

## CHAPTER 155

### THEFT 1992-29

This Act came into operation on 1st September, 1994 by Proclamation (S.I. 1994 No. 75).

#### **Amended by:**

This Act has not been amended

#### **Law Revision Orders**

*The following Law Revision Order or Orders authorized the insertion and removal of pages as the case may be under the Law Revision Act Cap.2 now repealed:*

1993

2002



## CHAPTER 155

### THEFT 1992-29

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**BARBADOS****THEFT  
1992-29**

*An Act to simplify and reform the law relating to larceny and similar or associated offences.*

[Commencement: 1st September, 1994]

**CITATION****Short title**

1. This Act may be cited as the *Theft Act*.

**INTERPRETATION****Definitions**

- 2.(1) In this Act,

“arrestable offence” has the meaning prescribed by section 2 of the *Criminal Law (Arrestable Offences) Act*, Cap. 125A;

“building” includes a part of any building, but does not include any church, chapel, meeting house or other place of divine worship;

“deception” means any deception, whether deliberate or reckless, by words or conduct as to fact or to law, including a deception as to the present intentions of the person using the deception or any other person;

“gain” includes a gain by keeping what one has, as well as a gain by getting what one does not have;

“loss” includes a loss by not getting what one might get, as well as a loss by parting with what one has;

“property” includes money and all other property, whether real or personal, including things in action and other intangible property;

“thief” means a person who acts in the circumstances described in section 3(1), and “steal” is to be construed accordingly.

(2) For the purposes of this Act,

(a) “gain” and “loss” extend only to gain or loss in money or other property, whether such gain or loss is temporary or permanent;

(b) section 6(1) applies generally to this Act as it applies to section 3.

## PART I

### DISHONEST ACQUISITION OF PROPERTY

#### **Theft**

**3.(1)** A person who dishonestly appropriates property belonging to another with the intention of permanently depriving the other of that property is guilty of theft and liable on conviction on indictment to imprisonment for 10 years.

(2) For the purposes of this section,

(i) it is immaterial whether the appropriation is made with a view to gain, or whether it is made for the thief’s own benefit;

- (ii) sections 4 to 7 have effect as regards the interpretation and operation of this section and, except as otherwise provided by this Act, apply only to this section.

**“Dishonestly”**

- 4.(1) A person’s conduct is not to be regarded as dishonest
- (a) where he performs the conduct believing in good faith that he is legally entitled to perform it on behalf of himself or of a third person; or
  - (b) where he appropriates the property believing in good faith that he would have the consent of the other person if that person knew of the appropriation and the circumstances of it; or
  - (c) where he appropriates the property believing in good faith that the person to whom the property belongs cannot be discovered by taking reasonable steps, except where the property came to him as a trustee or personal representative.
- (2) A person’s appropriation of property belonging to another may be dishonest notwithstanding that he is willing to pay for the property.

**“Appropriates”**

- 5.(1) A person appropriates property belonging to another,
- (a) when he assumes the rights of an owner; or
  - (b) where he has come by the property, whether innocently or not, without stealing it, when he later assumes a right to the property by keeping or dealing with it as owner.
- (2) Where property, or a right or interest in property is or purports to be transferred to a person acting in good faith, no later assumption by that person of rights which he believed himself to be acquiring amounts to theft of the property by reason of any defect in the transferor’s title.

**“Belonging to another”**

6.(1) Property belong to another where he has possession or control of the property, or has 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 the property belongs include any person having a right to enforce the trust, and an intention to defeat the trust is an intention to deprive that person of the property.

(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 its proceeds belong as against him to the other.

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

(5) For the purpose of this section, the property of a corporation sole belongs to the corporation notwithstanding a vacancy in the corporation.

**“With the intention of permanently depriving the other of that property”**

7.(1) A person who appropriates 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 that property 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 the thing may amount to so treating it if, but only if, the borrowing or lending is for a period, and in circumstances that make it equivalent to an outright taking or disposal.

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

*Stealing with force or with the threat of force etc.*

### **Robbery and assault with intent to rob**

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

(2) A person who assaults another with intent to rob is guilty of an offence.

(3) A person who is guilty of robbery or of an assault with intent to rob is liable on conviction on indictment to imprisonment for 15 years.

*Blackmail, fraud and other offences*

### **Blackmail**

9.(1) A person who, with a view to gain for himself or another or with intent to cause loss to another, makes any unwarranted demand with menaces is guilty of blackmail and liable on conviction on indictment to imprisonment for 15 years.

(2) For the purposes of subsection (1),

(a) a demand with menaces is unwarranted unless the person making the demand does so in the belief that

(i) he has reasonable grounds for making the demand; and

(ii) the use of the menaces is a proper means of reinforcing the demand;

- (b) 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.

### **Criminal deception**

**10.(1)** A person who by any deception dishonestly obtains property belonging to another, with the intention of permanently depriving the other of the property is guilty of criminal deception and liable on conviction on indictment to imprisonment for 10 years.

(2) For the purpose of this section,

- (a) “obtain” includes obtaining for another or enabling another to obtain or to retain;
- (b) a person is to be treated as obtaining property if he obtains the ownership, possession or control of the property;
- (c) section 7 applies to this section with the necessary adaptation of the reference to “appropriates” as it applies for the purposes of section 3.

### **Obtaining a pecuniary advantage by deception**

**11.(1)** A person who by any deception dishonestly obtains for himself or another any pecuniary advantage is guilty of an offence and liable on conviction on indictment to imprisonment for 5 years.

(2) For the purposes of this section, a person obtains a pecuniary advantage where

- (a) he is allowed to borrow by way of overdraft, or to take out any policy of insurance or annuity contract, or obtains an improvement of the terms on which he is allowed to do; or
- (b) he is given the opportunity to earn remuneration or greater remuneration in an office or employment, or to win money by betting.

**Obtaining services by deception**

**12.(1)** A person who by any deception dishonestly obtains services from another is guilty of an offence and liable on conviction on indictment to imprisonment for 5 years.

(2) For the purposes of subsection (1), a person obtains services where the other is induced to confer a benefit by doing some act, or by causing or permitting some act to be done, on the understanding that the benefit has been or will be paid for.

**Evading liability by deception**

**13.(1)** Subject to subsection (2), a person who by any deception

- (a) dishonestly secures the remission of the whole or part of any existing liability to make a payment, whether his own liability or another's; or
- (b) with intent to make permanent default in whole or in part on any existing liability to make a payment, or with intent to let another do so, dishonestly induces the creditor or any person claiming payment on behalf of the creditor to wait for payment, whether or not the due date for payment is deferred, or to forego payment; or
- (c) dishonestly obtains any exemption from or abatement of liability to make a payment,

is guilty of an offence, and liable on conviction on indictment to imprisonment for 5 years.

(2) In this section, "liability" means a legally enforceable liability; and subsection (1) does not apply to a liability that has not been accepted or established to pay compensation for a wrongful act or omission.

(3) For the purposes of subsection (1) (b), a person who is induced to take in payment a cheque or other security for money by way of conditional satisfaction

of a pre-existing liability is to be treated not as being by paid but as being induced to wait for payment.

(4) For the purposes of subsection (1) (c), “obtains” includes obtaining for another or enabling another to obtain.

### **Making off without payment**

**14.(1)** Subject to subsection (2), a person who, knowing that payment on the spot for anything supplied or service done is required or expected from him, dishonestly makes off without having paid as required or expected, and with intent to avoid payment of the amount due is guilty of an offence and liable on conviction on indictment to imprisonment for 5 years.

(2) Where the thing supplied or the service done is contrary to law or where the service done is such that payment is not legally enforceable, subsection (1) does not apply.

(3) For the purposes of this section, “payment on the spot” includes payment at the time of collecting the thing on which work has been done or in respect of which a service has been provided.

### **Falsifying accounts and documents**

**15.(1)** A person who 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, 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 record or document made or required for any accounting purpose, that to his knowledge is or is likely to be misleading, false or deceptive in a material particular,

is guilty of an offence and liable on conviction on indictment to imprisonment for 7 years.

- (2) For the purposes of this section, a person who
- (a) makes or concurs in making in an account or other document an entry that is or is likely to be misleading, false or deceptive in a material particular; or
  - (b) omits or concurs in omitting a material particular from an account or other document,

is to be treated as falsifying the account or document.

### **Liability of directors, officers and members of a body corporate**

**16.(1)** Where an offence is committed by a body corporate under section 10, 11, 12, 13, 15 or 17 and the offence 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 of any person purporting to act in any such capacity, he and the body corporate are each guilty of that offence and liable to be dealt with in the manner prescribed for that offence.

(2) Where the affairs of a body corporate are managed by its members, this section applies 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.

### **False statements by directors, etc. of a body corporate or unincorporated association**

**17.(1)** Any officer of a body corporate or of an unincorporated association, or any person purporting to act in that capacity, who 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 that to his knowledge is or is likely to be misleading, false or deceptive in a material particular is guilty of an offence and liable on conviction on indictment to imprisonment for 7 years.

(2) Where the affairs of a body corporate or of an association are managed by its members, this section applies to any statement that 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.

(3) For the 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 that body or association.

### **Destruction or concealment etc. of documents**

**18.(1)** A person who dishonestly, with a view to gain for himself or another or with intent to cause loss to another,

(a) destroys, defaces or conceals any valuable security, any will or other testamentary document or any original document of, or belonging to, or filed or deposited in, any court or government department or ministry; or

(b) procures by any deception the execution of a valuable security,

is guilty of an offence and liable on conviction on indictment to imprisonment for 7 years.

(2) Paragraph (b) of subsection (1) applies to the making, acceptance, endorsement, alteration, cancellation or destruction in whole or in part of a valuable security, and to the signing or sealing of any paper or other material in order that it may be made or converted into or used or dealt with as, a security, as if that were the execution of a valuable security.

(3) For the purposes of this section, “valuable security” means any document creating, transferring, surrendering or releasing any right to, in or over property, or authorising the payment of money or delivery of property, or evidencing the creation, transfer, surrender or release of any such right, or the payment of money or delivery of any property, or the satisfaction of any obligation.

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*Offences relating to stolen property***Handling stolen property**

**19.(1)** A person who handles stolen property is guilty of handling stolen property and liable on conviction on indictment to imprisonment for 15 years.

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

**Advertising reward for return of property stolen or lost**

**20.** Where any public advertisement of a reward for the return of any property that has been stolen or lost uses any words to the effect that no questions will be asked, or that the person producing the property will be safe from apprehension or inquiry, or that any money paid for the purchase of the property or advanced by way of loan on the property will be repaid, the person advertising the reward and any person who prints or publishes the advertisement is guilty of an offence and liable on summary conviction to a fine of \$1 000 or to imprisonment for one year or both.

**Scope of provisions relating to stolen property**

**21.(1)** The provisions of this Act relating to property that has been stolen apply whether the stealing occurred in Barbados or elsewhere, and whether it occurred before or after 1st September, 1994, provided that the stealing, if not an offence under this Act, amounted to an offence where and at the time when the property was stolen; and references to stolen property shall be construed accordingly.

(2) For the purposes of the provisions of this Act relating to property that has been stolen, references to stolen property include, in addition to the property originally stolen and parts of it, whether in their original state or not

- (a) any other property that directly or indirectly represents or has at any time represented the stolen property in the hands of the thief as being the proceeds of any disposal or realisation of the whole or part of the property stolen or of the property so representing the stolen property; and
- (b) any other property that directly or indirectly represents or has at anytime represented the stolen property in the hands of a handler of the stolen property or of any part of it as being the proceeds of any disposal or realisation of the whole part of the stolen property handled by him or of property so representing it.

(3) No property is to be regarded as having continued to be stolen property after it has been restored to the person from whom it was stolen or to other lawful possession or custody or after that person or any other person claiming through him has otherwise ceased as regards that property to have any right to restitution in respect of the theft.

(4) For the purposes of the provisions of this Act relating to property that has been stolen, including subsections (1) to (3), property obtained in Barbados or elsewhere either by blackmail or in the circumstances described in section 10 (1), is to be regarded as stolen, and “steal”, “theft” and “thief” shall be construed accordingly.

### *Theft of use*

#### **Taking motor vehicle or other conveyance without permission**

**22.(1)** Subject to this section, a person who, without having the consent of the owner or other lawful authority, takes any conveyance for his own or another’s use or, knowing that any conveyance has been taken without that consent or

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authority drives it or allows himself to be carried in or on it is guilty of an offence and liable on conviction on indictment to imprisonment for 5 years.

(2) Where on the trial of an indictment for theft, the jury are not satisfied that the accused committed the theft, but it is proved to their satisfaction that the accused committed an offence under subsection (1), the jury may find the accused guilty of that offence.

(3) Subsection (1) does not apply to pedal cycles.

(4) Subject to subsection (5), 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 that consent or authority, is guilty of an offence and liable on summary conviction to a fine of \$500 or imprisonment for 6 months or both.

(5) 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.

(6) For the purposes of this section,

(a) "conveyance" means any conveyance constructed or adapted for the carriage of a person, whether by land, air or water, but excludes a conveyance constructed or adapted for use only under the control of a person not carried in or on it, and "drive" is to be construed accordingly;

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

### **Abstracting utility services**

**23.** A person who dishonestly uses without due authority, or dishonestly causes to be wasted or diverted any water, gas or electricity is guilty of an offence and liable on summary conviction to a fine of \$1 000.

PART II  
OFFENCES RELATING TO BUILDINGS

**Burglary**

**24.(1)** A person who

- (a) enters any building as a trespasser with intent to commit an offence as mentioned in subsection (2); or
- (b) having entered any building as a trespasser,
  - (i) steals or attempts to steal anything in the building, or
  - (ii) inflicts or attempts to inflict on any person in the building any grievous bodily harm,

is guilty of burglary, and liable on conviction on indictment to imprisonment for 20 years.

(2) The offences referred to in subsection (1) (a) are the offences of

- (a) stealing anything in a building;
- (b) inflicting any bodily harm on any person in the building;
- (c) raping or indecently assaulting a woman in a building;
- (d) committing buggery, whether with a male person or an animal; or
- (e) unlawfully damaging or destroying the building or anything in the building.

(3) Reference in subsections (1) and (2) to a building apply to an inhabited vehicle or vessel; and to any such vehicle or vessel at times when the person having the habitation in it is not there as well as at times when he is.

**Aggravated burglary**

**25.(1)** A person who commits burglary and at the time of its commission has with him any firearm, imitation firearm, weapon of offence, or explosive is guilty

of aggravated burglary and liable on conviction on indictment to imprisonment for life.

- (2) For the purposes of this section,
- (a) “firearm” includes an air gun or air pistol;
  - (b) “imitation firearm” means anything that has the appearance of being a firearm, whether capable of being discharged or not;
  - (c) “weapon of offence” means any article made or adapted for use for causing injury to or for incapacitating a person, or intended by the person having it with him for that use;
  - (d) “explosive” means any article manufactured for producing a practical effect by explosion, or intended by the person having it with him for that purpose.

### **Sacrilege**

- 26.** A person who
- (a) enters any church, chapel, meeting-house or other place of divine worship with intent to commit or attempts to commit any arrestable offence; or
  - (b) having entered any church, chapel, meeting-house or other place of divine worship, commits an arrestable offence

is guilty of sacrilege, and liable on conviction on indictment to imprisonment for life.

### **Going equipped with implement for stealing etc.**

**27.(1)** A person who, not being at his place of abode, has with him any article for use in the course of or in connection with any burglary, theft or criminal deception is guilty of an offence, and liable on conviction on indictment to imprisonment for 5 years.

(2) Where a person is charged with an offence under this section, proof that he had with him any article made or adapted for use in committing a burglary, theft or criminal deception is evidence that he had it with him for that use.

(3) For the purposes of this section, an offence under section 22 (1) in respect of the taking of a conveyance is to be treated as theft, and criminal deception refers to an offence under section 10.

### **Removal of articles from place open to the public**

**28.(1)** Subject to subsections (2) and (3), where the public have access to a building in order to view the building 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 in its grounds is guilty of an offence and liable on conviction on indictment to imprisonment for 5 years.

(2) 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.

(3) For the purposes of this section,

- (a) the reference to “collection” includes a reference to a collection got together for a temporary purpose, but does not include a reference to a collection made or exhibited for the purpose of effecting sales or other commercial dealings;
- (b) it is immaterial 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).

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PART III  
ENFORCEMENT AND PROCEDURE

**Arrest and search for stolen property**

29.(1) Where it is made to appear by information on oath before a magistrate that there is reasonable cause to believe that a person has in his custody or possession or on his premises any stolen property, the magistrate may grant a warrant to search for and seize the property; but no warrant to search for stolen property may be addressed to a person other than a police officer except under the authority of an enactment expressly so providing.

(2) Where under subsection (1), a person is authorised to search premises for stolen property, he may enter and search the premises accordingly, and may seize any property he believes to be stolen property.

(3) Section 58 of the *Police Act*, Cap. 167 applies to property which has come into the possession of the police under this section as it applies to property which has come into the possession of the police in the circumstances described in that section.

(4) This section is to be construed in accordance with section 21.

**Evidence and procedure**

30.(1) Any number of persons may be charged in one indictment, with reference to the same theft, with having at different times or at the same time handled all or any of the stolen property, and the persons so charged may be tried together.

(2) On the trial of two or more persons indicted for jointly handling any stolen property the jury may find any of the accused guilty if the jury are satisfied that he handled all or any part of the stolen property, whether or not he did so jointly with the other accused or any of them.

(3) Where a person is being proceeded against for handling stolen property, it is not necessary to allege or prove that he knew or ought to have known of the particular offence by reason of which any property is or is deemed to be stolen property.

(4) Where a person is being proceeded against for handling stolen property, but not for any offence other than handling stolen property, then at any stage of the proceedings, if evidence has been given of his having or arranging to have in his possession the property the subject of the charge, or of his undertaking or assisting in, or arranging to undertake or assist in, its retention, removal, disposal or realisation, the following evidence is admissible for the purpose of proving that he knew or believed the property to be stolen property:

- (a) evidence that he has had in his possession, or has undertaken or assisted in the retention, removal, disposal or realisation of, stolen property from any theft taking place not earlier than 12 months before the offence charged; and
- (b) provided that 7 days' notice in writing has been given to him of the intention to prove the conviction, evidence that he has within the 5 years preceding the date of the offence charged been convicted of theft or of handling stolen property.

(5) In any proceedings for the theft of anything in the course of transmission, whether by post or otherwise, or for handling stolen property from such theft, a statutory declaration made by any person that he despatched or received or failed to receive any property or postal packet, or that any property or postal packet when despatched or received by him was in a particular state or condition, is admissible as evidence of the facts stated in the declaration, subject to the following conditions:

- (a) a statutory declaration shall only be admissible where and to the extent to which oral evidence to the like effect would have been admissible in the proceedings; and

- (b) a statutory declaration is only admissible if at least 7 days before the hearing or trial, a copy of it has been given to the person charged, and he has not, at least 3 days before the hearing or trial or within such further time as the court may in special circumstances allow, given the prosecutor written notice requiring the attendance at the hearing or trial of the person making the declaration.

(6) This section is to be construed in accordance with section 21 and in subsection (4) (b), the reference to handling stolen property includes any corresponding offence committed before 1st September, 1994.

### **Orders for restitution**

**31.(1)** Where any property has been stolen, and a person is convicted of any offence with reference to the theft, whether or not the stealing is the gist of the offence, the court by or before which the offender is convicted may on the conviction exercise any of the following powers

- (a) the court may order anyone having possession or control of the property to restore it to any person entitled to recover it from him; or
- (b) on the application of a person entitled to recover from the person convicted any other property directly or indirectly representing the first-mentioned property, as being the proceeds of any disposal or realisation of the whole or part of it or of property so representing it, the court may order that other property to be delivered or transferred to the applicant; or
- (c) on the application of a person who, if the first-mentioned property were in the possession of the person convicted, would be entitled to recover it from him, the court may order that a sum not exceeding the value of that property be paid to the applicant out of any money of the person convicted which was taken out of his possession on his apprehension.

(2) Where under subsection (1) the court has power on a person's conviction to make an order against him both under paragraph (b) and under paragraph (c) with reference to the stealing of the same property, the court may make orders

under both paragraphs provided that the applicant for the orders does not thereby recover more than the value of the property.

(3) Where under subsection (1) the court on a person's conviction makes an order under paragraph (a) for the restoration of any property, and it appears to the court that the person convicted has sold the property to a person acting in good faith, or has borrowed money on the security of the property from a person so acting, then on the application of the purchaser or lender the court may order that there shall be paid to the applicant, out of any money of the person convicted which was taken out of his possession on his apprehension, a sum not exceeding the amount paid for the purchase by the applicant or, as the case may be, the amount owed to the applicant in respect of the loan.

(4) The court shall not exercise the powers conferred by this section unless in the opinion of the court the relevant facts sufficiently appear from evidence given at the trial or the available documents, together with admissions made by or on behalf of any person in connection with any proposed exercise of the powers; and for this purpose

“the available documents” means any written statements or admissions which were made for use, and would have been admissible as evidence at the trial, the depositions taken at any committal proceedings and any written statements or admissions used in evidence in those proceedings.

(5) Any order made under this section on conviction on indictment is to be treated as an order for the restitution of property for the purposes of any enactment regulating the effect of appeals or orders for the restitution of property.

(6) Any order made under this section by a magistrate's court is to be suspended

(a) in any case until the expiration of the period for the time being prescribed by law for the giving of notice of appeal against a decision of a magistrate's court;

(b) where notice of appeal is given within the period so prescribed, until the determination of the appeal.

(7) References in this section to stealing are to be construed in accordance with section 21(1) and (4).

PART IV  
MISCELLANEOUS

**Husband and wife**

**32.(1)** This Act applies in relation to the parties to a marriage, and to property belonging to the wife or husband whether or not by reason of an interest derived from the marriage, as it would apply if they were not married and any such interest subsisted independently of the marriage.

(2) Subject to subsection (4), a person has the same right to bring proceedings against that person's wife or husband for any offence, whether under this Act or otherwise, as if they were not married, and a person bringing any such proceedings is competent to give evidence for the prosecution at every stage of the proceedings.

(3) Where a person is charged in proceedings not brought by that person's wife or husband with having committed any offence with reference to that person's wife or husband or to property belonging to the wife or husband, the wife or husband is competent to give evidence at every stage of the proceedings, whether for the defence or for the prosecution, and whether the accused is charged solely or jointly with any other person except that

- (a) the wife or husband, unless compellable at common law, is not compellable either to give evidence or, in giving evidence, to disclose any communication made to her or him during the marriage by the accused; and
- (b) her or his failure to give evidence shall not be made the subject of any comment by the prosecution.

(4) Proceedings may not be instituted against a person for any offence of stealing or doing unlawful damage to property which at the time of the offence belongs to that person's wife or husband, or for any attempt, incitement or conspiracy to commit such an offence, unless the proceedings are instituted by or with the consent of the Director of Public Prosecutions; but

- (a) this subsection does not apply to proceedings against a person for an offence
  - (i) if that person is charged with committing the offence jointly with the wife or husband, or
  - (ii) if by virtue of any judicial decree or order, wherever made, that person and the wife or husband are at the time of the offence under no obligation to cohabit; and
- (b) this subsection does not prevent the arrest, or the issue of a warrant for the arrest, of a person for an offence, or the remand in custody or on bail of a person charged with an offence, where the arrest, if without a warrant, is made, or the warrant of arrest issues on an information laid, by a person other than the wife or husband.

#### **Effect on civil proceedings and rights**

**33.(1)** A person shall not be excused, by reason that to do so may incriminate that person or the wife or husband of that person of an offence under this Act

- (a) from answering any question put to that person in proceedings for the recovery or administration of any property, for the execution of any trust or for an account of any property or dealings with property; or
- (b) from complying with any order made in any such proceedings;

but no statement or admission made by a person in answering a question put or complying with an order made as aforesaid shall, in proceedings for an offence under this Act, be admissible in evidence against that person or, unless they married after the making of the statement or admission, against the wife or husband of that person.

(2) Notwithstanding any enactment to the contrary, where property has been stolen or obtained by fraud or other wrongful means, the title to that or any other property is not affected by reason only of the conviction of the offender.

**Effect on existing law and construction of references to offences**

**34.(1)** The following offences are hereby abolished for all purposes not relating to offences committed before 1st September, 1994:

- (a) any offence at common law of larceny, robbery, burglary, receiving stolen property, obtaining property by threats, extortion by colour of office or franchise, false accounting by public officers, concealment of treasure trove and, except as regards offences relating to the public revenue, cheating; and
- (b) any offence under an enactment mentioned in the *Schedule*<sup>\*</sup>, to the extent to which the offence depends on any provision of that enactment that is repealed.

*\*[The Schedule and the repeals referred to in this paragraph are not printed in this revision. See section 34 of, and the Schedule to, this Act as originally enacted (Act 1992-29).]*

(2) Except as regards offences committed before 1st September, 1994, and except in so far as the context otherwise requires

- (a) references in any enactment passed before this Act to an offence abolished by this Act shall, subject to any express amendment or repeal made by this Act, have effect as references to the corresponding offence under this Act, and in any such enactment the expression “receive”, when it relates to an offence of receiving, means handle, and “receiver” shall be construed accordingly; and
- (b) without prejudice to paragraph (a), references in any enactment, whenever passed, to theft or stealing, including references to stolen goods, and references to robbery, blackmail, burglary, aggravated burglary or handling stolen goods, shall be construed in accordance with the provisions of this Act, including those of section 21.