

Chapter 9: Theft and other property offences

Problem Questions

Below is an example of a problem question and a worked answer. The answer is written in bullet-point form, highlighting how the structure for answering problem questions (discussed in the 'eye on assessment' section of every chapter) can be applied in this area. Remember that when you write your essays, you should use full prose (ie, not bullet-points).

Sally's work involves visiting elderly and frail people in their own homes, where she cleans and makes meals for them. One of her clients is Josie, who is seventy-eight years old and virtually house-bound by her disabilities and poor sight. One day she asks Sally if she will take her to the shops so that she can get out of the house for a while. Sally reluctantly agrees, knowing that this will really slow her down. At the check-out, Josie tells Sally that to thank her she can keep the change and 'treat herself to some chocolates'. In fact, Josie had handed over a £50 note and the change came to £40. Sally is aware that this is money that Josie cannot afford to lose and that she probably had not realised the value of the note she had given to the shop assistant. But she decides to keep it, thinking it makes up for the fact that she will have to take a taxi to get to her next client on time.

Sally then takes Josie home and calls a taxi. When she arrives at her next client, she gives the taxi driver, Nick, a £10 note for the £6 fare. Absentmindedly, thinking it was a £20 note, Nick gives her £14 change. Sally does not check her change until after Nick has driven off. She then thinks, 'well, my lucky day!' and decides to keep the money.

Her next client is Frank. She tells him that his lounge rug is so worn out and threadbare that she is afraid he will trip over it and hurt himself. She offers to replace it for him if he will give her £75. He agrees. In fact, the rug is fine and Sally merely turns the rug over and pockets the money for herself.

Discuss Sally's potential criminal liability.

Introduction: Brief statements introducing the topic. The question is non-specific, asking you to 'discuss Sally's potential criminal liability' only, so it will be useful to highlight that you understand that the question is focused on property offences. It will also be useful to introduce how you are going to structure your answer – here, as you have a single

defendant, it makes more sense to work chronologically through the problem facts, discussing each potential crime as it arises.

Step 1: The first potential criminal event relates to Sally's (S's) taking of £40 from Josie (J).

Step 2: We will assess S's potential liability for theft (Theft Act 1968, section 1).

Step 3:

- **Appropriation:** When taking the money (remember that J's consent does not undermine the appropriation).
- **Of Property:** Money is property (section 4(1)).
- **Belonging to another:**
 - The money belongs to Josie because of her mistake (section 5(4)).
 - Or, as it only says Josie *probably* did not realise, the prosecution could alternatively claim that the offence element is satisfied (in line with *Hinks*) simply because of the circumstances of vulnerability and exploitation. However, this is less likely – and will require a factual comparison with *Hinks*.
- **Intention to permanently deprive:** Yes – S 'decides to keep it'.
- **Dishonesty:** The section 2 exceptions don't seem to be relevant (although there could be some discussion of 'belief in consent'), and therefore the *Ivey* test should be applied:
 - A) What was the actual state of D's knowledge or belief as to the facts? She realised the mistake etc.
 - B) In the context of (A), was D's conduct dishonest by the standards of ordinary decent people? Discuss with reference to *Hinks* etc, though note the change in test for dishonesty from that case.

- **Alternative offence:** An alternative charge would be fraud under the Fraud Act 2006 section 1, most likely section 4 fraud by abuse of position (could analyse as other types of fraud as well).
 - Section 4 requires S to have occupied a position where she was expected to safeguard the financial interests of another, to dishonestly abuse that position, and to intend to make a gain or cause a loss by that abuse.

Step 4: There are no likely defences, and so no discussion is required.

Step 5: It is likely that S will be liable for theft, or for the alternative fraud offence.

Step 1: The second potential criminal event relates to S's taking of £14 from Nick (N).

Step 2: We will assess S's potential liability for theft (Theft Act 1968, section 1).

- **Appropriation:**
 - When taking the money? N's consent does not undermine the finding of an appropriation. However, S is not dishonest at this point, so there is no coincidence of theft elements. We therefore need another appropriation on which to base liability.
 - When deciding to keep the money? Here S clearly assumes rights of ownership – section 3(1).
- **Of Property:** Money is property (section 4(1))
- **Belonging to another:** The money belongs to Nick because of the mistake (section 5(4)).
- **Intention to permanently deprive:** Yes – S 'decides to keep the money'.
- **Dishonesty:** The example within section 2(1)(c) may apply, as it would be hard to find the true owner, and should be discussed. However, as this is not certain to apply, you should also consider *Ivey*:

- A) What was the actual state of D's knowledge or belief as to the facts? Explain what is known etc.
- B) In the context of (A), was D's conduct dishonest by the standards of ordinary decent people? You should discuss the circumstances, including that it would be hard to find the taxi again, etc.

Step 4: There are no likely defences, and so these do not require discussion.

Step 5: Subject to some doubt as to S's dishonesty, it is likely that he will be liable for theft.

Step 1: The third potential criminal event relates to the £75 taken from Frank (F).

Step 2: We will assess S's potential liability for theft (Theft Act 1968, section 1).

- **Appropriation:** When taking the money? Remember that F's consent does not undermine the appropriation).
- **Of Property:** Money is property (section 4(1))
- **Belonging to another:** Frank will retain equitable rights because of S's deception.
- **Intention to permanently deprive:** Yes, this is indicated on the facts – 'pockets the money for herself'.
- **Dishonesty:** The section 2 examples seems unlikely on the facts, and therefore the *Ivey* test should be applied:
 - A) What was the actual state of D's knowledge or belief as to the facts? Explain what is known etc.
 - B) In the context of (A), was D's conduct dishonest by the standards of ordinary decent people? Very likely on the facts.

- **Alternative offence:** An alternative charge would be fraud under the Fraud Act 2006 section 1, most likely section 2 fraud by false representation (could analyse as other types of fraud).
 - S makes a false representation, appears dishonest, and intends to make a gain or cause a loss by that representation.

Step 4: There are no likely defences, and so these do not require discussion.

Step 5: It is likely that S will be liable for theft, or for the alternative fraud offence.

Conclusion: A brief conclusion, summarising S's likely liability, will be useful.

Essay Questions

There are several areas of interest for essay-type questions in relation to property offences. For example, the overlap of theft and fraud, the status of 'appropriation' post *Hinks*, the definition of 'dishonesty' post *Ivey*, and so on.

Below is an example of an essay-type question, and a bullet-point plan for a possible answer. This is for illustration purposes only. When writing an essay of this kind yourself, there will usually be alternative ways you could structure your answer, alternative points of discussion that could be raised, and you would certainly be expected to write in full prose (ie, not in bullet-point form). The most important point to take from these plans is how they focus on identifying and discussing the subject matter of the debate within the question, not simply listing information about the relevant topic.

The current definition of theft is tolerably clear, but can lead to unfairness.

Discuss.

Introduction:

- The topic of this essay question is clear, but make sure your introduction highlights the debate – legal issues of ‘clarity’ and ‘fairness’.
- You also need to tell your reader how you are going to structure your answer. Two possible structures include:
 - Separating issues of clarity and fairness – exploring each in relation to the current law of theft, and discussing examples in the case law.
 - Separating the elements of the theft offence – exploring each element in relation to questions of clarity and fairness.

Body of the essay:

- Where you have a lower word-count, or limited time (as in an exam), the first of these structures should probably be preferred.
- The current definition of theft is ‘tolerably clear’.
 - In favour of the statement: There are a number of examples to support this statement. Probably the best would be the evolution of ‘appropriation’ within the current law. Allowing appropriation to be found even where V consents may be controversial, but it certainly makes the law clearer and easier to apply. Another example could be the definition of ‘dishonesty’ under the *Ivey* test: this may not create clarity in terms of predictability of cases, but it is certainly a straightforward test. This latter example also allows you to question what we mean/want in terms of legal clarity.
 - Against the statement: There are equally examples that can be used to counter the statement. For example, although the issue of consent and appropriation is clear, the exact applicability of *Hinks* (where property is passed to D as a valid civil gift) remains uncertain. This is also important under another element of theft, that the property passed must ‘belong to another’. Another example is ‘dishonesty’ as it relates to outcomes: without a universal understanding of dishonesty, the current test risks different outcomes in relation to similar facts.

- The current definition of theft 'can lead to unfairness'.
 - This part of the question requires you to engage with the outcomes from the current law, and whether liability is correctly applied. Questions of fairness can be analysed in two ways:
 - Objectively: It is always unfair for like cases to be treated differently. Therefore, you should highlight debates about the test for dishonesty as giving rise to the potential for unfairness.
 - Subjectively: Where you think the boundaries of theft should lay is a subjective question, but one that you need to engage with. For example, you might think that theft should apply more narrowly and only include non-consensual appropriation; that theft should apply more widely to include the taking of confidential information, or taking where D only intends to deprive V temporarily; etc.

Conclusion:

- Your conclusion should briefly summarise your discussion, making clear whether you generally agree or disagree with the statement, and why.
- As the discussion involves a critique of the current law, you may also want to briefly consider potential reform of the law, and what this might look like.