

1. Identify the accused (divide working base on offender);
2. Identify charges;
3. What needs to be proved to sustain an argument? (what is the test to establish liability/complete the test, provide all elements, give a conclusion at every stage; *E.g. 'this is unclear, but the prosecution is likely to satisfy...'*)
4. Provide an authority after each statement of law;
5. Apply the law to the facts;
6. Conclusion *e.g. 'finding with respect to actus reus/mens rea/causation'*

After identifying the accused, discuss potential charges/evaluate viability (as above), then discuss issues (*e.g. mens rea and intoxication, claim of right, or mistake, then, address possible defences*)

- *'the facts are silent as to consent'*
- Don't forget: discuss temporal coincidence, either, after analysis of *actus reus* and *mens rea* or in the course of evaluation; requires own separate heading.

7B Property Offences: Larceny

As per **Illich 1987**: larceny is committed by a person who, without the consent of the owner, fraudulently and without claim of right made in good faith, takes and carries away anything capable of being stolen with intent, at the time of such a taking, to permanently deprive the owner thereof.

- **If there are any issues of temporal coincidence (most likely, pertaining to consent) for larceny, alternative charge of fraud.**
 - State that you have gone with the alternative, as a result of TC issue.
 - *E.g. TC issue: initial taking was trespassory due to lack of consent. 'The statutory provision overcomes the problems of consent for larceny, therefore, fraud is appropriate'.*
 - *E.g. if a teller hands over bank notes, and the defendant took them, the teller has not 'merely facilitated'. This was not a fundamental mistake as the teller intended to give him currency. Larceny is not made out, however, fraud is available to the prosecution.*
- Possibility: *e.g. took extra 10 pallets; chose in action; basis for fraud.*

Actus Reus: for the common law offence of larceny. Specific intent, **charged under s 117**.

The prosecution must prove, beyond a reasonable doubt that:

1. The property is capable of being stolen for the purposes of larceny; tangible and moveable, of some value. Fungibles can be stolen too: treat coins as paper/currency.
2. The property is in the possession of a person other than defendant; **Williams v Phillips 1956**
 - If the original owner has relinquished rights, it has been abandoned. Must show that something has been left behind. Either, there is no way of identifying them, or they have intentionally left it behind.
 - **Hibbert 1948**: found liable for picking up golf balls as though the original owners had relinquished ownership, the balls had been abandoned in enclosed land, in constructive possession of the golf course. Note: ownership passes with possession.
 - Any use of the item has to be consistent with the rights of the owner; if this is satisfied, there will be no trespass.
3. Needs to be taken and carried away; needs to be (a) physical asportation (the slightest movement will suffice) and (b) there needs to be a trespass against the possessor. **Wallis v Lane 1964**
 - **Note: Must show the moment of asportation, for the purposes of temporal coincidence.**
 - Where the defendant has retained money by mistake, mere intention without asportation is not considered sufficient; 'a mere movement of the mind cannot amount to a taking' **Potisk 1973**.

- **For the defendant to be found guilty of larceny, they must have had fraudulent intent at the time of the taking. *R v Thurbon 1849.***

- Riley principle or doctrine of continuing trespass: where the defendant innocently acquires property, and later forms the intention to permanently deprive the owner of the property, larceny is established. (it will ground a charge of larceny)

4. Without the consent of the possessor (a) was it mere facilitation rather than consent or (b) was there a fundamental mistake in handing over the item? If there was a **mistake**, consent is vitiated; discuss fundamental mistake here.

- *E.g.* if simply moving to the glove box, this falls into implied consent.
- If we characterise making a phone call as taking, then there is no consent. However, ***Dimondopoulous*** stated this was a stealing of funds, and therefore fraud.
- When he discovers the mistake, he is the owner of the notes/coins and later develops the requisite *mens rea*, however, **there is no trespass** as he is now the possessor.

Mens rea:

1. Intention to permanently deprive at the time of the taking.

- Property passes with possession.
- S 118: where the defendant takes property, an intention to return the property is not a defence to the charge of larceny, if the defendant has appropriated the property for the defendant's own use or benefit, or for another's use or benefit.
- ***Weatherstone (NSW)***: intention to permanently deprive can also include dealing with the property in such a way as to change the nature of the property.

2. **Without a belief in a claim of right (needs to be raised to the evidentiary standard).**

- Accused needs to subjectively believe that they have a legal right to the property. It is a question of fact, subjectively determined.

3. Was acting fraudulently/dishonestly. Two possible tests. *Peters* is preferred.

- The prosecution must prove beyond a reasonable doubt that the accused's conduct, was dishonest against the standards of ordinary people. ***Peters 1998***
- It must also be established that the accused subjectively knew that their actions were contrary to the standards of ordinary people. ***Ghosh 1982***

- Claim of right: *Mens rea* will not be present if a person genuinely believes they are asserting a lawful claim to the property. The claim does not have to be reasonable, but does have to be *bona fide* and proportionate. A moral right is insufficient.

- A lawful claim can arise from a mistake of fact, where you mistakenly believe the property is yours. It can also arise where there has been a mistake of law and property has been passed to you. ***R v Lopatta 1983*** (A person is not responsible for a property offence unless it is done with an intention to defraud)

Three kinds of fundamental mistakes in ***Illich 1987*** that prevent ownership from passing:

- Mistake as to the identity of a person to whom property is given. ***Middleton 1873***
- Mistake as to the identity of that which is handed over. ***Ashwell 1885*** (nature and quality of the item)
- Where an excess quantity of a good is delivered, ownership of the excess has not passed to the receiver. ***Russel v Smith 1957*** (*e.g.* intend to give \$20, but give two \$20 bills stuck together).

8A Property Offences: Fraud

- E.g. intellectual property as per notes in the margin of a stolen textbook.
- Discuss at deception *mens rea* stage: **Foster implied misrepresentation:**
 - E.g. meal/staying when aware that there is no money. By staying, they are still making a representation; therefore, temporal coincidence of deception, leaving, is satisfied.

Give priority to property, even if there is a financial advantage obtained.

Accurately pinpoint the conduct amounting to deception. **Charged under s 192 E.**

S 192 C Dishonestly obtaining property:

Actus Reus	Mens rea
1. A by any deception	1. Intentional or reckless deception
2. Obtains property	2. Intention to permanently deprive
3. Deception causes the obtaining	3. Dishonesty

S 192 D Dishonestly obtaining financial advantage:

Actus reus	Mens rea
1. A by any deception	1. Intentional or reckless deception
2. obtains financial advantage	2. Dishonesty
3. Deception causes the obtaining	

1. The prosecution must prove that the defendant used deception. This is, that the deception caused the handing over or payment of the valuable thing. (causation: what must be established is that the deception must have been the means whereby the item/money was obtained, of the effective cause of obtaining).
 - *Actus reus*: 192 B deception can occur by words or conduct (false statements, silence, or wearing a disguise).
 - *Mens rea*: 192 B (2): a person does not commit an offence, unless the deception was intentional or reckless.
 - Exaggeration will not amount to deception; **it will be a question of fact for the jury to determine the distinction. *R v John Bryan 1857***
 - False promise amounts to deception. ***R v Freeman 1981***
 - Conduct without word can amount to deception. ***R v Freeman 1981***
2. That the deception caused the person to either:
 - Obtain property belonging to another:
 - *Actus reus*: the accused or third party gain control or possession of another: s 192 C (definition of property: s 4, 'belongs to another' is defined as when the person has possession, control or a proprietary right to the property.
 - *Mens rea*: an intention to permanently deprive. 192 C (2)
 - Includes an intention to 'treat the thing as his or her own to dispose of regardless of the other's rights'. 192 C (4) **OR**
 - Causes financial advantage:
 - *Actus reus*: to obtain a financial advantage for oneself or another person, or to induce a third party to do those things. 192 D
 - *Mens rea*: intent or reckless to the causing, as per ***He Kaw Teh 1985***
 - E.g. though the cheques he drew against, 'might be worthless' he still did.
 - 4B def. imposes a subjective requirement that the defendant recognises he is being dishonest, an objective element as to the standards of ordinary people.

3. And that the obtaining/causing was dishonest:

- *Actus reus*: automatically satisfied, since deception is obviously dishonest and was already proved at this point.
- *Mens rea*: **Ghosh 1982** (a) that the accused had the knowledge that obtaining/causing would be dishonest against the standards of ordinary people.
 - Write in response: ordinary people would consider it dishonest to use your card to withdraw money from an ATM, knowing that you do not have the funds, and have been advised by the bank that you have insufficient funds.
- *Mens rea continued* (b) knows it's dishonest according to ordinary person's standards. *E.g.* if he has not received the letter, he could be seen as reckless as to the possibility, deceiving as he did not have the information that the cheque had been cleared.
- **Claim of right** can negate this charge.
 - Where the defendant raises a claim of right, the defendant should be acquitted if the prosecution could not disprove the defendant's argument that he or she had a belief in the legal right to obtain property in question, even if he had no belief in his legal right to practice deception to do so.
 - When a claim of right is raised, the issue is whether there was a legal right to obtain property, not whether there was a legal right to practice deception.

Dishonesty:

Moore v R 2016: Mr Moore behaved not only extremely foolishly, but also dishonestly. There was nothing covert about his behaviour. His conduct was technically authorised by the bank, therefore, it could not be held that Mr Moore misled or deceived the bank, and intended to.

Financial advantage:

R v Vasic 2005: any delay is a financial advantage, as you can use this advantage to delay, invest and gain. *E.g.* when a person offers a cheque in payment of a debt, s/he implies that ordinarily, the cheque will be honoured by the bank upon presentation.

Larceny v Fraud:

Tweedie 2015: the accused took a wallet out of someone's bag in the doctor's waiting room. He used the cards. Larceny is committed for the wallet and its contents. He was also charged with fraud, for the goods he obtained by using the stolen cards. Note: he cannot be charged with larceny if he buys cigarettes from the shop **as the shop has consented to the transfer of possession.**