

70114 CRIMINAL LAW AND PROCEDURE

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OFFENCES

LARCENY (s 117)

Actus reus

1. Property taken and carried away by D
2. Property is capable of being stolen
3. Property is in the possession of another
4. Without the consent of the possessor

Mens rea

1. Intention to permanently deprive
2. No claim of right to the property
3. Taken fraudulently or dishonestly

Taken and carried away

- Asportation – physical removal of the property
- Only minimal movement necessary
 - o *R v Lapiér (1784)*: earring moved from the ear to hair

Capable of being stolen

- s 4 definition not applicable to larceny – no mention of property in s 117
- Only tangible property – has a physical form
 - o Not intellectual property
 - o Only physical paper/coins, not moving money from a bank account (*Croton v R*)

Croton v R (1967) 117 CLR 326

- D opened a joint bank account with his fiancée Webster – most of the money was her salary and alimony, D made all the deposits and had control of the deposit book
- D withdrew all the money without Webster's knowledge and deposited it in another bank account in his name – charged with larceny of the money
- Depositor only has a choice in action with the bank – a right to recover the balance he placed in the bank
- HELD: no actus reus elements of larceny present – appeal dismissed
 - o Bank voluntarily gave D the paper money
 - o Webster never had possession of the actual paper money and coins – bank never had the money either – deposited by cheque
 - o Arrangement between D and Webster meant money could be passed to D alone

In possession of another

- Physical control over the property and intention to maintain that control
- Property must have been in possession of one person and then taken
- Unlawful possession makes no difference to the law (*Anic, Stylianou and Suleyman*)

Anic, Stylianou and Suleyman (1993) 61 SASR 223

- Broke into a house in the belief that it contained cannabis
- Appealed burglary conviction on the basis that it was not possible to steal property from a person who had it unlawfully in their possession – unlawful to possess drugs
- HELD: the drugs were tangible personal property capable of having property rights, taking them would amount to larceny – appeal dismissed

Without consent

- Person with possession didn't hand over the property willingly
- Person facilitates or allows property to be taken – not consent (*Kennison v Daire*)
- Finder of lost property has consent to take possession in order for property to be returned

Kennison v Daire (1986) 64 ALR 17

- Closed his bank account, withdrew balance and then later used his bank card to withdraw \$200 from an ATM
- ATM was offline and programmed to give up to \$200 when a card was presented and the right PIN number entered
- D argued teller has general authority of bank to give over money – ATM is the same as a teller so bank had given consent
- HELD: bank consented to withdrawal of up to \$200 by a cardholder who presented his card and PIN number if they had an account that was valid – bank did not consent to withdrawal by a cardholder with a closed account

Ilich v R (1987) 162 CLR 110

- Convicted of stealing \$600 from Brighton
- Brighton said he gave him \$1176 for his locum work, and then Ilich took \$600 he had seen in an envelope on the table
- Ilich said he had taken as payment all the money on the table, believing he was entitled to it, later discovered he had been overpaid by \$530 and placed it aside for safekeeping
- Trial judge gave direction that the application would be guilty on his own account if he decided to keep the money after becoming aware of a mistaken overpayment – mistake as Ilich's version was probable
- Ilich's version does not have any necessary intent under WA law

Mistakes that prevent ownership passing

- Mistake as to the identity of the person to whom the property is given (*R v Middleton*)
- Mistake as to the identity of that which is handed over (*R v Ashwell*)
- Mistake as to the quantity of the thing delivered (*Russell v Smith*)

Intent to permanently deprive

- s 118: intent to return property is not a defence – if D has appropriated/used the property for their own benefit
- Evidence of intention to return – difficult to prove intention to permanently deprive (*Foster*)
- Conditional intention to return = intention to permanently deprive (*Sharp v McCormick*)
- Mere borrowing – criminal offence of larceny (s 154A)
- Altering the nature of property – becomes unusable in original state – owner permanently deprived (*Weatherstone*)

Foster (1967) 118 CLR 117

- Took a gun from Baker, who he was staying with in Goulburn, and took it to Canberra show his parents
- Claimed intention to return with the gun the same evening and replace it in Baker's possession
- Charged with larceny, lost in NSWCCA, appealed to High Court
- HELD: there was evidence that he intended to return the gun, s 118 must be interpreted narrowly and prosecution must rebut beyond reasonable doubt – never appropriated the gun for himself

Weatherstone (1987) 8 Petty Sessions Review 3729 (NSWCCA)

- Kempsey Shire Council employee who took metal welding rods owned by the council to repair local tennis court fencing
- The welding rods would have melted and fused the broken fence together
- Fence would remain the property of the council
- HELD: rods could not be used in their original state – D had intention to permanently deprive Council of their rods

Fraudulently or dishonestly

- Everyday meaning that does not need to be explained to jury
- *Feely* test: apply the current standards of ordinary decent people to determine if dishonest (under *Peters*)
- D must act with intention to permanently deprive and without claim to right – acted fraudulently

No claim of right

- D must place evidence that raises the issue of claim of right – prosecution rebut beyond reasonable doubt
- Belief in a legal right to the property – no larceny
- Moral entitlement not enough

Fuge (2001) 123 A Crim R 310

- Broke into Hungry Jacks with the belief that they owed her wages
- HELD:
 - a) Must involve a belief as to the right to property or money in the hands of another
 - b) must be genuine
 - c) does not need to be reasonable but does need to be more than a pretence
 - d) must be a legal entitlement
 - e) relevant issue is the belief in the right to take the property, not the belief in a legal right to use the means in question to take the property
 - f) not confined to the specific property or money that were held by the claimant
 - g) must extend to all the property taken

Lopatta (1983) 35 SASR 101

- Took 20 drums from his former employer because he believed the money was owed to him
- Denied the chance to argue his claim of right to the money
- HELD: conviction quashed and a retrial ordered