

## Dishonest Acquisition

### Larceny (s 117 Crimes Act 1900- max 5 yrs imp penalty)

Elements:

**AR1) Property capable of being stolen (circ)-** Must be tangible- does not include illegally removing money from bank account as it's a 'choses in action', same as debts and data (Croton). Does not include land/real property. Fixtures (things attached to the land such as letterboxes and things growing out of the land) not included as they are intended as permanently attached. However, there are s 139 (stealing glass, woodwork, metal fixed are liable for punishment under larceny), also s 140 (trees/plants included if value over \$2). Wild animals cannot be stolen (Blade), but domesticated farm animals can (s 126). Gas can be stolen from a pipe (White). Also valuable securities (shares/interests) can be stolen such as cheque, deed, bond or electricity (s 134).

**AR2) Property in the possession of another (circ)**

- Requires the property physically in X's control at some time and having an intention to maintain control over the item.
- Includes constructive possession (Hibbert)- this means items in physical custody of another but you still have the rights of ownership.
- It doesn't matter if you steal something that has been stolen from another, or if you still something illegal (i.e. drugs- Anic).
- If property found on a person's enclosed land, the property is constructively in this person's possession even if they are unaware of it (Hibbert).

**AR3) The property is taken and carried away/asportation (act)**

- Any movement of the goods with an intention to steal them is sufficient- regardless if it is even the slightest movement (Wallis).
- The mere intention to take is insufficient (Potisk)- there needs to be a positive act by D done.
- NOTE: In practice, P relies on an intention to steal rather than an actual stealing.

**AR 4) Taking is done w/out consent of the possessor (circ)**

- Must be unwilling or against their will (Middleton).
- An ATM cannot consent (Kennison)- Just because a fraud was facilitated didn't mean the bank consented to the withdrawal.
- If there is temporary possession based on an implied licence (e.g. clothes shop able to take off of rack and try on or carry them to register), then by dealing w/ that property in breach of licence asportation will have occurred (Kolosque). "any conduct which is inconsistent with the implied consent" (Kolosque). Also w/ lost property- the real owner is deemed to consent to returning the property.

**MR1) Intention to permanently deprive**

- A temporary borrowing/temporary appropriation of the property is not sufficient (Phillips, Holloway). The exception is joyriding (s 154A).
- If you treat the property like it's your own but intend to return it there will still be an intention to permanently deprive (s 118, Foster). This means you assume rights of ownership (e.g. pawning something) even if you intend to return it (Foster). s 118- appropriated the property for "accused's own use, or the accused's own benefit, or that of another".
- "to exercise ownership of the goods, to deal with them as his own, an intention later to restore the property in the goods will not prevent the original taking being larcenous" (Foster).
- Conditional approach will still have requisite intention (Lowe). (e.g. saying the other person can take it back if they pay for it).

- Borrowing items which are limited to a number of uses or a time which it can be used within has the requisite intention (Beecham).
- If the taker makes a “substantial alteration” to the property (rather than a “slight” one) and then returns it there will still be the intention (Weatherstone). (e.g. metal welding rod changed to become melted).

**MR2) Property is taken fraudulently (i.e. dishonestly)**

- Terms fraudulently and dishonestly are interchangeable (Glenister).
- Dishonesty requires “current standards of ordinary decent people” to be applied (Feely, applied in Peters).
- ‘Moral obloquy’ is required (i.e. strong public condemnation/disgrace)- therefore fraudulently in larceny is a morally-based concept (Weatherstone).

**MR 3) Absence of a claim of right**

- Must be a genuine belief of a legal entitlement to the property, not moral entitlement (Fuge) or customary law entitlement (Goodsell).
- Cannot be convicted of a greater larceny-based offence (e.g. break and enter) if you have a genuine claim of legal entitlement to the property.
- The belief does not have to be reasonable (Fuge) and must extend to the entirety of the property.
- D has evidentiary burden to introduce sufficient evidence, once raised D must negate BRD (Astor).

**i) Receiving stolen property (s 188)- harder to prove- Look for 3<sup>rd</sup> parties involved**

- Whoever “receives, or disposes of, or attempts to dispose of, any property” stealing of which amounts to serious indictable offence, “**knowing** the same to have been stolen”. Max penalty normally- 10yrs max, motor vehicle or vessel- 12 yrs.
- Elements:

AR1) Stolen property- Must not have been returned to the person it was stolen from. Extends to products of non-larceny (e.g. embezzlement).

AR2) Receiving that property- Show D took possession of property (Fien). Can be held jointly w/ the thief (Gleed) or be constructively held through employee/accomplice (Miller and Connors). Proof of receiving- if “recently stolen” w/out any reasonable explanation, guilty knowledge is inferred (Bruce).

MR) Knowledge the property is stolen- Actual knowledge/belief that the goods were stolen (Raad). Mere suspicion or closing of eyes is not sufficient (Raad), needs to exist at the time of the receiving (Balough).

- It is possible to charge a person w/ receiving stolen property or larceny from ‘persons unknown’ (Issacs).

**ii) Goods in custody (s 527C- 6 mths imp, 1 yr for motor vehicles)- easier to prove**

If individual has a thing in their custody, or has it in the custody of another person etc. that is “**reasonably suspected of being stolen or otherwise unlawfully obtained**”. NOTE: s 527C(2): Defence for D to satisfy they had “no reasonable grounds for suspecting that the thing referred to in the charge was stolen or otherwise unlawfully obtained”.

- Objective test used and unnecessary for P to point to commission of a specific or general offence (Haken)- (negligence w/ ‘no reasonable suspicion’, no precise offence).
- “May” falls short of “is” and “suspected” falls short of known, convinced or shown (Anderson). Concerned only w/ accused’s belief (Anderson).
- Circumstances when the thing is found and behaviour of the person under suspicion are relevant (Anderson). D must be in possession of goods at time of apprehension (English).

## Statutory Expansions of Larceny

- i) **Larceny by bailee (s 125)**- MR formed after the bailment/taking (i.e. when subsequent intention to deprive arises). Under CL simple larceny it wouldn't be an offence b/c the property was taken with consent.

**s 125: If a bailee of property “fraudulently takes, or converts, the same or any part thereof, or any property into or for which it has been converted, or exchanged, to his or her own use, or the use of any person other than the owner thereof”**

- Converts includes selling, giving to someone (Ward).

- ii) **Embezzlement (s 157)**

Whosoever, being a clerk, or servant, fraudulently embezzles, either the whole or any part of, any property delivered to, or received, or taken into possession by him or her, for, or in the name, or on the account of, his or her master, or employer, shall be deemed to have stolen the same, although such property was not received into the possession of such master, or employer, otherwise than by the actual possession of such clerk, or servant, and shall be liable to imprisonment for ten years.

- The possession must not be reduced to the constructive possession (i.e. money placed in the till) of the employer (Hayward).
- The employee must receive the property in circumstances where they are bound to place it in the possession of the employer (Gale).
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- iii) **Expansion of intent to permanently deprive MR(joyriding, fraudulent appropriation and carjacking)**

**Joyriding (s 154A- 5 yrs max imp):** Any person who a) Without having the consent of the owner of person in lawful possession of a conveyance, takes it and drives it, or takes it for the purpose of driving it, or secreting it, or obtaining a reward for its restoration or pretended restoration, or for any other fraudulent purpose OR b) Knowing that any conveyance had been taken without such consent, drives it or allows himself or herself to be carried in or on it.

**Carjacking (s 154C- 10 yrs max imp):** Taking motor vehicle w/out owner's consent or lawful possessor in circumstances where D assaults a person in order to do so, or drives off w/ a person in the vehicle.

**Fraudulent Appropriation (s 124):** Dishonest retention of property dishonestly obtained- helps w/ MR not able to be proved at time of obtaining property (e.g. finding lost property or taking property by mistake and dishonestly keeping it). Leg: a) Person had fraudulently appropriated to his or her own use or that of another, the property in respect of which the person is indicted, although the person had not originally taken the property w/ any fraudulent intent OR b) Person had fraudulently retained the property in order to secure a reward for its restoration.

#### iv) Aggravated offences

**Robbery (s 94- 14 yrs max imp)**- Considered 'aggravated larceny'. s 94: "robs or assaults with intent to rob any person...or... steals any chattel, money or valuable security from the person of another".

Elements: AR- Physical elements of larceny + use of violence or threat of violence before or during taking of the property. MR- MR of larceny + violence/threat of violence must have been intended to overcome resistance.

- Violence used/threatened must be directed towards the person, not merely the property (Gnosil). Intended to overpower the party robbed, and prevent their resisting (Gnosil).
- Threat after property is taken is not robbery (Foster).
- Includes where goods are in your constructive possession and they were taken in your presence (Smith).

**Breaking/entering (s 112,113- aggravated trespass offence- pg 972)**- Entering through already open- breaking security of the dwelling (can break in OR break out).