

Endangering Particular Property by Fire¹: s 426

The prosecution must prove that:

1. The defendant set fire to a thing situated so that the building (or other form of property mentioned in s461(a)-(d)) was likely to catch fire from it.
2. The defendant did so wilfully; that is, when he set fire to the thing, he intended that the building would catch fire; or, alternatively, he deliberately lit the thing, realising that it was likely that the building would catch fire, and acting in reckless disregard of that risk.^{2 3}
3. The defendant set the fire to the thing unlawfully.

If the prosecution shows that if the building had caught fire it would have been without the owner's consent⁴, the defendant's act is unlawful unless it is authorised or justified or excused by law.^{5 6}

¹ Section 462 was amended with effect from 1.12.08. The practical result of the amendment was to remove the offence of attempted arson as a separate substantive offence.

² *Lockwood; ex parte A-G* [1981] Qd R 209.

³ In *R v Webb, ex parte Attorney-General* [1990] 2 Qd R 275 the Court of Criminal Appeal considered whether "wilfully and unlawfully" applied to the action of setting fire to the original object or to the prospect of the building (or other s461 property) catching fire. It concluded in favour of the second, the offence being complete if there were an objective likelihood that the building would catch fire as a result of the defendant's act. The offence then appeared as s 462(b), under the heading "Attempts to commit arson"; it remains to be seen whether the change of heading is considered to alter the section's construction.

⁴ See also s458(2), where the defendant is in possession of or has a part interest in the property, and s 459, which renders an otherwise lawful act causing injury to property unlawful where it is done with intent to defraud, regardless of whether the property belongs to the offender.

⁵ See *R v Webb* at 279 at 286-287.

⁶ See s458(3) which creates an excuse for injury to property by use of force reasonably necessary for defence of person or property.