

CRIMINAL LAW REVISION COMMISSION

By: Donald L. Paillette, Project Director Subcommittee: No. 1

Date: February 24, 1968 Action: _____

Date: _____

Proposed Code Revision

Subject: Larceny; definitions
ORS 161.010 (10)(11); ORS 164.310 (2)

History and Background of Present Law:

The definitions of some of the terms employed in the existing larceny statutes are found in the above cited sections. ORS 161.010 defines certain words used in the criminal statutes. Subsection (10) therein provides: "'Property' includes both real and personal property."

Subsection (11) provides:

"'Person' includes corporations as well as natural persons. Where 'person' is used to designate the party whose property may be the subject of a crime, it includes this state, any other state, government or country which may lawfully own any property in this state, and all municipal, public or private corporations, as well as individuals."

ORS 164.310 is the basic larceny statute:

"(1) Any person who steals the property of another, or who wilfully takes, carries, leads or drives away the property of another with the intent to deprive such other of such property permanently, is guilty of larceny; and

"(a) If such property exceeds \$75 in value, shall be punished upon conviction by imprisonment in the penitentiary for not more than 10 years.

"(b) If such property does not exceed \$75 in value, shall be punished upon conviction by imprisonment in the county jail for not more than one year, or by a fine of not more than \$500, or both.

"(2) As used in subsection (1) of this section 'property' means any real or personal property, including but not limited to:

"(a) Any goods or chattels.

History and Background of Present Law:

"(b) Any government note, bank note, coin, money, promissory note, bill of exchange, bond or other thing in action.

"(c) Any book of accounts or order or certificate concerning money due or to become due or goods to be delivered.

"(d) Any deed or writing containing a conveyance of land or any interest therein.

"(e) Any bill of sale or writing containing a conveyance of goods or chattels, or any interest therein.

"(f) Any valuable contract in force.

"(g) Any receipt, release, or defeasance.

"(h) Any writ, process, or public record.

"(i) Any railroad, railway, steamboat or steamship passenger ticket or other evidence of the right of a passenger to transportation."

Although ORS 164.310 has been amended several times since its enactment in 1864, the only significant change in definitions was to expand the definition of "property" to include real property. None of the other terms used in the larceny statutes are defined and one must look to the cases for guidance in construing them.

Common law offenses are not recognized in Oregon but reference may be made for definitions of statutory offenses. State v. Ayers, 49 Or 61 (1907).

Word "property" as used in portion of larceny statute proscribing defrauding another of property, must be interpreted to mean "possession." The word "property" as used in statute proscribing the obtaining of any "property" by false pretenses, or intent to defraud, must be interpreted to mean "the title to property." Lilly v. Gladden, 84 Or 220 (1960).

"Property" under false pretenses statute must be something capable of being possessed and title to which can be transferred. State v. Miller, 192 Or 188 (1951).

"Property" as defined in ORS 164.310 includes tangible but not intangible chose-in-action. State v. Tauscher, 227 Or 1 (1961).

Breaking up property stolen to facilitate transportation is part of "taking." State v. Albert, 117 Or 179 (1926).

History and Background of Present Law:

The words "take, steal and drive away" are sufficient to describe larceny.
State v. Minnick, 54 Or 90 (1909).

An indictment which charged that defendant took, stole and carried away a certain cow was not insufficient for failure to allege that acts were done feloniously, since the use of the word "steal" necessarily implied that act charged was unlawful, and since larceny of a cow is a felony under statute.
State v. Ede, 167 Or 640 (1941).

The word "steal" as used in larceny statute means to take and carry away property of another with the felonious intent to deprive the owner thereof, and to appropriate the same to one's own use.
State v. Downing, 185 Or 689 (1949).

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Comment on Proposed Revision:

The definitions are designed to clarify several terms used in the proposed larceny draft and to allow a briefer definition of the crime. These definitions, as is the remainder of the larceny draft, are patterned after the New York Revised Penal Law.

Subsection (1) defines the term "property." It is submitted that this definition is broad enough to encompass the subjects of larceny now covered by ORS 164.310, including real property, and by including intangible property within its scope, remedies the type of problem that occurred in State v. Tauscher, 227 Or 1 (1961). That case held that only property which is tangible and capable of being possessed may be the subject of larceny or embezzlement under the existing statutes and an agent who, without authority and for her own purposes, drew a check on her principal's account was guilty of neither larceny nor embezzlement.

The definition of "obtain" in subsection (2) extends the concept of larceny to include the constructive acquisition of property.

Subsections (3) and (4) define "deprive" and "appropriate," retaining the traditional distinction between larceny and other similar crimes; i.e., the intent by the actor to exercise permanent control over the property taken or to cause permanent loss to the owner of the possession thereof. C.J.S. Larceny, ss. 27, 28; State v. Teller, 45 Or 571 (1904); State v. Ducher, 8 Or 394 (1880).

Subsection (5) defines the relationship that must exist between a person and the property involved in order for him to be an "owner" and the legal victim of a larceny. This is a word not found in our existing statute; however, the phrase "the property of another" that

Comment on Proposed Revision:

appears in ORS 164.310 as well as in the common law definition of larceny, means "ownership." State v. Broom, 135 Or 641 (1931); State v. Poyntz, 168 Or 69 (1942).

For larceny purposes, it is uniformly held that "ownership" of property means "possession" of it and that having a legally recognizable interest in property gives a person possession of it. State v. Luckey, 150 Or 566 (1935); State v. Swayzer, 11 Or 357 (1884); 52 C.J.S., s. 13, p. 811.

The subsection also defines the rights of joint or common owners, such as partners, and is a restatement of the generally accepted principle that one common owner cannot "steal" from a fellow common owner if the taker has a right to possession at the time of the taking. The situations involving security agreements is also covered by this definition and gives a person in lawful possession a right of possession superior to one having only a security interest in the property. Trevathan v. Mutual Life Ins. Co., 166 Or 515 (1941); 58 A.L.R. 331; 169 A.L.R. 372.

Text of Proposed Revision:

PRELIMINARY DRAFT

Definitions.

(1) "Property" means any article, substance or thing of value, including money, tangible and intangible personal property, real property, choses-in-action, evidence of debt or contract.

(2) "Obtain" includes, but is not limited to, the bringing about of a transfer or purported transfer of property or of a legal interest therein, whether to the obtainer or another.

(3) "Deprive." To "deprive" another of property means to:

(a) Withhold it or cause it to be withheld from him permanently or for so extended a period or under such circumstances that the major portion of its economic value or benefit is lost to him; or

(b) Dispose of the property in such manner or under such circumstances as to render it unlikely that an owner will recover such property.

(4) "Appropriate." To "appropriate" property of another to oneself or a third person means to:

(a) Exercise control over it, or to aid a third person to exercise control over it, permanently or for so extended a period or under such circumstances as to acquire the major portion of its economic value or benefit; or

(b) Dispose of the property for the benefit of oneself or a third person.

(5) "Owner." When property is taken, obtained or withheld by one person from another person, an "owner" thereof means any person who has a right to possession thereof superior to that of the taker, obtainer or withholder.

Text of Proposed Revision:

A person who has obtained possession of property by theft or other illegal means shall be deemed to have a right of possession superior to that of a person who takes, obtains or withholds it from him by larcenous means.

A joint or common owner of property shall not be deemed to have a right of possession thereto superior to that of any other joint or common owner thereof.

In the absence of a specific agreement to the contrary, a person in lawful possession of property shall be deemed to have a right of possession superior to that of a person having only a security interest therein, even if legal title lies with the holder of the security interest pursuant to a conditional sale contract or other security agreement.