

## **THEFT**

The prosecutor will be guilty of theft, if [x]steals dishonestly, appropriating property belonging to another with the intention of permanently depriving the other of it. CA s72(1)-(2)

This is an indictable offence. CA s74

### **THREE ELEMENTS**

The prosecutor must prove three elements BYD: (CA s 72(1))

1. The accused **appropriated property belonging to another; and**

The thing appropriated was **property**; and

The property **belonged to another person**; and

The accused **appropriated** something;

2. The accused did so with the **intention of permanently depriving** the other of that **property; and**
3. The accused appropriated the property **dishonestly**.

### **ELEMENT 1: APPROPRIATED**

#### **STEP 1: PROPERTY**

- The thing that the accused appropriated must have been "property" (CA 1958 s72(1)).
- Property is **defined** to include money and all other property real or personal including things in action and other intangible property CA s71(1)
- This includes things with no physical existence ie debts *R v Lloyd 1985 QB*
- **Consider: what was the property?**

Was the property was **real** (ie land or fixtures attached to land) **or personal property** (money or goods ie books)?

Was it **tangible** or intangible?

## STEP 2: BELONGING TO ANOTHER

1. It is only theft if a person appropriates property "belonging to another" CA s72(1)

2. Property is **defined** to belong to any person:

- having possession or
- control of it, or
- having any proprietary right or interest CA s71(2)
- This includes property that the accused also has property rights or interest in *R v Bonner 1970, WLR*
- If someone else also has property rights in (x), the property "belongs to another" and can be appropriated *R v Bonner 1970, WLR*

**Consider: did the property belong to someone else than the accused?**

- **Did the accused have possession or control of the property?**
- **Did they have any proprietary right or interest in the property?**

3. Prosecution does not need to prove who the owner of the property was. [They] simply have to prove that [x] belonged to someone other than the accused. *Lodge v Lawton 1978, VSC*

- **Can the person who owned the property be identified?**

**Abandoned or lost property?**

- Property no longer 'belongs' to a person who has intentionally relinquished all ownership rights. It is then **abandoned** property *R v Small 1987, Crim LR*
- Property which is merely **lost** still 'belongs' to the owner and can be appropriated *R v Small 1987, Crim LR*
- **Consider:** was the property abandoned or lost?

## STEP 3: APPROPRIATED

The accused will have appropriated property if s/he:

1. **Assumed any of the rights** of the owner (CA s73(4)), **and**
2. **Adversely interfered** with or usurped the owner's rights in some way  
(*Roffel v R 1985, VSCA*)

**In relation to assuming rights**, this includes:

- A person is **defined** to "assume the rights" of an owner by taking on the right to do something which the owner has the right to do by virtue of ownership  
*Stein v Henshall 1976 VSC*

The rights of the owner generally include the right to control the property and possess it  
*Roffel v R 1985, VSCA*

- This requirement will be satisfied if the accused has taken on any of the owner's rights. The prosecution does not need to prove the accused assumed all of those rights  
*Stein v Henshall 1976, VR*
- This includes taking, controlling, lending, selling, damaging, using and extinguishing  
*Roffel v R 1985, VSCA*
- **Consider: What did the accused do in relation to the property?**
  - a. Physically taking the property away
  - b. Controlling access to the property
  - c. Lending the property to another person
  - d. Selling the property to another person
  - e. Damaging the property

- **Consider: did the offender interfere with the rights of the owner of the property?**

**In relation to, adversely interfering with or usurping the owner's rights in some way,**

- The very act of doing something that only owners can do is **defined** as interfering with the owner's right to be the only person who can do these things

*Roffel v R 1985, VR*

- **Consent?**

If the accused gained consent from the owner of the property, the accused has therefore not appropriated the property

*Roffel v R 1985, VSCA*

- If the consent is due to fraud, deception or false representation, the accused will still be regarded as having appropriated the property despite the purported consent

*R v Baruday 1984, VSCA*

- **Consider: did the accused interfere with the rights of the owner of the property?**
- **Did the owner consent to the accused's conduct?**