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The way in which the concept of appropriation under the Theft Act 1968 has been interpreted by subsequent case-law is unsatisfactory from both a practical and theoretical point of view

Theft is concerned with interferences with the rights and interests other people have in property.[1] Theft is committed when an individual dishonestly appropriates property belonging to another individual with the intention of permanently depriving the other of it.[2] The actus reus of theft is the appropriation of property belonging to another individual; it is no less for an appropriation for being authorised or to happen with the consent of the owner of the property.[3] Theft is only committed when the person appropriating the property has the intention at the time of appropriating the property to deprive the owner of the property permanently of the property.[4] If it is proven that the appropriation is not dishonest by the standards of ordinary people, then theft is not committed, further more theft is not committed if, although appropriation was dishonest according to the standards of ordinary people, the prosecution needs to prove that the defendant realised that it was, if the defendant did not realise that the appropriation was dishonest at the time he was appropriating the property then he can not be guilty of theft. [5]

The Theft Act was passed in 1968 and for many years the Criminal Law Revision Committee had considered the area of property offences, which was initially covered by the Larceny Act 1916 as were considered about reviewing this area of the law.[6] The Criminal Law Revision Committee Appended to its 8th Report, Titled Theft and Related Offences, 1966 and there was along with this report a draft Bill which was passed by Parliament after some amendments.[7] This Bill became known as the Theft Act 1968. This Act was a new code which jettisoned the existing the previous law creating a new range of offences which were constructed as far as possible in plain and simple languages to avoid unnecessary technicalities and complexity that had been a major feature of the old law.[8]

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[1] Allen, 92007) p.421
[2] Wilson, (2008) p.387
[3] Wilson, (2008) p.387
[4] Wilson, (2008) p.387
[5] Wilson, (2008) p.387
[6] Allen, 92007) p.421
[7] Allen, 92007) p.421
[8] Allen, 92007) p.421

The Theft Act 1978 was passed to replace section 16 (2) (a) of the Theft Act 1968, which was found very technical and proved very inefficient and unsatisfactory, further more the Theft Act 1978 also contains some other provisions to fill some lacuna that was left by the Theft Act of 1968 and this 1978 Act did not make things any easier or clearly.[9] The Theft Act 1968 was to be a short simple measure free from technicalities and the first step towards the codification of the criminal law, however the Act did not turn out the way its progenitors has hoped.[10] In R v Gomez (1993) AC 442, the court adopted a much wider meaning of appropriation than did the pre 1968 law. It is generally argued that Parliament left many parts of the Theft Act to be worked out by the courts.[11]

The Theft Act 1968 has raised a lot of problems. The Act uses words such as dishonestly which the courts have often left to the juries to define and more often than not this has lead to inconsistencies in case law.[12] Another problem that also involves inconsistency is that the courts in applying the law as contained in the Acts have most times ignored the civil law.[13]

Theft lies at the heart of the Theft Act 1968 and the elements of theft are to be found in sections 1-6 of the Thefts Act 1968. In each case, the questions that ought to be asked are as follows: was there an appropriation of property; was the thing appropriated property and did the property at the time it was appropriated belong to another person?[14] The actus reus of theft will be established if all these questions are answered positively, after that the final two questions, which relate to the mens rea of theft can then be asked.[15] The questions are as follows: was the appropriation of the other person's property dishonest. However, I need to point out at this juncture that section 2 of the Theft Act 1968, provides three instances of states of mind not amounting to dishonesty, but the section does not define what dishonesty is. However, it should be pointed out that the 1968 Act does provide some guidance in section 2 on how to assess standards of hones conducts, but it is limited to particular situations.[16] This oversight has caused a lot of problems in this area of law especially in the way the concept of appropriation under the Theft Act 1968 has been interpreted by the courts. These interpretations appear to be unsatisfactory from both a practical and theoretical point of view and bring about a lot of inconsistencies in this area of the law; finally was the appropriation at

[9] Allen, (2007) p.421
[10] Jefferson, (2007) p.581
[11] Jefferson, (2007) p.581
[12] Allen, (2007) p.421
[13] Allen, (2007) p.421
[14] Wilson, (2008) p.389
[15] Wilson, (2008) p.389
[16] Halpin, (2004) 150

the time it occurred, accompanied by an intention to permanently deprive the owner of the property.[17]

Under the previous law some form of taking and carrying away was necessary to establish the actus reus of theft. Under the Theft Act1968, although theft will normally involve a taking and carrying away, section 3 of the Act now indicates that this is no longer necessary. According to section 3(1) of the Act any assumption by a person of the rights of an owner amounts to an appropriation even if the person has come by the property innocently or not without stealing the property, however the person will be held liable for appropriation if he later assumes that he has a right to keep or deal with the property as if he is the owner. Therefore the definition of appropriation in the 1968 Act is very wide, the main question to be asked then is not whether the accused has appropriated the property but whether he has assumed the rights of the owner over the property. [18]

The Theft Act is fraught with difficulties and even in simple situations it has not be very easy to interpret the Act. See Moynes v Coopper (1956) 1 QB 439 and R v Royle (1971) 1 WLR 1764. In R v Hallam (1995) the Court of Appeal stated inter alia that the 1968 Act was in urgent need of simplification and modernisation because juries should not bother them selves with concepts couched in the ‘’arcane Franglais of chose in action’’.[19] See also Treacy v DPP (1971) AC 537.

Under section 3(1) of the Theft Act 1968: any assumption of the rights of an owner amounts to an appropriation. However, the development of case law in this area of law is still very unsatisfactory both from a practical and theoretical point of view. There are obvious problems caused by the broad scope of section 3(1) of the Theft Act in that any of the rights of the owner can be exercised by another person and it will amount to an appropriation. However, some legal commentators, have argued that that this version of subsequent interpretation runs contrary to the plain words of the Act which speaks of rights in the plural; however, In as much as I will not go as far as some commentators and suggest that this must involve the assumption of those rights in their entirety, it however calls into question the level to which the law has been allowed to develop. Like, I earlier stated the concept of appropriation under 3(1) of the Theft Act 1968 is very wide, as shown by cases such as Re Morris that involved the switching of price labels in a supermarket. Thus the actus reus of

[17] Wilson, (2008) p.389
[18] Wilson, (2008) p.390
[19] Citied in Jefferson, (2007) p.581

theft is easily satisfied and only the absence of mens rea protects ordinary shoppers in the super market from carrying theft on a daily basis. However, I very much doubt that parliament ever intended the actus reus of the offence of theft to be so easily satisfied. The comments of Lord Roskill in Morris clearly rejected the notion that this should be the case and stated that the concept of appropriation involved adverse interference with the rights of the owner of the property. Unfortunately this was not the view of the court in Lawrence v MPC and in the subsequent case of DPP v Gomez [1993] AC 442. In Gomez it was held that appropriation is not necessarily adverse to the owner's rights of ownership, in effect reducing appropriation to a value neutral word and leaving the way open for almost any act of acquiring property to be interpreted as an appropriation for the purposes of the section 1 of the Theft Act. In both Gomez and Lawrence the title that the subject acquired to the gift was voidable due to deception. This position was effectively destroyed however by the decision in R v Hinks [2000] 3 WLR 1590. In this land mark case, the House of Lord stated inter alia that the main question to be asked is, "whether the acquisition of an indefeasible title to property is capable of amounting to an appropriation of property belonging to another for the purposes of section 1(1) of the Theft Act 1968." It has been argued that that the way in which the question was instrumental to the rather sad decision that was reached in Re Hinks. Surely one of the major issues that were considered in this case was whether or not there had been the passing of indefeasible title, or whether this had in fact been nullified by misrepresentation or deception?

Finally the decision in Hinks appears to be in conflict with the civil law. Lord Steyn's remarks that that one need not necessarily presume the criminal law rather than the civil law to be defective, only goes to expose and highlight the discrepancy. The main reason the law on theft is to protect property rights of individuals not to change the civil law which determines what those rights are. Only Lord Hobhouse looked in to the wider context, and especially the phrase 'belonging to another' in section 1 (1) of the Theft Act 1968 which only makes sense in the context of existing civil law concepts of property ownership
Finally, the result of the above decision is that the concept of appropriation in the law of theft is indeed a value neutral term. The actus reus elements of the offence is very easy to satisfy, it would only be fair and reasonable to observe that great importance is now placed on the mens rea elements of section 1(1) Theft Act 1968. Intention permanently to deprive some one of his property is moreover unlikely to exist in isolation from dishonesty except probably in the case of a gift, as the case of Hinks shows. Appropriation no longer offers any limitation

of scope where gifts are concerned, therefore in the final analysis dishonesty must be considered to be the crucial element in deciding if the defendant is guilty or not.

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