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[No. 50.] *Criminal Justice (Theft and Fraud Offences) Act, 2001.* [2001.]

PART 2

THEFT AND RELATED OFFENCES

Theft.

4.—(1) Subject to *section 5*, a person is guilty of theft if he or she dishonestly appropriates property without the consent of its owner and with the intention of depriving its owner of it.

(2) For the purposes of this section a person does not appropriate property without the consent of its owner if—

- (a) the person believes that he or she has the owner's consent, or would have the owner's consent if the owner knew of the appropriation of the property and the circumstances in which it was appropriated, or
- (b) (except where the property came to the person as trustee or personal representative) he or she appropriates the property in the belief that the owner cannot be discovered by taking reasonable steps,

but consent obtained by deception or intimidation is not consent for those purposes.

(3) (a) This subsection applies to a person who in the course of business holds property in trust for, or on behalf of, more than one owner.

(b) Where a person to whom this subsection applies appropriates some of the property so held to his or her own use or benefit, the person shall, for the purposes of *subsection (1)* but subject to *subsection (2)*, be deemed to have appropriated the property or, as the case may be, a sum representing it without the consent of its owner or owners.

(c) If in any proceedings against a person to whom this subsection applies for theft of some or all of the property so held by him or her it is proved that—

- (i) there is a deficiency in the property or a sum representing it, and
- (ii) the person has failed to provide a satisfactory explanation for the whole or any part of the deficiency,

it shall be presumed, until the contrary is proved, for the purposes of *subsection (1)* but subject to *subsection (2)*, that the person appropriated, without the consent of its owner or owners, the whole or that part of the deficiency.

(4) If at the trial of a person for theft the court or jury, as the case may be, has to consider whether the person believed—

- (a) that he or she had not acted dishonestly, or
- (b) that the owner of the property concerned had consented or would have consented to its appropriation, or
- (c) that the owner could not be discovered by taking reasonable steps,

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the presence or absence of reasonable grounds for such a belief is a matter to which the court or jury shall have regard, in conjunction with any other relevant matters, in considering whether the person so believed. Pt.2 S.4

(5) In this section—

“appropriates”, in relation to property, means usurps or adversely interferes with the proprietary rights of the owner of the property;

“depriving” means temporarily or permanently depriving.

(6) A person guilty of theft is liable on conviction on indictment to a fine or imprisonment for a term not exceeding 10 years or both.

5.—(1) Where property or a right or interest in property is or purports to be transferred for value to a person acting in good faith, no later assumption by that person of rights which that person believes himself or herself to be acquiring shall, by reason of any defect in the transferor’s title, amount to theft of the property. Exceptions to theft.

(2) A person cannot steal land, or things forming part of land and severed from it by or under his or her directions, except where the person—

(a) being a trustee, personal representative or other person authorised by power of attorney or as liquidator of a company or otherwise to sell or dispose of land owned by another, appropriates the land or anything forming part of it by dealing with it in breach of the confidence reposed in him or her, or

(b) not being in possession of the land, appropriates anything forming part of the land by severing it or causing it to be severed, or after it has been severed, or

(c) being in possession of the land under a tenancy or licence, appropriates the whole or part of any fixture or structure let or licensed to be used with the land.

(3) For the purposes of *subsection (2)*—

(a) “land” does not include incorporeal hereditaments,

“tenancy” means a tenancy for years or any less period and includes an agreement for such a tenancy,

“licence” includes an agreement for a licence,

and

(b) a person who after the expiration of a tenancy or licence remains in possession of land shall be treated as having possession under the tenancy or licence, and “let” and “licensed” shall be construed accordingly.

(4) A person who picks mushrooms or any other fungus growing wild on any land, or who picks flowers, fruit or foliage from a plant (including any shrub or tree) growing wild on any land, does not (although not in possession of the land) steal what is picked, unless he or she does it for reward or for sale or other commercial purpose.