

Explanation what are
reasonable means or
what



**ASSIGN
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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 for restoring it to, the owner does not take or misappropriate it dishonestly, he 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. There was a difference of opinion about the subject matter of Section 403 of I. P. C.

Some High Courts were of the opinion that it should be movable property; on the other side some High Courts were of the opinion that the subject matter may be movable or immovable. The Supreme Court have now settled the issue in the case of *Mellala Saidhrnaya v. State of Andhra Pradesh* where the court laid down that the subject matter of Section 403 may be movable or immovable. It is not necessary that the finder should know who is the owner of the property, 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.

Illustration: Z dies in possession of furniture and money. His servant A dishonestly misappropriates it before it comes into the possession of anybody. A has committed the offence defined in this section. Criminal misappropriation means dishonest misappropriation or conversion, either permanent or temporary, of property which is already in the possession of the offender, such possession being not acquired through any wrong.

The offence of criminal misappropriation is committed where possession has innocently come by, but where, by a subsequent change of intention or from knowledge of some new facts with which the party was not previously acquainted the retention of such property or its disposal or conversion becomes wrongful. Thus, if money is paid to a person by mistake, and such person, either at the time of receipt or at any time subsequently, discovers the mistake but determines to appropriate the money, he would be guilty of criminal misappropriation. The original innocent taking may become criminal misappropriation by subsequent acts. Ingredients: The offence consists of the following two ingredients: (i) Dishonest misappropriation or conversion of property to one's own use, and (ii) Such property must be movable. Criminal misappropriation consists in dishonest retention or conversion of property; it does not lie in dishonest reception which is a different offence. The retention of money by a servant authorised to collect it may be criminal misappropriation even though he retains it on account of wages due to him. In order to prove an offence under Section 403, the prosecution has to prove that (i) the property was the property of the complainants; (ii) the accused misappropriated that sum or converted it to his own use; (iii) and he did so dishonestly. Dishonest misappropriation for a time being is also

misappropriation, it is no defence to a charge of misappropriation that the official who misappropriated the amount entrusted to him for a particular purpose by preparing false documents, did in fact, disburse that amount for the intended purpose after the matter was reported to the high authorities.

Mere retention of money would not warrant a conviction under Section 403 unless there is evidence to show that the accused used the money.

Explanation 1 of Section 403 clearly states that a misappropriation for time being only amounts to criminal misappropriation. The essential thing to prove in such cases is whether the accused was actuated by dishonest intention or not. Explanation 2 makes it clear that finder of the abandoned property will not be liable for the offence of criminal misappropriation. But when the property is not abandoned and also owner is not known, the question whether finder can appropriate it has been answered in Illustration (f) Explanation 2, under which he is bound to attempt to discover the owner.

The finder must wait upto a reasonable time to allow the owner to claim the property, before he appropriates it.