# Answer guidance

## Question:

During a long motorway journey, D stops off at an off-licence store. She needs some champagne for a party. On seeing a box of expensive bottles, she removes the price label of £100 and substitutes a label from a cheaper box of £30. She puts the box in her trolley but notices a beady-eyed security guard near the check-out and so replaces it on the shelf. She picks up a few boxes of sparkling wine instead and conceals three bottles of the expensive champagne in her overcoat pockets. On paying for the sparkling wine at the check-out the cashier (Z) gives her £50 too much change by mistake. D drives the rest of the journey home before noticing the overpayment.

D returns to the store one week later and buys some wine. On her way out, Z runs after her and demands the return of the £50. Z’s wages had been reduced by this amount because of her mistake. D refuses whereupon Z threatens her with a black eye and grabs D’s bag. She takes £50 from D’s purse, drops both bag and purse, and runs off.

Discuss the liability of D, X, Y and Z for theft or robbery.

## Key issues:

Identify the relevant offences:

* Theft under s1 Theft Act 1968
* Robbery under s8 Theft Act 1968
* Defences to theft and robbery under s2(1)( c) Theft Act 1968

## Key law

* The development of the law on appropriation is discussed in *Lawrence*, *Morris*, *Gomez* and *Hinks* at 10.1.2
* Dishonesty in theft is discussed at 10.1.3 : *Ivey*/*Barton*
* Intention to permanently deprive is discussed at 10.1.3
* Robbery is discussed at 10.2.2 (actus reus) and 10.2.3 (mens rea)

## Hints:

* A useful way to answer a question like this which has several issues is to make a table to help you to decide if the requirements of the Act are satisfied. This could look like the one below for this question (the theft element only).

|  | **Appropriation S3** | **Property S4** | **Belonging to another S5** | **Dishonesty S2(1) beliefs + *Ivey*** | **Intention permanently to deprive S6** |
| --- | --- | --- | --- | --- | --- |
| Box of champagne/label - switching | Yes—on switching the labels: *Gomez*. | Yes | Yes | Yes | Yes |
| 3 bottles of champagne | Yes—on picking them up and certainly by concealing them: *Gomez*. | Yes | Yes | Yes | Yes |
| £50 change | Yes—on taking possession. However, s3(1) also refers to a later keeping or dealing. | Yes | S5(4) applies: property obtained by another’s mistake. D is under an obligation to restore. | *Ivey* may apply. This is a question of fact for the jury. | Yes |

* Under the previous Ghosh test if D asserted a belief that she was not dishonest by reasonable standards at that point because anyone would have done the same, especially living so far away from the store, and she is believed, she would not be dishonest. However, *Ivey v Genting Casinos* [2017] dispenses with this second limb of the test. The fact that she returned the following week and refused to repay the £50 means that it is likely she was dishonest according to reasonable standards.
* Remember that all the elements of a property offence must be satisfied including the intention to permanently deprive. Work through these elements one by one to establish liability.
* Remember that appropriation includes dealing with the property as an owner (section 3(2) Theft Act 1968).
* The timing element is important for robbery