

CLAT 2019

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Law of Crimes

Session 5 :

Theft, Robbery, Dacoity, Criminal
Misappropriation of Property

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5.1 Theft

- Where a person with dishonest intention takes away any movable property out of the possession of any person without that person's consent or moves that property in order to take it; this person is said to have committed theft.
- A thing so long as it is attached to the earth, not being movable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Illustrations:

- (a) A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession without Z's consent. Here, as soon as A has severed the tree in order to such taking, he has committed theft. Hence, the actual taking away of the tree is not essential to constitute theft rather the theft is legally presumed to have been completed as soon as it was severed.
- (b) A puts a bait for dogs in his pocket, and thus induces Z's dog to follow the bait. Here, if A's intention is to dishonestly take the dog out of Z's possession without Z's consent, then A has committed theft as soon as Z's dog has begun to follow A.
- (c) A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.
- (d) A, being Z's servant, and entrusted by Z with the care of Z's plate, dishonestly runs away with the plate, without Z's consent. A has committed theft.
- (e) Z, going on a journey, entrusts his plate to A, the keeper of the warehouse, till Z shall return. A carries the plate to a goldsmith and sells it. Here the plate was not in Z's possession. It could not therefore be taken out of Z's possession, and A has not committed theft, though he may have committed criminal breach of trust.

- (f) A finds a ring belonging to Z on a table in the house which Z occupies. Here the ring is in Z's possession, and if A dishonestly removes it, A commits theft.
- (g) A finds a ring lying on the highroad, not in the possession of any person. By taking it, A, commits no theft, though he may have committed criminal misappropriation of property.
- (h) A sees a ring belonging to Z lying on a table in Z's house. Not venturing to misappropriate the ring immediately for fear of search and detection, A hides the ring in a place where it is highly improbable that it will ever be found by Z. A intends to take the ring from the hiding place and sell it when the loss is forgotten. Here A, at the time of first moving the ring, commits theft.
- (i) A delivers his watch, to a jeweler, Z, to be regulated. Z carries it to his shop. A, not owing the jeweler any debt for which the jeweler might lawfully detain the watch as a security, enters the shop openly, takes his watch by force out of Z's hand, and carries it away. Here A, though he may have committed criminal trespass and assault, has not committed theft, in as much as what he did was not done dishonestly.
- (j) If A owes money to Z for repairing the watch, and if Z retains the watch lawfully as a security for the debt, and A takes the watch out of Z's possession, with the intention of depriving Z of the property as a security for his debt, he commits theft, in as much as he takes it dishonestly.

- (k) Again, if A, having pawned his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he borrowed on the watch, he commits theft, though the watch is his own property in as much as he takes it dishonestly.
- (l) A takes an article belonging to Z out of Z's possession, without Z's consent, with the intention of keeping it until he obtains money from Z as a reward for its restoration. Here A takes dishonestly; A has therefore committed theft.
- (m) 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, for the purpose merely of reading it, and with the intention of returning it. Here, it is probable that A may have conceived that he had Z's implied consent to use Z's book. If this was A's impression, A has not committed theft.
- (n) A asks charity from Z's wife. She gives A money, food and clothes, which A knows to belong to Z her husband. Here it is probable that A may conceive that Z's wife is authorized to give away alms. If this was A's impression, A has not committed theft.
- (o) A is the paramour of Z's wife. She gives a valuable property, which A knows to belong to her husband Z, and knows to be such property as she has no authority from Z to give. If A takes the property dishonestly, he commits theft.
- (p) A, in good faith, believing property belonging to Z to be A's own property, takes that property out of Z's possession. Here, as A does not take dishonestly, he does not commit theft.

Ex-I**Rules:**

- A. Whoever intending to take any movable property out of the possession of any person without that person's consent, moves that property out of his or her possession, is said to commit theft.
- B. A person who, without lawful excuse, damages any property belonging to another intending to damage any such property shall be guilty of causing criminal damage.
- C. Damage means any impairment of the value of a property.

Facts: Veena, an old lady of 78 years, used to live with her granddaughter Indira. Veena was ill and therefore bed-ridden for several months. In those months, she could not tolerate any noise and it became quite difficult to clean her room. After she died, Indira hired a cleaner, Lucky, to clean the room and throw away any rubbish that may be there.

There was a pile of old newspapers which Veena had stacked in a corner of her room. Lucky asked Indira if he should clear away the pile of old newspapers, to which she said yes. Lucky took the pile to a municipality rubbish dump. While Lucky was sorting and throwing away the newspapers, he was very surprised to find a beautiful painting in between two sheets of paper. He thought that Indira probably wouldn't want this old painting back, especially because it was torn in several places and the colour was fading. He took the painting home, mounted it on a wooden frame and hung it on the wall of his bedroom. Unknown to him, the painting was an old masterpiece, and worth twenty thousand rupees. Before mounting the painting, Lucky pasted it on a plain sheet of paper so that it does not tear any more. By doing so, he made its professional restoration very difficult and thereby reduced its value by half.

Lucky's neighbour Kamala discovered that the painting belonged to Indira. With the motive of returning the painting to Indira, Kamala climbed through an open window into Lucky's room when he was away one afternoon and removed the painting from his house.

Has Lucky committed theft?

- (a) Yes, Lucky has committed theft of the newspapers and the painting.
- (b) No, Lucky has not committed theft because he had Veena's consent.
- (c) Yes, Lucky has committed theft of the painting, but not of the newspapers.
- (d) No, Lucky has not committed theft because he has not moved the painting out of Veena's possession.

Ex-I **Answer: (B)**

➤ ***Explanation:***

In this case, the key part is the fact that the 'person should take the property without that person's consent and move that property out of his possession. In this case, Indira had asked Lucky to take away the entire pile and that included the painting as well. So, it's clear, that the property in question has not been moved without her 'consent'. This is enough for us to conclude that Lucky is not guilty of theft as all the conditions required for theft have not been met.

Is Lucky guilty of criminal damage?

- (a) No, Lucky is not guilty of criminal damage as he did not intentionally impair the value of the painting.
- (b) Yes, Lucky is guilty of criminal damage as he intentionally stuck the paper on to the painting.
- (c) No, Lucky is not guilty of criminal damage as he does not have the painting in his possession anymore.
- (d) No, Lucky is not guilty of criminal damage as he has not destroyed the painting.

Ex-I **Answer: (A)****➤ Explanation:**

The main ingredients of Criminal Damage are:

- A) A person damages any property belonging to another without lawful excuse.
- B) The person must have the intention to damage such property

So the quickest way to solve this problem is to answer one basic question: Did Lucky have the intention to damage the painting. In this case, Lucky had only pasted the white paper on the painting in order to prevent it from suffering any further damage. Therefore, in the absence of any intention of damaging the property as such, Lucky has not committed any criminal damage. Options (c) and (d) do not connect with the Principle provided and hence do not need to be considered.

Facts: If Lucky had discovered the painting before leaving Indira's house rather than at the rubbish dump, would he have been guilty of theft in this case?

- (a) Yes, he would be guilty of theft of the newspapers and the paintings.
- (b) No, he would not be guilty of theft.
- (c) Yes, he would be guilty of theft of the painting.
- (d) None of the above.

Ex-I **Answer: (B)****➤ Explanation:**

This is a tricky one. The basic question still remains the same, whether the property was moved without Indira's consent. In the facts, it is mentioned that 'Indira hired Lucky to clean the room and throw away any rubbish that may be there'. Now, that rubbish included the painting as well. Should Lucky have asked Indira about the painting had he discovered it before leaving Indira's house? The answer may be in the affirmative. However, this is not connected to Principle at all. Indira had given Lucky her consent to remove the pile of old newspapers and hence the painting was not moved without her consent. Hence, Lucky would not be guilty of Theft.

Ex-II**Principle:**

Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property with an intention to take it, is said to commit theft.

Facts:

Y cuts down a tree on Z's ground, with the intention of dishonestly taking it out of Z's possession without Z's consent. Y could not take away the tree.

- (a) Y can be prosecuted for theft.
- (b) Y cannot be prosecuted for theft.
- (c) Y can be prosecuted for attempt to theft.
- (d) Y has neither committed theft nor attempted to commit theft.

Ex-II **Answer: (A)****➤ Explanation:**

Earlier illustration, It clearly states that the moment the tree is severed it becomes theft. So, as per this, it should be considered theft as the facts clearly mention that Y had cut down the tree or, in other words, severed it.

Now, let's have a look as to how to answer this problem as per the legal reasoning, the following conditions must be satisfied in order to commit the offence of theft as per the principle given to us.

- i) Intention to take 'dishonestly' any 'movable' property out of the 'possession' of any person;
- ii) Without that person's 'consent'
- iii) 'Moves' that property with an intention to take it

In this case, condition (i) and (ii) seemed to be well satisfied. But there is some confusion with respect to 'moving' that property. It will be wrong to interpret as to say the 'severance' of the tree would not amount to moving the property. The property has changed from being an immovable property to a movable property and hence it can be considered to have been moved. So the most appropriate answer would be option (a). Y can be prosecuted for theft.

Ex-III**Principle:**

Whoever takes away anything from the land of any person without that person's consent is said to commit theft. A thing so long as it is attached to the earth is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Facts: Y cuts down a tree standing on the land of X with the intention of dishonestly taking the tree out of X's possession without the consent of X. But Y is yet to take away the tree out of X's possession.

- (a) Y has committed theft as soon as he came to the land of X
- (b) Y has committed theft as soon as the tree has been completely cut down by him
- (c) Y has committed theft as soon as he has started cutting down the tree
- (d) Y has not committed theft because he is yet to take away the tree out of X possession

Ex-III Answer: (D)**➤ Explanation:**

In this one, the conditions required are different as to what we encountered in the previous question.

In order to prove theft, the following conditions must be fulfilled.

- i) The person 'takes' away anything from the land of any person
- ii) Without that person's 'consent'

The facts clearly mention that although Y had cut down the tree, but he had not taken it away from the land of the person. Hence (d) is the most appropriate answer.

We can clearly see the importance of sticking to the principle. On first reading, both questions look very similar. But the reasoning required to answer is very different.

Ex-IV

Legal Principles:

- (1) Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.
- (2) 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.

Factual Situation: A takes umbrella belonging to Z out of Z's possession in good faith, believing at the time when he took it, that the property belongs to himself. His wife points out after some days that the umbrella does not belong to them but to Z. After coming to know that, A dishonestly keeps the umbrella.

Decide Whether:

- (a) A is guilty of criminal misappropriation.
- (b) A is guilty of criminal breach of trust.
- (c) A is guilty of theft.
- (d) Both A and his wife are guilty of criminal misappropriation.

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Ex-IV Answer: (A)**➤ Explanation:**

In this case, Principle 1 refers to the offence of theft whereas Principle 2 refers to criminal misappropriation. For Theft, the essential condition is that property must have been moved with a dishonest intention of taking it, whereas for Criminal Misappropriation the property must have been dishonestly misappropriated or converted for self-use. In the facts given, it is clear that A had no dishonest intention when he moved the umbrella. But once he got to know that the umbrella did not belong to him but to Z and he still dishonestly kept it, he converted it for his own use. Hence, option (a) is the most appropriate answer.

5.2 Extortion

- Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person, so put, in fear, to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits "extortion".

Illustrations:

- (a) A threatens to publish a defamatory libel concerning Z unless Z gives him money. He thus induces Z to give him money. A has committed extortion.
- (b) A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A promissory note binding Z to pay certain monies to A. Z signs and delivers the note. A has committed extortion.
- (c) A threatens to send club-men to plough up Z's field unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.
- (d) A, by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security, A has committed extortion

5.3 Robbery

- In all robbery there is either theft or extortion.
- **When theft is robbery:** Theft is "robbery" if, in order to commit the theft, the offender, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

Illustrations:

- (a) A holds Z down and fraudulently takes Z's money and jewels from Z's clothes without Z's consent. Here A has committed theft, and in order to the committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.
- (b) A meets Z on the high roads, shows a pistol, and demands Z's purse. Z in consequence, surrenders his purse. Here A has extorted the purse from Z by putting him in fear of instant hurt, and being at the time of committing the extortion in his presence. A has therefore committed robbery.
- (c) A meets Z and Z's child on the high road. A takes the child and threatens to fling it down a precipice, unless Z delivers his purse. Z, in consequence delivers his purse. Here A has extorted the purse from Z, by causing Z to be in fear of instant hurt to the child who is present there. A has therefore committed robbery on Z.
- (d) A obtains property from Z by saying, "Your child is in the hands of my gang, and will be put to death unless you send us ten thousand rupees". This is extortion, and punishable as such; but it is not robbery, unless Z is put in fear of the instant death of his child.

5.4 **Dacoity**

- When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly commit or attempt to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "dacoity".

Ex-V

Principle: When five or more persons jointly commit robbery, they are said to have committed the offence of dacoity.

Facts: Six persons agreed to commit robbery in the house of Mr. Santosh Jain, a jeweler merchant. It was agreed that robbery would be committed on the night of 1st May 2006 at about midnight. On the agreed day at the agreed time, only four of them were present. They committed robbery without waiting for the arrival of the other two.

- (a) The offence of dacoity has been committed. There are six persons involved though only four have committed robbery.
- (b) The offence of dacoity was not committed as the robbery was committed only by four persons.
- (c) There is conspiracy to commit the offence of Dacoity
- (d) The other two persons are deemed to have participated in the robbery. Hence the offence of dacoity was committed.

Ex-V **Answer: (B)****➤ Explanation:**

The Principle given implies that the offence of robbery when committed by five or more persons jointly becomes dacoity. In the given facts, it is mentioned that on the agreed day and time, only four of them were present. Hence, by applying the Principle, option (b) is the most appropriate answer. Option (c) is not applicable as the Principle does not talk about the offence of conspiracy at all.

5.5 Dishonest Misappropriation of Property

- 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 any 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 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.
- (c) 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 criminal misappropriation.
- (d) A finds a purse with money, not knowing to whom it belongs; he afterwards discovers that it belongs to Z but appropriates it to his own use. A has committed criminal misappropriation.
- (e) A finds a valuable ring, not knowing to whom it belongs. A sells it immediately without attempting to discover the owner. A has committed criminal misappropriation.

Ex-VI

Principle: One who dishonestly misappropriates or converts to his own use or sells any movable property belonging to another, is guilty of the offence of misappropriation.

Facts: 'A' takes property belonging to 'Z' out of Z's possession, in good faith, believing when he takes it, that the property belongs to him. Subsequently, 'A', on discovering his mistake, without disclosing the actual facts, dishonestly sells the property to a stranger.

- (a) 'A' is not guilty because when he took the property, he believed in good faith that it belonged to him.
- (b) 'A' is guilty of an offence of misappropriation.
- (c) 'A' may be guilty of theft but not for misappropriation.
- (d) 'A' is not guilty as the property can be recovered from the stranger.

Ex-VI Answer: (B)**➤ Explanation:**

The key part which we have to answer is whether there was dishonest intention on the part of A. "A' had no dishonest intention when he took the property out of the possession of 'Z' as he honestly believed that the property belonged to him. But his intention was malafide when he sold the property despite knowing the fact that the property belonged to 'Z'. Hence, he is liable for misappropriation of property and that makes option (b) the most appropriate answer.

5.5

Difference between Theft and Criminal Misappropriation of property

S. No.	Theft	Criminal Misappropriation of Property
1	1 In theft, property is taken out of the possession of another person and the offence is completed as soon as the property is moved. There is an invasion of the right of possession because the property is taken out of another's possession.	In criminal misappropriation, there is no invasion of another's possession. The property often comes innocently into another's possession. There is no invasion of the right of possession because the offender is already in possession of the property.
2	Dishonest intention precedes the act of taking.	Dishonest intention develops subsequently.
3	The property in respect of which the offence is committed must be movable in theft	The property in respect of which the offence is committed may be movable or immovable.
4	Punishment: 3 years or fine or both.	Punishment: 2 years or fine or both

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