

# Stealing s 391

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The prosecution must prove that:

1. **The [property described in the indictment] is a thing capable of being stolen.**

**“Anything that is the property of any person is capable of being stolen if it is**

**(a) moveable; or**

**(b) capable of being made moveable even if it is made moveable in order to steal it.”<sup>1</sup>**

2. **The thing is owned by the person named as owner in the indictment.**

3. **There was a taking without the consent of the owner.**

**That is the defendant must have actually moved it or actually dealt with it by some physical act without the owner’s consent.**

4. **The taking was with a fraudulent intent.**

**That is with an intent to permanently deprive the owner of the thing.**

[Where there is more than one item of property:

**It is sufficient for the prosecution to prove the stealing of any one item – not necessary for the prosecution to prove defendant stole all the items referred to in the indictment.]<sup>2</sup>**

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<sup>1</sup> The definition of “things capable of being stolen” was simplified by Act No. 3 of 1997. As the learned editor of Carter observes, there maybe some difficulty in applying the simplified definition in s 390, to some of the things now included in the definition of property in s 1 e.g., “things in action or other intangible property”. It is suggested that in such a case the Crown would elect to proceed under s 408C and not s 398(1).

<sup>2</sup> If the indictment alleges circumstances of aggravation see s.398.