AILET

Offences Against Property (IPC Notes): Cheating, Mischief and More

Aditya Anand · 08 Apr 2020

Offences Against Property (IPC Notes): Cheating, Mischief and More

Criminal Misappropriation

Principle: *Whoever dishonestly misappropriates or converts to his own use any movable property shall be guilty of the offence of criminal misappropriation.*

Following are the essential ingredients of criminal misappropriation:

1. It is important that the accused has misappropriated the property or converted the property to his own use another's movable property i.e. either the accused sets aside the property for one's use and to the exclusion of others which is against the interest of the real owner or he sets aside and use the property according to his wish as if it is his own property. Therefore, if the accused merely retains the property he shall not be guilty of criminal misappropriation; he shall only be liable when he further appropriates or converts it for his own use. However, even if appropriation or conversion is only for a temporary period it will still amount to criminal misappropriation.
2. The accused should have dishonest intention i.e. the intention to cause wrongful gain to him or wrongful loss to another.

To constitute the offence of criminal misappropriation, it is required that the property so appropriated or converted should be owned by somebody and it should have come into the possession of the accused legally or in good faith believing to be his own. If a person finds a property he should exercise all the reasonable means to find the true owner and wait for a reasonable period of time before converting it for one's use.

A partner or joint owner shall not be liable for the offence of criminal misappropriation if he takes the property out of the possession another.

Criminal Breach of Trust

Principle: ***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"***

Following are the essential ingredients of criminal breach of trust:

1. Entrustment or control over the property: there should be entrustment of property whether movable or immovable by one person to another. Entrustment implies voluntarily passing on custody or management of the property for some specific purpose under a trust.
2. Dishonest misappropriation or conversion to one's use: the accused with the dishonest intention either to cause wrongful gain to oneself or wrongful loss to another misappropriates, converts, uses or disposes of the property for any purpose other than that specified under entrustment shall be liable for criminal breach of trust. Mere retention of the property without misappropriation does not amount to criminal breach of trust.
3. The appropriation of the property so entrusted must be either in violation of a contract whether express or implied or in violation of the direction of law.

Cheating

Principle: ***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 or property, is said to "cheat"***

Following are the essential ingredients of cheating:

1. Deception: the word 'deceive' means to cause someone to believe what is false or mislead or trick him to some error by words or conduct. However, a simple misrepresentation of the quality of goods is not a false pretence i.e. untrue praise of goods meant for sale does not amount to cheating.

2. Dishonest or fraudulent intention: the person so deceiving must dishonestly i.e. intention to do wrongful loss or have a wrongful gain or fraudulently i.e. intention to injure any unascertained property or person induce any person to deliver any property or to do some act or omit to do anything which the person so deceived otherwise would not have done. The dishonest intention must accompany the dishonest act i.e. a dishonest intention cannot be drawn merely from the fact that a person was subsequently unable to fulfil his promise due to change of events. To constitute cheating it is required that the person under deception delivers the property or does or omits to do the act which is detrimental to his interest.
3. Causes damage or harm: there should be causation or likelihood to cause damage or harm to the mind, body, property or reputation of the person so deceived and not to any other person. However, the damage caused should be under the influence of deceit and it should not be too remote

Mischief

Principle: ***Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes 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"***

Following are the essential ingredients of mischief:

1. Destruction of property: the essence of the offence of mischief is that the accused must cause destruction of property either in total i.e. by causing complete destruction of property or partially i.e. destroying or diminishing the utility of the property or by changing its situation. Such property must be tangible which can be destroyed by the use of force.
2. Wrongful loss: damage or wrongful loss may be caused to any public property e.g. buses, railways etc or it can be to any person or private property. A man may commit mischief on his own property to cause wrongful loss to someone e.g. a man may put fire to his house in order to claim money from the insurance company.
3. Intention or knowledge: wrongful loss to the property or person must be committed with the intention or knowledge to do such an act. If a person commits mischief in the exercise of a bona fide claim or right, he shall not be guilty of the offence. Mischief involves mental act with destructive animus.

Read our previous post on offences against property (ipc notes) here.

Take our test on offences against property (ipc notes) here.

Read our post on the Landmark Judgements of 2019-2020.

Read our post on Elements of Crime.

Read CLATapult's post on offer and acceptance here. Also, try their mocks for more legal reasoning practice questions.