

PROPERTY OFFENCES

LARCENY

SUMMARY

Common law offence (**s.117 Crimes Act 1900 (NSW)**)
IMPRISONMENT 5 YEARS

Actus Reus

Took and carried away

The property must be physically moved by the accused. The property must be removed from its original spot to be considered asportation (*Wallis v Lane (1964)*). Here, STATE WHAT HAPPENED

Property capable of being stolen

The property stolen must be a real, tangible object that is capable of physical possession and removal (*Croton v R (1967)*). The property must also be of value (*R v Perry (1945)*). Here/On the facts/This element is satisfied as...

- Cannot be information (*R V LLOYD (1985)*)
- Stealing of animals (*s126 - Cattle, s132 - dogs*)

In the possession of another

The property stolen must be in the original possession of another person.

- Stolen objects can be in constructive possession (not physically on them) **R v Chisser (1678)**
- Things under someone's control can be stolen (**Moors v Burke (1919)**)
- Larceny can be committed even if a person steals illegal objects (e.g illicit drugs) - **Anic Stylianou and Suleyman v R (1993)**
- Not considered larceny if it concerns abandoned property
 - Abandonment is where there is intentional giving up of ownership and possession (**Hibbert v McKiernan (1949)**)

STATE WHAT HAPPENED AND EVALUATE

Without the owner's consent

The property stolen must be without the owner's consent. Here/On the facts/This element is satisfied as STATE SCENARIO

Mistakes and consent (include within above paragraph if applicable)

The accused's actions may be negated by an honest and reasonable mistake. The mistake must be of a sufficiently fundamental kind (**Ilich v R (1987)**)

- Can be negated by an honest mistake (unilateral or bilateral mistake)

Unilateral mistake

- Unilateral mistake is made when the accused realises immediately that the other party has made a mistake and from that point forms the dishonest intention to take advantage of it

Bilateral mistake

- Mutual mistake is made when neither party realises that a mistake has been made, and when the accused realises they have gained from the mistake they form a dishonest intention

Mistakes that prevent ownership from passing

- Mistaken identity of the person to whom the property is given (R v Middleton 1876)
- Mistake as to identity of the property or thing that is handed over (R v Ashwell)
- Mistake as to the quantity of the thing delivered (Russel v Smith)

Mens Rea

With the intention of permanently depriving the owner

The prosecution must prove that the accused had the intention of depriving the owner of their property (**R v Holloway (1849)**).

- If an individual steals and uses property that was not originally theirs and returns it, they are not entitled to an acquittal (**S118 Crimes Act**)
- A person who deprives an owner of their possession but exercises ownership and later restores it, that is not considered larcenous (**Foster v R (1967)**)

Without an honest claim of right

The prosecution must prove that the accused did not have an honest claim of right with regards to the property. The accused must have had a legal and genuine belief as to the right of property (whether well founded in fact or law).

- (If taking of property involved in an assault): Whether the accused had a genuine belief in a legal right to property rather than a legal right to employ the means to recover property

Fraudulently

The accused must have dishonestly obtained the property. The current standard of ordinary decent people must be used to assess an accused's conduct (**R v Feely (1973)**). Here/On the facts/This element is satisfied STATE SCENARIO.

FRAUD

- Offence under **192E Crimes Act**

Actus Reus

Deception

The prosecution must prove that the accused's conduct aimed to deceive or cause an electronic device to make a response the person is not authorised to make (**s.192B Crimes Act**). Here/On the facts/This element is satisfied as STATE SCENARIO.

- Deception can be made by
 - Making a false statement
 - Mere exaggeration not deception (**R v John Bryan (1857)**)

Deception used obtain property/financial advantage

The accused must have obtained property, financial advantage or caused a disadvantage as a result of their deception (**s.192D Crimes Act**). There must be a causal link between the accused's deception and its consequences. Here/On the facts/This element is satisfied as STATE SCENARIO

Mens Rea

Actions - intentionally/recklessly deceptive

The prosecution must prove that the accused's actions were intended to deceive and that the accused is aware of the possibility that their conduct was deceptive.

Dishonesty/dishonestly

The accused's actions must have been dishonest to the standards of ordinary people and known by the defendant to be dishonest according to these standards (**S48 Crimes Act**)

- **Other property offences:**

- Robbery
 - Larceny and assault (by force or threat of force)
 - **S94 Crimes Act 1900**
 - Must have both larceny and assault to be considered robbery
- Burglary
 - Larceny and trespass of dwelling/house (i.e. breaking and entering)
 - **SS109-113 Crimes Act 1900 (NSW)**
 - Must have both elements - breaking and entering
 - Dwelling/house **S4 Crimes Act**
- Receiving stolen goods
 - **SS188-189 Crimes Act**

