

GRAND LARCENY IN THE FOURTH DEGREE
(From the Person)
Penal Law § 155.30(5)
(Committed on or after Sept. 1, 1967)

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

Under our law, a person is guilty of Grand Larceny in the Fourth Degree when such person steals property and when the property, regardless of its nature and value, is taken from the person of another.

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.¹

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

PROPERTY means any money, personal property, or thing of value.²

OWNER means a person having a right to possession of the property superior to that of the person who takes it. ³

¹See Penal Law § 155.05(1).

²See 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.

³See 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

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,⁴ *or*

(2) to exercise control over the property, [*or to aid a third person to exercise control over it*], permanently,⁵ *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.⁶

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

that person takes, obtains, or withholds property without an

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.

⁴In 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.”

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⁶See Penal Law §§ 15.05(1); 155.00(3); 155.03(4).

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.^{7]}

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.

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;

⁷See *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*.

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 was taken from the person of another.

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.