

## Robbery: s 409

---

### Legislation

S 409 [Criminal Code](#)

S 411 [Criminal Code](#)

### Commentary

#### *Meaning of 'actual violence';*

Any degree of violence is sufficient: *R v Jerome and McMahon* [1964] Qd R 595. The fear of violence without a threat is not sufficient: *R v Parker* [1919] NZLR 365.

Use of violence means that some degree of force is used. It means no more than physical force which is real and not merely threatened or contemplated: *R v De Simoni* (1981) 147 CLR 383.

#### *Aggravation*

In *R v Graham* [2016] QCA 73 the Court of Appeal held that when the elements of the offence are to be proved by s 7(1)(a), any circumstance of aggravation cannot be established by s 7(1)(c) (at [59]-[63]).

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

#### *Alternative verdicts*

Stealing is open as an alternative verdict on a charge of robbery; however assault is not. If in doubt about the element of violence, the prosecution usually charge stealing from the person: s 398(4)(a). Attempted robbery is a substantive offence: s 412.

Where a circumstance of aggravation is charged under s 161Q of the *Penalties and Sentences Act 1992* (serious organised crime circumstance of aggravation), see Part 9D, Division 1 of the *Penalties and Sentences Act 1992* for relevant definitions.

### Suggested Direction

#### **The prosecution must prove that:**

- 1. The defendant stole something. [Refer to the direction on stealing at Benchbook Ch 179 – Stealing.]**

- 2. At the time of, or immediately before, or immediately after, stealing it, the defendant used or threatened to use actual violence to any person or property.**

**Any degree of violence is sufficient.**

**Use of violence means that some degree of force is used.**

**The use or threat of violence must be done in order to obtain the thing stolen or to prevent or overcome resistance to it being stolen.**

**[Refer to any circumstances of aggravation.]**