

Arson s 461

The prosecution must prove that:

1. The defendant set fire¹ to the property;²
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 did it that the property's catching fire was a likely consequence of his act and that he did the act regardless of the risk.³

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.⁴

¹ ie. s/he 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.

² 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.

³ 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.

⁴ s 458(2) – 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(3) – 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.