

Contents

Criminal Problem-solving Structure	1
Murder(s 18(1)(a) CA).....	4
Manslaughter(s 18(1)(b))	5
Defence:.....	7
I. Negate Voluntariness	7
II. Negate MR	7
A. Insanity/Mental illness (Insane automatism): [<i>Full defence</i>]	7
B. Intoxication (drug or alcohol).....	8
C. Substantial impairment by abnormality of mind[<i>Partial defence</i>]	8
D. Extreme provocation[<i>Partial defence</i>]	9
E. Self-defence [<i>Full defence</i>]; Excessive self-defence [<i>Partial defence</i>]	10
Larceny	11
Aggravated Larceny	13
Receiving stolen property	15
Goods in custody	15
Fraud (s 192E).....	16
Complicity	18
Joint Criminal Enterprise: (Osland)	18
Extended joint criminal enterprise (McAuliffe).....	18
Accessory before the fact	18
Accessory after the fact(ss 348-351)-Concealing or Escape	19
Conspiracy(LK/RK).....	19

Criminal Problem-solving Structure

1. Whether XX constituted Conspiracy to (Larceny)?
 - According to **LK&RK**, the **existence of agreement** is referred to **AR** and the **intent of entering** into the agreement is **MR**.
 - **AR**: Pursuant **O'Brien**, merely **negotiation** about the plan, preparatory scouting or possible inclination is not sufficient.
 - **Here**, [the specific way to perform acts is irrelevant (see **Douglas**)]
 - Negotiation (= matters left outstanding of a sufficiently substantial nature) vs Agreement (Agreement is expressed?)
 - Just talking or Actual performed?
 - **MR**: **Intent/Knowledge** **sufficed**, but **recklessness** is **insufficient**. (see **LK/RK**) --- **Here**, ...
 - **Therefore**, the conviction is likely to be established unless defence succeeds.

2. Larceny
 - A. Whether Principal can be charged with Larceny of XX item?
 - Under s117 **Crimes Act** and **Ilich**, the Prosecution must prove AR and MR of larceny BRD. (**Woolmington**)
 - **AR**: (a). Property **capable of being stolen** (**Croton**)
 - (b). Property in the **possession** of **another**
 - (c). **Asportation**: In **Wallis**, Slight movement is sufficient
 - (d). **Without consent** of the possessor. In **Kolosque, Kennison**, the contrary will is unnecessary
 - **Here**, ... (Someone's item) is **tangible and taken by XX (principal) (Perpetrator)** without the **expressed consent** of possessor. Thus, the element of AR is satisfied
 - **MR**: (a). **Intent to permanently deprive**
 - Argue: borrow and intend to return? - Own benefits (**Foster**); conditional (**Lowe**)
 - (b). Taken fraudulently or **dishonestly**
 - There is a **debate** over whether **Peters & Feely** - Objective test applies (Dishonest according to the current standards of ordinary decent people) to larceny or **Gosh test** and **s4B** definition of dishonesty from **CA** - Subjective plus objective test **applies**. The court of appeal applies the **Peters & Feely**-Objective test.
 - **Here**, ...
 - (c). Without a claim of right (Fuge)
 - Argue: The accused can argue s/he **honestly** believed s/he had the **legal entitlement** of the property. (**Langham**)
 - Defence: Under s428, self-induced **Intoxication can be defence as to a specific intent offence (Larceny)**.
 - **Therefore**, XX (person) is arguably charged with Larceny because defence of ... probably succeeds.

 - B. Whether XX (person) forms a joint criminal enterprise (JCE) for Larceny/stealing item?
 - Based on **Tangye** and **Osland**, the Crown must prove BRD that XX have **reached an understanding or arrangement** to steal ...,
 - **Communication** between XX can be **implied or expressed**. **Osland** - The agreement did **not** have to be **in writing**. **Tangye**
 - **Here**, 1. Be **at the presence** and acting in concert 2. words or documents can show their common mind to agree...
 - **Therefore**, XX (Person) is likely to be treated as a **principal in the first degree** based on JCE

 - Alternatively, whether XX constitutes the larceny as a accessory principal in the second degree?
 - The liability of secondary participants is derivative. Under **Giorgianni**, the prosecution must AR and MR BRD,
 - **AR**: D **aid, abet** (at the scene) or **counsel, procure** (without presence) the principal
 - **MR**: D **knew** all the **essential facts** and **intentionally did that conduct**. Mere **recklessness** will be **insufficient** (**Giorgianni**)
 - **Here**, XX aided (give supports), abetted (encouraged, incited) at the scene and D actually knew the conduct (in detail) is a crime (which specific crime?) ---- **Self-induced intoxication can be applied under s428**
 - **Therefore**, XX (Person) is likely to be charged with larceny as a principal in the second degree under Accessory Liability (AL).
 - **Alternatively**, AL before the fact (without presence at the scene)? (counselled (advised), procured (endeavour-Causation))

3. Whether XX (Principal) committed Robbery of item?
 - A. Principal? Pursuant **s94**, XX who **intentionally** used **force against the victim** when s/he stolen item is guilty of robbery.
 - Here, force is what? That conduct illustrates intention.
 - Argue: victim got injured **accidentally** (**Gnosil**) OR injury happened **after** the conduct of taking item (**Foster**)

 - B. (The other participants) Aggravated robbery?
 - **S94**: Robbery in company? **S97**: Armed robbery in company?
 - C. Whether XX can be charged with robbery under the doctrine of Extended Joint Criminal Enterprise (EJCE)?
 - This liability is derivative. According to **McAuliffe, Suteki, Gillard**, the prosecution must prove the accused have **foreseen the possibility** in relation to **AR and MR**. (objective test)
 - Here, ... (Argue: **frolic** of his/her own conduct)
 - Therefore, XX can be treated as the principal in the first degree to robbery based on EJCE
 - D. AL? (See Above)
 - ending. → not a reasonable response

Larceny

Larceny is a common law offence supplemented by a series of statutory extensions in NSW; s 117 of the *Crimes Act 1900* merely stipulates the maximum penalty of 5 years imprisonment.

To establish larceny, the prosecution must prove AR and MR of the offence BRD.

I AR

(1) Property capable of being stolen²(*Croton*)

Land	Land is excluded b/c it cannot be taken and carried away.
Fixture attached to land	<ul style="list-style-type: none">- Fixture (Foley) Houses and letterboxes, things growing out of the land (trees and crops), things forming part of the land (minerals and soil) cannot be stolen. Billing v Pill- Statute exclusion constitutes larceny under <i>Crimes Act 1900</i><ul style="list-style-type: none">- Metal, glass, wood etc fixed to house or land (s139);- Trees etc in pleasure-grounds etc (s140);- Shrubs/ underwood etc (s 513);- Live or dead fence etc (s 515);- Rock or stones etc (s 521A);
Animals	<ul style="list-style-type: none">- Wild animals cannot be an object of larceny in their natural state unless they are in sb's possession.- Stealing of certain animals constitutes larceny.<ul style="list-style-type: none">- Cattle (s 126), skin of stolen animal (ss 502-504)- Dogs(ss132-503), animals ordinarily kept in confinement(ss505 -506);- Fish in private waters or ponds. (s132-133,502-512)
Intangible property	<ul style="list-style-type: none">- Things capable of being stolen must have a physical form that can be "taken and carried away", even if the physical nature of the property is slight.- Examples of intangible property:<ul style="list-style-type: none">- Intellectual property;- Money in bank account (cf physical paper money or coins, b/c it is debt owed by the bank to account-owner).³ Croton

(2) Property in the possession of another

- Mere possession of property is sufficient to claim larceny.
 - Possession comprised of some degree of physical control and an intention to maintain that physical control.
 - Mere control without intention to control (ie custody) OR mere intention to control without actual control are not forms of possession.
- Constructive possession
 - Property held by an employee or servant may be held to be constructively in the possession of the employer or master. → Employee can steal from their employers
 - Where the property appears to be abandoned, the court will likely find that the "owner" is the last person in possession of it.⁴
 - Clothing left outside a charity is considered to be intended by the owner to pass possession to charity;
 - Property found on a person's enclosed land is considered to be theirs even if they had no knowledge of it.
- It is possible to steal property from a person who had it unlawfully in their possession. (ie lawfulness of possession is irrelevant.) **Anic, Stylianou and Suleyman**

Anic, Stylianou and Suleyman [broke into a house with intent to steal cannabis]

- Drugs are tangible personal property having some value and are therefore covered by larceny.

(3) Asportation: taking and carrying away

² Gist is "whether can be taken and carried away".

³ Therefore larceny consists in appropriation of an item itself, not its value.

⁴ Property is rarely considered to be possessed by no one.

- Even slight movement from the original position is sufficient proof of asportation. **Wallis v Lane**
- Mere intention to take and carry away property (ie no action) is not sufficient. **Potisk**

Wallis v Lane [delivery man, seeing one of the boxes damaged and opened, took stuff from the box and hid it on the delivery truck]

Potisk [mistakenly be given too much money in a currency exchange transaction; keep the money obtained by mistake]

(4) Taking without consent of the possessor(**Kolosque, Kennison**)

- “without consent” means “a lack of positive statement to pass the possession”. **Middleton**
- Instead of contrary to or against the will, without consent is sufficient.-**Kennison**
- Licence to take temporary custody of property indicates consent. However, that consent is negated when the accused acts inconsistently with the licence. **Kolosque v Miyazaki**
 - Eg: retail stores/ lost property.

Kolosque v Miyazaki

- In retail stores, there is implied licence allowing customers to pick up and inspect and to take them to the counter etc (ie take temporary custody); That licence is broken if there is any action to damage goods or remove them from the store (ie action inconsistent with the licence).

II MR

(1) Intent to permanently deprive

- D deals with the property in such a way that repudiates the property rights of the prior possessor. “deprive wholly of the property” **Holloway/Phillips**
- 1. Where the accused appropriated the property to his own use or for his own benefit, but intended eventually to return the same, he is not acquitted.⁵ (s 118 *Crimes Act*)/ **Foster**
 - Eg: pawn another’s property in the hope that when financial situation improves they can redeem the property and return it.
- 2. An intention to permanently deprive despite an intention to return is found if the intention to return is conditional. **Lowe v Hooker**
 - Eg: “refund fraud” – ransom principle, one can have it back if he pays for it; **Sharp v McCormick**.
- 3. Even if the property is only intended to be borrowed temporarily, if the true value of the property consists in its ability to be used in a particular way (eg: limited number of uses), the court will find an intent to permanently deprive.
 - Eg: ticket returned the next day becomes useless. (Cf **Lloyd**)
- 4. Changing the nature of the property **Smalls/Weatherstone**
 - Where only a slight alteration was made to the property and its original use can still be enjoyed, no intent to permanently deprive; (Cf **Weatherstone**)
 - Where a substantial alteration was so made to the property that enjoyment of the property is forever prejudiced, there is intent to permanently deprive.

Note: 就看 whether deal with the property as his own.

Holloway [move skin tanned by other employees to his storage area in the tannery’s warehouse]

- H was merely involved in a fraudulent misuse of the skins, but had no intention to keep those skins for himself.
- A trespass to goods is not sufficient to prove larceny.

Phillips and Strong [took horses from a stable and rode them 30 miles to another town; find mere intention to save themselves labour in travel]

Foster [D took his friend’s gun and exhibited it to his parents, with alleged intention to return the gun that same evening]

- If the intention is to deprive the true owner of possession for a limited time, larceny is not made out; if the intention

⁵ Accused always argue this way - “mere intention to borrow the property”.