

52. Offences in respect of property. —Any person subject to this Act who commits any of the following offences, that is to say, —

- (a) commits theft of any property belonging to the Government, or to any military, naval or air force mess, band or institution, or to any person subject to military, naval or air force law; or
- (b) dishonestly misappropriates or converts to his own use any such property; or
- (c) commits criminal breach of trust in respect of any such property; or
- (d) dishonestly receives or retains any such property in respect of which any of the offences under clauses (a), (b) and (c) has been committed, knowing or having reason to believe the commission of such offence; or
- (e) wilfully destroys or injures any property of the Government entrusted to him; or
- (f) does any other thing with intent to defraud, or to cause wrongful gain to one person or wrongful loss to another person; shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

NOTES

1. Offences under this section should not be dealt with summarily under [AA.s.80, 83 or 84](#). Before trial is ordered on charges under this section, reference should be made to the DJAG Command concerned: See [Regs Army paras 432 and 458](#).
2. A person charged before a court-martial with an offence under clause (a), (b), (c) or (d) of this section may be found guilty of any other of these offences with which he might have been charged ([AA.s.139\(5\)](#)).
3. Clause (a): —(a) For definition of theft see [IPC.s.378 in part III](#).
(b) 'Any property' means any moveable property.
(c) See [IPC.s.27](#) for the implication of the term "Possession".
4. (a) If the stolen property has been recovered, it should be produced in court and identified by its owner and by any other witnesses who mention it in their evidence. If it has not been recovered its value or approximate value should be entered in the particulars of the charge and proved in evidence so that the court, if it convicts the accused, may add an award of stoppages to its sentence.
(b) where an offender is sentenced by court-martial to be placed under stoppages in respect of any property stolen, etc., by him, due allowance must be made, in enforcing such stoppages, for money, or the value of any property found upon him and appropriated by way of restitution under [AA.s.151](#).
5. Captured enemy property becomes the property of the Government.
6. (a) One of the essential ingredients of the offence of theft is that the property must be taken out of the possession of another person. It is not necessary that the property should have been owned by such person. When a person has the 'physical' or "constructive possession of property, dishonest removal of the same from the possession of such person without his consent constitutes theft.
(b) Stealing from a person subject to military law is regarded as a particularly disgraceful military offence, considering that in the daily routine of barrack life, persons must constantly leave exposed their arms, uniform and equipment as well as their private property, such as money, watches, etc., trusting to the honour of their comrades.
7. For the presumptions which a court may draw in respect of recent possession of stolen property, see [IEA.s.114](#) illustration (a).

8. If the property belongs to some person or institution not included in the categories contained in this clause, the accused can only be charged under [AA.s.69](#) or [52\(f\)](#) or dealt with by the civil power.
9. Every instance of theft should be laid as a separate charge unless they form part of the same transaction.
10. Clause (b): (a) For civil offence of criminal misappropriation see [IPC.s.403 \(Part III\)](#).
 (b) 'Any property' means any moveable property.
 (c) For definition of 'dishonestly' see [IPC.s.24](#). Also see [IPC.s.23](#).
11. (a) 'To misappropriate' means to set apart for or to assign to the wrong person or a wrong use.
 (b) 'Converts to his own use'. —There must be actual conversion of the thing appropriated to the use of some person other than the person entitled thereto. Mere retention of property would not warrant a conviction under this clause; unless there is evidence that the accused used that property; for instance when a clerk received certain sums on various dates but entered them in the accounts on each occasion some days after and it was found that the clerk was not in difficulties and did not use the amount, the mere retention by him of the money for some days would not constitute an offence under this clause.
12. Difference between theft and criminal misappropriation. —In theft the object of the offender always is to take property which is in the possession of a person out of that person's possession; and the offence is complete as soon as the offender has moved the property in order to dishonest taking of it. In criminal misappropriation, the offender is already in possession of the property; and is either innocently or lawfully in possession of it, because either he has found it or it is entrusted to him, or his possession, if not strictly lawful, is not punishable as an offence because he has acquired it under some mistaken notion of right in himself or of, consent given by another. It is the dishonest misappropriation or conversion to his use that constitutes the offence.
13. (a) A mere error or irregularity in accounts or a mistaken mis- application of property does not constitute an offence under this clause. There must be an intent to defraud on the part of the accused either for the benefit of himself or some other person. This must be particularly remembered in the case, for example, of an NCO's accounts getting into confusion through the neglect or carelessness of his superiors. Neglect or failure to supervise that the account is maintained strictly according to service regulations frequently leads to loss of funds and property, and also exposes the subordinates to grave temptation in relation to their accounts.
 (b) To secure a conviction on a charge under this clause it is not necessary for the prosecution to prove that the accused intended permanently to deprive the public or other owner of the property, provided the court is satisfied that the accused or some other person benefited and that the owner of the property suffered. In other words, a person may still be guilty of the offence, even though he has repaid the money which he had misappropriated, provided that at the time of such misappropriation he had a dishonest intent. The term 'dishonest misappropriation' includes temporary as well as permanent misappropriation of that description. See [IPC.s.403](#) explanation 1.
 (c) If no evidence is forthcoming as to the particular mode of misappropriation, the court may, in the absence of explanation from the accused, infer that the property was misappropriated from the fact of its not having been properly utilised or accounted for.
14. Each instance of misappropriation should be in a separate charge unless they all form part of the same transaction.
15. The value of the property alleged to have been misappropriated should be entered in the particulars of the charge and proved in evidence so that the court, if it convicts the accused, may award stoppages.
16. Clause(c):Criminal breach of trust; for definition, see [IPC.s.405](#).
17. (a) To constitute an offence under, this clause, there must be dishonest misappropriation by a person in whom confidence is placed as to the custody or management

of the property in respect of which the breach of trust is charged. There must be an entrustment which, in its most general significance, imports a handing over the possession for some purpose which may not imply the conferring of any proprietary right at all.

(b) A person is said to be entrusted with dominion over property when it remains legally in the owner's possession but he is given a limited authority to deal with it.

18. Criminal misappropriation and criminal breach of trust :- In criminal misappropriation the property comes into the possession of the offender by some casualty or otherwise, and he, afterwards misappropriates it. In the case of criminal breach of trust the offender is lawfully entrusted with the property and he dishonestly misappropriates the same or wilfully suffers any other person to do so, instead of discharging the trust attached to it.

19. Clause (d): Dishonestly—See [IPC.s.24](#). Also see [IPC.s.23](#).

20. The offence of dishonestly receiving property under this clause has practically the same meaning as under [IPC.s.411](#) except that this clause is only limited to property of the description mentioned in clause (a).

21. Receives or retains.—A person cannot be convicted of receiving if he had no guilty knowledge at the time of receipt. But he is guilty of 'retaining' if he subsequently knows or has reason to believe that the property was obtained by theft, criminal misappropriation or criminal breach of trust. The offence of dishonest retention may be completed without any guilty knowledge at the time of receipt. A person who is proved to have stolen etc., property cannot be convicted of retaining it.

22. Clause (e): Wilfully destroys or injures.—A charge for destroying or injuring the property here mentioned must be laid under this clause, and not under [AA.s.69](#). The prosecutor must adduce evidence which will either prove, or enable the court to infer, that the injury was not accidental or done by some other person. If the injury appears to be the result of neglect, it will be for the court to determine whether the neglect was wilful and intended to injure the property, or was mere carelessness. In the latter case no offence under this clause would be committed.

The pecuniary amount of damage or injury caused must be stated in the particulars of the charge and proved in evidence by calling an expert witness if necessary, to enable 'the court to award stoppages in case of conviction.

23. Clause (f): 'Does any other thing'.—An act or omission which would fall under any other clause or any other section of AA should not be made the subject matter of a charge under this clause. But in doubtful cases, the charge should be laid under this clause.

24. (a) 'With intent to defraud'. —A person is said to do a thing fraudulently if he does that thing with intent to defraud but not, otherwise. [IPC.s.25](#)

(b) The terms 'fraud' and 'defraud' are not found defined in the IPC. The word 'defraud' is of double meaning in the sense that it either may or may not imply deprivation. Whenever the words 'fraud' or 'intent to defraud' or 'fraudulently' occur in the definition of a crime two elements at least are essential to the commission of the crime; namely first, deceit or an intention to deceive or in some cases mere secrecy; and secondly, either actual injury or possible injury or an intent to expose some person either to actual injury or to a risk of possible injury by means of that deceit or secrecy. This intent is very seldom the only or the principal intention entertained by; the fraudulent person, whose principal object in nearly every case is his own advantage. The "injurious deception" is usually intended only as a means to an end, though this does not prevent it from being intentional. A practically conclusive test as to the fraudulent character of a deception for criminal purposes is this; did the author of the deceit derive any advantage from it, which he could not have had if the truth had been known? If so, it is hardly possible that advantage should not have had an equivalent in loss, or risk of loss to some one else; and if so, there was fraud.

(c) A general intention to defraud, without the intention of causing wrongful gain to one person or wrongful loss to another, would be sufficient to support a conviction. In order to prove an intent to defraud & it is not at all necessary that there should have been

some person defrauded, or who might possibly have been defrauded. A person may have an intent to defraud, and yet there may not be any person who could be defrauded by his act. It should, however, be noted that an intent only to deceive is not enough.

(d) When it is material to prove an intent to defraud, evidence may be given of similar offences by the accused.

25 . Wrongful loss or wrongful gain: See [IPC.s.23 \(Part III\)](#).

26. (a) *In order to constitute an offence under this clause, it is not sufficient to couple the description of an act which can bear an innocent construction with an averment of intent to defraud. The act alleged to have been committed with intent to defraud must itself appear from the particulars of the charge to be a wrong act though it need not necessarily amount to an offence under the ordinary criminal law.*

(b) Mere irregularity in accounts, due to incompetence or ignorance of bookkeeping, would not be sufficient under this clause, to constitute an offence as no fraudulent conduct is involved. However acts such as, with intent to defraud, presenting for signature acquittance rolls, containing entries known to be false; or charging money for railway warrants; tickets, or vouchers, to which a person is entitled free of charge, would all amount to offences of a fraudulent nature for the purposes of this clause.