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MENS REA

INTENTION TO PERMANENTLY DEPRIVE OWNER

Larceny is not committed unless, at the time of the taking, D intends to deprive the owner of the property permanently (Foster (1967)). The facts suggest that [defendant] [insert one of the following]:

- a) Intended to permanently deprive [victim] of [the object], as evident in [specific facts]. Thus this element seems to be satisfied.
- b) Intended to return [the object] conditionally, as [specific facts]. [Go to **CONDITIONAL RETURN**]
- c) Intended to return [the object], but in a substantially altered condition or with reduced value. [Go to **ALTERED CONDITION**]
- d) [ONLY APPLIES IF OBJECT IS A FUNGIBLE] Intended to return the equivalent amount/value of [the object]. [Go to **FUNGIBLES**].

CONDITIONAL RETURN

Section 118 of the Act; An intention to return the property is not a defence to the charge of larceny if D has appropriated the property for D's own use or benefit, or for another's use or benefit. This is despite the reasonableness of D's intention to reclaim the property and return it to its owner (Foster (1967)). (NB: [Defendant might argue that he/she did not appropriate the property, but merely assumed possession of it, in which case [defendant] would not be guilty of Larceny (Foster (1967)).)

ALTERED CONDITION

Where D intends to return the property to the owner, but in a substantially altered condition or with reduced value, D can be charged with larceny: Duru (1973) Parsons v R (1999). However, the change in the property must be substantial, and not that which would occur by normal use of the property (Bailey (1924)).

FUNGIBLES (Interchangeable everyday possessions)

[Defendant] may argue that [the object] is a fungible, that is, it is interchangeable in everyday life. Under the law, however, fungibles are treated differently. Cockburn (1968) held that the defendant was convicted of larceny because he intended to permanently deprive the victim of particular notes, only intending to return money of equal value. In this case, [defendant] would be found guilty of larceny as he/she did not return the exact [object], only that of equivalent value.

WITHOUT A CLAIM OF RIGHT MADE IN GOOD FAITH

Mens rea will not be present if [defendant] genuinely believes he/she was asserting a lawful claim to [the object]. From the facts it seems that [defendant] had a lawful claim that arose from [select one of the following]:

- a) A mistake of fact, that is, [defendant] mistakenly believed [the object] belonged to him/her.
- b) A mistake of law, that is, [defendant] believed that under the rules of civil law the title to [the object] had passed to him/her. A mistake of law may negate a charge of larceny if the mistake prevented [defendant] from forming the necessary mens rea.

The focus is generally not on whether there is a factual or legal foundation for the belief in the claim, but on whether [defendant] honestly held the belief. [Defendant] only needed to have a belief in a legal right to the