chapter
11A Other Theft Act Offences

study points

After reading this chapter, you will be able to understand:

- further offences contained in the Theft Acts 1968 and 1978
- the offence of blackmail, the elements of the offence and the punishment for the offence
- the offence of handing stolen goods, the elements of the offence and the punishment for the offence
- the offence of making off without payment, the elements of the offence and the punishment for the offence

11A.1 Introduction to other Theft Act offences

This chapter is designed to cover some other major offences contained in the Theft Act (TA) 1968 that are not dealt with in the previous chapter. At first sight, it may appear to be an odd cumulation of offences; however, for ease, the chapter shall be devised chronologically, according to their respective section numbers within the TA 1968. This chapter shall also cover the offence of making off without payment, which is the only remaining offence under the Theft Act (TA) 1978.

The offences we shall be considering in this chapter include:

- blackmail (**11A.2**);
- handling stolen goods (**11A.3**); and
- making off without payment (**11A.4**).

Offences that we do not deal with here include:

- removal of items from a public place open to the public, contrary to s 11 of the TA 1968;
- taking a conveyance without consent, contrary to s 12 of the TA 1968;
- aggravated vehicle taking, contrary to s 12A of the TA 1928;
- abstracting electricity, contrary to s 13 of the TA 1968.

These examples are given merely to demonstrate the breadth of property offences, and you are advised to consult a practitioner text in respect of these offences.

11A.2 Blackmail

Blackmail, often referred to as 'extortion', is an offence created by the TA 1968. Prior to its introduction in 1968, no offence of 'blackmail' existed; instead, a defendant might have been charged with 'demanding with menaces' contrary to ss 29 and 30 of the Larceny Act 1916. The TA 1968 greatly simplified the law, with Hogan ('Blackmail' [1966] Crim LR 474) commenting that the 1968 Act replaced

> an ill-assorted collection of legislative bric-a-brac which the draftsman of the 1916 Act put together with scissors and paste.

Blackmail is an offence that does not fit nicely in our structure of property offences, given the combination of offence against the person and offence against property. Further to this, many would treat blackmail as a branch of fraud, given the deception and dishonesty present in a defendant. However, it is argued that blackmail is better suited within this chapter as it remains a part of the TA 1968.

11A.2.1 Defining blackmail

Blackmail is an offence predicated on the use of threats by the defendant in an attempt to acquire property, and thus make a gain, or cause a loss to the victim. As stated above, the offence is often difficult to place within the criminal law, and it remains hard to find a sole rationale for its existence. Specifically, the offence of blackmail protects victims from threats involving difficult and unpleasant consequences (an offence against the person); whilst also protecting property where the defendant intends to make a gain or cause a certain loss (an offence against property). This dual protection is necessary to defend the interests of an individual from what the Court of Appeal in *R v Aziz* [2009] EWCA Crim 2337 described as an 'ugly and cruel' offence.

One argument in favour of protecting the individual is provided by Alldridge ('Attempted Murder of the Soul: Blackmail, Privacy and Secrets' (1993) 13 OJLS 368), who focuses on the protection of personal interests, such as privacy and protection from invasive demands. Alldridge took favour from the statement of the learned trial judge (HHJ Pownall QC) in sentencing in *R v Hadjou* (1989) 11 Cr App R (S) 29, where his Honour characterised blackmail in the following way:

> … in the calendar of criminal offences blackmail is one of the ugliest and it is one of the ugliest because it involves what really amounts, so often, to attempted murder of the soul.

The statement received approval from Lord Lane CJ in the Court of Appeal.

Lamond ('Coercion, Threats and the Puzzle of Blackmail' in Simester and Smith (eds), *Harm and Culpability* (Clarendon Press, 1996)), on the other hand, argues that the focus of blackmail ought to be on the property under which the demands and threats are made. It is contended that both views must be taken together in understanding the law of blackmail. Should one element exist without the other, there is unlikely to even be an offence of blackmail chargeable against a defendant.

11A.2.2 Elements of blackmail

Section 21 of the TA 1968 provides that:

> (1) A person is guilty of blackmail if, with a view to gain for himself or another or with intent to cause loss to another, he makes any unwarranted demand with menaces; and for this purpose a demand with menaces is unwarranted unless the person making it does so in the belief—
> (a) that he has reasonable grounds for making the demand; and
> (b) that the use of the menaces is a proper means of reinforcing the demand.
>
> (2) 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.

The *actus reus* and *mens rea* of blackmail are outlined in **Table 11A.1**.

Table 11A.1 Elements of blackmail

AR/MR	Elements of the offence
Actus reus	(i) makes a demand; (ii) with menaces.
Mens rea	(i) a view to make a gain or cause a loss; (ii) the demand is unwarranted.

Unlike other property offences, blackmail does not require any form of 'dishonesty' on the part of the defendant.

We shall consider each element in turn.

11A.2.2.1 *Actus reus:* (i) makes a demand

The first element of this offence is that the defendant makes an unwarranted demand to the victim. In this section, we are concerned solely with the demand and not whether it is 'unwarranted'. This is because the nature of an 'unwarranted demand' forms part of the *mens rea* of the offence and not the *actus reus*, given that the demand is *only* warranted if it falls within s 21(1)(a) or (b) above.

There are two key points that must first be noted:

(a) There must be a demand. The word 'demand' is to be given its ordinary meaning (per Lord Diplock in *Treacy v DPP* [1971] AC 537). Where a demand is missing (eg where the defendant is *offered* property), no blackmail will exist.

(b) The demand must be made in relation to property, specifically with a view to make a gain or cause a loss. Where a demand is made in relation to something other than property, eg sexual favours, there will be no blackmail (however, a defendant may be liable for causing another to engage in sexual activities without consent – see **Chapter 10**).

Express and implied demands

The demand may be express or implied and may be made by any form of communication, whether oral or written. Further to this, although the word 'demand' may seem harsh and may imply some form of malicious wording and threatening nature, the better view is that a demand is simply a 'request' made by the defendant, regardless of whether it was said harshly or rather politely (*R v Studer* (1916) 11 Cr App R 307). This can be seen in *R v Collister; R v Warhurst* (1955) 39 Cr App R 100, where the defendants (two police officers) were convicted of the old offence of 'demanding money with menaces' contrary to s 30 of the Larceny Act 1916, after asking the victim whether he 'had anything' for them, in order to stop a prosecution arising against him. The pair were convicted and appealed to the Court of Criminal Appeal alleging that no demand was made. The Court of Criminal Appeal upheld their convictions, finding that a demand need not be express – it may be implied from conduct and circumstances – and the demand need not be hostile in any way.

Must the demand be made in England and Wales?

In the majority of cases, liability will arise where the demand with menaces is sent from a location in England, to another location in England. However, in *R v Pogmore (Nigel)* [2017] EWCA Crim 925, the Court of Appeal ruled that the criminal courts hold the

jurisdiction to try blackmail cases in line with s 4(b) of the Criminal Justice Act 1993 where:

> there is a communication in England and Wales of any information, instruction, request, demand or other matter if it is sent by any means—
>
> (i) from a place in England and Wales to a place elsewhere; or
> (ii) from a place elsewhere to a place in England and Wales.

In *Pogmore,* the demand had been sent from Nepal to the victim, who was in England. As you can see from s 4(b), the rule works in reverse also: ie sending a demand from England to another country. Whilst *Pogmore* concerned a demand sent via email, there is no reason why this rule cannot apply to other forms of communication, eg via text messaging or through a social media platform.

Must the victim be aware of the demand?

Importantly, the demand element of the *actus reus* is satisfied upon the defendant making the demand, and it is irrelevant whether the victim was aware that a demand was made. This may include circumstances where the victim was oblivious to the demand, where a letter or message was never received or read, or where a threat over the phone was never heard. We can understand this principle by reference to the case of *Treacy v DPP* [1971] AC 537.

case example

Charge:
Blackmail (TA 1968, s 21)

Case progression:
Crown Court – Guilty

Court of Appeal – Conviction upheld

House of Lords – Conviction upheld

Point of law:
Point at which a demand is made

In *Treacy v DPP* [1971] AC 537, the defendant posted a letter to the victim who resided in Germany. The letter contained several demands with menaces attached. The defendant attempted to argue that she could not be tried for the offence in England as the demand was only 'received' upon it being read in Germany. The defendant's defence failed and she was convicted in the Crown Court of blackmail.

The House of Lords agreed with the Crown Court and the Court of Appeal and found the defendant liable for blackmail at the moment the demand was made, ie at the moment it was posted.

Important to its construction, blackmail is considered a continuing act and the demand remains in continuum until it is withdrawn. See *R v Hester* [2007] EWCA Crim 2127, in which the defendant was instructed to blackmail the victim. The demand had already been made on a previous occasion before the defendant had joined the gang. This was irrelevant as the demand was a continuing act.

11A.2.2.2 *Actus reus:* (ii) with menaces

The demand must be made with menaces. In *R v Lawrence and Pomroy* (1971) 57 Cr App R 64, Cairns LJ explained that 'menaces' is 'an ordinary English word which any jury can be expected to understand'. Lord Wright in *Thorne v Motor Trade Association* [1937] AC 797 would define this term as

> to be liberally construed and not as limited to threats of violence but as including threats of any action detrimental to or unpleasant to the person addressed. It may also include a warning that in certain events such action is intended.

Blackmail is thus a much wider offence than one may initial perceive; specifically, it goes beyond the use of threat of violence to persons and property. Instead, it focuses on a threat which is 'unpleasant' to the individual concerned. This may include:

- demanding the payment of an extortionate fine to prevent prosecution (as might have been the case in *Thorne v Motor Trade Association* [1937] AC 797, with slightly different facts);
- threatening (by email) to publish material damaging to a company online (*R v Pogmore (Nigel)* [2017] EWCA Crim 925);
- threatening (and using) force against the victim's dog to induce the victim to pay for the dog's return (*R v Walker* [2010] EWCA Crim 2184);
- threatening to reveal adultery to the victim's wife (as in *R v Tomlinson* [1895] 1 QB 706).

As with demands, the menaces attached may be made expressly or impliedly. This was made clear in *R v Lawrence and Pomroy* (1971) 57 Cr App R 64, where the defendant made a statement along the lines of 'keep looking over your shoulder' to the victim, which was then accompanied with the presence of a large man requesting to speak with the victim outside his house. The Court of Appeal concluded that the menaces were present from the presence of the large man when accompanied with the previous statement to keep a look over one's shoulder. Ultimately, however, whether or not a threat was or could be carried out by the defendant (or someone else for that matter) is irrelevant. This was made clear by Moses LJ in *R v Lambert* [2009] EWCA Crim 2860, where his Lordship stated:

> It being irrelevant whether the menaces relate to action taken by the demander or somebody else, and it also being irrelevant whether the demander is in any position to effect menace. It is how the demand and menace affects the victim that matters.

Whether menaces are present within the demand is to be determined by way of an objective standard. This was made clear by the Court of Appeal in *R v Clear* [1968] 1 QB 670. Specifically, Sellers LJ stated that the menace must be

> of such a nature and extent that the mind of an ordinary person of normal stability and courage *might* be influenced or made apprehensive so as to accede unwillingly to the demand. (emphasis added)

Although the word 'might' indicates quite a low threshold, the matter remains one to be determined by a jury using their objective standards of reasonableness. For instance, in circumstances where the victim himself is not fearful or phased by the threat made, a jury may still find that they (as the objective persons) would be intimidated by the threat. On this account, the defendant remains liable for blackmail (*R v Moran* [1952] 1 All ER 803). However, in the circumstances where neither the victim nor the objective persons are phased by the threat, there shall be no blackmail. This was made clear in the case of *R v Harry* [1974] Crim LR 32, where the defendant informed the victim that if he donated to his cause, the victim would be free from 'inconveniences'. The Crown Court found that the word 'menaces' is a strong word requiring a high degree of coercion which was not present on the given facts. To demonstrate the severity of the menace, the Court of Appeal in *R v Jheeta* [2007] EWCA Crim 1699 appeared to prefer the term 'menacing pressures' to indicate the sort of conduct necessary (we considered *Jheeta* in **Chapter 10**).

What these cases show is the divergence between cases where the menacing behaviour causes the arbiter of fact to feel *influenced* and cases where it does not. In the former, there will be a menacing demand; in the latter, no such menaces will be present.

One area that has not been discussed as yet are the circumstances where the victim accedes to the demands due to a particular and unique susceptibility (or vulnerability), but the arbiters of fact would not have been so influenced, applying an objective standard. If we were to follow *Harry* above, there will be no menace where the objective persons are not influenced by the demand. However, an exception applies when one observes the decision of the Court of Appeal in *R v Garwood* [1987] 1 All ER 1032. In *Garwood*, the jury asked the trial judge whether it was relevant that the defendant appeared more menacing to the victim (who was timid) than he did to the objective reasonable man. The trial judge affirmed the jury's question, stating that the peculiarities of the victim are relevant to the jury's deliberation of menacing conduct, so long as the defendant was aware that his threat was particularly menacing to this victim. Lord Lane CJ in the Court of Appeal ruled:

> In our judgment it is only rarely that a judge will need to enter on a definition of the word 'menaces'. It is an ordinary word of which the meaning will be clear to any jury. … It seems to us that there are two possible occasions on which a further direction on the meaning of the word menaces may be required. The first is where the threats might have affected the mind of an ordinary person of normal stability but did not affect the person actually addressed. In such circumstances that would amount to a sufficient menace … The second situation is where the threats in fact affected the mind of the victim, although they would not have affected the mind of a person of normal stability. In that case, in our judgment, the existence of menaces is proved providing that the accused man was aware of the likely effect of his actions on the victim.

11A.2.2.3 *Mens rea:* (i) a view to make a gain or cause a loss

The first element of the *mens rea* is that the defendant by his unwarranted demands with menaces intends to make a gain or cause a loss. The phrase 'with a view to' is synonymous with 'intention' and thus we shall adopt this phrasing for sake of ease and consistency.

We are assisted in our understanding of these terms by s 34(2), which provides:

> For purposes of this Act—
> (a) 'gain' and 'loss' are to be construed as extending only to gain or loss in money or other property, but as extending to any such gain or loss whether temporary or permanent; and—
> (i) 'gain' includes a gain by keeping what one has, as well as a gain by getting what one has not; and
> (ii) 'loss' includes a loss by not getting what one might get, as well as a loss by parting with what one has;
> …

Importantly, all that is required by this element is that the defendant intends to make a gain or cause a loss; there is no requirement for an actual gain or loss to occur (*R v Moran* [1952] 1 All ER 803). On this basis, blackmail is a conduct crime (*R v Pogmore (Nigel)* [2017] EWCA Crim 925). Section 34(2)(a) has the effect of refining the remit of

blackmail only to demands involving property. Therefore, as stated above, where demands are made as to non-property, such as of a sexual nature, there is no blackmail.

Property

Property has been defined broadly to include 'money or other property' and the view to make a gain or cause a loss has also been described quite broadly. This can be illustrated by the case of *R v Bevans* (1988) 87 Cr App R 64.

case example

Charge:
Blackmail (TA 1968, s 21)

Case progression:
Crown Court – Guilty

Court of Appeal – Conviction upheld

Point of law:
Meaning of property

In *R v Bevans* (1988) 87 Cr App R 64, the defendant forced the victim, a doctor, at gunpoint to give him an injection of morphine for the purposes of pain relief. The defendant was charged with and convicted of blackmail in the Crown Court.

The defendant argued two grounds in the Court of Appeal: first – the morphine did not amount to property; and, secondly, the morphine was for the purpose of relief of pain – not to make a gain or cause a loss. The Court of Appeal dismissed the defendant's appeal, arguing that the morphine amounted to property and the defendant had a view to gain property by having it injected into him.

The broadness of 'property' was demonstrated by the case of *R v Read* [2018] EWCA Crim 2186 in which the defendant had demanded a payment of bitcoins (electronic currency) threatening to infect the victim's IT systems with a virus. The demand began at 15 Bitcoins and escalated to 250 Bitcoins prior to the arrest of the defendant. The defendant was charged with and convicted of blackmail. Whilst the appeal was concerned with sentence, as opposed to conviction, it must be the case that all parties to the proceedings, and potentially the Court of Appeal, accepted that Bitcoin amounted to 'property' for the purposes of s 34(2) given that no issue was raised about this on appeal.

Examples of 'gain or loss'

The view to make a gain or cause a loss can also be found in circumstances where the defendant demands money that it owed to him under a debt. This was seen in this case of *R v Parkes* [1973] Crim LR 358, where the defendant demanded money owed to him by the victim. The defendant argued at trial that his seeking of repayment was not with a 'view to make a gain or cause a loss' since he was already entitled to the money in question. Indeed, this argument is in line with the view of Hogan ('Blackmail' [1966] Crim LR 474), who argues that demanding property that an individual is legally entitled to should not fall within the offence of blackmail as there is no intention to make a gain or cause a loss. Despite this, the Crown Court considered that the demand amounted to blackmail. Although *Parkes* was only a first instance Crown Court decision, it has since been approved by the Court of Appeal in *AG's Reference (No 1 of 2001)* [2002] EWCA Crim 1768.

Therefore, following *Parkes, R v Lawrence* (1973) 57 Cr App R 64 and s 34(2)(a), 'gain' is to be interpreted as including 'getting what one has not got', even in circumstances where one has a lawful right to that property.

example

Suppose Jack threatens to reveal Jill's past exploits as a pornography star unless she does three things:

(a) sleep with him;
(b) destroy her mobile phone (which contains scandalous messages from Jack); and
(c) give him her new television.

Jill accedes to all three demands.

In this case, Jack may be liable for two counts of blackmail. The first demand cannot be blackmail as the demand is not directed with an intention to make a gain or cause a loss in relation to property. Rather, this demand may give rise to liability for a number of sexual offences, including rape and causing a person to engage in sexual activity (see **Chapter 10**). The second demand can be blackmail as Jack is intending, through his menacing demand, to cause a loss to Jill (ie of her mobile phone). The third demand can also be blackmail as Jack is intending to make a gain (ie of Jill's new television set). It is important to note that Jack need not intend to make a gain *and* cause a loss. It is sufficient for the purposes of blackmail that Jack simply intends one or the other.

11A.2.2.4 *Mens rea:* (ii) the demand is unwarranted

As discussed above, the *actus reus* requires simply that a 'demand' is made. The corresponding *mens rea* element to this feature is that the demand is 'unwarranted'.

By s 21(1) of the TA 1968, a demand with menaces is 'unwarranted' unless the person making the demand believes both:

(a) that he has reasonable grounds for making the demand; and
(b) that the use of the menaces is a proper means of reinforcing the demand.

This section therefore provides a presumption *in favour* of the demand being unwarranted *unless* it can be proven that the defendant believes both of the factors laid out. It is important to note that this is an 'and' test and not an 'or' test. Both factors must be satisfied. You should therefore consider each in turn, which we shall now observe.

Table 11A.2 Factors amounting to unwarranted demands

Factor	Description
Reasonable grounds for demand (s 21(1)(a))	The defendant must believe he has reasonable grounds for making the demand. It is not sufficient that the defendant believes the demand is 'correct' or 'justified', but whether the defendant believes that the objective person would find the demand to be 'correct' or 'justified'.
Proper means of reinforcing (s 21(1)(b))	If the defendant believes the objective person would find his demands to be reasonable, he must then consider whether his menaces are the proper means of reinforcing the demand. Simply, where the defendant uses menaces that would amount to criminal liability in their own regard, clearly his means will not be 'proper' (as in *R v Kewell* [2000] 2 Cr App R (S) 38 – threatening to reveal personal photographs of the victim; and *R v Harvey* (1981) 72 Cr App R 139 – threats to rape, maim and kill the victim's family).

An interesting application of the 'proper means' element was seen in *Arthur v Anker* [1997] QB 564 where it was held that car clamping may lead to a conviction for blackmail in cases where the defendant did not believe the clamping was a proper means of enforcing the demand.

Whether the defendant 'believes' either factor is present is a subjective matter to be determined by the jury. In this regard, the jury are not concerned with the nature or content of the threat or demand itself (although this will be useful evidence); but, rather, they are concerned with the subjective state of mind (or *mens rea*) on the part of the defendant. MacKenna ('Blackmail' [1966] Crim LR 467) argues that this subjective element of the offence goes 'too far … allowing the defendant's own moral standards [to] determine the rightness or wrongness of his conduct'.

Although there appears to be a presumption *in favour* of a demand being unwarranted, it remains the burden of the prosecution to disprove either of those elements if raised by a defendant (*R v Ashiq* [2015] EWCA Crim 1617).

Specifically, the prosecution is required to prove the negative elements of those factors, ie:

- that the defendant *did not* believe he had reasonable grounds to make the demands; and
- that the defendant *did not* believe that the use of menaces was a proper means of reinforcing the demand.

Given that this test is dual (ie both must be satisfied), it is enough for the prosecution to prove a lack of belief in either of these factors; it need not prove both.

in practice

Do not worry about the language used when discussing the two factors in s 21(1)(a) and (b). In practice, the courts will often vary in their phrasing of the prosecution's duty. For example, a judge may direct a jury either:

(a) that the prosecution must *prove* that the defendant either did not believe he had reasonable grounds to make the demands or that the use of menaces was a proper means of reinforcing the demand; or

(b) that the prosecution must *disprove* that the defendant either believed he had reasonable grounds to make the demands or that the use of menaces was a proper means of reinforcing the demand.

Either direction is appropriate; just do not get caught up in the variations.

In summary, in order for the defendant to be liable, there must be evidence of both factors working together to create the blackmail. This has been expressed by Lindgren ('Unravelling the Paradox of Blackmail' (1984) 84 Col L Rev 670), who attempts to explain the 'paradox' that exists in blackmail cases.

Specifically, Lindgren notes that a defendant is entitled to make demands but without menacing conduct and likewise may act in a menacing way but without the presence of a demand. It will be helpful to explain both circumstances in turn:

- In the former case, a defendant may make demands for money owed but without menacing conduct and will not be liable for an offence of blackmail. Naturally, if a debt is owed by the debtor to the defendant, the defendant has a legal right (in civil law) to demand the return of the money. Should the debtor fail to pay the debt, he may be sued under the debt.
- In the latter case, a defendant may expose a victim to his questionable activities (eg he acts menacingly by revealing a victim's sexual orientation) but without the presence of a demand; again he may not be liable for blackmail.

However, in the circumstances where the defendant uses such menacing means *in order* to make the demand, then he will be liable for blackmail.

This is known as the 'paradox' of blackmail and has led to much academic commentary throughout the years. Justifications for the offence of blackmail in light of this paradox are plentiful. One justification, provided by Lamond ('Coercion, Threats and the Puzzle of Blackmail' in Simester and Smith (eds), *Harm and Culpability* (OUP 1996)), is to think of blackmail like obtaining property by deception – both offences involve some acquisition of property through the manipulation and coercion of the victim's mind. Another justification, relying on an analogy provided by Katz ('Blackmail and Other Forms of Arm-Twisting' (1993) University of Pennsylvania Law Review 141), is that blackmail is similar to robbery in that property is taken from a victim by use of 'immoral means'.

11A.2.3 Charging blackmail

11A.2.3.1 Mode of trial

Blackmail is an offence chargeable only on indictment, meaning that it may only be tried in the Crown Court before a judge and jury.

11A.2.3.2 Sentencing

The maximum sentence for blackmail is 14 years' imprisonment (TA 1968, s 21(3)). When sentencing the defendant, the court should consider the psychological harm done or intended to be done to the victim (*R v Ford* [2015] 2 Cr App R (S) 177).

11A.2.3.3 Charging attempted blackmail

A particularly interesting topic under the offence of blackmail is whether one may be charged with attempted blackmail. It has long been thought that no such attempt offence exists, given that the offence of blackmail is in itself an attempt to make a gain or cause a loss. On that basis, Jefferson (*Criminal Law*, 12th edn (Pearson, 2015)) makes the point that '[i]t seems absurd to charge attempting to attempt to obtain property'. A justification for attempted blackmail has, however, been put forward by Griew (*The Theft Acts 1968-1978*, 7th edn (Sweet & Maxwell, 1995)) who argues that:

> If a blackmailing demand is 'made' as soon as it is spoken or dispatched beyond recall, the possibility of a case of attempted blackmail is limited to fanciful situations such as where [the accused] is affected by a stammer or interrupted in the act of posting.

Indeed, Griew's view has merit when one considers a demand that is intended to be made via telephone and, just before the demand is made, the telephone call cuts out. The problem with Griew's theoretical understanding of attempted blackmail is that, in practice, how could it be proven that the defendant was going to make a demand? Simply, it cannot. Therefore, although an attempt is possible in these circumstances, it remains unlikely to be charged for evidential reasons.

We have considered the law of attempts in **Chapter 5**.

11A.2.4 Putting together blackmail

Consider this issue and think of how you may structure an answer to it. Then see the figure below for a sample structure to adopt.

facts

Jack is a bank manager in a heterosexual relationship with his wife, Jill. Unbeknownst to Jill, Jack has entered into a homosexual affair with his business colleague, Andy. A co-worker, Alice, discovers this fact and threatens to reveal Jack's affair to his wife, should Jack not provide Alice with a substantial pay rise. Jack agrees and awards the pay rise.

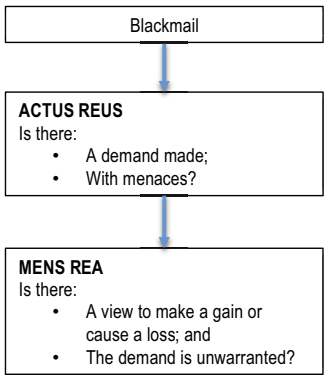

Figure 11A.1 Putting together blackmail

11A.3 Handling stolen goods

Handling stolen goods is a crime aimed at making theft harder to carry out. Indeed, according to the CLRC's 8th Report (*Theft and Related Offences*, 1996), the purpose of having an offence of handling is to 'combat theft by making it more difficult and less profitable to dispose of stolen property'. It is for this reason, as noted by De Than (*Criminal Law*, 4th edn (OUP, 2013)), that the 'maximum sentence is higher than for theft on the basis that handling, by facilitating disposal of the proceeds of theft, contributes to its prevalence'.

11A.3.1 Defining handling

As a result of the justification noted above, Jefferson (*Criminal Law*, 12th edn (Pearson, 2015)) describes the offence as one 'secondary' to the offence of theft. By this, Jefferson means that handling does not exist unless and until some form of theft, or related offence, occurs. Further to this, Horder (*Ashworth's Principles of Criminal Law*, 9th edn (OUP, 2019)) comments that the offence of handling is drafted so widely as to 'cast a net around the main Theft Act offences'.

11A.3.2 Elements of handling

Section 22(1) of the TA 1968 provides:

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

The *actus reus* and *mens rea* of handling are outlined in **Table 11A.3**.

Table 11A.3 Elements of handling stolen goods

AR/MR	Elements of the offence
Actus reus	(i) handles; (ii) otherwise than in the course of stealing; (iii) stolen goods.
Mens rea	(i) knows or believes them to be stolen; (ii) dishonestly deals with them.

We shall consider each element in turn.

11A.3.2.1 *Actus reus:* (i) handles

From s 22(1) above, it is possible to find 18 variations of carrying out the *actus reus* of handling. Specifically, there are four broad, or basic, ways of handling goods, with more specific conduct arising under each of the four basic headings. We can see this in **Table 11A.4**.

Table 11A.4 Methods of 'handling' stolen goods

	Basic method of handling	Specific method of handling
1	Receiving	n/a
2	Undertaking	By retention
3	Undertaking	By removal
4	Undertaking	By disposal
5	Undertaking	By realisation
6	Assisting	By retention
7	Assisting	By removal
8	Assisting	By disposal
9	Assisting	By realisation
10	Arranging	To receive
11	Arranging	To undertake by retention
12	Arranging	To undertake by removal
13	Arranging	To undertake by disposal
14	Arranging	To undertake by realisation
15	Arranging	To assist by retention
16	Arranging	To assist by removal
17	Arranging	To assist by disposal
18	Arranging	To assist by realisation

It is important to note that although there are 18 different ways in which a person may 'handle' goods, there is only one offence (*Griffiths v Freeman* [1970] 1 All ER 1117). Although the 'type' of handling needs to be stated in an indictment, there remains only one offence chargeable, namely that under s 22 (*R v Nicklin* [1977] 2 All ER 444). However, where the defendant is charged with a specific form of handling (for example 'receiving'), he may not be convicted on the basis of a different form of handling (for example 'undertaking'). In the circumstances where there is uncertainty as to the correct form of handling, the case of *R v Sloggett* [1972] 1 QB 430 recommends the charging of separate counts on the indictment.

We shall now consider each way in which a defendant may 'handle' goods.

Receiving

The first key point to note is that this form of handling does not involve some form of qualification; namely it does not have to be 'for the benefit of another person' as required for 'undertaking', nor does the activity have to be 'by … another person', meaning that no assistance to another is required. As a result, in circumstances where the defendant is acting alone or, better yet, is not acting with or for the benefit of another, 'receiving' is the only form of handling available to prosecutors.

The receipt of goods simply requires proof that the defendant has taken physical possession or control of the stolen goods from another individual. According to the Court of Criminal Appeal in *R v Cavendish* [1961] 2 All ER 856, it must be proven that the defendant took some form of active participation in the receiving of goods. Where the defendant is simply engaged in a negotiation as to receiving the goods, he will not be liable for handling by receiving (as was the case in *R v Wiley* (1850) 2 Den 37). Likewise, where the defendant simply finds goods that are stolen, this will not be considered as receiving for the purposes of the Act (*R v Haider* (CA, 22 March 1985)).

Each act of receiving amounts to a separate offence of handling, and, thus, in the circumstances where the defendant has received stolen property from multiple individuals, each receipt will amount to a separate charge of handling (*R v Smythe* (1981) 72 Cr App R 8). In *R v Miller* (1854) 6 Cox CC 353 it was held that where the defendant's agent takes receipt of the stolen goods with his authority, this will amount to the defendant 'receiving' the stolen goods in the eyes of the law.

Receiving goods requires no form of permanence, nor does it require the defendant to receive the goods for a particular purpose, for example to keep or dispose of them. According to the Court of Assize in *R v Richardson* (1834) 6 Car & P 335, receipt of goods is complete upon the defendant taking possession or control, regardless of his purpose. In that case, the defendant took control of the goods in order to hide them for the benefit of the thief. Simply, receiving is a 'finite act', as explained by the Court of Appeal in *R v Smythe* (1981) 72 Cr App R 8.

The Divisional Court in *Hobson v Impett* (1957) 41 Cr App R 138 did, however, note that the defendant must be aware that he is in possession or control of the goods. In circumstances where the defendant was 'unaware' the goods were stolen at the point of receiving them, but later becomes aware of their stolen nature, the defendant cannot be liable for handling by receiving.

example

Jack hands over a rucksack to Jill containing a number of items of jewellery, including watches, rings and bracelets. Jack asks Jill to take possession of the items and keep them safe. Jill agrees to do so, believing them to be in the ownership of Jack. A number of weeks later, Jack informs Jill that the jewellery was stolen and that she should hide the items. Jill agrees to do so.

In this instance, Jill has not *received* the goods knowing, or believing, them to be stolen. As a result, Jill cannot be liable for handling by receiving. However, the Court of Appeal in *R v Pitchley* (1973) 57 Cr App R 30 ruled that the better charge in this circumstance would be one of 'undertaking to retain', instead of receiving.

Undertaking

The next form of handling requires the defendant to 'undertake' a certain activity for the benefit of another person. The defendant may either retain, remove, dispose of or

realise the stolen goods; however, it must be emphasised that it has to be for the benefit of *another*. The meanings of these four specific forms of handling are detailed in **Table 11A.5**.

Table 11A.5 Understanding retention, removal, disposal and realisation

Specific form of handling	Meaning
Retention	The stolen goods are 'kept' or 'stored' for the benefit of another person, eg the thief. In *R v Pitchley* (1973) 57 Cr App R 30, the Court of Appeal coined the phrase 'keep possession of, not lose, continue to have' (per Cairns LJ).
Removal	The stolen goods must be moved or transported from one location to another (*R v Gleed* (1917) 12 Cr App R 32).
Disposal	The stolen goods must be disposed of. Disposal may include selling or exchanging the stolen property or destroying it (*R v Watson* [1916] 2 KB 385).
Realisation	The stolen goods must be exchanged for value (ie money or money's worth). This section overlaps with the previous one of 'disposal' (*R v Bloxham* [1983] 1 AC 109).

Charge:
Handling stolen goods (TA 1968, s 22)

Case progression:
Crown Court – Guilty

Court of Appeal – Conviction upheld

House of Lords – Conviction quashed

Point of law:
Meaning of 'for the benefit of another'

In *R v Bloxham* [1983] 1 AC 109, the defendant bought a car from a thief, unaware that it was stolen. Almost a year later, the defendant came to believe the car had been stolen, given the lack of registration documents. As such, believing the goods to be stolen, the defendant sold the car to a third party.

The defendant was charged with and convicted of handling stolen goods on the basis that he had undertaken the realisation of the car for the benefit of another person. The trial judge directed the jury that the 'other person' was the third party purchaser. The Court of Appeal affirmed the trial judge's ruling but granted permission for appeal to the House of Lords.

The House of Lords quashed the defendant's conviction on the basis that the benefit obtained from the transaction was a benefit to the defendant and not the third party. Although the third party may have obtained a benefit by use of the car, their benefit was not what was contemplated by the wording of the section.

Lord Bridge in the House of Lords explained the Court's position in the following way:

> The critical words to be construed are 'undertakes … their … disposal or realisation … for the benefit of another person'. Considering these words first in isolation, it seems to me that, if A sells his own goods to B, it is a somewhat strained use of language to describe this as a disposal or realisation of the goods for the benefit of B. True it is that B obtains a benefit from the transaction, but it is surely more natural to say that the disposal or realisation is for A's benefit than for B's.

His Lordship went on to provide the key principle we are to follow from this case, namely:

> It is the purchase, not the sale, that is for the benefit of B. It is only when A is selling *as agent for a third party* C that it would be entirely natural to describe the sale as a disposal or realisation for the benefit of another person. (emphasis added)

Griew (*The Theft Acts*, 7th edn (Sweet & Maxwell, 1995)) explains this case on the basis that

> the House of Lords effectively treats the notion of an act undertaken 'for the benefit of another person' as that of an act done on behalf of another person; it is an act that the other might do himself.

The Court of Appeal approached the question of 'benefit of another' in *R v Gingell* [2000] 1 Cr App R 88, which concerned a joint charge of handling against two defendants. The Court ruled that the phrase 'benefit of another' excludes a co-accused. 'Another' must be an individual distinct from the defendants. Despite this, where a defendant proposes to undertake a specific activity for the benefit of his co-defendant, he may be liable for conspiracy to handle (*R v Slater; R v Suddens* [1996] Crim LR 494).

Assisting

The third specific form of handling comes under the heading of 'assisting'. Under this heading, the prosecution is required to prove that the defendant assisted or encouraged another in the retention, removal, disposal or realisation of the stolen goods. Assistance or encouragement requires the defendant to be active and to be actively engaged in the handling of the goods alongside another. In *R v Kanwar* [1982] 2 All ER 528, Cantley J stated that:

> To constitute the offence, something must be done by the offender, and done intentionally and dishonestly, for the purpose of enabling the goods to be retained. Examples of such conduct are concealing or helping to conceal the goods, or doing something to make them more difficult to find or to identify. Such conduct must be done knowing or believing the goods to be stolen and done dishonestly and for the benefit of another.

As a result, the Court of Appeal in *R v Sanders* (1982) 75 Cr App R 84 ruled that merely using the items that are retained by someone else is not sufficient.

There are two cases that have caused difficulty in this area, namely *R v Kanwar* [1982] 2 All ER 528 and *R v Brown* [1970] 1 QB 105. In the former it was held that lying to the police regarding the lawful owner of stolen goods is sufficient to constitute assisting another. In the latter case, however, a failure to inform the police regarding the presence of stolen goods on the property was not capable of constituting assistance for the purposes of the Act. These two cases can be understood by reference to the actions of the defendant. In *Kanwar*, the defendant took a positive step in lying to the police officers. This step was a form of 'active' assistance to the thief. Whereas in *Brown*, the defendant merely failed to respond to police questions. The defendant was not obliged to answer such questions and there was no 'active' assistance on the part of the defendant to the thief.

Arranging

The final circumstance is where the defendant arranges to act in any of the general manners listed above (ie receiving, undertaking or assisting). If the defendant is charged with 'arranging to receive', the same rules of receiving set out above apply here. Likewise, where the defendant is charged with either 'arranging to undertake' or 'arranging to assist', the qualifications that apply to those general methods also apply here.

11A.3.2.2 *Actus reus:* (ii) otherwise than in the course of stealing

As will be explained in greater detail in the next section, at the time of the respective 'handling', the goods in question must have been 'stolen'. Further to this, the offence requires the handling to be done 'otherwise than in the course of the stealing'.

This provision is a 'safety net' for original thieves who are still acting in the course of stealing. In such a case, they will not be considered as 'handling' for the purpose of s 22. We can see this in the case of *Hobson v Impett* (1957) 41 Cr App R 138, where the defendant assisted another in unloading stolen goods from a lorry. The defendant was acting 'in the course of stealing' by assisting in the removal of items from the vehicle. This does not mean that a thief cannot be liable for handling; rather, the better expression of this requirement was provided by the court in *R v Bosson* [1999] Crim LR 596, where it was said that in order to be liable for handling, the 'handling' must take place *after* the theft has been committed.

The difficulty here arises when considering whether the handling has come *after* the theft. More specifically, it is often difficult to determine that the 'course of stealing' has ended. We can demonstrate this problem through the case of *R v Pitham and Hehl* (1977) 65 Cr App R 45.

Charge:
Handling stolen goods (TA 1968, s 22)

Case progression:
Crown Court – Guilty

Court of Appeal – Conviction upheld

Point of law:
Meaning of 'in the course of stealing'

case example

In *R v Pitham and Hehl* (1977) 65 Cr App R 45, a third party offered to sell the victim's furniture to the defendants. The victim at the time was in prison and the third party held no authority to offer for sale the victim's furniture. The defendants purchased the furniture before then removing it from the house. The defendants were charged with and convicted of handling in the Crown Court.

The defendants appealed to the Court of Appeal on the basis that their actions were in the course of stealing, and thus they could be liable for theft but not handling. The Court of Appeal dismissed their appeal, ruling that the theft was complete upon the third party offering the furniture for sale. The Court reasoned that any actions taking place after this offer were 'otherwise than in the course of stealing'.

A further difficulty that arises in the case law involves the circumstance where it cannot be said with certainty that the defendant is the thief or merely a handler. The Court of Appeal in *R v Cash* [1985] QB 801 attempted to solve this problem by providing that the jury were entitled to infer that the defendant was the handler unless there was some evidence to suggest he was in fact the thief. In the case where no evidence is available, the jury should infer that the defendant is a handler without direction as to 'in the course of stealing'. Where, however, there is evidence that the defendant is the thief, the jury must be directed to consider whether his handling is 'otherwise than in the course of stealing'. If the jury conclude that his actions were within the course of stealing, he is not liable for handling (refer back to *R v Atakpu* [1994] QB 69 in **Chapter 11** and the notion of continuing acts).

11A.3.2.3 *Actus reus:* (iii) stolen goods

The next element of the *actus reus* that must be proven is that the defendant handled 'goods' that were 'stolen'. We shall deal with each element individually.

Goods

Section 34(2)(b) of the TA 1968 provides:

> 'goods', except in so far as the context otherwise requires, includes money and every other description of property except land, and includes things severed from the land by stealing.

For the purposes of this offence 'goods' has been defined so widely as to almost be synonymous with the definition of 'property' under s 4 of the TA 1968. Goods can therefore include both tangible and intangible property (including choses in action – *AG's Reference (No 4 of 1979)* [1981] 1 All ER 1193); however 'goods' does not include land that has not been severed. Unlike in the law of theft and criminal damage, which allow certain non-severed fixtures to amount to property, such fixtures will not be considered as 'goods' under s 22. Further to this, under s 24(2), 'goods' includes the 'proceeds of sale'.

Stolen

In order for a defendant to be liable for handling, it must be proven that the goods were in fact 'stolen'. Now, this may appear to state the obvious; however, there may be some circumstances where the defendant believes that the goods are stolen, but in actual fact they are not (for example, the owner has given his consent for the goods to be appropriated, but the defendant is unaware of this). On this basis, where the goods are not stolen, but the defendant believes they are, the appropriate offence is not handling but, rather, attempted handling (*Haughton v Smith* [1975] AC 476).

The word 'stolen' is to be construed according to s 24(4), which provides:

> For purposes of the provisions of this Act relating to goods which have been stolen … goods obtained in England or Wales or elsewhere either by blackmail or … by fraud (within the meaning of the Fraud Act 2006) shall be regarded as stolen; and 'steal', 'theft' and 'thief' shall be construed accordingly.

As a result, goods may be stolen in the following circumstances:

- theft
- robbery
- burglary
- fraud
- blackmail.

It is not a requirement for the offence for the defendant to personally steal the goods. In a situation where the defendant does personally steal the goods, a prosecutor must charge one of the above offences as appropriate. Rather, what is required is that some person, other than the defendant, has stolen the goods by way of one of the offences above. It is not necessary that the prosecution proves who stole the goods in the first place, so long as they were in fact stolen (*R v Forsyth* [1997] 2 Cr App R 299).

The 'goods' in question are not restricted to the original goods acquired through the relevant act of theft, burglary etc. Rather, 'goods' for the purposes of s 22 also includes the proceeds of such property or the remainder. This is provided for in s 24(2):

> … references to stolen goods shall include, in addition to the goods originally stolen and parts of them (whether in their original state or not),—
>
> (a) any other goods which directly or indirectly represent or have at any time represented the stolen goods in the hands of the *thief* as being the proceeds of any disposal or realisation of the whole or part of the goods stolen or of goods so representing the stolen goods; and
>
> (b) any other goods which directly or indirectly represent or have at any time represented the stolen goods in the hands of a *handler* of the stolen goods or any part of them as being the proceeds of any disposal or realisation of the whole or part of the stolen goods handled by him or of goods so representing them. (emphasis added)

As a result of s 24(2), therefore, goods may include:

- goods or proceeds in the hands of the thief that represent the whole or part of the original stolen goods (s 24(2)(a)); and
- goods or proceeds in the hands of the handler that represent the whole or part of the original stolen goods (s 24(2)(b)).

Section 24(2) is not a simple provision. Professor Smith has described this offence as 'a source of endless fascination'. Indeed, it is hoped you will find as much enjoyment in this offence as Smith did; however, you will first need to understand the intricacies of s 24(2). The best way to do so is through a number of examples involving the theft of a single piece of property. Let us take a detailed example:

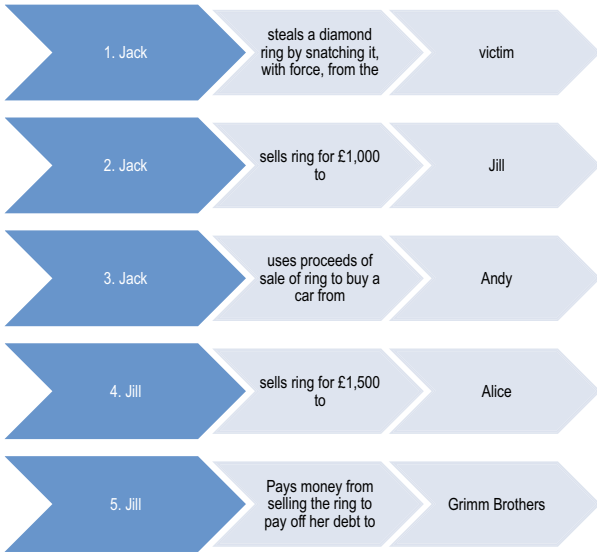

Figure 11A.2 Transition of handling stolen goods

In the first instance, Jack may be liable for robbery. Our focus, however, is on the transactions that follow:

(i) *Jack sells the ring to Jill for £1,000.* If Jill is aware that the ring is stolen, she will be liable for handling stolen goods (s 24(2)(b)). Jack, by selling the ring, is also liable for handling stolen goods (s 24(2)(a)).

(ii) *Jack uses the £1,000 to buy a pre-owned car from Andy.* Jack is liable for handling stolen goods by using the £1,000 made from selling on the stolen property (it is proceeds from disposal of the stolen goods), and the car is also now 'stolen' as it 'represents' the stolen goods (s 24(2)(a)). If Andy is aware that the £1,000 is 'stolen', he will be liable for handling stolen goods (s 24(2)(b)).

(iii) *Jill then sells the ring on to Alice for £1,500.* If Alice is aware that the ring is stolen, she will be liable for handling stolen goods (s 24(2)(b)). Jill will remain liable for the selling of the ring and the money made as a result of selling the ring (s 24(2)(b)).

(iv) *Jill uses the £1,500 to settle her debt with the Grimm brothers.* Jill will be liable for disposing of stolen goods representing the original stolen goods (s 24(2)(b)). If the Grimm brothers are aware that the money is a part of the proceeds of a stolen item, they will be liable for handling stolen goods (s 24(2)(b)).

In all cases, the goods in question, and the proceeds of such goods, have moved between numerous different 'handlers' (ie they have had their hands on the goods).

A difficulty arises, therefore, in circumstances where the goods, proceeds, parts or representative goods have never been in the 'hands' of the 'handler'. In such a case, there can be no offence of handling. This is often the case where the proceeds from the sale of stolen goods is paid into the bank account of the thief who then transfers the money, or part of it, to a third party.

example

Jack is a businessman working alongside his partner, Andy. Jack is tired of working long shifts to make a profit and decides to steal money from the company safe.

At present, in this scenario, Jack is liable for theft. If Jack were to use the money to buy a car, for example, he would be liable for handling stolen goods (as the car would represent the original stolen goods). What is the case, then, if Jack pays the money into his own bank account before then transferring half the money to his wife, Jill? Clearly, the payment of monies into his own account will amount to theft but it will also amount to handling as the stolen property has become a chose in action (money in an account); but what of Jill? Under the common law (following *R v Preddy* [1996] AC 815) Jill could not be liable for handling stolen goods in circumstances where she simply retains the 'stolen' money and in circumstances where she withdraws the 'stolen' money. This is justified on the basis that the stolen property was never in the hands of the handler (in this case, Jill). This was clearly a lacuna in the law leading the Law Commission to propose ('Offences of Dishonesty: Money Transfers' (Law Com No 243, 1996)) the creation of two new offences, which came into force by way of the Theft (Amendment) Act 1996, now contained within s 24A of the TA 1968.

The two offences under s 24A are as follows:

- dishonestly retaining a wrongful credit (s 24A); and
- handling stolen goods by way of dishonest withdrawals from accounts which have been wrongfully credited (s 24A(8)).

The latter of the two is not a new offence, so to speak. Rather, it is an expansion of the current offence of handling to cover circumstances where the individual withdraws money from a wrongfully credited account.

Restored goods

Section 24(3) TA 1968 provides:

> But no goods shall be regarded as having continued to be stolen goods after they have been restored to the person from whom they were stolen or to other lawful possession or custody, or after that person and any other person claiming through him have otherwise ceased as regards those goods to have any right to restitution in respect of the theft.

In essence, this section provides that once the stolen goods have been returned to their owner, or another who is entitled to lawful possession, the goods will no longer be considered 'stolen' for the purposes of the offence of handling. This factor was vital to the conviction of the defendant in *Greater London Metropolitan Police Commissioner v Streeter* (1980) 71 Cr App R 113 and to the acquittal of the defendant in *AG's Reference (No 1 of 1974)* [1974] QB 744.

11A.3.2.4 *Mens rea:* (i) knows or believes them to be stolen

The first element of the *mens rea* is that the defendant 'knows or believes' that the goods are stolen. This knowledge or belief must be present at the time the defendant 'receives' or 'handles' the goods. Knowledge or belief in this context requires the arbiters of fact to take a subjective approach and consider whether *this* defendant on *this* day knew or believed the goods to be stolen. The objective standard of a reasonable person is therefore irrelevant (*Atwal v Massey* [1971] 3 All ER 881).

Over the lifespan of this offence, the courts have consistently reinforced that the defendant must *know* or *believe* that the goods are stolen. It is therefore incorrect to ask what the defendant *ought* to have known or believed. Knowledge and belief were defined by the Court of Appeal in *R v Hall* (1985) 81 Cr App R 260, where Boreham J held:

> A man may be said to know that goods are stolen when he is told by someone with first hand knowledge (someone such as the thief or the burglar) that such is the case. Belief, of course, is something short of knowledge. It may be said to be the state of mind of a person who says to himself: 'I cannot say I know for certain that these goods are stolen, but there can be no other reasonable conclusion in the light of all the circumstances, in the light of all that I have heard and seen.' Either of those two states of mind is enough to satisfy the words of the statute.

On this basis, the Court of Appeal in *R v Forsyth* [1997] 2 Cr App R 299 ruled that 'knowledge and belief' should be given their ordinary meanings; but 'suspicion and recklessness' will not be sufficient. The Court of Appeal in *R v Reader* (1978) 66 Cr App R 33 held that foresight that goods are probably stolen cannot constitute belief either. An even more restrictive interpretation of 'knows or believes' was taken by the Court of Appeal in *R v Griffiths* (1974) 60 Cr App R 14, which held that a 'wilful blindness' to the goods being stolen will also not be sufficient to found an offence.

example

Jack buys a smartphone in his local public house from a regular patron whom he knows often deals in 'dodgy goods'.

In this circumstance, Jack's liability will ultimately depend on how he reacted to the offer of sale and eventual purchase. For example:

- where Jack avoids even considering the idea that the phone is stolen, he will not be liable for an offence; but
- where Jack *knows* or *believes* that the smartphone is stolen but thinks it is best to 'keep his mouth shut' and 'ask no questions', he may be liable for an offence.

in practice

Although a suspicion is not sufficient to find that the defendant knew or believed the goods were stolen, a prosecutor is likely to ask the jury to apply their common sense and infer knowledge to a defendant who is wilfully blind to the idea that goods are stolen. The prosecution would be wrong to suggest to the jury that a wilful blindness is sufficient but may ask them to consider whether such wilful blindness, amongst other pieces of evidence, can be used to infer knowledge on the defendant's part.

An interesting point is that the defendant need not know the nature of the goods that are stolen; he merely must know or believe that the goods are stolen, whatever they may be. For instance, in the case where Jack picks up a suitcase believing it to contain stolen necklaces but in fact it contains stolen watches, he is still liable for an offence of handling (even though he believed the goods to be something else). This was made clear by the Court of Appeal in *R v McCullum* (1973) 57 Cr App R 645.

The prosecution may be assisted in proving its case by use of two devices:

- the doctrine of 'recent possession'; and
- evidence of previous convictions.

Recent possession

The doctrine of recent possession describes the situation where the defendant is found in possession of goods that are recently stolen and offers no explanation, or no believable explanation, for his possession. In this circumstance, the jury are entitled to infer guilty knowledge on the defendant where they are satisfied beyond a reasonable doubt that he had no explanation or no 'true' explanation (*R v Abramovitch* (1916) 11 Cr App R 45). The key phrase there is that the jury are 'entitled' to infer guilty knowledge; they are not 'obliged' to infer guilty knowledge (*R v Smythe* (1981) 72 Cr App R 8).

in practice

A prosecutor must consider whether to charge the defendant with theft or burglary, as an alternative to handling, in circumstances where there is evidence to suggest that the defendant was not merely a 'receiver' of goods. The CPS advises prosecutors to look out for the following factors:

- the time and place of the theft;
- the likelihood of the property being sold on as quickly as the defendant may suggest;
- any connection the defendant has with the place where the theft occurred; and
- anything said by the defendant that may support (or conflict with) the other evidence.

Previous convictions

The prosecution may also be assisted in its task by the use of s 27(3), which permits the admission of two forms of evidence where a defendant is charged *solely* with the offence of handling.

Specifically, s 27(3) of the TA 1968 provides:

> … the following evidence shall be admissible for the purpose of proving that he knew or believed the goods to be stolen goods:—
>
> (a) evidence that he has had in his possession, or has undertaken or assisted in the retention, removal, disposal or realisation of, stolen goods from any theft taking place not earlier than twelve months before the offence charged; and
>
> (b) (provided that seven days' notice in writing has been given to him of the intention to prove the conviction) evidence that he has within the five years preceding the date of the offence charged been convicted of theft or of handling stolen goods.

Ordinarily, if the prosecution wished to admit evidence of a previous conviction of the defendant, it would have to apply to the court for permission to admit the conviction

in accordance with the 'bad character' provisions found in Part 11 of the Criminal Justice Act 2003. For the purpose of handling offences, however, s 27(3) merely requires that seven days' notice is given in writing of the intention to prove the conviction(s) and no application to the court need be made.

11A.3.2.5 *Mens rea:* (ii) dishonestly deals with them

The first point to note is that the circumstances listed regarding what is *not* dishonest under s 2(1) of the TA 1968 do not apply to this offence. Instead, dishonesty remains a question of fact for the jury following the ground-breaking case of *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67. Following *Ivey,* the jury must undertake two tasks:

(a) They must assess the state of the defendant's knowledge or belief as to the facts (this is a subjective question).
(b) They must then assess whether the defendant was dishonest according to the standards of ordinary decent people (this is an objective question).

Where the arbiter of fact finds the defendant to be dishonest according to those honest and ordinary standards, the defendant is to be considered 'dishonest' in law. In the majority of cases, even under the old *Ghosh* law, dishonesty will not be hard to prove – ie where the defendant knows or believes the goods to be stolen. The jury may find a defendant to lack dishonesty in circumstances where he knows or believes that the goods are stolen but is in the course of returning the goods to the owner or turning them over to the police. This was made clear in *R v Matthews* [1950] 1 All ER 137.

11A.3.3 Charging handling

11A.3.3.1 Mode of trial

Handling stolen goods is an offence triable either way, meaning it can be tried in either the magistrates' court or the Crown Court.

11A.3.3.2 Sentencing

Handling stolen goods carries a maximum sentence of 14 years' imprisonment. According to the Court of Appeal in *R v Shelton* (1993) 15 Cr App R (S) 415, the offence is designed to discourage the trade in stolen goods and thus discourage theft. On that basis, the offence is to be sentenced at a much higher level of seriousness than its theft counterpart (for which the maximum is only 7 years).

in practice

In charging handling, prosecutors should consider whether to charge any of the appropriate money laundering offences under the Proceeds of Crime Act 2002 in the alternative. In *R v Rose; R v Whitwam* [2008] EWCA Crim 239, the Court of Appeal indicated a preference for the use of handling in straightforward cases (cases where the value was small). Although this text goes no further into a discussion of the Proceeds of Crime Act 2002, in a problem question, it may be worth making reference to the potential use of the 2002 Act.

Where the goods have not yet been stolen and the defendant enters into an agreement to handle the goods upon them being stolen, the defendant cannot be

charged with handling. Rather, according to the Court of Appeal in *R v Park* (1987) 87 Cr App R 164, the more appropriate charge would be one of conspiracy to handle.

11A.3.4 Putting together handling

Consider this issue and think of how you may structure an answer to it. Then see the figure below for a sample structure to adopt.

facts

Around Christmas time, Jack burgles the house of Andy. In the act of burgling, Jack steals a DVD recorder, a watch and a video game console. Jack takes all three goods to his local pub and attempts to sell the items to his friend, Jill. Jill asks whether the items are 'kosher', to which Jack replies with a wink. Jill purchases all three items. Jill keeps the DVD recorder for herself, gives the watch to her husband as a Christmas present, and sells the video game console to her friend for £100.

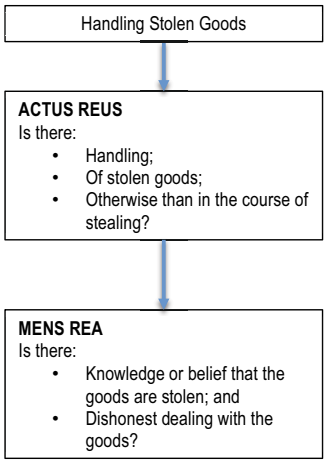

Figure 11A.3 Putting together handling stolen goods

11A.4 Making off without payment

Making off without payment is the last remaining offence within the TA 1978. The Fraud Act 2006 had the effect of replacing all deception offences previously found within the 1968 and 1978 Acts. Making off was unaffected by the 2006 Act, however, given that it is not a crime of deception. Instead, making off was introduced by the 1978 Act to plug the gap left by the 1968 Act. Specifically, under the 1968 Act, theft requires an individual to be dishonest and intend to permanently deprive *at the time* of the appropriation of property. This left a gap in the law where individuals only form their dishonest intent after the goods have been appropriated, at which point the goods were lawfully their own. Most notable is the case of *Edwards v Ddin* [1976] 1 WLR 942, where the Divisional Court found that the defendant could not be liable for theft of petrol where his dishonest intention was formed only after the petrol was in his tank – according to contract law, the property had already passed to the defendant at this stage (see the earlier case of *R v Greenberg* [1972] Crim LR 331 on the same issue).

Smith ('R v Vincent' [2001] Crim LR 488) explains the basis for the offence as being rooted in 'a deep-seated hostility to criminalising non-payment of debts'.

The same argument can be made for the forming of dishonest intent after services were received or done. In *DPP v Ray* [1974] AC 370, the defendant ordered and consumed a meal in a restaurant with an honest intent to pay for the meal. Upon discovering he was unable to pay for the meal, the defendant ran from the restaurant when the dining area was clear. Although the House of Lords could find liability for a false representation, no offence of theft was possible as the goods had already become the property of the defendant (ie they were in his stomach) at the time he formed his dishonest intent. If the offence of making off had been available to the prosecutor, that would have been the more suitable charge. In filling this gap, the Court of Appeal in *R v Vincent* [2001] 1 WLR 1172 has noted that s 3(1) 'is indeed intended to create a simple and straightforward offence' (per Pill LJ).

11A.4.1 Defining making off

As a result of s 3(1), making off now covers such activities, often referred to as 'bilking', as:

- leaving a restaurant or hotel without paying;
- not paying a taxi fare; and
- filling up with petrol and driving off.

In all of these circumstances, there is no requirement to prove any deception in the manner that the defendant made off; nor is it necessary to prove that the property in question belonged to another. Simply, the offence requires the defendant to have made off with the dishonest intent to avoid payment when expected or required.

11A.4.2 Elements of making off

Section 3(1) of the TA 1978 provides:

> … a person who, knowing that payment on the spot for any goods 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 shall be guilty of an offence.

The *actus reus* and *mens rea* of making off are outlined in **Table 11A.6**.

Table 11A.6 Elements of making off without payment

AR/MR	Elements of the offence
Actus reus	(i) makes off; (ii) goods supplied or service done; (iii) without payment that is required or expected; (iv) on the spot.
Mens rea	(i) dishonesty; (ii) knowledge that payment on the spot is required or expected; (iii) intention to avoid payment of the amount due.

We shall consider each element in turn.

11A.4.2.1 *Actus reus:* (i) makes off

The first element required to be proven is that the defendant has 'made off'. According to the Court of Appeal in *R v Brooks and Brooks* (1983) 76 Cr App R 66, the words

'making off' should be given their ordinary meaning, allowing the jury to find that the defendant merely 'departed' from the spot at which payment was required. There is no requirement for the defendant to 'leave by stealth'; he may forcibly leave the relevant spot without payment (see Bennion, 'Letter to the Editor' [1980] Crim LR 670 who gives the example of a heavyweight boxer who forces his way past a restaurant manager).

D must fully depart from the spot

The defendant must have fully exited the relevant space; anything short of that will not find liability for making off. This is often the case where the defendant is stopped before he has managed to escape from the 'spot' without payment (eg caught whilst attempting to escape via a window in a restaurant toilet). In such a case, the relevant charge is an attempt (*R v McDavitt* [1981] Crim LR 843 – though note that the defendant in that case simply went into the toilet to wait for the police to arrive).

Departing with permission

There may of course be situations where the defendant has departed from the relevant spot but has done so with the permission of the relevant authority or body to do so (for example, a restaurant manager or petrol station attendant), on the condition that he returns with payment at a later date. The Crown Court in *R v Hammond* [1982] Crim LR 611 ruled that where permission is granted, regardless as to how it was obtained, the defendant cannot be liable for making off. However, where the defendant is dishonest in his intention to leave and not return, although not liable for making off, he may be liable for a separate offence of fraud by false representation, contrary to s 1 of the Fraud Act 2006 (see **Chapter 12**). Although only a first instance decision, *Hammond* has led to stark academic debate on whether a defendant can 'make off' where permission has been granted. First, Spencer ('Making Off Without Payment' [1983] Crim LR 573) argues that the courts ought to distinguish between two cases, namely:

- where the defendant has left without a trace (ie he has walked out without communication as to how to locate him); and
- where the defendant has left whilst leaving a note of where to find him in the future (eg the note may provide his name, telephone number or address).

Spencer contends that in the latter of the scenarios, the defendant does not make off under the Act; whereas, in the former scenario, the defendant is to be liable for making off. Smith (*Organised Crime and Conspiracy Legislation* (Home Office, 2002)) refutes this argument and states that to distinguish such scenarios would be to 'read too much' into the meaning of making off. The argument of Smith is to be preferred – Spencer's claim fails to take into account the circumstances where a defendant provides details of his identity and address but, in fact, those details are false. Spencer does not state why this distinction exists. Is it the fact that a note of *some* information is left for the supplier of the goods or service, or is it the fact that a note of *true* information is left? The difficulty arises in that a supplier of goods or services will not know the truthfulness of the details until the time comes to request payment – at which point, it is too late.

11A.4.2.2 *Actus reus:* (ii) goods supplied or service done

The second element requires the prosecution to prove that either:

- goods were supplied; or
- a service was done.

Goods

'Goods' are defined in s 34(2)(b) of the TA 1968, which, by s 5(2) of the TA 1978, applies to making off.

Section 34(2)(b) of the TA 1968 provides:

> 'goods', except in so far as the context otherwise requires, includes money and every other description of property except land, and includes things severed from the land by stealing.

Goods are 'supplied' when they are offered by the victim and are taken by the defendant, eg by accepting delivery. Naturally, a defendant may be liable for theft of the goods in addition to making off. Examples of supply may include:

- supply of petrol; and
- supply of goods in a supermarket.

Griew (*The Theft Acts 1968 and 1978*, 7th edn (Sweet & Maxwell, 1995)) contends that goods in a restaurant or in a self-service supermarket are not 'supplied' for the purposes of the Act. The better understanding of the word 'supply', however, is that taken from Smith ('Criminal Liability of Accessories: Law and Law Reform' (1997) LQR 113), who argues that goods are supplied if they are 'made available for sale'.

Services

Unlike 'goods', 'services' are not currently defined in either the TA 1968 or the TA 1978. Prior to the introduction of the Fraud Act 2006, s 1(2) of the TA 1978 provided that: 'It is an obtaining of services where the other is induced to confer a benefit by doing some act, or causing or permitting some act to be done, on the understanding that the benefit has been or will be paid for.' This definition was provided for the old offence of obtaining services by deception, which was abolished by Sch 1, para 1(b)(i) of the FA 2006. There is no definition of 'services' in respect of the offence of making off. Jefferson (*Criminal Law*, 12th edn (Pearson, 2015)) regards such an omission as 'inexplicable'. The *Oxford Dictionary* defines service as 'the action of helping or doing work for someone'.

A service is 'done' when the victim does a particular act or service, which need not be physical, and the defendant takes advantage of that service. Examples of a 'done' service may include:

- supplying a meal at a restaurant;
- providing a haircut;
- giving a taxi ride; and
- letting hotel accommodation.

Importantly, as noted at **11A.4.2.3**, the service must have been completed before an offence can be committed.

Wilson (*Criminal Law*, 7th edn (Pearson, 2020)) notes that any services that are 'abstracted secretively' will not amount to services 'done' for the purpose of the Act. Wilson gives the example of an individual who climbs over a fence into a golf course in order to play a number of holes. In this instance, the defendant has not received the benefit of playing golf as a result of any provision of services done to him. The same view appears to have been taken by Griew (*The Theft Acts*, 7th edn (Sweet & Maxwell, 1995)).

Excluded goods and services

Importantly, by s 3(3), 'where the supply of the goods or the doing of the service is contrary to law, or where the service done is such that payment is not legally enforceable', the defendant will not be liable for an offence where he 'makes off'.

example

Jack and Jill are bank robbers. Jack is the thief and Jill is the getaway driver. The pair successfully steal £10,000; however, Jack refuses to pay Jill her share of the money.

In this scenario, Jack will not be liable for making off, given that the services offered by Jill, namely her driving skills for use in a criminal enterprise, would be unlawful and thus payment would not enforceable in the civil law (or criminal law for that matter). Similarly, suppose Jill is a prostitute. Should Jack engage in sexual intercourse with Jill on the basis of payment for services, he will not be liable where he makes off without payment as the payment is for an illegal service and is not enforceable in law.

11A.4.2.3 *Actus reus:* (iii) without payment that is required or expected

This element can usefully be divided into two, namely that:

- the defendant has not paid; and
- payment is required or expected.

No payment

The first requirement of payment necessitates full payment from the defendant and the defendant has not paid. Making off after part-payment for goods or services required may still found an offence of making off given that full payment would be 'required or expected'.

Requirement or expectation of payment

The second requirement is that payment must be required or expected. Such requirement or expectation must be for payment 'on the spot'. According to the Divisional Court in *Troughton v MPC* [1987] Crim LR 138, payment is generally required immediately after goods are supplied or a service is done. Where the service is incomplete, no payment will be required.

case example

Charge: Making off without payment (TA 1978, s 3)

Case progression: Magistrates' Court – Guilty

Divisional Court– Conviction quashed

Point of law: No payment required where the service is incomplete

In *Troughton v MPC* [1987] Crim LR 138, the defendant was too intoxicated to properly direct a taxi driver as to where he lived. Failing to get any information out of the defendant, and as a result of the defendant attempting to leave the taxi, the driver drove the defendant to a police station.

The defendant appealed to the Divisional Court which found that the contract between the taxi driver and the defendant was never complete. As such, the defendant was not liable for making off in circumstances where the 'spot' where payment would be required had not been reached.

The Divisional Court explained that payment was never 'legally due' given that the contract between the defendant and the taxi driver was never completed. On that basis, the defendant could not be liable for making off.

Troughton may be applied to circumstances where the defendant is provided with inedible food in a restaurant. In the circumstances where the defendant walks out of restaurant in anger without payment, he may not be liable for making off as there may not be an expectation to pay for inedible food. If the court were to accept such lack of expectation, the defendant would most certainly evade liability on the grounds of lack of dishonesty (*R v Aziz* [1993] Crim LR 708 – see below).

Further to this, where it has been agreed to postpone payment, regardless of whether it is done through fraud, it will be held to not be required or expected *at that time*. This is demonstrated by the Court of Appeal's decision in *R v Vincent* [2001] 1 WLR 1172.

case example

Charge:
Making off without payment (TA 1978, s 3)

Case progression:
Crown Court – Guilty

Court of Appeal – Conviction quashed

Point of law:
Permission to leave will void any requirement or expectation for payment on the spot

In *R v Vincent* [2001] 1 WLR 1172, the defendant stayed in two hotels for a number of weeks. He left both without payment, claiming to be suffering from financial difficulties and made arrangements to pay at a later date. The defendant claimed that he was soon about to come into money and could pay his debt. Upon failing to pay the debt, the defendant was charged with and convicted of making off without payment in the Crown Court.

The defendant appealed to the Court of Appeal, arguing that payment on the spot was no longer required or expected given that an agreement to postpone payment was reached. The Court of Appeal allowed the defendant's appeal and quashed his conviction on the grounds submitted by the defendant.

Pill LJ ruled:

> In circumstances such as these, the section does not in our view require or permit an analysis of whether the agreement actually made was obtained by deception. The wording and purpose of the section do not contemplate what could be a complex investigation of alleged fraud underlying the agreement. If the expectation is defeated by an agreement, it cannot be said to exist. The fact that the agreement was obtained dishonestly does not reinstate the expectation. While the customer would be liable to be charged with obtaining services by deception, if he continued to stay at the hotel with that dishonest intention, he would not infringe s 3.

The appropriate offence to charge in this regard would be fraud by false representation (see **Chapter 12**).

11A.4.2.4 *Actus reus:* (iv) on the spot

The final requirement of the *actus* reus is that payment must be expected or required 'on the spot'. 'On the spot' is a term of art requiring no particular geographical location; instead, the court will be concerned with ascertaining where the relevant 'spot' is for the purposes of each transaction. We are provided with little assistance by s 3(2) which states that '… "payment on the spot" includes payment at the time of collecting goods on which work has been done or in respect of which service has been provided'. The 'spot' in question is where payment is required. The Divisional Court in *Moberly v Alsop* (1991) *The Times*, 13 December, ruled that there can be more than one spot where payment is due. An interesting decision on the meaning of 'spot' was provided by the Court of Appeal in *R v Aziz* [1993] Crim LR 708.

case example

Charge:
Making off without payment (TA 1978, s 3)

Case progression:
Crown Court – Guilty

Court of Appeal – Conviction upheld

Point of law:
Meaning of 'spot'

In *R v Aziz* [1993] Crim LR 708, the defendant got into a taxi and requested the driver to take him and a friend to a nightclub. The driver complied with the request and stated his fare. On arrival at the club, the defendant objected to paying the fare, which resulted in the taxi driver driving the pair to the nearest police station. The defendant was charged with and convicted of making off in the Crown Court.

He appealed to the Court of Appeal, arguing that he had not made off from the 'spot' at which payment was required (which he argued was the nightclub).

The Court of Appeal dismissed his appeal, ruling that the location of the destination is not irrelevant. The focus of the court is that payment was required on the spot, which the Court ruled, in the case of a taxi, will be at the window or in the cab itself.

See Leveson LJ's comments in *R v Morris* [2013] EWCA Crim 436, where he contended (in *obiter*) that the court's understanding of 'the spot' could be applied 'too literally [so as to] misunderstand the legislation'.

Aziz differs from *Troughton* above, in that the defendant was taken to his requested destination (thus the contract had been fulfilled and payment was thereafter required). Had the taxi driver not taken the pair to the nightclub as requested, then, as in *Troughton*, the pair would not have been liable for making off.

11A.4.2.5 *Mens rea:* (i) dishonesty

The first point to note is that the circumstances listed regarding what is *not* dishonest under s 2(1) of the TA 1968 do not apply to this offence under the TA 1978. Instead, dishonesty remains a question of fact for the jury following *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67. Following *Ivey,* the jury must undertake two tasks:

(a) They must assess the state of the defendant's knowledge or belief as to the facts (this is a subjective question).
(b) They must then assess whether the defendant was dishonest according to the standards of ordinary decent people (this is an objective question).

Where the arbiter of fact finds the defendant to be dishonest according to those honest and ordinary standards, the defendant is to be considered 'dishonest' in law.

11A.4.2.6 *Mens rea:* (ii) knowledge that payment on the spot is required or expected

The second element is that the defendant knows that payment is required or expected for the goods or service received. In the majority of cases, it will be clear that the defendant is aware that he is required to pay for the goods or services on the spot. However, there may be other cases where the defendant's knowledge is not so clear as to the provision of the service.

The defendant will lack this element of the *mens rea* in circumstances where:

- he believes that payment is not required (eg it is a gift from the individual offering the goods or service);
- payment is required at a later date (ie payment is to be held on credit against the defendant, as in *R v Vincent* [2001] 1 WLR 1172); and
- payment is going to be made by another individual (as in *R v Brooks and Brooks* (1983) 76 Cr App R 66, where one defendant believed her father was to pay the bill).

There may be many more occasions where a defendant might allege that he did not believe, or know, that payment was required. The important point to emphasise is that this is a subjective test, looking at the state of mind of the defendant. The jury must ask themselves: 'Did this particular defendant, on this particular day, know that payment was required or expected for the goods or services provided to him?' If the answer is yes, the defendant may be liable subject to the other elements of the offence. If the answer is no, the defendant cannot be liable for making off.

11A.4.2.7 *Mens rea:* (iii) intention to avoid payment of the amount due

The final element of the *mens rea* is that the defendant intends to avoid payment. Although the Act is silent on this point, the intention must be one of permanence, and it is not sufficient for the defendant to simply intend to defer or avoid payment for a temporary period. This was made clear by the House of Lords in *R v Allen* [1985] AC 1029.

Charge:
Making off without payment (TA 1978, s 3)

Case progression:
Crown Court – Guilty

Court of Appeal – Conviction quashed

House of Lords – Appeal dismissed

Point of law:
Scope of intention to avoid payment

case example

In *R v Allen* [1985] AC 1029, the defendant exited a hotel without settling his bill. The defendant claimed that he intended to pay the bill at a later date when he could afford to do so. The defendant returned a month later to collect his goods. The defendant was charged with and convicted of making off in the Crown Court.

The defendant successfully appealed to the Court of Appeal, which ruled that the defendant must intend to avoid payment on a permanent basis. The prosecution appealed to the House of Lords, which dismissed its appeal following the reasoning adopted by the Court of Appeal.

In the Court of Appeal ([1985] 1 WLR 50), Boreham J cited with approval the words of the trial judge, who commented:

> It follows, therefore, that the conjoined phrase 'and with intent to avoid payment of the amount due' adds a further ingredient: an intention to do more than delay or defer, an intention to evade payment altogether.

The House of Lords endorsed this view on the basis that it was consistent with the 13th Report of the CLRC ('Section 16 of the Theft Act 1968' (Cmnd 6733, 1977)), which required the intention to avoid payment to be one of permanence. Wilson (*Criminal Law*, 7th edn (Pearson, 2020)) is critical of the decision in *Allen*, arguing that '[g]iven the mischief the section was designed to counter and the absence of the word "permanently" from the definition, the decision does not appear to be a good one'. Jefferson (*Criminal Law*, 12th edn (Pearson, 2015)) is equally critical of the decision, arguing that it 'would appear to undermine the thrust of the crime'.

11A.4.3 Charging making off

11A.4.3.1 Mode of trial

Making off without payment is an offence triable either way, meaning it can be tried in either the magistrates' court or the Crown Court.

11A.4.3.2 Sentencing

Where tried in the magistrates' court, the maximum penalty for an offence is 6 months and/or a level 5 fine. In the Crown Court, a person found guilty on conviction upon indictment may be sentenced to a maximum of 2 years' imprisonment.

11A.4.4 Putting together making off

Consider this issue and think of how you may structure an answer to it. Then see the figure below for a sample structure to adopt.

facts

Jack recently went on a night out with a number of his friends. The group spent a considerable amount of money on drinks and entry into nightclubs. After closing time, Jack signalled for a taxi and requested to be taken to his home. Jack merely told the driver the area in which he lived and could not provide the street name. Upon reaching the general area, the taxi driver asked for further information from Jack without success. At that point, the driver requested his money or else he would 'take Jack to the police'. At this point, Jack ran from the cab without paying.

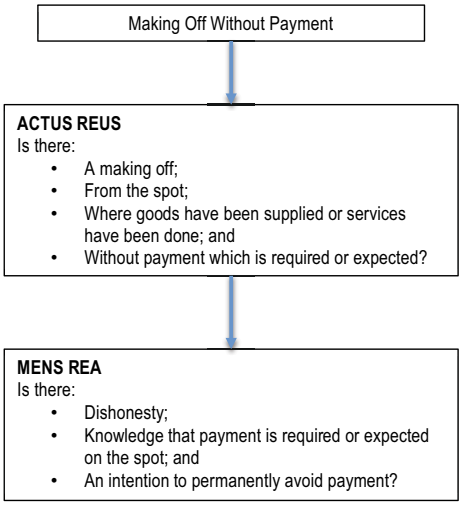

Figure 11A.4 Putting together making off

11A.5 Further reading

Blackmail

Alldridge, 'Attempted Murder of the Soul: Blackmail, Privacy and Secrets' (1993) OJLS 368.

Lamond, 'Coercion, threats and the puzzle of blackmail' in Simester and Smith (eds), *Harm and Culpability* (OUP, 1996).

Handling

Green, 'Thieving and Receiving: Overcriminalizing the Possession of Stolen Property' (2011) New Criminal Law Review 14.

Shute, 'Knowledge and Belief in the Criminal Law' in Shute and Simester (eds), *Criminal Law Theory* (OUP, 2002).

Spencer, 'Handling, Theft and the Mala Fide Purchaser' [1985] Crim LR 92.

Williams, 'Handling, Theft and the Purchaser who Takes a Chance' [1985] Crim LR 432.

Making off without payment

Spencer, 'Making Off Without Payment' [1983] Crim LR 573.
Spencer, 'The Theft Act 1978' [1979] Crim LR 24.

- Blackmail is concerned with the making of demands with unwarranted menaces with a view to making a gain or causing a loss.
- The gain or loss must relate to property.
- Handling stolen goods is concerned with the circumstance where the defendant is caught in possession or control of stolen goods.
- His possession or control can be interpreted broadly, but it must be otherwise than in the course of stealing.
- Making off is designed to plug the gap left by theft and other dishonesty offences.
- Making off simply requires the defendant to depart from a spot where payment is expected or required.
- The defendant must intend, when making off, to not pay for the goods or services, and this intention must be one of permanence.

Problem

Jill has recently taken over the management of a local care home. Whilst there, Jill discovers that one of the present occupants, Tony, is a convicted paedophile. Using this to her advantage, Jill demands all of Tony's property, including a watch and a large sum of money; otherwise she will reveal this fact to the other occupants and staff members. Tony agrees and gives the property to Jill. Jill returns home that evening and hands the watch to her partner, Jack, informing him that she 'got it from an old guy at work'. When Jack enquires further as to how Jill obtained the watch, Jill informs him accordingly and Jack keeps the watch in his personal watch box. A few weeks later, Jack enters a restaurant and begins a meal. During the meal, Jack decides that he does not wish to pay for the food. He informs the manager that he has left his wallet at home and must return home to retrieve it. He writes down a fake name and address on a piece of paper and hands it to the restaurant manager. On this basis, the manager allows Jack to leave without payment.

Advise Jack and Jill as to their liability for several property-related offences.

Essay

'Despite attempting to mitigate confusion, blackmail remains a puzzle with no consistent understanding as to its purpose, operation or interaction to and in the criminal law.'

Critically discuss.