


Subject: **LAW**

Production of Courseware

 **e-Content for Post Graduate Courses**



Paper : **Substantive Criminal Law**

Module

**Criminal Misappropriation, Criminal Breach of Trust,
and
Receiving Stolen Property**





Component-I (B) Description of Module:

Description of Module	
Subject Name	Criminal Law
Paper Name	Substantive Criminal Law
Module Name/Title	Criminal Misappropriation, Criminal Breach of Trust, and Receiving Stolen Property
Module Id	Module 18
Pre-requisites	For understanding the module, basic understanding of movable and immovable property, dishonest intention, trust and theft is required.
Objectives	To understand the concept of Criminal Misappropriation, Criminal Breach of Trust, and Receiving Stolen Property
Keywords	Criminal misappropriation, dishonest intension, movable property, immovable property, entrustment, theft and stolen property.

Component – II – e-Text

Introduction:

Crimes against property have always been a centre of concern in all societies. There are certain property wrong which are very common in all jurisdictions like theft, trespass, burglary, larceny, Robbery, Misappropriation, Embezzlement, and Extortion etc. Criminal wrong may be against any property (movable or immovable) in which partial or complete damage is caused or property may be taken away from the lawful possessor.

Indian Penal Code recognised certain category of criminal wrong against property in chapter XVII. Here you will know about criminal misappropriation, criminal breach of trust, and receiving stolen property which have been specifically mentioned in Section 403,405 and 410 of Indian Penal Code.

Learning Outcome

This module would enable the learners to:

- Explain the concept of Misappropriation,
- Explain the Criminal Breach of Trust, and Receiving Stolen Property
- Compare the provisions relating to Misappropriation, Criminal Breach of Trust, and Receiving Stolen Property.

CRIMINAL MISAPPROPRIATION OF PROPERTY

Criminal Misappropriation of Property means using others property in unauthorised way. It is comparatively a new offence because it developed from the law of theft. In case of theft, change of possession or taking away the property from the possession of the owner is necessary where as in case of criminal misappropriation of property - it is not required. Hence the offence is very near to theft yet is not exactly the offence of theft.

Section 403 of IPC defines dishonest misappropriation of property as

Whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

According to the above definition there are three essentials of criminal misappropriation:

1. Dishonest intention
2. Misappropriation or conversion of property for own use
3. Movable property

1. DISHONEST INTENTION

Dishonest intention plays a very important role in the criminal misappropriation of property. It is not necessary that dishonest intention should be present at the time of getting possession of the property, the possession of the property may come lawfully or innocently but subsequent change of intention and utilisation of property for personal use will bring the act in the category of criminal misappropriation. It is well illustrated in illustration (a) and (b) of the section.

Illustration (a) - A takes property belonging to Z out of Z's possession, in good faith, believing, at any time when he takes it, that the property belongs to himself. A is not guilty of theft; but if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section.

Illustration (b)- A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent. Here, if A was under the impression that he had Z's implied consent to take the book for the purpose of reading it, A has not committed theft. But, if A afterwards sells the book for his own benefit, he is guilty of an offence under this section.

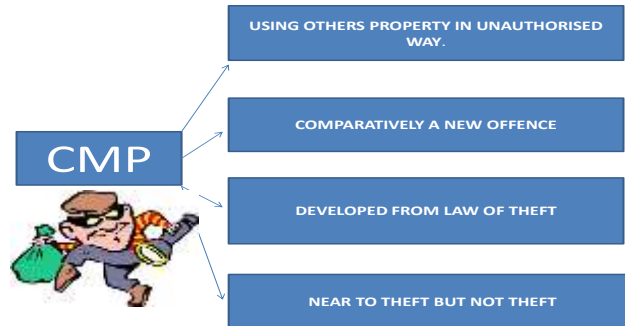


Dishonest intention to misappropriate the property may be permanent or temporary in nature. (Explanation-I of Section 403). If property is already in the possession of a person innocently and later on he dishonestly misappropriates for the property for the time being and again it restores the property, he will be liable in for criminal misappropriation.

In Kesho Ram's case (1889) PR No.36 of 1889, the accused was given some money by his master to purchase grain. The accused ran away with the money and later he was arrested with whole money in his possession. The defence defended that accused was not liable under section 403 for criminal misappropriation because money has been found intact and he had not converted to his own use. But the court held that the first possession being lawful, the misappropriation consisted not in any actual expenditure of the money, but in the mental act or intent to deprive the master of his property without any outward or visible trespass, which was rightly inferred from the conduct of the accused.

2. MISAPPROPRIATION OR CONVERSION OF PROPERTY FOR OWN USE

Misappropriation means taking possession of another property and its wrongful utilisation. The essence of offence is that some property belonging to others which comes under the possession of the accused, innocently, is misappropriated or converted by the accused to his own use misappropriation or conversion need not be permanent it may be only for some time. Illustrations (a), (b)



and (c) suggest that the original taking was innocent but the offence of criminal misappropriation is constituted due to sufficient dishonest appropriation.

The words ‘convert to own use’ means setting apart for one’s own to the exclusion of others. In Ram Dayal’s case (1886) P.R.No 24of 1886, a girl ‘A’ found a gold necklace and she handed it over to ‘another girl’ C. B, brother of A represented to C that the necklace belonged to a man of his acquaintance, and thus took it in his possession. On inquiry by a police officer a few hours later, B repeated the representation but afterwards gave up the necklace. The representations were proved to be untrue to the knowledge of the accused B. He was, therefore held guilty of criminal misappropriation.

3. MOVABLE PROPERTY

Word ‘any property’ means movable property. Movable property are subject matter of criminal misappropriation. This movable property is like movable property of ‘theft’ but there is a difference in getting possession of the property under theft and criminal misappropriation. In case of theft property is taken away where as in case of criminal misappropriation it may be innocent taking or lawful taking at the beginning but subsequently it is dishonestly misappropriated. Finder of the goods are also liable under the section in certain cases. It is well described in Explanation 2 and its illustrations (a), (b), (c), (d), (e) and (f).

Mayne stated that there can be no criminal misappropriation in case of abundant property. He has cited the example of sacred bulls abundant before the temple but idol of the temple is capable of holding property apart from the Pujari and the later may be guilty of misappropriation with temple property.

In a case where B and C were on a railway platform. B had a ticket from Allahabad to Delhi and C had a ticket from Allahabad to Kanpur. D, an illiterate women handed over her ticket to C in order to ascertain whether she had a right ticket. she under the pretence of returning his ticket substituted therefore his own ticket and kept B’s ticket. She was held liable for criminal misappropriation and not for cheating.

Distinction between Theft and Criminal Misappropriation

(1) The first and main difference is that initial taking theft is always wrongful. But in criminal misappropriation it may be lawful and innocent. It is subsequent change of intension which covert lawful taking into unlawful.



(2) In case of theft there is invasion of possession of another persons by wrongdoer. Whereas in case of criminal misappropriation there is no such infringement of right of possession. In criminal misappropriation offender is already in possession of the property and it is his unlawful misappropriation which creates offence.

(3) In theft mere moving by is an offence. In criminal misappropriation may not be an offence even it may be lawful.

(4) In theft property is moved without the consent of the owner where as in case of criminal misappropriation person might have come into the possession of the property with the consent of the owner.

(5) Dishonest intension is common to both. In theft this is shown by moving of the property while in criminal misappropriation it is effected by actual misappropriation .

(6) In case of theft dishonest intension precede taking while it follows the taking in criminal misappropriation.

CRIMINAL BREACH OF TRUST

Criminal breach of trust is a special kind of criminal misappropriation where the property was entrusted to the accused by the owner and accused dishonestly misappropriated that property. It may be treated as a kind of criminal misappropriation but in the Indian Penal Code it has been categorised as a separate offence under section 405.

405. Criminal breach of trust —

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

According to the definition of criminal breach of trust as given in definition there are following essentials

1. Entrusting any person

(a) Property

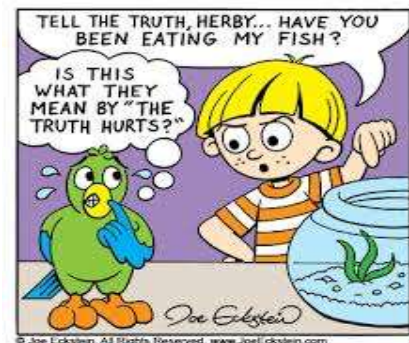
(b) With any dominion over property

2. Person entrusted dishonestly misappropriate that property or convert unlawfully to his own use.

1. ENTRUSTING ANY PERSON

As the title to the offence itself suggests, entrustment of property is an essential requirements before any offence under this section takes place. The language of the section is very wide. The words used are ‘in any manner entrusted with property’. So, it extends to entrustments of all kinds – whether to clerks, servants, business partners or other persons, provided they are holding a position of trust. “The term “entrusted” found in s 405, IPC governs not only the words “with the property” immediately following it but also the words “or with any dominion over the property”.”

A trust implies a confidence placed by one man in other. Such confidence must be voluntarily and freely placed. If confidence is obtained by playing tricks, there is no consent and no true entrustment. In *Pushpa Kumar Vs State of Sikkim* (1978 Cr. L.J. 1379), the accused was a conductor of the bus belonging to the Sikkim Nationalised Transport and in such capacity had collected bus fares and freight charges amounting to more than Rs. 2000. He did not render any accounts to the transport authorities nor did he deposit any amount with them despite several reminders. The High Court held that one of the most important elements of ‘entrustment’ is that the property in respect of which criminal breach of trust is alleged to have been committed must have been made over or transferred or handed over by the aggrieved persons, who continues to be the owner thereof, to the accused. In this case there was no entrustment because the amount was not made over or transferred or handed over by any one on behalf of Sikkim Transport to the accused. It is submitted that the above view of the High Court is not correct in the view of the decision of the Supreme Court in *Som Nath Vs. State of Rajasthan* (1972 Cr .L. J. 897). It was held in this case that a person authorised to collect money on behalf of another is entrusted with the money when the amounts are paid to him , and though the person paying may no longer have any proprietary interest, nonetheless, the person on whose behalf it was collected becomes the owner as soon as the amount is handed over to the person authorised to collect on his behalf. Thus is the view of the decision of the Supreme Court the accused conductor was entrusted with the amounts of money as soon as he collected the same on behalf of the Sikkim Transport.



Property – The word property used in the section has much wider ambit and it includes movable and as well as immovable property but it must be a property of complainant. It does not matter that the complainant on whose behalf the property is entrusted is the owner of it or not, provided there is entrustment of property.

Dominion over property – Entrustment or dominion over the property is necessary condition for constituting offence of criminal breach of trust. A person is said to be dominion over the property when he supervises, or exercises control over the property or is in the charge of that property. A driver of a bus will be liable for selling any part of it. Allahabad high court in case of *Bimala Charan Roy* (1913 35 All 361) held that where the Inspector of Water Works is said to having dominion over the water belonging to his employer and if such inspector misappropriate such water for his own use or for the use of his tenant for which he pays no tax and gives no information to his employer, he would be guilty of criminal breach of trust.

There is difference between criminal liability of entrusted person and person having dominion over property. In case of entrustment, the person will be liable to account for the property if it is found missing, without any further proof or requirement as to actual misappropriation. In case of dominion, the person will be liable only when it is shown that he misappropriated the property or a party to user or disposal etc of that property by any other person.

A mere transaction of sale cannot amount to an entrustment. If the accused had violated the conditions of purchase or allotment, the only remedy is to prosecute him under the appropriate law. But no offence of criminal breach of trust was made out, since mere existence of dominion over property is not enough.

Similarly, if the wife entrusts her *stridhana* property with the dominion over that property to her husband or any other member of the family and the husband or such member of the family dishonestly misappropriates or converts to his own use that property, or wilfully allows any other person to do so, he commits the offence of criminal breach of trust.

2. DISHONEST MISAPPROPRIATION OR CONVERTING UNLAWFULLY TO OWN USE

Dishonest act (i.e. misappropriation) is basic element of this offence without it this offence cannot be charged. But appropriation of a property in assertion of claim, however, unfounded does not constitute an offence. Only retention of goods by a person without misappropriation does not amount to criminal breach of trust.



In *State of Gujarat Vs Jaswantlal Nathal*, (AIR 1968 SC 700), the government allotted/sold certain bags of cement to the accused contractor only on the condition that it will be used for specific construction work. However, a portion of the cement was diverted to a different subject and the contractor did not use the cement for the authorised purpose alone. The accused was prosecuted for criminal breach of trust. The Supreme Court held that the expression 'entrustment' carries with it the implication that.

In *Jaikrishnadas Manobardas Desai vs State of Bombay* (1960 AIR SC 833) , it was held that dishonest misappropriation or conversion may not ordinarily be a matter of direct proof, but when it is established that property, is entrusted to a person or he had dominion over it and he has rendered a false explanation for his failure to account for it, then an inference of misappropriation with dishonest intent may readily be made.

In *Surendra Prasad Verma vs State of Bihar*(AIR 1973 SC 488), the accused was in possession of the keys to a safe. It was held that the accused was liable because he alone had the keys and nobody could have access to the safe, unless he could establish that he parted with the keys to the safe. As seen in the case of criminal misappropriation, even a temporary misappropriation could be sufficient to warrant conviction under this section

Use or Disposal of property

An offence under this section consists of any one of the four positive acts, namely, misappropriation, conversion, user, or disposal of property. A user of property comes within this section when such user causes substantial or appreciable loss to the owner of the property or gain to the accused. A ask B, a



jeweller to make a gold a gold ring for him and pays him the cost of the gold ring. B neither delivers the ring nor return the money. Here B will liable under this section.

RECEIVING STOLEN PROPERTY

Unrestricted circulation of stolen goods will cause encouragement for theft, robbery and like nature of crimes. It becomes important to restrict the demand of such types of goods. Generally it has been seen that stolen goods are available at very low price in comparison genuine goods which invariably attracts many buyers. So dishonest receiving of stolen goods has been made as crime under code to discourage theft and related offence. Section 411 deals about it as follows:

411. Dishonestly receiving stolen property —

Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

A person can be convicted for receiving stolen property if following condition is satisfied:

1. Property must be stolen property
2. Person dishonestly received or retained and
3. Accused was aware or had reason to believe that the property was stolen.

1. Property must be stolen property

In order to make a person liable under this section, the first and fore most important requirement is that property must be stolen property in accordance with section 410. According to the section stolen property means '*property, the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated or in respect of which criminal breach of trust has been committed, is designed as "stolen property", whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without India. But, if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property*'.

A mere reading of section 411 shows that the concerned person should in the first place dishonestly receive or retain the stolen property. it shows that before the stolen property goes into the hands of the accused it must be shown that the said property as a stolen property has been in possession of somebody else before it reached the hands of the accused and that he received it. He should receive it knowingly or having reason to belief the same is stolen.

A, B, C, D and E starts for committing dacoity in the house of M. E being dead drunk could not proceed and fell down under a neem tree. A, B, C and D went into the house of Mand after firing into the air took away cash and ornaments. There after they returned to the place where E was lying and gave him a part of the booty. Here E is liable for receiving stolen property.

To be termed stolen property, the property must have gone out of the control of the owner and it must have been received by the accused as stolen property and not in any other manner. Property, the



possession of which has been transferred by theft or the other offences is designated stolen property. It is, therefore, a term which equally applies to property in the hands of the thief or of a receiver other than the thief. As regards property acquired by theft, extortion and robbery, the property is called stolen property.

The property in the possession of a thief who runs away with stolen property is property so-called, though there has not been 'transfer' in the real sense of the term, and though his possession is insecure. But insecurity of possession is an incident of all stolen property and its transfer does not demand complete transmutation of possession which is not even the incident of a legal transfer. Indeed, the gist of the term lies in the intention as will be seen presently.

To be termed stolen property, the property must have gone out of the control of the owner and it must have been received by the accused as stolen property, and not in any other manner. Section 410 merely specifies the attributes of stolen property which however by themselves do not constitute an offence. Section 410 confined the definition of stolen property only to property which was the actual subject-matter of theft. It excludes all property which the stolen property has been converted into or exchanged for.

2. PERSON DISHONESTLY RECEIVED OR RETAINED

For committing the offence under 411 the accused must have received or retain the stolen property dishonestly. A person cannot be convicted of receiving stolen property if he had no guilty knowledge at the time of receipt. But he is guilty of retaining the same if he subsequently knows or has reason to believe the property was stolen.

3. ACCUSED WAS AWARE OR HAD REASON TO BELIEVE THAT THE PROPERTY WAS STOLEN.

The word 'belief' is a much stronger word than suspect and it involves the necessity of showing that the circumstances were such that a reasonable man must have felt convinced in his mind that the property with which he was dealing must be stolen property. it is not sufficient to show that the accused was careless or he had reason to suspect that the property was stolen or he did not make sufficient enquiry to ascertain if it had been honestly acquired.

It should be noted here that the words 'received' and 'retained' have been used. The section has been very carefully drafted by imposing liability not only on person who receive it dishonestly but on the person who take the property honestly later on after knowing it retain it dishonestly.