

LAWS4102  
CRIMINAL LAW



SAMPLE EXTRACT

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# ROBBERY

## Section 392 (Robbery):

1. Steals a thing.
2. Uses/threatens violence to a person or property (before, during, immediately after).
  - *Jerome and MacMahon* [1964] Qd R 595 – accused claimed they touched victim but did no violence; held: **undressing the victim not enough to amount to violence** for robbery.
  - *Hood* (2000) 111 A Crim R 556 – accused stole wallet & ran away, victim pulled on shirt but fell over & hurt himself, held: **negative force amounts to violence**.
3. In order to obtain the thing or to prevent/overcome resistance.
  - *Mead* [2010] QCA 370 – violence used to **push shopkeeper away after stealing had occurred**, held: constituted robbery.
4. Circumstances of aggravation = in company, BH, threat to kill, person to whom violence used/threatened over 60 years old.
  - **In company**
    - *Button & Griffen* (2002) 54 NSWLR 455 – Kirby J: common law holds that:
      - The offender must be in the company of another person.
      - The persons must share a common purpose.
      - Others must be physically present (not look-out or accessory); determined by coercive impact of group (embolden offender/intimidate victim).
      - Perspective of victim relevant but not determinative (does not always have to be aware of the company).
    - *Dick* (2006) 161A Crim R 271 – refers to Kirby J's judgement above, Greg James J: look-out would not provide support but a sniper would. Issue is **influence the company has in regard to the situation, capacity to physically intervene, common purpose** (if aim is achieved with knowledge that company is able to assist).

\*\*Easier to prove s 378(5)(a) Stealing from the Person of Another [no violence required] or 378(5)(b) Stealing in a Dwelling with Violence [no purpose in violence required]\*\*

### **Armed Robbery (s 392(c))**

- If the offender is armed (or pretends to be armed) with a dangerous or offensive weapon or instrument before, during or immediately after the commission of the offence.
- *Hutchinson (1784) 168 ER 273* – being armed must be something more than “catching up a hatchet in the hurry & heat of an affray”.
- *Dayle [1974] 1 WLR 181* – jury must decide the issue of intent by reference to all the evidence (drawing inferences from the evidence as appear proper), if an article already possessed lawfully is used offensively to cause injury such use does not necessarily prove intent, carrying a weapon may be lawful in circumstances but use is unlawful (*R v Jura*), use of a wheel jack in this case; held: **using an offensive weapon is not the same as being armed (needs to have intent)**.
- *Van den Berg (1983) 12 A Crim R 113* – question of a barrel of a shotgun as a weapon, TJ advised jury that object was required to be capable of being used for offensive purposes & was intended to be used for an offensive purpose, Pigeon J on appeal argued direction incorrect (weapon in the form it was could not inflict BH according to its design or the way it was threatened) – note here that there is no distinction between being ‘armed’ and ‘pretending to be armed’.
- Blood filled syringe considered a weapon – *Miles (1997) WAR 518*; *Pratt (2000) 112 A Crim R 70*.
- *Majok (2005)* – **being armed does not require the thing to be in actual physical possession of the person, sufficient to be in the power of the offender & available for use** to reinforce demand or threaten force (therefore does not matter if the weapon was held by the co-offender). In this case the principal offender said “We’ve got a gun” / “We’re going to shoot you”.

**Assault with Intent to Rob (s 393)** – involves assault with no stealing but intent to do so.

# BURGLARY

## Section 401(1) Intent to Commit Offence

1. Enters/is in the place of another person.
  - “Enters/is in” = as soon as any part of the person’s body or any part of anything in the person’s possession/under the person’s control (s 400(2)).
  - “Place” = means building, structure, tent, or conveyance, or a part thereof (includes a conveyance that at the time of offence is moveable, or a place that is uninhabited/empty of property from time to time).
2. Without the other person’s consent.
  - *Barker (1983) 153 CLR 338* – **trespass if entering premises for other than consenting purpose**, referred to *R v Pratt* where a man entered land on public highway to hunt committed an offence due to inconsistency with land owner’s consent (i.e. consent only for right to pass).
3. With intent to commit an offence in that place.
4. No act.

## Section 401(2) Actual Offence

1. In the place of another person.
2. Without the other person’s consent.
3. Commits an offence.
4. Act.

## Punishments

- ❖ 20 years (aggravated home burglary).
- ❖ 20 years (aggravated non-home burglary).
- ❖ 18 years (home burglary, non-aggravated).
- ❖ 14 years (any other case).

## FRAUD

### Section 409:

#### 5. Intent to defraud...

- *Bolitho* (2007) 34 WAR 215 – defendant **must have intention of inducing an act/omission relating to victim's economic interest or public duty**, however victim's action does not have to precisely correspond with intention of defendant, may turn social/sexual relations into economic interests if victim would have demanded payment if not for deceitful means, intention to defraud in CCWA s 409 is the same as at common law (therefore same as at Commonwealth; see *Peters*). Limited to frauds relating to property (exception: to prevent fulfilment of duty).
- *London and Globe Finance Corp Ltd* [1903] 1 Ch 728 – to defraud is to deprive by deceit, to deceive is to induce a person to believe that a thing is true which is false & that the person practicing is aware.
- *Nelson* [1987] WAR 57 – accused claimed insurance on her stolen car, found out later that friend had stolen it for her in order for her to get the payout but remained silent. Held: did not amount to deceit (however would if she lied about it when asked).
- *Peters* (1998) 151 ALR 51 – accused charged with conspiracy to defraud Commonwealth, appeal found to be based on the **incorrect belief that 'dishonesty' is a distinct legal element (actually embedded in fraud & intent to defraud)**. Evidence of the false names on the mortgage documents & purpose to deprive Commonwealth of tax was enough to reveal fraud – up to jury to determine whether the state of mind existed. Held: *Crimes Act 1914* (Cth) uses definition of 'defraud' at Commonwealth law is the same as at common law, therefore the same as in CCWA (therefore same as CCWA; see *Bolitho*).
- *Hunter v WA* [2014] WASCA 184 – accused deceived an employee of a company with the intent to defraud the company itself; held: **the law does not require the person deceived also be the subject of the intention to defraud**.
- *Matthews* [2001] WASCA 264 – intent to defraud is not to be equated with carelessness (see *Derry v Peek* (1889)), proper course for determining 'dishonesty' is for the TJ to identify knowledge, belief or intent said to render the act dishonest & to instruct the jury to assess its existence – this assessment is the same for determining an act or intent 'fraudulent'.
- *Brown v Deveroux* (2008) 192 A Crim R 190 – defendant altered drug prescription (increased quantity), there was no question that the accused was going to pay, however it was held that there was **intention to deprive the chemist of the opportunity not to sell the pills** (economic interest). It was also considered that a case for deprivation of duty could be argued.

#### 6. ...by deceit or fraudulent means.

- *Hunter* – 'intent to defraud' (subjective), 'deceit/fraudulent means' (objective), those means resulted in consequences (objective).

7. Induces a person to abstain/do anything they are lawfully entitled to abstain/do, obtains/induces delivery of property, or gains benefit from/causes detriment to.
  - Clemesha [1978] WAR 193 – accused hired out bobcat, but did not return (intent to steal), held: giving the hire company a false name/address did not induce the hire (payment did), therefore not fraud.
  - Hunter – deceit/fraudulent means in s 409(1) is separate & distinct from intention to defraud, the circumstances in (a)-(f) must have been a result of the fraudulent means.

### **Section 444 (Criminal Damage):**

1. Wilfully.
  - Intends to damage or destroy. Knows or believes destruction or damage is likely.
  - R v T [1997] 1 Qd R 623 – Fitzgerald P: more probable than not (recklessness), Pincus JA: ‘substantial chance’ (real & not remote), MacKenzie J: more probable than not.
2. Unlawfully.
  - Injury to property of another must be without that person’s consent (s 441).
  - Injury to property can still be unlawful even if accused has a partial interest in it (s 441(2)).
  - Some injury to property lawful if done in defence (s 441).
  - Injury to one’s own property can be unlawful if done with intent to defraud (s 442).
3. Destroys or damages.
  - See CCWA s 1.
  - R v Zischke [1983] 1 Qd R 240 – held that **damage to property is such that renders it imperfect or inoperative** (cost to remedy not relevant, but could indicate extent of damage).
4. Any property.
  - Includes real/personal & everything animate/inanimate capable of being owned (CCWA s 1).
5. Penalty: basic 10yrs; if destruction by fire, then life; if in circumstances of aggravation, then 14yrs.