



LAW04: Criminal Law (Offences against Property)
Theft

Theft.

Theft is defined in **s. 1 Theft Act 1968**

"a person is guilty of theft if he **dishonestly appropriates property belonging to another with the intention to permanently deprive** the other of it."

Property.

The D must appropriate **property**.

This is defined in **s. 4(1) TA68**

"property includes money and all other property real or personal, including things in action and other intangible property."

Definitions of the 5 types of property.

1. Money.

This simply means coins and banknotes.

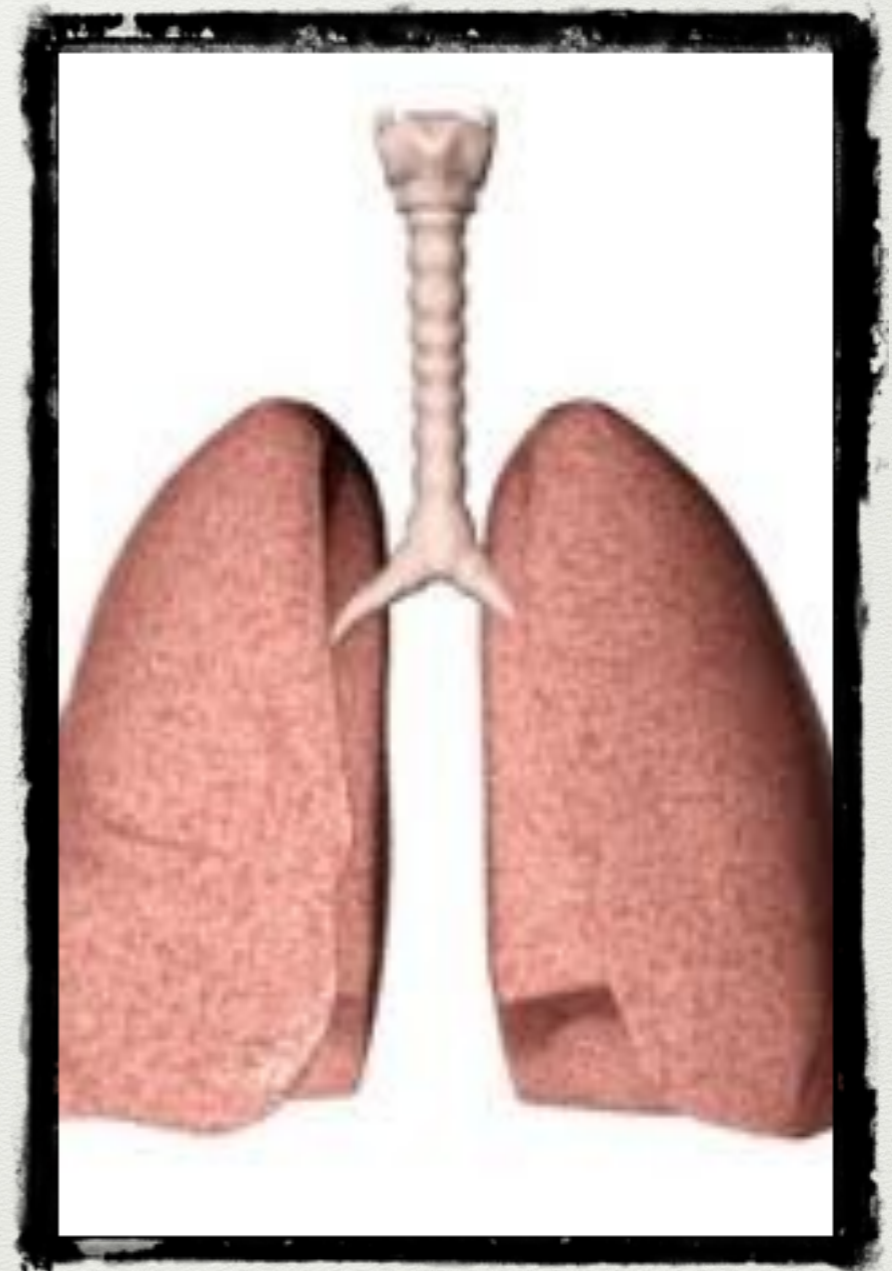
2. Personal property.

This means all moveable items of property such as pens, books, DVDs, cars, aeroplanes etc.

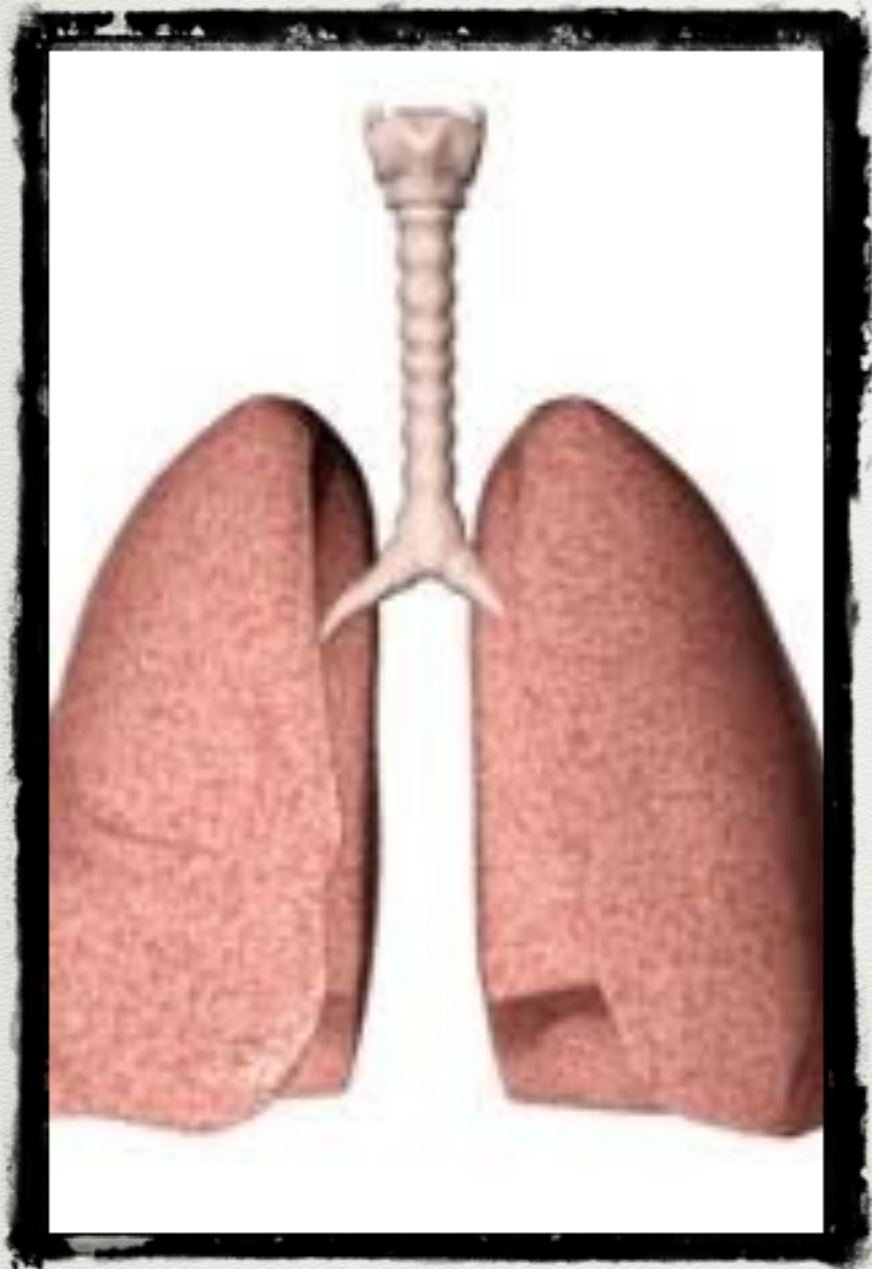
Kelly and Lindsay (1998)

K was a sculptor and asked L to take body parts from the Royal College of Surgeons where L worked as a lab assistant. K then made casts from these body parts

Both were charged and convicted of theft.



Kelly and Lindsay (1998)



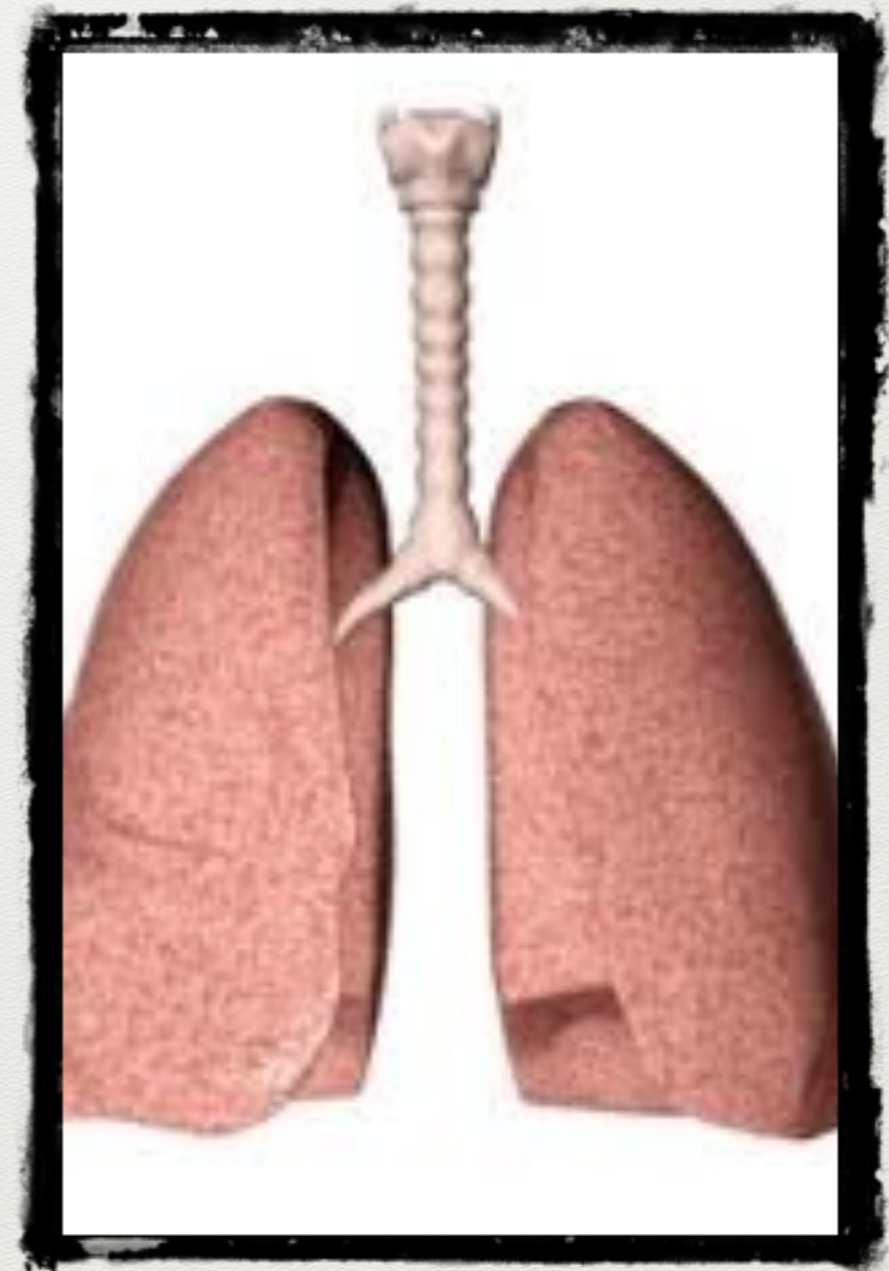
K and L both appealed on the grounds that body parts are not "property".

The CA stated that a dead body is not normally property **but** the body parts in this case were property because they had ...

Kelly and Lindsay (1998)

... "acquired different attributes by virtue of the application of skill, such as dissection or preservation techniques, for exhibition or teaching purposes."

So, body parts can be property if they have acquired some "value".



3. Real property.

This is a legal term meaning **land**.

Under **s. 4(1)** land can be stolen **but s. 4(2)** states that it can only be stolen in **3** circumstances:

a) a trustee or personal representative takes land in breach of his duties as a trustee or personal representative.

b) someone not in possession of the land severs anything forming part of the land from the land.

For example, if someone knocked down a wall and then took the bricks this would be theft.

c) a tenant takes a fixture or structure from the land that is let to them.

4. Things in action.

This is a "right" that can be enforced against another person by an action in law.

It is this "right" that is classed as property under **s. 4(1)**.

A bank account is a **thing in action**. Money in a bank account does not physically exist but a customer has a "right" to the money in their account.

If a D causes the bank to debit money from an account then property has been appropriated.

A cheque is also an example of a **thing in action**.

5. Other intangible property.

These are other "rights" that have no physical presence but could still be "stolen" by a D.

A patent on an invention is intangible property and therefore could be stolen.

However, some types of intangible property cannot be stolen ...

Oxford v Moss (1979)

Information written on an examination paper was held not to be property.

The D was liable for stealing the examination paper itself but not the information on it!



Things which cannot be stolen.

Some things cannot be stolen.

s. 4(3) TA68 states that

"a person who picks mushrooms growing wild on any land, or who picks flowers, fruit and foliage from a plant growing wild on any land, does not (although not in possession of the land) steal what he picks, unless he does it for reward or sale or other commercial purpose."

Also, s. 4(4) TA68

"wild creatures, tamed or untamed, shall be regarded as property; but a person cannot steal a wild creature not tamed nor ordinarily kept in captivity, or the carcass of any such creature, unless it has been reduced into possession by or on behalf of another person and possession of it has not since been lost or abandoned, or another person is in course of reducing it into possession."

Appropriation.

Appropriation is much more than just taking something.

It is defined in **s. 3(1) TA68** as

"any assumption by a person of the rights of an owner amounts to an appropriation, and this includes, where he has come by the property (innocently or not) without stealing it, any later assumption of a right to it by keeping or dealing with it as owner."

Examples of "rights of an owner" that could be
"assumed" would include ...

- possessing property;
- selling property;
- destroying property;
- using property;
- lending property to someone;
- hiring property to someone etc.

Pitham and Hehl (1977)

The D sold furniture that belonged to another person.

Is this appropriation?

Yes.

Why?

Selling property is an owner's right and the D assumed this owner's right.



If the furniture had been sold but hadn't been removed from the house when the V found out would this still be appropriation?

Yes.

Why?

The selling of the property is the owner's right. It is irrelevant if the furniture is removed or not.

How many owner's rights does a D have to assume in order to appropriate property?

1.

Morris (1983)

The D switched the price labels on 2 items on a supermarket shelf. D then put the lower priced item into his basket and took it to the checkout. D was arrested before he went through the checkout.

How has the D appropriated the property?

D switched the prices on the items and only the owner has the right to do this.



Morris (1983)



Lord Roskill stated:

"it is enough for the prosecution if they have proved . . . the assumption of any of the rights of the owner of the goods in question."

And so, assuming ONE owner's right is sufficient for appropriation.

Corcoran v Anderton (1980)

The CA stated that the forcible tugging of a handbag, even though the owner of the bag did not let go, could amount to an assumption of the rights of the owner and therefore be appropriation.



Consent.

What if the owner has consented for the D to assume an owner's right over property?

Will this still be appropriation?

Lawrence (1971)

An Italian student, who only spoke a little English, arrived in London and gave a taxi driver (D) an address on a piece of paper. The journey should have cost 50p and the student offered a £1 note as payment. The D stated that this wasn't enough. The student then offered his wallet to the D and allowed him to take a further £6.



Lawrence (1971)



The D argued that he had **not** appropriated the property because the student had consented to him taking it.

Was it appropriation?

The CA and HL both stated that this was appropriation.

Gomez (1993)

The D was the assistant manager of a shop and persuaded the manager to sell £17k worth of electrical goods to his accomplice and to accept payment by way of 2 cheques that the D said were as good as cash. The cheques were actually stolen and had no value.

The D was charged and convicted of theft.



Gomez (1993)



On appeal to the HL it was decided that there was appropriation even though the 'owner' had given consent.

It was pointed out that it had already been decided that appropriation could take place with the owner's consent in the case of **Lawrence**.

Consent without deception.

In **Lawrence** and **Gomez** the D deceived the owner in order to get his consent.

But, can appropriation take place if the D **hasn't** deceived the owner in order to get their consent?

Hinks (2000)

The D was a woman who had befriended a man with a low IQ. The man was capable of understanding the concept of ownership and making a gift.

Over an 8 month period the D accompanied the man to his building society where he withdrew approx. £60k and deposited it into D's account

He also bought D a TV.

D was charged and convicted of theft.



Hinks (2000)



The D appealed to the HL.

Can accepting a valid gift be appropriation?

The HL decided on a majority of 3 to 2 that accepting a valid gift is appropriation.

A later assumption of a right.

s. 3(1) also states there can be appropriation when the D acquires property **without** stealing it and then later decides to "keep" or "deal" with the property as owner.

In this type of situation the appropriation takes place **at the time of** the "keeping" or "dealing".

Examples

- The D hires a DVD and then later decides to keep it rather than return it.
- The D borrows something from someone and then later decides to sell it or give it away to someone else.

Belonging to another.

The property appropriated must **belong to another.**

"Belonging to another" is given a **very** wide definition by the Theft Act.

It is defined in **s. 5(1) TA68**

"property shall be regarded as belonging to any person having possession or control of it, or having in it any proprietary right or interest."

There are **3** ways in which property might "belong to another"

1. If a person has **possession** of property; **or**
2. If a person has **control** of property; **or**
3. If a person has a **proprietary right or interest** in the property.

Possession or control.

The owner of property usually has possession or control of it ...

... **but** property can be stolen from people who do not own the property.

Turner (No. 2) (1971)

The D left his car at a garage for repairs. It was agreed that when the repairs were completed the D would pay for the repairs when he collected the car.

The repairs were nearly finished when the garage left the car parked on the street overnight. The D used a spare key and took the car without paying.



Turner (No. 2) (1971)



Had D stolen the car?

Yes.

Why?

The garage was in possession and control of the car.

It is therefore possible to be convicted of theft for "stealing" your own property.

Woodman (1974)

Company 1 (C1) sold all its scrap metal to Company 2 (C2). C2 arranged for the scrap metal to be collected but some of it was accidentally left on C1's premises.

The D took the remaining scrap metal from C1's premises and was convicted of theft.

Therefore, it is possible for property to "belong" to someone and be stolen from them without their knowledge.



There can be situations where the property in question no longer belongs to the V and ownership has passed on to the D. This could mean that a D would not have the necessary actus reus for theft even if they have behaved dishonestly etc.

s. 5(3) and **s. 5(4)** try and counter these situations and ensure that the property can be considered to "belong to another".

Property received under an obligation.

s. 5(3) TA68 states:

"where a person receives property from or on account of another, and is under an obligation to the other to retain and deal with that property or its proceeds in a particular way, the property shall be regarded ... as belonging to the other."

So, if the D is under an **obligation** to retain and deal with property in a particular way they **must** do so.

If they do **something else** with the property it will still "belong" to the V and this could then be theft.

Hall (1972)

The D was a travel agent who received deposits from clients for flights. D paid the deposits into the firm's general account **but** didn't organise any tickets and was unable to pay back the money.



Hall (1972)



Using s. 5(3) does the money still "belong to another"?

No, D is not guilty of theft.

Why?

D received **deposits** and was under no obligation to use these deposits in a particular way.

Klineberg and Marsden (1999)

The Ds operated a company that sold timeshare apartments. Each purchaser paid the full price on the understanding that the money would be held by an independent trust company until the apartments were completed.

Over £500,000 was paid to the Ds but only £233 was paid into the independent account.



Klineberg and Marsden (1999)



Using s. 5(3) are the Ds guilty?

Yes.

Why?

They were under an obligation to "retain and deal with that property or its proceeds in a particular way".

They were obliged to pay the money into the independent account and didn't.

Wain (1995)

D raised £2,833.25 for charity and paid it into a special bank account. With the charity's permission he transferred the money into his personal bank account. D spent the money and was unable to give it to the charity.

D was convicted of theft.



Wain (1995)



The CA decided that under s. 5(3) the D was under an obligation to retain the same amount of money he raised through sponsorship.

It did not matter that the D did not retain the actual notes and coins raised, he was still under an obligation.

Davidge v Bunnett (1984)

D was given money by her flatmates to pay the gas bill but spent the money on Christmas presents instead.

Using s. 5(3) has the D committed theft?

Yes

The D had an obligation to use the money in a particular way.



Property obtained by a mistake

s. 5 (4) TA68 states that if a D receives property by mistake and is under an obligation to give it back, the property, for the purposes of theft, shall still belong to the person who mistakenly gave the D the property in the first place.

A-G's Reference (No. 1 of 1983) (1985)

D was mistakenly overpaid by £74.74 directly into her bank account. D was acquitted of theft but the prosecution asked the CA to rule on whether a person in this situation, who dishonestly decided not to repay the money, would be guilty of theft.



A-G's Reference (No. 1 of 1983) (1985)



The CA stated that under **s. 5(4)** if there was an "obligation to make restoration" and there was a dishonest intention not to repay then D could be guilty of theft.

This would also cover situations where Ds have been mistakenly given too much change and then kept it etc.

Dishonesty

The D must have appropriated the property **dishonestly**.

The Theft Act 1968 does not define dishonesty but does give 3 situations in which a D's behaviour is not considered dishonest.

Behaviour which is not dishonest

s. 2(1) TA68 states ...

A person's appropriation of property is not dishonest if he is in the belief that:

- a) he has in law the right to deprive the other of it, on behalf of himself or of a third person;

Robinson (1977)

D ran a clothing club and was owed £7 by V's wife. D approached V about this and during a struggle V dropped a £5 note. D took the £5.

The D's belief that he had the right to take the £5 meant that he wasn't dishonest under **s. 2(1)(a)**.



b) he would have the other's consent if the other knew of the appropriation and the circumstances of it;

c) the person to whom the property belongs cannot be discovered by taking reasonable steps.

Willing to pay

s. 2(2) TA68 states that "a person's appropriation of property belonging to another may be dishonest notwithstanding that he is willing to pay for the property."

So, a person could still be dishonest if they take property and leave payment for it.

This prevents a person from taking whatever he likes regardless of the owner's wishes.

The Ghosh test

As the Theft Act 1968 does not provide a definition of dishonesty we must rely on case law.

The CA set out the test for "dishonesty" in the case of ...

Ghosh (1982)

D was a doctor working as a locum in a hospital. D claimed a fee for an operation he had not carried out. He claimed he was not dishonest as he was owed the same amount in consultant fees.



Ghosh (1982)



The CA introduced a 2 part test for dishonesty ...

1. Was the action dishonest according to the ordinary standards of reasonable and honest people?
2. Did the D realise that what he was doing was dishonest by those standards?

Intention to permanently deprive

Usually it can be quite obvious if the D has the intention to permanently deprive.

For example, D takes some money and spends it.

This is true even if the D intends to replace the money at a later date.

Velumyl (1989)

D, a company manager, took £1,050 from the office safe. D stated he was owed some money by a friend and he was going to replace the money when the friend repaid him.

D's conviction for theft was upheld. The banknotes he intended to replace the stolen money with would be different banknotes so he did have the intention to permanently deprive.



There are some situations where it is not clear if there has been an intention to permanently deprive.

In these situations **s. 6(1) TA68** explains and expands the meaning of the phrase.

A person can be regarded as having the intention to permanently deprive if they ...

"treat the thing as their own to dispose of regardless of the other's rights."

DPP v Lavender (1994)

The Divisional Court ruled that the dictionary definition of "dispose of" was too narrow.

They decided that a "disposal" could also include simply **"dealing with property"**.



Borrowing or lending

Normally, borrowing would not be intention to permanently deprive ... the point of borrowing is that you intend to give it back.

s. 6 states that borrowing is not theft unless it is **for a period** and **in circumstances making it equivalent to an outright taking or disposal.**

Lloyd (1985)

This case interpreted this to mean borrowing the property and keeping it until "**the goodness, virtue, the practical value has gone out of the article**".

For example, borrowing a pen and giving it back to the owner when all the ink has run out. The pen has lost its "**goodness ...**" etc.



Another problem may arise when the D picks up property to see if it is worth stealing or not.

What if the D decides it isn't and puts the property back?

This is called "conditional intent".

Easom (1971)

D picked up a handbag in the cinema, rummaged through the contents and then replaced the handbag without taking anything.

The CA quashed D's conviction for theft stating that the "conditional" intention to deprive was not enough to satisfy the mens rea of theft.



Intention to treat the thing as his own

If the D treats the thing (property) as his own to dispose of, regardless of the other's rights, then the D has the intention to permanently deprive (**s. 6(1) TA68**).

Raphael and another (2008)

The 2 Ds took V's car by force and demanded payment from V for its return.

It was held that the wording of s. 6(1) included situations when D makes an offer to return to V his own property but subject to a condition which is inconsistent with V's right to possession of his own property.

So, the Ds were guilty of theft.

