

## Larceny

### A. Introduction

\_\_\_\_\_ (D) could be charged with **larceny** under **s 117** of the **Crimes Act 1900 (NSW)**. The burden of proof lies upon the prosecution to prove all the elements of the crime BRD (*Woolmington*). The elements of larceny are not defined under statute; however the High Court in *Illich v R* has approved the definition of larceny to be: "A person steals who, without the consent of the owner, fraudulently and without a 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."

D may raise the defence of \_\_\_\_\_ (insert defence) **OR** D has no grounds to raise a defence.

### B. Actus Reus

- 1) Taking and carrying away (asportation)
- 2) Property capable of being stolen
- 3) Which belonged to another
- 4) Without the consent of the owner

#### 1) Taking and carrying away (asportation)

- The actus reus of larceny requires the prosecution to prove that D took and carried away the property – there must be a physical removal of the property said to be stolen.
  - The slightest movement can satisfy the 'carrying off' requirement: *R v Lapiere*
  - There must be a positive act on the part of D; mere passive retention of property will not be sufficient for larceny: *R v Thomas*

Conclude:

- If satisfied: it is clear from the facts that this element of asportation is satisfied.
- If not: this element may be difficult for the prosecution to prove.

#### 2) Property capable of being stolen

- The prosecution must prove that the property was capable of being stolen.
  - Property must be of some value; even slightest value is sufficient: *R v Perry*
  - Property must be moveable: *R v Young*
  - Property must have an owner and cannot be abandoned: *R v MacDonald*
  - Property does not have to be tangible to be stolen; electricity (*Electricity Supply Act 1995 NSW*), valuable insecurities like bills of exchange (**s 134**) and gas can be stolen (*Low v Bleas*)
  - Corpse is not property and cannot be stolen: *R v Sharpe*

Conclude:

- If satisfied: the prosecution would have no problem with proving this aspect of the actus reus.
- If not: the prosecution may have difficulty proving this aspect of the actus reus.

### 3) Which belonged to another

- The property must have belonged to another person.
  - Is it actual possession: *Moors v Burke*
    - The person has actual possession of property if the person intends to possess the property; and the person had some degree of control over the property at some stage.
    - Property can be stolen from someone who is merely in control of property, rather than possession: *Hibbert v McKierman*
    - A person is in control of property where he/she has 'manual custody', or by having it 'where he alone has the exclusive right or power to place his hands on it, and so have manual custody when he wishes': *Moors v Burke*
    - No requirement that the person in possession is aware of the existence of property: *Hibbert v McKierman* → the golf club possessed the golf balls but didn't know how many there were.
  - Is it constructive possession: *Ellis v Lawson*
    - A person has constructive possession where he/she does not have actual possession but has the legal right to assume possession whenever that person wishes to do so. E.g. employer has constructive possession for goods in his shop.

Conclude:

- If satisfied: it is clear from the facts that the property belonged to another person.
- If not: this element may be difficult for the prosecution to prove.

### 4) Without the consent of the owner

- The property must be taken without consent of the person in possession: *Illich; Croton*

Conclude:

- If satisfied: it is clear and evident in the facts that D took the property without the consent of the owner because \_\_\_\_\_ (insert facts), thus this is sufficient for the element to be satisfied.
- If consent is an area of difficulty, consider the following issues:
  - **FACILITATION AND CONSENT:**

The distinction between facilitation and consent will be a question of fact.

    - Where owners facilitates or allows property to be taken away will not necessarily amount to consent: *Martin v Puttick*
    - BANK SCENARIO: *Kennison v Daire* → closing of a bank account and still using the card to withdraw money from an ATM amounts to larceny because even though the ATM had permitted the withdrawal, this did not amount to consent by the bank and the HC held that the machine could not give the bank's consent.
    - NOT AGAINST WILL OF OWNER: *R v Turvey* → D planned to steal property from employer and D's co-conspirator told D's boss who advised co-conspirator to go along with the plot and hand the property over to D to entrap him. Held that D was not guilty as he did not carry away the goods against the will of the owner.

GROCERY SHOPPING SCENARIO: *Martin v Puttick* → D stole chops at supermarket and put them in her shopping bag and also bought other goods. D gave manager her