

**The Law of Theft :
Regulations in the Theravāda Vinaya
and the Law Commentaries¹**

All Buddhist canons were transmitted orally for several centuries, and — as we have them today — consist of older and younger text layers. In the present contribution the composition of the law of theft (Pārājika 2) of the Theravādins as handed down in their monastic code (*vinaya*) will be explored, focusing on the various chronological layers (part 2). Subsequently the classification of the various types of theft presented in the commentarial literature — Samantapāsādikā and Kaṅkhāvitaraṇī — for which also information from the old commentaries (*sīhaḷaṭṭhakathā*) had been taken into account by the authors is investigated (part 3). Finally, the method for the absorption of offences developed by the early Aṭṭhakathās in line with the law of theft will be looked at (part 4).

I. Introduction

The law of theft is part of the Pātimokkha, the list of rules which regulate the daily life of the fully ordained. It is included among the gravest rules, namely in the Pārājika class, the first of the seven sections of rules constituting the Pātimokkha. Their transgression leads to the expulsion from the community, although this, contrary to what had been thought for a long time, may not be irreversible.²

¹Andrew Huxley sent me a draft of his article on “Max Weber and the Classical Pali Law of Theft” (first draft, 7 February 2006, for the Law & Buddhism conference in Bellagio, March 2006), which — he told me — he is not going to publish. There he dealt with several of the questions I present here.

My thanks go to Shayne Clarke, who made corrections to a previous version of this article, to Peter Jackson and William Pruitt for their valuable suggestions and corrections, and to the latter for his unfailing efforts regarding the editorial work and for polishing the English.

²For other traditions than the Theravādin, see Clarke 2000, 2009; for the Theravādin, see Kieffer-Pülz 2007, 294.

The Pātimokkha is handed down as a separate text and as part of the Buddhist law code, where it is embedded in the Suttavibhaṅga. Since in the Vinaya older versions of a rule were not erased, but simply complemented by new ones, the Vinaya contains much more information than the mere Pātimokkha can give.

Two commentaries of about the fifth century A.D. have been transmitted, namely the Kaṅkhāvīṭaraṇī on the Pātimokkha, and the Samantapāsādikā on the Vinayaṭṭaka. Tradition ascribes both texts to the well-known scholar monk Buddhaghosa. It is, however, certain that the Kaṅkhāvīṭaraṇī and Samantapāsādikā were not written by the same author and that the Kaṅkhāvīṭaraṇī represents a more recent and developed stage.³ The Kaṅkhāvīṭaraṇī comments on theft in seven and a half pages (Kkh 41,1–48,11),⁴ the Samantapāsādikā in one hundred and seven (Sp 285,1–392,6).

2. Theft in the Suttavibhaṅga of the Vinayaṭṭaka

2.1. The Law of Theft

The law of theft for monks and nuns⁵ runs as follows:⁶

Whatever bhikkhu/bhikkhuni should seize from a village or from a wilderness what is not given in a way which is counted as theft, in such manner of taking what is not given that kings, having arrested a robber, would beat or would bind or would expel him/her, [saying], “You are a robber, you are a fool, you are stupid, you are a thief,” the bhikkhu/bhikkhuni, seizing anything of such a nature that is not given, also is expelled [from the community, incurs] the loss of communal life.⁷

³von Hinüber 1996: § 224. The translation of this text into Chinese by Saṅghabhadra (489 A.D.) is a heavily abbreviated version of the Pāli Samantapāsādikā. But in the section on theft it is very close to the Pāli text. (See the English translation, Saṅghabhadra 1970, 219–85.)

⁴An English translation of this part of the Kkh is given in Appendix II.

⁵Corresponding rules for novices and laymen are handed down in the lists of five or ten silas.

⁶Pāt 8,9–14 = Vin III 46,16–20.

⁷For remarks regarding the translation of some terms, see Appendix II.

As is obvious from this rule the Buddha or the redactors of the Vinaya based themselves on secular law in defining the amount of stolen goods in such manner that kings would treat a person stealing it as a thief. An absolute measure for this amount is given not in the Pārājika rule itself, but in its predecessor, the *akaraṇīya*, “[that] which should not be done”.⁸ According to this the amount is one *pāda* or more.⁹ In the Word Analysis of the second Pārājika, which is more recent than the Pātimokkha rule (see below, § 2.2), two different amounts are named, five *māsaka* in the definition of a “robber” (*cora*), and one *pāda* in the definition of the stolen goods.¹⁰ Finally in the first Introductory Story of the second Pārājika the *pāda* is described as an old currency equal to five *māsaka* at the time of this Introductory Story.¹¹ This shows that

⁸For an analysis of *akaraṇīya* and *pārājika*, see von Hinüber 1999: 41ff.

⁹Vin I 96,30–34: *upasampanna bhikkhunā adinnaṃ theyyasaṃkhātāṃ na ādātappaṃ antamaso tiṇasalākaṃ upādāya. yo bhikkhu pādaṃ vā pādārahaṃ vā atirekapādaṃ vā adinnaṃ theyyasaṃkhātāṃ ādiyati, assamaṇo hoti asakyaputtiyo*. “When a monk is ordained he should not take by theft what has not been given, even if it is only a blade of grass. Whatever monk takes by theft a *pāda* or the worth of a *pāda* or more than a *pāda* that has not been given, he becomes not a [true] recluse, not a son of the Sakyans.” (BD IV 124f.).

¹⁰Vin III 47,3–5: *coro nāma yo pañcamāsakaṃ vā atirekapañcamāsakaṃ vā agghanakaṃ adinnaṃ theyyasaṃkhātāṃ ādiyati, eso coro nāma*. “**Thief** means that one is called a thief who takes in a way which is counted as theft anything not given having the value of five *māsaka* or more than five *māsaka*.” Vin III 47,14–15: *tathārūpaṃ nāma pādaṃ vā pādārahaṃ vā atirekapādaṃ vā*. “**Anything of such a nature** means a *pāda* or the worth of a *pāda* or more than a *pāda*.”

¹¹Vin III 45,5ff. *tena kho pana samayena aññataro purāṇavohāriko mahāmatto bhikkhūsu pabbajito bhagavato avidūre nisinno hoti. atha kho bhagavā taṃ bhikkhuṃ etad avoca: “kittakena kho bhikkhu rājā Māgadho Seniyo Bimbisāro coraṃ gahetvā hanti vā bandhati vā pabbājeti vā?” ti. “pādena vā bhagavā pādārahena vā” ti. tena kho pana samayena Rājagahe pañcamāsako pādo hoti. BD I 71f.*: “Now at that time a certain former minister of justice, who had gone forth among the monks, was sitting near the lord. And the lord

even before the Vinaya was redactionally closed it became necessary to replace one amount by another one.¹²

2.2. Structure of the Rules in the Suttavibhaṅga

In the Suttavibhaṅga section of the Vinaya each Pātimokkha rule is presented in a specific way: It starts with (1) an Introductory Story, followed by (2) the prescription itself (*paññatti*). Sometimes further Introductory Stories introduce supplementary prescriptions (*anupaññatti*). Thereafter (3) a Word Analysis (*padabhājanīya*), (4) a Casuistry, and finally (5) a section with defences leading to guiltlessness, the *anāpatti*-formula, follow. In the case of the four *pārājika* and the first five *saṅghādisesa* rules (6) a section called *vinītavatthu* is added after the *anāpatti*-formulas (*anāpattivāra*), that means at the end of the rules. These are collections of exemplary cases meant to give guidance to later law specialists.¹³ In my impression these sections comprise all cases collected up to the date of the redactional closing of the Vinayaṭṭaka.¹⁴ Regarding the chronological succession the rule itself is supposed to be the oldest part. The Introductory Stories have been added later and sometimes do not fit in with the rule.¹⁵ The Word Analysis and the Casuistry are thought of as originating from around the same time as the Introductory Stories, whereas the *anāpatti*-formulas are considered the youngest part.¹⁶

spoke thus to this monk: ‘For what amount [of theft] does King Seniya Bimbisāra of Magadha, having caught a robber, flog or imprison or banish him?’ ‘For a *pāda*, lord, or for the worth of a *pāda*, or for more than a *pāda*,’ he said. Now at that time in Rājagaha the *pāda* was [worth] five *māsakas*.’

¹²For this passages, see also von Hinüber 1999: 47f.

¹³See von Hinüber 1996: § 22.

¹⁴The *Vinītavatthu* of the second *Pārājika* has been dealt with in some detail by Huxley 1999: 313–30.

¹⁵Schlingloff 1964; von Hinüber 1996: § 23.

¹⁶For the different layers of the Vinaya and their relative chronology, see von Hinüber 1996: §§ 22ff.

The law of theft starts with an Introductory Story followed by a prescription (*paññatti*, Vin III 45,15–19). A second Introductory Story leads to the supplementary prescription (*anupaññatti*, Vin III 46,16–20) which further specifies the original rule in prohibiting theft whether from a village (*gāma*) or from the wilderness (*arañña*).

Deviating from the usual structure of the rules in the Suttavibhaṅga the law of theft has two supplementary sections, not belonging to any of the listed categories. They follow after the Word Analysis (Vin III 46,21–47,26) and before the Casuistry (Vin III 54,14–55,20). (See Table 2.)

2.3 The First Supplementary Section (Vin III 47,27–53,18)

The First Supplementary Section is composed of three parts:¹⁷ (1) a list of stolen goods defined by their location, (2) a list of stolen goods specified by nature, and (3) a list of special types of theft. (See Table 3.) Probably all aspects of theft relevant to the practice at a certain time were collected here. This at least would explain the heterogenous structure of that section.

In my opinion this passage is not so much an example of “Virtuoso Patterns” as Andrew Huxley suggested for this First Supplementary Section,¹⁸ but rather it was important for practical usage. Since the *pārājika* offence of theft was accomplished only if the act of taking was carried out with the intention to steal an object (*mens rea*) and after the

¹⁷This is a simplification since in many of the cases not only items deposited in some location but also the locations themselves are dealt with.

¹⁸Huxley 2006a, 7: “For comparative purposes, I shall borrow Calder’s description as a label for legal reasoning which looks pretty but which is analytically useless.”

(1) Introductory Story
(2) Prescription (<i>paññatti</i>) = Pātimokkha rule
Possible <ul style="list-style-type: none"> – Further Introductory Stories – Supplementary prescriptions (<i>anupaññatti</i>)
(3) Word Analysis (Commentary on each word of the Pātimokkha rule; <i>padabhājanīya</i>)
(4) Casuistry or hypotheticals
(5) <i>Anāpatti</i> formula / defences (exceptions to the rule; <i>anāpattivāra</i>)
(6) <i>Vinītavatthu</i> section (only in <i>pārājika</i> and part of the <i>saṅghādisesa</i> rules)

Table 1. General structure of the *pārājika* rules in the Suttavibhaṅga

First Introductory Story (Vin III 41,1–45,14)
Pātimokkha rule: prescription (<i>paññatti</i> ; Vin III 45,15–19)
Second Introductory Story (Vin III 45,22–46,15)
Pātimokkha rule: supplementary prescription (<i>anupaññatti</i> ; Vin III 46,16–20)
Word Analysis (<i>padabhājanīya</i> ; Vin III 46,21–47,26)
First Supplementary Section: list and definition of types of stolen goods and theft (Vin III 47,27–53,18).
Second Supplementary Section: theft by incitement (Vin III 53,19–54,13)
Casuistry (Vin III 54,14–55,20) containing a probably more recent passage (Vin III 54,31–55,5)
<i>Anāpatti</i> -formula (Vin III 55,21–23)
<i>Vinītavatthu</i> section (Vin III 55,25–67,38)

Table 2. Structure of the second *Pārājika* rule in the Suttavibhaṅga

object to be stolen had been moved from its place,¹⁹ it was necessary to know at which point the act of moving (the *actus reus*) was in fact accomplished.²⁰ Thus one had to know with respect to every object when the movement had been completed. To move, for example, standing four-footed creatures from their place was completed only when all four legs were moved. But if the animal was pegged, five points had to be taken into consideration, i.e. the four legs and the connection to the peg (Sp 364,18ff.). If, however, the animal lay on the ground, then only one point had to be examined; if it was pegged, two points had to be considered (Sp 365,4). This was different with respect to birds and even more complicated if birds as “objects being in the air” (*ākāsaṭṭha*) changed into “objects above ground” (*vehāsaṭṭha*) by sitting down on a tree or something else.²¹ Thus the law specialists had to know how to define the exact status and range of an object depending on its location, and, in the case of living beings, on its posture.

The second part of the list, dealing with eleven special goods, had the same purpose; in the case of stealing water, for example, accomplishment of shifting the water from its location (case 16; Vin III 51,9–20) could not be judged as easily as in the case of goods placed on firm ground. In the case of goods in transit, no fixed location existed from which to move the goods (case 19; Vin III 51,29–35), etc.

The last group comprises five special types of theft. The first of these is a type of theft by incitement through a person who spies out goods and circumstances (case 27; Vin III 52,36–38). It is the only instance where theft by incitement is mentioned in the second Pārājika, if we ignore the Second Supplementary Section (Vin III 53,19–54,13). Even

¹⁹Exceptions to this are mentioned in the Vinītavatthu section.

²⁰If one of the two, *mens rea* (intention) or *actus reus* (actual completion of theft), is incomplete, a lesser offence is committed. I take over these two terms from Huxley 2006a.

²¹Vjb 129,9–12, see also Kieffer-Pülz (forthcoming), B [Z 42].

(1) Stolen goods defined by their location	(2) Stolen goods specified by their nature	(3) Specific kinds of theft
(a) being in the earth (2)*	(a) water (16)	(a) theft by incitement through a spy (case 27)
(b) being on firm ground (3)	(b) tooth-cleaners (17)	(b) theft by a keeper of the entrusted goods (case 28)
(c) being in the air (<i>ākāsa</i> ; 4)	(c) forest trees (18)	(c) theft arranged by a group of bhikkhus (case 29)
(d) being above ground (<i>vehāsa</i> ; 5)	(d) goods in transit (19)	(d) theft for which an appointment in time was made (case 30)
(e) being in the water (6)	(e) deposits (20)	(e) theft by giving a sign (31)
(f) a boat, being in a boat (7)	(f) toll taxes (customs frontier ; 21)	
(g) a vehicle, being in a vehicle (8)	(g) creatures (<i>pāṇa</i> ; 22)	
(h) carried as a burden (9)	(h) apodal creatures (23)	
(i) an <i>ārāma</i> , being in a garden or monastery (<i>ārāma</i> ; 10)	(i) two-footed creatures (24)	
(j) being in a monastic building (<i>vihāra</i> ; 11)	(j) four-footed creatures (25)	
(k) field, being in a field (12)	(k) many-footed creatures (26)	
(l) property, being on a property (<i>vatthu</i> ; 13)		
(m) being in a village (14)		
(n) wilderness, being in the wilderness (<i>arañña</i> ; 15)		

*Paragraph numbers

Table 3. Contents of the First Supplementary Section (Vin III 47,27–53,18)

the Vinitavattu with its forty-nine cases does not give one example for this type of theft. In the second case, theft by a keeper of the entrusted goods (case 28; Vin III 53,1-3), the keeper himself steals goods entrusted to him. This slightly deviates from case 39 of the Vinitavattu, where it is explicitly allowed that keepers give fruits from gardens they watch over to monks (Vin III 65,12-18). The third type of theft, theft by arrangement, planned by a group of bhikkhus and executed by at least one of them (case 29; Vin III 53,4-5) is not mentioned elsewhere in the Vinaya. This also holds true for theft by appointing a time (case 30; Vin III 53,6-11), and theft by making a sign (case 31; Vin III 53,12-18) which form the fourth and fifth types of theft.

2.4 The Second Supplementary Section (Vin III 53,19-54,13)

The Second Supplementary Section is a homogenous text dealing exclusively with theft by incitement. Differentiated are simple incitement of a monk by a monk; Vin III 53,19-27, and incitement in a chain (German: *Kettenanstiftung*), i.e. a monk incites another monk to incite a third monk to steal; Vin III 53,27-32.²² Thus the Second Supplementary Section seems to supplement the First.

2.5 The Vinitavattu (Vin III 55,25-67,38)

The Vinitavattu section is still more heterogenous than the First Supplementary Section. I do not want to go into detail here, since that subject has been investigated at some length by Andrew Huxley (1999), but I want to review some of the facts. Out of the forty-nine cases listed in the Vinitavattu, twenty describe situations where no theft takes place.²³ Some of them lead to the establishment of new rules.²⁴ Other

²²Further cases are dealt with in which a monk enjoined another monk to steal, and even when that one returned and said that he was not able to steal, insisted on the theft (Vin III 53,32-54,5), or the instigator enjoined another monk to steal, but felt regret thereafter.

For a fuller investigation of the position of this section, the third Pārājika should be compared since it contains an almost identical section.

²³Cases 6, 8, 10, 11, 12 and 45; 19 and 20; 25, 33, 38, 39, 40, 41b, 43, 44, 46, 47, 48, and 49.

cases deal with the missing intention to steal.²⁵ Twenty-nine cases of theft show that the questions of (1) ownership,²⁶ of (2) who kept the object at the time of theft,²⁷ of (3) whether the owner, keeper or thieves lost the object before it was stolen,²⁸ or (4) whether the objects were

²⁴It is forbidden to take clothes from a body not yet decomposed, *dukkāṭa* (case 8; Vin III 58,11–21); it is allowed to take something away from animals (case 11; Vin III 58,31ff.); it is forbidden to creep into a family's favour by referring to a bhikkhu who is respected by this family, *dukkāṭa* (case 25; Vin 61,23ff.); it is forbidden to eat something destined for another vihāra, *dukkāṭa* (case 43; Vin III 65,37ff.); it is allowed to accept what is given by a watchman (case 39; Vin III 65,12ff.); the temporary use of objects belonging to the saṅgha is allowed (cases 40, 44; Vin III 65,19ff.; 66,7ff.); it is allowed that *āgantuka* monks distribute fruits belonging to the saṅgha among themselves as food (case 38; Vin III 65,1ff.); it is forbidden to burn grass belonging to the saṅgha, *dukkāṭa* (case 41; Vin III 65,25ff.); it is forbidden to eat a pot of ghee little by little, *dukkāṭa* (case 33; Vin III 64,4ff.).

²⁵If a monk mistakes something as his own (cases 10, 20; Vin III 58,25ff.; 60,15ff.); if a monk takes something in trust thinking that he may use it (case 19; Vin III 60,7ff.); see Norman 1989: 222ff. for this case); if a monk takes something to return it to its owner, but in being accused of having stolen it, he seems to confirm the accusation that he stole (case 6; Vin III 57,16ff.); if one takes some extra portion for a person — whether existing or not — and eats it himself. In that case, however, we are referred to the *pācittiya* rules, since this is a deliberate lie (cases 12, 45; Vin III 59,1ff.; 66,11ff.).

²⁶Theft of objects belonging to the saṅgha (cases 16, 23, 41a, 42; Vin III 59,35–37; 61,12–16; 65,25ff., 32ff.), of objects the owner of which is unknown (cases 3, 17; Vin III 56,27–32; 59,38ff.).

²⁷Theft of an object from one who bleaches robes, etc. (cases 1, 2; Vin III 56,10–27); theft of an object owned by someone else, which the monk carries at that moment (case 5; Vin III 57,6–15).

²⁸Theft of an object lost by the owner (case 7; Vin III 58,1–10) or by the one who bleaches robes (case 32; Vin III 63,32ff.), or objects lost or left by thieves (21, 22, 36; Vin III 60,28–61,11; 64,25–32) or someone else (30, 31; Vin III 63,16–31).

stolen from thieves who stole them from the owner before,²⁹ are irrelevant. Some cases illustrate that special situations, as for instance a famine, are not counted as alleviating circumstances if a monk steals something eatable (cases 13, 35; Vin III 59,11–20; 64,18–24). Three cases indicate that theft may be accomplished even if one does not move the object to be stolen from its place,³⁰ but only the object on which the object to be stolen is located (cases 15, 28; Vin III 59,31–34; 63,4–7). A few cases show specific types of theft, as (1) theft by exchanging a lot marker (case 9; Vin III 58,22–24), (2) arranged theft (case 34; Vin III 64,8–17), and (3) smuggling objects over some boundary (case 26; Vin III 62,9–29).

The Vinītavatthu section gives the impression of having been compiled out of various lists, since the same topic with only slight differences is dealt with in various places (i.e. cases 4 and 14; 7 and 32; 13 and 35; 12 and 45; 15 and 28; 16 and 23; and 41a and 42; etc.). This corresponds to Huxley's (1999: 315) opinion, that the Vinītavatthus were compiled from several collections of various monasteries.

2.6 Comparison of the Three Sections

Comparing the three sections we can see that “arranged theft” is described in the First Supplementary Section (case 29; Vin III 53,4–5) as well as in the Vinītavatthu (case 34; Vin III 64,8–17). Though the two cases agree with each other, the version in the Vinītavatthu is more detailed and contains an additional case, thus giving the impression of being more recent.

Passing an object over a boundary is described in the First Supplementary Section (case 21; Vin III 52,5–13) and in the Vinītavatthu (case 26; Vin III 62,9–29). But whereas the First Supplementary Section deals with a monk who himself intends to pass an object over a boundary, the Vinītavatthu has only cases where monks smuggle objects for other

²⁹Theft of something taken away from the owner by someone else (case 29; Vin III 63,8–15).

³⁰Thus not accomplishing a *pārājika* offence according to the general rules.

people. Thus the Vinītavatthu case complements that in the First Supplementary Section.

As mentioned before, the Vinītavatthu does not contain any case of theft by incitement, whereas the two supplementary sections do. In the light of the facts mentioned before this may be taken as a further indication that the Vinītavatthu was compiled later than these two supplementary sections, because there was no necessity to deal with that settled subject any longer.

Thus we may assume that these three sections were handed down independently, and that probably the First Supplementary Section is the oldest of them, being complemented by the Second Supplementary Section and finally by the Vinītavatthu.

2.7 The Casuistry (Vin III 54,14–55,20)

The only systematic list of conditional clauses for theft is the list of the five constituent factors (*aṅga*)³¹ of theft which lead to a *pārājika* offence. Only if all five constituent factors are given and if the *actus reus* is accomplished is a *pārājika* offence committed (Table 4).³²

In addition to this list we have a list of six, and a second list of five (Vin III 54,14–55,20). In the second list of five (Vin III 55,6–20) the first of the five constituent factors (“the object belongs to another”) has been replaced by “the object does not belong to another.” In that case only *dukkata* offences arise, irrespective of the value of the object and irrespective of the proceeding of the *actus reus*.

Now, the list of six constituent factors (Vin III 54,31–55,5) has the same purpose as the first list of five (see Table 5). This is proven by the identical distribution of offences in all cases, the worst being a *pārājika*.

³¹This is how the commentaries name these five points.

³²The list of five is applied to three items in accordance with the three types of possible objects: (1) a valuable object worth more than five *māsaka*, (2) a non-valuable object worth one to five *māsaka*, and (3) a non-valuable object worth less than one *māsaka*; and it gives the three possible offences for each item depending on how far the *actus reus* has proceeded: (1) touching, (2) shaking, and (3) moving from its place.

(1) The object belongs to another (<i>parapariggahitam</i>)
(2) One thinks that the object belongs to another (<i>parapariggahitasaññi</i>)
(3) The object is valuable ³³ (<i>garuko parikkhāro</i>)
(4) The object is worth more than five <i>māsaka</i> (<i>pañcamāsako vā atireka-pañcamāsako</i>)
(5) The intention to steal is present (<i>theyyacittam paccupaṭṭhitam</i>).

Table 4. The list of five constituent factors for theft from the Vinaya

Therefore the list of six seems to be a variant on the first list of five. If we examine the list of six, it becomes obvious that the first two constituent factors of the first list of five — (1) “the object belongs to another,” and (2) “one thinks that the object belongs to another” — are missing here. Though the first constituent factor is not listed, we can safely say that it must be presupposed in the list of six. This is proven by the fact that a *pārājika* offence arises when all six factors are given and the *actus reus* is accomplished. That, however, presupposes that the object belongs to another. For, if it did not belong to another, only *dukkata* offences would be possible, as is clearly shown by the second list of five (Vin III 55,6–20). Therefore the difference between the list of five and the list of six from the view of content is reduced to the second constituent factor of the list of five (“one thinks that an object belongs to another”). The list of six has three constituent factors instead: (1) “one does not think that the object is one’s own”; (2) “one does not take the object on a mutual agreement”; (3) “one does not take the object temporarily”. The first of these, “one does not think that the object is one’s own”, clearly says the same as the constituent factor 2 of the list of five (“one thinks that the object belongs to another”) only formulated in the negative. Constituent factors 2 to 3 of the list of six clearly presuppose that a monk knows that the object belongs to someone else.

³³The splitting up of (3) and (4) would not be necessary in the case of a valuable object. In the case of non-valuable objects, however, there are two categories depending on the value. Thus the division results from those categories.

All three situations if turned into the positive exempted a monk from the accusation of theft. This is illustrated by cases 10 and 20 of the Vinītavatthu, where a monk mistakes something as his own, by cases 40 (Vin III 65,19–24) and 42 (Vin III 65,32–37) of the Vinītavatthu which allow the temporary use of material of the community, and by case 19 (Vin III 60,8–14) of the Vinītavatthu, where taking under the wrong impression of a mutual agreement frees one from theft. Besides, these exceptions are mentioned in the *anāpatti*-formula (Vin III 55,21). In giving the negatives of these defences the list of six expresses the same as the constituent factor 2 of the first list of five, but it specifies this constituent factor in excluding the possible exceptions.

The list of five constituent factors	The list of six constituent factors
(1) The object belongs to another (<i>parapariggahitam</i>)	— ³⁴
(2) One thinks that the object belongs to another (<i>parapariggahitasāññī</i>)	(1) One does not think that the object is one's own (<i>na sakasāññī</i>) (2) One does not take the object on a mutual agreement (<i>na vissāsagāhī</i>) (3) One does not take the object temporarily (<i>na tāvakālikam</i>)
(3) The object is valuable (<i>garuko parikkhāro</i>)	(4) The object is valuable (<i>garuko parikkhāro</i>)
(4) The object is worth more than five <i>māsaka</i> (<i>pañcamāsako vā atireka-pañcamāsako</i>)	(5) The object is worth more than five <i>māsaka</i> (<i>pañcamāsako vā atireka-pañcamāsako</i>)
(5) The intention to steal is present (<i>theyyacittam paccupaṭṭhitam</i>)	(6) The intention to steal is present (<i>theyyacittam paccupaṭṭhitam</i>)

Table 5. The first list of five and the list of six constituent factors from the Casuistry of the second Pārājika

Thus the list of six seems to be an attempt to specify the second constituent factor of the first list of five in the light of exceptions, which probably occurred only after the first list of five had been compiled. Since the exceptions listed in that part of the Casuistry are mentioned only in the *anāpatti*-formula and in the Vinītavatthu, it may well be that

³⁴Implicitly presupposed, but not explicitly stated.

the list of six was inserted into the Casuistry around the time of the formation of the *anāpatti*-formula and the Vinitavatthu section. Nevertheless such a specification was superfluous since the fifth constituent factor of the first list of five and the sixth constituent factor of the list of six require the presence of the intention to steal. Therefore, “taking erroneously”, “taking temporarily”, and “taking on a supposed mutual agreement” are already excluded by this constituent factor. Since furthermore the list of six presupposes the constituent factor 1 of the list of five without mentioning it, the attempt at a more specified list of six constituent factors resulted in a rather weak product. The position of the commentaries regarding this Casuistry will be discussed below (§ 3.3).

3. The Commentaries of the Fifth Century

3.1. The Twenty-five Types of Theft

As the canonical material discussed so far shows, the Vinaya’s statements on theft are not arranged according to some visible system, but rather consist in various lists, each systematized to a different degree, put side by side. Obviously the old commentaries lost today — setting aside the quotations in the commentaries from the fifth century onwards — also had problems in classifying this material; at least the Samantapāsādikā says that the statements in the old Aṭṭhakathās were confused, and hard to understand.³⁵ Thus the commentators of the fifth century and later had little help from the Vinaya and the old commentaries.

Nevertheless they present a system of twenty-five types of theft classified in five groups with five items in each.

These five groups are:

(I) The group of five concerning various objects (*nānābhaṇḍa-pañcaka*)

(I.1) Should seize (*ādiyeyya*)

(I.2) Should take (*hareyya*)

(I.3) Should take away (*avahareyya*)

³⁵The regulation presented by all old commentaries was confused, disturbed, and could hardly be understood (Sp 303,18–19).

- (1.4) Should cause [someone] to deviate from the path he is moving along (*iriyāpathaṃ vikoṭṭeyya*)
 (1.5) Should move from its place (*thānā cāveyya*)

(2) The group of five concerning a single object (*ekabhaṇḍapañcaka*)

- (2.1) As in (1.1)
 (2.2) As in (1.2)
 (2.3) As in (1.3)
 (2.4) As in (1.4)
 (2.5) As in (1.5)

(3) The group of five [beginning] “with one’s own hand” (*sāhatthikapañcaka*)

- (3.1) “With one’s own hand” (*sāhatthika*)
 (3.2) “Done by commanding someone else” (*āṇattika*)
 (3.3) “Throwing out” (*nissaggiya*)
 (3.4) “Accomplishing a legal case” (*atthasādhaka*)
 (3.5) “Giving up the legal claim” (*dhuranikkhepa*)

(4) The group of five [beginning with] “acts preparatory to the main act” (*pubbapayogapañcaka*)

- (4.1) “Act preparative to the main act” (*pubbapayoga*)
 (4.2) “Act simultaneous with the main act” (*sahapayoga*)
 (4.3) “Taking away by an arrangement” (*saṃvidhāvahāra*)
 (4.4) “Act of appointing the time” (*saṅketakamma*)
 (4.5) “Act consisting in making a sign” (*nimittakamma*)

(5) The group of five [beginning with] “taking away by theft” (*theyyāvahārapañcaka*)

- (5.1) “Taking away by [simple] theft” (*theyyāvahāra*)
 (5.2) “Taking away by force” (*pasayhāvahāra*)
 (5.3) “Taking away by determination” (*parikappāvahāra*)
 (5.4) “Taking away by concealment” (*paṭichannāvahāra*)
 (5.5) “Taking away by changing lot markers” (*kusāvahāra*)

The names of these five groups and their items reveal that groups 3 to 5 received their names from their respective first item, while in the case of

the first two groups no connection between the names of the groups and their items exists. Thus the system is composed of two units: unit one consisting of the first two groups, and unit two of groups 3 to 5.

As an examination of the definitions of all twenty-five types of theft indicates, there was no absolute necessity to construct five groups of five. The first and second groups describe exactly identical types of theft with the only difference that group one refers to “various [types] of objects” (*nānābhaṇḍaka*) while group two refers to “one [type of] object” (*ekabhaṇḍaka*). As *Samantapāsādikā* and *Kaṅkhāvitaraṇī* explain, the group of “various [types] of objects” comprises animate and inanimate objects, whereas “one [type of] object” refers to animate beings only. Later, these are defined as slaves and animals which have an owner. Since the first group also includes animate beings, no necessity can be detected for the formation of the second group, except the wish to systematically cover *nānā-* and *eka-bhaṇḍaka*. Therefore one might suppose that these two groups — instead of one — were formed in order to have a smoothly constructed system of five by five.

Looking at the five items of the first two groups (for the following, see the table in Appendix I) it becomes obvious that the commentaries took the first five (out of six) synonyms given in the Word Analysis of the Vinaya for the word “should seize” (*ādiyeyya*; Vin III 46,35–36) as names of these items. For each of them they defined a certain type of action subsumed under the fact of theft. Thus “should seize” (*ādiyeyya*) was understood as laying legal claim to someone else’s property; “should take” (*hareyya*) as stealing another’s goods which one carried as a load already; “should take away” (*avahareyya*) as rejection of giving back some property deposited before; “should cause someone to deviate from the path he is moving along” (*iriyāpathaṃ vikopeyya*) as stealing the goods together with the carrier; and finally, “should move from its place” (*thānā cāveyya*) as stealing property which stands on firm ground. If we examine which of these types of acts are described in the Vinaya, we realize that eight cases described in the First Supple-

mentary Section do agree with those five items of the first group, and six with those of the second group.

The third group, “the group of five [beginning] with one’s own hand” (*sāhatthikapāñcaka*), comprises five types of means of theft:

- (3.1) stealing something with one’s own hand,
- (3.2) inciting someone else to steal,
- (3.3) throwing something out of a certain location,
- (3.4) settling a legal case, i.e. inciting someone else to steal at some time (variant to 3.2), and
- (3.5) the owner’s giving up his legal claim on his property.

Most types of theft are committed by the first two means, i.e. with one’s own hand (3.1) or by inciting someone (3.2). Giving up the legal claim (3.5) is an additional original means.³⁶ But the two remaining groups (3.3 and 3.4) are only special forms of stealing with one’s own hand (3.1) and incitement (3.2). Thus they may have been listed in order to attain five items and because appropriate cases were described in the Vinaya.³⁷

Some of the Vinaya cases are conformable to the items of group one/two and of three respectively. From them we can deduce from which viewpoint theft is considered in the respective groups. “Laying legal claim to someone else’s property” is the first item of group one/two (1.1). In group three we have as fifth item “giving up the legal claim” (*dhuranikkhepa*) (3.5). From the way it is expressed it becomes

³⁶Within this item a development can be observed, when the Samantapāsādikā refers this case solely to giving up the legal claim to goods deposited before (Sp 304.20–21; Kkh 44.4–5), whereas the Kaṅkhāvīṭaraṇī also refers it to real estates and to cases where temporary goods were not returned and no compensation was given for them (Kkh 44.4–6). Interestingly the sub-commentaries try to explain that discrepancy between Kaṅkhāvīṭaraṇī and Samantapāsādikā by declaring that the Sp only gave an example, and that the other things are to be included.

³⁷The Samantapāsādikā relates the third case (3.3) to the sixth synonym for *ādiyeyya* given in the Vinaya (Vin III 46.36; Sp 303.8–10; 304.5–9).

clear that group one/two describes the execution of theft from the viewpoint of the culprit (the monk lays claim to someone's property) whereas group three describes the means of theft by which theft is accomplished — the owner gives up his rightful claim to his own property.

The meaning of the fourth and fifth groups is self-evident. Group four, “the group of five [beginning with] acts preparative to the main act” (*pubbapayogapañcaka*), comprises types of acts preparative to theft, which nevertheless constitute the fact of theft. These can precede the main act, but may also be nearly simultaneous. The five items are:

- (4.1) acts preparative to the main act, represented by incitement;
- (4.2) acts simultaneous with the main act, represented by moving an object from its place or by shifting boundary pegs in the case of fields, etc.;³⁸
- (4.3) taking away by an arrangement;
- (4.4) act of appointing the time for theft; and
- (4.5) making signs for stealing.

Here again the first two items cover all cases, because each preparative act will precede the act or will be nearly simultaneous. Items three to five could have been subsumed also under the first item. But here too adequate cases were listed in the First Supplementary Section.

The last group (5), “the group of five [beginning with] taking away by [simple] theft” (*theyyāvahārapañcaka*), lists the methods by which theft is executed:

- (5.1) simple theft,
- (5.2) theft by force,
- (5.3) theft in determining the objects or the place,
- (5.4) in hiding something, or

³⁸This seems a bit strange, because moving something from its place generally represents the main act, not a preparative act. Perhaps this was listed because in some cases, preparative acts like shifting pegs resulted in the accomplishment of the main act with the shifting of the last peg.

(5.5) in changing lot markers to get another share than the one determined for oneself.

Each type of theft falls under one of these methods of theft. The Vinaya itself does not contain examples for most of them. In fact, nearly all the Vinaya cases fall under the first item. Only one case from the Vinītavatthu conforms to the fifth, i.e. changing the lot marker (Vin III 58,22–24 [Pār 2.7.9]). The Samantapāsādikā relates the third item to the sixth synonym given by the Vinaya for *ādiyeyya* (Vin III 46,36; Sp 303,6–8; 304,5–9).

Summarizing, we can say that in the system of twenty-five types of theft (five by five) theft is looked at from four angles:

1. Types of [main] acts constituting the fact of theft (groups 1 to 2). These are all possible main acts by which a person might steal some object.
2. Types of means of theft by which theft is accomplished (group 3).
3. Types of preparative acts constituting the fact of theft (4). These are all possible preparative acts by which a person might steal some object.
4. Methods of executing the acts which constitute the fact of theft (5). This refers to the mode in which theft is executed.

Each type of theft that might occur within the Buddhist community thus has to be examined from these four viewpoints.

This list of twenty-five types, though ignored by most of the secular Burmese law books (*dhammathats*), came up in the Manugye *dhammathat* (eighteenth century) and was later on used to lend some authority to two non-classical lists. Thus, the twenty-five types of theft of the commentarial tradition of monastic law crept into Burmese secular law.³⁹

³⁹For their usage there, see Huxley 2006b: § 2b; Okudaira 2006: § III.1.(2).

3.2 The Five Points (*pañca thānāni*)

The Samantapāsādikā gives a further set of five points — handed down already in the early sources, i.e. some old commentaries — which have to be taken into consideration in examining theft (see Table 6). These are:

- (1) Object (*vatthu*): determining the object as such;⁴⁰
- (2) Time (*kāla*): determining the value of the stolen object at the time of theft (Sp 306,20–23).
- (3) Place (*desa*): determining the value of the stolen object in the region where it was stolen (Sp 306,23ff.).
- (4) Value (*aggha*): determining the value of the object as such (Sp 307,23–27);
- (5) Use (*paribhoga*): determining the value of the stolen object diminished by usage.

The Kaṅkhāvitarāṇī reduces this list to three points, (1) time, (2) place and (3) increasing as well as decreasing value by use (Kkh 47,26–48,2).

Samantapāsādikā based on old sources	Kaṅkhāvitarāṇī
(1) object (<i>vatthu</i>)	— ⁴¹
(2) time (<i>kāla</i>)	(1) time
(3) place (<i>desa</i>)	(2) place
(4) value (<i>aggha</i>)	(3) increasing as well as decreasing value by use
(5) use (<i>paribhoga</i>)	

Table 6. The five points (*pañca thānāni*) in Samantapāsādikā and Kaṅkhāvitarāṇī

⁴⁰If no charge is brought against the thief, though he declares that he has stolen it, one has to examine whether the object is owned or not. If it is owned, one has to examine whether the owner wants to keep it or not. If the owner does not want to keep it, the thief is not dealt with according to the *pārājika* offence (Sp 305,6–12).

⁴¹Implicitly presupposed, but not explicitly stated.

In the version of the Kkh point one does not appear, but is implicitly presupposed, whereas points four and five are united. The sub-commentaries on the Samantapāsādikā do not touch on this passage except for one or other word explanation. This is an indication that the system of five additional points was outdated, or better, transformed as early as the Kaṅkhāvitarāṇī and that its application did not lead to any problems which the commentaries thought worth discussing. These five points reduced to three in the Kaṅkhāvitarāṇī appear in Burmese secular law as the four *mahāpadesas*, points four and five being united there.⁴²

3.3 The Five Constituent Parts (*aṅga*)

As mentioned in connection with the Casuistry of the second Pārājika, the Vinaya hands down two lists, one with five, and one with six constituent factors. As a statement of the Samantapāsādikā shows, this Casuistry was not very well understood by the early commentaries. The Samantapāsādikā, after having explained the difficulties which the early commentaries had regarding the system of the twenty-five types of theft, proceeds with respect to the Casuistry (Sp 303,20–29) in the following way:

For likewise the constituent parts (*aṅga*) of theft named [in the Vinaya] — in the manner “**one who takes what is not given in five ways has [committed] a pārājika[-offence]: (1) [the object] is owned by another**” (Vin III 54,14), etc., — which have been approved [by the early commentaries], are indicated as one group of five in some places [of the early Aṭṭhakathās,⁴³ and] as two groups of five in some [other] places [of the early Aṭṭhakathās, where the first list of five is considered] together with the [constituent parts] handed down by “**in six ways**” (i.e. the list of six; Vin III 54,31).⁴⁴ But these are not groups of five. For that is called a group of five where a theft is proven by each single word. But here, only one

⁴²See for this Huxley 2006b: § 2c; Okudaira 2006: § II.4.(1).

⁴³Explanation of the Ṭikās.

⁴⁴i.e. some early Aṭṭhakathās obviously did only refer to the first list of five, whereas others took the first list of five and the list of six into account and regarded each of them as a group of five.

theft [is indicated] by all the words, and the meaning of all these groups of five, which are indicated as in fact being received there (i.e. in the Vinaya), is not explained. Thus, in this point all [early] Aṭṭhakathās have regulations which are confused, disturbed, and could hardly be understood.

The explanation of the Casuistry by the Samantapāsādikā (Sp 370,24–371,16) does not add anything regarding the development or the usage of the two lists in the Casuistry. But a further development of the list of five can be detected in the Kaṅkhāvitarāṇī, where the constituent facts (*aṅga*) for each rule are part of the classification of the rule given at the end.⁴⁵ The Kaṅkhāvitarāṇī lists five *aṅgas* for theft:

- (1) The object belongs to another human being. This formulation shows that the rules resulting from some stories in the Vinīta-vatthu, i.e. the allowance to take things from animals (case 11) and from corpses (case 8), now have been taken into consideration.
- (2) One knows that the object belongs to another [human being],
- (3) it is a valuable object,
- (4) the intention to steal is present,
- (5) it is taken away by theft of one among the [twenty-five types] described (Kkh 48,6–8).

The Kaṅkhāvitarāṇī clearly has developed the list of five constituent factors given in the Casuistry in the Vinaya by (a) specifying the first constituent factor, (b) uniting clauses three and four and (c) adding as the fifth the theft according to the twenty-five types described in Sp (see Table 7).

⁴⁵The classification in Sp does not contain the *aṅgas*, at least not as systematically as Kkh.

List of five from the Casuistry of the Vinaya	List of five constituent parts (<i>aṅga</i>) from the Kaṅkhāvitaraṇī
(1) The object belongs to another (<i>parapari-ggahitaṃ</i>)	(1) The object belongs to another human being (<i>aññassa manussajātikassa vasena parapari-ggahitaṃ</i>)
(2) One thinks that the object belongs to another (<i>parapari-ggahitasaññī</i>)	(2) One thinks that the object belongs to another [human being] (<i>parapari-ggahitasaññitā</i>)
(3) The object is valuable (<i>garuko parikkhāro</i>)	(3) The object is valuable (<i>garu-parikkhāro</i>)
(4) The object is worth more than five <i>māsaka</i> (<i>pañca-māsako vā atirekapañca-māsako</i>)	—
(5) The intention to steal is present (<i>theyyacittam paccupaṭṭhitaṃ</i>)	(4) The intention to steal [is present] (<i>theyyacittam</i>)
	(5) It is taken away by theft of one among the [twenty-five types] described (<i>vuttappakārānaṃ avahārānaṃ vasena avaharaṇaṃ</i>)

Table 7. List of five from the Vinaya and the list of five constituent parts from the Kkh

4. Absorption of Offences

As the Vinaya's statements on theft of an object deposited in the earth (*bhummaṭṭha*), etc., indicate, there might be a number of activities preceding the actual theft. A monk who plans to steal some goods deposited in the earth might, for instance, badly need assistants, and/or tools to unearth the goods as, for example, some tool to cut the grass, the creepers, etc., or others to dig the soil. Furthermore he is forced to first dig the soil, pile it up, or throw it out of the hole in the earth. All such activities may accompany theft. The Vinaya clearly prescribes *dukkata* offences in each and every case (Vin III 48,35–48.3).

Now the Samantapāsādikā describes these “preceding” or more precisely “accompanying actions” and the resulting offences in great detail, and thus makes plain that in preparing theft one could commit hundreds of smaller offences, mainly of the *dukkata* type. I will illustrate this by the translation of a short excerpt from a passage of the Samantapāsādikā which extends over several pages (Sp 310,8ff):

A monk who, having learned [about some object to be stolen] ... develops the intention to steal ... gets up during the night [and] walks [to the place of theft] commits *dukkata* [offences] with every movement of body and speech, even if he does not reach [the place of theft].... If he gets up in order to take away [the goods], he moves limb by limb; in every single case [this] is in fact a *dukkata* [offence. If] he puts the under and upper garments into order, a *dukkata* [offence arises] with every movement of the hand. [If he thinks] that the treasure is large, that one person might not be able to take it away, and wishes to go to a friend, desiring [to win] him as an assistant, a *dukkata* [offence arises] with every gesture of the feet and the hands....

What results from this enumeration of examples is that a monk, even if he gives up theft during the “accompanying actions,” has already committed many *dukkata* and *pācittiya* offences. Now, if he wants to be of good standing (*pakatatta*) — which means that he is free from offences, and thus able to participate in legal proceedings of the community — he has to confess all offences committed by him. As one can easily imagine after what has been said before, the number of offences in the case of a more complex type of theft could amply accumulate. How could a monk be sure that he did not forget to confess one of his many offences?

In fact, the early commentaries had already started to develop methods for solving this problem which are at least partly preserved in the Samantapāsādikā.

The Samantapāsādikā divides accompanying actions into actions which precede [theft], i.e. “earlier actions” (*pubbapayoga*), and “simultaneous actions”, i.e. actions simultaneous [with theft] (*sahapayoga*), see Table 8. Searching for assistants, searching for tools or preparing

them belong to the “earlier actions”; digging the soil, piling it up, etc.,⁴⁶ to the “simultaneous actions”. All offences resulting from “earlier actions” are valued as *dukkāṭa* or *pācittiya* offences depending on the transgressed Vinaya rule. In the case of “simultaneous actions”, however, *dukkāṭa* and *pācittiya* offences are valued as *dukkāṭa* offences only.⁴⁷ For example, when a monk who wants to steal an animal kills that animal before he moves it from its place, then the act of killing — regularly a transgression of a *pācittiya* rule — is counted as a *dukkāṭa* offence only, because this act of killing is an accompanying action to theft.⁴⁸ All offences resulting from “earlier actions” accumulate, i.e. they are not absorbed. If a bhikkhu stops while still being involved in these “earlier actions” he therefore has to confess all offences.⁴⁹ The

⁴⁶In the case of the object in the earth (*bhummaṭṭha*) there are five “simultaneous actions” which lead to *dukkāṭa* offences: (1) cutting [plants at the place of theft] (*chedana*), (2) digging [the soil] (*khaṇana*), (3) piling up [the soil] (*vyūhana*), (4) throwing the soil out [of the hole in the earth] (*uddharana*), and (5) touching [the goods to be stolen] (*āmasana*). Moving (*phandana*) the object also belongs to the simultaneous actions, but it results in a *thullaccaya* offence as stated in the Vinaya.

⁴⁷This results from all explications of the Sp and of the *ṭīkā*s. See Sp 312,17–20: *idaṃ saḥapayogaḍukkāṭaṃ nāma. ettha pana pācittiyavatthu ca dukkāṭa-vatthu ca dukkāṭaṭṭhāne yeva tiṭṭhati. kasmā? avahārassa saḥapayogattā ti.* “This is called a *dukkāṭa* offence on account of the simultaneous action. But here the object of a *pācittiya* [offence] as well as the object of a *dukkāṭa* [offence] remain in the class of a *dukkāṭa* [offence] only. Why? Because these are simultaneous with theft.” Cf. Vin-vn-pt I 62,8–10: *idha, adinnādāna-sahitapayogattā pācittiyavatthumhi, itaratra ca dukkāṭam evā ti ayam ettha vireso.* “Here, in the case of a *pācittiya* [offence resulting] from an [accompanying] act being simultaneous with taking what is not given (theft) and elsewhere [i.e. in other similar cases] only a *dukkāṭa* [offence arises]. This is the difference here [to the preceding action].”

⁴⁸Sp 365,5–6 with Vjb 134,5–8, Sp-ṭ II 155,3–5.

⁴⁹Sp 314,12–14: *saḥapayogaṃ pana akatvā lajjidhammaṃ okkantena yā pubba-payoge dukkāṭapācittiyā āpannā, sabbā tā desetabbā.* “But not having com-

Accompanying actions to theft	
Actions earlier [than theft] (<i>pubbapayoga</i>)	Actions simultaneous [with theft] (<i>sahapayoga</i>)
<i>dukkata</i> and <i>pācittiya</i> offences are counted as such	<i>dukkata</i> and <i>pācittiya</i> offences both are valued as <i>dukkata</i> offences
All offences accumulate, i.e. are not absorbed as long as “earlier actions” are executed.	All offences of one and the same simultaneous action accumulate.
All offences are absorbed as soon as one starts with simultaneous actions	All offences of one simultaneous action are absorbed as soon as one starts with another type of simultaneous action

Table 8. The absorption of offences

offences resulting from “earlier actions” are only absorbed as soon as the monk starts with a “simultaneous action”.⁵⁰ Within the category of “simultaneous actions” the offences resulting from one and the same activity accumulate, and are only absorbed when one changes the type of “simultaneous action”. That means, when one finishes digging the soil and starts to pile it up, then all offences resulting from digging are absorbed,⁵¹ if, on the other hand, one digs the soil, and in a next step

mitted a simultaneous action [a monk] filled with shame (and thus stopping his theft) has to confess all *dukkata* and *pācittiya* [offences] which he committed with respect to earlier actions.”

⁵⁰Sp 314,10–12: *sahapayogato paṭṭhāy’ eva c’ ettha purimā purimā āpatti paṭi-passambhati*. “And only from the simultaneous action onward is each earlier offence absorbed.”

⁵¹Sp 314,16–19: *khaṇane bahukāni pi viyūhanam, viyūhane bahukāni pi uddharaṇam, uddharaṇe bahukāni pi āmasanam, āmasane bahukāni pi phandāpanam patvā paṭi-passambhanti*. “Many [offences committed] in digging [the earth] lapse when one arrives at the amassing [of the earth]; all [offences committed in] amassing [the earth] lapse when one arrives at the throwing out [of earth]; all [offences committed in] throwing out [of earth] lapse when one arrives at touching [the goods to be stolen]; all [the offences committed in] touching [the goods to be stolen] lapse when one arrives at moving [the goods to be stolen].”

piles it up, then the offence arising from digging is immediately absorbed by the action of piling up.

The system of absorption described here seems to have originated in one of the early commentaries, i.e. in the Mahā-Aṭṭhakathā.⁵² Another system of absorption is described in the Vinaya within the *yāvataṭṭhaka*-rules,⁵³ where the culprit has to be admonished three times before he becomes guilty with the third ineffective admonition. This type of absorption is different from the one described in the case of theft insofar as the offences arising from the first and second ineffective admonitions are only absorbed when the final offence arises with the last ineffective admonition. But the regulation in the *yāvataṭṭhaka*-rules seems to have served as a model for the absorption invented with respect to theft. At least it is mentioned as a pattern for the development of this method by the Ṭikās.

Petra Kieffer-Pülz

⁵²Sp-ṭ II 135,8–9; Vin-vn-pṭ I 65,2–5.

⁵³They are enumerated in the Parivāra (Vin V 146,19–21): from the Bhikkhupātimokkha it is Suddhapācittiya 68 and Saṅghādisesa 10–13, from the Bhikkhunipātimokkha Suddhapācittiya 36, Saṅghādisesa 7–10 and Pārājika 3.

References

- BD* I.B. Horner (transl.), *The Book of the Discipline (Vinaya-Piṭaka)*. 6 vols. London : Pali Text Society, 1938–1966 (Sacred Books of the Buddhists 10, 11, 13, 14, 20, 25).
- B^e* Burmese edition.
- Clarke, Shayne N. 2000, “The Existence of the Supposedly Non-existent *Śikṣādattāsrāmaṇerī* : A New Perspective on *Pārājika* Penance”, *Bukkyō Kenkyū* 29, 149–76.
- 2009, “Monks Who Have Sex : *Pārājika Penance* in Indian Buddhist Monasticisms”, *Journal of Indian Philosophy* 37 (2009), 1–43.
- CPD* *A Critical Pāli Dictionary*, begun by V. Trenckner, ed. D. Andersen, H. Smith, H. Hendriksen, vols. 1–3, Copenhagen, 1924–2011.
- CSCD* CD-ROM of *B^e*, Version 3, Vipassana Research Institute, Dhammagiri, Igatpuri, India.
- DOP* Margaret Cone : *A Dictionary of Pāli*, Vol. I : *a–kh*. Oxford : Pali Text Society 2001.
- E^e* European edition
- von Hinüber, Oskar 1968, *Studien zur Kasussyntax des Pāli, besonders des Vinaya-Piṭaka*. München.
- 1985, “Die Bestimmung der Schulzugehörigkeit buddhistischer Texte nach sprachlichen Kriterien”, in : Heinz Bechert [ed.], *Zur Schulzugehörigkeit von Werken der Hinayana-Literatur* (Symposien zur Buddhismusforschung, III.1), Vol. I, Göttingen, 1985 (Abhandlungen der Akademie der Wissenschaften in Göttingen, 149), 57–75.
- 1992, “The Arising of an Offence : *āpattisamuṭṭhāna*. A Note on the Structure and History of the Theravāda-Vinaya”, *Journal of the Pāli Text Society* XVI, 55–69.
- 1996, *A Handbook of Pāli Literature*, Berlin : Walter de Gruyter (Indian Philology and South Asian Studies, Vol. 2).
- 1999, *Das Pātimokkhasutta der Theravādin. Studien zur Literatur des Buddhismus II*, Mainz : Franz Steiner Verlag (Akademie der Wissenschaften und der Literatur. Abhandlungen der Geistes- und sozialwissenschaftlichen Klasse, Jg. 1999, Nr. 6).
- Huxley, Andrew 1999, “Buddhist Case Law on Theft : The *Vinītavatthu* on the Second *Pārājika*”, *Journal of Buddhist Ethics* 6, 313–30.
- 2006a, “Max Weber and the Classical Pali Law of Theft”, unpublished conference paper for the Law and Buddhism Conference. Bellagio, Italy, March 2006.

- 2006b, “What the Burmese Did with Classical Pali Theft Law”, unpublished conference paper for the Law and Buddhism Conference. Bellagio, March 2006.
- Kkh K.R. Norman and William Pruitt (eds.), *Kaṅkhāvitaraṇī by Bhaddantācariya Buddhaghosa*. London, 2003 (Pali Text Society).
- Kkh-pt *Kaṅkhāvitaraṇīpurāṇaṭīkā*. Rangoon, 1961 (Chaṭṭhasaṅgāyana edition).
- Kkh-nt *Buddhanāga, Vinayatthamañjūsā nāma Kaṅkhāvitaraṇī-abhinavaṭīkā*. Rangoon, 1961 (Chaṭṭhasaṅgāyana edition).
- Khuddas-nt *Sumaṅgalappasādanī nāma Khuddasikkhā-abhinavaṭīkā*, in : *Khuddasikkhā-Mūlasikkhā, Khuddasikkhā-Purāṇa-Abhinava-ṭīkā, Mūlasikkhā-ṭīkā*, Rangoon, 1962 (Chaṭṭhasaṅgāyana edition).
- Kieffer-Pülz, Petra 1992, *Die Sīmā. Vorschriften zur Regelung der buddhistischen Gemeindegrenze in älteren buddhistischen Texten*. Berlin : Reimer-Verlag (Monographien zur indischen Archäologie, Kunst und Philologie, 8).
- 2007, “Ein Musterbeispiel ‘komplexen, multiperspektivischen religionswissenschaftlichen Denkens ... auf der Höhe der Zeit?’, *Bulletin d’Études Indiennes* 24–25 (2006–2007), 281–307.
- (forthcoming), *Die Gaṇṭhipadas in der Vajirabuddhiṭīkā*.
- M Monk
- N Nun
- Niss Nissaggiya
- Norman, K.R. 1989, “Pāli Lexicographical Studies VI: Six Pāli Etymologies”, *Journal of the Pali Text Society* XIII, 219–27.
- Okudaira, Ryuji 2006, “Theft Cases in 18th Century Burma (Myanmar) with Special Reference to the *Atula Hsayadaw Hpyathton*”, unpublished conference paper for the Law and Buddhism Conference. Bellagio, Italy, March 2006.
- Pāc Pācittiya
- Pār Pārājika
- Pāṭ Pāṭidesanīya
- Pāt Pātimokkha
- PEd *The Pali Text Society’s Pali–English Dictionary*, ed. T.W. Rhys Davids, W. Stede, London, 1921–1925.
- Ps Papañcasūdanī (see CPD, Epilegomena)
- Saṅghabhadra 1970, *Shan-Chien-P’i-P’o-Sha*, English translation by P.V. Bapat and Akira Hirakawa, Poona : Bhandarkar Oriental Research Institute.

- Schlingloff, D. 1964, "Zur Interpretation des Prātimokṣasūtra", *ZDMG* 113, 536–51.
- Sgh Saṅghādisesa
- Sn Suttanipāta (see *CPD*, Epilegomena)
- Sp J. Takakusu, M. Nagai, K. Mizuno (eds.), *Samantapāsādikā, Vinayaṭṭhakathā*, 7 vols. London : Pali Text Society, 1924–1947.
- Sp-t Sāriputta [from Poḷonnaruva], *Sāratthadīpanī*, 3 vols. Rangoon, 1960 (Chaṭṭhasaṅgāyana edition).
- Utt-vn Uttaravinicchaya (CSCD)
- Vin Hermann Oldenberg, (ed.), *Vinaya Piṭakam*, 5 vols. London, 1879–1883.
- VinTexts* T. W. Rhys Davids, Hermann Oldenberg, *Vinaya Texts*, 3 vols. Oxford, 1881, 1882, 1885 (Sacred Books of the East, 13, 17, 20).
- Vin-vn-pt *Vinayatthasārasandīpanī*. 2 vols. Rangoon, 1977 (Chaṭṭhasaṅgāyana edition).
- Vism Buddhaghosa, *Visuddhimagga*, ed. C.A.F. Rhys Davids, 2 vols. London, 1920–1921 (Pali Text Society).
- Vjb Vajirabuddhi, *Vajirabuddhiṭikā*, Rangoon, 1960 (Chaṭṭhasaṅgāyana edition).
- Vmv Coḷiya Kassapa, *Vimativinodaniṭikā*, 2 vols. Rangoon, 1960 (Chaṭṭhasaṅgāyana edition).

Appendix I: The explanation of the twenty-five types of theft and the corresponding cases of the Vinaya

Kaṅkhāvitaraṇī, Samantapāsādikā	Vinaya
(I) The group of five concerning various objects (<i>nānābhaṇḍapañcaka</i>)	
(I.1) should seize (<i>ādiyeyya</i>) : to lay legal claim to something belonging to someone else (Kkh 43,1-3 = Sp 302,22-25).	Vin III 50,5-7.14.22.30 (Pār 2.4.10, 11, 12, 13).
(I.2) should take (<i>hareyya</i>) : stealing the goods of another which one carries as a load on the head (Kkh 43,4-6 = Sp 302,25-28)	Vin III 49,26-35 (Pār 2.4.9).
(I.3) should take away (<i>avahareyya</i>) refers to cases where someone who deposited his goods and now asks to get them back is rejected by a bhikkhu with the words “I do not fetch them” (Kkh 43,7-10 = Sp 302,28-303,1).	Vin III 51,36-52,4 (Pār 2.4.20).
(I.4) should cause [someone] to deviate from the path he is moving along (<i>iriyāpathaṃ vikopeyya</i>) refers to cases where a person who carries some goods with him is caused to leave its original path (Kkh 43,11-13 = Sp 303,1-3).	Vin III 51,30-32 (Pār 2.4.19).
(I.5) should move from its place (<i>thānā cāveyya</i>) refers to stealing property standing on firm ground (<i>thalaṭṭhaṃ bhaṇḍaṃ</i> , Kkh 43,14-15 = Sp 303,3-6).	Vin III 48,20-24 (Pār 2.4.3).

(2) The group of five concerning a single object (<i>ekabhaṇḍapañcaka</i>)	
(2.1) seizing (<i>ādiyana</i> , as in I.1)	Every theft of creatures may belong to this section (Vin III 52,14–35 [Pār 2.4.22–26]).
(2.2) taking (<i>haraṇa</i> , as in I.2)	”
(2.3) taking away (<i>avaharaṇa</i> , as in I.3)	”
(2.4) should cause someone to deviate from the path he is moving along (<i>iriyāpathavikopana</i> , as in I.4)	”
(2.5) moving from its place (<i>thāna-cāvana</i> , as in I.5)	”
(3) The group of five [beginning] with one’s own hand (<i>sāhatthikapañcaka</i>)	
(3.1) “with one’s own hand” (<i>sāhatthika</i>) means with one’s own hand one takes away the goods of another (Kkh 43,21–22 = Sp 304,12)	All cases in the Vinaya — except incitement — are cases in which theft is committed with one’s own hand.
(3.2) “done by commanding someone else” (<i>āṇattika</i> , Kkh 43,22–23 = Sp 304,12–13)	Vin III 52,36–38 (Pār 2.4.27) ; 53,19–54,13 (Pār 2.5.1–4).
(3.3) “throwing out” (<i>nissaggiya</i>) means throwing outside, while standing inside of the customs frontier (Kkh 43,23–24 Sp 304,14–16)	Vin III 46,36 ; 52,5–13 (Pār 2.4.21).
(3.4) “accomplishing a legal case” (<i>atthasādhaka</i>) means that one commands another to steal goods when he is able (the difference to 3.2 is that the command and theft are not simultaneous ; Kkh 43,24–44.4 Sp 304,16–20).	Vin III 54,3–5 (Pār 2.5.3)

<p>(3.5) “giving up the legal claim” (<i>dhuranikkhepa</i>) refers (a) to an owner who gives up his legal claim to his deposited goods as a consequence of a bhikkhu’s claim to the respective object (Sp 304.20–21 ; Kkh 44.4–5), or to his property (Kkh 44.4) ; (b) to one who does not give compensations for temporary goods (Kkh 44.5–6).</p>	<p>Vin III 50.5–7.14.22.30 ; 52.2 (Pār 2.4.10, 11, 12, 13, 20).</p>
<p>(4) “The group of five [beginning with] acts preparative to the main act” (<i>pubbapayogapañcaka</i>)</p>	
<p>(4.1) “act preparative to the main act” (<i>pubbapayoga</i>) refers to a command preceding the theft (Kkh 44.8–9 = Sp 304.24–25).</p>	<p>Vin III 52.36–38 (Pār 2.4.27) ; 53.19–54.13 (Pār 2.5.1–4).</p>
<p>(4.2) “act together with the main act” (<i>sahapayoga</i>) refers to (a) moving the object from its place (Kkh 44.9 = Sp 304.25), (b) taking fields, etc., in shifting the boundary pegs (Kkh 44.9–10).</p>	<p>(a) nearly all types of theft ; (b) no example for this type of theft is to be found in the Vinaya.</p>
<p>(4.3) “taking away by an arrangement” (<i>saṃvidhāvahāra</i>) refers to cases, where several bhikkhus planned together to take away such-and-such goods. When these goods are moved from their place by even one of them, it is theft for all of them (Kkh 44.10–13 ; Sp 304.26 only refers to the Vinaya).</p>	<p>Vin III 53.4–5 (Pār 2.4.29).</p>
<p>(4.4) “act of appointing the time” (<i>saṅketakamma</i>) means having fixed a time for theft (Kkh 44.13–17 ; Sp 304.26 only refers to the Vinaya).</p>	<p>Vin III 53.6–11 (Pār 2.4.30).</p>

(4.5) “act consisting in making a sign” (<i>nimittakamma</i>) refers to making a sign such as blinking with the eyes, etc. (Kkh 44,17–20 ; Sp 304,26 only refers to the Vinaya).	Vin III 53,12–18 (Pār 2.4.31).
(5) “The group of five [beginning with] taking away by [simple] theft” (<i>theyyāvahārapañcaka</i>)	
(5.1) “Taking away by [simple] theft” (<i>theyyāvahāra</i>) refers to theft (a) by making a hole in a wall, etc., then taking away goods without being seen, or (2) by deceiving others by means of false weights and false coinage, etc. (Kkh 44,22–25 ; Sp —).	(a–b) no example in the Vinaya ;
(5.2) “Taking away by force” (<i>pasayhāvahāra</i>) refers to (a) overpowering others by application of force grasping their property, or (b) grasping more by application of force than the tax which is suitable for one (Kkh 44,25–45,3 ; Sp —).	(a–b) no example in the Vinaya.
(5.3) “Taking away by determination” (<i>parikappāvahāra</i>) means : the throwing outside, while standing inside the pre-determined place ; or grasping after the determination of goods or the place (Kkh 45,3–25 ; Sp —).	Vin III 46,36, but no example in the Vinaya
(5.4) “Taking away by concealment” (<i>paṭichannāvahāra</i>) taking away something by covering it (Kkh 45,26–46,13 ; Sp —).	No example in the Vinaya.

(5.5) “Taking away by changing lot markers” (<i>kusāvahāra</i>) refers to theft by moving the lot-marker to another share (Kkh 46,14–47,3 ; Sp 304,31–32 refers to the commentary in Sp 375,13ff.).	Vin III 58,22–24 (Pār 2.7.9).
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------

**Appendix II: Translation of the commentary on the second
Pārājika from Kaṅkhāvitaraṇī 4I,1–48,11⁵⁴**

⟨41⟩ [2. The Commentary on the Second Pārājika]

[Pārājika Two for monks: *Whatever bhikkhu should seize from a village⁵⁵ or from a wilderness⁵⁶ what is not given in a way which is counted as theft,⁵⁷ in such manner of taking what is not given that kings,*

⁵⁴This is an excerpt of the joint translation of the Kaṅkhāvitaraṇī (still in progress), translated by K.R. Norman, revised by Petra Kieffer-Pülz and William Pruitt.

Numbers in pointed brackets ⟨ ⟩ refer to page numbers of the new Kkh edition; numbers in square brackets [] refer to the page numbers of the old Kkh edition. The abbreviations follow those used in the *CPD*, *Epilegomena*.

⁵⁵*gāma* represents any type of settlement.

⁵⁶*arañña* represents all areas outside of settlements, rivers, oceans, and natural lakes. Therefore our translation as “wilderness” does not give the whole sense of the word. This is also true for *BD* I 73 “jungle” or *VinTexts* I 4 “wood”. Where exactly the *arañña* begins is different depending on the rule and the respective definition of *gāma*.

⁵⁷Pāt 9 “in a way which is called theft”; *BD* I 73 “by means of theft”; *VinTexts* I 4 “what men call ‘theft’”. Von Hinüber 1999: 47, translates *theyyasankhātāṃ* (Vin III 47,3–5: *yo ... adinnaṃ theyyasankhātāṃ ādiyati*) as “wer einen nicht gegebenen, als Diebsgut bezeichneten [Gegenstand] ... an sich nimmt” (“who pockets a not given [object], called stolen goods”). This would help with the problematic *theyyasankhātāṃ* in various parallel references, but *theyya* is not known to us as being used in the meaning “Diebsgut” (= “das zu Stehlende”) anywhere. Cf. the explanation of Kkh 42,9–17 = Sp II 302,3–12 ≠ Ps II 329,30–30,2.

having arrested a robber, would beat or would bind or would expel him, [saying], “You are a robber, you are a fool, you are stupid, you are a thief,” the bhikkhu, seizing anything of such a nature that is not given, also is expelled [from the community],⁵⁸ [incurs] the loss of communal life⁵⁹ (Pāt 8,9–14 = Vin III 46,16–20).

In the second [rule] (i.e. Pār 2 M), herein “from a village or from a wilderness” (Pāt 8,9) means: indeed each [village, one] consisting in a single hut, etc.,⁶⁰ whether enclosed (*parikkhitta*) or not enclosed (*aparikkhitta*), whether [inhabited by] human beings (*samanussa*) or [uninhabited] by human beings⁶¹ or even every caravan which has settled for more than four months; [each of these] is to be understood as

⁵⁸Translated by “entailing defeat” in Pāt (9,1.2 etc.); von Hinüber (1985: 62) discusses the different derivations of *pārājika* (*parā* + passive of *ji* or *parā* + *aj*), and shows that *pārājika* is derived from the latter and thus to be translated as “was zur Vertreibung (aus dem Orden) gehört”.

⁵⁹*asaṃvāso*; Pāt 9 “not in communion”; *BD* II 42 “he is not in communion”; *VinTexts* I, 4: “he is no longer in communion”; von Hinüber 1999: 50 “wäre des Zusammenlebens verlustig”.

⁶⁰The “etc.” refers to the definition of *gāma* in the Word Analysis on Pār 2 M, where “a village of one hut” up to “a village of four huts” are enumerated (Vin III 46,23–24).

⁶¹Alternative: “[inhabited by] beings who are not human.” Both possibilities are considered in Sp II 298,27–28: *amanusso nāma yo sabbaso vā manussānaṃ abhāvena yakkhapariggahhūto yato vā manussā kenaci kāraṇena puna pi āgantukāmā eva apakkantā*. “[A village uninhabited] by human beings/ [inhabited by] beings who are not human (Vin III 46,24) means: whichever [village] has been totally taken possession of by demons by virtue of the total absence of human beings, or whichever [village] the human beings leave (or: which the human beings leave for any reason) indeed with the wish to return again for any reason.” Cf. *Kkh-pt* 35,26–36,7; *Sp-t* II 123,26–24,5, 125,12ff.; *Vjb* 124,20ff., *Vmv* I 170,2–5, 15–17.

a “village” (*gāma*).⁶² Apart from a “village” and the “vicinity of a village” (*gāmūpacāra*),⁶³ the rest is called “wilderness” (*arañña*).⁶⁴

There, in order to avoid confusion, this classification should be known:

- (1) a house (*ghara*),
- (2) the vicinity of a house (*gharūpacāra*),
- (3) a village (*gāma*),
- (4) the vicinity of a village (*gāmūpacāra*).⁶⁵

(1) For “house” (*ghara*) means [the space] inside the place where the water falls from the eaves of the roof.⁶⁶

(2) Moreover, whatever water for washing bowls the women throw when standing at the door, [both] the falling place of that, and the falling place of a winnowing basket or a sweeping brush thrown outside in the usual way by women standing inside the house, and the enclosure made to prevent oxen entering, by joining the two corners in the front of the house, then fixing in the middle a gate with a wooden bolt, all of this indeed means “vicinity of a house” (*gharūpacāra*).⁶⁷

(3) [The space] inside the falling place of a clod thrown in this way — as young men showing off their strength stretching forth their arm

⁶²This whole passage repeats the definition of *gāma* as given in Vin III 46,23–27, only the *gonisādiniviṭṭho pi gāmo* is missing here.

⁶³*BD* I 74 “precincts of the village”. The definition of *gāmūpacāra* is given Vin III 46,27–30.

⁶⁴Quotation from Vin III 46,30–31.

⁶⁵The explanations in Sp of what is and what is not a village are much more detailed. The categorization given in Kkh is traced back to the Mahā-Aṭṭhakathā by Sp II 299,25ff. and taken as the standard. The relevant passage of Sp has been dealt with in Kieffer-Pülz 1992: B 13.3.1, and von Hinüber 1996: 107f.

⁶⁶For *nibbakosa*, see Kieffer-Pülz 1992: B 7.2.2.

⁶⁷Cf. Sp II 299,25–300,4; for the definitions of Kurundī and Mahāpaccarī, see Sp II 299,21–23; The third method refers to the vicinity around the whole house, see Vjb 125,1f.; Sp-ṭ II 124,26–27; Vmv I 170,17–22.

throw a clod of earth — by a man of medium strength standing in such a vicinity [as described in (2)] of that house, which, moreover, is the outermost house [of a village],⁶⁸ means “village” (*gāma*).

(4) ⁶⁹–[The space] inside the falling place of another clod of earth [thrown] from there (i.e. from the village)⁷⁰ means “vicinity of a village” (*gāmūpacāra*).⁶⁹ The place where the clod rolls after it has fallen is not to be taken into consideration.

(4.1) In the case of an enclosed village, however, only the enclosure (*parikkhepa*) constitutes the exact determination (*pariccheda*) of a village.⁷¹ If [such an enclosed village] has two thresholds,⁷² [the space] inside the falling of a clod [thrown by] someone standing by the innermost threshold means “vicinity of a village” (*gāmūpacāra*).⁷³ **⟨42⟩** For also in the Word Analysis [of the Vinaya] the meaning is to be understood only this way.⁷⁴

(4.2) There, whatever vicinity is shown for a village which is not enclosed, by virtue of that the offence [against the rule] “entering a village at the wrong time” (Pāc 85 M⁷⁵), etc.,⁷⁶ is to be determined.⁷⁷

⁶⁸See n. 60.

^{69–69}= Sp II 300,6–7.

⁷⁰But, see Vism 72,10–11, where the second clod is also thrown from the vicinity of a house. See Kieffer-Pülz 1992: B 13.3.1, p. 317 and n. 550.

⁷¹Cf. Sp 300,20–21.

⁷²*indakhīla*, see DOP s.v.; Kieffer-Pülz 1992: 312f.

⁷³Cf. Sp 299,6–7.

⁷⁴Vin III 46,26–30: *gāmūpacāro nāma parikkhittassa gāmassa indakhīle ʔhitassa majjhimassa purisassa leḍḍupāto, aparikkhittassa gāmassa gharupacāre ʔhitassa majjhimassa purisassa leḍḍupāto*. (See BD I 74).

⁷⁵Pāt 78,17–20 = Vin IV 166,11–12.

⁷⁶There exist many rules for which the exact definition of a village, etc., plays an important role; for instance *saṃvidhānasikkhāpadaṃ* (Pāc 27 M/Sgh 3 N), *uyyojanasikkhāpadaṃ* (Pāc 42 M/123 N), *theyyasatthasikkhāpadaṃ* (Pāc 66 M), *saṃvidhānasikkhāpadaṃ* (Pāc 67 M), *kuladūsakasikkhāpadaṃ* (Sgh 13 M/17 N), *sāsaṅkasikkhāpadaṃ* (Niss 29 M, Pāt 4 M), and *asaṅkaccikasikkhā-*

Thus the remainder, apart from the village and the “vicinity of a village,” means “wilderness” in this rule (i.e. Pār 2 M).⁷⁸

The [phrase] “*from the village or from the wilderness*” (Pāt 8,9), however, is only a mere wider concept.”⁷⁹ But whatever house, vicinity of a house, village, or vicinity of a village is spoken of in order to show their (i.e. the village’s and the wilderness’s) exact determination, there arises indeed an [offence entailing] expulsion for anyone taking away from there an [object that is] the subject matter of a *pārājika* [rule].⁸⁰

Not given (adinnaṃ, Pāt 8,9) means: the property of another human being.⁸¹

⁸²–*What is counted*⁸³ *as theft (theyyasāṅkhātāṃ, Pāt 8,9–10)*: herein [27] thief (*thena*) means robber (*cora*); the mental disposition of a thief

padaṃ (Pāc 96 N). Kkh-ñṭ (196,12–13: *vikāle gāmapavesanādīsū ti ettha ādisaddena asaṅkaccikāgāmapavesanaṃ saṅgaṇhāti*) in explaining *ādi* refers to Pāc 96 N.

The reason for this explicit statement in Kkh is that for Sgh 3 N another definition of *gāma* and *gāmūpacāra* is valid.

⁷⁷The definition of the *gāmūpacāra* of a village that is not enclosed as given in the Vinaya is also valid for the rule Pāc 85 M and others (e.g. Pāc 96 N, see n. 76), mentioned only by *ādi*. See also Sp II 300,31–301,2: *tato gharaṃ gharūpacaro gāmo gāmūpacāro ti esa vibhāgo saṅkiyati, asaṅkarato c’ ettha vinicchayo veditabbo, vikāle gāmapavesanādīsū*. “On account of that the classification (1) house, (2) vicinity of a house (3) village [and] (4) vicinity of a village becomes confused. Here, however, the regulation (*vinicchaya*) has to be known without confusion for [the rule] ‘entering a village at the wrong time’ [Pāc 85 M], etc.”

⁷⁸Cf. Sp II 301,8–11. For other definitions of *arañña*, see Sp II 301,11ff.

⁷⁹*desanāmattam*; which means that other — not explicitly mentioned — objects, can also be subsumed under the respective term. In the present case *ghara*, *gharūpacāra*, *gāma*, *gāmūpacāra*, etc., are all subsumed under *gāmā*.

⁸⁰Kkh-ñṭ 196,20 explains it by *pādagghānakam*, “[an object] worth one *pāda*”.

⁸¹Cf. Sp II 301,24–28.

^{82–82}= Sp II 302,3–12.

⁸³Translated “called” in Pātimokkha.

is theft (*theyya*); the [word theft (*theyya*)] is [another] designation for “thinking of taking away”. *Saṅkhā* (“counting”) and *saṅkhāta* (“counted”) are one in meaning. The [words *saṅkhā* and *saṅkhāta* are another] designation for “number/group”, as in [the phrase] “for, the group ‘diversification’ has perception as its origin”.⁸⁴ That “*which is counted as theft*” (*theyyasaṅkhāta*): that part [of the thoughts which] is “theft”.⁸⁵ The meaning is: that single group of thoughts counted as thoughts about theft. And this accusative [is used] in the sense of an instrumental; therefore, as to the meaning [*theyyasaṅkhātam*] is to be regarded as “by means of what is counted as theft” (*theyyasaṅkhātena*). And whoever takes up by means of what is counted as theft, since he has thoughts of theft, therefore to show only the meaning without taking the letter into consideration, the Word Analysis on it (= *theyyasaṅkhātam*) is taught thus: “[one who] has thought[s] of theft, [one, who] has thought[s] of taking away.”⁸⁶ [Thus] it is to be understood.⁸⁷

Should seize (*ādiyeyya*, Pāt 8,10) means: should take by virtue of one or other of the twenty-five [types of] taking away. But those [types of] taking away⁸⁷ are to be thoroughly examined putting together five groups of five. The five groups of five are:

- (1) the group of five concerning various objects (*nānābhaṇḍapañcaka*),
- (2) the group of five concerning a single object (*ekabhaṇḍapañcaka*),
- (3) the group of five [beginning] with one’s own hand (*sāhatthikapañcaka*),
- (4) the group of five [beginning with] “action preceding [the main action]” (*pubbapayogapañcaka*), and

⁸⁴Sn 874d.

⁸⁵i.e. it is a *kammadhāraya* compound.

⁸⁶Vin III 46,34 (*BD I 74*).

⁸⁷⁻⁸⁷= Sp II 303,31–304,1.

- (5) the group of five [beginning with] “taking away by [simple] theft” (*theyyāvahārapañcaka*).⁸⁷

There, the first two groups of five (1–2) are to be understood by virtue of the words uttered in the Word Analysis on this very word (i.e. on *ādiyeyya*)[, i.e.]

- “(i) should seize (*ādiyeyya*),
(ii) should take (*hareyya*),
(iii) should take away (*avahareyya*),
(iv) should cause [someone] to deviate from the path he is moving along (*iriyāpatham vikoṭṭeyya*),
(v) should move from [its] place (*thānā cāveyya*).”⁸⁸

There, (1) “the group of five concerning various objects” (*nānā-bhaṇḍakapañcaka*) is to be regarded by virtue of animate (*saviññānaka*) and of inanimate (*aviññānaka*) [objects],⁸⁹

- (2) the other [group of five] (i.e. *ekabhaṇḍakapañcaka*)⁹⁰ only by virtue of animate [objects]. **(43)**

How [is this]?

(i) ⁹¹–“Should seize” (*ādiyeyya*, Kkh 42,23) means: [if a bhikkhu] lays [legal] claim to a pleasure park, [he commits] an offence of wrong doing. [If] he creates doubt for the owner, [he commits] a grave offence. [If] the owner, thinking, “[This] will not be mine,” gives up [his legal] claim, [the bhikkhu commits] an offence entailing expulsion.

(ii) “Should take” (*hareyya*, Kkh 42,23) means: [if,] while taking the goods of another, he touches the load on his head with the thought of stealing [it, he commits an offence of] wrong doing. [If] he shakes it,

⁸⁸Vin III 46,35–36 (*BD* III 74).

⁸⁹Cf. Sp II 302,20–21.

⁹⁰Since the first two were mentioned before, *itaram* must refer to the other of the two. This tallies with Sp II 302,20; Vin-vn-pt I 52,18–21.

⁹¹⁻⁹¹= Sp II 302,22–303,6.

[he commits] a grave offence. [If] he puts it down on his shoulder,⁹² [he commits] an [offence entailing] expulsion.

(iii) “Should take away” (*avahareyya*, Kkh 42,23) means: [if,] being spoken to with the words, “Goods have been deposited [by me]; give me [back] the goods,” [a bhikkhu] says “I do not take them,” [he commits an offence of] wrong doing. [If] he creates doubt for the owner, [he commits] a grave offence. [If] the owner, thinking, “This will not be mine” gives up [his legal] claim, [he commits] an [offence entailing] expulsion.

(iv) “Should cause [someone] to deviate from the path he is moving along” (*iriyāpatham vikoṭṭeyya*, Kkh 42,23) means: [If, thinking] “I will lead the one taking the goods with him,” he causes [the person with the goods] to pass [the original path by]⁹³ the first step, [he commits] a grave offence; [if] he causes [the person with the goods] to pass [the original path by] the second step, [he commits] an [offence entailing] expulsion.⁹⁴

(v) “Should move from [its] place” (*thānā cāveyya*, Kkh 42,23) means: [if] with the thought of stealing he touches property standing on [firm] ground, [he commits an offence of] wrong doing. [If] he shakes it, [he commits] a grave offence. [If] he moves it from its place, [he commits] an [offence entailing] expulsion.⁹¹

Thus first of all “the group of five concerning various objects” (*nānābhaṇḍapañcaka*) is to be understood.

⁹²Since it is a load to be carried on the head, putting it down from the head is moving the goods from their place (*thānā cāveti*), therewith the *actus reus* of a *pārājika* is accomplished.

⁹³Regularly in other instances of Par 2 M, the first and second steps refer to the passing of the boundary of that space within which the respective object can be touched, carried around, etc., without an offence being committed in this way (Sp II 303,6–10; 359,6–7). Here, however, the transgressing by one and two steps refers to the transgression of the original path.

⁹⁴Cf. Sp II 303,1–3.

(2) “The group of five concerning a single object” (*ekabhaṇḍa-pañcaka*) is to be known by virtue of

- (i) seizing (*ādiyana*),
- (ii) taking (*haraṇa*),
- (iii) taking away (*avaharaṇa*),
- (iv) causing [someone] to deviate from the path he is moving along (*iriyāpathavikopana*),
- (v) moving from [its] place (*thānacāvana*) by the means as described [above]⁹⁵ beginning with the laying legal claim⁹⁶ to a slave or animal which has an owner.⁹⁷

(3) What about “the group of five ‘[beginning] with one’s own hand’”? (*sāhatthikapañcaka*)

- (i) with one’s own hand (*sāhatthika*),
- (ii) [done by] commanding [someone else] (*āṇattika*),
- (iii) throwing out (*nissaggiya*),
- (iv) accomplishing a legal case (*atthasādhaka*),
- (v) giving up the legal claim (*dhuranikkhepa*).⁹⁸

There (i) “with one’s own hand” (*sāhatthika*) means: with his own hand he takes away the goods of another.

(ii) “[Done by] commanding [someone else]” (*āṇattika*) means: he commands another, “Take away the goods of so-and-so.”⁹⁹

(iii) “Throwing out” (*nissaggiya*) means:¹⁰⁰ throwing outside while standing inside the customs frontier or a [pre-]determined place.¹⁰¹

⁹⁵This refers to the definition of the words *ādiyeyya*, *hareyya*, etc., with respect to “the group of five concerning various objects” just given before (Kkh 43,1–16).

⁹⁶*abhiyoga* takes up the verb *abhiyuñjati* (Kkh 43,1).

⁹⁷This shows that the object of this group of theft is an animate being only, as declared in the beginning (Kkh 42,25–26). Cf. Sp II 303,12–15.

⁹⁸This fits Pār 2 M, but not the word *dhuranikkhepa* as used elsewhere, where it also means “burden, responsibility”.

⁹⁹Cf. Sp II 368,21–70,23.

¹⁰⁰The passage from (3) up to here corresponds to Sp II 304,10–16.

(iv) ¹⁰²–“Accomplishing a legal case”¹⁰³ (*atthasādhaka*)¹⁰⁴ means: he commands another: “When you are able, then take away the goods of so-and-so.” There, **⟨44⟩** if the other person, without obstacle (= unprevented), takes it away, for the one who gives the command it is an offence entailing expulsion at the very moment the command is given.¹⁰² Or **[28]** [if] he places sandals, etc.,¹⁰⁵ inevitably fit to absorb¹⁰⁶ oil worth a *pāda* into an oil jar belonging to another, [he

¹⁰¹Sp II 304,14–16; cf. Sp II 358,24–61,4.

¹⁰²⁻¹⁰²= Sp II 304,16–19.

¹⁰³CPD s.v. *attha-sādhaka*, “accomplishing one’s welfare, profitable”, but without references to the Vinaya literature. DOP does not list this compound. There are many possible meanings of *attha*; our suggestion is “legal case” on account of the explanations of the commentaries: Vmv I 173,17–20: *kiriya-siddhito puretaram eva pārājikāpattisaṅkhātāṃ atthaṃ sādhetī ti atthasādhako. attha vā attano vattamānakkhaṇe avijjamānam pi kiriya-siddhisāṅkhātāṃ atthaṃ avassaṃ āpattiṃ sādhetī ti pi atthasādhako*. “Quite before the completion of the activity one accomplishes a legal case counted as an offence entailing expulsion, [this is] **accomplishing a legal case**. Or, though at the moment, when one speaks, a legal case counted as a completed activity does not exist, one accomplishes inevitably an offence; [this] also [is] **accomplishing a legal case**”. The first explanation is to be found in Kkh-ñ 200,20–21 = Sp-ṭ II 128,30–29,1.

¹⁰⁴*atthasādhaka* differs from *āṇattika* insofar as the order to commit the theft is for the time after the command, whereas in the case of *āṇattika*, command and theft are simultaneous (Kkh-ñ 200,25–29; Sp-ṭ II 128,16–20; Vmv I 174,1–3).

¹⁰⁵Kkh-ñ 201,17 explains that *dukūlasāṭaka* (“a hempen cloth”), *cammakkaṇḍa* (“animal skins”), etc., are included in *ādi*.

¹⁰⁶*pivanaka* (lit. fit to drink, can drink); so in most parallels (Sp-ṭ II 129,3–4: *telāṃ avassaṃ pivanakānaṃ upāhanādīni*; Kkh-ñ 201,20: *telapivanakāṃ bhaṇḍaṃ*; Vin-vn-pt I 53,23: *pādagghanakatelapivanakam upāhanādikiñcivatthum*). Vin-vn-pt has *telapivanārahaṃ* instead in another instance (I 70,23f.: *telapivanārahaṃ dukūlasāṭakacammakkaṇḍādikaṃ bhaṇḍaṃ*). This clearly shows that the commentaries understood *pivanaka* in this way. Compare also Sp II 319,21–24.

commits] an offence entailing expulsion in the mere act of releasing [them] from his hand.¹⁰⁷

(v) “Giving up the legal claim” (*dhuranikkhepa*) should be understood by virtue of laying legal claim to a pleasure park or of goods which have been deposited.¹⁰⁸ Exactly the same principle also applies to someone not giving compensations (*bhaṇḍadeyya*) for temporary [goods].¹⁰⁹ This is the group of five [beginning] “with one’s own hand”.

(4) What is “the group of five [beginning with] ‘action preceding [the main action]’” (*pubbapayogapañcaka*)? It is

- (i) action preceding [the main action] (*pubbapayoga*),
- (ii) action together with [the main action] (*sahapayoga*),
- (iii) taking away by an arrangement¹¹⁰ (*saṃvidhāvahāra*),
- (iv) act of appointing [the time]¹¹¹ (*saṅketakamma*),
- (v) act [consisting in making] a sign (*nimittakamma*).

There, (i) “action preceding [the main action]” (*pubbapayoga*) is to be known by virtue of [there being] a command.¹¹²

¹⁰⁷Cf. the exact parallel for the first part at Sp II 304,16–20; parallels for the later part at Sp II 319,3–7 and 319,21–24.

¹⁰⁸Sp II 304,20–21 only mentions *upanikkhittabhaṇḍa*. Sp-ṭ II 129,23–25, Vmv I 174,4–6, Khuddas-ṅ 247,5–7 explain that the same principle applies to the case of laying legal claim on *ārāmas* (*ārāmābhiyuñjana*), etc., and of not giving compensation for temporary goods (*tāvakālikabhaṇḍadeyyānaṃ adāne*).

¹⁰⁹Sp II 350,17 *tāvakālikagahaṇe pi tath’ eva* (with the preceding lines 14–17) shows that in this case also compensation has to be paid.

¹¹⁰According to von Hinüber (1968: 117, n. 1), in the passage dealt with by him (Vin IV 64,11f.), *saṃvidahati* is used in the sense of “(einseitig) eine Verabredung festlegen” contrary to *saṃketa*- “gegenseitige Verabredung”. As the present case shows, this is not valid at the time of the commentaries, since here *saṃvidhakamma* describes a theft with a prior mutual arrangement, whereas *saṃketa* refers to an appointment of time.

¹¹¹*asaṃketa*, CPD s.v. “without appointing (a place)”, see also von Hinüber 1968: 117, with n. 273. *Samketa* in the context of theft, however, always refers to appointing a time, as Sp II 367,23–368,14 shows.

¹¹²= Sp II 304,24–25.

(ii) And “action together with [the main action]” (*sahapayoga*) is to be known by virtue of moving [the object] from [its] place¹¹³ and by virtue of taking fields, etc., in shifting the [boundary] pegs, etc.¹¹⁴

(iii) “Taking away by an arrangement” (*saṃvidhāvahāra*), means: the taking away after having arranged; after having consented: “We will take away such-and-such goods”. For, when they have gone [away] after having arranged [it] in this way, when these goods have been moved from [their] place by even one of them, it is taking away (i.e. theft) for all of them.¹¹⁵

(iv) “Act of appointing [the time]” (*saṅketakamma*) means act of making aware (*sañjānana*).¹¹⁶ For if, having fixed a time, such as the time of the morning meal, etc., the one spoken to [with the words:] “At such-and-such a time take away such-and-such goods”, takes [them] away neither after nor before (i.e. simultaneously with) the appointed time, for the one who appoints [the time] this is “taking away” at the very moment of appointing [the time].¹¹⁷

(v) “Act [consisting in making] a sign” (*nimittakamma*) means making a sign such as blinking with the eyes, etc., in order to produce awareness. For if the one spoken to [with the words] “Take it away” takes it away neither after nor before (i.e. simultaneously with) the making of the sign, for the one who makes the sign this is “taking away” at the very moment of making the sign.¹¹⁸

¹¹³This always is the main action in the case of theft.

¹¹⁴This second possibility is not mentioned in the parallel in Sp II 304,25.

¹¹⁵Sp II 304,26, refers to the Vinaya for this and the following two types of *avahāra*. However, a detailed discussion is to be found in Sp II 366,8–67,22.

¹¹⁶Cf. Sp II 367,23–24, where additionally *kālaparicchedavasena saññāṇa-karaṇan ti attho* (“the meaning is: making being aware by virtue of the exact determination of time”) is stated.

¹¹⁷For a detailed discussion, see Sp II 367,23–68,14.

¹¹⁸For a detailed discussion, see Sp II 368,15–20.

This is “the group of five [beginning with] ‘action preceding [the main action]’” (*pubbapayogapañcaka*).

(5)¹¹⁹–What is the “group of five [beginning with] ‘taking away by theft’” (*theyyāvahārapañcaka*)? They are

- (i) taking away by [simple] theft (*theyyāvahāra*),
- (ii) taking away by force (*pasayhāvahāra*),
- (iii) taking away by [pre]determination (*parikappāvahāra*),
- (iv) taking away by concealment (*paṭichannāvahāra*),
- (v) taking away by [moving] a lot marker (*kusāvahāra*).¹¹⁹

There, (i) whoever, having made a hole in a wall, etc., takes away [goods] without being seen, or, having deceived [others] by means of false weights and false coinage, etc., grasps [goods], for him, grasping [the goods] in this way, the “taking away” is to be known as “taking away by [simple] theft” (*theyyāvahāra*).¹²⁰

(ii) But anyone who overpowers [others]¹²¹ then by applying force grasps the property of others, (45) like a village robber, etc., or who grasps more than the tax [which is] suitable for him, — exactly in the manner described¹²² — as king’s servants, etc., do, for him, grasping in this way, the “taking away” is to be known as “taking away by force” (*pasayhāvahāra*).¹²³

(iii) Grasping after [pre]determining, however, is called “taking away by [pre]determination” (*parikappāvahāra*). That is two-fold by virtue of goods and place.

There, this is “[pre]determination of goods” (*bhaṇḍaparikappa*): Someone who needs a piece of cloth, enters an inner room thinking, “If there is a piece of cloth I will grasp it. If [there is] thread I will not grasp [it].” In the darkness he grasps a sack. If there is a piece of cloth in it,

¹¹⁹–¹¹⁹= Sp II 304,27–29.

¹²⁰Cf. Sp II 375,19–22.

¹²¹Sp II 375,22 adds *pare*

¹²²i.e. by force; see Sp II 375,26: *balakkārena*.

¹²³Cf. Sp II 375,22–28.

there is an offence entailing expulsion in the very act of picking it up (i.e. the sack with the cloth in it). If there is thread, [this] preserves [him from an offence]. If he takes it outside, opens it, knows, “It is thread,” carries it back again, [and] puts it [back, this] indeed preserves [him from an offence]. If he knows, “It is thread,” but thinks, “Whatever is received is to be grasped,” [and] goes away, he is to be treated according to the number of steps [he takes].¹²⁴ If having put it on the ground he grasps it [again], there is an offence entailing expulsion in picking it up. If [he is] followed [by people] crying, “Robber, robber,” [and] having thrown it down he runs away, [that] preserves [him from an offence]. If the owners see it and grasp it, [that] indeed preserves [him from an offence]. If someone else grasps it, compensation [has to be paid]. If the owners turn back [i.e. stop following him], then he, who after having seen [the object] himself, grasps [it thinking,] “How much more is the object grasped by me with the perception¹²⁵ [that it is a rag robe from a] dust heap¹²⁶ my property now;”¹²⁷ even he [has to pay]

¹²⁴*padavārena* is used in Sp in instances where bhikkhus with the intention of stealing deliberately leave the space protected by a respective command. For instance, if a bhikkhu deviates from the allowed route and goes into the wilderness, which is not allowed (e.g. Sp 323,22–23; 351,5, 28; 352,4, 13–14, etc.). From the point of content, the expression *pāduddhāra* (“taking the feet off the ground”; Kkh 157,21; Sp 334,22, 28; 376,19–20; 774,34–35; 775,2) seems to refer to the same matter. Possibly the two divergent expressions result from different texts, since *padavārena* is used in the Kurundī, one of the early commentaries belonging to the so-called Sihalaṭṭhakathā (Sp 351,5), and *pāduddhāra* is used in the Mahāpaccaṛī, also one of the old commentaries (Sp 376,19–20). Cf. the discussion of this expression of the Mahāpaccaṛī in Vjb 141,21ff.

¹²⁵*saññā* in such constructions mostly implies that the impression is wrong.

¹²⁶*paṃsukūla* is allowed for bhikkhus, Vin I 280,35–37; 282,3–5.

¹²⁷What is meant is that the owners gave up the search, i.e. the object therefore does not have an owner. The bhikkhu now finds the object on the street, i.e. it is a rag robe, which is allowed for him, so he thinks that taking this object

compensation indeed. There, whatever [pre]determination occurs such as “If there is a piece of cloth, I shall grasp it”, this is called “[pre]determination of property” (*bhaṇḍaparikappa*).

“[Pre]determination of place” (*okāsaparikappa*), however, is to be understood thus: Someone [29] has entered someone else’s residence, etc. Seeing some desirable goods after making an assessment along the door of the inner room, the veranda, the entrance door of the lower [floor of the] palace, the gateway, the foot of a tree, etc., he determines, “If they see me here inside, I shall give it back as though having grasped it from a desire to see it while [I was] wandering around; if they do not see me, I shall take it.” For him, taking it there is “taking away” in the mere act of transgressing the [pre]determined assessment.¹²⁸ Thus whatever [pre]determination occurred in just the manner spoken of, that is “[pre]determination of place” (*okāsaparikappa*).

Thus the taking away of one who grasps, having [pre]determined by virtue of both these [pre]determinations is to be known as “taking away by [pre]determination” (*parikappāvahāra*).¹²⁹

(iv) Taking [something] away in covering it, however, is called “taking away by concealment” (*paṭichannāvahāra*). It is to be understood thus: Whatever bhikkhu in gardens, etc., seeing a signet ring, etc., belonging to others who have taken it off and put it down, <46> [thinking], “I will grasp it later,” covers it with dust or leaves, as long as he does not pick it up, for so long there is no “taking away” (*avahāra*). But if the owners, searching for it and not having seen it, go off with the mere intention, “Tomorrow we shall find out,” then for him, [when] picking it up, there is “taking away” in the act of picking it up (*uddhāre*). One, however, grasping [it] at the very time of concealing

now, when it is a rag robe, makes it even more his property than before (i.e. when the owners had not given up their claim).

¹²⁸i.e. the range within which the bhikkhu will return the object he has taken is defined by him mentally depending on where he is, terrace, lower floor of a palace, etc.

¹²⁹The whole section (iii) corresponds to Sp II 375,29–77,20.

[it], with the perception that it is his own, [thinking], “This is my property,” or with the perception that it is [a rag robe from] a dust heap, [thinking], “Now they have gone, these are goods thrown away,” [has to pay] compensation. Even if they, having come back on the second or third day, having searched and not having seen [it], go away having given up [their] legal claim, [and] it is grasped [by him, he has to pay] compensation indeed. For him being reprimanded afterwards [by someone] knowing [about it, but] not giving it back, there is “taking away” in the giving up of the legal claim by the owners. Why? Because it was not seen by them because of his action. But whoever with the thought of stealing, not covering property of such a kind lying in such a place, [but] treading on it with his foot, pushing it into the mud or the sand, for him there is “taking away” in the mere act of pushing it in.¹³⁰

(v) Now taking away by having moved the lot marker, however, is called “taking away by [moving the] lot marker” (*kusāvahāra*). This too is to be understood thus: If any bhikkhu has dropped [on his share] a lot marker, made of bamboo or made of palm leaf, with [his] sign on it; when robe material is being shared out, he, being desirous of taking the share of another, [which is] lying in the vicinity of his own share, [which is] less valuable, or more valuable [than his own], or of equal value, picks up the lot marker which had fallen on his own share because of his desire to drop it on the share of another, this preserves [him from an offence].¹³¹ First of all, when it has fallen¹³² on the share of another, he is preserved indeed [from an offence]. But if, when it has fallen there, he picks up the lot marker of the other one from that other one’s share, there is “taking away” in the mere act of picking it up.¹³³

¹³⁰Section (iv) corresponds to Sp II 377,21–78,8.

¹³¹That means that up to this point of his preparations for theft, he is still without guilt.

¹³²Kkh reads *pātike*; w.r. for *pātite*?

¹³³The arrangement of actions is as follows: (1) the thief picks up his own lot marker from his own share; (2) he drops it on the share of the other; (3) he picks up the lot marker of the other from the other one’s share, and becomes

If at the very first he picks up the lot marker of another from that other one's share, in picking [it] up because of his desire to drop it on his own share [this] preserves [him from an offence]; also in dropping it, [this] preserves [him from an offence]. <47> [If] he picks up¹³⁴ his own lot marker from his own share, however, [this] preserves [him from an offence] only in the act of picking it up. For one who, having picked it up, drops it on another's share, there is "taking away" in the mere release from his hand.¹³⁵ This is "taking away by [moving the] lot marker" (*kusāvahāra*).¹³⁶

Thus, the meaning has been made clear of what was said [above, i.e. (Kkh 42,18–19)] "'should seize' (*ādiyeyya*) means: should take away by virtue of one or other of the twenty-five [types of] taking away".

In such manner (*yathārūpe*, Pāt 8,10) means: of such a kind.

Of taking what is not given (*adinnādāne*, Pāt 8,10) means: of taking the property belonging to another which is not given.

Kings (*rājāno*, Pāt 8,10): this is said with reference only to Bimbisāra. [30] Other [kings] whether they might or might not act like that are not authoritative.

Or would beat (*haneyyūṃ vā* Pāt 8,11) means: they would strike with hands, etc., or they would cut with a weapon.

guilty in that very moment. Thus the fourth action, dropping the other one's share on his own share, is not described any more.

¹³⁴*uddharati*. Kkh reads *uddharato*, Sp in the parallel passage reads *uddharati*.

In the preceding sentences that have the same structure *uddharati* is used throughout (Kkh 46,19, 21, 22).

¹³⁵This is an example for the same type of theft, but the actions are arranged the other way round: (1) the thief takes the lot marker of the other person from the other one's share; (2) he drops it on his own share; (3) he lifts his own lot marker from his share (up to this point no offence arises); (4) he drops his own lot marker on the other's share. With the release of his own lot marker from his hand the monk becomes guilty.

¹³⁶Section (v) corresponds to Sp II 378,9–79,6.

Or would bind (bandheyyuṃ vā, Pāt 8,11) means: or they would bind with ropes and bonds, etc.

Or would expel (pabbājeyyuṃ vā, Pāt 8,11) means: or they would drive [him] off.

You are a robber, you are a fool, you are stupid, you are a thief (coro 'si, bālo 'si, mūlho 'si, theno 'si, Pāt 8,11–12): With such words they abuse [the guilty person]. In respect of the taking of what sort of things that are not given do kings act thus? In respect of [the taking of] a *pāda* or something worth a *pāda*.¹³⁷

The bhikkhu taking anything that is not given of such a nature (tathārūpaṃ bhikkhu adinnaṃ ādiyamāno, Pāt 8,12–13) means: a bhikkhu taking away, by one “taking away” (*avahāra*) or another of the [twenty-five “types of] taking away” described [above],¹³⁸ such goods, which are not given, as a *pāda* of an ancient *kahāpaṇa*¹³⁹ or worth a *pāda*, whether they are endowed with life or are lifeless, wherever they are placed, in the earth, etc.,¹⁴⁰ he is expelled [from the community]. What need to talk about anything [worth] more than that?

¹⁴¹[This rule] was prescribed at Rājagaha (= 1. *provenance*) concerning Thera Dhaniya (= 2. *individual*) with respect to the subject

¹³⁷This value is given in the *akaraṇiya* (Vin I 96,32–33) preceding the formulation of Pār 2 M; the Word Analysis of Pār 2 M, however, has *māsaka* (Vin III 47,3–5) as well as *pāda* (Vin III 47,14–15), and the introductory story to Pār 2 M explains that at that time in Rājagaha one *pāda* equalled five *māsaka* (Vin III 45,10–11). For a discussion of all this, see above § 2.1.

¹³⁸Kkh 42,18–47,3.

¹³⁹According to Sp II 308,28–29 the *pāda* is a quarter of a *kahāpaṇa* (one *kahāpaṇa* = four *pāda*), which following Kkh-ñ 206,9–10, is the old *kahāpaṇa*. According to the Vinaya definition one *pāda* = five *māsaka* (Vin III 45,10–11), see n. 137.

¹⁴⁰This refers to the various places listed and described in the Vinaya, where the goods may be placed.

¹⁴¹Here starts the classification of Pār 2 M. The number and the name of the respective classification category are given in round brackets.

matter (= 3. *subject matter*) of taking [goods] which had not been given, [i.e.] the king's [pieces of] wood. This[. i.e.] "from a village or from a wilderness" (Pāt 8,9; Kkh 41,7), is the supplementary prescription (*anupaññatti*) herein (i.e. in Pār 2 M). [The rule] is a prescription in common [for both bhikkhus and bhikkhunīs] (*sādhāraṇapaññatti*) (= 4. *prescription*). It is connected with commanding [someone else] (= 5. *command*).¹⁴² An offence of wrong doing [arises] in respect of an action preceding [the main action] (*pubbapayoga*) beginning with going¹⁴³ in order to take¹⁴⁴ [goods]. In the case of touching, an offence of wrong doing [arises]. In shaking [something which is] the subject matter of an offence entailing expulsion, a grave offence [arises]. For [someone] taking [something not given], an offence of wrong doing [arises] for [something worth] a *māsaka* but less than a *māsaka*. In the case of [something worth] more than a *māsaka* or less than five *māsakas*, a grave offence [arises]. In the case of five *māsakas* or more than five *māsakas*, an offence entailing expulsion [arises].¹⁴⁵ Through-out, <48> the regulation is to be understood by the time of taking it, and by the region of taking it, and by the increase or decrease [in value] by

¹⁴²i.e. an offence against this rule can be committed by commanding someone else to steal.

¹⁴³Sp II 310,3–314,25 describes in detail the various *pubbapayoga* and *sahapayoga* in connection with theft. The activities mentioned are taken from the casuistry given in the Vinaya (Vin III 47,27ff.). Offences resulting from *pubbapayoga* are *dukkata* or *pācittiya* offences depending on the rule which is violated by the respective *pubbapayoga*. "Going" with the intention to commit the theft belongs to the *pubbapayoga*, and is qualified as a *dukkata* offence in the Vinaya (Vin III 47,37; 48,22.29.36; etc.). Sp II 310,8–11 explains that a bhikkhu going to steal goods, commits a *dukkata* offence with each change of body and speech, even if he does not reach the place where the goods are placed. Cf. Sp II 311,27ff.

¹⁴⁴Kkh 47,22 reads *karaṇatthāya* (also the reading of E^c) without any vv.ll. Kkh B^e, however, reads *haraṇatthāya*, which makes much more sense here.

¹⁴⁵See Vin III 52,15–20 with reference to water.

reason of use, of exchanging [the content] of a vessel, etc.¹⁴⁶ (= 6. [sort of] offence). There is no offence for one who thinks it is his own, in the case of taking on trust, in the case of a temporary thing, in the possession of a ghost (*peta*), in the possession of an animal, for one who thinks it is a [rag robe from a] dust heap, and for one who is insane, etc. (= 7. non-offence). [The offence against this rule] is a failure of virtuous conduct (*silavipatti*) (= 8. failure). These are the five constituent parts (*aṅga*) herein: (i) it belongs to others referring to another human being, (ii) the awareness that it belongs to others, (iii) it is a valuable requisite,¹⁴⁷ (iv) there is the intention of stealing, and (v) there is a

¹⁴⁶Sp II 305,1–308,23 discusses the five conditions (*pañca thānāni*), i.e. *vatthu*, *kāla*, *desa*, *aggaha*, *paribhoga*, which are to be considered in estimating the value of a stolen object (see above, 3.2), the fifth being the “use” (*paribhoga*) diminishing the value of the goods which are stolen. Kkh lists only the terms *kāla*, *desa*, and *parihina/aparihina*, the last being specified by *paribhoga-bhājanaparivattanādi*; *paribhoga* is clear, but the exact meaning of *bhājana* and *parivattana* is not. Perhaps they form a compound, and pick up *bhājan'-antaraparivattanēpi* (“also by exchanging the content of a vessel (?)”, Sp II 308,14), which is listed as one of the means by which the value of an object decreases. Kkh-ñ 206,23ff., explains that Kkh here gives the short version, and quotes the whole passage from Sp (II 305,1–308,23).

¹⁴⁷Vin I 305,10–13 differentiates between *lahubhaṇḍa lahu-parikkhāra* and *garubhaṇḍa garu-parikkhāra*. *Lahubhaṇḍa lahu-parikkhāra* are goods to be divided among the saṅgha present. *Garubhaṇḍa garu-parikkhāra*, however, must not be given away or transferred and are indivisible (*avissajjika*, *avebhaṅgika*). They belong to the Saṅgha of the four directions of the past and future. Five *garubhaṇḍa* not to be transferred (*avissajjiyāni*) are listed in the Cullavagga (Vin II 170,23–35): (1) *ārāma*, *ārāmavattu*, (2) *vihāra*, *vihāravattu*, (3) *mañca*, *pīṭha*, *bhisi*, *bimbohana*, (4) *lohakumbhī*, *lohābhāṅaka*, *lohavāraka*, *lohakaṭṭhā*, *vāsī*, *pharasu*, *kuṭṭhārī*, *kuddāla*, *nikhādāna*, (5) *vallī*, *veḷu*, *muñjababbaja*, *tiṇa*, *mattikā*, *dārubhaṇḍa*, *mattikābhaṇḍa*. The same five categories are also defined as *avebhaṅgiya* (Vin II 171,32–38). To transfer one of these goods is to commit a grave offence (Vin II 170,25–26).

Sp explains that *garubhaṇḍa* in connection with Pār 2 M describes goods worth five *māsaka* (Sp II 484,12–14). In the context of Pār 4 M, however, Sp refers to the Cullavagga passage cited above (Sp II 484,15–25). Here in the

“taking away” by virtue of the [twenty-five “types of] taking away” described [above]¹⁴⁸ (= 9. *constituent factor*). The [offence against this rule has the] origin (= 10. *sort of origin*) of taking what is not given (*adinnādānasamuṭṭhānaṃ*); [it originates in] activity (= 11. *activity*¹⁴⁹), has acquittal because of [lacking] awareness (= 12. *awareness*), is [dependent on] intention (= 13. *intention*), [is] a fault according to common opinion (= 14. *faults*), [is a] bodily deed (= 15. *deed*), a verbal deed (= 15. *deed*), [is done with an] unwholesome thinking (= 16. *thinking*), [and involves] three feelings (= 17. *feelings*).

The commentary on the second [rule] entailing expulsion is finished.

classification of Pār 2 M *garubhaṇḍa* must have the meaning “goods worth five *māsaka*”, since only if this condition is fulfilled, do we have the third *aṅga* necessary for an offence against Pār 2 M.

¹⁴⁸See Kkh 42,18–47,3.

¹⁴⁹*kiriyaṃ*; Kkh 48,9 *kiriya* with v.l. *kiriyaṃ*. The latter is the better reading, since the classification categories refer to the word *sikkhāpada*.