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ADVANCED GCE UNIT **2573/RM**

LAW

CRIMINAL LAW SPECIAL STUDY MATERIAL

PRE-RELEASE MATERIAL FOR JUNE 2007 EXAMINATION

THURSDAY 21 JUNE 2007 Morning

Time: 1 hour 30 minutes

INSTRUCTIONS TO CANDIDATES

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- You may **not** take notes into the examination.

This document consists of **10** printed pages and **2** blank pages.

2573 CRIMINAL LAW

SPECIAL STUDY MATERIAL

SOURCE MATERIALS

SOURCE 1

Extract adapted from Walker and Walker's English Legal System edited by Ward, Richard & Wragg, Amanda (2004). pp 62–63, 75–76, 34–36, 42, 218–219. By permission of Oxford University Press.

The traditional view of……

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Details:

An extract from 'Walker and Walker's English Legal System' by Richard Ward and Amanda Wragg. ISBN: 978-0406959539

.....repercussions of law reform.

Where the words of.....

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Details:

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.....left by the legislature.

SOURCE 2

Extract from the Theft Act 1968 s8, Crown Copyright

8 Robbery

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An extract from the Theft Act 1968, section 8. Clause 1 of Robbery

SOURCE 3

Extract adapted from the judgment of Lord Justice Lawton in *Dawson (1976) 64 Cr. App R 170*

Mr Locke had submitted at the end of the prosecution's case that what had happened could not in law amount to the use of force. He called the learned judge's attention to some old authorities and … submitted that because of those old authorities there was not enough evidence to go to the jury.

The object of the Act was to get rid of all the old technicalities of the law of larceny and to put the law into simple language which juries would understand and which they themselves would use. That is what has happened in section 8 which defines "robbery".

The choice of the word "force" is not without interest because under the Larceny Act 1916 the word "violence" had been used, but Parliament deliberately on the advice of the Criminal Law Revision Committee changed that word to "force". Whether there is any difference between "violence" or "force" is not relevant for the purposes of this case; but the word is "force". It is a word in ordinary use. It is a word which juries understand. The learned judge left it to the jury to say whether jostling a man in the way which the victim described to such an extent that he had difficulty in keeping his balance could be said to be the use of force. The learned judge, because of the argument put forward by Mr Locke, went out of his way to explain to the jury that force in these sort of circumstances must be substantial to justify a verdict.

Whether it was right for him to put that adjective before the word "force" when Parliament had not done so we will not discuss for the purposes of this case. It was a matter for the jury. They were there to use their common-sense and knowledge of the world. We cannot say that their decision as to whether force was used was wrong. They were entitled to the view that force was used.

SOURCE 4

Extract adapted from the judgment of Lord Justice Eveleigh in *Hale [1978] 68 Cr. App R 415*

In so far as the facts of the present case are concerned, counsel submitted that the theft was completed when the jewellery box was first seized and any force thereafter could not have been "immediately before or at the time of stealing" and certainly not "in order to steal". The essence of the submission was that the theft was completed as soon as the jewellery box was seized.

Section 8 of the Theft Act begins: "A person is guilty of robbery if he steals …" He steals when he acts in accordance with the basic definition of theft in section 1 of the Theft Act; that is to say when he dishonestly appropriates property belonging to another with an intention of permanently depriving the other of it. It thus becomes necessary to consider what is "appropriation" or, according to section 3, "any assumption by a person of the rights of an owner". An assumption of rights … is conduct which usurps the rights of the owner. To say that the conduct is over and done with as soon as he lays hands on the property, or when he first manifests an intention to deal with it as his own, is contrary to common-sense and to the natural meaning of the words.

In the present case there can be little doubt that if the appellant had been interrupted after the seizure of the jewellery box the jury would have been entitled to find that the appellant and his accomplice were assuming the rights of an owner at the time when the jewellery box was seized. However, the act of appropriation does not suddenly cease. It is a continuous act and it is a matter for the jury to decide whether or not the act of appropriation has finished. Moreover, it is quite clear that the intention to deprive the owner permanently, which accompanied the assumption of the owner's rights, was a continuing one at all material times. This Court therefore rejects the contention that the theft had ceased by the time the lady was tied up. As a matter of common-sense the appellant was in the course of committing the theft; he was stealing.

There remains the question whether there was robbery. Quite clearly the jury were at liberty to find the appellant guilty of robbery relying upon the force used when he put his hand over Mrs Carrett's mouth to restrain her from calling for help. We also think that they were also entitled to rely upon the act of tying her up provided they were satisfied (and it is difficult to see how they could not be satisfied) that the force so used was to enable them to steal.

SOURCE 5

Extract adapted from the judgment of Watkins J in *Corcoran* v *Anderton [1980] 71 Cr. App R 104*

So confining myself to the facts as found by the justices in the instant case, I think that an "appropriation" takes place when an accused snatches a woman's handbag completely from her grasp, so that she no longer has physical control of it because it has fallen to the ground. What has been involved in such activity as that, bearing in mind the dishonest state of mind of the accused, is an assumption of the rights of the owner, a taking of the property of another. If one had to consider the definition of "theft as contained in the Larceny Act 1916, it is inevitable, so it seems to me, that there was here a sufficient taking and carrying away to satisfy the definition of "theft" in that Act. In my judgment there cannot possibly be, save for the instance where a handbag is carried away from the scene of it, a clearer instance of robbery than that which these justices found was committed.

Turning to the actual question posed to this Court. "Could the tugging at the handbag, accompanied by force, amount to robbery, notwithstanding that the co-accused did not have sole control of the bag at any time?" in my opinion, which may be contrary to some notions of what constitutes a sufficient appropriation to satisfy the definition of that word in section 3(1) of the Theft Act, the forcible tugging of the handbag of itself could in the circumstances be a sufficient exercise of control by the accused person so as to amount to an assumption by him of the rights of the owner, and therefore an appropriation of the property.

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SOURCE 6

Extract adapted from Smith & Hogan Criminal Law . 10th Ed. p 563. By permission of Oxford University Press.

No jury could reasonably. . . .

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Details:

An extract from 'Smith and Hogan Criminal Law'. ISBN: 978-0406948014

.....lobe of the ear.

SOURCE 7

Extract from the Theft Act 1968 s9 (as amended by the Sexual Offences Act 2003), Crown Copyright

9 Burglary

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Clause 1, 2 and 4 from the Theft Act of 1968, section 9 for burglary

SOURCE 8

Extract adapted from the judgment of Lord Justice Edmund Davies in *R* v *Collins [1973] 1 Q.B. 100 CA*

Now one feature of the case which remained at the conclusion of the evidence in great obscurity is where exactly Collins was at the moment when, according to him, the girl manifested that she was welcoming him. Was he kneeling on the sill outside the window or was he already in the room, having climbed through the window frame, and kneeling upon the inner sill? It was a crucial matter, for there were certainly three ingredients that it was incumbent upon the Crown to establish. Under s9 of the Theft Act 1968 … the entry of the accused into the building must first be proved. Secondly, it must be proved that he entered as a trespasser. Thirdly, it must be proved that he entered as a trespasser with intent at the time of entry to commit rape therein.

The second ingredient of the offence – the entry must be as a trespasser – is one which has not, to the best of our knowledge been previously canvassed in the courts.

What does that involve? According to the editors of *Archbold Criminal Pleading* "Any intentional, reckless or negligent entry into a building will, it would appear, constitute a trespass if the building is in the possession of another person who does not consent to the entry.

A view contrary to that…was expressed by Professor Smith's book on *The Law of Theft* "D should be acquitted on the ground of lack of *mens rea.* Though, under the civil law, he entered as a trespasser, it is submitted that he cannot be convicted of the criminal offence unless he knew of the facts which caused him to be a trespasser or, at least, was reckless.

The matter has also been dealt with by Professor Griew … "What if D wrongly believes that he is not trespassing … for the purpose of criminal liability a man should be judged on the basis of the facts as he believed them to be … D should be liable for burglary only if he knowingly trespasses or is reckless as to whether he trespasses or not".

We prefer the view expressed by Professor Smith and Professor Griew … there cannot be a conviction for entering premises "as a trespasser" within the meaning of section 9 of the Theft Act unless the person entering does so knowing that he is a trespasser and nevertheless deliberately enters, or, at the very least, is reckless as to whether or not he is entering the premises of another without the other party's consent.

Having so held, the pivotal point of this appeal is whether the Crown established that this defendant at the moment he entered the bedroom knew perfectly well that he was not welcome there, or being reckless as to whether he was welcome or not, was nevertheless determined to enter. That in turn involves consideration as to where he was at the time the complainant indicated that she was welcoming him into the bedroom.

Unless the jury were entirely satisfied that the defendant made an effective and substantial entry into the bedroom without the complainant doing or saying anything to cause him to believe that she was consenting to his entering it, he ought not to be convicted of the offence charged.

We have to say that this appeal must be allowed on the basis that the jury were never invited to consider the vital question whether this young man did enter the premises as a trespasser.

[Turn over

SOURCE 9

Extract adapted from Criminal Law by Michael Jefferson. Published by Longman. Copyright Pearson Education Ltd 2001

The Court of Appeal .....

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An extract from 'Criminal Law' by Michael Jefferson. ISBN: 978-0582438149

.....need not be substantial.

SOURCE 10

Extract adapted from Nolan, M, Bloy, D, Lanser, D, Modern Criminal Law , 5th Edition, 2003, pp 297–8, London: Cavendish Publishing

Despite [the] limited guidance. . . .

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Details:

An extract from 'Modern Criminal Law'. ISBN: 978-1859418079

.....he proposes to steal.

In Laing [1995] Crim LR 395.....

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.....charge is under 9(1)(a) or (b).

SOURCE 11

Extract adapted from the judgment of Lord Justice Geoffrey Lane in R v Walkington [1979] 1 WLR 1169

The defendant was seen loitering near tills in Debenhams in Oxford Street while cashing up was in process. He then went into a till area, which was for staff only, and which was unattended. He looked into the partly open cash drawer and then slammed it shut when he saw that it was empty. He was convicted of burglary with intent to steal contrary to s9(1)(a) Theft Act 1968 and appealed unsuccessfully.

It seems to this court that in the end one simply has to go back to the words of the Act itself and if the jury are satisfied so as to feel sure that the defendant had entered any building or part of a building as a trespasser, and are satisfied that at the moment of entering he intended to steal anything in the building or that part of the building, the fact that there was nothing in the building worth while to steal seems to us to be immaterial. He nevertheless had the intent to steal. As we see, to hold otherwise would be to make a nonsense of this part of the Act and cannot have been the intention of the legislature at the time when the Theft Act 1968 was passed. Nearly every prospective burglar could no doubt truthfully say that he only intended to steal if he found something in the building worth stealing.

SOURCE 12

Extract adapted from Criminal Law Text and Materials C M V Clarkson and H M Keating. 4th Ed. By permission of Sweet & Maxwell.

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.....entered as a trespasser.

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