

GRAND LARCENY OF A SPECIFIED AMOUNT
(Committed on or after Nov. 1, 1986)
(Revised April 4, 2003)¹
(Revised July 27, 2009)²

GRAND LARCENY IN THE SECOND DEGREE
(Value of property exceeds \$50,000)
Penal Law § 155.40(1)

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. 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 take, obtain, or withhold” can be substituted or added in this charge at the point where that term is defined.

¹ The purpose of April, 2003 revision was to provide for the integration of additional theories of larceny as set forth in the Additional Charges and as explained in the opening note to the charge.

² The purpose of the July, 2009 revision was to include a cross-reference to an instruction, if necessary, for “Aggregate Value of Stolen Property,” as set forth in the “Additional Charges.”

The (specify) count is Grand Larceny in the (Specify) Degree.

Under our law, a person is guilty of Grand Larceny in the (Specify) Degree when that person steals property and when the value of the property exceeds (specify amount).

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.³

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

PROPERTY means any money, personal property, or thing of value.⁴ The value of the property means the market value of the property at the time and place of the crime or if such be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the crime.⁵

³See Penal Law § 155.05(1).

⁴ See Penal Law § 155.00(1). The statutory definition of property also includes the following: “or real property, computer data, computer program, thing in action, evidence of debt or contract, or any article, substance or thing of value including any gas, steam, water or electricity, which is provided for a charge or compensation.” Unless the property listed in this portion of the definition is in issue, this portion of the definition need not be read.

OWNER means a person having a right to possession to the property superior to that of the person who takes it.⁶

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,⁷ or

(2)to exercise control over the property, [or to aid a third person to exercise control over it], permanently,⁸ 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.⁹

⁵ See Penal Law § 155.20(1). This definition of “value” applies to all property other than “certain written instruments” (e.g., check, draft, promissory note, ticket) and gas, steam, water or electricity for which the Penal Law provides a special definition of value in subdivisions two and three of section 155.20; accordingly, if one of those special definitions is applicable, it should be substituted for the definition specified in the text.

⁶ 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.

⁷ In the typical larceny, 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.”

[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.]

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.

° In the typical larceny, 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.”

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

[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.^{10]}

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.

[NOTE: When the larceny is based on the aggregated value of property stolen in a series of thefts, insert, in lieu of what follows, the charge, entitled, "Aggregate Value of Stolen Property," which

is set forth in the "Additional Charges" at the end of the charges set forth for this article.]

In order for you to find the defendant guilty of this crime, the People are required to prove, from all 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 a third person]; and
3. That the value of the property exceeded (specify amount) dollars.

¹⁰ See *People v Olivo*, 52 N.Y.2d 309, esp 318, n.6 (1981). Movement of the property is not required where the property is a vehicle which is capable of movement. *Id.*, *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." *People v Alamo, supra*.

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

If you find the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of this crime.