

Arson: s 461

Legislation

461 Arson

- (1) Any person who wilfully and unlawfully sets fire to any of the things following, that is to say—
- (a) a building or structure;
 - (b) a motor vehicle, train, aircraft or vessel;
 - (c) any stack of cultivated vegetable produce, or of mineral or vegetable fuel;
 - (d) a mine, or the workings, fittings, or appliances of a mine;
- is guilty of a crime, and is liable to imprisonment for life.
- (2) It is immaterial whether or not a thing mentioned in subsection (1)(a) or (b) is complete.

Commentary

Set fire to the property

To have set fire to property, the defendant must have caused some actual burning of the property. Mere scorching or charring is not sufficient. In *R v Joinbee* [\[2013\] QCA 246](#) it was held that the expression “sets fire to’ in s 461 of the Code refers to conduct which causes the building being set on fire. It is not limited to conduct involving physically igniting the building” at [76]. See also *R v Cormack* [\[2013\] QCA 342](#).

See s 458(2) where the defendant possesses or has a part interest in the property, s 459(1) where an otherwise lawful burning is done with an intent to defraud any person and s 459(2) where the defendant owns the property.

Wilfully

See *Lockwood; ex parte A-G* [\[1981\] Qd R 209](#); *T v The Queen* [1997] 1 Qd R 623; Intoxication is relevant to whether the defendant had the necessary intention: *R v Eustance* [\[2009\] QCA 28](#).

Unlawfully

It is immaterial that the person who does the injury is in possession of the property injured, or has a partial interest, or an interest in it as a joint or part owner or owner in common: s 458(2). A person is not criminally responsible for an injury caused to property by the use of such force as is reasonably necessary for the purpose of

defending/protecting himself or any other person, or any property from injury which the person believes, on reasonable grounds, to be imminent: s 458(3).

Suggested Direction

The prosecution must prove beyond reasonable doubt that:

- 1. The defendant set fire to the property;**
- 2. The defendant did so wilfully;**

That is, the defendant either had an actual intention to set fire to the property or deliberately did an act aware at the time he/she did it that the property's catching fire was a likely consequence of his/her act and that he/she did the act regardless of the risk.

- 3. The defendant did so unlawfully.**

An act which causes injury to the property of another, and which is done without the owner's consent, is unlawful unless it is authorised or justified or excused by law.