



ANU LAW STUDENTS' SOCIETY

LAWS1206 Criminal Law and Procedure 1st Semester 2004

How to Use this Script:

These sample exam answers are based on problems done in past years. Since these answers were written, the law has changed and the subject may have changed. Additionally, the student may have made some mistakes in their answer, despite their good mark.

Therefore **DO NOT** use this script by copying or simplifying part of it directly for use in your exam or to supplement your summary. If you do so **YOUR MARK WILL PROBABLY END UP BEING WORSE!** The LSS is providing this script to give you an idea as to the depth of analysis required in exams and examples of possible structures and hence to provide direction for your own learning.

Please do not use them for any other purposes - otherwise you are putting your academic future at risk.

This paper is provided solely for use by ANU Law Students. This paper may not be redistributed, resold, republished, uploaded, posted or transmitted in any manner.

Question 1

75/100

1. Liability for Hugh

Minor Theft of the Money

Under s321 of ACT Crim Code if a person dishonestly appropriates property belonging to someone else with the intention to permanently deprive the other person of that property, and the property is valued at \$2000 or less. Hugh (H) may also have liability under s308 for Theft (per s321 {3}).

1. Is the Money property?

The dictionary in the code gives a broad inclusive definition of property, and the Legislation Act states money is property. [✓]

2. Does the money belong to someone else?

If H got the money by Roger ®'s fundamental mistake and is under a legal obligation to make restoration the property is deemed to still belong to R (s305 {a}), and any intention not to make restoration constitutes both an appropriation (s305 {5} {b} {ii}) and an intention to permanently deprive R (s305 {5} {b} {i}). [✓]

- Was there a fundamental mistake?

NO! As there was no mistake about the nature of the property – R intended to give H a rug, which he did do. So fundamental mistake is not made out.

[But rug + money?]

The property still belonged to Elizabeth though. However, H is protected from a finding of appropriation by s304(3) as he did not know the money or the rug belonged to E, and so long as he keeps them, he is not liable for theft.

[Other way of looking at this. Yes, re rug ---not a bona fide recipient necessarily re money].

The painting

H is also protected under s304(3) for his purchase of the painting, as he did not even consider that R was selling stolen property. [✓]

1. Liability for R

Selling of Painting

A person is liable for obtaining by deception if the person, by deception, dishonestly obtains property belonging to someone else with intent to permanently deprive (s326). [✓]

1. Was it property?

A painting clearly fits within the Legislation Act definition of property. [✓]

2. Does it belong to another person?

[s 301]

Although R assumed control and possession and passed them on to H; E, David and Christine all had a proprietary right or interest and the painting therefore belonged to them as well (s305 {1}). [✓]

3. Was the property obtained?

Obtaining is defined in s328. A person obtains property if they obtain ownership, possession or control [✓] of the property for themselves or someone else (s328 {1} {a}). This clearly occurred when R gave H the painting.

4. Did R use deception?

Deception requires two elements to be proved: firstly that R used deception as defined in s325; secondly that the deception was operative on the mind of H and caused the transfer of the money for the painting. [✓]

Under s325 deception includes an intentional deception by words, and occurs where a person means to engage in the deception to bring about a result (s18). R deceived H by saying he was the owner, and had ownership certificates.

The courts use a broad definition as to whether the deception was an operative cause (*Benli; R v Lambie*). Here, it seems H may not have bought the painting otherwise, so R's deception may have been an operative cause

[Look at H's statement and conduct]

5. Did R intend to permanently deprive E of the painting?

R must have intended to permanently deprive E of her property (s329{4}). Clearly R never intended to get the painting back, as he viewed the sale as permanent. This element is satisfied. [✓]

6. Did R act dishonestly?

A person's obtaining may be dishonest even though he is willing to pay for the property (s327) [✓]. Dishonesty requires a two part test (s300; *Feely-Ghosh*). Firstly, was R's conduct dishonest according to standards of ordinary people? Lying about owning a painting, and lying about certificates being in Melbourne, and selling someone else's property without their consent is possibly dishonest by those standards [✓]. Secondly, did R know it was dishonest? He had already planned to "bluff" and lie about the certificates, so it appears quite possible a jury will find there has been dishonesty [✓].

Can R argue Claim of Right Defence?

R may argue Claim of Right (s38) as he thought E would have given him the painting. However, this argument must fail as he has not got a belief in a LEGAL possessory right (*Walden v Hensler*).

[How does this go to dishonesty? Obtaining could go to theft?]

Conclusion

If the prosecution proves all elements R may be found liable for obtaining by deception under the ACT criminal code. While many elements appear largely unproblematic, the question of deception being an operative cause is difficult to decisively determine, and may be the determining factor in R's liability. [✓]

Alternatively if this is not made out R may be liable under s308 for theft. [✓]

Most elements of theft have already been discussed in relation to obtaining. The one remaining element is appropriation

[But different considerations re dishonesty.]

Any assumption of the rights of an owner to ownership, possession or control without the consent of a person to whom property belongs is appropriation (s304{1}). R assumed the control of the painting as only owners have a right to sell property, and R was acting without consent of the other owners.

If appropriation is made out, it may result in R being liable for theft of the painting. [✓]