

# CAUSATION

**Royall v R (1991) 172 CLR 378**

- would the consequence have happened if it wasn't for the actions of the accused (But for test)
- Common sense test

**R v Hallet [1969] SASR 141**

- 'Operating and substantial cause'

# BURDEN OF PROOF

**Woolmington v Director of Public Prosecutions [1935] AC 426**

- Woolmington principle BRD
- Innocent until proven guilty (prosecution must prove)

# INTENTION

- A subjective standard, most culpable fault element

**He Kaw Teh v R (1985) 157 CLR 523**

- Wanting, wishing, aiming at, desiring the result

# VOLUNTARINESS

**Ryan v R (1967) 121 CLR 205; R v Falconer (1990) 171 CLR 30**

The prosecution is entitled to believe the accused's actions were voluntary, that is 'conscious' or 'willed'.

# TEMPORAL COINCIDENCE

**Fagan v Metropolitan Police Commissioner [1969] 1 QB 439**

- Continuing act

**Thabo Meli v R [1954] 1 All ER 373**

- Series of acts

# LARCENY

## 116 All larcenies to be of same nature

Every larceny, whatever the value of the property stolen, shall be deemed to be of the same nature, and shall be subject to the same incidents in all respects, as grand larceny was before the passing of the Act seventh and eighth George the Fourth, chapter twenty-nine.

## 117 Punishment for larceny

Whosoever commits larceny, or any indictable offence by this Act made punishable like larceny, shall, except in the cases hereinafter otherwise provided for, be liable to imprisonment for five years.

## 118 Intent to return property no defence

Where, on the trial of a person for larceny, it appears that the accused appropriated the property in question to the accused's own use, or for the accused's own benefit, or that of another, but intended eventually to restore the same, or in the case of money to return an equivalent amount, such person shall not by reason only thereof be entitled to acquittal.

## 94AA Property previously stolen

Where on the trial of a person for any offence which includes the stealing of any property it appears that the property was, at the time when it was taken by the accused, already out of the possession of the owner by reason of its having been previously stolen, the accused may be convicted of the offence charged notwithstanding that it is not proved that the taking by him or her amounted to an interference with the right to possession of, or a trespass against, the owner.

ELEMENTS OF OFFENCE	
ACTUS REUS	MENS REA
Property capable of being stolen	Intention to permanently deprive owner of it
It must be taken and carried away	Property must be taken without a claim of right made in good faith
Property must belong to someone other than the accused	The property must be taken fraudulently/dishonestly
The taking must be without the consent of the owner of the property	

## Property Capable of Being Stolen

### R v White (1904)

-A thing capable of being stolen is a specific movable item, must be tangible

### R v Daley (1879)

-Must have some value no matter how slight (a piece of paper is sufficient)

Chose in Possession: Tangible touchable piece of property

Chose in Action: Intangible right

## Taken and Carried away

### Ilich v R (1986)

- Taking must be a trespass against person in possession of the property even if that person is not the owner

### Wallis v Lane [1964]

- Slightest movement of property will suffice

### **R v Thomas (1953)**

- Must be a positive act by the accused

### **Belongs to Someone Other Than Accused**

- Larceny is a crime against possession, not ownership

### **Hayes v Fries (1988) 49 SASR 184**

A person has possession of an item if they intend to possess it AND they have at some time had some physical control over it

### **Without Consent**

#### **Croten v R (1967)**

- Taking must be without consent of the owner

### **Kennison v Daire (1985) 38**

- Machines aren't consent

### **Illich v R (1987) 162 CLR 110**

- Unilateral mistake: A obtains property by mistake and is aware of mistake
- Mutual mistake: A obtains property due to mistake and only subsequently becomes aware
- **BUT** Only fundamental mistakes will vitiate (negate) consent-
  1. Mistaken ID transferee
  2. Property or thing handed over
  3. Of quantity of property handed over

### **money ownership passess over with possession, just with money**

- Where the Crown alleges **stealing by finding** the Crown has to negative the possibility that the goods have been abandoned and that the accused did not believe that the owner could be found
- So it is larceny if you find and take lost property AND you believe at the time the true owner can be found by taking reasonable steps, but you intend to keep the property from them

### **Macdonald [1983]**

- What the accused does to attempt to locate the owner is relevant

### **Thurborn (1848)**

- A later discovery of the owner and intention to keep the goods will not suffice

### **Ward (1938)**

- If the accused obtains possession from the victim by reason of trick, then larceny has been committed although the owner voluntarily handed over possession

### **Permanently Deprive**

#### **R v Foster (1967) 118 CLR 117**

- Must be an intention to permanently deprive owner of the property and the intent must exist at the same time of the taking

### **Riley Principle**

- BUT if the initial taking is trespassory a later dishonest intention will suffice- Riley

### **Fungibles**

- Law doesn't treat fungibles in the same way everyday life does, if you borrow \$20 with the intention of returning a different \$20 note then the law would characterise this as intent to permanently deprive

## **Without Claim of Right**

### **Bernhard [1938]**

- If accused honestly even if unreasonably believed that they were asserting a lawful claim of right there is no larceny

### **Fuge (2001)**

- It is sufficient if the defendant honestly believed that he was legally entitled to the property, even if he did not believe that he had a right to claim it the way that he did:
- The defence only applies if you only take what you believe you are owed
- In the case of an accessory, it is enough that the principle offender or offenders had a bona fide claim of right.

### **Langham**

- If genuine belief held may constitute an answer to a crime in which the means used to take property involved an assault, or the use of arms

### **R v Lopatta (1983) 35 SASR 101**

Belief does not have to be reasonable

- Accused took 20 drums of oil from employer valued at \$5000 because employer owed him \$5000, defence of CoR was available to him
- Crown must negative a CoR where it is sufficiently raised on the evidence, to the satisfaction of the jury BRD
- Belief must be a legal entitlement to property not just a moral entitlement

## **Fraudulently/Dishonestly**

### **R v Weatherstone NSWCCA**

- Even if intend to permanently deprive, not sufficient MR unless there is dishonestly/fraud attached to the taking
- In deciding whether or not it is dishonest the jury should apply the current standards of ordinary people.

### **Macleod (2003) 214 CLR 230**

- Defendant does not have to realise that what he was doing at the time was dishonest