Apply the definition of theft under s.1(1) of the Theft Act 1968 to the following scenario:

Alex took his brother’s (Ali’s) new Lexus out for a drive when Ali was at work. Ali’s new laptop was also in the back of the car. Alex drove the Lexus across the countryside on rough terrain. He eventually crashed the Lexus into a tree, and ran off with the laptop.

Alex played with the laptop for a while before realising that it was running on a new and expensive program that his friends wanted to buy. Alex removed the hard drive, knowing that his father could find a cheap replacement, and returned the laptop to Ali that evening along with the bad news that his new Lexus was wrapped round a tree 25 miles away. Ali called the police immediately.

Has Alex committed theft?

The Theft Act 1968 created a new and simple code for the law of theft and other property offences. The 1968 Act was the result of the Eighth Report of the Criminal Law Revision Committee, Theft and Related Offences, Cmnd 2977 (1966).

Theft is defined by s.1(1) of the Theft Act 1968 as:

“a person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it.”

The definition of theft seems quite short and straightforward, but it has many different elements which have their own definitions within the Theft Act 1968.

These definitions have in turn accumulated their own case law. For example: “appropriation” is defined under s.3; “property” is defined under s.4; “dishonestly” is defined under s.2; “intention to permanently deprive” is defined under s.6, and “belonging to another” is defined under s.5. These will be explored in turn.

A vital component of the actus reus is the appropriation of property. Appropriation is the physical act of taking something, whether it be a wallet on a bus or a bank balance on a screen. Appropriation is defined under s.3(1) of the 1968 Act as:

“any assumption by a person of the rights of an owner amounts to an appropriation, and this includes, where he has come by the property (innocently or not) without stealing it, any later assumption of a right to it by keeping or dealing with it as owner.”
Appropriation therefore means assuming (i.e. adopting) the rights of the owner, which can include: selling it, destroying it, using it, hiring it, lending it, consuming it, and possessing it. The defendant does not have to assume all of the rights of the owner; any right will suffice, as held in R v Morris (1983). A jury may find that when Alex took Ali’s Lexus out for a drive, he appropriated it without his consent. In addition to this, by removing the hard drive from Ali’s laptop, Alex also appropriated the hard drive and the programme on it.

The word “property” appears in the definition of theft under s.1(1). It is an important part of the actus reus and a very flexible term. Property is most commonly known as land or physical items that can be stolen. It is also defined by its own paragraph under s.4(1) of the 1968 Act:

“Property” includes money and all other property real or personal, including things in action and other intangible property.

The section 4(1) definition lists virtually all kinds of property. Personal property is most commonly stolen, including wallets and mobile phones. The jury will probably find that a car and the hard drive out of a laptop are both property capable of being stolen under the s.1(1) and s.4(1) definitions.

Under the s.1(1) definition of theft, the property must “belong to another”. A very wide definition of this phrase has been provided by s.5(1) of the 1968 Act:

“property shall be regarded as belonging to any person having possession or control of it, or having in it any proprietary right or interest”.

The definition is intentionally very wide so that the prosecution do not have to prove who the legal owner is: “possession or control” will clearly suffice. In Turner (1971) the defendant left his car at a garage for repairs. He agreed to pay for the repairs on collection, but he stole the car during the night instead. He argued that it was his own property. The court held that the garage had “possession and control” of the car and so the defendant was guilty of stealing his own car from another. This case highlights that “possession and control” is not a legal term for “permanent ownership” — any person can possess and control the property, for even a short time. A person may be in possession of an item even if they do not know it is there (e.g. materials left on his property overnight) according to Woodman (1974). The jury will probably find that Ali had a proprietary interest in his car and laptop because they legally belonged to him. He was not in “possession or control” of the items at the time because he was at work.

The mens rea of theft is not as entrenched in statute as the actus reus is. Under the s.1(1) definition of theft above, there are two mental components which must be met: dishonesty, and an intention to permanently deprive.

Dishonesty is not defined by the 1968 Act, but s.2(1) gives three examples as to when a defendant is not dishonest:
(a) if he appropriates the property in the belief that he has in law the right to deprive the other of it; (b) if he appropriates the property in the belief that he would have the other’s consent if the other knew; (c) if he appropriates the property in the belief that the person to whom the property belongs cannot be discovered by taking reasonable steps.

If the defendant honestly holds one of the beliefs under s.2(1)(a)(b)(c), then he is not dishonest. This was confirmed in *Turner* (1971). In *Small* (1987), the defendant found a car that had been abandoned for two weeks. The doors were unlocked, the keys were in the ignition, there was no petrol in the tank, the battery and the tyres were flat. He never thought it might be stolen. His conviction for theft was quashed because he had an honest belief that the owner could not be found and there was evidence that he believed the car was abandoned. This case clearly illustrates how the defences under s.2(1) can support a defendant who acted in all honesty. If a defendant later agrees to pay for the stolen property, this does not prevent his mental state from being dishonest under s.2(2). The jury are expected to know what “dishonest” behaviour is, and so no complex definition is required, as held in *Brutus v Cozens* (1972). Dishonesty should be judged by the jury according to the standards of ordinary descent people as held in *Feely* (1973). The jury test for dishonesty is a two-part test, as established by *R v Ghosh* (1982). The test is both objective and subjective as follows:

- **Objective test 1:** “A jury must first of all decide whether, according to the ordinary standards of reasonable and honest people, what was done was dishonest.”
- **Subjective test 2:** “If it was dishonest by those standards, then the jury must consider whether the defendant himself must have realised that what he was doing was by those standards dishonest.”

The Court of Appeal made it clear in *Ghosh* that a defendant cannot argue that he thought his actions were morally right. *DPP v Gohill and another* (2007) confirmed that *Ghosh* is the correct law. A jury might find that Alex satisfies the exception for dishonesty under s.2(1)(b) in that he may genuinely believe that he would have Ali’s consent to drive the Lexus. This would be difficult to prove. However, it is highly unlikely that Alex would have a genuine belief in Ali’s consent to remove the hard drive from the new laptop. Applying the dishonesty test from *Ghosh*, the jury might find that under test 1, according to the ordinary standards of reasonable and honest people, what Alex did was dishonest, and under test 2, Alex himself realised that what he was doing was, by those standards, dishonest.

In addition to dishonesty, the defendant must intend to permanently deprive the victim of their item. Borrowing something with the intention of returning it later is not theft. Section 6 of the 1968 Act provides some guidance on the phrase:

“a person appropriating property belonging to another without meaning the other permanently to lose the thing is nevertheless to be regarded as having the intention to permanently deprive the other of it if: his intention is to treat the thing as his own to dispose of regardless of the other’s rights; or a borrowing or lending of it may
amount to so treating it if the borrowing or lending is for a period and in circumstances making it equivalent to an outright taking or disposal."

A defendant must therefore (a) intend to treat the item as his own and dispose of it; and (b) borrow or lend it for such a long time that it is equivalent to disposal. The dictionary definition of “dispose of” was used in Cahill (1993). The s.6 definition widened to include “dealing with” in DPP v Lavender (1994). Treating an item as your own to dispose of without actually disposing of it will suffice, as held in Marshall (1998). According to s.6(1), borrowing or lending may reveal an intention to permanently deprive depending on the circumstances. In Lloyd (1985) a film had been taken, copied, and the original returned, undamaged. The issue was whether the film had been permanently deprived via the copy. Lord Lane CJ said:

“s.6(1) is intended to make clear that a mere borrowing is never enough to constitute the guilty mind unless the intention is to return the thing in such a changed state that it can truly be said that all its goodness or virtue has gone.”

A good example of this is picking a bag up, rummaging through it, finding nothing to steal and then replacing it: this is not an intention to permanently deprive as seen in Easom (1971). If a defendant parts with the stolen property knowing that there is a risk he will not get it back, he is treating the property as his own to dispose of under s.6(2). The jury may find that, under s.6 of the 1968 Act, Alex has treated Ali’s Lexus as his own to dispose of by taking the car out for a drive, crashing it into a tree and leaving it there. He has also treated the hard drive from the laptop as his own to dispose of by removing the hard drive permanently from the laptop, anticipating that his father would find a cheaper replacement. Under s.6(2), Alex parted with the Lexus and there may have been a risk that he would not get it back, because parts could have been stolen for use in illegal garages. This may be a sign that he was treating the property as his own.

The jury are free to find that Alex has the actus reus for the theft in regards to the permanent appropriation of Ali’s Lexus and laptop hard drive, and the mens rea for theft in regards to his dishonest appropriation of the property and his seeming intention to permanently deprive by leaving the car in the countryside and removing the hard drive on the premise that there would be a cheaper replacement.