



SCAFFOLD: CRIMINAL LAW B

Semester 2 2017



Contents

PROPERTY	3
LARCENY s 117	4
LARCENY BY A BAILEE s 125	5
EMBEZZLEMENT s 157	5
JOYRIDING s 154	6
FRAUDULENT APPROPRIATION s 124	6
FRAUD OFFENCES s 192E	6
ROBBERY s 94	7
RECEIVING STOLEN PROPERTY s 188	7
GOODS IN CUSTODY s 527C	8
COMPLICITY I	9
JOINT CRIMINAL ENTERPRISE (JCE)	9
EXTENDED JCE	10
ACCESSORIAL LIABILITY	10
COMPLICITY II	13
ATTEMPT	13
COMPLICITY III	14
CONSPIRACY	14
CONSORTING	15
ASSOCIATION	16
PARTICIPATION IN CRIMINAL GROUPS	17
DEFENCES I	18
FITNESS TO STAND TRIAL	18
MENTAL ILLNESS	19
AUTOMATISM	20
DEFENCES II	22
EXTREME PROVOCATION	22
DEFENCES III	24
INTOXICATION s 11A	24
SELF-DEFENCE Pt 11, Div 3	25
EXCESSIVE SELF-DEFENCE	26
SENTENCING I	27
JUSTIFICATIONS FOR PUNISHMENT	27
CRIMES (SENTENCING AND PROCEDURE) ACT 1999	28
CATEGORIES OF PUNISHMENT	29
SENTENCING II	31
SENTENCING CHECKLIST	31
APPELLATE REVIEW	31

GUILTY PLEAS	31
SNPP's	31
PREVENTATIVE DETENTION	32
MANDATORY SENTENCING	32
AGGRAVATING FACTORS	32
MITIGATING FACTORS	34
GUIDELINE JUDGEMENTS	34

Property

LARCENY s 117

s 117: 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**.

- Larceny by a bailee: 5 years (**s 125**)
- Larceny as a servant: 10 years (**s 156**)
- Embezzlement: 10 years (**s 157**)
- Joyriding (s 154A): separate offence since 1988 – 10 yrs (**s 154F**)
- Fraudulent appropriation: 2 years (**s 124**)

(Ilich) defined elements of larceny:

‘Larceny is committed by a person who, without the consent of the owner, fraudulently and without claim of right made in good faith, takes and carries away anything capable of being stolen with intent at the time of such taking permanently to deprive the owner thereof...’

AR1: Property capable of being stolen

- Not land
- Not fixtures (*Crimes Act 1900* (NSW) ss 139, 140) (**Billing v Pill**)
 - Land extends to include things attached to the land
 - Eg houses, letterboxes, things growing out of the land (trees and crops) and things forming part of the land (minerals and soils)
 - S 139 of Crimes Act includes (metal, glass, wood etc.)
- Not wild animals (*Crimes Act 1900* (NSW) ss 126-133, re stealing farm animals, domestic animals etc.)
 - Wild animals cannot be an object of larceny unless someone else has previously assumed possession either through capturing or killing them
 - Domesticated farm animals can be stolen from their possessor (S 4 ss 126-131 of Crimes Act)
- Needs to be tangible - not possible at C/L to steal a ‘chose in action’ (i.e. debt), but is now possible to “steal” valuable securities (s 4) (per s 134, e.g. cheque, deed, bond), or gas, or electricity
 - Property must have a physical form, something that can be ‘taken and carried away’
 - Gas can be stolen from a pipe (**White**)
 - Intangible forms of property cannot be stolen because they are rights, not things (**Kidd and Walsh** – copyright in a song)
 - Cannot be debt (**Croton**) – a person can be convicted of physical paper money and coins but not for illegally removing money from a bank account

AR2: That is in the possession of someone other than the defendant

Possession is a combination of two elements:

- a) Some degree of physical control of the property
- b) Intention to maintain that physical control
- Irrelevant if unlawful possession of property (**Anic, Stylianou and Suleyman/ R v Waterhouse**)
- Constructive possession: less than actual possession may be sufficient
 - An owner can be the last person in possession of it
 - Eg clothing left outside a charity shop (**Rickets v Basildon Magistrates Courts**)

AR3: Taking and carrying it away ("asportation")

- The only AR element which is an ACT (other 3 are CIRCUMSTANCES)
- Asportation: physical removal - slightest movement sufficient **Wallis v Lane**
- Any movement of goods is sufficient (slightest movement) (**Wallis v Lane**)
- Must be a positive act by D (not mere intention to take without act, nor mere passive retention) (**Potisk**)

AR4: Without the consent of the person who was in possession

- As a general rule: where there is consent to the taking of property there is no larceny
- Must be against their will (**Davies**)

Exceptions:

- ATM cannot give consent on behalf of bank (**Kennison v Daire**)
- If there is temporary possession based on an implied license
 - If the property is dealt with in breach of that license = larceny
 - Eg retail: give customer the chance to pick up and inspect items before purchase (**Kolosque v Miyazaki**)
 - Similar license applied when lost property is found, the prior possessor is deemed to consent to the finder taking possession in order for the property to be returned (**Humes v Townsend/ Martin v Puttick**)

MR1: Intent to permanently deprive

- Intention to deprive the owner wholly of his property (**Holloway**)
- Borrowing without consent is not larceny (**Phillips and Strong**)
- Assuming rights of ownership (eg pawning something) is larceny even though you intend to return it (S 118 Crimes Act)
 - 'Intention to return' is not a defence (**Foster**)
- Conditional appropriation: intention to permanently deprive despite an intention to return, if the intention to return is conditional
 - Eg 'refund fraud' (**Lowe v Hooker**)
- Exhausting the value of the property: temporary taking, which consumes value, amounts to intention to permanently deprive. Eg tickets (**Beecham**)