

## Wilful Damage s 469

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The prosecution must prove:

1. The defendant damaged (or destroyed) the property described in the indictment.<sup>1</sup>

“Damage” means to render imperfect or inoperative.<sup>2</sup>

2. The defendant did so wilfully.

“Wilfully” requires proof that the defendant either:

- a) had an actual intention to do the particular kind of harm that was in fact done; or
- b) deliberately did an act aware at the time he or she did it that the result charged in the indictment was a likely consequence of his or her act and that he or she recklessly did the act regardless of the risk.<sup>3</sup>

The word “likely” in the direction concerning recklessness conveys a substantial – a real and not remote chance.<sup>4</sup>

3. The defendant did so unlawfully.

“Unlawfully” means not justified authorised or excused by law.

An act which causes injury to the property of another and which is done without the owner’s consent is unlawful unless authorised or justified or excused by law: s 458(1).

It is immaterial that the person who does the injury is in possession of the property injured, or has a partial interest, or an interest in it as joint or part owner or owner in common: s 458(2).

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<sup>1</sup> The prosecution does not have to prove the property was the property of the person named in the indictment unless the prosecution is relying on such ownership as proof that the damage was unlawful under s 459: *R v McClymont; ex parte Attorney-General* [1987] 2 Qd R 442 at 443.

<sup>2</sup> *R v Zischke* [1983] 1 Qd R 240; *Grajewski v DPP (NSW)* [2019] HCA 8; (2019) 93 ALJR 405. See s 1 *Criminal Code* as to what constitutes damage to a document.

<sup>3</sup> *R v Lockwood; ex parte Attorney-General* [1981] Qd R 209; *R v T* [1997] 1 Qd R 623; [1996] QCA 258.

<sup>4</sup> *R v T* (above) per Pincus JA.

**When an act which causes injury to property, and which would be otherwise lawful, is done with an intent to defraud<sup>5</sup> any person, it is unlawful: s 459(1).**

**When an act which causes injury to property is done with intent to defraud any person, it is immaterial that the property in question is the property of the defendant: s 459(2).**

**4. Direct on any circumstances of aggravation.<sup>6</sup>**

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<sup>5</sup> As to the meaning of intent to defraud see the Notes to Forgery.

<sup>6</sup> Section 469, 1-10.