

Criminal law 9 offences against property

[Law](#), [Criminology](#)



Theft - The Theft offence is defined under S1 of the 'Theft act 1968'. Where it provides that if 'A person dishonestly appropriates property belonging to another, with the intention of permanently depriving the other of it,' will be guilty of the offence. For this charge to be upheld, both the actus Reus and the mens rea have to be established. Actus Reus - Beginning with the physical element of the crime, the actus Reus it is made up of 3 elements - 'appropriates, property, belonging to another.' Appropriation is defined in S3, 'Any assumption by a person of the rights of an owner amounts to appropriation. This includes coming across the property innocently or not without stealing it and treating the property how the owner would. Examples of this would be using, eating, selling, destroying, lending/hiring the property. The case examples are: ? 'Pitman v Hehl (1977)' - 'defendant sold property belonging to another. Offer of sale is an assumption of right. It didn't matter whether the property was removed or not. ? 'Morris, (1983)' - At least one assumption of all the rights Switched price labels in shop. ? 'Lawrence (1971)' - With consent An Italian student paying for taxi ride, ? 6 instead of 50p. 'Gomez'- Lied about cheques so friend could take supplied goods. Dishonestly appropriating goods, induced through fraud, deception or a false representation to consent. ? 'Hinks' - Consent without deception, got naive friend to put money in account. Said where gifts however also results to appropriation. Property has been defined under S4; this includes money, real property (buildings and land, personal property, things in action (bank accounts) and other intangible assets. (e. g. Patent) ? Kelly and Lindsay (1998) - Taken body parts from the royal college of surgeons to make casts.

Normally dead bodies are not property however; belonged to the royal college. ? A-G of Hong Kong v Chan Nai-Keung- Stolen quota ? Oxford v Moss - Not intangible property , - knowledge of the questions on a exam paper ? Wild mushrooms and plants cannot be property unless it is taken for reward or commercial purposes. Not theft if creatures are wild, but theft if they are in captivity or owned. Belonging to another is defined under S5, ' property shall be regarded as belonging to any person having possession or control over it, or having in it any proprietary right or interest. Therefore prosecution do not have to prove who the legal owner is. ' Turner (no. 2) (1971)' Stealing own car Garage was in control of the property as he left it with them to make repairs and pay thereafter. Guilty, when property may not belong to another. (1) Trust property, where trustee steals it (2) Property received under obligation - ' Hall, (1972)' – Travel agent, deposits for client tickets. Klineberg and Marsden,' Obligation to make deposits in a certain way. Timeshare apartments. ' Davidge V Bunnett' Money for bill but didn't. 3)Property received by another's mistake - ' A-G Reference (No 1 of 1983) (1985) – Salary overpaid through bank transfer, had an obligation to repay. Mens Rea - Within the offence of the theft the mental element of the crime the mens rea is the ' dishonest intention'. Dishonesty, it has to be proved that they defendant appropriated dishonestly, there is no definition under S2 however it states that it is irrelevant whether it was made with a view of gain or own benefit. Therefore meaning if the other entire elements are present the defendant's motive is not relevant.

S2 provides 3 situations in which the defendant's behaviour is not dishonest. If a genuine belief in one of the three below not guilty. A) He has in law the

right to deprive the other of it, on behalf of himself or a third person. b) He would have the consent if the other knew of the appropriation and the circumstance of it. c) The person who the property belongs to cannot be discovered by taking reasonable steps. Willing to pay – it doesn't prevent dishonest conduct. ' A person's appropriation of property belonging to another may be dishonest notwithstanding that he is willing to pay for the property. The Ghosh Test (1982) – Leading case on dishonesty. Ghosh a doctor, (a locum consultant) at hospital, He claimed fees for operations he had not carried out. COA decided dishonestly has both objective and subjective element. 1. Was the action dishonest according to the ordinary standards of reasonable & honest people? Objective 2. Did the defendant realise that what he was doing was dishonest by those standards? Subjective Here the jury would start with the objective test, if it was proved to be dishonest it was carried to the subjective test, however if it was not dishonest he would be acquitted.

Intention to permanently deprive this is the final element, which is defined in S6. ' Velumyl' – Company manager took ? 1050 from safe. He said owed money to a friend and would replace later. COA upheld conviction as he has intention of permanently depriving company of banknotes. Permanent e. g. destroys property ' DPP v Lavender (1994) – took doors from council property at time of repair and used to replace damaged door in girlfriend council flat. Borrowing is not theft unless it is for a period and in circumstances making it equivalent to taking it or disposal Lloyd' - Not theft, film taken copied and brought back undamaged. ' Easom' – The defendant picked up a handbag in a cinema, rummaged through its contents and then put it back without

having taken anything, condition intention, not guilty. Robbery is an offence defined under S8 of the ' Theft act 1968', it provides' A person is guilty of robbery if he steals, and immediately before or at the time of doing so, and in order to do so, he uses force on any person or puts or seeks to put any person in fear of being then and there subjected to force,' will be convicted of robbery.

This is basically aggravated theft, by the use or/and threat of force. For robbery, theft must be completed for robbery to be committed, all the elements of theft need to be present, and therefore if there is no theft, there is no robbery. The elements which have to be proved for the actus Reus of robbery are:- 1. Theft 2. Force or putting or seeking to put any person in fear of force. (immediately before or at time of theft and must be in order to steal) Completed Theft - Where force is used to steal, the moment thattheftis complete, there is a robbery.

A case example is Corcoran v Anderton (1980) – Defendant hit woman in back and then tugged at her bag. She let go of the bag, however the defendants ran off without it, as the lady was screaming. It was held that theft occurred, therefore guilty of robbery, (temporary Appropriation). If she had not let go of the bag, theft would not be completed, but could be charged with attempted robbery, (s9 (2) Theft Act 1968). Force or threat of force - The prosecution must prove that there was a force or threat of force present. This is determined by the jury. It has been said the amount of force use can be small. In ' R v Dawson', one the defendant nudged the victim causing loss of balance so the other could take his wallet. Jury to decide if the force was present; charged with robbery • In R v ' Clouden', the

defendant had wrenched on the victim's handbag from her hands. COA held that whilst taking of property without resistance from the owner, should not amount to robbery, the question of force 'on any person' should be left to the jury. The force must be immediately before or at the time of the theft. - It is decided by the jury the length of theft, but it has been held that theft is a continuing act. When theft is completed. 'Hale (1979)', the two defendants forced their way in. One defendant put his hand over her mouth to stop her screaming while the other went upstairs and took a jewellery box and then tied up her up before leaving. COA, force of hand over mouth and theft ongoing. • 'R v Lockley', the defendant The defendant, with two others, was caught shoplifting cans of beer from an off-licence and used force on the shopkeeper who was trying to stop them escaping. The defendant appealed on the basis that the theft was complete when he used the force, but the Court of Appeal followed Hale and dismissed his appeal. On any person - This force or threat of force can be put on any; it does not have to be the person from whom the threat occurs. An example situation is bank robbery and force on customers. - Force in order to steal - If force is not used in order to steal it is not robbery, example being fight between defendant and victim and then theft. The defendant charged with OAPA and also theft. For the mens rea of robbery it must be proved that the defendant had the:- 1. Intention for theft 2. Intended to use force to steal. Burglary offence is under S9 of 'Theft act 1968. It defines 2 different ways to commit burglary. Common elements of both, (a) entry (b) of building or part of building, (c) as trespasser. Under S9(1)(a)' A person is guilty of burglary if he enters any building or part of a building as a trespasser, with intent to steal, rape, do

unlawful damage and inflict gbh. Under S9(1)(b) 'A person is guilty of burglary if he enters any building or part of a building as a trespasser, he steals or attempts to steal anything in the building or inflicts or attempts to inflict gbh on any person in the building. Actus Reus

Not defined in 'Theft act 1968', but there are several cases of the meaning. 'Collins' – COA, Jury satisfied that D made 'effective and substantial entry' 'R v Brown' – 'Effective entry'. D was outside shop window leaning in, looking through goods. 'Ryan (1996)' – D entered, trapped in window of a house at 2: 30am, half body inside. The theft act gives extended meaning for the word building, but a basic definition is not given, however never really a problem with this. It includes houses, flats, offices, factories... It also includes outbuilding and sheds.

Large storage containers – 'B and S v Leathley (1979) A freezer container had been in a farmyard and been used for storage. It had be held to be a building Part of building. This is where a defendant has permission to be one area of the building however not another. 'Walkington (1979) – D went to the counter of the shop and open the till. S (9) (1) (a). Defendant to be committed of burglary he must enter as a trespasser. If have permission - not a trespasser. 'Collins' – Drunken defendant wanted sex, he saw an open window and climbed a ladder to look. A naked girl was asleep in... Entered the room.

She thought he was her boyfriend ... they had sex. Charged under S9 (1) (a), Enter, trespasser with intent to rape. On appeal, conviction quashed as he was not a trespasser. A defendant can become a trespasser even if he has a permission to enter. This is when the defendant goes beyond the given

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permission. ‘ Smith and Jones (1976)’ – Smith and friend went to Smith's father's house and took two television sets without his father's knowledge/permission. His father stated that his son is not a trespasser, (general permission to enter). However COA, guilty of Burglary, S9 (1) (b), ‘ entering in access of the permission given to him’.

In line with ‘ Barker v R (1983)’ Neighbour to look after property, told defendant that there is a key hidden if needed, but however entered property to steal. Mens Rea – 2 parts Both, S9 (1) (a) and S9 (1) (b), must intend or be subjectively reckless to enter as a trespasser. With S9 (1) (a) the defendant will also need the intention of committing at least one of the four offences stated when entering. He needs intention to steal or condition intention. For S9 (1) (b) the defendant must also have the mens rea for theft or gbh when committing or attempting to commit the actus Reus of burglary.

Deception Offences (Fraud) and Making off without payment. Deception Offences ? Obtaining property by deception (s15 Theft Act 1968); ? Obtaining services by deception (s1 Theft Act 1978); ? Evading liability by deception (s2 (1) Theft Act 1978). Common Elements - (1) Deception (2) obtaining/evading (3) Dishonesty [pic]Basic definition is stated in S15 (4) Theft Act 1968. ‘ Any deception (whether deliberate or reckless) by words or conduct as to the fact or as to law, including a deception as to the present intentions of the person using the deception or any other person’.

It applies to all 3 offences. It makes clear the deception can be words, silence, conduct... Deception definition - ‘ DPP v Ray (1973)’ – Lord Reid. ‘ Deceive is to induce a man to believe that a thing is true which is false, and which the person practising deceit knows or believe it to be false’ Deception

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can be deliberate or reckless. Spoken or written words - 'Silverman- (1987)' D gave excessive quotation to 2 elderly sisters, after building a good relationship from past. COA said it is deception. Quashed because jury. - Conduct (e. g. false cards, uniform) - 'Barnard- (1837)' went in to shop in oxford worn student clothes, and stated that he was a student, so could get sold products on credit. False pretence Silence- Can be implied in certain situations, 'DPP v Ray' - (1973). Went to restaurant with friends, he didn't have enough money but friend agreed to pay, however they all decided not to pay and then ran out of restaurant. Circumstances Also when circumstances have changed - 'Rai - (2000)' - Applied for grant for downstairs bathroom for elderly mother. It approved but she died, did not tell council. Firth 1990)' - Doctor who failed to inform the NHS hospital, that some patients were private, he avoided paying charged to the hospital. Use of cheques When a person writes a cheque, it implies that they have the bank account and money in this, to pay for the cheque, representations of fact. 'Gilmartin (1983)' D paid for supplies with a post dated cheque which he knew would not be met. Use of cheque guarantee cards - It is issued by the bank on current accounts, which has a limit of ? 50- ? 100. The bank guarantees that a cheque up to a specific amount will be met by bank. 'Charles (1976)'. D bank account had overdraft of up to ? 00. Has cheque guarantee card for up to ? 30. Not meant to use more than 1 a do. Wrote 25 of ? 30, also knew he no sufficient funds. HOL, false representation S16, Theft act 1968 (Obtaining a pecuniary advantage by deception. Credit cards. Representations, user of card is the name on card and has the authority of Card Company to use it. 'Lambie (1981)' D had a Barclaycard credit card

which had a limit of ? 200; she exceeded limit and bank asked for card to be returned. HOL reinstated it. Deception as to fact, law intention. False statement about the law can be deception and also deception about the facts. King and Stockwell (1987)' The falsely represented to woman that they were reputable firm of tree surgeon, and made false claims to make her agree to pay for work. Attempting to obtain property by deception. [pic]As well as proving deception, it must be shown that a person was deceived and property/service/ evade liability as a result of deception. Common in all deception offences. Deception is not relevant to the person to whom it is made. ' Laverly'. D changed number plates and chassis of car and sold to plaintiff. Not deception as plaintiff thought he was owner and no prove of deception. Etim v Hatfield' D produced false declaration to PO clerk that he was entitled to supplementary benefits. Clerk gave him ? 10. 60. Without deception no payment would be given. Machines, not possible for deception to happen, however it may be charged as theft. Deception after obtaining is not deception. ' Collis-Smith' D filled car up with petrol and claimed that his company would pay for his petrol. Ownership of petrol passed to him. Led to new law of the theft act 1978 under, S2. [pic] It must be proved in all deception offences. The Ghosh Test (1982) – Leading case on dishonesty. Ghosh a doctor, (a locum consultant) at hospital.

He claimed fees for operations he had not carried out. COA decided dishonestly has both objective and subjective element. • Was the action dishonest according to the ordinary standards of reasonable & honest people? Objective • Did the defendant realise that what he was doing was dishonest by those standards? Subjective Here the jury would start was the

objective test, if it was proved to be dishonest it was carried to the subjective test, however if it was not dishonest he would be acquitted. - Intention to permanently deprive, S15 (3) states that S6 shall apply to this offence, the word ‘ appropriation’ is changed to ‘ obtaining. - Makes the deception deliberately or to be reckless as to whether they are deceiving others Obtaining Property by Deception is defined in S15 of the Theft act 1968 it states that any deception made to dishonestly obtain property belonging to another, with the intention of permanently depriving the other of it. It is similar to theft however property must be obtained through deception. Most offences of obtaining by deception could also be charged with theft, since the case of Gomez which overlapped these laws. Actus Reus. Obtain – S15 (2), states that obtain means ‘ obtaining ownership, possession or control of it.

Any one is sufficient; makes clear that obtaining can be for another person or to enable another person or to keep it. Property – It has the same meaning as it theft. It includes money and all other property, real or personal, including things in action (bank accounts) and other intangible assets (e. g. Patents). The only difference being that it has no restrictions on obtaining land (limited situations) Belonging to another has the same meaning as in theft, therefore it means ‘ any person having possession or control over it, or having in it any proprietary right or interest. ’

Obtaining because of deception - As well as proving deception, it must be shown that a person was deceived and property obtained as a result of deception. Deception is not relevant to the person to whom it is made. ‘ Laverly’. D changed number plates and chassis of car and sold to plaintiff.

Not deception as plaintiff thought that defendant was owner, no proof of deception. 'Etim v Hatfield' D produced false declaration to PO clerk that he was entitled to benefits. Clerk gave him ? 10. 60. Without deception no payment would be given. Deception after obtaining is not deception. Collis-Smith' D filled car up with petrol and claimed that his company would pay for his petrol. Ownership passed to him. Led to S2 theft act 1978 Mens rea - Dishonest - The Ghosh Test (1982) - Leading case on dishonesty. Ghosh a doctor, (a locum consultant) at hospital. He claimed fees for operations he had not carried out. COA decided dishonestly has both objective and subjective element. • Was the action dishonest according to the ordinary standards of reasonable & honest people? O • Did the defendant realise that what he was doing was dishonest by those standards? S

Here the jury would start with the objective test, if it was proved to be dishonest it was carried to the subjective test, however if it was not dishonest he would be acquitted. - Intention to permanently deprive, S15 (3) states that S6 shall apply to this offence, the word "appropriation" is changed to 'obtaining.' - Makes the deception deliberately or to be reckless as to whether they are deceiving others Obtaining Services by Deception is an offence under S1 of Theft act 1978, which states, ' S1 (1) A person who by any deception dishonestly obtains services from another shall be guilty of an offence.

S1 (2) It is an obtaining of services where the other is induced to confer a benefit by doing some act, or causing or permitting some act to be done, on the understanding that the benefit has been or will be paid for. The defendant makes the other person induce to confer a benefit by: AR Doing

some act Causing some act to be done Permitting some act to be done This part of the actus Reus covers a wide range of situations of the ways that the offence can be committed. The act must cause a benefit to the defendant and must be proved that the benefit ' has been or will be paid for. If the benefit is free there is no offence even if the defendant was dishonest. The victim doesn't have to suffer any loss. Service – E. g. haircut, hotel stay, entertainment activity, film, repair of goods, cleaning and decoration etc. ' Widdowson' obtaining of hire purchases in order to buy a car was a service. ' Halai' Mortgage advantage not a service. But S1 (3) inserted into S1 by the theft, (amendment) act 1996. Now contained in S1 theft 1978. ' Sofroniou' – Obtaining loans through a bank account or by way of overdraft was now, with the amending addition of S1 within the meaning of services.

COA held that opening bank account and obtaining credit card is also a service. Understanding that the benefit has been or will be paid for. For there to be an offence they have to be shown that they were a benefit which had been or would be paid for. ' Sofroniou'. D opened 2 bank accounts under false names, and then arranged for loans in both accounts causing account to become overdrawn. He then applied for store credit and exceeded limit. Convicted of S1 theft act 1978. Understanding of the payment Mens rea – Dishonesty, deception was made intentionally or recklessly - Dishonest - The Ghosh Test (1982) – Leading case on dishonesty.

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Evasion of Liability is under S2 of the Theft Act 1978, it creates a number of ways that evasion of liability can be committed 2(1) (a) dishonestly secures the remission of the whole or part of any existing liability to make a payment, whether his own liability or another's; or 2(1) (b) with intent to make permanent default in whole or in part on any existing liability to make a payment, or with intent to let another do so, dishonestly induces the creditor or any person claiming payment on behalf of the creditor to wait for payment (whether or not the due date for payment is deferred) or to forgo payment; or 2(1) (c) dishonestly obtains any exemption from or abatement of liability to make a payment; shall be guilty of an offence. The liability is limited to legally enforceable liability Securing remissions of a liability - E. g. persuades creditor to let him off repaying all or part of debt, through untrue stories and deception. Jackson' D paid for petrol using a stolen credit card, it was decided that he had an existing liability to pay for it by deception through the stolen credit card Inducing a creditor to wait or forgo payment, with (a) There must be an existing liability, but for (b) this offence it is enough if the defendant induces the creditor to wait for payment or forgo payment, the defendant must intend to make a permanent default. ' Holt and Lee' - Two defendants had a meal in a pizza restaurant, after they finished they made a plan to tell their waitress they had already made

payment to another member of staff, so they could leave without paying. This was heard by an off duty police officer and they were arrested for attempting to induce a creditor to forgo payment. Turner' (1974) – Defendant owed money for some work done, but the defendant said he had no ready cash and persuaded creditor to accept a cheque which he knew would not be met. Intent Obtaining an exemption from or an abatement of liability - Covers many everyday situations. E. g. People use invalid tickets or claim discounts that they are not entitled to. Leading case' Sibartie'(1983) Defendant was a law student, bought two season tickets for daily journey, one ticket covering the beginning of his journey and the other ticket covering the end of his journey on; in between were 14 stations including an interchange station which had no valid ticket.

At the interchange station passing a ticket inspector, the appellant flashed ticket so fast so that she could not see what was on it. He with evasion of a liability by deception, contrary to section 2(1) (c) of the Theft Act 1978. 'Firth 1990)' – Doctor who failed to inform the NHS hospital, that some patients were private, he avoided paying charged to the hospital. Mens rea [pic]As well as proving deception, it must be shown that a person was deceived evaded liability as a result of deception. Common in all deception offences. Deception is not relevant to the person to whom it is made. 'Laverly'. D changed number plates and chassis of car and sold to plaintiff. Not deception as plaintiff thought he was owner and no proof of deception. Etim v Hatfield' D produced false declaration to PO clerk that he was entitled to supplementary benefits. Clerk gave him ? 10. 60. Without deception no payment would be given. Machines, not possible for deception to happen,

however it may be charged as theft. Deception after obtaining is not deception. 'Collis-Smith' D filled car up with petrol and claimed that his company would pay for his petrol. Ownership of petrol passed to him. Led to new law of the theft act 1978 under, S2. [pic] It must be proved in all deception offences. The Ghosh Test (1982) – Leading case on dishonesty. Ghosh a doctor, (a locum consultant) at hospital. He claimed fees for operations he had not carried out.

COA decided dishonestly has both objective and subjective element. • Was the action dishonest according to the ordinary standards of reasonable & honest people? Objective • Did the defendant realise that what he was doing was dishonest by those standards? Subjective Here the jury would start with the objective test, if it was proved to be dishonest it was carried to the subjective test, however if it was not dishonest he would be acquitted. - Intention to permanently deprive, S15 (3) states that S6 shall apply to this offence, the word 'appropriation' is changed to 'obtaining.' - Makes the deception deliberately or to be reckless as to whether they are deceiving others

Making off without payment, is defined under S3 (1) of the Theft Act 1978, it provides 'a person who, knowing that payment on the spot for any goods supplied or service done is required or expected from him, dishonestly makes off without having paid as required or expected and with intent to avoid payment of the amount due shall be guilty of an offence.' The goods supplied or service must be lawful, if not there is no offence. This offence was created as the Theft act 1968 had many loop holes which meant many defendants were getting off not guilty even if defendants conduct seen by

many as 'criminal'. One gap was seen in the case 'Greenburg' (1972) - D filled car up at garage and driven off without paying, not guilty as moment petrol was appropriated it belonged to him. Payment on the spot' includes payment at the time of collecting goods on which work has been done or in respect of which service has been provided. Needs to be proved that POTS was required or expected. 'Vincent' (2001) - D stayed at two hotels and left without fully paying his bills, having persuaded both hotel owners, by deception, to postpone payment, so POTS was not required. The COA quashed his conviction under S3, because the hoteliers had agreed to postpone payment, which meant that the actus Reus had not been committed. Makes off - The defendant must make off for the spot that payment is required 'McDavitt'- D refused to pay a bill after an argument with the manager. D walked towards the door but was told the police were called. D went to the toilet and remained there.

Directed jury to acquit the defendant, as he had not made off without payment. 'Brooks & Brooks', D1 ran out of a rear door and D2 was caught having walked out of a restaurant. 'The spot' was treated as being cash register 'the spot where payment is required.' Mens Rea - Dishonesty (Same as theft) - The Ghosh Test (1982) - Leading case on dishonesty. Ghosh a doctor, (a locum consultant) at hospital. He claimed fees for operations he had not carried out. COA decided dishonestly has both objective and subjective element. • Was the action dishonest according to the ordinary standards of reasonable & honest people? Objective • Did the defendant realise that what he was doing was dishonest by those standards? Subjective

Here the jury would start with the objective test, if it was proved to be dishonest it was carried to the subjective test, however if it was not dishonest he would be acquitted. Knowledge that payment on the spot is required. It must be established that the defendant knew payment was required or expected of him. Examples are restaurants where bill paid before leaving. Intention to avoid payment 'with intent to avoid payment for the amount due' Allen (1985) HOL stated there must be an intent permanently to avoid payment. D left hotel without payment of £1,286, leaving behind his belongings. He phoned later to say he would pay as soon as he received sufficient money and arranged to collect his belongings and leave his passport as security.

Basic criminal damage is set out in S1 (1) of the criminal damage act 1971 where it provides that 'A person who without lawful excuse destroys or damages any property belonging to another intending to destroy or damage any such property or being reckless as to whether any such property would be destroyed or damaged shall be guilty of an offence.' Actus Reus - This phrase is not defined in the act, however old cases have stated that slight damage was sufficient to prove damage. 'Gayford v Chouler' - Trampling down grass, no longer binding but a persuasive precedent. 'Roe v Kingerlee' - Smearing excrement on walls of a police cell; it cost £6 to clean up. 'Matter of fact and degree,' damage even if not permanent. 'Hardman' - Painting on pavements, removed with jets. None permanent 'Blake v DPP' - Biblical quotation on a concrete pillar, cost to clean, so held as damage 'Samuel v Stubbs' - Denting a policeman's hat, causing a "temporary functional derangement" 'A v R' - D spat on policeman shirt, minimal

effort to remove, therefore no damage. ? ‘ Morphitis v Solmon’ – Scratch on scaffolding pole, doesn’t affect its usefulness or integrity. Defined in S10 (1) of criminal damage act 1971, ‘ property’ means pr of a tangible nature, whether real or personal, including money and land; tamed wild creatures (or their carcasses); but not including wild mushrooms, fruit or foliage. Not intangible

Belonging to another is defined in S10 (2), provides that property belongs to any person having: custody or control of it; any proprietary right or interest; or a charge on it. Cannot be guilty of damaging or destroying own property. ? ‘ Smith 1974’, D removed some electrical wiring . Not guilty, lacked mens rea. Mens Reus - ‘ Pembliton (1874) – D threw stone at men who were fighting, missed and broke window. No intention even if he had intent to throw stone. No charge. - ‘ Smith 1974’, Believed he was damaging own property. ‘ Honest belief, negatives the mens rea. ’ ‘ Stephenson (1979) D was tramp sheltering in a hay stack, lit a fire ... costs in damages.

Would have been guilty if he was not schizophrenic, he didn’t realise the risk. Caldwell (1981), the HOL changed the law. Reckless - created an obvious risk to property..... It was used up to 2003. Gemmell and Richards reinstated the subjected test for recklessness. The two young defendants went camping without their parents' permission. During the night they entered the back yard of a shop and set fire to some bundles of they found and threw some it under a large plastic wheelie-bin and left. The fire spread and caused approximately ? 1m worth of damage. The defendants stated they thought it would extinguish itself because of the concrete, could not be charged as they didn’t realise the risk. 5 (2) (a) – D believed that the owner had

consented or would have consented to destruction or damage. S5(2)(b) – D did it to protect some other property which he believed was in immediate need of protection and the means of protection were reasonable having regard to all the circumstances. (a) ‘Denton’, Thought employer had encouraged him to set fire to mill to make insurance claim. (B) ‘Hunt’ helped wife in duty as deputy warden in block of flats. Set fire to bedding to show alarms didn’t work. Conviction upheld as not for protection. (b) Conviction upheld – Baker and Williams, only for immediate danger. (Endangering Life) Aggravated criminal Damage is under S1 (2) of Criminal damage act (1971). A person who without lawful excuse destroys or damages any property, whether belonging to himself or another – (a) intending to destroy or damage any property or being reckless as to whether any property would be destroyed or damaged; and (b) intending by the destruction or damage to endanger the life of another or being reckless as to whether the life of another would be thereby endangered; shall be guilty of an offence. ‘. Much more serious than basic, carries life sentence. The danger must come from the destruction/damage. ‘Steer (1987) - D fired 3 shots at the window of ex business partner, causing damage. Not guilty danger from shots. ‘Webster – D pushed large stone from bridge on to train, caused damage & showered passengers with debris, based on Recklessness. ‘Warwick’ - D rammed s police car and threw brick at it, causing damage and showered the officer with broken glass.

Aggravated criminal damage the life doesn’t have to be endangered. ‘Sangha’ D set fire to mattress & 2 chairs in neighbours flat, however flat was empty and no one was at risk. Realised risk he would be guilty even if no

actual risk. 'Merrick' – Employed to removed cables, life live wire out for 6 minutes, no one was hurt, but charged, if it was owner he would also be guilty. Mens Rea Intention or Recklessness as to destroying or damaging any property; and Intention or reckless as to whether the life is endangered by the destruction or damage. (Same meaning as basic offence). The prosecution must prove that the defendant was both aware of risk and danger.

R(Stephen Malcolm) d was 15 years old, with friends thrown milk bottles filled with petrol at the outside of neighbour flat. This caused sheets of flame across window, thus endangering the lives of occupants, guilty. Arson - Under s1 (3) of the criminal damage act 1971, ' an offence committed under this section by destroying or damaging property by fire shall be charged as arson. ' the maximum penalty if life imprisonment. The basic offence of criminal damage must contain destruction through fire, thus the rest is the same. Aggravated Arson - Prosecution must prove that the defendant intended or was reckless as to whether life was endangered by the damage or destruction by fire. ' Miller' HOL held that arson can be committed through omission.