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Part B, Question 1

70/100

Alice’s liability under s 321-her theft of the $100

S 321 establishes the physical and mental elements of the offence of minor theft. All of these will be discussed as separate elements of the offence. S 321(1)(b) limits the operation of the section to property of the value of up to $2000. This is an absolute liability sub-section and therefore the defence of mistake of fact does not apply by s 24(2)(b) [✓].

(1) Although normally appropriation would be the starting point, the existence of a fundamental mistake (FM) on the part of the person from whom property seems to have passed can deem that property not to have actually passed, but remained with the original owner [✓]. S 306 defines FM as including (b) a mistake about the essential nature of the property. As the owner of the property and the owner of the store both did not realise they were handing over more than just the coat (including the evidence that the original owner of the coat reported the money and other contents of the property missing), it is clear they made a FM [✓].

Under s 305(5), a FM and a legal obligation to make restoration make the property that looks as though it’s passed still property belonging to someone else at the moment of appropriation. There was obviously a legal obligation to make restoration as Alice was unfairly enriched by getting something she did not pay for due to someone else’s FM [✓].

A decision not to take the property back is via s 305(5)(b) a means of shortcutting to prove other elements of the offence. Alice decided not to make restoration when she put the money in her wallet [✓✓].

The decision not to take the money back, i.e. the moment she decided to put it in her wallet was both the moment she intended to permanently deprive the owner of the property ((5)(b)(i)) and the moment of appropriation without the owner’s consent [✓✓].

Was the $100 property?

Money is included under the definition of ‘property’ in the Legislation Act 2001 [✓].

Was she reckless that it belonged to someone else?

S 20(4) provides that if she knew it belonged to someone else then that automatically proved the element of recklessness. Alice obviously knew the property belonged to someone else as she knew it was not hers, even though she thought it belonged to someone other than it actually belonged to; she still knew it belonged to someone else [✓].

Was she dishonest?

Under s 300, clearly it is dishonest to take something that is not yours.

Did she know it was dishonest?

Alice was uncertain at first and then was persuaded by Adam to take the property on the grounds that ‘no one will find out’ and ‘you can’t steel from a dead woman’. Her hesitation in thinking it over before she decided to keep it shoes that she knew it was wrong before she took it. Also, if she took it only because she thought no one would find out, she still knew it was dishonest [✓].

However, if she was persuaded into thinking it was right to take the property and truly thought it...
was honest, then at the moment she took it (moment of appropriation), there was no dishonesty. [Interesting point...one for the trier of fact!]