



INTRODUZIONE

DEI DELITTI CONTRO IL PATRIMONIO: PROFILI GENERALI E COMPARATIVI

I REATI CONTRO IL PATRIMONIO NEL DIRITTO ANGLO-AMERICANO

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1.1. BIBLIOGRAFIA

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Si consiglia, in ogni caso, la consultazione delle ultime edizioni dei manuali di Ashworth, di Smith-Hogan, e di LaFave, di Robinson-Cahil, citati *supra*.

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1.1.3.3. Burglary (violazione di domicilio al fine di commettere un reato)

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1.2. FONTI NORMATIVE

Una indicazione di tutte le norme incriminatrici concernenti l'ampia ed indeterminata categoria dei «reati contro il patrimonio» in tutti i diversi ordinamenti compresi nella famiglia dei sistemi anglosassoni è, per varie ed intuitive ragioni, impossibile.

In Scozia ed in taluni ordinamenti degli Stati Uniti e dell'Australia, considerevoli porzioni del sistema dei reati patrimoniali sono regolate dal common law.

Per quanto riguarda la definizione dei vari reati secondo il common law, oltre ai classici del Seicento Coke e Hale, a quelli del Settecento Hawkins e Blackstone, ed al più recente East (tutti citati supra, nella bibliografia storica), un utile strumento di consultazione è: PERKINS, BOYCE, *Criminal Law*, cit., 246-452.

Con riferimento alle fattispecie previste dalle statutory law:

1.2.1. INGHILTERRA e GALLES

I reati patrimoniali sono contemplati essenzialmente nel Theft Act 1968; nel Criminal Damage Act 1971; e nel Fraud Act 2006. Si riportano qui di seguito le disposizioni di maggiore interesse.

Considerato che i seguenti materiali sono accessori ad un paragrafo del volume di testo che ha ad oggetto il diritto straniero, si è ritenuto di offrire al lettore la possibilità di consultare un ampio campionario di fonti. Data la quantità dei riferimenti normativi, è sembrato preferibile riportare il solo testo in lingua originale.

1.2.1.1. Theft Act 1968, 1968 c. 60

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1 *Basic definition of theft.*

- (1) A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it; and “thief” and “steal” shall be construed accordingly.
- (2) It is immaterial whether the appropriation is made with a view to gain, or is made for the thief’s own benefit.
- (3) The five following sections of this Act shall have effect as regards the interpretation and operation of this section (and, except as otherwise provided by this Act, shall apply only for purposes of this section).

2 *“Dishonestly”.*

- (1) A person’s appropriation of property belonging to another is not to be regarded as dishonest –
 - (a) if he appropriates the property in the belief that he has in law the right to deprive the other of it, on behalf of himself or of a third person; or
 - (b) if he appropriates the property in the belief that he would have the other’s consent if the other knew of the appropriation and the circumstances of it; or
 - (c) (except where the property came to him as trustee or personal representative) if he appropriates the property in the belief that the person to whom the property belongs cannot be discovered by taking reasonable steps.

(2) A person's appropriation of property belonging to another may be dishonest notwithstanding that he is willing to pay for the property.

3 "*Appropriates*".

(1) Any assumption by a person of the rights of an owner amounts to an appropriation, and this includes, where he has come by the property (innocently or not) without stealing it, any later assumption of a right to it by keeping or dealing with it as owner.

(2) 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 him of rights which he believed himself to be acquiring shall, by reason of any defect in the transferor's title, amount to theft of the property.

4 "*Property*".

(1) "Property" includes money and all other property, real or personal, including things in action and other intangible property.

(2) A person cannot steal land, or things forming part of land and severed from it by him or by his directions, except in the following cases, that it to say –

(a) when he is a trustee or personal representative, or is authorised by power of attorney, or as liquidator of a company, or otherwise, to sell or dispose of land belonging to another, and he appropriates the land or anything forming part of it by dealing with it in breach of the confidence reposed in him; or

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

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

– For purposes of this subsection "land" does not include incorporeal hereditaments; "tenancy" means a tenancy for years or any less period and includes an agreement for such a tenancy, but a person who after the end of a tenancy remains in possession as statutory tenant or otherwise is to be treated as having possession under the tenancy, and "let" shall be construed accordingly.

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

– For purposes of this subsection "mushroom" includes any fungus, and "plant" includes any shrub or tree.

(4) Wild creatures, tamed or untamed, shall be regarded as property; but a person cannot steal a wild creature not tamed nor ordinarily kept in captivity, or the carcase of any such creature, unless either it has been reduced into possession by or on behalf of another person and possession of it has not since been lost or abandoned, or another person is in course of reducing it into possession.

5 "*Belonging to another*".

(1) Property shall be regarded as belonging to any person having possession or control of it, or having in it any proprietary right or interest (not being an equitable interest arising only from an agreement to transfer or grant an interest).

(2) Where property is subject to a trust, the persons to whom it belongs shall be regarded as including any person having a right to enforce the trust, and an intention to defeat the trust shall be regarded accordingly as an intention to deprive of the property any person having that right.

(3) Where a person receives property from or on account of another, and is under an obligation to the other to retain and deal with that property or its proceeds in a particular way, the property or proceeds shall be regarded (as against him) as belonging to the other.

(4) Where a person gets property by another's mistake, and is under an obligation to make restoration (in whole or in part) of the property or its proceeds or of the value thereof, then to the extent of that obligation the property or proceeds shall be regarded (as against him) as belonging to the person entitled to restoration, and an intention not to make restoration shall be regarded accordingly as an intention to deprive that person of the property or proceeds.

(5) Property of a corporation sole shall be regarded as belonging to the corporation notwithstanding a vacancy in the corporation.

6 *“With the intention of permanently depriving the other of it”.*

(1) A person appropriating property belonging to another without meaning the other permanently to lose the thing itself is nevertheless to be regarded as having the intention of permanently depriving the other of it if his intention is to treat the thing as his own to dispose of regardless of the other's rights; and a borrowing or lending of it may amount to so treating it if, but only if, the borrowing or lending is for a period and in circumstances making it equivalent to an outright taking or disposal.

(2) Without prejudice to the generality of subsection (1) above, where a person, having possession or control (lawfully or not) of property belonging to another, parts with the property under a condition as to its return which he may not be able to perform, this (if done for purposes of his own and without the other's authority) amounts to treating the property as his own to dispose of regardless of the other's rights.

7 *Theft.*

A person guilty of theft shall on conviction on indictment be liable to imprisonment for a term not exceeding seven years

8 *Robbery.*

(1) A person is guilty of robbery if he steals, and immediately before or at the time of doing so, and in order to do so, he uses force on any person or puts or seeks to put any person in fear of being then and there subjected to force.

(2) A person guilty of robbery, or of an assault with intent to rob, shall on conviction on indictment be liable to imprisonment for life.

9 *Burglary.*

(1) A person is guilty of burglary if –

(a) he enters any building or part of a building as a trespasser and with intent to commit any such offence as is mentioned in subsection (2) below; or

(b) having entered any building or part of a building as a trespasser he steals or attempts to steal anything in the building or that part of it or inflicts or attempts to inflict on any person therein any grievous bodily harm.

(2) The offences referred to in subsection (1)(a) above are offences of stealing anything in

the building or part of a building in question, of inflicting on any person therein any grievous bodily harm therein, and of doing unlawful damage to the building or anything therein.

(3) A person guilty of burglary shall on conviction on indictment be liable to imprisonment for a term not exceeding –

(a) where the offence was committed in respect of a building or part of a building which is a dwelling, fourteen years;

(b) in any other case, ten years.

(4) References in subsections (1) and (2) above to a building, and the reference in subsection (3) above to a building which is a dwelling, shall apply also to an inhabited vehicle or vessel, and shall apply to any such vehicle or vessel at times when the person having a habitation in it is not there as well as at times when he is.

10 *Aggravated burglary.*

(1) A person is guilty of aggravated burglary if he commits any burglary and at the time has with him any firearm or imitation firearm, any weapon of offence, or any explosive; and for this purpose –

(a) “firearm” includes an airgun or air pistol, and “imitation firearm” means anything which has the appearance of being a firearm, whether capable of being discharged or not; and

(b) “weapon of offence” means any article made or adapted for use for causing injury to or incapacitating a person, or intended by the person having it with him for such use; and

(c) “explosive” means any article manufactured for the purpose of producing a practical effect by explosion, or intended by the person having it with him for that purpose.

(2) A person guilty of aggravated burglary shall on conviction on indictment be liable to imprisonment for life.

11 *Removal of articles from places open to the public.*

(1) Subject to subsections (2) and (3) below, where the public have access to a building in order to view the building or part of it, or a collection or part of a collection housed in it, any person who without lawful authority removes from the building or its grounds the whole or part of any article displayed or kept for display to the public in the building or that part of it or in its grounds shall be guilty of an offence.

– For this purpose “collection” includes a collection got together for a temporary purpose, but references in this section to a collection do not apply to a collection made or exhibited for the purpose of effecting sales or other commercial dealings.

(2) It is immaterial for purposes of subsection (1) above, that the public’s access to a building is limited to a particular period or particular occasion; but where anything removed from a building or its grounds is there otherwise than as forming part of, or being on loan for exhibition with, a collection intended for permanent exhibition to the public, the person removing it does not thereby commit an offence under this section unless he removes it on a day when the public have access to the building as mentioned in subsection (1) above.

(3) A person does not commit an offence under this section if he believes that he has lawful authority for the removal of the thing in question or that he would have it if the person entitled to give it knew of the removal and the circumstances of it.

(4) A person guilty of an offence under this section shall, on conviction on indictment, be liable to imprisonment for a term not exceeding five years.

12 *Taking motor vehicle or other conveyance without authority.*

(1) Subject to subsections (5) and (6) below, a person shall be guilty of an offence if, without having the consent of the owner or other lawful authority, he takes any conveyance for his own or another's use or, knowing that any conveyance has been taken without such authority, drives it or allows himself to be carried in or on it.

(2) A person guilty of an offence under subsection (1) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale, to imprisonment for a term not exceeding six months, or to both.]

(3)

(4) If on the trial of an indictment for theft the jury are not satisfied that the accused committed theft, but it is proved that the accused committed an offence under subsection (1) above, the jury may find him guilty of the offence under subsection (1) and if he is found guilty of it, he shall be liable as he would have been liable under subsection (2) above on summary conviction.

(4A) Proceedings for an offence under subsection (1) above (but not proceedings of a kind falling within subsection (4) above) in relation to a mechanically propelled vehicle –

(a) shall not be commenced after the end of the period of three years beginning with the day on which the offence was committed; but

(b) subject to that, may be commenced at any time within the period of six months beginning with the relevant day.

(4B) In subsection (4A)(b) above “the relevant day” means –

(a) in the case of a prosecution for an offence under subsection (1) above by a public prosecutor, the day on which sufficient evidence to justify the proceedings came to the knowledge of any person responsible for deciding whether to commence any such prosecution;

(b) in the case of a prosecution for an offence under subsection (1) above which is commenced by a person other than a public prosecutor after the discontinuance of a prosecution falling within paragraph (a) above which relates to the same facts, the day on which sufficient evidence to justify the proceedings came to the knowledge of the person who has decided to commence the prosecution or (if later) the discontinuance of the other prosecution;

(c) in the case of any other prosecution for an offence under subsection (1) above, the day on which sufficient evidence to justify the proceedings came to the knowledge of the person who has decided to commence the prosecution.

(4C) For the purposes of subsection (4A)(b) above a certificate of a person responsible for deciding whether to commence a prosecution of a kind mentioned in subsection (4B)(a) above as to the date on which such evidence as is mentioned in the certificate came to the knowledge of any person responsible for deciding whether to commence any such prosecution shall be conclusive evidence of that fact.]

(5) Subsection (1) above shall not apply in relation to pedal cycles; but, subject to subsection (6) below, a person who, without having the consent of the owner or other lawful authority, takes a pedal cycle for his own or another's use, or rides a pedal cycle knowing it to have been taken without such authority, shall on summary conviction be liable to a fine not exceeding level 3 on the standard scale.

(6) A person does not commit an offence under this section by anything done in the belief

that he has lawful authority to do it or that he would have the owner's consent if the owner knew of his doing it and the circumstances of it.

(7) For purposes of this section –

(a) “conveyance” means any conveyance constructed or adapted for the carriage of a person or persons whether by land, water or air, except that it does not include a conveyance constructed or adapted for use only under the control of a person not carried in or on it, and “drive” shall be construed accordingly; and

(b) “owner”, in relation to a conveyance which is the subject of a hiring agreement or hire-purchase agreement, means the person in possession of the conveyance under that agreement.

12A *Aggravated vehicle-taking.*

(1) Subject to subsection (3) below, a person is guilty of aggravated taking of a vehicle if –
(a) he commits an offence under section 12(1) above (in this section referred to as a “basic offence”) in relation to a mechanically propelled vehicle; and

(b) it is proved that, at any time after the vehicle was unlawfully taken (whether by him or another) and before it was recovered, the vehicle was driven, or injury or damage was caused, in one or more of the circumstances set out in paragraphs (a) to (d) of subsection (2) below.

(2) The circumstances referred to in subsection (1)(b) above are –

(a) that the vehicle was driven dangerously on a road or other public place;

(b) that, owing to the driving of the vehicle, an accident occurred by which injury was caused to any person;

(c) that, owing to the driving of the vehicle, an accident occurred by which damage was caused to any property, other than the vehicle;

(d) that damage was caused to the vehicle.

(3) A person is not guilty of an offence under this section if he proves that, as regards any such proven driving, injury or damage as is referred to in subsection (1)(b) above, either –

(a) the driving, accident or damage referred to in subsection (2) above occurred before he committed the basic offence; or

(b) he was neither in nor on nor in the immediate vicinity of the vehicle when that driving, accident or damage occurred.

(4) A person guilty of an offence under this section shall be liable on conviction on indictment to imprisonment for a term not exceeding two years or, if it is proved that, in circumstances falling within subsection (2)(b) above, the accident caused the death of the person concerned, fourteen years.

(5) If a person who is charged with an offence under this section is found not guilty of that offence but it is proved that he committed a basic offence, he may be convicted of the basic offence.

(6) If by virtue of subsection (5) above a person is convicted of a basic offence before the Crown Court, that court shall have the same powers and duties as a magistrates' court would have had on convicting him of such an offence.

(7) For the purposes of this section a vehicle is driven dangerously if –

(a) it is driven in a way which falls far below what would be expected of a competent and careful driver; and

(b) it would be obvious to a competent and careful driver that driving the vehicle in that way would be dangerous.

(8) For the purposes of this section a vehicle is recovered when it is restored to its owner or to other lawful possession or custody; and in this subsection “owner” has the same meaning as in section 12 above.]

13 *Abstracting of electricity.*

A person who dishonestly uses without due authority, or dishonestly causes to be wasted or diverted, any electricity shall on conviction on indictment be liable to imprisonment for a term not exceeding five years.

14 (*omissis*)

15-16 [Norme Abrogate, v. ora Fraud Act 2006, *infra*]

17 *False accounting.*

(1) Where a person dishonestly, with a view to gain for himself or another or with intent to cause loss to another, –

(a) destroys, defaces, conceals or falsifies any account or any record or document made or required for any accounting purpose; or

(b) in furnishing information for any purpose produces or makes use of any account, or any such record or document as aforesaid, which to his knowledge is or may be misleading, false or deceptive in a material particular;

he shall, on conviction on indictment, be liable to imprisonment for a term not exceeding seven years.

(2) For purposes of this section a person who makes or concurs in making in an account or other document an entry which is or may be misleading, false or deceptive in a material particular, or who omits or concurs in omitting a material particular from an account or other document, is to be treated as falsifying the account or document.

18 *Liability of company officers for certain offences by company.*

(1) Where an offence committed by a body corporate under section 17 of this Act is proved to have been committed with the consent or connivance of any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence, and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, this section shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

19 *False statements by company directors, etc.*

(1) Where an officer of a body corporate or unincorporated association (or person purporting to act as such), with intent to deceive members or creditors of the body corporate or association about its affairs, publishes or concurs in publishing a written statement or account which to his knowledge is or may be misleading, false or deceptive in a material particular, he shall on conviction on indictment be liable to imprisonment for a term not exceeding seven years.

(2) For purposes of this section a person who has entered into a security for the benefit of a body corporate or association is to be treated as a creditor of it.

(3) Where the affairs of a body corporate or association are managed by its members, this section shall apply to any statement which a member publishes or concurs in publishing in connection with his functions of management as if he were an officer of the body corporate or association.

21 *Blackmail.*

(1) A person is guilty of blackmail if, with a view to gain for himself or another or with intent to cause loss to another, he makes any unwarranted demand with menaces; and for this purpose a demand with menaces is unwarranted unless the person making it does so in the belief

–
(a) that he has reasonable grounds for making the demand; and

(b) that the use of the menaces is a proper means of reinforcing the demand.

(2) The nature of the act or omission demanded is immaterial, and it is also immaterial whether the menaces relate to action to be taken by the person making the demand.

(3) A person guilty of blackmail shall on conviction on indictment be liable to imprisonment for a term not exceeding fourteen years.

22 *Handling stolen goods.*

(1) A person handles stolen goods if (otherwise than in the course of the stealing) knowing or believing them to be stolen goods he dishonestly receives the goods, or dishonestly undertakes or assists in their retention, removal, disposal or realisation by or for the benefit of another person, or if he arranges to do so.

(2) A person guilty of handling stolen goods shall on conviction on indictment be liable to imprisonment for a term not exceeding fourteen years.

23 *Advertising rewards for return of goods stolen or lost.*

Where any public advertisement of a reward for the return of any goods which have been stolen or lost uses any words to the effect that no questions will be asked, or that the person producing the goods will be safe from apprehension or inquiry, or that any money paid for the purchase of the goods or advanced by way of loan on them will be repaid, the person advertising the reward and any person who prints or publishes the advertisement shall on summary conviction be liable to a fine not exceeding [level 3 on the standard scale.]

24 *Scope of offences relating to stolen goods.*

(1) The provisions of this Act relating to goods which have been stolen shall apply whether the stealing occurred in England or Wales or elsewhere, and whether it occurred before or after the commencement of this Act, provided that the stealing (if not an offence under this Act) amounted to an offence where and at the time when the goods were stolen; and references to stolen goods shall be construed accordingly.

(2) For purposes of those provisions references to stolen goods shall include, in addition to the goods originally stolen and parts of them (whether in their original state or not), –

(a) any other goods which directly or indirectly represent or have at any time represented the stolen goods in the hands of the thief as being the proceeds of any disposal or realisation of the whole or part of the goods stolen or of goods so representing the stolen goods; and

(b) any other goods which directly or indirectly represent or have at any time represented

the stolen goods in the hands of a handler of the stolen goods or any part of them as being the proceeds of any disposal or realisation of the whole or part of the stolen goods handled by him or of goods so representing them.

(3) But no goods shall be regarded as having continued to be stolen goods after they have been restored to the person from whom they were stolen or to other lawful possession or custody, or after that person and any other person claiming through him have otherwise ceased as regards those goods to have any right to restitution in respect of the theft.

(4) For purposes of the provisions of this Act relating to goods which have been stolen (including subsections (1) to (3) above) goods obtained in England or Wales or elsewhere either by blackmail or, subject to subsection (5) below, by fraud (within the meaning of the Fraud Act 2006)] shall be regarded as stolen; and “steal”, “theft” and “thief” shall be construed accordingly.

(5) Subsection (1) above applies in relation to goods obtained by fraud as if –

(a) the reference to the commencement of this Act were a reference to the commencement of the Fraud Act 2006, and

(b) the reference to an offence under this Act were a reference to an offence under section 1 of that Act.

24A-36 (*omissis*)

1.2.1.2. Criminal Damage Act 1971, (1971 c. 48)

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1. *Destroying or damaging property.*
2. *Threats to destroy or damage property.*
3. *Possessing anything with intent to destroy or damage property.*
4. *Punishment of offences.*
5. *“Without lawful excuse.”*
6. *Search for things intended for use in committing offences of criminal damage.*
7. *Jurisdiction of magistrates’ courts.*
8.
9. *Evidence in connection with offences under this Act.*
10. *Interpretation.*
11. *Minor and consequential changes in existing law, and repeals.*
12. *Short title and extent.*

1. *Destroying or damaging property.*

(1) A person who without lawful excuse destroys or damages any property belonging to another intending to destroy or damage any such property or being reckless as to whether any such property would be destroyed or damaged shall be guilty of an offence.

(2) A person who without lawful excuse destroys or damages any property, whether belonging to himself or another –

(a) intending to destroy or damage any property or being reckless as to whether any property would be destroyed or damaged; and

(b) intending by the destruction or damage to endanger the life of another or being reckless as to whether the life of another would be thereby endangered;

shall be guilty of an offence.

(3) An offence committed under this section by destroying or damaging property by fire shall be charged as arson

2. *Threats to destroy or damage property.*

A person who without lawful excuse makes to another a threat, intending that that other would fear it would be carried out, –

(a) to destroy or damage any property belonging to that other or a third person; or

(b) to destroy or damage his own property in a way which he knows is likely to endanger the life of that other or third person;

shall be guilty of an offence.

3. *(omissis)*

4. *Punishment of offences.*

(1) A person guilty of arson under section 1 above or of an offence under section 1(2) above (whether arson or not) shall on conviction on indictment be liable to imprisonment for life.

(2) A person guilty of any other offence under this Act shall on conviction on indictment be liable to imprisonment for a term not exceeding ten years.

5. *“Without lawful excuse”.*

(1) This section applies to any offence under section 1(1) above and any offence under section 2 or 3 above other than one involving a threat by the person charged to destroy or damage property in a way which he knows is likely to endanger the life of another or involving an intent by the person charged to use or cause or permit the use of something in his custody or under his control so to destroy or damage property.

(2) A person charged with an offence to which this section applies, shall, whether or not he would be treated for the purposes of this Act as having a lawful excuse apart from this subsection, be treated for those purposes as having a lawful excuse –

(a) if at the time of the act or acts alleged to constitute the offence he believed that the person or persons whom he believed to be entitled to consent to the destruction of or damage to the property in question had so consented, or would have so consented to it if he or they had known of the destruction or damage and its circumstances; or

(b) if he destroyed or damaged or threatened to destroy or damage the property in question or, in the case of a charge of an offence under section 3 above, intended to use or cause or permit the use of something to destroy or damage it, in order to protect property belonging to himself or another or a right or interest in property which was or which he believed to be vested in himself or another, and at the time of the act or acts alleged to constitute the offence he believed –

(i) that the property, right or interest was in immediate need of protection; and

(ii) that the means of protection adopted or proposed to be adopted were or would be reasonable having regard to all the circumstances.

(3) For the purposes of this section it is immaterial whether a belief is justified or not if it is honestly held.

(4) For the purposes of subsection (2) above a right or interest in property includes any right or privilege in or over land, whether created by grant, licence or otherwise.

(5) This section shall not be construed as casting doubt on any defence recognised by law as a defence to criminal charges.

6-9. (*omissis*)

10. *Interpretation.*

(1) In this Act “property” means property of a tangible nature, whether real or personal, including money and –

(a) including wild creatures which have been tamed or are ordinarily kept in captivity, and any other wild creatures or their carcasses if, but only if, they have been reduced into possession which has not been lost or abandoned or are in the course of being reduced into possession; but

(b) not including mushrooms growing wild on any land or flowers, fruit or foliage of a plant growing wild on any land.

For the purposes of this subsection “mushroom” includes any fungus and “plant” includes any shrub or tree.

(2) Property shall be treated for the purposes of this Act as belonging to any person –

(a) having the custody or control of it;

(b) having in it any proprietary right or interest (not being an equitable interest arising only from an agreement to transfer or grant an interest); or

(c) having a charge on it.

(3) Where property is subject to a trust, the persons to whom it belongs shall be so treated as including any person having a right to enforce the trust.

(4) Property of a corporation sole shall be so treated as belonging to the corporation notwithstanding a vacancy in the corporation.

11-12. (*omissis*)

1.2.1.3. Fraud Act 2006, (2006 c. 35)

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Fraud

1. *Fraud.*

2. *Fraud by false representation.*

3. *Fraud by failing to disclose information.*

4. *Fraud by abuse of position.*

5. *“Gain” and “loss”.*

6. *Possession etc. of articles for use in frauds.*

7. *Making or supplying articles for use in frauds.*

8. *“Article”.*

9. *Participating in fraudulent business carried on by sole trader etc.*

10. *Participating in fraudulent business carried on by company etc.: penalty.*

Obtaining services dishonestly

11. *Obtaining services dishonestly.*

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12. *Liability of company officers for offences by company.*

13. *Evidence.*

14. *Minor and consequential amendments etc.*

15. *Commencement and extent.*

16. *Short title.*

1. *Fraud*

(1) A person is guilty of fraud if he is in breach of any of the sections listed in subsection (2) (which provide for different ways of committing the offence).

(2) The sections are –

- (a) section 2 (fraud by false representation),
- (b) section 3 (fraud by failing to disclose information), and
- (c) section 4 (fraud by abuse of position).

(3) A person who is guilty of fraud is liable –

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or to both);
- (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine (or to both).

(4) Subsection (3)(a) applies in relation to Northern Ireland as if the reference to 12 months were a reference to 6 months.

2. *Fraud by false representation*

(1) A person is in breach of this section if he –

- (a) dishonestly makes a false representation, and
- (b) intends, by making the representation –
 - (i) to make a gain for himself or another, or
 - (ii) to cause loss to another or to expose another to a risk of loss.

(2) A representation is false if –

- (a) it is untrue or misleading, and
- (b) the person making it knows that it is, or might be, untrue or misleading.

(3) “Representation” means any representation as to fact or law, including a representation as to the state of mind of –

- (a) the person making the representation, or
- (b) any other person.

(4) A representation may be express or implied.

(5) For the purposes of this section a representation may be regarded as made if it (or anything implying it) is submitted in any form to any system or device designed to receive, convey or respond to communications (with or without human intervention).

3. *Fraud by failing to disclose information*

A person is in breach of this section if he –

- (a) dishonestly fails to disclose to another person information which he is under a legal duty to disclose, and
- (b) intends, by failing to disclose the information –
 - (i) to make a gain for himself or another, or
 - (ii) to cause loss to another or to expose another to a risk of loss.

4. *Fraud by abuse of position*

- (1) A person is in breach of this section if he –
- (a) occupies a position in which he is expected to safeguard, or not to act against, the financial interests of another person,
 - (b) dishonestly abuses that position, and
 - (c) intends, by means of the abuse of that position –
 - (i) to make a gain for himself or another, or
 - (ii) to cause loss to another or to expose another to a risk of loss.
- (2) A person may be regarded as having abused his position even though his conduct consisted of an omission rather than an act.

5. *“Gain” and “loss”*

- (1) The references to gain and loss in sections 2 to 4 are to be read in accordance with this section.
- (2) “Gain” and “loss” –
- (a) extend only to gain or loss in money or other property;
 - (b) include any such gain or loss whether temporary or permanent; and “property” means any property whether real or personal (including things in action and other intangible property).
- (3) “Gain” includes a gain by keeping what one has, as well as a gain by getting what one does not have.
- (4) “Loss” includes a loss by not getting what one might get, as well as a loss by parting with what one has.

6. *Possession etc. of articles for use in frauds*

- (1) A person is guilty of an offence if he has in his possession or under his control any article for use in the course of or in connection with any fraud.
- (2) A person guilty of an offence under this section is liable –
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or to both);
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine (or to both).
- (3) Subsection (2)(a) applies in relation to Northern Ireland as if the reference to 12 months were a reference to 6 months.

7. *Making or supplying articles for use in fraud*

- (1) A person is guilty of an offence if he makes, adapts, supplies or offers to supply any article –
- (a) knowing that it is designed or adapted for use in the course of or in connection with fraud, or
 - (b) intending it to be used to commit, or assist in the commission of, fraud.
- (2) A person guilty of an offence under this section is liable –
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or to both);
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine (or to both).

(3) Subsection (2)(a) applies in relation to Northern Ireland as if the reference to 12 months were a reference to 6 months.

8. "Article"

(1) For the purposes of –

(a) sections 6 and 7, and

(b) the provisions listed in subsection (2), so far as they relate to articles for use in the course of or in connection with fraud,

"article" includes any program or data held in electronic form.

(2) The provisions are –

(a) section 1(7)(b) of the Police and Criminal Evidence Act 1984 (c. 60),

(b) section 2(8)(b) of the Armed Forces Act 2001 (c. 19), and

(c) Article 3(7)(b) of the Police and Criminal Evidence (Northern Ireland) Order 1989 [S.I. 1989/1341 (N.I. 12)];

(meaning of "prohibited articles" for the purposes of stop and search powers).

9. *Participating in fraudulent business carried on by sole trader etc.*

(1) A person is guilty of an offence if he is knowingly a party to the carrying on of a business to which this section applies.

(2) This section applies to a business which is carried on –

(a) by a person who is outside the reach of [F1 section 993 of the Companies Act 2006] (offence of fraudulent trading), and

(b) with intent to defraud creditors of any person or for any other fraudulent purpose.

(3) The following are within the reach of [F2 that section] –

(a) a company (within the meaning of [F3 the Companies Act 1985 or the Companies (Northern Ireland) Order 1986]);

(b) a person to whom that section applies (with or without adaptations or modifications) as if the person were a company;

(c) a person exempted from the application of that section.

(4)

(5) "Fraudulent purpose" has the same meaning as in [F5 that section].

(6) A person guilty of an offence under this section is liable –

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or to both);

(b) on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine (or to both).

(7) Subsection (6)(a) applies in relation to Northern Ireland as if the reference to 12 months were a reference to 6 months.

10. *Participating in fraudulent business carried on by company etc.: penalty*

(1) In Schedule 24 to the Companies Act 1985 (punishment of offences), in column 4 of the entry relating to section 458 of that Act, for "7 years" substitute "10 years".

(2) In Schedule 23 to the Companies (Northern Ireland) Order 1986 (punishment of offences), in column 4 of the entry relating to Article 451 of that Order, for "7 years" substitute "10 years".

Obtaining services dishonestly

11. *Obtaining services dishonestly*

(1) A person is guilty of an offence under this section if he obtains services for himself or another –

- (a) by a dishonest act, and
- (b) in breach of subsection (2).

(2) A person obtains services in breach of this subsection if –

- (a) they are made available on the basis that payment has been, is being or will be made for or in respect of them,
- (b) he obtains them without any payment having been made for or in respect of them or without payment having been made in full, and
- (c) when he obtains them, he knows –
 - (i) that they are being made available on the basis described in paragraph (a), or
 - (ii) that they might be,

but intends that payment will not be made, or will not be made in full.

(3) A person guilty of an offence under this section is liable –

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or to both);
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine (or to both).

(4) Subsection (3)(a) applies in relation to Northern Ireland as if the reference to 12 months were a reference to 6 months.

Supplementary

12. *Liability of company officers for offences by company*

(1) Subsection (2) applies if an offence under this Act is committed by a body corporate.

(2) If the offence is proved to have been committed with the consent or connivance of –

- (a) a director, manager, secretary or other similar officer of the body corporate, or
- (b) a person who was purporting to act in any such capacity,

he (as well as the body corporate) is guilty of the offence and liable to be proceeded against and punished accordingly.

(3) If the affairs of a body corporate are managed by its members, subsection (2) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

13. *Evidence*

(1) A person is not to be excused from –

- (a) answering any question put to him in proceedings relating to property, or
 - (b) complying with any order made in proceedings relating to property,
- on the ground that doing so may incriminate him or his spouse or civil partner of an offence under this Act or a related offence.

(2) But, in proceedings for an offence under this Act or a related offence, a statement or admission made by the person in –

- (a) answering such a question, or
- (b) complying with such an order,

is not admissible in evidence against him or (unless they married or became civil partners after the making of the statement or admission) his spouse or civil partner.

- (3) "Proceedings relating to property" means any proceedings for –
- (a) the recovery or administration of any property,
 - (b) the execution of a trust, or
 - (c) an account of any property or dealings with property,
- and "property" means money or other property whether real or personal (including things in action and other intangible property).
- (4) "Related offence" means –
- (a) conspiracy to defraud;
 - (b) any other offence involving any form of fraudulent conduct or purpose.

14-16 (*omissis*)

1.2.2. STATI UNITI D'AMERICA

Negli Stati Uniti, visto il numero degli ordinamenti statali, può essere significativa l'indicazione della disciplina «modello» descritta nel Model Penal Code. Si tratta, giova sottolinearlo, di disciplina non vigente, ma è un modello cui si ispirano numerosi codici penali in vigore nei singoli Stati.

Come esempio di disciplina vigente che mantiene espresso riferimento al larceny e alla appropriazione indebita, si riportano, a seguire, le due norme più significative previste, in tema di crimes against property, dal codice penale dello Stato di New York.

1.2.2.1. Model Penal Code

Model Penal Code
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PART II. DEFINITION OF SPECIFIC CRIMES
OFFENSES AGAINST PROPERTY

ARTICLE 220. ARSON, CRIMINAL MISCHIEF, AND OTHER PROPERTY DESTRUCTION

Model Penal Code § 220.1

§ 220.1. Arson and Related Offenses.

- (1) Arson. A person is guilty of arson, a felony of the second degree, if he starts a fire or causes an explosion with the purpose of:
- (a) destroying a building or occupied structure of another; or
 - (b) destroying or damaging any property, whether his own or another's, to collect insurance for such loss. It shall be an affirmative defense to prosecution under this paragraph that the actor's conduct did not recklessly endanger any building or occupied structure of another or place any other person in danger of death or bodily injury.
- (2) Reckless Burning or Exploding. A person commits a felony of the third degree if he purposely starts a fire or causes an explosion, whether on his own property or another's, and thereby recklessly:
- (a) places another person in danger of death or bodily injury; or
 - (b) places a building or occupied structure of another in danger of damage or destruction.
- (3) Failure to Control or Report Dangerous Fire. A person who knows that a fire is endangering life or a substantial amount of property of another and fails to take reasonable measures

to put out or control the fire, when he can do so without substantial risk to himself, or to give a prompt fire alarm, commits a misdemeanor if:

- (a) he knows that he is under an official, contractual, or other legal duty to prevent or combat the fire; or
- (b) the fire was started, albeit lawfully, by him or with his assent, or on property in his custody or control.

(4) Definitions. "Occupied structure" means any structure, vehicle or place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present. Property is that of another, for the purposes of this section, if anyone other than the actor has a possessory or proprietary interest therein. If a building or structure is divided into separately occupied units, any unit not occupied by the actor is an occupied structure of another.

(omissis)

ARTICLE 221. BURGLARY AND OTHER CRIMINAL INTRUSION

Model Penal Code § 221.0

§ 221.1. Burglary.

(1) Burglary Defined. A person is guilty of burglary if he enters a building or occupied structure, or separately secured or occupied portion thereof, with purpose to commit a crime therein, unless the premises are at the time open to the public or the actor is licensed or privileged to enter. It is an affirmative defense to prosecution for burglary that the building or structure was abandoned.

(2) Grading. Burglary is a felony of the second degree if it is perpetrated in the dwelling of another at night, or if, in the course of committing the offense, the actor:

- (a) purposely, knowingly or recklessly inflicts or attempts to inflict bodily injury on anyone; or
- (b) is armed with explosives or a deadly weapon.

Otherwise, burglary is a felony of the third degree. An act shall be deemed "in the course of committing" an offense if it occurs in an attempt to commit the offense or in flight after the attempt or commission.

(3) Multiple Convictions. A person may not be convicted both for burglary and for the offense which it was his purpose to commit after the burglarious entry or for an attempt to commit that offense, unless the additional offense constitutes a felony of the first or second degree.

§ 221.2. Criminal Trespass.

(1) Buildings and Occupied Structures. A person commits an offense if, knowing that he is not licensed or privileged to do so, he enters or surreptitiously remains in any building or occupied structure, or separately secured or occupied portion thereof. An offense under this Subsection is a misdemeanor if it is committed in a dwelling at night. Otherwise it is a petty misdemeanor.

(2) Defiant Trespasser. A person commits an offense if, knowing that he is not licensed or privileged to do so, he enters or remains in any place as to which notice against trespass is given by:

- (a) actual communication to the actor; or

(b) posting in a manner prescribed by law or reasonably likely to come to the attention of intruders; or

(c) fencing or other enclosure manifestly designed to exclude intruders.

An offense under this Subsection constitutes a petty misdemeanor if the offender defies an order to leave personally communicated to him by the owner of the premises or other authorized person. Otherwise it is a violation.

(3) Defenses. It is an affirmative defense to prosecution under this Section that:

(a) a building or occupied structure involved in an offense under Subsection (1) was abandoned; or

(b) the premises were at the time open to members of the public and the actor complied with all lawful conditions imposed on access to or remaining in the premises; or

(c) the actor reasonably believed that the owner of the premises, or other person empowered to license access thereto, would have licensed him to enter or remain.

ARTICLE 222. ROBBERY

Model Penal Code § 222.1

§ 222.1. Robbery.

(1) Robbery Defined. A person is guilty of robbery if, in the course of committing a theft, he:

(a) inflicts serious bodily injury upon another; or

(b) threatens another with or purposely puts him in fear of immediate serious bodily injury; or

(c) commits or threatens immediately to commit any felony of the first or second degree.

An act shall be deemed “in the course of committing a theft” if it occurs in an attempt to commit theft or in flight after the attempt or commission.

(2) Grading. Robbery is a felony of the second degree, except that it is a felony of the first degree if in the course of committing the theft the actor attempts to kill anyone, or purposely inflicts or attempts to inflict serious bodily injury.

ARTICLE 223. THEFT AND RELATED OFFENSES

Model Penal Code § 223.0

§ 223.0. Definitions.

In this Article, unless a different meaning plainly is required:

(1) “deprive” means: (a) to withhold property of another permanently or for so extended a period as to appropriate a major portion of its economic value, or with intent to restore only upon payment of reward or other compensation; or (b) to dispose of the property so as to make it unlikely that the owner will recover it.

(2) “financial institution” means a bank, insurance company, credit union, building and loan association, investment trust or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment.

(3) “government” means the United States, any State, county, municipality, or other political unit, or any department, agency or subdivision of any of the foregoing, or any corporation or other association carrying out the functions of government.

(4) “movable property” means property the location of which can be changed, including

things growing on, affixed to, or found in land, and documents although the rights represented thereby have no physical location; “immovable property” is all other property.

(5) “obtain” means: (a) in relation to property, to bring about a transfer or purported transfer of a legal interest in the property, whether to the obtainer or another; or (b) in relation to labor or service, to secure performance thereof.

(6) “property” means anything of value, including real estate, tangible and intangible personal property, contract rights, choses-in-action and other interests in or claims to wealth, admission or transportation tickets, captured or domestic animals, food and drink, electric or other power.

(7) “property of another” includes property in which any person other than the actor has an interest which the actor is not privileged to infringe, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement.

§ 223.1. Consolidation of Theft Offenses; Grading; Provisions Applicable to Theft Generally.

(1) Consolidation of Theft Offenses. Conduct denominated theft in this Article constitutes a single offense. An accusation of theft may be supported by evidence that it was committed in any manner that would be theft under this Article, notwithstanding the specification of a different manner in the indictment or information, subject only to the power of the Court to ensure fair trial by granting a continuance or other appropriate relief where the conduct of the defense would be prejudiced by lack of fair notice or by surprise.

(2) Grading of Theft Offenses.

(a) Theft constitutes a felony of the third degree if the amount involved exceeds \$ 500, or if the property stolen is a firearm, automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle, or in the case of theft by receiving stolen property, if the receiver is in the business of buying or selling stolen property.

(b) Theft not within the preceding paragraph constitutes a misdemeanor, except that if the property was not taken from the person or by threat, or in breach of a fiduciary obligation, and the actor proves by a preponderance of the evidence that the amount involved was less than \$ 50, the offense constitutes a petty misdemeanor.

(c) The amount involved in a theft shall be deemed to be the highest value, by any reasonable standard, of the property or services which the actor stole or attempted to steal. Amounts involved in thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be aggregated in determining the grade of the offense.

(3) Claim of Right. It is an affirmative defense to prosecution for theft that the actor:

(a) was unaware that the property or service was that of another; or

(b) acted under an honest claim of right to the property or service involved or that he had a right to acquire or dispose of it as he did; or

(c) took property exposed for sale, intending to purchase and pay for it promptly, or reasonably believing that the owner, if present, would have consented.

(4) Theft from Spouse. It is no defense that theft was from the actor’s spouse, except that

misappropriation of household and personal effects, or other property normally accessible to both spouses, is theft only if it occurs after the parties have ceased living together.

§ 223.2. Theft by Unlawful Taking or Disposition.

(1) Movable Property. A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with purpose to deprive him thereof.

(2) Immovable Property. A person is guilty of theft if he unlawfully transfers immovable property of another or any interest therein with purpose to benefit himself or another not entitled thereto.

§ 223.3. Theft by Deception.

A person is guilty of theft if he purposely obtains property of another by deception. A person deceives if he purposely:

(1) creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise; or

(2) prevents another from acquiring information which would affect his judgment of a transaction; or

(3) fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship; or

(4) fails to disclose a known lien, adverse claim or other legal impediment to the enjoyment of property which he transfers or encumbers in consideration for the property obtained, whether such impediment is or is not valid, or is or is not a matter of official record.

The term "deceive" does not, however, include falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons in the group addressed.

§ 223.4. Theft by Extortion.

A person is guilty of theft if he purposely obtains property of another by threatening to:

(1) inflict bodily injury on anyone or commit any other criminal offense; or

(2) accuse anyone of a criminal offense; or

(3) expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business repute; or

(4) take or withhold action as an official, or cause an official to take or withhold action; or

(5) bring about or continue a strike, boycott or other collective unofficial action, if the property is not demanded or received for the benefit of the group in whose interest the actor purports to act; or

(6) testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(7) inflict any other harm which would not benefit the actor.

It is an affirmative defense to prosecution based on paragraphs (2), (3) or (4) that the property obtained by threat of accusation, exposure, lawsuit or other invocation of official action was honestly claimed as restitution or indemnification for harm done in the circumstances to

which such accusation, exposure, lawsuit or other official action relates, or as compensation for property or lawful services.

§ 223.5. Theft of Property Lost, Mislaid, or Delivered by Mistake.

A person who comes into control of property of another that he knows to have been lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient is guilty of theft if, with purpose to deprive the owner thereof, he fails to take reasonable measures to restore the property to a person entitled to have it.

(omissis)

§ 223.7. Theft of Services.

(1) A person is guilty of theft if he purposely obtains services which he knows are available only for compensation, by deception or threat, or by false token or other means to avoid payment for the service. "Services" includes labor, professional service, transportation, telephone or other public service, accommodation in hotels, restaurants or elsewhere, admission to exhibitions, use of vehicles or other movable property. Where compensation for service is ordinarily paid immediately upon the rendering of such service, as in the case of hotels and restaurants, refusal to pay or absconding without payment or offer to pay gives rise to a presumption that the service was obtained by deception as to intention to pay.

(2) A person commits theft if, having control over the disposition of services of others, to which he is not entitled, he knowingly diverts such services to his own benefit or to the benefit of another not entitled thereto.

1.2.2.2. New York Penal Code

§ 155.05 Larceny; defined.

1. A person steals property and commits larceny when, with intent to deprive another of property or to appropriate the same to himself or to a third person, he wrongfully takes, obtains or withholds such property from an owner thereof.

2. Larceny includes a wrongful taking, obtaining or withholding of another's property, with the intent prescribed in subdivision one of this section, committed in any of the following ways:

(a) By conduct heretofore defined or known as common law larceny by trespassory taking, common law larceny by trick, embezzlement, or obtaining property by false pretenses;

(b) By acquiring lost property.

A person acquires lost property when he exercises control over property of another which he knows to have been lost or mislaid, or to have been delivered under a mistake as to the identity of the recipient or the nature or amount of the property, without taking reasonable measures to return such property to the owner;

(c) By committing the crime of issuing a bad check, as defined in section 190.05;

(d) By false promise.

A person obtains property by false promise when, pursuant to a scheme to defraud, he obtains property of another by means of a representation, express or implied, that he or a third person will in the future engage in particular conduct, and when he does not intend to en-

gage in such conduct or, as the case may be, does not believe that the third person intends to engage in such conduct.

In any prosecution for larceny based upon a false promise, the defendant's intention or belief that the promise would not be performed may not be established by or inferred from the fact alone that such promise was not performed. Such a finding may be based only upon evidence establishing that the facts and circumstances of the case are wholly consistent with guilty intent or belief and wholly inconsistent

with innocent intent or belief, and excluding to a moral certainty every hypothesis except that of the defendant's intention or belief that the promise would not be performed;

(e) By extortion.

A person obtains property by extortion when he compels or induces another person to deliver such property to himself or to a third person by means of instilling in him a fear that, if the property is not so delivered, the actor or another will:

(i) Cause physical injury to some person in the future; or

(ii) Cause damage to property; or

(iii) Engage in other conduct constituting a crime; or

(iv) Accuse some person of a crime or cause criminal charges to be instituted against him; or

(v) Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or

(vi) Cause a strike, boycott or other collective labor group action injurious to some person's business; except that such a threat shall not be deemed extortion when the property is demanded or received for the benefit of the group in whose interest the actor purports to act; or

(vii) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(viii) Use or abuse his position as a public servant by performing some act within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or

(ix) Perform any other act which would not in itself materially benefit the actor but which is calculated to harm another person materially with respect to his health, safety, business, calling, career, financial condition, reputation or personal relationships.

§ 165.00 Misapplication of property.

1. A person is guilty of misapplication of property when, knowingly possessing personal property of another pursuant to an agreement that the same will be returned to the owner at a future time,

(a) he loans, leases, pledges, pawns or otherwise encumbers such property without the consent of the owner thereof in such manner as to create a risk that the owner will not be able to recover it or will suffer pecuniary loss; or

(b) he intentionally refuses to return personal property valued in excess of one hundred dollars to the owner pursuant to the terms of the rental agreement provided that the owner shall have made a written demand for the return of such personal property in person or by certified mail at an address indicated in the rental agreement and he intentionally refuses to return such personal property for a period of thirty days after such demand has been received or should reasonably have been received by him. Such written demand shall state: (i) the

date and time at which the personal property was to have been returned under the rental agreement; (ii) that the owner does not consent to the continued withholding or retaining of such personal property and demands its return; and (iii) that the continued withholding or retaining of the property may constitute a class A misdemeanor punishable by a fine of up to one thousand dollars or by a sentence to a term of imprisonment for a period of up to one year or by both such fine and imprisonment.

(c) as used in paragraph (b) of this subdivision and in subdivision three of this section, the terms owner, personal property, and rental agreement shall be defined as in subdivision one of section three hundred ninety-nine-w of the general business law.

2. In any prosecution under paragraph (a) of subdivision one of this section, it is a defense that, at the time the prosecution was commenced, (a) the defendant had recovered possession of the property, unencumbered as a result of the unlawful disposition, and (b) the owner had suffered no material economic loss as a result of the unlawful disposition.

3. In any prosecution under paragraph (b) of subdivision one of this section, it is a defense that at the time the prosecution was commenced, (a) the owner had recovered possession of the personal property and suffered no material economic loss as a result of the unlawful retention; or (b) the defendant is unable to return such personal property because it has been accidentally destroyed or stolen; or (c) the owner failed to comply with the provisions of section three hundred ninety-nine-w of the general business law.

Misapplication of property is a class A misdemeanor.

1.2.3. SISTEMI PENALI DIVERSI DA QUELLI INGLESE E STATUNITENSI

Si riportano sintetiche indicazioni in ordine ai seguenti sistemi penali.

1.2.3.1. Australia

Stato di Vittoria: Crimes (Theft) Act 1973; Stato di Australian Capital Territory: Crimes (Amendment) Ordinance (n. 4) 1985; Northern Territory: NT Criminal Code, sects. 209 s.; Meramente definitorie della common law le disposizioni degli Stati del New South Wales (Crimes Act 1900, sects. 117 s.) e South Australia (Criminal Law Consolidation Act 1935, sects. 131 s.). Sostanzialmente basate sulla common law anche le previsioni dei codici penali della Tasmania, del Queensland e del Western Australia. Per il sistema federale, Criminal Code Act 1995, Part 7.2

1.2.3.2. Canada

Criminal Code, Sects. 321-365, 428-447.

1.2.3.3. Irlanda

Theft and Fraud Offence Act 2001.

