

Endangering Particular Property by Fire: s 462

Legislation

462 Endangering Particular Property by Fire

A person who wilfully and unlawfully sets fire to anything situated so that a thing mentioned in section 461(1)(a) to (d) is likely to catch fire from it commits a crime.

Maximum penalty—14 years imprisonment.

Commentary

Section 462 was amended with effect from 1 December 2008. The practical result of the amendment was to remove the offence of attempted arson as a separate substantive offence.

Wilfully and unlawfully

The word “wilfully” requires proof that the defendant either had an actual intention to do the particular kind of harm done or deliberately did an act, aware that the result was a likely consequence and recklessly did the act regardless: *Lockwood; ex parte A-G* [1981] Qd R 209.

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 s 461 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.

Without owner’s consent

If the building had caught fire and it would have been without the owner’s consent, the defendant’s act is unlawful unless authorised, justified or excused by law: See *R v Webb* at 279 at 286-287.

See s 458(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.

See also s 458(3) which creates an excuse for injury to property by use of force reasonably necessary for defence of person or property.

Suggested Direction

The prosecution must prove beyond reasonable doubt 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/she set fire to the thing, he/she intended that the building would catch fire; or, alternatively, he/she deliberately lit the thing, realising that it was likely that the building would catch fire, and acting in reckless disregard of that risk.**
- 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 consent, the defendant's act is unlawful unless it is authorised or justified or excused by law.