

CRIMINAL LAW, FALL, 2009 - HANDOUT # 5
PARTICULAR CRIMES:

PROPERTY CRIMES

HRS § 708-830 Theft. A person commits theft if he does any of the following:

(1) Obtains or exerts unauthorized control over property. . . . [or] obtains, or exerts control over, the property of another with intent to deprive him of the property.

(2) . . . [O]btains, or exerts control over, the property of another by deception with intent to deprive him of the property.

(3) . . . [O]btains, or exerts control over, the property of another which he knows to have been lost or mislaid, or to have been delivered under a mistake as to the nature or amount of the property, the identity of the recipient, or other facts, and, with the intent to deprive the owner of the property, he fails to take reasonable measures to discover and notify him.

(4) . . . [I]ntentionally obtains services, known by him to be available only for compensation, by deception, false token, or other means to avoid payment for the services. Where compensation for services is ordinarily paid immediately upon the rendering of them, absconding without payment or offer to pay is *prima facie* evidence that the services were obtained by deception.

(5) . . . Having control over the disposition of services of another to which he is not entitled, he intentionally diverts those services to his own benefit or to the benefit of a person not entitled thereto.

(6) . . .

(a) He intentionally obtains property from anyone upon an agreement, or subject to a known legal obligation, to make specified payment or other disposition, . . . and deals with the property as his own and fails to make the required payment or disposition. It does not matter that it is impossible to identify particular property as belonging to the victim at the time of the defendant's failure to make the required payment or disposition. A person's status as an officer or employee of the government or a financial institution is *prima facie* evidence that he knows his legal obligations with respect to making payments and other dispositions. If the officer or employee fails to pay or account upon lawful demand, or if an audit reveals a falsification of accounts, it shall be *prima facie* evidence that he has intentionally dealt with the property as his own.

(b) He obtains personal services from an employee upon agreement or subject to a known legal obligation to make a payment or other disposition of funds to a third person on account of the employment, and he intentionally fails to make the payment or disposition at the proper time.

(7) . . . He intentionally receives, retains, or disposes of the property of another, knowing that it has been stolen, with intent to deprive the owner of the property. It is

prima facie evidence that a person knows the property to have been stolen if, being a dealer in property of the sort received, he acquires the property for a consideration which he knows is far below its reasonable value.

(8) Shoplifting.

(a) He conceals or takes possession of the goods or merchandise of any store or retail establishment, with intent to defraud. (b) He alters the price tag or other price marking on goods or merchandise of any store or retail establishment, with intent to defraud.

(c) He transfers the goods or merchandise of any store or retail establishment from one container to another, with intent to defraud. . . .

§ 708-834 Defenses: unawareness of ownership; claim of right; household belongings; cointerest not a defense.

(1) It is a defense to a prosecution for theft that the defendant:

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

(b) Believed that he was entitled to the property or services under a claim of right or that he was authorized, by the owner or by law, to obtain or exert control as he did.

(2) If the owner of the property is the defendant's spouse, it is a defense to a prosecution for theft of property that:

(a) The property which is obtained or over which unauthorized control is exerted constitutes household belongings; and

(b) The defendant and his spouse were living together at the time of the conduct.

(3) "Household belongings" means furniture, personal effects, vehicles, money or its equivalent in amounts customarily used for household purposes, and other property usually found in and about the common dwelling and accessible to its occupants.

(4) In a prosecution for theft, it is not a defense that the defendant has an interest in the property if the owner has an interest in the property to which the defendant is not entitled.

§ 707-764. Extortion. A person commits extortion if he does any of the following:

(1) Obtains, or exerts control over, the property or services of another with intent to deprive him of the property or services by threatening by word or conduct to:

(a) Cause bodily injury in the future to the person threatened or to any other person; or

(b) Cause damage to property; or

(c) Subject the person threatened or any other person to physical confinement or restraint; or

(d) Commit a penal offense; or

(e) Accuse some person of any offense or cause a penal charge to be instituted

against some person; or

(f) Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt, or ridicule, or to impair his credit or business repute; or

(g) Reveal any information sought to be concealed by the person threatened or any other person; or

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

(i) Take or withhold action as a public servant, or cause a public servant to take or withhold such action; or

(j) Bring about or continue a strike, boycott, or other similar collective action, to obtain property which is not demanded or received for the benefit of the group which the defendant purports to represent; or

(k) Do any other act which would not in itself substantially benefit the defendant but which is calculated to harm substantially some person with respect to his health, safety, business, calling, career, financial condition, reputation, or personal relationships; or

(2) Intentionally compels or induces another person to engage in conduct from which he has a legal right to abstain or to abstain from conduct in which he has a legal right to engage by threatening by word or conduct to do any of the actions set forth in paragraphs (a) through (k) of this section; or

(3) Makes or finances any extortionate extension of credit, or collects any extension of credit by extortionate means.

§ 708-810 Burglary in the first degree.

(1) A person commits the offense of burglary in the first degree if he intentionally enters or remains unlawfully in a building, with intent to commit therein a crime against a person or against property rights, and:

(a) He is armed with a dangerous instrument in the course of committing the offense; or

(b) He intentionally, knowingly, or recklessly inflicts or attempts to inflict bodily injury on anyone in the course of committing the offense; or

(c) He recklessly disregards a risk that the building is the dwelling of another, and the building is such a dwelling.

(2) An act occurs "in the course of committing the offense" if it occurs in effecting entry or while in the building or in immediate flight therefrom.

§ 708-840 Robbery in the first degree.

(1) A person commits the offense of robbery in the first degree if, in the course of

committing theft:

(a) He attempts to kill another, or intentionally inflicts or attempts to inflict serious bodily injury upon another; or

(b) He is armed with a dangerous instrument and:

(i) He uses force against the person of anyone present with intent to overcome that person's physical resistance or physical power of resistance; or

(ii) He threatens the imminent use of force against the person of anyone who is present with intent to compel acquiescence to the taking of or escaping with the property.

(2) As used in this section, "dangerous instrument" means any firearm, whether loaded or not, and whether operable or not, or other weapon, device, instrument, material, or substance, whether animate or inanimate, which in the manner it is used or threatened to be used is capable of producing death or serious bodily injury.

Handgun operable and loaded. – When the jury validly finds that the handgun used in a robbery is real but does not find that it was not operable and not loaded, it may infer that during the robbery the handgun was operable and loaded and that it was a dangerous instrument. *State v. Crowell*, 5 Haw. App. 674, 706 P.2d 453 (1985).

A dangerous instrument in the terroristic threatening context. – In the terroristic threatening context, an instrument is a dangerous instrument, as defined in this section, when it is known to be capable of producing death or serious bodily injury when used in the manner it is threatened to be used. *State v. Corpuz*, 10 Haw. App. 584, 880 P.2d 213, cert. denied, 77 Haw. 373, 884 P.2d 1149 (1994).

§ 708-813 Criminal Trespass in the first degree.

(1) A person commits the offense of criminal trespass in the first degree if:

(a) That person knowingly enters or remains unlawfully:

(i) In a dwelling; or

(ii) In or upon the premises of a hotel or apartment building;

(b) That person:

(i) Knowingly enters or remains unlawfully in or upon premises that are fenced or enclosed in a manner designed to exclude intruders' and

(ii) Is in possession of a firearm, as defined in section 134-1, at the time of the intrusion, or

(c) That person enters or remains unlawfully in or upon the premises of any public school as defined in section 302A-501, or any private school, after reasonable warning or request to leave by school authorities or a police officer.

(2) Criminal trespass in the first degree is a misdemeanor.