**Video transcript**
**Video Tutorial (k): Property and fraud offences (chp 9 & 10)**

Hi! In this video I want to talk briefly about property offences and fraud offences. So these are the issues that we deal with in Chapters 9 and 10 of the textbook. And there is a couple of issues that I think are worthy of some kind of discussion here. The first one is the particular issue when it comes to identifying a potential criminal event when you're looking at and applying property offences and the second one is the issue with overlapping offences which is particularly true in relation to fraud but also between fraud and theft for example another offences of that kind.

So in terms of the first one, in terms of identifying a potential criminal offence. Now when you answering a problem question this is always your first step. So within our structure of the six steps to answering within different problem questions scenarios the first one is always, 'What is the criminal event or the potential criminal event?'. Now for many different types of offences that's quite a straightforward question. So if you're looking at a homicide type question the event is when the defendant does something which leads to the death of the victim. If you're looking at an offence against the person type scenario it's when the defendant kicks the victim or something of that nature. It's relatively obvious where that event is within the problem scenario and then your analysis obviously engages with that potential criminal event.

Now within property offences it can actually be rather more tricky and this is particularly true in relation to the offence of theft. So, of course, when we're looking at the potential criminal offence for theft, the the most obvious place to look is the moment when the defendant takes hold of something that doesn't belong to them. So at that point we can say there is an appropriation there's a physical taking of control of an item that belongs to somebody else, it is property there's an intention to deprive and it's dishonest and therefore all of the elements of theft coincide in that single point in time. Now if that is the case then wonderful its mercifully simple and we could simply find liability at that point at the appropriation. But actually, the unique thing or semi-unique thing about the offence of theft is when we think about an appropriation we're not simply talking about physical taking but rather an appropriation is any assumption of property rights the original owner. So the most obvious physical demonstration of that is a physical taking but equally it can be if you take something to borrow it and you later decide to keep it that later decision to keep to sell to use it was your own actually constitutes a second appropriation. So when you are identifying the potential criminal event you need to keep in mind that there might be several appropriations of exactly the same property within one potential scenario. And sometimes it's necessary not to focus your analysis on that first appropriation but rather to look at one of those later appropriations in order to find the best chance of liability. So, a simple example would be where the defendant is given something to borrow and they take the item their intention is to borrow it and later on they decide to keep it. Now in that scenario if we looked at the first appropriation the physical taking then we would say yes there is an appropriation the physical taking it is a property it may even be dishonest although it's unlikely if it's just being taken to borrow but there definitely isn't an intention to

permanently deprive. The intention of the defendant at the time of the taking is simply to borrow the item and therefore there can't be liability there is no coincidence. So rather than simply concluding there's no crime this is where I encourage you to look for alternative appropriations. At the point our defendant decided to keep the item this in itself amounts to a second appropriation and at this stage we can say, there is an appropriation, it is property, it did belong to another ,there's an appropriation of the property right, this time it is the intention permanently deprive and as long as it's considered dishonest we have a theft offence at this second stage of the appropriation. So it's just important thing to remember here that unlike many other offences the potential criminal event the location of the crime where you're looking for the coincidence of elements may be quite different for theft of there might be multiple appropriations and therefore multiple potential points we could find liability and you need sometimes to consider more than one in order to find the best chance of finding liability.

Okay, moving on and that's the first question in terms of indentifying the event. The other particularly tricky thing with certain property offences is overlap. Now sometimes this won't be tricky because the problem question will tell you the offence it's asking you to analyse. For example, if the problem question says discuss Dave's liability for theft for example then straightforwardly that's the offence you're looking at. However if the problem question tells you to simply assess Dave's liability then you may find in property offences that there are multiple choices. The overlap nowadays between theft and fraud is almost complete. There are very few things that you can class as theft which aren't also potentially fraud offences and equally within the offence of fraud you've got overlapping types of fraud offences. And actually, particularly fraud by false representation has been popularly argued to almost subsume all the other types of fraud as well.

Now the point here is if you were acting for a prosecuting authority this could be quite simple, you can simply just choose one offence and you can charge that for every single scenario within your problem question but actually within a problem question you're not simply a Prosecuting Authority looking to charge someone but you're also looking to demonstrate your understanding of the law demonstrate your wider knowledge. Now you therefore have a choice. Do you try and deal with all the potential offences and discuss each one in detail or do you just choose one and ignore the others? Those two approaches are the most common ones that students take. What I encourage you to do is a third option which is essentially to take what you think is the most likely offence to be charged. Likely because it's the most serious, likely because it's the most appropriate label, likely because is perhaps the easiest to prosecute identify that offence go through all the elements in detail when you're applying to the problem facts but then afterwards to acknowledge in just maybe one or two sentences the fact that as well as the offence that we've analysed this offence or this scenario could alternatively be analysed in relation to these other offences.

Now you don't need to go through all the detail of these other offences, you simply won't have time in most scenarios, but at least with knowledge it demonstrates to your reader that you have a more extended knowledge in the area of law and particularly of course when you're looking at fraud offences where there is this real

overlap between types of fraud, try and vary that first offence that you're analysing in detail. Don't for example answer a problem question on fraud by just looking at fraud by false representation for each of the 2 or 3 or 4 potential criminal events and then simply mentioning a sentence what other fraud offences might be committed. Where possible try and choose a different offence to analyse in real detail and then acknowledge that this could also be classed as fraud by false representation or something of that nature.

So, the point here is the two fold really first of all in terms of identifying events be aware that this could be multiple appropriations and multiple events. And then in relation to overlapping offences which offence you're going to choose be aware of that overlap, acknowledge it to your reader, do one offence in detail when you're applying it and acknowledge the other potentials afterwards.

Thank you!