contract is valid under contract law, following *Hinks* this could still be theft. Remember that under the Ivey test for dishonesty Davina will have a defence if she can show that on the facts as she believed them to be what she was doing was not dishonest by the standards of honest people.