# Foundations of Criminal Law

- Theft
- Fraud
- Misappropriation
- Forgery

# Theft

- Definition
  - The Criminal Code provides no explicit definition. Instead, our Courts have adopted the definition by Carrara:

> *“La contrattazione dolosa della cosa altrui, fatto invito domino, con animo di farne lucro”*

- ‘The fraudulent taking of a thing belonging to another, without the owner’s consent, with intent to make gain’

# The Six Elements of Theft

**1. La contrattazione**

(The taking away)

**2. Dolosa**

(Fraudulent)

**3. Di una cosa**

(Of a thing)

**4. Altrui**

(Belonging to others)

**5. Fatto invito domino**

(Without owner's consent)

**6. Animo di farne lucro**

(Intent to make gain)

# Theft – Element 1 – 'Contrattazione'

(When is the theft complete?)

## Theories on Completion

- **Carrara (*Theory of Amotio*):** Completed as soon as the object is touched or moved with intent to steal. (This is the strict theory adopted by Maltese Courts).
- **Pessina:** Competed when the object is removed from the owner's 'sphere of possession'

## Maltese Court Position

**Our courts follow Carrara's theory.** In '**Il-Pulizija vs Carmelo Felice (1942),** the Court held that the 'taking' is complete the moment the thing is removed from the free availability of the owner, even momentarily. An attempted theft becomes a completed theft at the instant of removal.

# Theft – Elements 2, 3 & 4 – ‘Dolosa’, ‘Di Una Cosa’ & ‘Altrui’

- **Dolosa – Fraudulent:** Requires malicious intent. There is no theft by negligence. Taking an item by mistake (e.g. the wrong umbrella) is not a theft as there is no ‘animus doloso’
- **Di una cosa – Of a thing:** The object must be a movable, corporeal (physical) thing with ‘some’ value, no matter how small, incorporeal things like copyrights cannot be ‘stolen’ in this sense.
- **Altrui – Belonging to another:** Cannot be ‘res nullius’ (abandoned). This includes ‘theft by finding’ if the finder believes the object has an owner and fails to deliver it to the police.

# Theft – Elements 5 & 6 – 'Fatto Invito Domino', 'Con Animo di Farne Lucro'

### *Fatto Invito Domino (Without Consent)*

- **Consent by Intimidation:** This is NOT valid consent. The taking is still theft.
- **Consent by Fraud:** This IS valid consent. If the owner 'willingly' parts with the object due to a trick, it is not theft. It is the crime of fraud.

### *Con Animo di Farne Lucro (Intent to Gain)*

- "Lucrum" (gain) is not just financial. It is any advantage, satisfaction, or benefit procured by the thief.

# A Special Case: "Furtum Usus" (Theft by Use)

- *288. The offender shall be liable to the punishments established for contraventions, when, in any case of simple theft, the gain contemplated by the offender is the mere use of the thing, with intent to restore the same immediately*

- Much lesser offence**, punished as contravention**
- Occurs when the gain is contemplated by the offender is the **mere temporary use** of the thing, with the clear intent to **restore the object immediately** after.

# Theft – Aggravating Circumstances

- The law distinguishes between simple theft and aggravated theft

**The 7 aggravating circumstances:**

- Violence
- Means
- Amount
- Person
- Place
- Time
- Nature of the Thing Stolen

# Theft – Aggravations

- Violence
  - Theft accompanied by homicide, bodily harm or threats. Also applies if the thief is armed or in a group of more than two.
- Means
  - **Use of False Keys**: Using any instrument to open locks, including genuine keys that were stolen or obtained by fraud.
  - **Breaking**: Demolishing or forcing any wall or door. Includes breaking pipes to steal water, gas or electricity.
  - **Disguise:** Using a mask, disguise or fictitious order to commit the theft or conceal identity.

# Theft - Aggravations

- Amount
  - The value of the stolen object exceeds Eur 232.94
- Person
  - Committed by a servant against their master, a guest against their host or an employee with access.
- Place
  - Committed in a dwelling-house, place of worship, court, public store, ship or prison
- Time
  - Committed in the night, defined as the period between sunset and sunrise.

# Theft - Aggravations

- The nature of the thing
  - Things exposed to danger (e.g. looting during a fire or shipwreck);
  - Cattle, beehives or farm animals
  - Things required for navigation or fishing nets
  - Ornaments or clothing from a child under 9 years of age.
  - Any vehicle in a public place, or any part, accessory or item inside such vehicle.
  - Nuclear material or public records.

# Theft – Simple Theft (Art. 284)

- *284.Theft, when not accompanied with any of the aggravating circumstances specified in article 261, is simple theft.*
- *285.Whosoever shall be guilty of simple theft shall be liable to imprisonment for a term from one to six months: Provided that if the value of the thing stolen does not exceed twenty-three euro and twenty-nine cents (€23.29), the offender shall, on conviction, be liable to imprisonment for a term not exceeding three months*

# Misappropriation

- Essential Elements:
  - A thing entrusted or delivered – The accused must have received the object lawfully.
  - The Act of Misapplication – The agent 'misapplies, converts' the thing to their own benefit or the benefit of another.
  - A specific title – The delivery implies an obligation to return the thing or use it for a specific purpose.
  - Complaint Required – Proceedings are instituted only on the complaint of the injured party.

# Misappropriation – Prerequisites of Delivery

**Special vs General Delivery**

The delivery must be 'special and not general'. A servant with general access to a house who steals commits 'theft' not misappropriation.

Misappropriation requires a specific, limited delivery.

**No Intent to Part with Possession**

The owner must 'not' have intended to part with their possession, only the physical custody of the item.

# Misappropriation – Completion and Aggravation

**Completion of the Crime**

The offence is completed at the moment of 'conversion'.

This occurs when the lawful 'causa' (the reason for possession, e.g. 'to hold for safekeeping') is substituted by an unlawful 'causa'.

**Aggravation (Art. 294)**

The offence is prosecuted 'ex ufficio' (without a complaint by the injured party) if committed by reason of:

- Profession or Trade
- Business or Management
- Office or Service

# Fraud

- The elements that constitute the offence of fraud are:
  - The means – The use of unlawful practice, fictitious names, false designation or other deceit/pretence.
  - The ruse – the means must be calculated to cerate belief in a fictitious enterprise, imaginary power, or chimerical event.
  - The gain – The agent must make an 'actual, unjust gain'.
  - The prejudice – The gain must be to the prejudice of another person.

# Theft vs Misappropriation vs Fraud

## Theft

Requires `Contrectatio` (physical taking) AND `Invito Domino` (no consent).

## Misappropriation

NO `Contrectatio` (already has possession). Requires initial *lawful* consent. Crime is the *conversion*.

## Fraud

NO `Contrectatio` (victim hands it over). Consent is *vitiated* (obtained by a trick).

# Case Study – The Cashier

- Il-Pulizija vs Katia Formosa Magro (2011)
  - Facts: A supermarket cashier failed to scan items that were being 'bought' by her relatives.
  - She was charged with fraud
  - Acquitted of Fraud. The Court ruled this was theft.
  - Reasoning: The owner's consent was 'completely missing' (invito domino). The cashier's act of letting the items pass was the 'contrectatio' (taking). It was not fraud, as the owner never consent (not even under a trick).

# Forgery – What is Forgery?

**The Core Concept**

Forgery is a crime that affects **public trust**. Society places trust in the genuineness and certainty of particular documents, expecting good fait and credulity.

**Legal Basis**

The Criminal Code (Art. 166-190) gives no single definition. Instead, it gives a **class of offences.** Guilt arises from:

1. Forging a document
2. Using or circulating a False Document

# Forgery – The Notion of a 'Document'

- The law gives a specific meaning to the word 'Document'. Our Courts uphold Kenny's view that it is 'a writing.. Which communicates… a human statement'
- Writing
  - Any form (letters, numbers, symbols) that communicates an idea.
- Comprehensible
  - Must be understandable.
- Content (Tenore)
  - Must have a manifestation of will or attestation to the truth.
- Author
  - The Author must be identifiable

# Forgery – Author & Content ('Tenore')

**The Author**

The author must be a determinate, identifiable person. An anonymous writing is not a document for the purpose of forgery.

A **signature** is a key identifier, even if it's a nickname or an abbreviation, as long as it reveals the author.

**Content ('Tenore')**

A document must have content. A signature on a blank paper (like a blank cheque) lacks 'tenore'.

Under Maltese law, if a person is given a blank cheque and fills in a sum larger than authorised, this is **not forgery.** It is the separate offence of **fraud.**

# Forgery – Public & Private Documents

**Public Documents (Article 1232(2) Civil Code)**

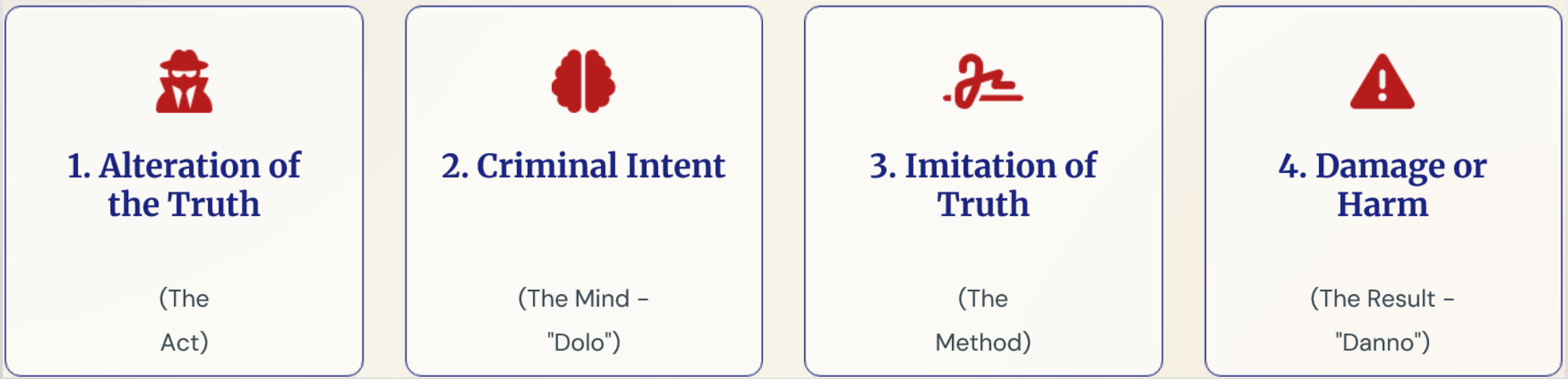
An instrument drawn up or received by a notary or other public officer lawfully authorised to attribute public faith thereto.

**Private Writings**

Defined by Elimination: any document that is **not** a public document.

This also includes public acts which are **defective in form** but are still subscribed by the parties.

# Forgery – The Four Essential Elements



# Forgery – The Alteration of the Truth (Actus Reus)

**Material Falsity (Is Forgery)**

The document **'tells a lie about itself'.**

It purports to be made by a person who did not make it, or altered in circumstances in which it was not. This includes creating a new fake document from scratch (counterfeiting).

**Ideological Falsity (Is Not Forgery)**

The document **is genuine,** but **contains a lie.**

**Example:** A party lies to a notary, and the notary 'faithfully' records that lie in the contract.

# Forgery – Criminal Intent

- *Dolus in res Ipsa*
  - Our Court follow this maxim and state that criminal intent is innate and proved by the very act of alteration itself.
- Public Trust
  - Forgery is a crime against Public Trust, not Property. The intent to defraud is not always a necessary ingredient.
- Art. 187
  - Tending to cause injury: This phrase refers to the 'capability' of the act, not the 'specific intent' of the agent.

# Forgery – Falso Grossolano

**Gross Forgery**

A forgery so crude, obvious, and self-evident that it is incapable of deceiving anyone. Does this negate the crime?

This is where the distinction between public and private documents becomes paramount.

**The Law is not Uniform**

**Public Documents:** Gross forgery is punishable. The harm is the 'breach of public trust itself', which occurs the moment the alteration is made.

Private Writings: Gross forgery is not punishable. The act is not 'tending to cause injury' because it has no potential to harm or to deceive.