

This section only applies to the offender who actually uses a deadly weapon, or causes grievous hurt.

(2) Attempt to commit robbery or dacoity when armed with a deadly weapon (**s 398**).

Criminal misappropriation.

A person commits 'criminal misappropriation' if he

(1) dishonestly misappropriates or converts to his own use

(2) any movable property (**section 403**). [Two years, or fine, or both.]

The offence is committed though the misappropriation be only temporary. The finder of property is not guilty if he takes it to protect it or to find the owner; but he is guilty, if he appropriates it knowing the owner, or having the means of discovering him, or before using reasonable means to discover him, or not believing it to be his own property, or not believing in good faith that the owner cannot be found (**Explanations 1 and 2**).

This offence takes place when the possession has been innocently come by, but where by a subsequent change of intention, or from the knowledge of some new fact with which the party was not previously acquainted, the retaining becomes wrongful and fraudulent. Thus, retention of money by a servant authorized to collect it from a person may be criminal misappropriation even though he retains it on account of wages due to him.

A person retaining money paid by mistake will be guilty of criminal misappropriation. But there can be no criminal misappropriation of things which have actually been abandoned.

Leading cases:—Bhagiram v Abar Dome. R v Sita. Romesh Chunder v Hiru Mondal.

'Theft' is distinguished from 'criminal misappropriation'—

(1) In 'theft' the property is taken out of the possession of another person and the offence is complete as soon as the offender moves the property. In 'criminal misappropriation' there is no invasion of another's possession. The property is often innocently got into possession.

(2) In 'theft' the dishonest intention must precede the act of taking; in 'criminal misappropriation' it is the subsequent intention to convert or misappropriate the property that constitutes the offence.

There is a difference between 'criminal misappropriation' and 'cheating'. In 'criminal misappropriation' as in 'criminal breach of trust', the original reception of property is legal, the dishonest conversion takes place subsequently. In 'cheating' deception is practised to get possession of the thing.

Dishonest misappropriation of property possessed by a deceased person at the time of his death is an offence (**section 404**).

Criminal breach of trust.

A person commits 'criminal breach of trust', if he

- (1) being in any manner entrusted with (a) property, or (b) any dominion over property;
- (2) dishonestly (a) misappropriates, or (b) converts to his own use, that property; or
- (3) dishonestly (a) uses, or (b) disposes of, that property;
- (4) 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, express or implied, which he has made touching the discharge of such trust; or
- (5) wilfully suffers any other person so to do (**section 405**). [Three years, or fine, or both (**section 406**).]

The property may be movable or immovable.

'Criminal misappropriation' differs from 'criminal breach of trust'—

- (1) In the former the property comes into the possession of the offender by some casualty, and he afterwards misappropriates it; in the latter the offender is lawfully entrusted with property and he dishonestly misappropriates it or wilfully suffers any other person to do so.
- (2) 'Criminal breach of trust' only applies to conversion of property held by a person in a fiduciary capacity; 'criminal misappropriation', to property coming into possession of the offender anyhow.
- (3) 'Criminal misappropriation' can only be of movable property. 'Criminal breach of trust' can be of any property, movable or immovable.

The following are aggravated forms of criminal breach of trust:—

1. Criminal breach of trust by a carrier, wharfinger, or warehouse-keeper (**section 407**).
2. Criminal breach of trust by a clerk or servant (**section 408**).
3. Criminal breach of trust by a public servant, banker, merchant, factor, broker, attorney or agent (**section 409**).

The Supreme Court has laid down that the offence is not wiped off by reason of the fact that the money in question has been returned or accounted for.

Leading case:—Viswanath v State of J&K.

Stolen property.

'Stolen property' is—

- (1) property the possession whereof has been transferred by (a) theft, (b) extortion, or (c) robbery;
- (2) property criminally misappropriated;
- (3) property in respect of which criminal breach of trust has been committed.

It is immaterial 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 ceases to be stolen property (**section 410**). [Receiving or obtaining stolen property

knowing it to be such is punishable with three years, or fine, or both (**section 411**).] A person who is found to be in the possession of property shortly after an offence, is presumed to be criminally mixed up with the transaction. The Supreme Court has explained the meaning of the term "recent possession" in this connection.

Leading case:—Earabhadrapa v State of Karnataka.

This section does not apply to the actual thief when theft is committed in India.

If stolen goods are restored to the possession of the owner and he returns them to the thief for the purpose of enabling him to sell them to a third person, they are no longer stolen goods; and the third person cannot be convicted of receiving them although he received them knowing them to be stolen.

'Dishonest retention' of property is distinguished from 'dishonest reception' of it. In the former offence the dishonesty supervenes after the act of acquisition of possession, while in the latter dishonesty is contemporaneous with such act. Thus a person cannot be convicted of 'receiving' if he has 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 stolen. Neither the thief, nor the receiver of stolen property, commits the offence of retaining such property dishonestly merely by continuing to keep possession of it.

Property into or for which the stolen property has been converted or exchanged is not stolen property, e.g., proceeds of a stolen cheque, or the change given for a stolen currency-note. But an ingot made out of stolen ornaments still retains its character as stolen property.

Res nullius cannot be the subject of receiving, e.g., a bull let loose as a part of religious ceremony and belonging to no one is not the subject of theft.

If articles belonging to different persons are received at one time, the conviction will be only for one act of receiving and not separate convictions.

The following are aggravated forms of this offence:—

1. Dishonestly receiving property stolen in the commission of a dacoity (**section 412**).
2. Habitually dealing in stolen property (**section 413**).
3. Voluntarily assisting in concealing or disposing of, or making away with, stolen property (**section 414**).

Cheating.

A person is said to 'cheat' if he

- (1) by deceiving any person;
- (2) fraudulently or dishonestly induces the person so deceived;
- (3) to deliver any property to any person; or
- (4) to consent that any person shall retain any property; or
- (5) intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not deceived; and which

(6) act or omission causes, or is likely to cause, damage or harm to that person in body, mind, reputation, or property (**section 415**).

Dishonest concealment of facts is a deception (**Explanation**).

[One year, or fine, or both (**section 416**).]

Like 'extortion', cheating is committed by the wrongful obtaining of a consent. The difference is that, in the former the consent is obtained by intimidation, in the latter, by deception.

'Cheating' also differs from 'theft'

(1) In the former the property obtained by deception may be movable or immovable, in the latter, it must be movable.

(2) In 'theft' the property is taken without the consent of the owner, in 'cheating' the owner's consent is obtained by deception.

It is not necessary that cheating should be committed in express words if it can be inferred from all the circumstances attending the obtaining of property. But it is necessary that a person should be deceived. If a person knows what the deception is and acts on it, the person practising deception will be guilty of attempt to cheat but not of cheating. The offence will be committed even if the person deceived is other than the one on whom the deception is practised. Similarly, it is not necessary that there should be an intent to deceive any particular individual. If a false prospectus or balance-sheet is issued to the public, or to a section of the public, the persons issuing it will be guilty of cheating although there was no intent to deceive any one in particular (**R v Ross**).

The person to whom the property is delivered may not be *participes criminis*. Property obtained by cheating does not fall within the definition of stolen property.

Mere puffing will not amount to this offence (**R v Bryan**, the *Elkington spoon* case).

Leading cases:—R v Abbas Ali. R v Appasami. R v Soshi Bhushan. Bashirbhai.

If the deception is in regard to a future event, then there must be evidence of an intention to cheat when the deception was made. Mere failure to carry out a promise is not enough. A man may intend to fulfil his promise, but subsequently he may change his mind.

The following are aggravated forms of cheating:—

1. Cheating with knowledge that wrongful loss may thereby be caused to a person whose interest the offender is bound to protect (**section 418**).

2. Cheating by personation (**sections 416, 419**).

3. Cheating and thereby dishonestly inducing the person deceived to deliver any property to any person, or to make, alter, or destroy a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security (**section 420**). Provisions of the section.

A person is said to 'cheat by personation' if he cheats

Cheating by personation.

(1) by pretending to be some other person, or

(2) by knowingly substituting one person for another, or

(3) by representing that he or any other person is a person other than he or such other person really is (**section 416**).

It is immaterial whether the individual personated is a real or imaginary person (**Explanation**). [Three years, or fine or both (**section 417**).]

As soon as a man by words, act, or sign, holds himself out as a particular person with the object of passing himself off as that person, and exercising the right which that person has, he has personated him. For instance, if A represents himself to be B at an examination, or represents himself to be of a particular caste which he is not, or gives a false description of his position in life, he commits this offence.

Fraudulent deeds and dispositions.

The following provisions relate to fraudulent deeds and dispositions of property:—

1. Dishonest or fraudulent removal or concealment or transfer of property to prevent distribution among creditors (**section 421**).

2. Dishonestly or fraudulently preventing from being made available for creditors a debt or demand due to the offender or to any other person (**section 422**).

3. Dishonestly or fraudulently signing, executing or becoming a party to any instrument which purports to transfer or charge any property and which contains any false statement as to the consideration for such transfer or charge or as to the person or persons for whose benefit it is intended to operate (**section 423**).

4. Dishonestly or fraudulently concealing or removing any property of the offender or of any other person or assisting in the concealment, or removal thereof, or dishonestly releasing any demand or claim to which the offender is entitled (**section 424**).

A person commits 'mischief' if he

Mischief.

(1) with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to (a) the public or (b) any person;

(2) causes (a) the destruction of any property, or (b) any such change in any property, or in the situation thereof, as destroys or diminishes its value or utility, or affects it injuriously (**section 425**).

The offender need not intend loss or damage to the owner. The property may belong to the offender, or to him jointly with others (**Explanation**). [Three months, or fine or both (**section 426**).]

A man may commit mischief on his own property to cause wrongful loss to some person. If a person does any act amounting to mischief in the exercise of a *bona fide* claim or right he cannot be convicted of this offence. An act done through negligence will never amount to mischief. Mischief cannot be committed in respect of a *res nullius*, e.g., killing a bull which was set free.

The aggravated forms of mischief are as follows:—

1. Committing mischief, and thereby causing damage to the amount of Rs. 50 (**section 427**).
2. Mischief by killing, poisoning, rendering useless, or maiming any animal of the value of Rs. 10 (**section 428**).
3. Mischief by killing, poisoning, maiming or rendering useless any elephant, camel, horse, mule, buffalo, bull, cow or ox or any other animal of the value of Rs. 50 or upwards (**section 429**).

This offence is similar to that created under [section 50 of the Wild Life Protection Act, 1972](#). The two enactments are, therefore, not likely to attract the doctrine of double jeopardy.

Leading case:—State of Bihar v Murad Ali Khan.

4. Mischief by injury to works of irrigation or by wrongfully diminishing the supply of water for agricultural purposes or for food, or drink, or cleanliness (**section 430**).
5. Mischief by injury to public road, bridge, river or channel, so as to render it impassable or less safe for travelling or conveying property (**section 431**).
6. Mischief by causing inundation or obstruction to public drainage attended with damage (**section 432**).
7. Mischief by destroying, or moving or rendering less useful a light house or sea-mark or by exhibiting false lights (**section 433**).
8. Mischief by destroying, moving, or rendering less useful any land-mark fixed by the authority of a public servant (**section 434**).
9. Mischief by fire or explosive substance with intent to cause damage to the amount of Rs. 100 or upwards or where the property is agricultural produce—Rs. 10 or upwards (**section 435**).
10. 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 (**s. 436**).

What is a new development under the section, the Madras High Court allowed public interest litigation under the section and compelled the State to pay compensation to the victims of a riot to whom the State did not provide any protection at the material time nor prosecuted the offenders afterwards.

Leading case:—R Gandhi v UOI.

11. Mischief with intent to destroy or make unsafe a decked vessel or a vessel of 20 tons burden (**section 437**).
12. Mischief or attempt to commit mischief with fire or any explosive substance (**section 438**).
13. Intentionally running a vessel aground or ashore with intent to commit theft or misappropriation of property (**section 439**).
14. Mischief committed after preparation made for causing to any person death, hurt, or wrongfully restraint, or fear of death, hurt, or wrongful restraint (**section 440**).

A person commits 'criminal trespass' if he

Criminal trespass.

- (1) enters into or upon property in the possession of another;
- (2) with intent to commit an offence; or
- (3) to intimidate, insult, or annoy any person in possession of such property; or
- (4) having lawfully entered into or upon such property unlawfully remains there;
- (a) with intent to intimidate, insult, or annoy any such person, or
- (b) with intent to commit an offence (**section 441**). [Three months or Rs. 500, or both (**section 447**).]

Trespass can only be committed in respect of corporeal property. The essence of the offence is the intention with which it is committed. The causing of such annoyance, intimidation or insult must be the main aim of the entry (*Mathri*). It is not necessary that the intention must be to annoy a person who is actually present at the time of the trespass (*Rash Behari*). A person entering on the land of another in the exercise of a *bona fide* claim of right will not be guilty though the claim is unfounded. But if the entry is made with *intent to annoy* it does not matter whether it was made under a claim of right. The annoyance must be such as would affect an ordinary man, not what would specially and exclusively annoy a particular individual of a queer temperament.

The property must be in the actual possession of a person other than the trespasser. It is *de facto* and not *de jure* possession that is necessary. The person in possession may be an individual or a corporate person.

The entry must be to commit an offence as defined in **section 40**, and not any unlawful act. Thus entering an exhibition building without a ticket does not amount to criminal trespass. Slum dwellers upon public land cannot be equated with a trespasser under these sections. Their action has been described by the Supreme Court to be not voluntary, but one due to compulsion of circumstances.

Leading case:—Olga Tellis v Bombay MC.

House-trespass.

A person commits 'house-trespass' if he

- (1) commits criminal trespass
- (2) by entering into, or remaining in
 - (a) any building, tent, or vessel used as a human dwelling, or
 - (b) any building
 - (i) used as a place of worship, or
 - (ii) as a place for the custody of property (**section 442**).

Introduction of any part of the trespasser's body is sufficient (**Explanation**). [One year, or Rs. 1,000, or both (**section 448**).]

The following are aggravated forms of this offence:—

1. House-trespass in order to the commission of an offence punishable with death (**section 449**).
2. House-trespass in order to the commission of an offence punishable with imprisonment for life (**section 450**).
3. House-trespass in order to the commission of an offence punishable with imprisonment (**section 451**).
4. House-trespass after preparation made for causing hurt, assault, or wrongful restraint to any person, or for putting any person in fear of hurt, assault, or wrongful restraint (**section 452**).

Lurking house-trespass.

'Lurking house-trespass' is house-trespass, after taking precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent, or vessel which is the subject of the trespass (**section 443**). [Two years and fine (s. 453).]

Whoever commits lurking house-trespass after sunset and before sunrise is said to commit 'lurking house-trespass' by night (**section 444**). [Three years and fine (**section 456**).]

House-breaking.

A person is said to commit 'house-breaking' if he

(a) commits house-trespass, and effects his *entrance* into the house, or

(b) if being in the house for committing an offence, or after committing an offence, *quits* it in any of the following ways—

(1) Through a passage made by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass.

(2) Through any passage not intended by any person other than himself, or an abettor of the offence, for human entrance, or through any passage to which he has obtained access by scaling or climbing over any wall or building.

(3) Through any passage which he, or any abettor of the house-trespass, has opened, in order to the committing of the house-trespass by any means by which that passage was not intended by the occupier of the house to be opened.

(4) By opening any lock.

(5) By using criminal force, or committing an assault, or by threatening any person with assault.

(6) By any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself, or by an abettor of the house-trespass (**section 445**). [Two years and fine (**section 453**).]

House-breaking after sunset and before sunrise is said to be 'house-breaking by night' (**section 466**). [Three years and fine (**section 456**).]

The following are aggravated forms of the offence of lurking house-trespass and housebreaking:—

1. Lurking house-trespass or house-breaking in order to the commission of an offence punishable with imprisonment (**section 454**).
2. Lurking house-trespass or house-breaking after preparation made for causing hurt to any person (**section 455**).
3. Causing grievous hurt or attempting to cause death or grievous hurt to any person whilst committing lurking house-trespass or house-breaking (**section 459**).

The following are aggravated forms of the offence of 'lurking house-trespass by night' and 'house-breaking by night':—

1. Lurking house-trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment (**section 457**).
2. Lurking house-trespass or house-breaking by night, after preparation made for causing hurt to any person (**section 458**).

All persons jointly concerned in lurking house- trespass or house-breaking by night are punishable where death or grievous hurt is caused by one of them (**section 460**).

Dishonestly breaking open a receptacle containing property is punishable (**section 461**). The punishment is much more severe when such act is committed by a person who is entrusted with its custody (**section 462**).

Chapter XVIII deals with offences relating to documents and to property marks.

A person commits forgery if he

Forgery. Chapter XVIII.

- (1) makes any false document, or part of a document,
- (2) with intent
 - (a) to cause damage or injury to the public or to any person, or
 - (b) to support any claim or title, or
 - (c) to cause any person to part with property, or
 - (d) to enter into any express or implied contract, or
 - (e) to commit fraud, or that fraud may be committed (**section 463**).

[Three years, or fine or both (**section 465**).] Using as genuine a forged document is punishable likewise (**section 471**).

A person is said to make a false document—

- I. If he dishonestly or fraudulently (a) makes, signs, seals, or executes a document,
- (b) with the intention of causing it to be believed that such document or part of a document was made, signed, sealed or executed

- (i) by, or by the authority of a person by whom, or by whose authority he knows that it was not made, signed, sealed, or executed, or
 - (ii) at the time at which he knows that it was not made, signed, sealed, or executed.
- Or

II. If he dishonestly, or fraudulently, without lawful authority by cancellation or otherwise,

- (a) alters a document in any material part thereof,
- (b) after it has been made or executed either by himself, or by any other person, whether such person be living, or dead at the time of such alteration. Or

III. If he dishonestly or fraudulently causes any person to sign, seal, execute, or alter a document, knowing that such person

- (a) by reason of unsoundness of mind, or intoxication cannot, or
- (b) by reason of deception practised upon him, does not, know the contents of the document, or the nature of the alteration (**section 464**).

A man's signature of his own name may amount to forgery (**Explanation 1**). But this must have been done in order that it may be mistaken for the signature of another person of the same name. Making a false document in the name of a fictitious person intending it to be believed that the document was made by a real person, or in the name of a deceased person intending it to be believed that the document was made by that person in his lifetime may amount to forgery (**Explanation 2**). A false document made wholly or in part by forgery is designated 'a forged document' (**section 470**).

It is not an essential quality of the fraud mentioned in the section that it should result in or aim at deprivation of property. The offence is complete as soon as a document is made with intent to commit a fraud. But the false document must appear on its face to be one which, if true, would possess some legal validity or must be legally capable of effecting the fraud intended. A writing, though not legal evidence of the matter expressed, may yet be a document if the parties framing it believed and intended it to be evidence of such matter. It is not necessary that the document should be made in the name of a really existing person.

Counterfeiting a document to support a legal claim will amount to forgery. Antedating a document or inserting a false date in it constitutes forgery.

A general intention to defraud, without the intention of causing wrongful gain or loss to any particular person, is sufficient. There must, however, be a possibility of some person being defrauded. A man may have an intent to defraud and yet there may not be any person who could be defrauded by his act.

If several persons combine to forge an instrument and each takes a distinct part in it, they are nevertheless all guilty.

It will amount to forgery even though the fabricated document purports to be a copy of another document.

Personation at an examination will amount to forgery as well as cheating.

Leading cases:—R v Abbas Ali. R v Lalit Mohan. R v Shoshi Bhushan. R v Kotamraju. Harnam Singh.