

"whoever a sells the  
horse and  
appropriates



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“ Whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustrations: (a) A takes property belonging to Z out of Z's possession in good faith, believing, at the time when he takes it, that the property belongs to himself. A is not guilty of theft; but if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section. (b) A, being on friendly terms with Z, goes into Z's library in Z's absence and takes away a book without Z's express consent.

Here, if A was under the impression that he had Z's implied consent to take the book for the purpose of reading it, A has not committed theft. But, if A afterwards sells the book for his own benefit, he is guilty of an offence under this Section. (c) A and B, being joint owners of a horse, A takes the horse out of B's possession, intending to use it. Here, as A has a right to use the horse, he does not dishonestly misappropriate it. But, if A sells the horse and appropriates the whole proceeds to his own use, he is guilty of an offence under this Section.

Explanation 1:- A dishonest misappropriation for a time only is a misappropriation within the meaning of this section. Illustration: A finds a Government promissory note belonging to Z, bearing a blank endorsement. A, knowing that the note belongs to Z, pledges it with a banker as a security for a loan, intending at a future time to restore it to Z. A has committed an offence under this section.

Explanation 2:- A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for, or of restoring it to, the owner, does not take or misappropriate it dishonestly, and is not guilty of an offence; but he is guilty of the offence above defined, if he appropriates it to his own use, when he knows or has the means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner and has kept the property for a reasonable time to enable the owner to claim it. What are reasonable means or what is a reasonable time in such a case, is a question of fact. It is not necessary that the finder should know who the owner of the property is, or that any particular person is the owner of it; it is sufficient if, at the time of appropriating it, he does not believe it to be his own property, or in good faith believes that the real owner cannot be found. Illustrations: (a) A finds a rupee on the high-road, not knowing to whom the rupee belongs. A picks up the rupee. Here A has not committed the offence defined in this section.

(b) A finds a letter on the road, containing a bank note. From the direction and contents of the letter he learns to whom the note belongs. He appropriates the note. He is guilty of an offence under this Section. (c) A finds a cheque payable to bearer.

He can form no conjecture as to the person who has lost the cheque. But the name of the person, who has drawn the cheque, appears. A knows that this person can direct him to the person in whose favour the cheque was drawn. A appropriates the cheque without attempting to discover the owner. He is guilty of an offence under this Section. (d) A sees Z drop his purse with

money in it. A picks up the purse with the intention of restoring it to Z, but afterwards appropriates it to his own use.

A has committed an offence under this Section. (e) A finds a purse with money, not knowing to whom it belongs; he afterwards discovers that it belongs to Z, and appropriates it to his own use. A is guilty of an offence under this Section. (f) A finds a valuable ring, not knowing to whom it belongs. A sells it immediately without attempting to discover the owner.

A is guilty of an offence under this Section." The essential requirements of criminal misappropriation are: (i) That the property in question was movable property; (ii) That the accused misappropriated or converted it to his own use; (iii) That he did it dishonestly Criminal misappropriation is a new offence carved out from theft. Theft is removal of property from the possession of the owner. But in criminal misappropriation, the taking is upon finding or other coming across of the property, and not from the possession of a person.

Criminal misappropriation may almost amount to theft, though it is not quite theft. This is because the initial removal is not from any person's possession and hence, does not satisfy an essential ingredient of theft. When possession has been innocently acquired but from subsequent intention or knowledge, the retention becomes wrongful and amounts to its criminal misappropriation.

The words 'to appropriate' means setting apart or assigning to a particular person or use and 'to misappropriate' means improperly setting apart for one's use to the exclusion of the owner. The word 'misappropriates' means

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nothing more than improperly setting apart for one's own use to the exclusion of the owner. If another uses it, it must be at the instance of the misappropriator. "Converts" means appropriation and dealing with property of another without right as if it is his own property. The word 'converts' is used ejusdem generis with 'misappropriates', and means nothing more than an appropriation of and dealing with the property of another without right, as if it were one's own property. It does not imply any alteration in its appearance. The term 'dishonestly' has been defined in Section 24 as 'whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person is said to do that thing 'dishonestly'. The misappropriation must be of moveable property.

According to Section 22 of IPC the word 'movable property' is intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth." A movable is something substantive which has relation with locality and may move or be moved including money, bonds for money, insurance policies and debt secured by a mortgage but not a debt merely as such. Things movable, by their nature, are such as may be carried from one place to another, whether they move by themselves as cattle or cannot be removed without an extraneous power as inanimate things.

'Movable property' shall mean property of every description, except immovable property. 'Movable Property' includes growing crops, grass and standing timber, fruit upon and juice in trees. Electricity is moveable property. As per Sec.

386(9) of Criminal Procedure Code, the word 'movable property' refers to tangible movable property which can be seized and which must be belonging to the offender. For an offence under Section 403, it is not necessary that the movable property should be taken with dishonest intention, the possession of the property may come innocently and then by subsequent change of intention, or knowledge of some new facts with which the party was not previously acquainted, the retaining of that property becomes wrongful and fraudulent. The essence of offence under Section 403 is that some property belonging to another which comes into the possession of the accused innocently is misappropriated or converted by the accused to his own use. There must be actual conversion of the thing misappropriated to the accused's own use. Mere retention of an article found does not amount to criminal misappropriation. For instance, if a person finds and picks up a watch on the road, it is an innocent act.

However, the honest act of picking up the watch will change to criminal misappropriation, if, instead of returning the watch to the owner, the person wears the watch himself and puts it to his own use. So, in criminal misappropriation, the person comes into possession in some neutral or innocent way. If the watch, which is found, is returned to the owner, then no offence is committed. However, if the person retains it and puts it to his own use, then it amounts to criminal misappropriation. The offence consists in the dishonest misappropriation or conversion, either permanently or for a time being, of property which is already in the possession of the other. The term of misappropriation implies misappropriation of property in possession of someone else.

No criminal misappropriation of property can take place if the property is in nobody's possession. The essence of the offence of misappropriation is putting to own use or converting to own use of another's property. There cannot be misappropriation of one's own property. The guilt of the accused is determined by the state of his mind at the time when he appropriates the property to his own use. By selling or pawning the watch, the finder of the watch is dealing with the watch, as if it was the property of the finder. There must be actual conversion of the thing misappropriated to his use. Mere retention of the property does not make him guilty of misappropriation.

Explanation 1 to Section 403 refers only to those cases where there is a dishonest misappropriation of property and makes it clear that Section 403 includes temporary as well as permanent misappropriation of that description. The word 'for a time only', means temporary misappropriation. Thus, if a person appropriates to himself the property of another, puts it to own use or unauthorised use and thereafter restores it to the owner, it will still amount to misappropriation under Section 403. Explanation II to Section 403 makes it clear that thing abandoned cannot form a proper subject of an offence under Section 403.

As is stated by Mayne, there can, of course, be no criminal misappropriation of such things. But an idol of a temple is capable of holding property apart from the pujari or shebait and the latter may be guilty of misappropriation with respect to the property in the possession of the temple. A servant cannot be convicted of theft for taking goods which belonged to the master except when the goods were in the possession of the servant unlawfully through him. For instance, where a clerk is sent out to collect money due on <https://assignbuster.com/whoever-a-sells-the-horse-and-appropriates/>

a bill, or a servant to buy and bring home goods, if the money or goods are misappropriated; should the offender be charged under Section 403 or under Section 408 (Criminal breach of trust by clerk or servant). For example, an income tax clerk, who received money from a party, misappropriated it without crediting it and paying into the treasury can be convicted under Section 403. In *Narayan Singh v. State of MP* [1986 CrLJ 1481], the accused was the chairman of the Samithi. He corrected certain dues from its members payable to the Government.

It was the duty of the chairman to credit all such amount in Government Treasury. He did not remit during the tenure and even after the completion of his period. It was held that the accused was guilty of the offence of criminal misappropriation. In *Khandu Sonu Dhobi v. The State of Maharashtra* [(1973) 1 SCJP 118], the accused was charged of preparation of false documents because, even though no work had been done and no amount had been disbursed, they prepared documents showing the doing of the work and the payment of the amount. It would be no answer to that charge that after the matter has been reported to the higher authorities the accused got the rectification work done. It would also be no answer to a charge of criminal misappropriation that the money was subsequently, after the matter had been reported to the higher authorities disbursed for the purpose for which it had been entrusted. According to Explanation I to Section 403, IPC, a dishonest misappropriation for the time only is 'misappropriation within the meaning of that section.

In *Dinabhandhu Banerjee v. Nandini Mukherjee* [1994 CrLJ 422 (Cal)], a wife, who was living with her father due to the misbehaviour of her husband,

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claimed back streedhan from her in-laws which they refused to return, it was held that the offence of dishonest misappropriation and criminal breach of trust are not continuing offences. The retention of streedhan would be in the same category. Linder Explanation 2 to Section 403, it is not necessary that the finder should know who is the owner of property. In R. V. Sita [(1893) ILR 18 Bom.

212], where the accused found a gold mohr (sovereign) on an open plain, and sold it the next day to a shroff for its full value and appropriated the sale proceeds, it was held that, in the absence of any information as to the circumstances under which the coin was lost, and as it was not improbable that the property in the coin had been abandoned by the original owner, the accused could not be convicted of criminal misappropriation. The punishment for dishonest misappropriation of property is imprisonment of either description for a term which may extend to two years or with fine or with both. The offence under Section 403 is non-cognizable, but warrant should, ordinarily, issue in the first instance. It is bailable but compoundable only with the permission of the court and is triable by any Magistrate, and may be tried summarily if the value of the property misappropriated does not exceed Rs.

200 in value.