

GRAND LARCENY IN THE FOURTH DEGREE

Penal Law § 155.30 (4)
(Committed on or after Jan. 1, 1988)

(Revised July, 2009 and June, 2013)

NOTE: The definition of what constitutes larceny encompasses, and is limited to, the theories of larceny specified in subdivision two of Penal Law § 155.05. (See People v Foster, 73 NY2d 596 [1989].) Those theories of larceny are imbedded in the definition of the term “wrongfully take, obtain, or withhold.” The most common theory of larceny expressed in the definition of that term is larceny by trespassory taking. Thus, the following charge is premised on a theory of larceny that is limited to larceny by trespassory taking. The definition of each additional theory of larceny is included in the Additional Charges section that may be found at the end of the charges for this article. If the theory of larceny is other than or in addition to larceny by trespassory taking, the appropriate definition or definitions for “wrongfully , obtain, or withhold” can be substituted or added, in this charge, at the point where that term is defined.

Under our law, a person is guilty of Grand Larceny in the Fourth Degree when such person steals property and when the property consists of:

one or more firearms, rifles or shotguns;⁶

⁶ Penal Law § 155.30 (7), effective September 1, 1969. For the definition of a “firearm, rifle or shotgun”, see Penal Law § 265.00.

A person STEALS PROPERTY and commits larceny when, with the intent to deprive another of property or to appropriate the same to himself or herself [or to a third person], such person wrongfully takes, obtains, or withholds such property from an owner of the property.¹¹

¹¹ Penal Law § 155.05 (1).

The following terms used in that definition have a special meaning:

PROPERTY means (name the property in issue and give its statutory definition if any).

OWNER means a person having a right to possession to the property superior to that of the person who takes it.¹²

INTENT means a conscious objective or purpose. Thus, a person acts with INTENT TO DEPRIVE ANOTHER OF PROPERTY OR TO APPROPRIATE PROPERTY TO HIMSELF OR HERSELF [or to a third person] when such person's conscious objective or purpose is:

(1) to withhold the property or cause it to be withheld permanently,¹³ or

(2) to exercise control over the property, [or to aid a third person to exercise control over it], permanently,¹⁴ or

(3) to dispose of the property either for the benefit of himself or herself [or a third person], or, under such circumstances as to render it unlikely that an owner will recover such property.¹⁵

NOTE: The next definition is the definition of “wrongfully takes, obtains, or withholds,” property. As explained at the beginning of the charge, the most common theory of larceny expressed in the definition of that term is larceny by trespassory taking. Thus, the following definition is premised on a theory of larceny that is limited to larceny by trespassory taking. The definition of each additional theory of larceny is included in the Additional Charges section that may be found at the end of the charges for this article. If the theory of larceny is other than or in addition to larceny by trespassory taking, the appropriate definition or definitions for “wrongfully take, obtain, or withhold” can be substituted or added here.

¹² See Penal Law § 155.00 (5). Also see that section for special definitions of “owner” to cover the situations (1) where the alleged owner obtained the property by theft, (2) where the alleged owner is a joint or common owner of the property, and (3) where the property is in the possession of the alleged owner but some other person has a security interest in the property.

¹³ In the typical larceny by trespassory taking it should not be necessary to include the alternate statutory language which follows the word “permanently”; namely: “or for so extended a period or under such circumstances that the major portion of its economic value or benefit is lost to such person.”

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¹⁵ See Penal Law §§ 15.05 (1); 155.00 (3); 155.03 (4).

A person WRONGFULLY TAKES, OBTAINS, OR WITHHOLDS PROPERTY from an owner when

that person takes property without an owner's consent, and

exercises dominion and control over that property for a period of time, however temporary,

in a manner wholly inconsistent with the owner's rights of the owner.

[NOTE: If the property allegedly stolen was not a vehicle, add the following paragraph:

The exercise of dominion and control of the property includes a requirement that the property be intentionally moved, at least slightly, by the taker.^{16]}

Thus, under the law's definition of larceny it is not necessary that the owner be in fact deprived of property permanently or that the property be in fact appropriated permanently. The crime of larceny is complete when a person has the intent to deprive or appropriate the property permanently, and that person wrongfully takes the property for any period of time, however temporary.

¹⁶ See *People v Olivo*, 52 NY2d 309, 318 n 6 (1981). Movement of the property is not required where the property is a vehicle which is capable of movement. (*Id.*; See also, *People v Alamo*, 34 NY2d 453 [1974].) If the property allegedly stolen was a vehicle which was capable of movement but was not moved, the following may, if applicable, be added: “A motor vehicle when activated comes within the dominion and control of the operator, even if the motor vehicle is not moved.” (see *People v Alamo*, *supra* at 458.)

In order for you to find the defendant guilty of this crime, the People are required to prove, from all of the evidence in the case beyond a reasonable doubt, each of the following three elements:

1. That on or about (date), in the County of (County), the defendant, (defendant's name), wrongfully took, obtained, or withheld (specify property) from its owner;
2. That the defendant did so with the intent to deprive another of the property or to appropriate the property to himself/herself [or to a third person]; and
3. That the property consists of: (insert the exact language of the subdivision of the statute with respect to the property issue).

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of this crime.