

105. Endangering Particular Property by Fire: s 462

105.1 Legislation

[Last reviewed: April 2025]

Criminal Code

[Section 462](#) – Endangering Particular Property by Fire

105.2 Commentary

[Last reviewed: April 2025]

The Defendant:

- (1) must have set fire to any thing;
- (2) which was situated so that another thing mentioned in s 461(1) was likely to catch fire from thing to which fire was set;
- (3) must have done so wilfully; and
- (4) must have done so unlawfully

Set fire to a thing

See the commentary under the heading 'set fire to' in [Benchbook Chapter 104 – Arson](#).

Situated so that a thing listed in s 461(1) was likely to catch fire from it

The things listed in s 461(1) are as follows:

- (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; and
- (d) a mine, or the workings, fittings, or appliances of a mine.

Wilfully

The element of 'wilfully' requires either (1) proof of actual intention, or (2) that the Defendant deliberately did an act, aware at the time it is done, that the thing catching fire is a likely consequence of the act, and that the Defendant did the act regardless of the risk: see *R v Lockwood; ex parte A-G* [\[1981\] Qd R 209](#); *R v T* [1997] 1 Qd R 623; [\[1996\] QCA 258](#).

In *R v Webb, ex parte Attorney-General* [\[1990\] 2 Qd R 275](#), the Court of Criminal Appeal considered the construction of the offence provision as then contained in s 462(b) under the heading '*Attempts to commit arson*'. The Court concluded that the requirement that the act be done 'wilfully' and 'unlawfully' qualified only (the potential of) the thing specified in s 461(1) catching fire. What must be established is that the Defendant set fire to a thing while wilfully contemplating an unlawful result that a thing specified in section 461(1) would thereby catch fire (see *Webb* per Macrossan CJ at [282] and Thomas J at [286]).

Unlawfully

An act which causes injury to the property of another, without the owner's consent, is unlawful unless it is authorised or justified or excused by law: s 458(1). It is immaterial that the person who does the injury to the property is in possession of the property, 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/herself or any other person, or any property from injury which the person believes, on reasonable grounds, to be imminent: s 458(4).

Section 459(1) renders otherwise lawful acts unlawful, when done with intent to defraud any person. It is immaterial that the property in question is the property of the offender: s 459(2).

See also discussion of *R v Webb, ex parte Attorney-General* [\[1990\] 2 Qd R 275](#), above.

105.3 Suggested Direction

[Last reviewed: April 2025]

The prosecution must prove beyond reasonable doubt that:

- 1. The Defendant set fire to [a thing] so situated that [an item mentioned in s461(1)] was likely to catch fire from it;**
- 2. The Defendant did so wilfully, that is, the Defendant either:**
 - i) had an actual intention that the [item mentioned in s 461(1)] would catch fire; or**
 - ii) was aware at the time [he/she] set fire to the [thing set fire to] that it was a likely consequence of doing so that the [item mentioned in s 461(1)] would catch fire, and [he/she] set fire to the [thing set fire to] regardless of the risk; and**
- 3. The Defendant did so unlawfully.**

The Defendant's conduct will be unlawful if the causing of injury to the [item mentioned in section 461(1)] (if it were to catch fire) would be unlawful.

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.

[If the causing of injury to the [item mentioned in section 461(1)] was/would have been without the consent of the owner, then the defendant's conduct was here, unlawful].