

PROPERTY OFFENCES

LARCENY – COMMON LAW (Elements from *Illich*)

ACTUS REUS

MENS REA

1. The relevant property is capable of being stolen

- Must be tangible, moveable property
- NOT real property or choses in action (*Croton*)

2. That property in in the possession of another person

- The property must be possessed or controlled by another and that person must intend to retain this possession or control of the property. Not necessary for the property to ‘belong’ to the other person.
- Unlawful items are capable of being stolen (*Anic, Stylianou and Suleyman*)

3. D takes and carries away the property (Asportation)

- The defendant must *take* the property, which involves moving the property - ‘asportation’
- Must be positive act, not just intention (*Potisk*)
- But, “any movement of the goods with intent to steal them is sufficient to constitute an asportation”: case

4. The taking is done without the consent of the possessor/owner

- This does not require that the taking be contrary the owner’s will. Instead, the focus is on the absence of consent (*Middleton: Kennison v Daire*).
- See also circumstances where there is a breach of an implied licence. For example:
 - Retail stores (*Kolosque v Miyazaki*)
 - Lost property (*Thirborn; Minigal v McCammon*)

1. D has an intention to permanently deprive the possessor/owner of the property

- “if the intention were not to take the entire dominion over the property, that is no larceny” *Holloway*
- Temporary appropriation (ie borrowing without consent) is not larceny.
- But where you assume rights of ownership (ie by pawning the property) this can be larceny even though you intend to return the property,
- s 118 provides that ‘returning the property is no defence’ (see explanation in *Foster*)
- May amount to intention to permanently deprive if

1. D changes the nature of the property (*Weatherstone*)

2. D exhausts the virtue of the property (*Beecham; Lloyd*)

Whether or not these circs will amount to this intention are questions of **degree**.

2. D has no claim of right over the property

- Key case = *Fuge*
- A claim of right = **genuine** belief in a legal (not just a moral) right to the property
- Genuine belief in a claim of legal right is inconsistent with MR of larceny
- D has the onus of raising this as an issue at trial (evidentiary burden). P must disprove BRD (legal burden).
- The defence of claim of right challenges the MR of the offence

3. D takes the property **fraudulently/dishonestly**

- Dishonesty is interchangeable with Fraudulent in Australia (*Glenister*)

What is dishonest/ fraudulent?

- Term of ordinary meaning. In deciding what is dishonest jurors should 'apply current standards of ordinary decent people'.
- It involves an element of 'moral obloquy' per *Feely*, followed in HCA case of *Peters*.
- *Weatherstone*— an element of moral obloquy is required. Intention to permanently deprive alone is not enough. Personal profit is but one example of dishonesty, but there may be other ways to prove dishonest

Does the prosecution also have to look at the defendant's state of mind?

- In the English case of *Ghosh* (p 982) there was a gloss put on the test of dishonesty to include an extra requirement that "the accused must have *realised* that that what he was doing was by those standards dishonest." (adding a subjective step) This was REJECTED by the HCA in *Peters* in relation to a different offence.
- Neither *Ghosh* nor *Peters* has been specifically applied in the case law to larceny in NSW; *Weatherstone* cited as authority in *Baartman* (p 982)