



# ANU LAW STUDENTS' SOCIETY

## LAWS1206 Criminal Law 1<sup>st</sup> Semester 2009

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## Part B – Q1: HD (81)

### a) Alice's liability for minor theft (s321) and theft (s308)

The question is whether Alice is liable under ss321&308 of the Criminal Code 2002 (ACT).

Alice will be liable if it can be proved beyond reasonable doubt (DPP v Woolmington) that she dishonestly appropriated property belonging to someone else, intending to permanently deprive that person of the property. The jurisdiction is the ACT.

#### *I. AR*

To be liable for minor theft of \$100 and theft of the earrings, the following elements must be established:

##### 1. Appropriation

Defined in s304(1), an appropriation is 'any assumption' of the rights of an owner. R v Morris says any assumption is given its ordinary meaning, so possession, control or ownership are all appropriations.

The problem here is that there was a delayed appropriation as Alice found the goods some months after the initial purchase. Further, there was a fundamental mistake by the owner of the goods. This clouds the time of the appropriation. [✓]

However, s305(5) of the Act applies to fundamental mistakes. The deeming provision will mean that property has not passed if FM is proved.

The elements needed to prove FM are as follows:

- a. Someone else's FM: this has no doubt occurred in this instance as the facts state the envelope fell mistakenly onto the coat pocket at the time of sale to 'second time around'. [✓]
- b. There must be a legal obligation to make restoration: 'legal obligation' defined in Attorney General's Reference, [✓] arises out of unjust enrichment or benefits that may occur. In this case, Alice would obtain an extra \$100 (unjust enrichment) and the benefit of the earrings, suggesting an obligation to make restoration.

Therefore Alice is not the rightful owner of the earrings by virtue of the deeming provision preventing ownership passing. However, with regards to the money, money ownership passes on receipt (Illich). This may mean that Alice is the rightful owner of the money – however, s305(6)(b) means that the mistake, in both cases, was of the NATURE of the property, meaning the appropriation can be delayed. [✓✓]

##### 2. Property belonging to someone else

By proving that a fundamental mistake occurred, it has already been established that the things stolen were both property, and belonging to someone else. Therefore all AR elements are proved. [✓✓]

## II. MR

The following fault elements must be proved also for Alice to be liable for theft:

### 1. Dishonestly

Alice must have acted dishonestly as measured by the two-part test in s300. [✓] Alice may argue that s303 applies to her (innocently coming by the property) however, the appropriation occurred upon formation of attention, thus making s300 apply.

The first part of the test is 'dishonestly' as understood by the standards of ordinary people. This objective analysis, applied to the facts, tells us that Alice acted dishonestly by keeping someone else's property when she knew it wasn't hers.

The second part, the subjective component, contemplates whether the defendant knew it was dishonest according to the standards of ordinary people. Her conduct illustrates that she knew it was dishonest to keep them – she placed the goods in her drawer until she decided what to do, and consulted her boyfriend. This evidence suggests she knew it was dishonest. [✓ connection with Adam?]

### 2. Intention to permanently deprive

S305(5)(b) demonstrates that an intention not to make restoration is an intention to permanently deprive. Alice had this intention.

### 3. Recklessness

This occurs by virtue of s22(2): s20 defines recklessness, and her intent proves recklessness as per s20(4).

Therefore Alice is liable under s321 for minor theft of the \$100, as well as s308 for theft of earrings, as both all AR & MR elements are proved beyond reasonable doubt. [✓]

## b) Alice's liability under s326

The question is whether A is liable under s326 (Criminal Code 2002 (ACT)). A will be liable if it can be proved beyond reasonable doubt (DPP v Woolmington) that A, by deception, dishonestly obtained property belonging to someone else with the intention to permanently deprive them.

### I. AR

1. Obtain: A must have 'obtained'. S330 applies to this money transfer, and, as s330(2) states that transferring money from someone else's account into yours is 'obtained', there is no question this element is fulfilled [✓]
2. Property: s330(2) also says that money transferred is 'property'. Thus the element is proved. [✓]
3. Deception: s325(b) stating that causing a machine do something that is not authorised to do is deception. A caused the ATM to unlawfully transfer money to her account, thereby satisfying this element.

4. Belonging to someone else: s330(2)(a) states that money transferred unlawfully is taken to be property belonging to the person from whom it was stolen. Again the element is proved as A moved money from Is account.
5. Causal link btw deception and obtaining: the causal link is clear here, as As deception of unlawfully using the ATM led to her obtaining the property.

Thus all AR elements are proved. [✓]

## *II. MR*

1. Dishonestly: the same test applies as outlined above. A knew she was acting dishonestly according to the standards of ordinary people, as shown by her conduct of shredding the card upon arrival back at her home. Also, the ordinary person would view such action as unlawful. [✓]
2. Intention to permanently deprive: s329(4) applies here – A intended to keep the money, fulfilling this element. Also, s330(2) states that such a money transfer amounts to an intention to permanently deprive.
3. Recklessness (as to circumstance): again s22(2) applies, implying in this elements. Again, this is proved by As intention.

As all elements are proved, A is liable for obtaining by deception the \$500 under s326, [✓]

## c) Adam's liability under s59

The question is whether Adam is liable under s59. Crimes Act 1900 (NSW). Adama will be liable for the offence if it can be proved beyond a reasonable doubt that he, intentionally or recklessly, through a positive act, created an apprehension of immediate and unlawful personal violence (Fagan). The jurisdiction is NSW.

### *I. AR*

1. Positive Act (Fagan): As act of raising the glass to Lucy's eye is the relevant act.
2. Create apprehension of immediate unlawful personal violence

There is no need for actual contact if the conduct creates the apprehension of violence (Fagan) and creation of the apprehension is a matter of fact (R v Knight). [✓]

Apprehension can be assessed by a subjective inquiry into whether the victim actually apprehended the violence (Ryan v Kuhl). It is clear that Lucy was fearing immediate violence by her action of running out of the bar straight after the incidence occurred. Therefore this element is proved. [✓]

It might be noted that the fact that the threat was conditional is irrelevant as conditional threats can still constitute assault (Rosza v Samuels).

### *II. MR*

1. Intention: as assault is a crime of basic intent (DPP v Majewski), intention refers to A meaning to perform the conduct. This is clear in the present case.

Thus an assault has occurred as all AR & MR elements are proved.

The assault however may be aggravated by s59, where ABH has occurred. To establish whether ABH has in fact occurred, it is necessary to look at the elements of ABH.

*I. AR*

- Harm may not be permanent, but must be more trifling or trying (R v Donovan) – here the facts tell us that the injuries are not permanent, but no doubt panic attacks are more than trifling as they affect behaviour substantially
- ABH can include psychiatric injury, but must be a clinical condition (R v Chan Fook). We may not know whether the injuries sustained were clinically identifiable, but will assume they are as the doctor prescribed medication. [✓]

*II. MR*

- Intention: as above, A must have intended to do the act which created the threat. A did intend this, so the MR element is proved.

Therefore as all AR & MR elements of ABH and assault are proved, A is liable under s59.

[This is overall a very good answer. You've identified all the key issues and your legal knowledge is clearly demonstrated. An area of improvement – try to spend more time incorporating more of the relevant facts into your analysis]