

Receiving: s 433 (From 1 December 2008)

Legislation

432 What is *tainted property* for ch 41

(1) In this chapter—

tainted property means—

- (a) a thing that has been obtained by way of an act constituting an indictable offence; or
 - (b) if tainted property mentioned in paragraph (a) is converted into other property—any of the other property; or
 - (c) if tainted property mentioned in paragraph (a) is mortgaged, pledged or exchanged for other property—any of the proceeds of the mortgage, pledge, or exchange.
- (2) However, a thing stops being ***tainted property*** after a person acquires a lawful title to it.

433 Receiving tainted property

(1) A person who receives tainted property, and has reason to believe it is tainted property, commits a crime.

Maximum penalty—

- (a) if the property was obtained by way of an act constituting a crime—14 years imprisonment; or
 - (b) if the property is a firearm or ammunition—14 years imprisonment; or
 - (c) if the offender received the property while acting as a pawnbroker or dealer in second hand goods, under a licence or otherwise—14 years imprisonment; or
 - (d) otherwise—7 years imprisonment.
- (1A) The *Penalties and Sentences Act 1992*, section 161Q also states a circumstance of aggravation for an offence against this section.
- (1B) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

- (2) For the purpose of proving the receiving of anything it is sufficient to show that the accused person has, either alone or jointly with some other person, had the thing in his or her possession, or has aided in concealing it or disposing of it.

Commentary

For offences committed before 1 December 2008, see Chapter 169.

'Tainted property' means a thing that was obtained by way of stealing (or another indictable offence). Tainted property also includes the property into which tainted property was converted or the proceeds of a mortgage, pledge or exchange of tainted property: s 432(1).

Property stops being tainted property after a person acquires a lawful title to it: s 432(2).

This offence is a prescribed offence under s 161Q *Penalties and Sentences Act 1992* so a serious organised crime circumstance of aggravation is applicable.

Suggested Direction

The prosecution must prove that:

1. **The defendant received the property.**

The prosecution can prove that the defendant received the property if it establishes that, either alone or jointly with some other person, he/she had it in his/her possession [or he/she aided in concealing it or disposing of it].

A person possesses something if:

(a) he/she has it in his/her physical custody; or

(b) he/she knowingly has it under his/her control.

2. **The property was tainted property; that is, it was obtained by way of stealing [or some other act constituting an indictable offence; or it is the property into which tainted property was converted or is the proceeds of a mortgage, pledge or exchange of tainted property].**

Property is stolen if it is taken from the owner, without the owner's consent and with an intent to permanently deprive the owner of it.

3. **At the time the defendant received the property he/she had reason to believe that the property was stolen.**

The defendant's state of mind as to the property being stolen must be more than suspicion, but it does not require the defendant to have actually seen the property being stolen, nor does it require the defendant to know when and by whom the property was stolen.

It is sufficient for the prosecution to prove that the circumstances surrounding the defendant's receipt of the property were such that he/she had reason to believe that the property was stolen.

Mere negligence, or carelessness or even recklessness in not realising that the property was stolen is not enough. However, if you think that the facts known to the defendant would have put a reasonable person on inquiry that would be a relevant factor when you are considering whether he/she had reason to believe it was stolen.