

Stealing s 391

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.”¹

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.]²

¹ 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).

² If the indictment alleges circumstances of aggravation see s.398. The offence is a prescribed offence under s 161Q *Penalties and Sentences Act* 1992 so a serious organised crime circumstance of aggravation is applicable.