

Component 2 Exam Practice

In each of the following situations, explain whether all the elements of theft are present.

1. Roland works in a small factory where there are only 20 employees. One day he finds a small purse in the washroom. He opens it and finds that it contains a £10 note and some coins. There is no name or other identification in it. Roland decides to keep the money as he does not think he can find the owner.

Plan:

- **Definition**
- **Actus reus elements: appropriation, property, belonging to another**
- **Mens rea: Dishonestly (also include test for dishonesty) and the intention to permanently deprive**
- **Include sections of Acts as well as cases**

A person is guilty of theft under section 3 of the Theft Act 1968 if they “dishonestly appropriate the property of another with the intention of permanently depriving the other of it”. It must be established that Roland has the actus reus of theft.

Firstly, the element of appropriation must be present. Section 3 makes it clear that there can also be an appropriation where the defendant acquires property without stealing it, but then later decides to keep or deal with the property as owner. The element of appropriation is present as Roland assumed he had the right to keep it and deal with it as owner regardless of if he came by the property innocently and it is clear that the appropriation took place at the point of keeping the money. Under section 4 property is defined as including money which can clearly be stolen, therefore in this case Roland has taken property. In addition, it must also be established that the money belonged to another, s5 states that “property shall be regarded as belonging to any person having possession or control of it, or having in it any proprietary right or interest as seen in Dyke and Munro. In this case, Roland may have thought that the property was abandoned and did not know who it belonged to, however we are told that there are only 20 employees in the factory which means it is most likely that someone has actually lost the money and it did belong to another person who worked there. There were reasonable steps that Roland could have taken to return the money however did not and decided to keep it, therefore he has committed the actus reus of theft.

In addition, it must be established that Roland had the mens rea for theft. The mens rea for theft is ‘Dishonestly with the intention of permanently depriving the other of it.’ Firstly, it must be proved that Roland is dishonest and under section 2 a person’s appropriation would not be regarded as dishonest if the person to whom the property belongs cannot be discovered by taking reasonable steps, Roland can argue that he genuinely thought that the property was abandoned however he did not take any reasonable steps to contact any of the 20 employees and find out who the money belonged to, instead he decided to keep it, therefore he did act dishonestly. The test for dishonesty asks: “Was the defendant dishonest by the standards of ordinary honest people? as established in Ivey v Genting Casinos. Applying this test in Roland’s case he was dishonest by the standards of ordinary people as he did not attempt to return the money or find out who it belonged to. It must also be proved

Component 2 Exam Practice

that Roland had the intention to permanently deprive and in Fernandes the Court held that the “thrust of s6 is whether the accused did intend ‘to treat the thing as his own to dispose of regardless of the others rights’. In this case, it can be stated that Roland did treat the money and purse as his own when he decided to keep it, not thinking about the rights of the other 20 employees and who the money actually belonged to. Therefore, Roland has the mens rea for theft.

2. Venus comes from another country where property placed outside a shop is meant for people to take free of charge. She sees a rack of clothes on the pavement outside a shop and takes a pair of jeans from it.

Notes: Ignorance of the law is not an excuse

A person is guilty of theft under section 3 of the Theft Act 1968 if they “dishonestly appropriate the property of another with the intention of permanently depriving the other of it”. It must be established that Venus has the actus reus of theft.

Firstly, the elements of appropriation must be present. Appropriation is defined under section 3 as “any assumption by a person of the rights of an owner amounts to an appropriation”. This includes, where he has come by the property (innocently or not) without stealing it, any later assumption of a right to it by keeping or dealing with it as owner.”In this case, Venus had assumed that the pair of jeans was free of charge and the appropriation took place at the point where Venus decided to keep the jeans, she assumed she had the right to keep it and deal with as owner regardless of if she came by the clothes innocently. Under section 4 property is defined as “including money and all other property real or personal, including things in action and other intangible property.” In this case, Venus has taken clothes which are personal property as seen in Kelly and Lindsay therefore she may be found guilty of taking property from the shop. In addition, it must also be established that the pair of jeans belonged to another, s5 states that “property shall be regarded as belonging to any person having possession or control of it, or having in it any proprietary right or interest as seen in Dyke and Munro. In this case,

Venus thought the clothes were free of charge as we are told that she comes from another country where items left outside are free of charge, the clothes did actually belong to the shop owner. Venus has committed all the elements of the actus reus of theft.

In addition, it must be established that Venus had the mens rea for theft. The mens rea for theft is ‘Dishonestly with the intention of permanently depriving the other of it.’ Firstly, it must be proved that Venus is dishonest and under section 2 a person’s appropriation would not be regarded as dishonest if the person to whom the property belongs cannot be discovered by taking reasonable steps, Venus can argue that she did not believe that it was a crime as she take property without paying due to it being placed outside as that was the ordinary thing to do in her country, however it was stated by Lord Reid that ignorance of the law is no excuse so in this case, even if Venus did come from another country, she would still be found guilty of dishonestly taking property not belonging to her.

Component 2 Exam Practice

The test for dishonesty asks: “Was the defendant dishonest by the standards of ordinary honest people? as established in *Ivey v Genting Casinos*. Applying this test in *Venus’s* case she was dishonest by the standards of ordinary people. She did take clothes that did not belong to her and she did not have the consent or the legal right to take them. It must also be proved that Venus had the intention to permanently deprive and in *Fernandes* the Court held that the “thrust of s6 is whether the accused did intend ‘to treat the thing as his own to dispose of regardless of the others rights’. In this case, it can be stated that Venus did have the intention of permanently depriving as seen in *Velumyl* as she it is clear that she thought she could keep the property without paying or returning it, therefore Venus does have the mens rea for theft.

3. Natalie is given a Christmas cash bonus in a sealed envelope. She has been told by her employer that the bonus would be £50. When she gets home she opens the envelope to find there is £60 in it. She thinks her employer decided to be more generous and keep the money. Would your answer be different if:

- a. Natalie realised there had been a mistake but did not return the money, or

Actus reus:

Appropriation- defined under s3 as: “any assumption by a person of the rights of an owner amounts to an appropriation”. This includes, where she has come by the property (innocently or not) without stealing it, any later assumption of a right to it by keeping or dealing with it as owner.” The appropriation took place at the point where she realised there had been a mistake, however still decided to keep the money and also there was also no consent to the appropriation.

Property- is defined under s4 as including money and all other property real or personal, including things in action and other intangible property.” In this case, money is property, Natalie could have had the opportunity to contact her boss and take reasonable steps to return the property however she did not therefore she would be found guilty of taking property.

Belonging to another- defined under s.5 as “property shall be regarded as belonging to any person having possession or control of it, or having in it any proprietary right or interest. In *Dyke and Munro*, property must belong to another and in this case, the property did clearly belong to Natalie’s boss therefore she took property that did not belong to her. Natalie may argue that she innocently received the property and did not actually steal it from her boss, however under s5 if property is got by mistake there is a duty to make restoration If this doesn’t happen there may be a theft as seen in *Gilks*, therefore Natalie has committed the actus reus of theft.

Mens rea: the mens rea of theft is ‘Dishonestly with the intention of permanently depriving the other of it.’

Dishonesty and intention to permanently deprive- Natalie acted dishonestly as she did not make any attempts to take any reasonable steps to return the money. The test for dishonesty asks: “Was the defendant dishonest by the standards of ordinary honest people? as established in *Ivey v Genting Casinos*. Applying this test in

Component 2 Exam Practice

Natalie's case she was dishonest by the standards of ordinary people. She did take the extra money that did not belong to her without consent or the legal right to take the money. It must also be proved that Natalie had the intention to permanently deprive and in Fernandes the Court held that the "thrust of s6 is whether the accused did intend 'to treat the thing as his own to dispose of regardless of the others rights'. In this case, it can be stated that Natalie did have the intention of permanently depriving as seen in Marshall as she it is clear that she thought she could keep the property without taking any reasonable steps to consult her manager without returning it, therefore Natalie does have the mens rea for theft.

b. The amount in the envelope was £200?

Actus reus:

Appropriation- defined under s3 as: "any assumption by a person of the rights of an owner amounts to an appropriation". This includes, where she has come by the property (innocently or not) without stealing it, any later assumption of a right to it by keeping or dealing with it as owner." The appropriation took place at the point where she realised there was £200 in the envelope which was more than her employer had told her, however still decided to keep the money without there being any consent to appropriation.

Property- is defined under s4 as including money and all other property real or personal, including things in action and other intangible property." In this case, money is property, Natalie could have had the opportunity to contact her boss and take reasonable steps to return the money however she did not therefore she would be found guilty of taking property.

Belonging to another- defined under s.5 as "property shall be regarded as belonging to any person having possession or control of it, or having in it any proprietary right or interest. In Dyke and Munro, property must belong to another and in this case, the property did clearly belong to Natalie's boss therefore she took property that did not belong to her. Natalie may argue that she innocently received the property and did not actually steal it from her boss, however under s5 if property is got by mistake there is a duty to make restoration If this doesn't happen there may be a theft as seen in Gilks and in this case the money given was a lot more than her employer had told she would give her, therefore Natalie has committed the actus reus of theft.

Mens rea: the mens rea of theft is 'Dishonestly with the intention of permanently depriving the other of it.'

Dishonesty and intention to permanently deprive- Natalie acted dishonestly as she did not make any attempts to take any reasonable steps to return the money. The test for dishonesty asks: "Was the defendant dishonest by the standards of ordinary honest people? as established in Ivey v Genting Casinos. Applying this test in Natalie's case she was dishonest by the standards of ordinary people. She did take the extra money that did not belong to her without consent. It must also be proved that Natalie had the intention to permanently deprive her employer of the money and in Fernandes the Court held that the "thrust of s6 is whether the accused did intend 'to treat the thing as his own to dispose of regardless of the others rights'. In this case, it can be stated that Natalie did have the intention of permanently depriving as

Component 2 Exam Practice

seen in Marshall as she it is clear that she thought she could keep the property without taking any reasonable steps to consult her manager without returning it, therefore Natalie does have the mens rea for theft.

4. Erol is given permission by his employer to borrow some decorative lights for use at a party. Erol also takes some candles without asking for permission. When putting up the lights Erol smashes one of them. He lights two of the candles so that by the end of the evening they are partly burnt down. One of the guests admires the remaining lights and asks if he can have them to use at a disco at the weekend. Erol agrees to let him take the lights.

A person is guilty of theft under section 3 of the Theft Act 1968 if they “dishonestly appropriate the property of another with the intention of permanently depriving the other of it”. It must be established that Erol has the actus reus of theft.

Firstly, the elements of appropriation must be present. Appropriation is defined under section 3 as “any assumption by a person of the rights of an owner amounts to an appropriation”. This includes, where he has come by the property (innocently or not) without stealing it, any later assumption of a right to it by keeping or dealing with it as owner.” In this case, Erol has been given permission by his employer to borrow the decorative lights, however he has not been given any permission to take the candles and therefore there was not true consent to the appropriation of the candles as seen in Lawrence regardless of whether Erol assumed it would be acceptable to take them too. We are also told that Erol smashes one of the lights, and if the defendant destroys property belonging to another then he can be charged with theft, in this case Erol burnt the candles down so they could no longer be reused which can be argued as destroying property as seen in Morris.

Under section 4 property is defined as “including money and all other property real or personal, including things in action and other intangible property.” In this case, personal property has been stolen as seen in Kelly and Lindsay as Erol took the candles without permission. In addition, it must also be established that candles belonged to another. S5 states that “property shall be regarded as belonging to any person having possession or control of it as seen in Turner (no.2), or having in it any proprietary right or interest as seen in Dyke and Munro. In this case, it is clear that the candles belonged to Erol’s employer so he cannot argue that he did not know who the property belonged to, he could have also taken reasonable steps such as ask his employer for permission to take the candles however did not, therefore Erol has committed the actus reus of theft.

In addition, it must be established that Erol had the mens rea for theft. The mens rea for theft is ‘Dishonestly with the intention of permanently depriving the other of it.’ Firstly, it must be proved that Erol is dishonest, it can be argued that Erol has acted dishonestly as he clearly knew who the property belonged to however did not bother to consult his employer and ask permission about taking the candles, Erol may be able to argue that section 2 it is stated that a person is not dishonest if they would have the other’s consent if the other knew of the appropriation and the circumstances of it and in this case, as Erol’s employer has already given him permission to take the lights it could suggest that due to their work relationships,

Component 2 Exam Practice

Erol's employer would not have minded if he knew the circumstances. The test for dishonesty asks: "Was the defendant dishonest by the standards of ordinary honest people? as established in *Ivey v Genting Casinos*. Applying this test in Erol's case he was dishonest by the standards of ordinary people as he did take the candles that did not belong to him and also used them up which could be seen as destroying property as there is no way of him being able to give the same candles back to his employer.

It must also be proved that Erol had the intention to permanently deprive his employer of the candles and in *Fernandes* the Court held that the "thrust of s6 is whether the accused did intend 'to treat the thing as his own to dispose of regardless of the others rights'. In this case, it can be stated that Erol did have the intention of permanently depriving as seen in *Mitchell* as it is clear he thought he could use the candles which is keeping property without having any intention to return them. In addition, we are told that Erol then gave the decorative lights to one of the guests at the party when they were only borrowed from Erol's employer. Borrowing is not normally a theft unless it is for a period and in circumstances making it equivalent to an outright taking or disposal as stated in *Lloyd*. However, in this case Erol may also be found guilty of theft for the fairy lights as by agreeing to give his employer's property to someone else he is voluntarily assuming ownership over them and has not consulted his employer to ensure that he has permission to give them away, therefore Erol has the intention to permanently deprive his employer of the candles and fairy lights, committing the mens rea of theft.

5. John is late for work one day so he takes his neighbour's bicycle to get to work on time. His neighbour is away, but John has used the bicycle on previous occasions. He intends returning it in the evening when he returns home from work. John parks the bicycle at the back of the shop where he works. When he leaves work in the evening he finds that the lamp and pump have been taken from the bicycle and it has been damaged. He is frightened to return the bicycle in this state so he throws it into the local canal.

A person is guilty of theft under section 3 of the Theft Act 1968 if they "dishonestly appropriate the property of another with the intention of permanently depriving the other of it". It must be established that Roland has the actus reus of theft.

Firstly, the element of appropriation must be present. Section 3 makes it clear that there can also be an appropriation where the defendant acquires property without stealing it, but then later decides to keep or deal with the property as owner. It is likely that John's neighbour would not have minded that John used the bicycle as we are told that he has used it before to go to work on many occasions which implies that he gets on well with his neighbour and that he wouldn't mind John borrowing the bicycle therefore it is most likely that there would have been consent to the appropriation. However, it needs to be considered that John did destroy the bicycle after he realised it had been damaged as we are told he then "throws it in the local canal", If the defendant destroys property belonging to another he can be charged with theft and in this case John did not actually destroy the property, he found the

Component 2 Exam Practice

bicycle in a damaged condition however theft can also be charged where the defendant does not destroy the other's property but throws it away as seen in Morris.

Under section 4 property is defined as "including money and all other property real or personal, including things in action and other intangible property." In this case the bicycle is seen as personal property as shown in Kelly and Lindsay. In addition, it must also be established that the bicycle belonged to another. S5 states that "property shall be regarded as belonging to any person having possession or control of it as seen in R v Rostron, or having in it any proprietary right or interest as seen in Dyke and Munro. In this case, it is clear that the bicycle belonged to John's neighbour who does have possession and control over it and John clearly knew who it belonged to. Therefore, by committing the appropriation by assuming the owner's right to destroy property John has committed the actus reus of theft.

In addition, it must be established that John had the mens rea for theft. The mens rea for theft is 'Dishonestly with the intention of permanently depriving the other of it.' Firstly, it must be proved that John is dishonest, it can be argued that John acted dishonestly as he did throw his neighbour's bicycle into the canal which caused the destruction of property however Under s.2 of the Theft Act 1968, a person's appropriation of property belonging to another is not to be regarded as dishonest if he appropriates the property in the belief that: he would have the other's consent if the other knew of the appropriation and the circumstances of it and it is implied that John had an honest belief that his neighbour would not have minded him taking his bike. The test for dishonesty asks: "Was the defendant dishonest by the standards of ordinary honest people? as established in Ivey v Genting Casinos. Applying this test in John's case he was dishonest by the standards of ordinary people as he although it is implied that he could take the bike, John still threw away his neighbour's property without his neighbour's knowledge or permission, it is destroying property as John cannot return the same bike to his neighbour.

It must also be proved that John had the intention to permanently deprive his neighbour of the bicycle and in Fernandes the Court held that the "thrust of s6 is whether the accused did intend 'to treat the thing as his own to dispose of regardless of the others rights'. In this case, it can be stated that John did not have the intention of permanently depriving as we are told that John "intended to return the bicycle in the evening when he returned home from work", it is also suggested that he uses the bicycle on a regular basis therefore it can be argued that he did not have the intention to permanently deprive his neighbour of the bicycle but just panicked when he saw it has been damaged and acted in fear leading to the destruction of the property, therefore John does not have the mens rea of theft.