

Be Wary of 'Discarded' Property

By Mathew B. Tully Q. If I find something discarded on base, is it ever OK to take it?

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Never would the military want its members to adhere to the motto, "Finders keepers, losers weepers." Service members need to be very careful when they take and keep property they find. In some cases, the "finders" end up being thieves in violation of Article 121 of the Uniform Code of Military Justice. The important issue is whether the found property was abandoned or lost. As the U.S. Air Force Court of Criminal Appeals noted in *U.S. v. Thomas M. Meeks* (1991), owners relinquish their right to abandoned property; not so with lost property. Service members who take abandoned property are not thieves, but those who take lost property are, so long as they intended to steal it and had "a clue about the identity of the owner," according to the court. The Meeks case involved an airman who, after doing his laundry, found an extra T-shirt that did not belong to him. He wore the shirt to chapel, where a sergeant confronted him claiming to own the shirt. The airman promptly returned it but was later charged with larceny. The court found that the T-shirt qualified as lost property and that the airman did not initially take the shirt from the laundry room with the intent to steal it. He had no clue to whom it belonged and quickly returned it when he learned the owner's identity. The court dismissed the larceny charge. Of course, there is always the possibility a service member could mistake property - lost or otherwise - as being abandoned. If that happens, and the service member is arrested, he, with the help of a military law attorney, could raise a defense of mistake of fact. The case *U.S. v. Stanley D. Morris* (2008) involved an Army sergeant charged with, among other things, attempting to sell military property in violation of Article 108. The sergeant had attempted to sell 37 cases of unused MREs. He believed he was authorized to sell them because he had previously discussed with an officer sending them to Hurricane Katrina victims. A civilian contractor also told the sergeant he was going to throw the MREs away and that the sergeant could take them. A military judge accepted the sergeant's guilty plea after establishing the sergeant did not reasonably believe he owned the MREs. However, the Army Court of Criminal Appeals noted that the sergeant's mistaken belief needed only to be honest for a mistake of fact defense - not reasonable. As such, the court dismissed the charge. Contact a military law attorney immediately if you have been charged with larceny or wrongful sale of military property. Depending on the circumstances, an attorney can show that you lacked the intent to commit any wrongdoing, that there was a mistake of fact, or that the property was abandoned.