

CHAPTER 13: CRIMES AGAINST PROPERTY

INTRODUCTION

Crimes against property can take many forms and have many different names. Texas prefers “theft” over the older term ‘larceny,’ has a consolidated theft statute, and a whole chapter dealing with computer crimes. Like all states, Texas has statutes dealing with robbery and forgery.

Theft, embezzlement, and related statutes are found in Texas Penal Code (TPC) ch. 31, “Theft:”
<http://www.capitol.state.tx.us/statutes/docs/PE/content/word/pe.007.00.000031.00.doc>

The robbery statutes are found in TPC ch. 29:
<http://www.capitol.state.tx.us/statutes/docs/PE/content/word/pe.007.00.000029.00.doc>

TPC ch. 32 “Fraud” contains forgery, credit card abuse and related statutes:
<http://www.capitol.state.tx.us/statutes/docs/PE/content/word/pe.007.00.000032.00.doc>

“Computer Crimes” are found in ch. 33 of the TPC:
<http://www.capitol.state.tx.us/statutes/docs/PE/content/word/pe.007.00.000033.00.doc>

THEFT

Like many states, Texas has a consolidated theft statute: Sec. 31.02 provides:

CONSOLIDATION OF THEFT OFFENSES. Theft as defined in Section 31.03 constitutes a single offense superseding the separate offenses previously known as theft, theft by false pretext, conversion by a bailee, theft from the person, shoplifting, acquisition of property by threat, swindling, swindling by worthless check, embezzlement, extortion, receiving or concealing embezzled property, and receiving or concealing stolen property.

The consolidated theft statute (sec. 31.03) is a long, complex and difficult statute. There are three basic ways to commit theft: (b) (1), (2) and (3). You may need to cover this material a number of times to see how it all fits together. The first part of the basic consolidated theft statute reads as follows:

§ 31.03. THEFT. (a) A person commits an offense if he unlawfully appropriates [defined below] property with intent to deprive the owner of property.

(b) Appropriation of property is unlawful if:
(1) it is without the owner's effective consent [defined below];
[(2) and (3) are discussed below]

A number of the key terms are defined in sec. 31.01:

(4) "Appropriate" means:

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(A) to bring about a transfer or purported transfer of title to or other nonpossessory interest in property, whether to the actor or another; or

(B) to acquire or otherwise exercise control over property other than real property.

(3) "Effective consent" includes consent by a person legally authorized to act for the owner. Consent is not effective if:

(A) induced by deception or coercion; [both defined below]

(B) given by a person the actor knows is not legally authorized to act for the owner;

(C) given by a person who by reason of youth, mental disease or defect, or intoxication is known by the actor to be unable to make reasonable property dispositions;

(D) given solely to detect the commission of an offense; or

(E) given by a person who by reason of advanced age is known by the actor to have a diminished capacity to make informed and rational decisions about the reasonable disposition of property.

1) "Deception" means:

(A) creating or confirming by words or conduct a false impression of law or fact that is likely to affect the judgment of another in the transaction, and that the actor does not believe to be true;

(B) failing to correct a false impression of law or fact that is likely to affect the judgment of another in the transaction, that the actor previously created or confirmed by words or conduct, and that the actor does not now believe to be true;

(C) preventing another from acquiring information likely to affect his judgment in the transaction;

(D) selling or otherwise transferring or encumbering property without disclosing a lien, security interest, adverse claim, or other legal impediment to the enjoyment of the property, whether the lien, security interest, claim, or impediment is or is not valid, or is or is not a matter of official record; or

(E) promising performance that is likely to affect the judgment of another in the transaction and that the actor does not intend to perform or knows will not be performed, except that failure to perform the promise in issue without other evidence of intent or

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knowledge is not sufficient proof that the actor did not intend to perform or knew the promise would not be performed.

“Deception” spoils effective consent to transfer of the property and makes the appropriation criminal. This covers the former “theft by false pretext” offense and other similar theft crimes.

Sec. 1.07 (a)(9) defines “coercion” as a

“threat, however communicated:

- (A) to commit an offense;
- (B) to inflict bodily injury in the future on the person threatened or another;
- (C) to accuse a person of any offense;
- (D) to expose a person to hatred, contempt, or ridicule;
- (E) to harm the credit or business repute of any person; or
- (F) to take or withhold action as a public servant, or to cause a public servant to take or withhold action.

Coercion makes the consent ineffective and the appropriation unlawful. This covers the blackmail and extortion situations.

Under sec. 31.01:

(2) "Deprive" means:

- (A) to withhold property from the owner permanently or for so extended a period of time that a major portion of the value or enjoyment of the property is lost to the owner;
- (B) to restore property only upon payment of reward or other compensation; or
- (C) to dispose of property in a manner that makes recovery of the property by the owner unlikely.

Under sec. 31.03 appropriation is also unlawful if

(2) the property is stolen and the actor appropriates the property knowing it was stolen by another; or

(3) property in the custody of any law enforcement agency was explicitly represented by any law enforcement agent to the actor as being stolen and the actor appropriates the property believing it was stolen by another.

Subsec. (2) covers the old offense of receiving stolen property. Subsec. (3) allows a person to be convicted under subsec. (2) even though the property was not really stolen. This allows police to set up sting operations where undercover officers sell “stolen” property to those willing to buy it. The use of sting operations is also covered by 31.03 (d):

It is not a defense to prosecution under this section that:

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- (1) the offense occurred as a result of a deception or strategy on the part of a law enforcement agency, including the use of an undercover operative or peace officer;
- (2) the actor was provided by a law enforcement agency with a facility in which to commit the offense or an opportunity to engage in conduct constituting the offense; or
- (3) the actor was solicited to commit the offense by a peace officer, and the solicitation was of a type that would encourage a person predisposed to commit the offense to actually commit the offense, but would not encourage a person not predisposed to commit the offense to actually commit the offense.

Subsec. 3 adopts a subjective form of the entrapment defense. (See ch. 9 *infra* and in your text for a discussion of entrapment.)

PENALTIES FOR THEFT

As you might expect, the more valuable the property stolen, the higher the potential level of punishment. Although there are special provisions for certain types of property (e.g., livestock, firearms) and certain other situations (e.g., offender is public servant, theft is from grave), the basic penalty scheme, sec. 31.03 (e)-(h), is as follows:

- 1) Class C misdemeanor if the value of the property is less than \$50;
- (2) Class B misdemeanor if the value of the property is \$50 or more but less than \$500;
- (3) Class A misdemeanor if the value of the property stolen is \$500 or more but less than \$1,500;
- (4) State jail felony if the value of the property stolen is \$1,500 or more but less than \$20,000,
- (5) Felony of the third degree if the value of the property stolen is \$20,000 or more but less than \$100,000,
- (6) Felony of the second degree if the value of the property is \$100,000 or more but less than \$200,000; or
- (7) Felony of the first degree if the value of the property is \$200,000 or more.

ADDITIONAL THEFT STATUTES

Although Texas has a consolidated theft statute, not all types of theft are covered in the consolidated statute. Other types of theft and theft related offenses are:

Sec. 31.04. theft of service (*e.g.*, food in a restaurant, hotel room);

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Sec. 31.05. theft of trade secrets (*e.g.*, secret formula for a commercially distributed food or drink);

Sec. 31.07. unauthorized use of a vehicle (see below);

Sec. 31.11. tampering with identification numbers (to make it difficult to trace or identify stolen property);

Sec. 31.12. theft of or tampering with multichannel video or information services (*e.g.*, theft of television services);

Sec. 31.13. manufacture, distribution, or advertisement of multichannel video or information services device; (*e.g.*, devices to intercept television services)

Sec. 31.14. sale or lease of multichannel video or information services device a(*e.g.*, to intercept television services)

Sec. 31.15. possession, manufacture, or distribution of certain instruments used to commit retail theft. (*e.g.*, specialized equipment for shoplifting such as “booster bags.”)

Of special interest is the “joy riding” statute, sec. 31.07:

UNAUTHORIZED USE OF A VEHICLE. (a) A person commits an offense if he intentionally or knowingly operates another's boat, airplane, or motor-propelled vehicle without the effective consent of the owner.

(b) An offense under this section is a state jail felony.

Note that the language from the consolidated theft statute (sec. 31.03), “intent to deprive the owner” is missing. This section distinguishes the car thief (who will keep, strip or sell the car) from the joy rider who will abandon the car, or even return it, when it runs out of gas, the fun is over, etc. Both this section and the consolidated theft statute use the phrase “without effective consent” of the owner. This language raises the possibility of a mistake of fact defense. If the defendant subjectively and reasonably believe he or she had consent to take the property, the defense could be applicable.

COMPUTER AND OTHER CRIMES

Most theft and property damage crimes deal with tangible property. The widespread use of computer and related electronic devices was not well protected by existing statutes. New statutes had to be created to deal with these situations.

Texas has a whole chapter dealing with computer crime, ch. 33 which is available at <http://www.capitol.state.tx.us/statutes/docs/PE/content/word/pe.007.00.000033.00.doc>

and a ch. 33A on “Telecommunications Crimes”, which is available at

<http://www.capitol.state.tx.us/statutes/docs/PE/content/word/pe.007.00.00033a.00.doc>

Texas' statutes are similar to those of most other states. These topics are discussed in the section on "Computer Crime" in your text.

FORGERY AND FRAUD

TPC sec. 32.21 (b) provides that it is an offense if a person "forges a writing with intent to defraud or harm another. Under sec. 32.21 (1) The term "forge" means:

(A) to alter, make, complete, execute, or authenticate any writing so that it purports:

- (i) to be the act of another who did not authorize that act;
- (ii) to have been executed at a time or place or in a numbered sequence other than was in fact the case; or
- (iii) to be a copy of an original when no such original existed;

(B) to issue, transfer, register the transfer of, pass, publish, or otherwise utter a writing that is forged within the meaning of Paragraph (A); or

(C) to possess a writing that is forged within the meaning of Paragraph (A) with intent to utter it in a manner specified in Paragraph (B).

Subsec. (1) (b) of sec. 32.21 covers the crime of uttering or passing a forged instrument. Further, as in most states, the term writing is defined (sec. 32.21) broadly:

(2) "Writing" includes:

(A) printing or any other method of recording information;

(B) money, coins, tokens, stamps, seals, credit cards, badges, and trademarks; and

(C) symbols of value, right, privilege, or identification.

Depending upon the type of writing and other circumstances, the crime can range from a Class A Misdemeanor to a Felony of the Third Degree. A class A misdemeanor is punishable by confinement in a jail for a maximum of one year and/or a maximum fine of \$4,000. Third degree felonies are punishable by imprisonment for not more than 10 years nor less than 2 years, and a fine not to exceed \$10,000.

There are also a number of other sections dealing with similar crimes:

Sec. 32.22. criminal simulation;

Sec. 32.23. trademark counterfeiting;

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- Sec. 32.24. stealing or receiving stolen check or similar sight order;
- Sec. 32.31. credit card or debit card abuse;
- Sec. 32.32. false statement to obtain property or credit;
- Sec. 32.33. hindering secured creditors;
- Sec. 32.34. fraudulent transfer of a motor vehicle;
- Sec. 32.35. credit card transaction record laundering;
- Sec. 32.41. issuance of bad check;
- Sec. 32.42. deceptive business practices;
- Sec. 32.43. commercial bribery;
- Sec. 32.44. rigging publicly exhibited contest;
- Sec. 32.441. illegal recruitment of an athlete;
- Sec. 32.45. misapplication of fiduciary property or property of financial institution;
- Sec. 32.46. securing execution of document by deception;
- Sec. 32.47. fraudulent destruction, removal, or concealment of writing;
- Sec. 32.48. simulating legal process;
- Sec. 32.49. refusal to execute release of fraudulent lien or claim;
- Sec. 32.50. deceptive preparation and marketing of academic product;
- Sec. 32.51. fraudulent use or possession of identifying information; and
- Sec. 32.52. fraudulent, substandard, or fictitious degree;

There also two chapters dealing with fraud in two specific areas. Ch.35 deals with Insurance Fraud and ch. 35A deals with Medicaid Fraud.

ROBBERY

Robbery is both a crime of violence and a property crime. The perpetrator obtains property by force or threat of force.

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Sec. 29.02. ROBBERY. (a) A person commits an offense if, in the course of committing theft as defined in Chapter 31 and with intent to obtain or maintain control of the property, he:

- (1) intentionally, knowingly, or recklessly causes bodily injury to another; or
- (2) intentionally or knowingly threatens or places another in fear of imminent bodily injury or death.

(b) An offense under this section is a felony of the second degree.

Two of the key terms are defined in sec. 29.01

Sec. 29.01. DEFINITIONS. In this chapter:

- (1) "In the course of committing theft" means conduct that occurs in an attempt to commit, during the commission, or in immediate flight after the attempt or commission of theft.
- (2) "Property" means:
 - (A) tangible or intangible personal property including anything severed from land; or
 - (B) a document, including money, that represents or embodies anything of value.

As in most states, there is also an offense of aggravated robbery. In Texas this is a felony of the first degree (punishable by imprisonment for life or for any term of not more than 99 years nor less than 5 years. In addition, punishment can include a fine of not more than \$10,000.)

An aggravated robbery (sec. 29.03) is a regular robbery plus the perpetrator:

- (1) causes serious bodily injury to another;
- (2) uses or exhibits a deadly weapon; or
- (3) causes bodily injury to another person or threatens or places another person in fear of imminent bodily injury or death, if the other person is:
 - (A) 65 years of age or older; or
 - (B) a disabled person.

REVIEW QUESTIONS

1. In addition to a consolidated theft statute, Texas also has statutes dealing specifically with theft of
 - a. services and trade secrets.
 - b. atomic material and hazardous chemicals.
 - c. public property and vehicles.
 - d. historic relics and antiques.
 - e. public funds and documents.
2. Theft of property valued less than \$50 is a
 - a. Class C Misdemeanor.

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- b. Class B Misdemeanor.
 - c. Class A Misdemeanor.
 - d. Civil Violation.
 - e. Civil Offense.
3. A robbery is essentially an assault and a
- a. theft from the person.
 - b. larceny by trick.
 - c. theft by deception.
 - d. larceny by bailee.
 - e. receiving stolen property.
4. Forgery involves criminal misuse or abuse of
- a. real estate.
 - b. personal property.
 - c. cash.
 - d. writings.
 - e. ancient documents.
5. The difference between theft of a vehicle and unauthorized use of a vehicle is that (unlike the theft statute) the unauthorized use statute has no
- a. mens rea requirement.
 - b. actus reus requirement.
 - c. intent to deprive element.
 - d. use of force element.
 - e. concurrence element.
6. Which of the following can turn a regular robbery into an aggravated robbery?
- a. causes serious bodily injury
 - b. victim is under 6 years of age
 - c. defendant has a prior conviction for robbery.
 - d. victim dies.
 - e. victim is a public official.

REFERENCES AND RESOURCES

Belbow, B. A. (2005). *Guide to Criminal Law for Texas*, 3rd ed. Belmont, CA: Thomson-Wadsworth, ch 10.

Teague, M.O. & Helft, B. P. (2006). *Texas Criminal Practice Guide*. San Francisco: Matthew Bender, ch. 127

Texas Jurisprudence 3rd (2006). *Criminal Law*, sec. 537-819

ANSWER KEY - CH. 13: CRIMES AGAINST PROPERTY

1. a
2. c
3. a
4. d
5. c
6. a