

ANSWER TO THE MODEL QUESTION

LARCENY MAY BE DEFINED (AT COMMON LAW) AS THE TRESPASSORY TAKING AND CARRYING AWAY OF THE PERSONAL PROPERTY OF ANOTHER WITH INTENT TO PERMANENTLY DEPRIVE THE POSSESSOR OF HIS/HER POSSESSION.

IN THIS CASE, BARNEY AND OPEY WERE PLAYING WITH THE CARS TOGETHER AND THERE IS NOTHING THAT WOULD LEAD ONE TO BELIEVE THAT OPEY INTENDED THAT BARNEY HAVE THE CARS FOR ANY LONGER THAN THE GAME WAS TO LAST. WHEN BARNEY ACCIDENTLY KEPT ONE OF THE CARS IN HIS POCKET AFTER THE GAME WAS OVER, HE HAD COMMITTED A TRESPASS TO OPEY'S CAR. BARNEY'S INNOCENT ACT OF KEEPING THE CAR WAS AN ACT THAT WAS INCONSISTENT WITH OPEY'S RIGHTS IN THE TOY CAR. THEREFORE, BARNEY'S INNOCENT ACT AMOUNTED TO A TRESPASS TO THE CAR.

A TAKING HAS BEEN COMMITTED WHERE THE WRONG-DOER EXERTS DOMINION AND CONTROL OVER THE PROPERTY. IN THIS CASE, BARNEY DID ACTUALLY ACQUIRE SUCH CONTROL OVER THE CAR SINCE HE HAD SUCH A CLOSE RELATIONSHIP TO THE CAR TO DETERMINE WHERE IT WENT AND HAD THE POWER TO CONTROL THE TOY CAR. IN OTHER WORDS, BARNEY HAD THE POWER AND DID DIRECT WHAT WAS TO HAPPEN TO THE CAR AT ALL TIMES AFTER THE GAME ENDED.

A CARRYING AWAY HAS OCCURRED WHERE THE DEFENDANT HAS MOVED THE PERSONAL PROPERTY ANY DISTANCE, HOWEVER SLIGHT, UNDER THE PREVAILING VIEW. [A SLIGHT MOVEMENT IS ALL THAT IS REQUIRED] HERE, BARNEY MOVED THE CAR FROM THE AREA IN WHICH THE TWO PLAYED TO HIS HOME WHERE THE PROPERTY REMAINED. THIS SHOULD SUFFICE FOR THIS ELEMENT BECAUSE THERE WAS MORE THAN EVEN SLIGHT MOVEMENT; THERE WAS SIGNIFICANT MOVEMENT.

THE ELEMENT OF PERSONAL PROPERTY WAS PRESENT IN THIS CASE DUE TO THE FACT THAT THE PROPERTY WAS IN NO WAY, SHAPE, OR FORM PROPERLY CONSIDERED TO HAVE BEEN REAL PROPERTY SINCE IT WAS NOT ATTACHED TO LAND. FURTHER, THE PROPERTY WAS MOBILE, ANOTHER FACTOR WHICH TENDS TO SHOW THAT THE PROPERTY WAS OF A PERSONAL NATURE.

THIS PROPERTY WAS NOT BARNEY'S TO POSSESS IN ANY WAY. THIS INDICATED THAT THE PROPERTY WAS "OF ANOTHER." FURTHER, THE PROBLEM STATED THAT THE CAR BELONGED TO OPEY. THERE WAS NO INDICATION THAT THE CAR WAS TO BE JOINTLY POSSESSED BY THE TWO OF THEM ON ANY PERMANENT BASIS. IN ESSENCE, BARNEY WAS A LEGAL STRANGER TO THE TOY CAR.

THE FINAL ELEMENT WHICH MUST BE SHOWN, CONCERNS THE MENTAL STATE OF BARNEY. HE MUST HAVE POSSESSED THE INTENT TO PERMANENTLY DEPRIVE SOMEONE ELSE OF THE PROPERTY. INITIALLY, THE FACTS DO NOT SHOW THAT BARNEY DESIRED TO PERMANENTLY KEEP THE CAR; IN FACT HE WAS PLANNING TO RETURN IT THE NEXT TIME HE SAW OPEY. ONLY LATER DID HE DECIDE TO PERMANENTLY DEPRIVE OPEY OF THE POSSESSION OF THE CAR. HIS MENTAL STATE MADE IT UNLIKELY THAT OPEY WOULD EVER GET HIS RIGHTFUL POSSESSION BACK. ONE PROBLEM WHICH IS STILL AT ISSUE HERE IS THE QUESTION OF WHETHER BARNEY'S MENTAL STATE EXISTED AT THE CORRECT TIME [AT THE TIME OF THE TAKING]. THE DOCTRINE OF CONTINUING TRESPASS HOLDS THAT ONCE A TAKING HAS OCCURRED, THE TRESPASS IS OF A CONSTANT NATURE WHICH EXISTS FOR ALL TIME UNTIL THE PROPERTY HAS BEEN RETURNED TO ITS RIGHTFUL POSSESSOR. THEREFORE, BARNEY'S TRESPASS WAS CONSTANT UNTIL HE FORMED THE INTENT TO PERMANENTLY DEPRIVE OPEY OF HIS POSSESSION [THE TOY CAR]. ALL THE ELEMENTS OF LARCENY WERE PRESENT AND BARNEY WAS PROPERLY CONVICTED.