

Q-1 What are the ingredients of the offence of theft and also Explain When theft become Robbery?

Ans: 1. Theft

- (i) Definition (Section 378).
- (ii) Punishment (Section 379).
- (iii) Theft in dwelling-house, etc. (Section 380).
- (iv) Theft by clerk or servant, of property in possession of master (Section 381).
- (v) Theft after preparation made for causing death, hurt, or restraint, in order to the committing of theft (Section 382).
- (vi) Distinction between larceny and theft.

Section 378. Theft. - Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent moves that property in order to such taking, is said to commit theft.

Explanation 1. -A thing so long as it is attached to the earth, not being movable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2. -A moving effected by the same act which effects the severance may be a theft.

Explanation 3. - A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it.

Explanation 4. - A person, who by any means causes any animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5. - The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

A thing attached to the earth, after it has been severed may become the subject of theft. The severance and the moving may be affected by the same act, i.e., the mere act of severance may amount to theft. Moving may be actual moving or by removing an obstacle which prevented it from moving or by separating the thing from any other thing. A person who causes an animal to move is said to move that animal and to move everything which is moved by that animal. The consent mentioned in the definition may be express or implied and may be given either by person in possession or by any person having express or implied authority for that purpose (Section 378).

Illustrations

(a) What offence if any is committed by A, A, under stress of hunger, steals money to buy food (Ans: theft; stress of hunger does not come under general exception]

(b) A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession without Z's consent. Here, as soon as A has severed the tree in order to such taking he has committed theft.

(c) A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it. Here, if A's intention be dishonestly to take the dog out of Z's possession without Z's consent, A has committed theft as soon as Z's dog has begun to follow A.

(d) A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure as soon as the bullock begins to move. A has committed theft of the treasure.

(e) A being Z's servant, and entrusted by Z with the care of Z's plate dishonestly runs away with plate, without Z's consent. A has committed theft

(f) Z, going on a journey, entrusts his plate to A, the keeper of a warehouse till Z shall return. A carries the plate to a goldsmith and sells it. Here the plate was not in Z's possession. It could not therefore be taken out of Z's possession, and A has not committed theft, though he may have committed criminal breach of trust. And a ring belonging to Z on a table in the house which Z occupies. Here the ring is in Z's possession, and if A dishonestly removes it, A commits theft,

Ingredient for theft.- five factors are essential to constitute theft-

- (1) Dishonest intention to take property.
- (2) The property must be movable.
- (3) Such property should be taken out of the possession of another person.
- (4) There must be some moving of property in order to such taking.

(5) It should be taken without the consent of that person. It is an essential element of offence of theft that the movable property should have been moved out of the possession of any person without his consent. That is possible only if the person moving the property had taken it out of the possession of the person concerned and transferred it to his own possession in order to move it for the purpose of taking it dishonestly. It follows that transfer of possession of the property, however transient, is an essential ingredient of an offence of theft.

Dishonest intention. - Intention is the gist of the offence. The taking will not amount to theft unless the intention with which it is taken is dishonest. If it is not taken dishonestly it will not amount to theft. It must be taken with the intention to cause wrongful gain to one person and wrongful loss to another. Both, wrongful gain and wrongful loss need not be caused; either is sufficient. Since the definition of theft requires that the moving of property is to be in order to such taking, "such" meaning intending to take "dishonestly" the very moving out must be with the dishonest intention. If you take away a thing believing it to be your own you do not take it away with any of the intentions mentioned above and though wrong may thereby be caused, i.e., irrespective of such consequence, the act will not amount to theft because the intention behind is not to take it away dishonestly. It is not theft to take a man's stick out of his hand to beat him.

Section 390. Robbery.-In all robbery there is either theft or extortion. Theft is "robbery" if, in order to committing of the theft, or in committing the theft or in carrying away or attempting to carry away property obtained by the theft the offender for that end, voluntarily causes or attempts to cause to any person, death or hurt or wrongful restraint or fear of instant death, or of instant hurt, or of instant wrongful restraint.

Extortion is "robbery" if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion

by putting that person in fear of instant death, or of instant hurt, or instant wrongful restraint to that person or to some other person and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Explanation. – The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, or instant hurt, or instant wrongful restraint.

Illustrations

(a) A holds Z down, and fraudulently takes Z's money and jewels from Z's clothes without Z's consent. Here, A has committed theft, and, in order to the committing of that theft has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.

(b) A meets Z on the high road, shows a pistol, and demands Z's purse. Z, in consequence, surrenders his purse. Here, A has extorted the purse from Z by putting him in fear of instant hurt, and being at the time of committing extortion in his pressure. A has therefore committed robbery.

(c) A meets Z and Z's child on the high road. A takes the child and threatens to fling it down a precipice, unless Z delivers his purse. Z, in consequence, delivers his purse. Here, A has extorted the purse from Z, by causing Z to be in fear of instant hurt to the child who is there present. A has therefore committed robbery on Z.

(d) A obtains property from Z by saying-"Your child is in the hands of my gang, and will be put to death unless you send us ten thousand rupees". This is extortion, and punishable as such but it is not robbery, unless Z is put in fear of instant death of his child.

Two persons, A and B entered the same compartment as the complainant had boarded. When the train reached the station some of the travellers started getting down from the compartment and there was a great rush in which A forcibly took away the wrist watch of the complainant and when the complainant raised alarm B slapped him and the other companions of A and B who also had boarded the train with him beat the complainant with a stick. It was argued that as B slapped the complainant after the watch had been stolen by A, it could not be said that hurt was caused to the complainant in order to commit the theft or in committing the theft so as to make out an offence of robbery as defined in Section 390. According to Section 390, theft is robbery, if in order to the committing of the theft, or in carrying away or attempting to carry away property obtained by theft, the offender, for that end, voluntarily causes or attempts to cause hurt. After the complainant, had been relieved of his watch by A, B slapped the complainant at a time when A was trying to carry the watch in order to enable A to do so. The hurt thus caused fell within the purview of Section 390, I.P.C.

Q-2 Distinguish between Criminal breach of trust and dishonestly misappropriation of property Give Illustrations?

Ans:- Criminal Breach of Trust

- (i) Nature of;
- (ii) Aggravated forms;
- (iii) *Queen-Emprss v. Moss and others.*

Section 405. Criminal breach of trust, definition.- 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".

Illustrations

(a) A, being executor to Will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the Will, and appropriates them to his own use. A has committed criminal breach of trust.

(b) A is a warehouse keeper, Z going on a journey entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse-room. A dishonestly sells the goods. A has committed criminal breach of trust.

(c) A, residing in Calcutta, is agent of Z, residing at Delhi. There is an express or implied contract between A and Z, that all sums remitted by Z to A shall be invested by A, according to Z's direction. Z remits a lakh of rupees to

A, with directions to A to invest the same in Company's papers. A dishonestly disobeys the directions and employs the money in his own business. A has committed criminal breach of trust.

Section 406. Punishment for criminal breach of trust. - Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Ingredients.-The essential ingredients of the offence of criminal breach of trust are :

(i) The accused must be entrusted with property or with dominion over it;

(ii) The person so entrusted must use that property, or

(ii) He must dishonestly use or dispose of that property or wilfully suffer any other person to do so in violation

(a) of any direction of law prescribing the mode in which such trust is to be discharged; or

(b) of any legal contract made touching the discharge of such trust.

Entrustment.-For the offence of criminal breach of trust the first essential ingredient to be proved is that the property was entrusted. However, Section 405 does not contemplate the creation of a trust with all the technicalities of the law of trust.' In order to constitute a legal entrustment-

(1):the complainant must be the owner of the property; (2) there must be a transfer of possession; (3) such transfer must be an actual transfer and not a fictional or notional one; (4) such transfer must be made to somebody who has no right except that of a custodian; and (5) such entrustment may be made to a person and not to a company or firm. These are the *Panch Sheel* of a legal entrustment within the purview of Section 405, I.P.C.?

Dishonest misappropriation, conversion, use or disposal. – Before a person can be convicted of criminal breach of trust, it must be proved firstly, that there was an entrustment of property or a dominion over property secondly, that there was dishonest misappropriation or conversion by a person to his own use of that property or that there was dishonest use or disposal of that property in violation of any direction of law prescribing the mode in which trust was to be discharged, or of any legal contract, express or implied, which he has made, touching the discharge of such trust, or that he wilfully suffered any person to do so. It must also be proved that there was dishonest misappropriation or conversion or dishonest use or disposal of property, etc.

In the case of *Madho Singh v. Kamla Devi*, Bombay High Court observed that if there is an agreement upon which certain acts have been done, the violation of such agreement will create civil as well as criminal liability. In the present case the respondent, husband was a member of housing society and entered into an agreement with society whereby society agreed to sell a plot measuring 3,600 Sq. ft. for the sum of rupees 12,200/-. Money was paid. After the death of husband wife was substituted but half of the plot was sold to another person by the society. It was held that act is in violation of Section 405 of I.P.C.

misapplication by the accused of the property entrusted to him. Dishonest misappropriation may not ordinarily be a matter of direct proof; entrustment of property and failure, in breach of an obligation, to account for the property entrusted may in the light of other circumstances, justifiably lead to an inference of dishonest misappropriation or conversion. Conviction of a person for breach of trust may not, in all cases, be founded on his failure to account for the to account or render an explanation for his failure to account which is untrue, an inference of misappropriation with a dishonest intention may readily be made.

The accused was the secretary-cum-salesman of the Co-operative Society and as such used to be entrusted with the amount belonging to the Society. The accounts were hacked and a sum of money was found short. The accused was given a week's time to make good the shortage and on his failing to do so he was prosecuted and convicted of an offence under Section 408, I.P.C. It was disclosed from the evidence of the prosecution witnesses that the shortage was the fact that the accused had given some money to the President of the Co-operative Society who often used to take money from the accused and also fact that he had purchased one truck load of wheat for another member of the society. It was held that the accused had thus wilfully suffered the said persons to commit dishonest misappropriation or conversion of the Society's money to their own use. Therefore, under Section 405, the accused dishonestly misappropriated and wilfully suffered these persons to convert to their own use the property of the Society. As such the intention to misappropriate the money belonging to the principal, i.e., the Co-operative Society of which the accused was the agent was there. In *A.J.E.G. Caspersz v. The King* an engineer was held to be guilty of dishonest misappropriation even though, he prepared false bills and made false entries in order to construct a military road essential for military purpose. Even then the action of the engineer was held to amount to

criminal breach of trust therefore, however laudable an object may be one is guilty of criminal breach of trust if he wilfully suffers somebody to make a wrongful gain to himself so as to cause wrongful loss to his principal.

Criminal breach of Trust and Criminal Misappropriation:

Distinction between

In criminal misappropriation, the property comes into possession through some chance, in criminal breach of trust, the property come into possession as a lawful entrustment.

Theft, Criminal Misappropriation and Criminal Breach of Trust:

Distinction between

(i) In theft the offender is not in possession of the property which he moves out of the possession of another intending to take it dishonestly; but in the other two offences, herein been distinguished, the property is already in the possession of the offender and the wrong consists in dishonest user, not in possession which is lawful.

(ii) In criminal breach of trust there is an entrustment of property, express or implied, with the offender and he stands in a fiduciary capacity but in criminal misappropriation the property may come into the possession of the offender anyhow but not unlawfully, while in theft the possession of the property by the offender if he succeeds in taking it, is and remains unlawful.

(iii) In theft the property is taken without consent of the person in possession of it: in criminal breach of trust its possession the offender is with consent, while in criminal misappropriation such possession is neither with nor without the consent of the person who is the lawful owner or possessor of such property but the possession is nevertheless not unlawful.

(iv) In criminal breach of trust there is a contractual relationship of the offender with regard to the property which he holds subject to some duty or obligation to apply it according to the trust but he dishonestly misappropriates or suffers it to be applied contrary to such trust instead of discharging the trust. In criminal misappropriation there is no such relationship of trust and where the person entitled to the property is not traceable the property in question may be lawfully retained and used by the finder thereof as if such property were really his without being guilty of criminal misappropriation but any dishonest user contrary to the trust would amount to criminal breach of trust under any circumstances.

(v) Theft is committed only in respect of movable property. There is a conflict of opinion on the point whether criminal breach of trust can be committed in respect of immovable property. Section 405 which defines criminal breach of trust, does not use any qualifying expression for the term "property" used therein. The Bombay High Court has held that the word "property" in this section refers only to movable property and immovable property is not meant thereby, hence a person could not be convicted of misappropriating the house of a deceased person. The Allahabad High Court

has held that immovable property can also become the subject of criminal breach of trust.? The Calcutta High Court has held that criminal breach of trust cannot be committed in respect of immovable property.³ The Madras High Court has observed that the view of the Calcutta High Court, as expressed in this case, is based on the general assumption that if a person cannot move a thing away he cannot convert it to his own use and such assumption may be correct in the majority of cases but the language of Section 405 is very comprehensive and it is dangerous to lay down any absolute rule. Criminal misappropriation can, according to the language of Section 403, be committed only in respect of movable property. Dishonest intention is a common element of theft, criminal misappropriation and criminal breach of trust.

Q-3 Write short Notes on Any two of the following:-

A-Dacoity:-

Section 391. Dacoity.-When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "dacoity".

Where the accused and his companions who numbered five or more than five attempted to commit robbery at the house of A, but on a hue and cry being raised took to their heels without committing robbery, the offence of dacoity was completed the moment they took to their heels without any booty. There was attempt to commit robbery and the accused would be guilty of an offence of dacoity and would be punishable under this section.

Section 392, Penalties-Punishment for robbery.- Whoever commits shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and if the robbery be committed on the highway between sunset and sunrise, the imprisonment may extend to fourteen years.

It has been held by the Supreme Court that the Court should not get swayed by the manner of perpetration of crime while dealing with a crime of robbery with murder.

In *Ezhil v. State of Tamil Nadu*, the facts of the case were that the accused In were charged for offences against Section 364. 392 and 302 read with Sections 34 and 120 B of the Indian Penal Code. The Supreme Court held that keeping in view the proximity of time within which act of murder was supposed to be committed and body found and the articles recovered from possession of Coed presumption can be drawn not only of the fact that they were in the possession of the stolen articles after committing robbery but also committed the paser of the deceased. Therefore, conviction of the accused persons under mirae 202 and 392 read with Section 34 was proper.

Section 393, Attempt to commit robbery.-Whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Section 395. Punishment for dacoity-Whoever commits dacoity shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine,

In a case having regard to the peculiar circumstances of ascertaining of *bona fide* claim of right by the accused persons Supreme Court awarded only three years' rigorous imprisonment. In another case considering the young age of the accused persons and that they made no attempts to cause injury to any person at the time of commission of offence Supreme Court reduced the sentence to imprisonment of one and half years already undergone by the accused In a recent case of *Suryamurti v. Gobinda Swami*, the Supreme Court observed that to constitute the offence of dacoity the person must have apprehended the danger to instant death, instant hurt or instant wrongful restraint.

Violence of Robbery.--The mere use of violence will not convert theft into robbery. The use of violence must be for one of the following four ends-

- (1) it must be used in order to commit theft, or
- (2) it must be used in committing theft, or
- (3) it must be used in carrying away stolen property, or
- (4) it must be used in attempting to carry away stolen property.

The definition of the offence of robbery includes both the offence and the attempt to commit it. Thus, where theft could not be committed but force was used in an attempt to commit it or where theft was committed but the property could not be carried away and force was used in an attempt to do so, i.e., to carry away the property, it would be robbery no less than it were if the attempt had been successful. If force is used for any other purpose, it will not convert theft into robbery. Suppose a thief is pursued by the owner. The thief leaves the property after some distance but the owner does not give up the pursuit. The thief in order to escape capture, throws stones at him, or others if any joining in the pursuit; we have here theft as well as the use of criminal force. Will it amount to theft? The answer is 'no', even if hurt is caused, because the hurt that is caused is to avoid capture and not to carry away stolen property which has already been abandoned.

Then again such use of violence must be voluntary. An act is said to be voluntary when it is intended to be done by the doer of such act, the doer acting as a free agent in intending to do it. This is the popular meaning of the word and the Code also generally uses this word in its popular sense without being affected in material sense by its own definition of the word in Section 39,

which is intended not so much to explain the meaning of the word as to extend criminal liability to consequences of acts no less than to the act themselves while such consequences are either known to the offender or the offender has reason to believe that they are likely to happen.

From the definition of robbery it is quite clear that there should be use of force or attempt to use for the purpose of committing theft or in carrying away or attempting to carry away property obtained by theft. Mere fact that the assault and the theft took place in the same transaction is not enough. The assault must be to facilitate commission of theft.

Even actual assault is not necessary. Only fear of injury is enough. In a case while carrying away the stolen property accused persons, exploded cracker to frighten the inmates of the house who wanted to pursue them. Conviction for dacoity was upheld. In another case the accused persons actually brandished deadly weapons and threatened and asked not to interfere with their fishing Here also conviction for dacoity was found justified)

Aggravated forms of Robbery and dacoity

Section 394. (i) *Voluntarily causing hurt in committing robbery* - If any person, in committing or in attempting to commit robbery voluntarily causes hurt, such person and other person jointly concerned in committing or attempting to commit such robbery, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Section 396. (ii) *Dacoity with murder.* - If any one of five or more persons who are conjointly committing dacoity, commits murder in so committing dacoity, even one of those persons shall be punished with death or imprisonment for life, or rigorous imprisonment which may extend to ten years and shall be liable to fine.

Where having made their escape, after attempting to commit robbery but without actually committing it the accused were still chased by the villagers and when they were some considerable distance away, one of the accused was caught and to effect his release, the other accused fired a pistol and killed the chaser, the offence of murder was not one committed in committing dacoity within the meaning of this section.

(ii) *Robbery or dacoity with attempt to cause death or grievous hurt.* - If the offender uses any deadly weapon at the time of committing robbery or dacoity or causes or attempts to cause death or grievous hurt to any person, the minimum punishment for such offender shall be rigorous imprisonment for seven years (Section 397).

The Supreme Court discussing the gravity of Section 397 of the Indian Penal Code, in the case *Polhakamury Srinivasulu v. State of Andhra Pradesh*, held that the accused can safely be held responsible for causing grievous injuries to deceased and also responsible for removing the earstuds under Section 397 of the Indian Penal Code

A person carrying a sword touched the palm of the victim with the tip of his sword and lifted Rs. 3.85 from his palm. The offence amounted to an offence under Section 397.

(iv) *Attempt to commit robbery or dacoity when armed with deadly weapon.* - In cases where the offender is armed with a deadly weapon when

attempted to commit robbery or dacoity but such weapon is not used the law views the fact of being so armed with the same degree of severity as if such weapon had been used and the punishment in such case for such offender also shall not be for less than seven years (Section 398).

If any one of the dacoits or robbers commits murder or voluntarily causes hurt, every one of them shall be equally liable for such death or hurt. It does not matter whether any one of them was inside the place where the dacoity was committed or outside it when murder was committed or hurt was caused. It is not necessary that it should be committed in the presence of all. The law in this respect is based on the principle enunciated in the law relating to joint offender discussed in the second chapter of this book and is subject to the other provisions of such law. The position is, however, different where only one offender is armed with a deadly weapon in which case the person actually so armed is punishable with a heavier penalty while others are not. The view of the Calcutta, Bombay and Punjab High Courts is that the words "offender" and "such offender" in Sections 397 and 398 refer only to persons who have been actually armed with deadly weapons and not to others who in combination with other persons have committed robbery or dacoity and Section 34 may be read with Sections 392 to 395 but it has no application to Section 398, and presumably also as it may be said from observations to such effect of these High Courts, to Section 397.

(2) **Mischief:- Mischief**

(i) Definition;

(in) Mischief and its various forms- Penalties for.

(i) Section 425. Mischief defined.-Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, cause the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief".

Explanation 1. - It is not essential to the offence of mischief that the offender should intend to cause loss or damages to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2.-Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

Illustrations

(a) A voluntarily burns a valuable security belonging to Z, intending to cause wrongful loss to Z. A has committed mischief.

(b) A introduces water into an ice-house belonging to Z and thus causes the ice to melt, intending wrongful loss to Z. A has committed mischief.

(c) A voluntarily throws into river a ring belonging to Z with the intention of thereby causing loss to Z. A has committed mischief.

(d) A knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to Z, destroys those effects, with the intention of

thereby preventing Z from obtaining satisfaction of the debt, and thus causing damage to Z. A has committed mischief.

(e) A having insured a ship, voluntarily causes the same to be cast away with the intention of causing damage to the underwriters A has committed mischief,

(f) A causes a ship to be cast away, intending thereby to cause damage to z who has lent money on bottomry on the ship. A has committed mischief

(g) A having joint property with Z in a horse, shoots the horse, intending thereby to cause wrongful loss to Z. A has committed mischief.

(h) A causes cattle to enter upon a field belonging to Z, intending to cause and knowing that he is likely to cause damage to Z's crop. A has committed mischief.

Criminal intent necessary.-A case of mischief under Section 425, 1LP.C.

and criminal trespass under Section 441, IPC., are essentially governed with a criminal intent to cause wrongful loss or damage to person, or a criminal intent to commit any offence, to intimidate any person in possession of a property. If facts are made out indicating a bona fide exercise of a civil right and no criminal intent can be proved, the two offences cannot be brought home.

Ingredients. - The essential ingredients of mischief are as follows

(1) intention or knowledge of the likelihood to cause wrongful loss or damage to the public or to any person

(2) causing the destruction of some property or any change in it or in its situation, and

(3) such destruction or change must destroy or diminish its value,

Mischief requires the intention of a person to cause wrongful loss or damage to general public or any person. Mischief may also be created by a person with change of situation of property with intention to injure to another person. In the case of *Nagendra Nath Roy v. Bijoy Kumar Das Verma*, the Court held that mere negligence is not mischief. Negligence followed with intention to cause wrongful loss or damage will amount to mischief.

The offence of mischief may be committed with reference to both movable well as immovable property. But in cases of movables when the offences of little nature say theft, robbery, extortion etc. are committed, there would be scope for application of mischief. Mayne says, "thus one who has stolen a sheep cannot be charged with mischief if he has changed the sheep into mutton by killing it".

Explanation 1 and Illustrations (e) and (t) make it clear that it is not necessary that property destroyed should belong to the person injuriously affected.

According to Explanation 2 and Illustrations (b) and (g), a person who destroys his own property, with the intention of causing or knowing that it is likely to cause wrongful loss or damage to anybody else is guilty of mischief.

illustration

(i) A landlord cuts off the electric connection of his tenant with a pair of scissors in the presence of his wife as the tenant had refused to pay the enhanced electric charges demanded by him. The landlord and his wife both were tried under Section 429 and convicted of the same. The Supreme Court held that the cutting off of the electric connection, which was done with intention of causing wrongful loss to the opposite parties and the same resulted in causing such destruction of the property or such change in property or diminution in its value or utility so as to clearly come within the definition of Section 425.

(ii) X, by removing bricks from the wall of a mosque on both sides caused wrongful loss to the Mohammedan public and, therefore, committed an offence of mischief.

(iii) The accused installed an oil engine on his property and his neighbour complained that his property was damaged by reason of vibrations from the engine. The Court held that the offence of mischief was not committed

(iv) Where an accused trespasses into an educational institution, burns its records and books, threatens its staff with evil consequences and puts a bomb therein, the object obviously is to create a scare so that neither the teaching staff nor the pupils would dare to attend it for prosecution of studies. These acts constitute not merely mischief under Section 425 but also constitute mischief which would disturb public order.

(ii) Mischief and its various forms-Penalties for

(i) Section 426. Punishment for mischief.- Whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both

(ii) Scope and application.-- This section prescribes the punishment for the offence of mischief defined in the preceding section

In case of mischief, the master cannot be held vicariously liable for any damage caused by his servant. Where the driver driving a lorry with defective brakes knew that he was likely to cause damage to any person though there could not be any damage to any particular person, the section would apply.

(ii) Section 427. Mischief causing damage to the amount of fifty rupees.-

Whoever commits mischief and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both

Ingredients of offence. - The essential ingredients of the offence under Section 427 are as follows:

(1) Accused committed mischief;

(2) Such mischief caused loss or damage amounting not less than Rs. 50.

(iii) Mischief by killing, poisoning, rendering useless, animal of the value of Rs. 10 or upwards-Imprisonment as under Section 427 (Section 428).

(iv) Mischief by killing, maiming cattle, etc., of any value or any other animal of the value of Rs. 50 or upwards – Imprisonment upto 5 years or fine or both (Section 429).

(v) Mischief by destroying, or moving or rendering less useful a lighthouse or sea-mark or by exhibiting false lights – Imprisonment of either description upto seven years or fine or both (Section 433).

(vi) Mischief by destroying, moving, or rendering less useful any land mark fixed by authority of a public servant-Imprisonment of either description upto one year or fine or both (Section 434).

(vii) Mischief by fire or explosive substance with intent to cause damage to the amount of Rs. 100 or upwards (or in case of agricultural produce Rs. 10 or

upwards-Imprisonment of either description upto 7 years and fine (Section 435).

(viii) Mischief by fire or explosive substance with intent to destroy any building used as a place of worship or human dwelling, or as a place for the custody of property-Imprisonment of either description upto 10 years and fine (Section 436) .

(C) cheating:-

(i) Cheating;

(ii) Cheating by personation;

(iii) Cheating and its aggravated forms- Penalties.

Section 415. Cheating. – Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property, to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation property, is said to "cheat". *Explanation.* – A dishonest concealment of facts is a deception within the meaning of the section.

Illustrations

(a) A, by falsely pretending to be in the Civil Service intentionally deceives Z and dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.

(b) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer and thus dishonestly induces Z to buy and pay for the article. A cheats.

(c) A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.

(d) A, by the tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill be dishonoured, intentionally deceives Z and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.

(e) A, by pledging as diamonds articles which he knows are no diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.

(f) A, intentionally deceives Z, into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, not intending to repay it. A cheats.

(g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. cheats; but A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

(h) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.

(i) A sells and conveys an estate to B. A knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z, without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z, A cheats.

Forms of Extortion. The following are the aggravated forms of extortion : (1) Extortion by putting a person in fear of death or grievous hurt to that person or to any other-imprisonment of either description upto ten years and fine (Section 386).

Where the modus operandi disclosed in the letters from the accused demanding ransom from the father of the boy whom they have kidnapped is by putting him in fright of the boy being murdered and there is throughout the likelihood of the boy being murdered in case the ransom money was not paid for one reason or the other the accused is guilty of the aggravated forms of kidnapping and extortion (Sections 364 and 387).

(2) Putting or attempting to put any person in fear of death or of grievous hurt to himself or to any other in order to commit such offence-Imprisonment of either description upto seven years and fine (Section 387)

(3) Extortion by threat of accusation of an offence punishable with death or imprisonment for life, or ten years' imprisonment or of having attempted to induce any other person to commit such offence for accusation of unnatural

offence under Section 377, I.P.C punishment with imprisonment for life, or with imprisonment upto ten years and fine (Section 388).

(4) Putting or attempting to put any person in fear of an accusation mentioned in Section 388 in order to commit extortion- Punishment under last section (Section 389).

(4) Extortion:-

Section 383. Extortion.-Whoever intentionally puts any person in fear of injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security or anything signed or sealed which may be converted into a valuable security commits "extortion".

Illustrations

A, B's discarded mistress, asks B to return to her. On B's refusal, A tells him that unless he pays her Rs. 10,000 she will get him exposed through a friend who is a newspaper editor. Examine A's liability.

[Ans. : guilty of extortion, see Illustration (a) to Section 383].

(a) A threatens to publish a defamatory libel concerning Z unless Z gives him money. He, thus, induces Z to give him money. A has committed extortion.

(b) A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z to pay certain money to A. Z signs and delivers the note. A has committed extortion.

(c) A threatens to send club-men to plough up Z's field unless Z will sign and deliver to B a bond, binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.

(d) A by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to blank paper and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security, A has committed extortion

The Supreme Court in *Dhananjay Kumar Singh v. State of Bihar*, held that in order to convict a person under Section 384 of Indian Penal Code, it is necessary that following ingredients must be proved by prosecution. Those are: (i) the accused must put any person in fear of injury to that person or any other person; (ii) the setting of a person in such fear must be intentional; (3) the accused must thereby induce the person so put in fear to deliver to any person any property, valuable security or anything signed or sealed which may be converted into a valuable security; (4) such inducement must be done dishonestly.

Section 384. Punishment for extortion.- Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Illustration

A cloth seller was threatened with the imposition of a fine if he continued to sell foreign cloth. He continued to sell such cloth. His shop was picketed for two hours to enforce the payment of fine. He lost some business as a result of picketing which induced him to pay the fine. It was held that the person responsible for the picketing was guilty of extortion. It is not necessary that the delivery of the property is made to the offender himself; it may be made to any

dean as directed or desired by the offender. Likewise the threat may not be of injury directly to the person put in fear but to some other person in whom the person put in fear may be interested in any manner so as to be moved to act to protect such other person from the threatened injury. The offence of extortion is committed by over-powering the Will of the owner or possessor of property as the case may be. In theft it is necessary that the property which is the subject matter of theft is in possession of some person, it being taken out from whose possession constitutes the offence, such other person may or may not be the owner thereof. Extortion may be committed on a person who may not be in possession of the property but who being owner or otherwise authorised is capable of affecting a transfer thereof by delivering anything signed or sealed. The expression "injury" has been defined in Section as meaning any harm whatever illegally caused to any person in body, mind, reputation or property. The injury contemplated must be one which the accused himself can inflict or cause to be inflicted, and a threat of divine punishment is not such an injury.!

The Law Commissioners who drafted the Code observed as follows : "We conceive that it will be a question for the Court whether the injury threatened was such as was likely to produce the effect intended, and whether under the circumstance the party was really put in fear, believing the injury to be inevitable, if he did not comply". Nothing can be said to be an injury unless it is either an offence or a civil wrong a harm which may be legally caused is not an injury. The age, sex and situation of the person threatened must be taken into consideration in deciding whether such person could be frightened by the threat in question. To constitute the offence it seems necessary that the person threatened should be actually put in fear. Accused persons surrounded victims and extorted certain amount as price for sparing them. This amount was paid to accused. No evidence of any property having been looted by accused. Accused persons were liable under Section 381/149, I.P.C)

Forms of Extortion. The following are the aggravated forms of extortion : (1) Extortion by putting a person in fear of death or grievous hurt to that person or to any other- imprisonment of either description upto ten years and fine (Section 386).

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(3) Extortion by threat of accusation of an offence punishable with death or imprisonment for life, or ten years' imprisonment or of having attempted to induce any other person to commit such offence for accusation of unnatural offence under Section 377, I.P.C punishment with imprisonment for life, or with imprisonment upto ten years and fine (Section 388).

(4) Putting or attempting to put any person in fear of an accusation mentioned in Section 388 in order to commit extortion- Punishment under last section (Section 389).