

CRIMINAL LAW GUIDEBOOK: QUEENSLAND AND WESTERN AUSTRALIA

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CHAPTER 7

ACTIVE LEARNING QUESTIONS

1. What are the elements of stealing in Queensland and Western Australia?

The offence of stealing is to be found in s 398 (Qld) and s 378 (WA): 'Any person who steals anything capable of being stolen is guilty of a crime.' However, the elements of the offence of stealing are found in s 391 (Qld) and s 371 (WA) where stealing is defined.

391 Definition of stealing (Qld)

- (1) A person who fraudulently takes anything capable of being stolen, or fraudulently converts to the person's own use or to the use of any other person anything capable of being stolen, is said to steal that thing.

Thus, the physical element of stealing is the taking, or conversion, or use of anything capable of being stolen. The mental element is 'fraudulently', which is defined in terms of intent: see s 391(2) (Qld) and 371(2) (WA), discussed below.

The meaning of 'anything capable of being stolen' is found in s 390 (Qld) and s 370 (WA). Section 390 (Qld) reads: 'Anything that is the property of any person is capable of being stolen if it is—(a) moveable, or (b) capable of being made moveable, even if it is made moveable in order to steal it.' The meaning of 'property' is found in s 1 in both Codes, and is given a wide definition. For example, the Western Australian definition reads: 'The term *property* includes real and personal property and everything, animate or inanimate, capable of being the subject of ownership.'

It can be seen that the definition of stealing above covers both theft and conversion. The meaning of 'fraudulently' is found in s 391(2) (Qld) and 371(2) (WA). 'Fraudulently' is defined in terms of intent: either an intention to permanently deprive, or an intention to deal with the property, or an intention to convert the property.

In seeking to clarify the meaning of an intention to permanently deprive for the purpose of the definition of 'fraudulently', and the completion of the act of stealing under s 391(6) (Qld) and s 371(6) (WA), the courts have considered both the length of time the property has been held and the physical dealing in the property: *R v Angus* [2000] QCA 29.

The physical and mental elements of stealing do not crystallise 'until the person taking or converting the thing actually moves it or otherwise actually deals with it by some physical act': s 391(6) (Qld) and s 371(6) (WA).

2. What are the elements of robbery and what factors constitute aggravated robbery in Queensland and Western Australia?

Robbery is stealing combined with the use or threat of actual violence, and is found in s 409 (definition) and s 411 (Qld) and in s 392 (WA). The Queensland legislation sets out the elements of robbery in s 409 and the circumstances of aggravation in s 411(2) below.

409 Definition of robbery (Qld)

Any person who steals anything, and, at or immediately before or immediately after the time of stealing it, uses or threatens to use actual violence to any person or property in order to obtain the thing stolen or to prevent or overcome resistance to its being stolen, is said to be guilty of robbery.

411 Punishment of robbery (Qld)

(1) Any person who commits the crime of robbery is liable to imprisonment for 14 years.

(2) If the offender is or pretends to be armed with any dangerous or offensive weapon or instrument, or is in company with 1 or more other person or persons, or if, at or immediately before or immediately after the time of the robbery, the offender wounds or uses any other personal violence to any person, the offender is liable to imprisonment for life.

It can be seen that robbery requires: (1) stealing; (2) use or threat of actual violence; (3) concomitance of (1) and (2); and (4) purpose of violence to obtain property being stolen or nullify resistance to the theft. If the robbery takes place in circumstances of aggravation, such as being armed or in company, the criminal penalty rises from 14 years to imprisonment for life.

In Western Australia, s 391 sets out the circumstances of aggravation for robbery, which under s 392(d) have the effect of increasing the maximum term of imprisonment for robbery from 14 to 20 years.

S 391 *circumstances of aggravation* means circumstances in which — (a) immediately before or at or immediately after the commission of the offence — (i) the offender is in company with another person or persons; or (ii) the offender does bodily harm to any person; or (iii) the offender threatens to kill any person; or (b) the person to whom violence is used or threatened is of or over the age of 60 years.

In addition, if a person is guilty of robbery, under s 392(c) that person is liable ‘if immediately before or at or immediately after the commission of the offence the offender is armed with any dangerous or offensive weapon or instrument or pretends to be so armed, to imprisonment for life’.

3. What are the differences between burglary/housebreaking offences in Queensland and Western Australia?

Both Codes have Chapters devoted to crimes that involve the unlawful entry of buildings: Chapter 39 Burglary-housebreaking and like offences (Qld), and Chapter XXXIX Offences in or respect of buildings (WA). These offences are structured in a similar manner to robbery, in that they combine two elements: (1) unlawful entry to buildings with (2) the intent to commit a crime. As with robbery, similar circumstances of aggravation apply such as being armed, in company, doing bodily harm, and the premises are ordinarily used for human habitation. The offence of burglary is found in s 419 (Qld) and s 401 (WA), as set out below.

S 419 Burglary (Qld)

- (1) Any person who enters or is in the dwelling of another with intent to commit an indictable offence in the dwelling commits a crime. Maximum penalty—14 years imprisonment.
- (2) If the offender enters the dwelling by means of any break, he or she is liable to imprisonment for life.
- (3) If— (a) the offence is committed in the night; or (b) the offender— (i) uses or threatens to use actual violence; or (ii) is or pretends to be armed with a dangerous or offensive weapon, instrument or noxious substance; or (iii) is in company with 1 or more persons; or (iv) damages, or threatens or attempts to damage, any property; the offender is liable to imprisonment for life.
- (4) Any person who enters or is in the dwelling of another and commits an indictable offence in the dwelling commits a crime. Maximum penalty—imprisonment for life.

S 401 Burglary (WA)

- (1) A person who enters or is in the place of another person, without that other person’s consent, with intent to commit an offence in that place is guilty of a crime and is liable —
 - (a) if the offence is committed in circumstances of aggravation, to imprisonment for 20 years;
 - or (b) if the place is ordinarily used for human habitation but the offence is not committed in

circumstances of aggravation, to imprisonment for 18 years; or (c) in any other case, to imprisonment for 14 years.

It can be seen that in Western Australia, under s 401 above, lack of consent is required, unlike the position in Queensland. However, it is not clear that a reference to consent serves any purpose given the mental element of the offence requires the intent to commit an offence in that place. If A did originally receive consent from B to enter under licence, but enters for an alien purpose outside the scope of the authority to enter, then A enters as a trespasser: *Barker v The Queen* (1983) 153 CLR 338, 346 per Mason J. A further point of difference is that under s 401 there is only reference to entering, and the distinction between entering and breaking in Queensland is not made.

The remaining point of distinction between the Codes lies in Western Australia's mandatory minimum sentencing regime of a minimum of 12 months imprisonment, under s 401(4) and (5) for repeat offenders, defined in s 400(3), who enter a place ordinarily used for human habitation.

4. Identify the key concept constituting fraud in Queensland and Western Australia. Do both Codes follow the common law?

Fraud is a broad offence that combines the physical element of obtaining property, with the key concept constituting fraud of the mental element of dishonesty (Qld) or intention to defraud (WA): s 408C (Qld) and s 409 (WA).

S 409 Fraud (WA)

(1) Any person who, with intent to defraud, by deceit or any fraudulent means — (a) obtains property from any person; or (b) induces any person to deliver property to another person; or (c) gains a benefit, pecuniary or otherwise, for any person; or (d) causes a detriment, pecuniary or otherwise, to any person; or (e) induces any person to do any act that the person is lawfully entitled to abstain from doing; or (f) induces any person to abstain from doing any act that the person is lawfully entitled to do, is guilty of a crime and is liable — (g) if the person deceived is of or over the age of 60 years, to imprisonment for 10 years; or (h) in any other case, to imprisonment for 7 years. Alternative offence: s 378 [Stealing], 414 [Receiving] or 417 [Possessing stolen property].

Neither Code defines the respective fault elements of dishonesty (Qld) or intention to defraud. (WA). Both terms have been interpreted by the courts to the same effect: namely, conduct that is considered dishonest by the standards of ordinary decent people.

Under s 130.3 of the *Criminal Code 1995* (Cth), dishonesty is defined as meaning (a) dishonest according to the standards of ordinary people; and (b) known by the defendant to be dishonest according to the standards of ordinary people. This is a simplified form of the *Ghosh* test (*R v Ghosh* [1982] 1 QB 1053, 1063–64) now legislated to be the test for dishonesty in the Commonwealth, ACT and South Australia. However, on the authority of *Peters v The Queen* (1998) 192 CLR 493, 504



per Toohey and Gaudron JJ, the test at common law does not require knowledge of the standards of ordinary people by the defendant.

In a case in which it is necessary for a jury to decide whether an act is dishonest, the proper course is for the trial judge to identify the knowledge, belief or intent which is said to render that act dishonest and to instruct the jury to decide whether the accused had that knowledge, belief or intent and, if so, to determine whether, on that account, the act was dishonest.

The approach in *Peters* was followed in *Mathews v The Queen* [2001] WASCA 264 at [19], where Burchett AUJ stated that intent to defraud was synonymous with dishonesty. The meaning of 'with intent to defraud' in s 409(1) was further considered in *Bolitho v The State of Western Australia* [2007] WASCA 102, where the court endorsed the common law approach in *Peters*.

Both Codes follow the common law as stated in *Peters v The Queen* (1998) 192 CLR 493, 504 per Toohey and Gaudron JJ above, which was reaffirmed in *MacLeod v The Queen* (2003) 214 CLR 230, 241–242 at [35] and [37] per Gleeson CJ, Gummow and Hayne JJ (footnotes omitted).

[35] In *Peters v The Queen*, which concerned charges of conspiracy to defraud the Commonwealth under ss 86(1)(e) and 86A of the *Crimes Act 1914* (Cth), Toohey and Gaudron JJ said that, ordinarily, fraud involves:

"the *intentional* creation of a situation in which one person deprives another of money or property or puts the money or property of that other person at risk or prejudicially affects that person in relation to 'some lawful right, interest, opportunity or advantage', *knowing* that he or she has no right to deprive that person of that money or property or to prejudice his or her interests." (emphasis added)

[37] In a passage that has significance for the present appeal, Toohey and Gaudron JJ stated:

"In a case in which it is necessary for a jury to decide whether an act is dishonest, the proper course is for the trial judge to identify the knowledge, belief or intent which is said to render that act dishonest and to instruct the jury to decide whether the accused had that knowledge, belief or intent and, if so, to determine whether, on that account, the act was dishonest. ... If the question is whether the act was dishonest according to ordinary notions, it is sufficient that the jury be instructed that that is to be decided by the standards of ordinary, decent people."

Their Honours rejected any further requirement, derived from *R v Ghosh*, that the accused must have realised that the act was dishonest by those standards.

5. How does the defence of honest claim of right operate?

Honest claim of right operates as an exception to the general rule that ignorance of the law does not afford an excuse. In both Codes, s 22(2) which deals solely with property is an exception to s 22(1) below. The defence of honest claim of right operates to negate the fault element of the property offence. Provided the defendant can satisfy an evidential burden, the Crown is then required to negative beyond reasonable doubt the defence of honest claim of right.

22 Ignorance of the law—bona fide claim of right

(1) Ignorance of the law does not afford any excuse for an act or omission which would otherwise constitute an offence, unless knowledge of the law by the offender is expressly declared to be an element of the offence.

(2) But a person is not criminally responsible, as for an offence relating to property, for an act done or omitted to be done by the person with respect to any property in the exercise of an honest claim of right and without intention to defraud.

In *R v Pollard* [1962] QWN 13, a case involving s 22(2) of the *Criminal Code* (Qld), Gibbs J stated, at 29, it was well settled that it was sufficient for a claim of right to relieve a person of criminal responsibility ‘need only be honest and need not be reasonable’. His Honour went on to observe at 29, that ‘the fact that it is wrongheaded does not matter’ and quoted from *R v Bernhard* [1938] 2 KB 264, at 270, that a person has such a claim of right ‘if he is honestly asserting what he believes to be a lawful claim even though it may be unfounded in law or in fact’.

It follows that a person cannot be convicted of stealing if he or she held a bona fide belief in a claim of right to the property. This is a purely subjective test and the boundaries of such a defence are wide, such that an honest claim of right is both a defence to robbery and to unlawful damage to property.

In *R v Skivington* [1968] 1 QB 166 the defendant demanded his wife’s pay-packet at knife-point and was charged with aggravated robbery. As theft is a necessary element of robbery, a successful excuse of honest claim of right will negative one of the essential elements of the offence of robbery. Provided the defendant can satisfy the evidential burden that he or she honestly believed in a right to take the property, there was no need for the defendant to satisfy a further belief in a right to take the property in the way that he or she did so: *R v Langham* (1984) 36 SASR 48. However, an honest claim of right only applies to property and therefore the defendant in *R v Skivington* was still sentenced in relation to common assault.

PROBLEM QUESTION

ASSUME THE FOLLOWING FACTS

Mark had been dismissed from his job at XYZ Pty Ltd. Mark was bitter because, first, he believed his ex-boss, Paul, had treated him unfairly and, secondly, because he calculated he was owed \$5,000 in unpaid entitlements by XYZ Pty Ltd.

To make matters worse, Mark had fallen and hurt his leg which required him to move with the aid of a walking stick while his leg recovered. A week after he was dismissed, Mark decided to break into XYZ's offices at night and take the petty cash which he knew was held in a flimsy cash box in the cashier's cupboard. Mark told himself this would go some way to recovering the money he believed he was owed.

On arrival at the rear door of XYZ's offices, Mark was pleasantly surprised to find it unlocked. However, moments after Mark entered the building, he was challenged by George, the elderly caretaker cum cleaner. Mark panicked and hit George on the head with his walking stick knocking George unconscious.

Mark then hurried to the cashier's office. Neither the cupboard door nor the cash box offered much resistance, and Mark stuffed the contents of the cash box into his pockets without bothering to count it. As Mark was leaving he passed Paul's office and gleefully entered it to smash Paul's prized collection of sporting memorabilia.

When Mark arrived home he counted the money from the cash box and found it came to \$10,000. Mark used the entire \$10,000 to clear his credit card debt. Three weeks later the police interviewed Mark and charged him with aggravated robbery and criminal damage.

Advise Mark.

THE ISSUES

This question raises three issues: (1) aggravated robbery; (2) criminal damage; and (3) honest claim of right.

THE RELEVANT LAW

The offence of stealing is to be found in s 398 (Qld) and s 378 (WA): 'Any person who steals anything capable of being stolen is guilty of a crime.' However, the elements of the offence of stealing are found in s 391 (Qld) and s 371 (WA) where stealing is defined.

391 Definition of stealing (Qld)

- (2) A person who fraudulently takes anything capable of being stolen, or fraudulently converts to the person's own use or to the use of any other person anything capable of being stolen, is said to steal that thing.

Thus, the physical element of stealing is the taking or conversion or use of anything capable of being stolen. The mental element is fraudulently. The meaning of 'fraudulently' is found in s 391(2) (Qld) and 371(2) (WA). 'Fraudulently' is defined in terms of intent: either an intention to permanently deprive, or an intention to deal with the property, or an intention to convert the property.

In seeking to clarify the meaning of an intention to permanently deprive for the purpose of the definition of 'fraudulently', and the completion of the act of stealing under s 391(6) (Qld) and s 371(6) (WA), the courts have considered both the length of time the property has been held and the physical dealing in the property: *R v Angus* [2000] QCA 29.

The meanings of 'taking' and 'converts' are not defined in the Codes for the purpose of the reach of the offence of stealing. An intention to deal with the property under the rubric of 'fraudulently' has been held to mean dealing with the property in a manner inconsistent with the rights of the owner (*Illich v The Queen* (1987) 162 CLR 110).

Robbery

Robbery is stealing combined with the use or threat of actual violence, and is found in s 409 (definition) and s 411 (Qld) and in s 392 (WA). The Queensland legislation sets out the elements of robbery in s 409 and the circumstances of aggravation in s 411(2) below.

409 Definition of robbery

Any person who steals anything, and, at or immediately before or immediately after the time of stealing it, uses or threatens to use actual violence to any person or property in order to obtain the thing stolen or to prevent or overcome resistance to its being stolen, is said to be guilty of robbery.

411 Punishment of robbery

(1) Any person who commits the crime of robbery is liable to imprisonment for 14 years.

(2) If the offender is or pretends to be armed with any dangerous or offensive weapon or instrument, or is in company with 1 or more other person or persons, or if, at or immediately before or immediately after the time of the robbery, the offender wounds or uses any other personal violence to any person, the offender is liable to imprisonment for life.

The equivalent Western Australian legislation for robbery is found in s 392 below.

392 Robbery

A person who steals a thing and, immediately before or at the time of or immediately after doing so, uses or threatens to use violence to any person or property in order —

(a) to obtain the thing stolen; or

(b) to prevent or overcome resistance to its being stolen,

is guilty of a crime and is liable —

(c) if immediately before or at or immediately after the commission of the offence the offender is armed with any dangerous or offensive weapon or instrument or pretends to be so armed, to imprisonment for life; or

(d) if the offence is committed in circumstances of aggravation, to imprisonment for 20 years; or

(e) in any other case, to imprisonment for 14 years.

In Western Australia, s 391 sets out the circumstances of aggravation for robbery, which under s 392(d) have the effect of increasing the maximum term of imprisonment for robbery from 14 to 20 years.

S 391 *circumstances of aggravation* means circumstances in which — (a) immediately before or at or immediately after the commission of the offence — (i) the offender is in company with another person or persons; or (ii) the offender does bodily harm to any person; or (iii) the offender threatens to kill any person; or (b) the person to whom violence is used or threatened is of or over the age of 60 years.

In addition, if a person is guilty of robbery, under s 392(c) that person is liable ‘if immediately before or at or immediately after the commission of the offence the offender is armed with any dangerous or offensive weapon or instrument or pretends to be so armed, to imprisonment for life’.

Thus, it can be seen that under the Griffith Codes robbery requires: (1) stealing; (2) use or threat of actual violence; (3) concomitance of (1) and (2); and (4) purpose of violence to obtain property being stolen or nullify resistance to the theft. If the robbery takes place in circumstances of aggravation, such as being armed or in company, the criminal penalty rises.

Criminal damage

The general provisions dealing with damage to property are s 469 Wilful damage (Qld) and s 444 Criminal damage (WA). Both sections have the same element structure.

469 Wilful damage (Qld)

(1) Any person who wilfully and unlawfully destroys or damages any property is guilty of an offence ...

The physical element is destruction or damage to property, and the fault element is wilfully. The wilful act must be unlawful, which is not strictly an element, rather the absence of authorisation, justification or excuse: s 458(1) (Qld) and s 441(1) (WA).

458 Unlawful acts (Qld)

- (1) An act which causes injury to the property of another, and which is done without the owner's consent, is unlawful unless it is authorised or justified or excused by law.

In Western Australia 'wilfully destroy or damage' is defined in s 443 as: '(a) intending to destroy or damage property; or (b) knowing or believing that the act or omission is likely to result in the destruction of or damage to property'.

Honest claim of right

Honest claim of right operates as an exception to the general rule that ignorance of the law does not afford an excuse. In both Codes, s 22(2) which deals solely with property is an exception to s 22(1) below. The defence of honest claim of right operates to negate the fault element of the property offence. Provided the defendant can satisfy an evidential burden, the Crown is then required to negative beyond reasonable doubt the defence of honest claim of right.

22 Ignorance of the law—bona fide claim of right

(1) Ignorance of the law does not afford any excuse for an act or omission which would otherwise constitute an offence, unless knowledge of the law by the offender is expressly declared to be an element of the offence.

(2) But a person is not criminally responsible, as for an offence relating to property, for an act done or omitted to be done by the person with respect to any property in the exercise of an honest claim of right and without intention to defraud.

In *R v Pollard* [1962] QWN 13, a case involving s 22(2) of the *Criminal Code* (Qld), Gibbs J stated, at 29, it was well settled that it was sufficient for a claim of right to relieve a person of criminal responsibility 'need only be honest and need not be reasonable'. His Honour went on to observe, at 29, that 'the fact that it is wrongheaded does not matter' and quoted from *R v Bernhard* [1938] 2 KB 264, at 270, that a person has such a claim of right 'if he is honestly asserting what he believes to be a lawful claim even though it may be unfounded in law or in fact'.

It follows that a person cannot be convicted of stealing if he or she held a bona fide belief in a claim of right to the property. This is a purely subjective test and the boundaries of such a defence are wide, such that an honest claim of right is both a defence to robbery and to unlawful damage to property.

In *R v Skivington* [1968] 1 QB 166 the defendant demanded his wife's pay-packet at knife-point and was charged with aggravated robbery. As theft is a necessary element of robbery, a successful

excuse of honest claim of right will negative one of the essential elements of the offence of robbery. Provided the defendant can satisfy the evidential burden that he or she honestly believed in a right to take the property, there was no need for the defendant to satisfy a further belief in a right to take the property in the way that he or she did so: *R v Langham* (1984) 36 SASR 48. However, an honest claim of right only applies to property and therefore the defendant in *R v Skivington* was still sentenced in relation to common assault.

PUTTING THE FACTS INTO THE LAW

On the facts, Mark decided to break into XYZ's offices at night and take the petty cash. He entered the unlocked offices and assaulted the caretaker before taking the cash and smashing Paul's sporting collection.

Mark has taken the cash which comes within the wide definition of 'property' in s 1 of the Codes and within the meaning of 'anything capable of being stolen': s 390 (Qld) and s 370 (WA). As Mark used the cash to pay off his credit card, his act comes within the meaning of 'fraudulently': s 391(2) (Qld) and 371(2) (WA), in that he had an intention to permanently deprive XYZ of the cash. Thus, unless Mark has a defence, he satisfies the elements of stealing.

Mark has also hit George with his walking stick and rendered George unconscious. Mark has therefore used actual violence to prevent resistance in order to obtain the cash (s 409 Qld and s 392 WA). However, not only does Mark fall within the definition of robbery, but the robbery has also been committed in circumstances of aggravation: s 411(2) Qld and s 391 WA. Mark is arguably armed with an offensive weapon (the walking stick) and has used personal violence under s 411(2) Qld. Mark has certainly inflicted bodily harm (any bodily injury which interferes with health or comfort), if not grievous bodily harm (see definitions in s 1 of both Codes), on a person over the age of 60 years which brings him within s 391 WA. The maximum term of imprisonment for aggravated robbery is imprisonment for life (Qld) or 20 years (WA).

For good measure, Mark smashed Paul's sporting collection, leaving him open to a charge of criminal damage: s 469 (Qld) and s 444 (WA). The physical element is destruction or damage to property, and the fault element is wilfully. The wilful act must be unlawful, which is not strictly an element, rather the absence of authorisation, justification or excuse: s 458(1) (Qld) and s 441(1) (WA).

The term 'wilful' is not defined in the *Criminal Code* (Qld). In *R v Hayes* [2008] QCA 371 previous authority in *R v Lockwood: Ex parte A-G (Qld)* [1981] Qd R 209, 217 (Lucas J) was upheld such that the accused must either have the actual intention 'or deliberately have done a willed act, aware at the time of doing the act that the result charged in the indictment was a likely consequence of the act and that the accused person did the act regardless of the risk': *R v Hayes* [2008] QCA 371 [4] (McMurdo P).

For Mark, all the elements of criminal damage are present: (1) destruction of the sporting memorabilia; (2) wilfully (gleefully entered Paul's office to smash the collection); and (3) unlawful (no authorisation, justification or excuse). This is not a case of criminal damage in order to access premises in the exercise an honest claim of right: *R v Lopatta* (1983) 35 SASR 101. There is no relationship between the criminal damage and the honest claim of right: *R v Bowman (No 2)* (1987) 87 FLR 472.

The more serious offence is aggravated robbery, and if the Crown cannot negative Mark's honest claim of right to the cash, then the charge of stealing will fail and consequently robbery also fails. Mark would still be liable for assaulting George, which given George was knocked out, could prove to be either bodily harm or grievous bodily harm: *R v Skivington* [1968] 1 QB 166.

At first sight, Mark's claim to an honest claim of right might have some traction given the authority of *R v Bernhard* [1938] 2 KB 264, at 270, that a person has such a claim of right 'if he is honestly asserting what he believes to be a lawful claim even though it may be unfounded in law or in fact'.

Mark's difficulty in relying on honest claim of right to nullify the stealing charge is that even by his own calculation he was only owed \$5,000: *Astor v Hayes* (1988) 38 A Crim R 219, 222. Once he paid off his \$10,000 credit card bill, Mark has difficulty showing his is 'without intention to defraud' which are the last four words of s 22(2): *Roberts v The State of Western Australia* [2005] WASCA 37.

CONCLUSION

Mark has no defence to the criminal damage charge. Mark's defence of honest claim of right is likely to fail because he kept the entire \$10,000 and made no attempt at restitution to XYZ of the balance of \$5,000. As three weeks had passed between Mark's clearing his credit card debt and his arrest, Mark demonstrated an intention to permanently deprive XYZ of all the cash. If the Crown failed to negative Mark's claim to an honest claim of right, he would still face conviction for either inflicting bodily harm or grievous bodily harm depending on the extent of George's injuries.