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LARCENY

The defendant could be charged with larceny under s 117 of the *Crimes Act 1900* (NSW)). However this section only stipulates the punishment for larceny. According to common law; ***Ilich (1987)*** larceny consists of the following actus reus and mens rea elements which must be proved by the prosecution beyond reasonable doubt (*Woolmington*)

ACTUS REUS

a) Taking and carrying away

First the prosecution must prove that [DEFENDANT'S] movement of [THE OBJECT] was enough to constitute asportation, or the physical removal of property without a transferral of possession (***Croton (1967)***). The facts [SPECIFIC FACT IF APPLICABLE] suggest that [DEFENDANT] satisfied this element, as his/her movement of [the object] was a positive act (***Thomas (1953)***), and a minimal movement is sufficient (***Lapier (1784)***).

b) Property capable of being stolen

At common law not all property can be stolen. As discussed, the property has to be capable of being taken and carried away. This means that property must be of tangible value. From the facts it is evident that [the object] is tangible (NB: tangibility can be slight eg gas stolen from a pipe: ***White (1853)***). The facts also suggest that [the object] has value, as even something of the slightest value is enough (***Perry (1845)***).

c) Belonging to another

Larceny was developed as an offence against possession, but has been extended to ownership and control. From the facts it is evident that [defendant] took [the object] out of [victim's] [insert one of the following and copy out why it relates to the specific facts]:

Actual possession:

- Immediate and direct physical control over property with intention to possess (***Moors v Burke (1919)***). A person has actual possession if:
- Illegal property (eg unlawful possession of drugs) is still subject to property rights and a person may still have possession: ***Anic, Stylianou & Suleyman (1993)***. Thus, an offence of larceny can still arise from the theft of unlawfully possessed property.

There is no requirement that the person in possession is aware of the existence of the property. In ***Hibbert v McKiernan (1948)***: a golf club possesses all golf balls lost in the grounds, even if it doesn't know how many, because the golf club's intention to exclude others from interfering with the land shows that it has some degree of physical control. Therefore balls could be stolen.

Constructive possession – that is, D had the power and intention to possess and control property without direct control over or actual possession of it. (***Ellis v Lawson***)

E.g. possession that is held by an employee within the terms of their employment contract is considered to be in the constructive possession of their employer.

- ***Ellis v Lawson*** (1987) → shop assistant allowed D to borrow the work radio, knowing that the owner did not consent to this. D was found guilty of larceny since the owner had remained in constructive possession of the radio and did not consent
- ***Hibbert v McKiernan*** (1948) → is an example of constructive possession – if the property is **found on a person's enclosed lands** (for the purposes of larceny) it will be constructively in the possession of that person, even if they are unaware of it.
- ***Hays*** (1958) → V left his video camera and bag in taxi. Another passenger, D, got in, taxi driver thought it was D's property and reminded him to take it. D was charged with larceny. Court: Taxi driver only had physical custody of the camera + bag; constructive possession remained with the original owner. D found guilty.
- ***Williams v Phillips*** (1957) → Placing property in an employer's cart/sack etc is enough to give constructive possession to the employer. Thus if the property is removed with the requisite intent it can be larceny:

Control – when he/she has 'manual custody', or by having the exclusive right/power to place his/her hands on it and so have manual custody when he/she wishes (***Moors v Burke*** (1919)). Property can be stolen from someone who is merely in control of it, rather than having possession: ***Harding*** (1929)

d) Without the consent of the owner

The taking of property must be a trespass in order for larceny to have been committed (***Ellis v Lawson*** (1987)). That is, [defendant] must have taken [victim's] property without his/her consent (***Croton*** (1967)). The prosecution must prove beyond reasonable doubt that there was a lack of consent; evidence of non-consent is not necessary (***Middleton*** (1873), reaffirmed by HCA in ***Kennison v Daire*** (1986)). From the facts, [Insert one of the following]

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| <ul style="list-style-type: none"> a) It is clear that [victim] gave consent when he/she [insert specific facts], and so it appears this element is not satisfied. b) It is clear that [victim] did not give consent, as [insert specific facts], and so this element is satisfied. c) [DEFENDANT] might claim that [VICTIM] consented when [INSERT SPECIFIC FACTS] |
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