

LARCENY

Introduction

1. (Name) could be charged with larceny under section 117 of the Crimes Act (NSW).
2. The prosecution will have to prove all elements of the crime beyond a reasonable doubt (Woolmington).
3. The elements of larceny were approved by the High Court in *Ilich v R* (1987): the accused took and carried away, property capable of being stolen, which belonged to another, and without the consent of the owner. At the time of the taking, the accused acted with the intention to permanently deprive the owner, without a claim of right, and fraudulently (Ilich).

Actus reus

The prosecution is entitled to presume (Name)'s acts were voluntary (Falconer). There is nothing in the facts to suggest their acts were anything but 'willed' or voluntary' (Ryan).

Taking and carrying away

1. The actus reus of larceny requires that (name) took and carried away the property.
2. It is clear from the facts that _____, which will easily satisfy the precondition of asportation.
3. The slightest movement is sufficient (Lapier).

Property capable of being stolen

1. The prosecution must prove the property was capable of being stolen.
2. (The item) was clearly tangible as _____ and it was of _____ value.
3. This will probably not be an issue of contention for the prosecution.

Which belonged to another

1. As larceny is an offence against possession/control/ownership, the property (Name) took must have belonged to another
2. The facts suggest _____.
3. This property was clearly under (Victim)'s possession/control/ownership – go back to notes for more depth.

Without the consent of the owner

1. The property must have been taken without the consent of the owner.
2. Types of consent:
 - a. Vitiating consent – by threat (Lovell), by fraud (section 192E *Crimes Act*)
 - b. Mistaken consent: An issue arises on whether or not (Name) is liable for taking advantage of the (Victim)'s mistake. The authorities, *Ilich* and *Potisk*, on mistaken consent are divided.
 - i. Establish type of mistake: unilateral or mutual
 - ii. Apply Potisk: When applying Potisk, (Name) will not be found guilty of larceny if (the property) was handed to him/her with

consent by (victim) as mistaken consent is still consent (Potisk).

- iii. Apply Ilich: If Ilich is applied, a fundamental mistake must have occurred for (Name) to be found guilty for larceny.
 1. If fundamental mistake: Establish the type of fundamental mistake: person (Middleton), goods (Ashwell) or excess quantity (Russell v Smith). If excess money – it is not a fundamental mistake.
 2. If not fundamental mistake: The facts suggest/reword the facts, that there was no fundamental mistake.

Mens rea

Intention to permanently deprive

1. The facts indicate _____
 - a. Conditional return: Even though (name) had the intention of returning it, he clearly appropriated the property for his own use/benefit. This constitutes as an intention to permanently deprive, regardless of the reasonableness of their intention to return (Foster). The prosecution will easily be able to prove this element.
 - b. Altered condition: The prosecution will be able to satisfy this element as its altered state constitutes as an intention to permanently deprive (Duru)
 - c. Fungibles/interchangeable items:
 - i. Money: Even if (name) had the intention of repaying (Victim), there was still an intention to permanently deprive (Victim) of that specific (amount of money) (Cockburn).
 - ii. More specific: As the item is considered a fungible, the focus will shift on whether (name) appropriated it. The facts indicate _____. This constitutes as an intention to permanently deprive (Foster).

Without a bona fide claim of right

1. The prosecution will need to prove (Name) did not have a legal claim of right.
2. The facts show that _____.
 - a. If (Name) had belief in a claim of right:
 - i. (Name)'s belief may have been unreasonable, but it was clearly genuine and in good faith. This will negative larceny as mens rea cannot be established here. If (Name) can successfully argue her legal claim of right, the onus of burden of proof will shift onto the prosecution to negative his/her claim.
 - ii. Did claim of right extend to entirety of property? If no, this is not a claim of right

Fraudulently

1. Talk about the facts – in accordance with their intention and claim of right
2. Fraud:
 - a. If the first two elements satisfied: As (Name) clearly had an intention to deprive property he/she was not entitled to, (Name) will be found to acted fraudulently as well (Love)