

PART A CRIMES

INTRODUCTION

<write this>

As the alleged offence was committed in NSW, all reference will be to the **Crimes Act 1900 (NSW)** unless otherwise stipulated. The prosecution has the burden of proof to prove beyond reasonable doubt (BRD) that the accused committed the alleged offence (**Woolmington**).

Property Offences

1. Larceny

<INSERT INTRODUCTION (above)>

Issue

Can **D (defendant)** be charged with larceny?

Law

Section 116 provides that all larceny, regardless of the property's value, is of the same nature and subject to the same legal incidents as grand larceny. The **actus reus** requires a voluntary taking of tangible, movable property belonging to another without consent or through mistake (*Wallis v Lane*; *R v Wilson*; *MacDonald*; *Moors v Burke*). The **mens rea** requires an intent to permanently deprive, no honest claim of right, and conduct that is dishonest by community standards (*Foster*; *Fuge*; *Ghosh*).

Application

In assessing whether **<Defendant (D)>** is guilty of larceny, it is essential to examine both the actus reus (AR) and mens rea (MR) components of the crime.

In applying these legal principles to the case, the AR must be established.

AR (need all elements)

Voluntariness: Was D's action voluntary (not coerced or	The prosecution can presume that D (defendant) actions were voluntary unless evidence suggests otherwise (Falconer). If D (defendant) acted without coercion or duress, this element is satisfied. In this case, Ds actions were:
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involuntary)?	<consider <u>where appropriate</u>> <table border="1" data-bbox="477 264 1401 808"> <tr> <td data-bbox="477 264 836 371">deliberate</td><td data-bbox="836 264 1401 371"><Explain how deliberate and voluntary actions ></td></tr> <tr> <td data-bbox="477 371 836 555"> IF RELEVANT Was D <u>under duress</u> at the time of the act? </td><td data-bbox="836 371 1401 555">However D (defendant) was under duress at the time.<Explain how forced/pressured under duress ></td></tr> <tr> <td data-bbox="477 555 836 808"> IF RELEVANT Are there <u>any factors</u> (e.g., intoxication, mental state) that may affect voluntariness? </td><td data-bbox="836 555 1401 808">Further, other factors impacting D voluntary actions include, <assess any of factors impact voluntarily stealing></td></tr> </table> Therefore, D (defendant) actions were <voluntary / not deemed voluntary>.	deliberate	<Explain how deliberate and voluntary actions >	IF RELEVANT Was D <u>under duress</u> at the time of the act?	However D (defendant) was under duress at the time.<Explain how forced/pressured under duress >	IF RELEVANT Are there <u>any factors</u> (e.g., intoxication, mental state) that may affect voluntariness?	Further, other factors impacting D voluntary actions include, <assess any of factors impact voluntarily stealing>
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Taking and Carrying Away (Asportation):	As D (defendant) physically removed V's property—even a minimal movement suffices (<u>Wallis v Lane</u>; <u>HKT</u>)—asportation is met. In this case, <consider <u>where appropriate</u>> <table border="1" data-bbox="477 1173 1401 1391"> <tr> <td data-bbox="477 1173 836 1281">D physically removed the property from V's possession</td><td data-bbox="836 1173 1401 1281">D physically removed the property from V's possession by <Explain how relocated property – took from where it belonged ></td></tr> <tr> <td data-bbox="477 1281 836 1391">Did D have control over the property at any point?</td><td data-bbox="836 1281 1401 1391">During this time D took possession of the property by <Explain how they held/carried item ></td></tr> </table> Therefore, D (defendant) actions indicate that they <did / did not> take and carried away the <item>.	D physically removed the property from V's possession	D physically removed the property from V's possession by <Explain how relocated property – took from where it belonged >	Did D have control over the property at any point?	During this time D took possession of the property by <Explain how they held/carried item >		
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Property: (not fixtures – land, letterboxes, trees, not wild animals) Does include gas	The property must be tangible and movable (<u>Croton</u>). As V's property is movable and tangible, this condition is satisfied (<u>Perry v. The Queen</u>). The facts clearly establish that the property was capable of being stolen.						
Belonging to Another:	V (victim) must have had actual or constructive possession of the property (<u>Moors v Burke</u>). If V was using the property and had the right to possess it, this element is fulfilled. In this case, the property did belong to V.						

Without Consent:	As D (defendant) took the property without consent, this element is satisfied. Consent obtained under a fundamental mistake, such as mistaken identity or the nature of the goods, may negate consent (Illich). In this case, mistake <doesn't apply OR does apply to negate the consent>

In terms of the **MR**

Intention to Permanently Deprive	<select ONE>	
	Permanent	If the intention of the taker is to exercise ownership of the goods, to deal with them as his own, an intention later to restore the property will not prevent the original taking being larcenous” (Foster; s 118). As D (defendant) intended to keep V'(victims) property permanently, this satisfies the MR requirement.
	Temporary <u>plan to return property later</u>	Temporary taking generally does not constitute larceny (Holloway). However, if D acts as if the property were their own, this can still satisfy MR (Foster). D (defendant) claims they intended to return the property later. This creates ambiguity. If D truly intended only temporary possession, it may weaken the prosecution’s case. If D exercised ownership or used the property as their own, MR may still be satisfied despite plan to return. D could argue they were holding the item temporarily for <insert factual justification, e.g., safekeeping, intending to return to owner>, which may challenge the element of permanent deprivation.
Without a Belief in a Claim of Right:	In this case,	
	<Select>	
	Didn’t have legal claim to property	D (defendant) does not believe they have a legal claim to the property.

	Believed had legal claim to property (believed it was rightfully their property)	As D (defendant) genuinely believed they had a <u>legal claim</u> to the property, this could negate mens rea (Fuge). This belief must be subjective and legally based; mere moral beliefs do not suffice (Lopatta).
Dishonestly or Fraudulently:	To establish dishonesty, the Ghosh test must be applied.	
	D's behaviour <u>WAS considered dishonest</u>	As D (defendant) conduct was dishonest by societal standards and D recognised this, then this element is likely satisfied (Ghosh).
	D's belief that they were acting for a justifiable reason	As D (defendant) believed their actions were <u>acceptable</u>, this could challenge the dishonesty aspect. This suggests that D did not possess the required MR for larceny, potentially leading to a not guilty verdict.

Conclusion

D (defendant) guilt will depend on the prosecution's ability to prove both AR and MR elements beyond a reasonable doubt. If any key element is unproven, D may not be found guilty of larceny.

In this case.

<select>

All elements of AR and MR exist	As all elements are proven, D (defendant) is likely to be found guilty of larceny under s117 . The prosecution has a strong case to charge D with larceny. Based on the evidence it is likely that there will be a conviction.
Not all elements satisfied	As not all key elements are proven, the prosecution has a weak case and D (defendant) may be acquitted . This could result in a dismissal of charges, which impacts D's criminal record and future legal standing.

2. Robbery

<INSERT INTRODUCTION (front page)>

Issue

Has D (defendant) committed robbery under Section 94 of the Crimes Act?

Law

Robbery under s 94 involves stealing or assaulting with intent to steal and carries a maximum penalty of 14 years. The actus reus requires intent, use of force or threats, and taking property (Smith v Desmond; R v Delk). The mens rea is dishonesty unless there is an honest claim of right (R v Langham). Aggravated robbery under s 95 involves the use of a weapon or causing harm and attracts a higher penalty.

Application:

In this case, analysing the **actus reus** of robbery involves assessing if **D (defendant)** intended to steal, used force or threats to instil fear, and took property directly from the victim or their immediate presence. Each element must be proven for guilt.

<Assess all elements>

Intent to Steal	To establish D (defendant) intent, consideration is given to statements made by D (defendant) indicating a desire to take V's property .	
	In this case <select>	
	Statements made indicated would steal	D (defendant) made statements such as <what statements were made by D to indicate premeditated actions (like following V) or displayed behaviour after the incident that shows intent to permanently deprive V of the property / threat to V>.
	No statements made	There were no indicative statements made by D (defendant) that showed they would steal from V (victim) .
	Next, D (defendant) actions leading up to the incident should be examined.	
	In this case <select>	
	Actions appeared premeditated stealing	as D (defendant) <insert actions prior to crime / if D was seen following Victim or surveying the area beforehand / preplanning of crime >, this may suggest premeditation.
	No premeditated actions	There were no premeditated actions taken by D (defendant) that indicated that they would steal from V (victim) .
	Finally, D (defendant) post-incident behaviour must be assessed.	
	In this case <select>	
	How act after – ran away	As D (defendant) attempted to flee or conceal the stolen items, this reinforces the intent to permanently deprive V (victim) of their property.
	Stayed at crime scene	As D (defendant) stayed at the scene, it indicates that they didn't intend to steal from V (victim)

Use of Force or Threat	For the use of force or threat, D (defendant) actions towards V (victim) must be scrutinised. In this case <table border="1"> <tr> <td data-bbox="432 338 603 622">Physical Contact</td><td data-bbox="603 338 1401 622"> <select> - D (defendant) made physical contact with V (victim) by <insert how physical contact made with V (victim) >. - Even minimal force can be sufficient, as established in Smith v Desmond. - D (defendant) did not make physical contact with V (victim) </td></tr> <tr> <td data-bbox="432 622 603 875">Threatening Behaviour</td><td data-bbox="603 622 1401 875"> Further, <select> - D (defendant) threats caused V (victim) genuine fear as <insert what D did to scare V eg D (defendant) pointed a weapon or made explicit threats / what quotes "...">. - D (defendant) did not undertake any threatening behaviour. </td></tr> <tr> <td data-bbox="432 875 603 1115">Victim's Perception [even non-physical threats can support the claim]</td><td data-bbox="603 875 1401 1115"> Also, V (victim) perception of D (defendant) actions is also crucial. In this case <select> - V felt genuinely threatened as <insert fact or statement that indicated they felt threatened> - V (victim) did not seem to feel threatened by D (defendant) </td></tr> </table>	Physical Contact	<select> - D (defendant) made physical contact with V (victim) by <insert how physical contact made with V (victim) >. - Even minimal force can be sufficient, as established in Smith v Desmond. - D (defendant) did not make physical contact with V (victim)	Threatening Behaviour	Further, <select> - D (defendant) threats caused V (victim) genuine fear as <insert what D did to scare V eg D (defendant) pointed a weapon or made explicit threats / what quotes "...">. - D (defendant) did not undertake any threatening behaviour.	Victim's Perception [even non-physical threats can support the claim]	Also, V (victim) perception of D (defendant) actions is also crucial. In this case <select> - V felt genuinely threatened as <insert fact or statement that indicated they felt threatened> - V (victim) did not seem to feel threatened by D (defendant)
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Taking from the Person or Immediate Presence	When analysing the taking from the person or immediate presence, it is important to determine how the property was taken. In this case <table border="1"> <tr> <td data-bbox="432 1294 624 1507">Direct Confrontation</td><td data-bbox="624 1294 1401 1507"> <select> - The property taken directly from V (victim) possession, as <insert how taken> this indicates the property was taken from Vs (victim) immediate presence. - The property was not taken directly from V's possession. </td></tr> <tr> <td data-bbox="432 1507 624 1832">Proximity of the Property</td><td data-bbox="624 1507 1401 1832"> The proximity of the property should also be considered. <select> - As D (defendant) took items that were in close proximity to V (victim) this qualifies as taking from the person. The case Delk (1999) suggests that proximity matters, even if the items were not physically held by V (victim). - D (defendant) did not take them in close proximity of V (victim) </td></tr> <tr> <td data-bbox="432 1832 624 2004">Witness Testimonies</td><td data-bbox="624 1832 1401 2004"> Finally, eyewitness testimonies can further bolster this element. <select> - There were witnesses who can attest to the manner in which D (defendant) took the property that could </td></tr> </table>	Direct Confrontation	<select> - The property taken directly from V (victim) possession, as <insert how taken> this indicates the property was taken from Vs (victim) immediate presence. - The property was not taken directly from V's possession.	Proximity of the Property	The proximity of the property should also be considered. <select> - As D (defendant) took items that were in close proximity to V (victim) this qualifies as taking from the person. The case Delk (1999) suggests that proximity matters, even if the items were not physically held by V (victim). - D (defendant) did not take them in close proximity of V (victim)	Witness Testimonies	Finally, eyewitness testimonies can further bolster this element. <select> - There were witnesses who can attest to the manner in which D (defendant) took the property that could
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		support claims of direct confrontation. In this case <who were witnesses>. - There were not any witnesses who saw the incident.
Aggravating Circumstances	Regarding aggravating circumstances, it must be assessed whether D (defendant) used a weapon or inflicted harm during the robbery. In this case, <select>	
	Was use of weapon OR inflicted harm	As D (defendant) was <select any appropriate> - armed, this elevates the charge to aggravated robbery. - Caused injuries such as <what injuries> to V (victim) could which could significantly impact the severity of the charges. - As D (defendant) engaged in other criminal behaviours, such as <insert any other offences eg kidnapping, assault>, this would further escalate the offence.
	No aggravating circumstances	There were no aggravating circumstances in play.

For the **MR**, the focus shifts to (defendant) state of mind at the time of the offence.

This involves assessing (defendant) intention to **permanently deprive the victim of their property** and **any honest belief in a claim of right**. Consideration will be given to whether (defendant) acted **dishonestly** and if any **genuine belief in ownership** negates the necessary intent for robbery.

In this case, <select>

Honest Belief of Claim of Right	there was a genuine belief by D (defendant), even if unreasonable, they had a right to the property taken. In this case D (defendant) believes that <what claim are they making the property is theirs>. Ultimately, it is for the jury to decide if D (defendant) belief negates the MR necessary for robbery, as outlined in R v Langham .
No claim on the property (knew it wasn't theirs to take)	D(defendant) knew that the property was not theirs and knew they were permanently deprive the victim of their property.

Conclusion

The determination of D (defendant) guilt for robbery hinges on the prosecution's ability to prove all elements BRD

In this case <select>

- **All elements met:** Conviction likely; robbery carries up to 14 years, aggravated robbery up to 25. Prosecution case strong.
- **Elements not met:** Conviction unlikely; D may face lesser charges due to weak evidence.

Joint Criminal Enterprise (JCE)

P1 – person who committed the actus rea of the actual “base” crime

P2 and P3 were at the scene

FOR P2 and P3 (not main offender)

*This ILAC is for the other people who **did not commit the AR** – do for each party P2 and P3 if asked**

Example – P1 P2 and P3 agree to robbery but P1 ends up killing victim and charged with murder (serious offence). JCE for robbery But Not necessarily murder.

NOTE What crime/offence is QUESTION asking about!!!!

Issue:

Is [P2 or P3] liable for [Offence] under the doctrine of Joint Criminal Enterprise (JCE)?

Law

Joint Criminal Enterprise (JCE) **is a framework**, not an offence, as seen in *McEwan, Robb*, and *Dambitis*.

To prove liability beyond reasonable doubt (*Woolmington*), the prosecution must show: an **agreement**, which can be informal or inferred (*Osland; Kanaan; Tangye*); **active participation**, since mere **presence** is insufficient (*Osland; Huynh; Chisimba*); **mens rea** at the time of the agreement (*Osland*); mutual liability among members (*Osland; Huynh*); presence is not required (*Osland*); and any withdrawal must be clear.

Application

To assess P2/ P3 liability under JCE, the four essential elements need to be assessed in detail.

STEP 1 Was there an agreement?

Evidence of an agreement to engage in the criminal enterprise is crucial. This can be inferred from specific conduct or communications among the parties.

In this case <select>

Evidence of agreement	There is evidence of agreement between the parties involved as
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to commit crime (did they plan it) (will depend on what crime the Question asking about)	<insert facts that support agreement such as - verbal agreements or discussions about committing the crime. INSERT QUOTES - Non-verbal cues, such as gestures or actions indicating a shared understanding. - prior planning meetings or exchanges of information that suggest a mutual intent to commit the offence>
no evidence of agreement or insufficient evidence (unexpected outcome)	it may be difficult for the prosecution to argue that there was any sort of agreement between <parties names>. In this case <explain how it was spontaneous decisions to commit offence>. There is no clear agreement that unequivocally points to the existence of a JCE to commit <insert offence> (<i>Chishimba, Makasa and Mulgena</i>) This suggests that P2/P3 did not expect the offence of <insert offence> and therefore it would be difficult to argue there was an agreement to commit the offence.

STEP 2 Did P2/P3 Participate?

This is **usually proven by the presence of the defendant**, however this must **amount to more than a mere presence**, such as to support, encourage or be available to assist (*Osland; Huynh*).

<select>

Participation	P2/P3's actions demonstrate support for P1 in the offence, such <insert actions supporting the offence such as • Urging P1 to <u>proceed</u> with the crime. • Making <u>encouraging statements</u>. • <u>Facilitating or providing assistance</u> in any form.
No participation	P2/P3 did not actively participate or support P1 in committing the offence, and their lack of involvement poses a challenge for the prosecution. Merely <u>observing without facilitating the crime undermines their liability</u> (<i>Osland, Huynh, Chisimba</i>). <consider any of following > • Did P2/P3 <u>distance themselves</u> from P1's actions? • Did they <u>urge P1 to stop or dispose of the weapon</u>? • Did they <u>leave the scene</u>? While the <u>bar for participation is low</u> and doesn't require the <u>actus reus</u> (<i>Dickson</i>), the evidence is likely insufficient to prove P2/P3's involvement, weakening the prosecution's case

STEP 3 Does one party have AR?

The prosecution must prove a crime within the agreement, with **P1** completing the offence.

All involved are guilty, regardless of role (**IL v The Queen**).

P1 had both actus reus and mens rea and has been charged with **<offence>**

STEP 4 Does P2/P3 have MR?

The prosecution must prove that the time the crime was committed, the defendant independently and personally formed the relevant mens rea of the offence that took place (**Osland**).

At the time of the offence **<select>**

Had intention to commit crime (NOTE: will depend on what crime asking about Robbery – yes Murder – not likely)	P2/P3 independently and personally formed the requisite MR for the offence. P2/P3 did form the relevant MR for <insert offence> as they < insert quotes or actions showing intent> This quote illustrates their exact intention to commit the offence.
Did not have intention (had no idea)	The absence of MR is the primary concern as for P2/P3 to be held liable, they must have intent. A P2/P3 did not share P1 (main offender) intent and was unaware of the criminal nature of the actions, they cannot be found guilty as a secondary party (Osland). In this case, <insert any evidence or facts that show P2/P3 was surprised by P1's actions or did not agree with the criminal intent or wanted to leave Eg told them to 'calm down' or 'Lets go'> This significantly undermines the case against them.

STEP 5 Does P2/P3 have grounds for Withdrawal?

An accused can avoid liability by **withdrawing support, changing their mind, informing the principal, and taking preventive steps**. The prosecution must prove BRD that this didn't occur, while the accused must show withdrawal, which the Crown must then disprove (**Tietie**).

<select>

Withdrew support (Tried to stop crime)	P2/P3 withdrew their support by <insert facts that support P2/P3 communicating that they didn't want to be involved in crime and what steps took to prevent it from happening> .
Did not withdraw support	P2/P3 did not withdraw from the JCE but continued to participate with P1 , making them jointly liable for the offence by failing to distance themselves.

Conclusion

<select>

Liabile	It is likely that P2/P3 will be held liable under JCE due to evidence of an agreement, active participation, and the necessary mens rea. By proving JCE, the prosecution has a strong case to extend liability of the charge of <base offence> to P1/P2. Based on the evidence it is likely that that there will be a conviction. <if withdrew> As P2/P3 communicated a clear withdrawal from the enterprise before the crime was committed, and took reasonable steps to prevent it, then liability could be negated. The defence would need to put forward a strong case of withdrawal to negate this charge.
Liabile (withdrawal)	While there is a strong case to support JCE, if withdrawal is proven, P2/P3, could potentially have the <serious offence> charge dismissed. However, if the <u>withdrawal is not deemed effective</u>, P2/P3 might still face <lesser offence eg manslaughter> charges instead. The final determination would depend on the specifics.
Not Liabile	The prosecution has a weak case against P2/P3 and it is unlikely they will be able to extend criminal liability under JCE as there is insufficient evidence to support their involvement in the offence. The DPP should not pursue charging P2/P3 with JCE as there is very limited prospects of success. There is <select any relevant> A. very limited evidence of P2/P3 participation, B. lack of agreement, C. weak evidence of forming of MR to commit the <offence>