



# Criminal Misappropriation of Property (Sec 403 to 404)

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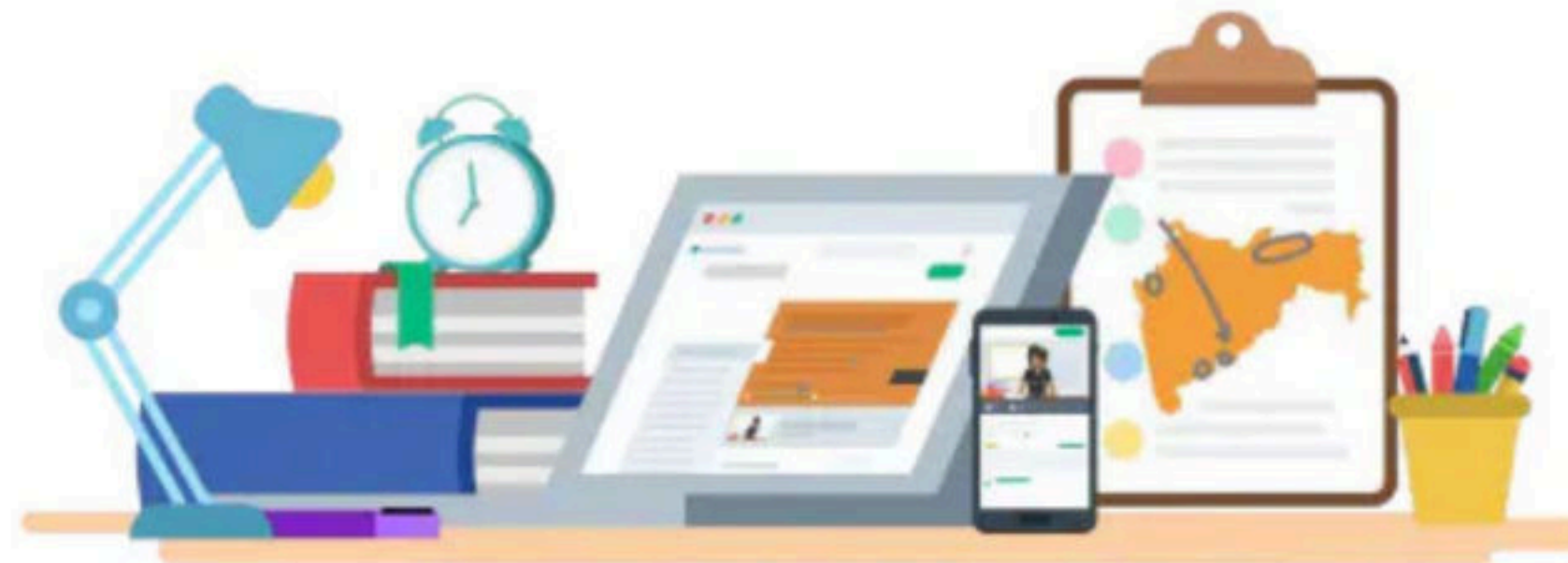


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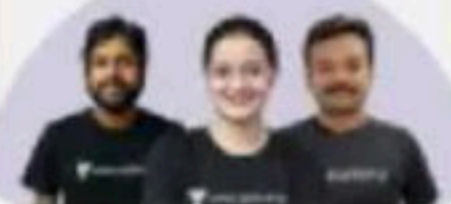
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## EXTORTION

**383. Extortion.**—Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property, or valuable security or anything signed or sealed which may be converted into a valuable security, commits “extortion”.

### Illustrations

(a) A threatens to publish a defamatory libel concerning Z unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

(b) A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z to pay certain monies to A. Z signs and delivers the note. A has committed extortion.

(c) A threatens to send club-men to plough up Z's field unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion

### **CRIMINAL BREACH OF TRUST (SECTION 405 TO 409)**

**Section 405:- .Criminal breach of trust.**—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust”.

[ 2 [Explanation 1].—A person, being an employer 3 [of an establishment whether exempted under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) or not] who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.]

[Explanation 2.—A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.]

***Illustrations***

(a) A, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriates them to his own use. A has committed criminal breach of trust.

(b) A is a warehouse-keeper. Z going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse room. A dishonestly sells the goods. A has committed criminal breach of trust

(c) A, residing in Calcutta, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z, that all sums remitted by Z to A shall be invested by A, according to Z's direction. Z remits a lakh of rupees to A, with directions to A to invest the same in Company's paper. A dishonestly disobeys the directions and employs the money in his own business. A has committed criminal breach of trust.

(d) But if A, in the last illustration, not dishonestly but in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions, and buys shares in the Bank of Bengal, for Z, instead of buying Company's paper, here, thought Z should suffer loss, and should be entitled to bring a civil action against A, on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.

(e) A, a revenue-officer, is entrusted with public money and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.

(f) A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.

**Section 406. Punishment for criminal breach of trust.—**

Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both

**Difference Between Criminal Misappropriation & Criminal Breach of Trust**

The Offences of Criminal Misappropriation and Criminal Breach of Trust are given under the head of crime against property in IPC.

Section 403, IPC defines Dishonest misappropriation of property as, "Whoever dishonestly mis-appropriates or converts to his own use any movable property."

Whereas, Section 405,IPC defines Criminal breach of trust as, "Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust."

<b><u>Basis of Difference</u></b>	<b><u>Criminal Misappropriation</u></b>	<b><u>Criminal Breach of Trust</u></b>
Provision under IPC,1860	Offence of criminal misappropriation is defined under section 403 of Indian Penal Code, 1860	Offence of Criminal Breach of Trust is defined under section 405 of Indian Penal Code,1860
Relationship	In misappropriation, there is no contractual relationship	But in Criminal Breach of Trust, there is a contractual relationship of the offender regarding the property.
Possession	In misappropriation, the property is obtained by some casualty or otherwise.	In criminal breach of trust, the property is obtained due to the trust vested by the owner on the offender.
Misappropriation	The property is misappropriated by the offender for his own use.	In criminal breach of trust, the property is misappropriated for his own personal use. A breach of trust includes criminal misappropriation, but the converse is not always true.
Nature of Property	In, Criminal misappropriation the property is always movable in nature.	Whereas, in criminal breach of trust, the nature of property can either be movable or immovable
Punishment	Offence of Criminal Misappropriation is punishable with imprisonment of either description for a term which may extent to 2 years or with fine, or with both (Sec.403,IPC)	Offence of Criminal Breach of Trust is punishable with imprisonment of either description for a term which may extent to 2 years or with fine, or with both (Sec.406,IPC)

In the case of *Badsudeb Patra v. K.L. Haldar* (32 C.W.N. 641), Where the accused got a loan of certain ornaments from the complainant for use on an occasion on the understanding that they should be returned after the purpose was served and the accused failed to return them, it was held that the accused was guilty under Sec. 406 and not Sec. 403 of Indian Penal Code, 1860.

References:-

1. K.D. Gaur, Indian Penal Code.
2. PSA Pillai, Criminal Law
3. Ratan Lal & Dhira Lal, The Indian Penal Code

### Difference between Theft and Criminal Misappropriation

The Offences of Theft and Criminal Misappropriation are given under the head of crime against property in IPC. Theft can be defined as an act of taking any movable property out of the possession of any person without that person's consent, moves that property for taking its possession. Whereas, Criminal Misappropriation can be defined as an act of converting or misappropriating any movable property with dishonest intention for his own use. Both the offences deal with the movable property.

Basis	Theft	Criminal Misappropriation
Provision under IPC	Offence of theft is defined under section <u>378</u> of Indian Penal Code, 1860	Offence of Criminal Misappropriation is defined under section <u>403</u> of Indian Penal Code, 1860
Intention	In Theft, the initial taking of the property is always unlawful. The intention behind such act is always dishonest.	In Criminal Misappropriation, the initial step of taking property may be innocent and lawful. Dishonest intention develops <u>subsequently</u> .
Consent	In theft, property is moved without the <u>consent or knowledge of the owner</u> .	In Criminal Misappropriation, the owner might have come into possession of the property with the express consent of the owner or by some casualty.
Commission of offence	In theft, the moving of property is itself an offence.	In Criminal Misappropriation, the offence is said to be committed when the property is converted or misappropriated with dishonest intention for offender's own use. Mere moving of property not constitute the offence.
Right of Possession	In theft, the <u>right of the possession is violated</u> by the wrongdoer.	Un Criminal Misappropriation, there is no such infringement of <u>right of possession</u> as the offender is already in the possession of the property.
Punishment	Offence of theft is punishable with imprisonment of either description for a term which may extent to <u>3 years</u> or with fine, or with both (Sec.379,IPC)	Offence of Criminal Misappropriation is punishable with imprisonment of either description for a term which may extent to <u>2 years</u> or with fine, or with both (Sec.403,IPC)

#### References:-

1. K.D. Gaur, Indian Penal Code.
2. PSA Pillai, Criminal Law
3. Ratan Lal & Dhira Lal, The Indian Penal Code



. (d) A, by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security. A has committed extortion.

**384. Punishment for extortion.**—Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

#### **Points**

- **Section 30 :- Valuable security**

The words “valuable security” denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right.

Illustration :- A writes his name on the back of a bill of exchange. As the effect of this endorsement is to transfer the right to the bill to any person who may become the unlawful holder of it, the endorsement is a “valuable security”.

**Section 44:- “Injury”**—The word “injury” denotes any harm whatever illegally caused to any person, in body, mind, reputation or property.

**Landmark case:- R.S.NAYAK vs A.R.ANTULAY**

**Chander Kala vs Ram Kishen (1985)**

**AGGRAVATED FORM OF EXTORTION**

**Section 386, 387, 388,389**

## ROBBERY AND DACOITY

**390. Robbery.**—In all robbery there is either theft or extortion.

**When theft is robbery.**—Theft is “robbery” if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, THE offender, for that end voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

**When extortion is robbery.**—Extortion is “robbery” if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Explanation.—The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

Illustrations

(a) A holds Z down, and fraudulently takes Z's money and jewels from Z's clothes, without Z's consent. Here A has committed theft, and, in order to the committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.

(b) A meets Z on the high road, shows a pistol, and demands Z's purse. Z, in consequence, surrenders his purse. Here A has extorted the purse from Z by putting him in fear of instant hurt, and being at the time of committing the extortion in his presence. A has therefore committed robbery.

(c) A meets Z and Z's child on the high road. A takes the child, and threatens to fling it down a precipice, unless Z delivers his purse. Z, in consequence, delivers his purse. Here A has extorted the purse from Z, by causing Z to be in fear of instant hurt to the child who is there present. A has therefore committed robbery on Z.

(d) A obtains property from Z by saying "Your child is in the hands of my gang, and will be put to death unless you send us ten thousand rupees". This is extortion, and punishable as such: but it is not robbery, unless Z is put in fear of the instant death of his child.

".

**392. Punishment for robbery.**—Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.

**Section 393:- Attempt to commit robbery.**—Whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

**391. Dacoity.**—When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit “dacoity”.

**Section 395:- Punishment for dacoity.**—Whoever commits dacoity shall be punished with 1 [imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

**Section 396:- Dacoity with murder.**—If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or 1 [imprisonment for life], or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

**Section 399:- Making preparation to commit dacoity.**—Whoever makes any preparation for committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

**Section 402 :- Assembling for purpose of committing dacoity.**—Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

**Criminal misappropriation of property (sec 403 to 404)**

**Section 403:- Dishonest misappropriation of property.—**

Whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustrations

(a) A takes property belonging to Z out of Z's possession, in good faith believing at the time when he takes it, that the property belongs to himself. A is not guilty of theft; but if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section.)

(b) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent. Here, if A was under the impression that he had Z's implied consent to take the book for the purpose of reading it, A has not committed theft.) But, if A afterwards sells the book for his own benefit, he is guilty of an offence under this section.)

(c) A and B, being, joint owners of a horse, A takes the horse out of B's possession, intending to use it. Here, as A has a right to use the horse, he does not dishonestly misappropriate it. But, if A sells the horse and appropriates the whole proceeds to his own use, he is guilty of an offence under this section.

Explanation 1.—A dishonest misappropriation for a time only is a misappropriation with the meaning of this section.

**Illustration**

A finds a Government promissory note belonging to Z, bearing a blank endorsement. A, knowing that the note belongs to Z, pledges it with a banker as a security or a loan, intending at a future time to restore it to Z. A has committed an offence under this section.

Explanation 2.—A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for, or of restoring it to, the owner, does not take or misappropriate it dishonestly, and is not guilty of an offence; but he is guilty of the offence above defined, if he appropriates it to his own use, when he knows or has the means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner and has kept the property a reasonable time to enable the owner to claim it. What are reasonable means or what is a reasonable time in such a case, is a question of fact. It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it; it is sufficient if, at the time of appropriating it, he does not believe it to be his own property, or in good faith believe that the real owner cannot be found.

### Illustrations

(a) A finds a rupee on the high road, not knowing to whom the rupee belongs, A picks up the rupee. Here A has not committed the offence defined in this section.

(b) A finds a letter on the road, containing a bank note. From the direction and contents of the letter he learns to whom the note belongs. He appropriates the note. He is guilty of an offence under this section.

(c) A finds a cheque payable to bearer. He can form no conjecture as to the person who has lost the cheque. But the name of the person, who has drawn the cheque, appears. A knows that this person can direct him to the person in whose favour the cheque was drawn. A appropriates the cheque without attempting to discover the owner. He is guilty of an offence under this section.

(d) A sees Z drop his purse with money in it. A picks up the purse with the intention of restoring it to Z, but afterwards appropriates it to his own use. A has committed an offence under this section.

(e) A finds a purse with money, not knowing to whom it belongs; he afterwards discovers that it belongs to Z, and appropriates it to his own use. A is guilty of an offence under this section.

(f) A finds a valuable ring, not knowing to whom it belongs. A sells it immediately without attempting to discover the owner. A is guilty of an offence under this section

**Section 404:- Dishonest misappropriation of property**

possessed by deceased person at the time of his death.—  
Whoever dishonestly misappropriates or converts to his own use property, knowing that such property was in the possession of a deceased person at the time of that person's decease, and has not since been in the possession of any person legally entitled to such possession, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine, and if the offender at the time of such person's decease was employed by him as a clerk or servant, the imprisonment may extend to seven years. Illustration Z dies in possession of furniture and money. His servant A, before the money comes into the possession of any person entitled to such possession, dishonestly misappropriates it. A has committed the offence defined in this section.