

Paula, you are being charged with the offence of theft, which is a summary offence, over claims that you stole a designer handbag. The definition of theft can be found in Section 1 (1) of the theft act (1968). The definition states 'A person guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it'. To be charged with theft the prosecution must prove that you have the mens rea and actus rea of this offence. To begin the actus rea of theft appropriation, property and property belonging to another. In relation to this specific offence the term 'appropriation' refers to treating something as your own examples can be seen in *r v Morris* (1983) and *Gomez* (1993). The assuming of the rights of an owner has been described as 'Include the right to possess the property, the right to use it, to consume it, destroy it, sell it, give it away, lend it, move it and price it' examples can be seen in *r v McPherson* (1973) and *r v Darroux* (2018). Following on the concept of property as defined by law can be found in Section 4 (1) of the theft act (1968), this was later expanded in 2011 to encompass drugs through the case *r v Smith* (2011). Definition is 'All property that is not land including, jewelry, Tv sets, vehicles, phones. Looking at the case you, Paula, have the actus rea for theft as the act of taking it and placing it within your coat is an act of appropriation, as you are taking the property of another as seen in *r v Darroux* (2018). Moving on we will next be looking at the mens rea of theft. The main aspects that make up the mens rea of theft are, Dishonestly and intention of permanently depriving. Dishonesty is not actually defined within S2 of the theft act (1968). Instead S2 (1) of the theft act (1968) states three situations in which it is not dishonest to appropriate another's property. The first being the Defendant having the legal right to deprive the owner an example being *r v Morgan* (1976). Secondly if they would have the owner's consent and finally if the person the property belongs to could not be found after taking reasonable steps to find them. S2 (2) of the theft act (1968) dictates 'a person's appropriation of property belonging to another may be dishonest notwithstanding that he is willing to pay for property'. Prior to *r v Ivey* (2017) in English law the test for dishonesty was known as the Ghosh test, named after the case, that set it as precedent *r v Ghosh* (1982). The Ghosh test listed 3 rules for the court to decide on whether the Defendant acted in a dishonest manner. The first test is considering the actual state of the individual's knowledge or belief as to the facts of the offence. Secondly was D's conduct dishonest by the standards of ordinary decent people. Finally did the Defendant understand what they were doing was wrong. However as stated after the case of *r v Ivey* (2017) the Ghosh test has been reformed to remove the knowledge of wrongdoing by the defendant. Finally, the idea of the defendant wanting to permanently deprive the Victim is up to the jury to decide. Regarding your case Paula the likelihood of the court finding you as acting in a dishonest manner is rather high your actions such as concealing the designer bag under your coat and hiding it underneath your car will not be favorable for your case. Regarding defenses I do not believe any apply for your case and in terms of criminal liability it appears rather clear that you could be found guilty of theft if prosecuted.

Harriet, the first charge I would like to look at with you is criminal damage. This is an either way offence which means it can be heard in either a magistrate court or crown court dependent on severity. The basic offence of criminal damage is defined in S1 (1) criminal damage act (1971). The definition dictate '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'. The elements of Criminal damage can be broken down into the following: There is property, that belongs to another, the defendants conduct, Destroys

or damages the property, Defendant does not have a lawful excuse, Defendant intends or is reckless to destroying or damaging the property. Now we will look at the actus Reas of criminal damage and how it pertains to you. Simply the actus Reas is Defendant without lawful excuse, destroys or damages property belonging to another. S10 (1) Criminal damage act (1971) defines property as: tangible items, real or personal, land, wild creatures that have been tamed and creatures reduced to possessions example can be seen in *Cresswell V DPP* (2006); *Currie v DPP* (2006). Following on S10 (2) of the criminal damage act (1971) provides that property belongs to another if that person: Has custody or control of it, has in it any proprietary right or interest and has a charge on it. Moving on is the aspect of rendering property unfit for purpose, for this there must be some interference with the property like in *Lloyd v DPP* (1992). Now regarding your case the act of smashing the glass door panes is an act of criminal damage and meets the requirement for the actus rea. Following on we will now be looking at the mens rea for Criminal damage. The basic description of the mens rea is, intent to destroy or damage property or be reckless to this and know or be reckless to the fact that the damage or destruction is to property belonging to another. Regarding intention for criminal damage, it can be either direct or oblique, good motives are irrelevant. When it came to recklessness there used to be two different categories under *r v Caldwell* (1982). However, after *r v G* and another (2003) this has been changed so that it is only subjective recklessness. Subjective recklessness means that the defendant knows or is reckless to the fact that the damage or destruction is to property belonging to another. Destruction/damage under a mistaken belief is insufficient *r v Smith* (1974). Regarding all of that you have the mens rea for criminal damage as within the description of the events it shows you acted with intent. However, first there are two legal defenses that could be used for this case. The first is involuntary intoxication, this can be used as a complete defense for an offence. However as seen in *r v Kingston* (1994) it will not work if the defendant formed the mens rea for the offence. The second defense that is better suited for this case is automatism. Automatism is defined as 'Disinhibition as a result of consuming drink and/or drugs is not automatism. Furthermore, automatism is not available to a defendant who has induced an acute state of involuntary behaviour as a result of his own voluntary consumption of intoxicants: *R v Coley*; *R v McGhee*; *R v Harris* [2013] Crim. L.R. 923 CA.' From the crown prosecuting service (2017). The reason automatism is preferable compared to involuntary intoxication is that it is shown that you were spiked therefore your reaction afterwards can be argued as automatism.

The final offense is Harriet with grievous bodily harm (GBH). GBH without intent is defined in S20 OAPA (1861) as 'Whosoever shall unlawfully and maliciously wound or inflict any grievous bodily harm upon any other person, either with or without any weapon or instrument, shall be guilty of a misdemeanor, and being convicted thereof shall ... be liable to imprisonment for not more than five years.' The elements of this offence boiled down to firstly there was unlawful conduct on the part of the Defendant, secondly another person suffered a wound or grievously bodily harm and third the defendant maliciously inflicted the wound or GBH. The actus reus, with or without a weapon, the defendant unlawfully causes either a wound or GBH to another person. The concept of wounding can be found in the case *C v Eisenhower* (1983) and examples can be found in *r v Smith* (1961), *r v Golding* (2014) and *r v Bollom* (2004). The mens rea for wounding and inflicting GBH without intent falls to 'maliciously' in *r v Savage* (1991). The house of lords held that the mens rea for S20 offences against persons act (1861) is that the defendant must foresee that because of his conduct: 'some physical harm to some person, albeit of a minor character, might result.' However, regarding this specific case there is no mens rea due

to transferred malice. Transferred malice is the concept that if A wants to hit B but misses and hits C instead the mens rea and offence switch from B to C. However, as seen in *r v Pembliton* (1870) transferred malice cannot switch between different crimes. As seen in the case the intention was purely to smash the glass panes to get out of the house. Moving on regarding further defenses, the same one as seen in the previous offence works here. If both offences were taken to court and tried it is unlikely you would be found liable for them due to Leon spiking your drink.

Bibliography

- Section 1 (1) of the theft act 1968: <https://www.legislation.gov.uk/ukpga/1968/60/section/1> [accessed 1 January 2022]
- *r v Morris* (1983) United Kingdom House of lords, Case A.C. 320, Westlaw, [https://uk.westlaw.com/Document/I5ABCOFF0E42811DA8FC2A0F0355337E9/View/FullText.html?transitionType=SearchItem&contextData=\(sc.Search\)](https://uk.westlaw.com/Document/I5ABCOFF0E42811DA8FC2A0F0355337E9/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)) [accessed 1 January 2022]
- Gomez (1993) United Kingdom House of lords, Case A.C. 442, Westlaw, [https://uk.westlaw.com/Document/I9AE75400E42711DA8FC2A0F0355337E9/View/FullText.html?transitionType=SearchItem&contextData=\(sc.Search\)](https://uk.westlaw.com/Document/I9AE75400E42711DA8FC2A0F0355337E9/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)) [accessed 1 January 2022]
- Mcpherson (1973) United Kingdom Court of appeal, Westlaw, [https://uk.westlaw.com/Document/I8D5AB570E43611DA8FC2A0F0355337E9/View/FullText.html?transitionType=SearchItem&contextData=\(sc.Search\)](https://uk.westlaw.com/Document/I8D5AB570E43611DA8FC2A0F0355337E9/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)) [accessed 1 January 2022]
- Darroux (2018) United Kingdom Court of appeal, Westlaw, [https://uk.westlaw.com/Document/IF2782D804F8F11E8B1DCE84A8819C9C6/View/FullText.html?transitionType=SearchItem&contextData=\(sc.Search\)](https://uk.westlaw.com/Document/IF2782D804F8F11E8B1DCE84A8819C9C6/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)) [accessed 1 January 2022]
- Section 4 (1) of the theft act 1968: <https://www.legislation.gov.uk/ukpga/1968/60/section/4> [accessed 1 January 2022]
- Smith (2011) United Kingdom Court of appeal, Westlaw, [https://uk.westlaw.com/Document/I6A18DCD0E42811DA8FC2A0F0355337E9/View/FullText.html?transitionType=SearchItem&contextData=\(sc.Search\)](https://uk.westlaw.com/Document/I6A18DCD0E42811DA8FC2A0F0355337E9/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)) [accessed 1 January 2022]
- Darroux (2018) United Kingdom Court of appeal, Westlaw, [https://uk.westlaw.com/Document/IF2782D804F8F11E8B1DCE84A8819C9C6/View/FullText.html?transitionType=SearchItem&contextData=\(sc.Search\)](https://uk.westlaw.com/Document/IF2782D804F8F11E8B1DCE84A8819C9C6/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)) [accessed 1 January 2022]
- Section 4 (1) of the theft act 1968: <https://www.legislation.gov.uk/ukpga/1968/60/section/4> [accessed 1 January 2022]
- Section 2 of the theft act 1968: <https://www.legislation.gov.uk/ukpga/1968/60/section/2> [accessed 1 January 2022]
- Section 2 (1) of the theft act 1968: <https://www.legislation.gov.uk/ukpga/1968/60/section/2> [accessed 1 January 2022]
- Morgan (1976) United Kingdom United Kingdom House of lords, A.C. 182, Westlaw, [https://uk.westlaw.com/Document/I9AFE5E70E42711DA8FC2A0F0355337E9/View/FullText.html?transitionType=SearchItem&contextData=\(sc.Search\)](https://uk.westlaw.com/Document/I9AFE5E70E42711DA8FC2A0F0355337E9/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)) [accessed 1 January 2022]
- S2 (2) of the theft act 1968: <https://www.legislation.gov.uk/ukpga/1968/60/section/2> [accessed 1 January 2022]

- Ivey (2017) United Kingdom Supreme Court, UKSC 67, Westlaw,
[https://uk.westlaw.com/Document/I0D169600B96C11E7A68BFC577B65FE9C/View/FullText.html?transitionType=SearchItem&contextData=\(sc.Search\)](https://uk.westlaw.com/Document/I0D169600B96C11E7A68BFC577B65FE9C/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)) [accessed 1 January 2022]
- Ghosh (1982) United Kingdom Court of appeal, Westlaw,
[https://uk.westlaw.com/Document/I472988A0E42811DA8FC2A0F0355337E9/View/FullText.html?transitionType=SearchItem&contextData=\(sc.Search\)](https://uk.westlaw.com/Document/I472988A0E42811DA8FC2A0F0355337E9/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)) [accessed 1 January 2022]
- Section 1 (1) criminal damage act 1971:
<https://www.legislation.gov.uk/ukpga/1971/48/section/1> [accessed 1 January 2022]
- Section 10 (1) Criminal damage act 1971:
<https://www.legislation.gov.uk/ukpga/1971/48/section/10> [accessed 1 January 2022]
- Cresswell V DPP; Currie v DPP (2006) United Kingdom Divisional court, Westlaw,
[https://uk.westlaw.com/Document/I533D5AA09C7811DB8858AF2516C526DA/View/FullText.html?transitionType=SearchItem&contextData=\(sc.Search\)](https://uk.westlaw.com/Document/I533D5AA09C7811DB8858AF2516C526DA/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)) [accessed 1 January 2022]
- S10 (2) of the criminal damage act 1971:
<https://www.legislation.gov.uk/ukpga/1971/48/section/10> [accessed 1 January 2022]
- Lloyd v DPP (1992) United Kingdom Queens bench division, Westlaw,
[https://uk.westlaw.com/Document/I7077D780E43611DA8FC2A0F0355337E9/View/FullText.html?transitionType=SearchItem&contextData=\(sc.Search\)](https://uk.westlaw.com/Document/I7077D780E43611DA8FC2A0F0355337E9/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)) [accessed 1 January 2022]
- G and another (2003) United Kingdom House of lords, UKHL 50, Westlaw,
[https://uk.westlaw.com/Document/I46CFF6F0E42811DA8FC2A0F0355337E9/View/FullText.html?transitionType=SearchItem&contextData=\(sc.Search\)](https://uk.westlaw.com/Document/I46CFF6F0E42811DA8FC2A0F0355337E9/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)) [accessed 1 January 2022]
- Smith (1974) United Kingdom Court of appeal, Westlaw,
[https://uk.westlaw.com/Document/I6A18DCD0E42811DA8FC2A0F0355337E9/View/FullText.html?transitionType=SearchItem&contextData=\(sc.Search\)](https://uk.westlaw.com/Document/I6A18DCD0E42811DA8FC2A0F0355337E9/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)) [accessed 1 January 2022]
- Kingston (1994) United Kingdom Court of appeal, 2A.C. 355, Westlaw,
[https://uk.westlaw.com/Document/I5151C8B1E42811DA8FC2A0F0355337E9/View/FullText.html?transitionType=SearchItem&contextData=\(sc.Search\)](https://uk.westlaw.com/Document/I5151C8B1E42811DA8FC2A0F0355337E9/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)) [accessed 1 January 2022]
- Crown Prosecuting service, involuntary intoxication: <https://www.cps.gov.uk/legal-guidance/intoxication> [accessed 1 January 2022]
- Legislation.gov (2022) Offences against person act 1861:
<https://www.legislation.gov.uk/ukpga/Vict/24-25/100/section/20> [accessed 1 January 2022]
- Eisenhower (1983) United Kingdom Queens Bench division, Westlaw,
[https://uk.westlaw.com/Document/ICD385710E42711DA8FC2A0F0355337E9/View/FullText.html?transitionType=SearchItem&contextData=\(sc.Search\)](https://uk.westlaw.com/Document/ICD385710E42711DA8FC2A0F0355337E9/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)) [accessed 1 January 2022]
- Smith (1961) United Kingdom House of lords, A.C. 290, Westlaw,
[https://uk.westlaw.com/Document/I9B0E8B10E42711DA8FC2A0F0355337E9/View/FullText.html?transitionType=SearchItem&contextData=\(sc.Search\)](https://uk.westlaw.com/Document/I9B0E8B10E42711DA8FC2A0F0355337E9/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)) [accessed 1 January 2022]
- Golding (2014) United Kingdom Court of appeal, Westlaw,
[https://uk.westlaw.com/Document/I690BB320D6A111E3A196817A1B7BA9F7/View/FullText.html?transitionType=SearchItem&contextData=\(sc.Search\)](https://uk.westlaw.com/Document/I690BB320D6A111E3A196817A1B7BA9F7/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)) [accessed 1 January 2022]
- Bollom (2004) United Kingdom Court of appeal, Westlaw,
[https://uk.westlaw.com/Document/I34002360E42811DA8FC2A0F0355337E9/View/FullText.html?transitionType=SearchItem&contextData=\(sc.Search\)](https://uk.westlaw.com/Document/I34002360E42811DA8FC2A0F0355337E9/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)) [accessed 1 January 2022]

- Savage (1991) United Kingdom House of lords 1 A.C. 699, Westlaw, [https://uk.westlaw.com/Document/I65112C60E42811DA8FC2A0F0355337E9/View/FullText.html?transitionType=SearchItem&contextData=\(sc.Search\)](https://uk.westlaw.com/Document/I65112C60E42811DA8FC2A0F0355337E9/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)) [accessed 1 January 2022]
- S20 offences against persons act 1861: <https://www.legislation.gov.uk/ukpga/Vict/24-25/100/section/20> [accessed 1 January 2022]
- r v Pembliton (1870) United Kingdom Crown cases reserved, Westlaw, https://uk.westlaw.com/Document/I60669010E42811DA8FC2A0F0355337E9/View/FullText.html?navigationPath=Search%2Fv1%2Fresults%2Fnavigation%2Fi0ad740360000017e3154e63e6abb716c&transitionType=SearchItem&listSource=Search&listPageSource=892758823161ca133017f94d7c2ecc37&list=RESEARCH_COMBINED_WLUK&rank=591&comp=wluk&contextData=%28sc.Default%29 [accessed 1 January 2022]