Chapter Thirteen: Crimes Against Property

Chapter Overview:

This chapter concerns the wrongful taking of another person's property. There are many categories of such crimes, including larceny, embezzlement, false pretenses, theft, identity theft, computer crime, receiving stolen property, forgery and uttering, robbery, and extortion.

Larceny is the removal of goods or money from a person without his or her consent with the intention of permanently depriving them of control over and physical possession of said goods or money. This crime requires asportation, or movement, of the stolen property, even if only a very slight one. It also requires caption of the property, asserting control over it. The intent to permanently deprive the victim of the property is the essential *mens rea* element of the crime and distinguishes it from a taking with the intent so simply borrow the property. If larceny is committed through the use of violence or threat of violence, then the crime is called robbery. Robbery also includes some specialized categories like carjacking. Where robbery requires the use of violence or threat of immediate violence, a separate crime called extortion is a theft that is made under the threat of future violence or other future harm.

When larceny was found to be insufficient to cover all types of theft that were thought unacceptable, English Parliament passed law against embezzlement of property, which today can be considered a felony or misdemeanor dependent upon the value of the embezzled property. While larceny punishes a criminal taking, embezzlement is designed to cover crimes in which the taking itself is lawful but the perpetrator unlawfully converts the property after taking possession of it, meaning that they cause a serious interference with the owner's property rights. This crime is generally carried out by people who are entrusted with the property of others, such as bank workers and auto mechanics.

False pretense is a crime that was defined by common law to encompass the obtainment of property by fraud or deceit. In these cases an individual tricks someone into transferring ownership of property to the perpetrator, such as by misrepresenting the value of property. This crime requires that the perpetrator commit the act knowingly and that he or she acts by design to defraud the victim. In some states, all three of these crimes, larceny, embezzlement, and false pretense, are combined into one statute and collectively punished as theft.

Two special cases of theft that were not foreseen by the drafters of original theft laws are identity theft and computer crime. Identity theft involves stealing another person's identifying information, such as name, birth date, and social security number. This is typically done for the purposes of obtaining credit and making purchases in the victim's name. Computer crime involves the unlawful access of another person's computer, most commonly access of programs, databases, and personal information. This crime often requires separate legislation because of the uniquely intangible nature of the property in question.

The crime of receiving stolen property occurs when someone gains possession of property that has previously been stolen from another. The *mens rea* of this crime requires that the recipient of

the stolen property be aware of the fact that the property is stolen and must take possession of it with the intention of permanently depriving the owner of such.

Forgery is the crime of counterfeiting or illegally altering a legal document for the purposes of fraud or deceit. While this purpose is required, one can be charged with this crime whether or not the documents are ever actually used for their intended purpose. The use of such documents for fraud or deceit is a separate crime known as uttering. In this chapter of the supplement you will read statutes and case law from Virginia that will show how the state is unique in its definitions and applications.

I. Larceny

Section Introduction: Under the common law, larceny requires the unlawful taking possession and transportation to a different location of another person's property with the intention of permanently depriving the rightful owner of possession of said property. Modern state statutes vary from each other and from common law in different ways, each with its own distinct formulation. Below are Virginia codes addressing the various forms of larceny.

Virginia Code § 18.2-95. Grand larceny defined; how punished.
Any person who (i) commits larceny from the person of another of money or other thing of value of $5 or more, (ii) commits simple larceny not from the person of another of goods and chattels of the value of $200 or more, or (iii) commits simple larceny not from the person of another of any firearm, regardless of the firearm's value, shall be guilty of grand larceny, punishable by imprisonment in a state correctional facility for not less than one nor more than twenty years or, in the discretion of the jury or court trying the case without a jury, be confined in jail for a period not exceeding twelve months or fined not more than $2,500, either or both.

Virginia Code § 18.2-96. Petit larceny defined; how punished.
Any person who:
1. Commits larceny from the person of another of money or other thing of value of less than $5, or
2. Commits simple larceny not from the person of another of goods and chattels of the value of less than $200, except as provided in subdivision (iii) of § 18.2-95, shall be deemed guilty of petit larceny, which shall be punishable as a Class 1 misdemeanor.

Virginia Code § 18.2-97. Larceny of certain animals and poultry.
Any person who shall be guilty of the larceny of a dog, horse, pony, mule, cow, steer, bull or calf shall be guilty of a Class 5 felony; and any person who shall be guilty of the larceny of any poultry of the value of $5 dollars or more, but of the value of less than $200, or of a sheep, lamb, swine, or goat, of the value of less than $200, shall be guilty of a Class 6 felony.

Virginia Code § 18.2-98. Larceny of bank notes, checks, etc., or any book of accounts.
If any person steal any bank note, check, or other writing or paper of value, whether the same represents money and passes as currency, or otherwise, or any book of accounts, for or concerning money or goods due or to be delivered, he shall be deemed guilty of larceny thereof, and may be charged for such larceny under § 18.2-95 or 18.2-96, and if convicted shall receive

the same punishment, according to the value of the thing stolen, prescribed for the punishment of the larceny of goods and chattels. The provisions of this section shall be construed to embrace all bank notes and papers of value representing money and passing as currency, whether the same be the issue of this Commonwealth or any other state, or of the United States, or of any corporation, and shall include all other papers of value, of whatever description. In a prosecution under this section, the money due on or secured by the writing, paper or book, and remaining unsatisfied, or which in any event might be collected thereon, or the value of the property or money affected thereby, shall be deemed to be the value of the article stolen.

Virginia Code § 18.2-99. Larceny of things fixed to the freehold.
Things which savor of the realty, and are at the time they are taken part of the freehold, whether they be of the substance or produce thereof, or affixed thereto, shall be deemed goods and chattels of which larceny may be committed, although there be no interval between the severing and taking away.

Dunlavey v. Commonwealth, **184 Va. 521, 35 S.E.2d 763 (1945)**

Procedural History: The accused, Thomas Orval Dunlavey, was indicted for the larceny of an automobile. He was tried by the court without the intervention of a jury, a jury having been waived. He was found guilty and sentenced to the penitentiary for three years.

Issue(s): Was the crime committed grand larceny, a felony, or receiving stolen goods of less value than $50.00 – a misdemeanor?

Facts: The indictment charged that the accused, on the 22nd day of November, 1944, in the city of Richmond, did unlawfully and feloniously take, steal and carry away, one Ford automobile, of the value of $474, which was the property of one J. T. Martin. The evidence was agreed upon in accordance with section 6342 of the Code (Michie, 1942). It is as follows:

> ‘On Wednesday, November 22, 1944, the automobile designated and described in the indictment against the defendant was stolen by one Louis Hall, aided and abetted by one, Raymond White. Dunlavey, the defendant, had no connection whatsoever with the said larceny of said automobile on said date of November 22, 1944. Later, on Saturday, November 25, 1944, while said automobile was still in the custody of and under the control of the said Louis Hall, the defendant, Dunlavey, pushed the stolen automobile with his, Dunlavey's automobile, in order to start the motor of the stolen automobile. This was done pursuant to a previous agreement between the defendant, Dunlavey, and Louis Hall made this date, three days subsequent to the larceny of the said automobile by Hall and White, that he, Dunlavey, would buy certain parts from said stolen automobile. Louis Hall testified that the defendant, Dunlavey, knew at the time he agreed to purchase the said parts that said automobile had been stolen by Hall and White. Dunlavey denied this statement by Hall.
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> The evidence further showed that the stolen automobile was parked on Linden street, Richmond, Virginia, when Dunlavey pushed it with his automobile to get it started and that Hall, White and a fourth unidentified person drove the stolen automobile to a

secluded section of Bryan Park, a distance of approximately three miles from Linden street, but still within the corporate limits of the city of Richmond; and that the defendant, Dunlavey, followed them in his own automobile to Bryan Park where the said four persons and two automobiles were later discovered by Poindexter, a part[-time] policeman. When thus apprehended, Hall, White and the unidentified person ran, but Dunlavey, the defendant, remained on the scene and was taken into custody by the park policeman. Later, when questioned, Dunlavey identified Louis Hall and Raymond White. When the defendant, Dunlavey, was apprehended, certain parts, which had been removed from the stolen automobile, were found in Dunlavey's automobile. Dunlavey testified that he had purchased said parts from Hall for the sum of $15.00. There was no evidence introduced at the trial as to the value of said parts. The owner of the stolen automobile did not testify at the trial, but it was stipulated by counsel for the defendant and the Commonwealth's attorney that the said automobile had been stolen in the city of Richmond, Virginia, and that the value of said stolen automobile was in excess of $50.00.'

Holding: Affirmed.

Opinion: GREGORY, Justice.

There is only one assignment of error. Its basis is the refusal of the court to set aside its judgment of conviction upon the ground that it is contrary to the law and the evidence. The accused contends that under the evidence he could not be convicted of grand larceny but that he could be convicted only of receiving stolen goods of the value of $15, knowing them to have been stolen, - a misdemeanor. Therefore, we must determine whether the crime was grand larceny, - a felony, or receiving stolen goods of less value than $50.00, - a misdemeanor. The indictment does not charge the accused with receiving stolen goods or with being an accessory. It charges him with the principal offense, grand larceny.

Larceny as defined by our court in *Vaughan v. Lytton,* 126 Va. 671, 101 S.E. 865, is the wrongful or fraudulent taking of personal goods of some intrinsic value, belonging to another, without his assent, and with the intention to deprive the owner thereof permanently. The *animus furandi* must accompany the taking, but the wrongful taking of property in itself imports the *animus furandi.*

The position of the accused is that the automobile had been stolen and carried away from the possession of the rightful owner by others (Hall and White), three days before he knew anything about it. Thus he claims to have come into the picture three days after the larceny when he agreed to assist in moving the automobile and to purchase the parts to be taken from it. He therefore contends that his offense is that of receiving stolen goods of less value than $50.00.

The position of the Commonwealth is that aside and apart from the subsequent purchase and receipt of the parts of the stolen car, and wholly independent of those acts, the accused was guilty of an offense when, with the knowledge that the car had been stolen, he pushed it in an effort to help Hall get it off of a public street and to place it in a secluded spot where it might be safely dismantled. The Commonwealth makes the further contention that where property is stolen, so long as the original thief has possession of it, his trespass against the possession of the

true owner is deemed a continuous trespass, and when a later party intervenes to assist in making the asportation more effective, he is deemed to join in with and become a party to the continuous trespass, and therefore he himself becomes a trespasser upon the owner's legal possession.

The crime here consisted of moving the automobile by the accused in order to get it started and not in receiving the parts taken from it of the value of $15. When he moved the automobile the accused knew it had been stolen. He moved it in pursuance of a previous agreement between him and Hall, the thief, to the effect that the accused would purchase certain parts which were to be stripped from the automobile. The movement was accomplished by the accused pushing the automobile with his own automobile in order to get the stolen automobile started. It was then driven from Linden street to a secluded section of Bryan Park by Hall and others. The accused followed in his own automobile to Bryan Park where the stolen automobile had been brought to a stop. There he was apprehended by a park policeman, and the parts taken from the stolen automobile were found in his own automobile. This conduct on the part of the accused amounted to larceny of the automobile.

The part taken by the accused was one incident of a continuous transaction. He was in the possession of the automobile when he started it by pushing it, even though his possession might have been a joint one. His conduct amounted to a trespass upon the constructive possession of the true owner with *animus furandi.*

Larceny has been held to be a continuous offense. This seems to be the weight of authority in other jurisdictions. In *Devine v. State,* 132 Miss. 492, 96 So. 696, the contention was made that the larceny was complete when the thief removed the car from the place where it was parked and that if he thereafter rendered him any assistance in making away with the car he did not thereby become guilty of larceny but only an accessory after the fact. The court held that the contention was without merit for the reason that larceny is a continuous offense and is being committed every moment of the time during which the thief deprives the owner of the stolen property or its possession. The court approved the rule that the legal possession of goods stolen continues in the true owner, and every moment's continuation of the trespass and felony amounts in legal contemplation to a new caption and asportation. The court concluded that if the accused aided and assisted the thief in making away with the car, after knowing that it had been stolen, he was guilty of larceny.

The same principle was applied in the case of *Brown v. State,* 7 Okla.Crim. 678, 126 P. 263-265. In *Good v. State, 21* Okla.Crim. 328, 207 P. 565, 29 A.L.R. 1029, automobile tires had been stolen. The defendant's participation in the crime consisted of driving another in his taxicab to a spot where the tires were loaded from a patch of weeds into his car and transported therein to town. The court held that the defendant knew that the tires had been stolen when they were loaded into his taxicab, and that by transporting them to town he assisted in the asportation of them, saying: ‘One who joins with a thief and assists in the asportation and disposal of stolen property, knowing at the time he does so that the other acting with him is in the act of carrying away the property of another, is equally guilty of the larceny.’

At the end of the opinion in the case of *Good v. State, supra,* 29 A.L.R., at page 1031, is an annotation in which it is stated that the general rule is that one assisting in the transportation or

disposal of property known to have been stolen renders him guilty of larceny. This annotation discloses some conflict of authority. For instance, the rule in Texas, as set out at page 1035, is contrary to the general rule. See also, *State v. Behrens,* 153 Wash. 280, 279 P. 607.

In 32 Am.Jur., Larceny, section 49, page 948, The general rule is stated thus: '* * * In most jurisdictions one who assists in transporting or disposing of the stolen property, knowing it to have been stolen, may be held guilty of the larceny as a principal, even though he was not present at the taking and neither instigated the crime nor took part as a conspirator. * * *'

In *Strouther v. Commonwealth*, 92 Va. 789, at page 791, 22 S.E. 852, 53 Ann.St.Rep. 852, it is held: '* * * It has been a settled principle of the common law, from an early day, in England, that where property is stolen in one county, and the thief has been found, with the stolen property in his possession, in another county, he may be tried in either. This practice prevailed notwithstanding the general rule that every prosecution for a criminal cause must be in the county where the crime was committed. The exception to the general rule grew out of a fiction of the law, that, where property has been feloniously taken, every act of removal or change of possession by the thief constituted a new taking and asportation; and, as the right of possession, as well as the right of property, continues in the owner, every such act is a new violation of the owner's right of property and possession. There is no principle, in respect to larceny, better settled than this, and it has received repeated sanction in this State. *Cousin's Case,* 2 Leigh (29 Va.) 709.'

The judgment is affirmed.

Critical Thinking Questions: Would the outcome of the case have been different if the defendant did not assist in moving the car but still knew the car was stolen when he purchased the parts? What is the reason for making a distinction for grade of offense based on the value of goods taken? In the present case, assuming the defendant was only charged with receiving stolen property, should the court determine the value of the goods by the value of the entire car, by what defendant paid for the specific items, or by what the value of items is as determined by an independent assessor? Explain the reason for your answer(s).

II. Embezzlement:

Section Introduction: It is sometimes the case that a person can unlawfully possess property without having to use unlawful means of attaining said property. If a defendant gained possession of another person's property through legal means and then later unlawfully converted the property into their own control, they are guilty of the crime of embezzlement. The Virginia statute below defines the penalty for embezzlement, which is encompassed by the general theft statute cited earlier in the chapter. In this section you will also find Virginia case law that specifically addresses the issue of embezzlement.

Virginia Code § 18.2-111. Embezzlement deemed larceny; indictment.
If any person wrongfully and fraudulently use, dispose of, conceal or embezzle any money, bill, note, check, order, draft, bond, receipt, bill of lading or any other personal property, tangible or intangible, which he shall have received for another or for his employer, principal or bailor, or

by virtue of his office, trust, or employment, or which shall have been entrusted or delivered to him by another or by any court, corporation or company, he shall be guilty of embezzlement. Proof of embezzlement shall be sufficient to sustain the charge of larceny. Any person convicted hereunder shall be deemed guilty of larceny and may be indicted as for larceny and upon conviction shall be punished as provided in § 18.2-95 or § 18.2-96.

Virginia Code § 18.2-112. Embezzlement by officers, etc., of public or other funds; default in paying over funds evidence of guilt.
If any officer, agent or employee of the Commonwealth or of any city, town, county, or any other political subdivision, or the deputy of any such officer having custody of public funds, or other funds coming into his custody under his official capacity, knowingly misuse or misappropriate the same or knowingly dispose thereof otherwise than in accordance with law, he shall be guilty of a Class 4 felony; and any default of such officer, agent, employee or deputy in paying over any such funds to the proper authorities when required by law to do so shall be deemed prima facie evidence of his guilt.

***Pitsnogle v. Commonwealth*, 91 Va. 808, 22 S.E. 351 (1895)**

Procedural History: For this offense he was, at a subsequent term, tried before a jury, found guilty as indicted, and his punishment fixed at 15 days in jail and a fine of $15.

Issue(s): Did the court err in overruling the defendant's motion to set aside the verdict on the ground that it was contrary to the law and evidence?

Facts: E. B. Pitsnogle was indicted in the Hustings court of the city of Roanoke for the larceny of a gold watch of the value of $30, the property of Edmond Bolden.

Holding: Affirmed.

Opinion: KEITH, P.

The … error assigned is that the court erred in overruling the defendant's motion to set aside the verdict on the ground that it was contrary to the law and evidence. First, because, as it is alleged, there is a variance between the allegations of the indictment and the proof, inasmuch as the indictment states that the watch was stolen from "Edmond Bolden," while the evidence is that the party whose property was stolen was named "Ed Bolen." The rule, as stated in 1 Bish. Cr. Proc. § 689, is that "if the names may be sounded alike without doing violence to the power of the letters found in the variant orthography, then the variance is immaterial." In the 16th volume of Am. & Eng. Enc. Law, p. 126, it is said that "whether or not two or more names are *idem sonans* may be determined by the court upon a mere comparison, where the issue is free from doubt; but the modern and approved practice is to submit the question to a jury whenever there is opportunity to do so, and where the correct sound appears at all doubtful or dependent upon particular circumstances." In our judgment, the court might very safely have disposed of this objection without the assistance of the jury, but as it seems to have taken the even more unexceptionable mode of determining the question (that of leaving it to the jury), the result is still less the subject of complaint or of error.

It is alleged in the indictment that a gold watch was stolen, and it is claimed that there is no proof that it was of gold. Bolen, its owner, testifies that he gave $30 for the watch; that it was represented, when purchased by him, as a gold watch; and while there was no analysis or chemical test as to the metal of which it was made, this evidence would seem to be sufficient to justify the verdict of the jury upon this point.

The petitioner, however, relies more particularly upon the fact that the commonwealth has failed to show the essential elements which constitute the crime of larceny. Much of the oral argument was devoted to the attempt to show that proof of embezzlement would not sustain a common-law indictment for larceny. Whatever doubt may have existed upon this subject formerly, and however the rule may be in other courts, it is too well established in Virginia to be any longer the subject of controversy. Section 3716 of the Code says that if "any person embezzle any money, note, bill, check, order, draft, bond, receipt, bill of lading, or any other property which he shall have received from another, *** he shall be deemed guilty of the larceny thereof." In sections 3714 and 3722 identical language *(mutatis mutandis)* is used with respect to receiving stolen goods and obtaining money under false pretenses. In Anable's Case, 24 Grat. 563, it was held that upon an indictment for larceny proof that the accused obtained money by false pretenses would sustain the indictment. It was argued there that the statute declaring that a person who obtained money or other goods under false pretenses should be deemed guilty of larceny ought to be construed as fixing the punishment of the offense, and not as changing the mode of the procedure or the form of the indictment; but Judge Christian, in his opinion, said: "Whatever may be the view of the court upon that question as an original proposition, it cannot now be reopened, and must be considered as *res adjudicata."* This principle was settled in Dowdy's Case, 9 Grat. 727, was followed in Leftwich's Case, 20 Grat. 716, and Pierce's Case, 21 Grat. 722, thus fixing the judicial interpretation of the statute. Since then it has been followed in Fay's Case, 28 Grat. 912, in Dull's Case, 25 Grat. 965, and in Shinn's Case, 32 Grat. 899.

The laws of Virginia have, since these decisions, been codified, and the statutes in question re-enacted, with this interpretation of the courts impressed upon them, and it must therefore now be considered as the settled law of this state that upon an indictment simply charging larceny the commonwealth may show either that the subject of the larceny was received with a knowledge that it was stolen, or that it was obtained by a false token or false pretense, or that it was embezzled. Upon another point in Anable's Case Judge Moncure dissented, but upon this point the court was unanimous, and in his dissenting opinion he declares that with respect to false pretenses, receiving stolen property, knowing it to be stolen and embezzled, - the statutes using identically the same language, - it is manifest that it was used in the same sense, and must receive the same construction in all. We are of opinion, therefore, that upon the indictment for larceny proof of embezzlement is sufficient to sustain the charge.

But it is contended that the proof of embezzlement is insufficient. It appears that the defendant lent Edmond Bolden $6 for 30 days, and that, as security for the loan, he received in pawn
Bolden's watch. The testimony of the defendant contradicts that of the commonwealth in certain particulars, but the great weight of evidence sustains the contention of the commonwealth, and from that it appears that Bolden pawned his watch with the defendant, who at the time gave a receipt which correctly stated the transaction; that he appropriated the watch to his own use;

and, by falsely and fraudulently substituting another and different paper for the one originally executed, that he attempted to convert a transaction which was originally a loan into a sale, and thereby vest the property of the watch in himself. I cannot conceive of evidence more conclusive of his guilt, if the witnesses who testify are worthy of belief. Their credibility was submitted to a jury, and the jury having found a verdict in accordance with their testimony, it is beyond the power of this court to disturb it. We are of opinion that the judgment is without error, and that it must be affirmed.

Critical Thinking Question(s): Why does the state distinguish between larceny, embezzlement, and receiving stolen property? Although all fall under the rubric of larceny, they are not punished differently based on the label, but rather on the amount of goods misappropriated. Should there be enhanced sentences for embezzlement where trust has been broken? Why or why not? Do you agree that the defendant in this case committed embezzlement, or was it attempted embezzlement, or temporary embezzlement akin to "joyriding" an automobile?

III. False Pretenses

Section Introduction: In some cases a defendant may make use of false pretenses to obtain the property of another. This can include making false statements regarding one's financial situation as well as other misrepresentations like impersonation of another individual. The Virginia statutes below define various ways in which someone may use false pretense to obtain property, as well as how that person may be punished.

Virginia Code § 18.2-115. Fraudulent conversion or removal of property subject to lien or title to which is in another.

Whenever any person is in possession of any personal property, including motor vehicles or farm products, in any capacity, the title or ownership of which he has agreed in writing shall be or remain in another, or on which he has given a lien, and such person so in possession shall fraudulently sell, pledge, pawn or remove such property from the premises where it has been agreed that it shall remain, and refuse to disclose the location thereof, or otherwise dispose of the property or fraudulently remove the same from the Commonwealth, without the written consent of the owner or lienor or the person in whom the title is, or, if such writing be a deed of trust, without the written consent of the trustee or beneficiary in such deed of trust, he shall be deemed guilty of the larceny thereof.

In any prosecution hereunder, the fact that such person after demand therefore by the lien-holder or person in whom the title or ownership of the property is, or his agent, shall fail or refuse to disclose to such claimant or his agent the location of the property, or to surrender the same, shall be prima facie evidence of the violation of the provisions of this section. In the case of farm products, failure to pay the proceeds of the sale of the farm products to the secured party, lien-holder or person in whom the title or ownership of the property is, or his agent, within ten days after the sale or other disposition of the farm products unless otherwise agreed by the lender and borrower in the obligation of indebtedness, note or other evidence of the debt shall be prima facie evidence of a violation of the provisions of this section. The venue of prosecutions against persons fraudulently removing any such property, including motor vehicles, from the Commonwealth shall be the county or city in which such property or motor vehicle was

purchased or in which the accused last had a legal residence.

This section shall not be construed to interfere with the rights of any innocent third party purchasing such property, unless such writing shall be docketed or recorded as provided by law.

Virginia Code § 18.2-186. False statements to obtain property or credit.
A. A person shall be guilty of a Class 1 misdemeanor if he makes, causes to be made or conspires to make directly, indirectly or through an agency, any materially false statement in writing, knowing it to be false and intending that it be relied upon, concerning the financial condition or means or ability to pay of himself, or of any other person for whom he is acting, or any firm or corporation in which he is interested or for which he is acting, for the purpose of procuring, for his own benefit or for the benefit of such person, firm or corporation, the delivery of personal property, the payment of cash, the making of a loan or credit, the extension of a credit, the discount of an account receivable, or the making, acceptance, discount, sale or endorsement of a bill of exchange or promissory note.

B. Any person who knows that a false statement has been made in writing concerning the financial condition or ability to pay of himself or of any person for whom he is acting, or any firm or corporation in which he is interested or for which he is acting and who, with intent to defraud, procures, upon the faith thereof, for his own benefit, or for the benefit of the person, firm or corporation in which he is interested or for which he is acting, any such delivery, payment, loan, credit, extension, discount making, acceptance, sale or endorsement, shall, if the value of the thing or the amount of the loan, credit or benefit obtained is $200 or more, be guilty of grand larceny or, if the value is less than $200, be guilty of petit larceny.

C. Venue for the trial of any person charged with an offense under this section may be in the county or city in which (i) any act was performed in furtherance of the offense, or (ii) the person charged with the offense resided at the time of the offense.

D. As used in this section, "in writing" shall include information transmitted by computer, facsimile, e-mail, Internet, or any other electronic medium, and shall not include information transmitted by any such medium by voice transmission.

IV. Receipt of Stolen Property:

Section Introduction: If someone does not personally carry out an act of theft but nevertheless comes to possess property that was unlawfully obtained through theft, they can be held accountable for the receipt of that stolen property. This crime also requires that the individual be aware, or be in the position that they should be aware, of the fact that the property is stolen. Here you will have the opportunity to read Virginia statutes relating to such dealings in stolen property.

Virginia Code § 18.2-108. Receiving, etc., stolen goods.
A. If any person buys or receives from another person, or aids in concealing, any stolen goods or other thing, knowing the same to have been stolen, he shall be deemed guilty of larceny thereof, and may be proceeded against, although the principal offender is not convicted.

B. If any person buys or receives any goods or other thing, used in the course of a criminal investigation by law enforcement that such person believes to have been stolen, he shall be deemed guilty of larceny thereof.

Virginia Code § 18.2-108.01. Larceny with intent to sell or distribute; sale of stolen property; penalty.

A. Any person who commits larceny of property with a value of $200 or more with the intent to sell or distribute such property is guilty of a felony punishable by confinement in a state correctional facility for not less than two years nor more than 20 years. The larceny of more than one item of the same product is prima facie evidence of intent to sell or intent to distribute for sale.

B. Any person who sells, attempts to sell or possesses with intent to sell or distribute any stolen property with an aggregate value of $200 or more where he knew or should have known that the property was stolen is guilty of a Class 5 felony.

C. A violation of this section constitutes a separate and distinct offense.

Virginia Code § 18.2-108.1. Receipt of stolen firearm.

Notwithstanding the provisions of § 18.2-108, any person who buys or receives a firearm from another person or aids in concealing a firearm, knowing that the firearm was stolen, shall be guilty of a Class 6 felony and may be proceeded against although the principal offender is not convicted.

Virginia Code § 18.2-109. Receipt or transfer of possession of stolen vehicle, aircraft or boat.

Any person who, with intent to procure or pass title to a vehicle, aircraft, boat or vessel, which he knows or has reason to believe has been stolen, shall receive or transfer possession of the same from one to another or who shall with like intent have in his possession any vehicle, aircraft, boat or vessel which he knows or has reason to believe has been stolen, and who is not an officer of the law engaged at the time in the performance of his duty as an officer, shall be guilty of a Class 6 felony.

V. Forgery

Section Introduction: The unlawful counterfeit or alteration of legal documents for the purposes of any fraud or injury is termed forgery. Note that forgery does not require the illegal document to actually be utilized in any way. The act of creating or altering the document, along with the intent to use it for criminal purposes, is enough to satisfy the definition of this crime. The Virginia statute specifically addressing the issue of forgery is in the section below.

Virginia Code § 18.2-152.14. Computer as instrument of forgery.

The creation, alteration, or deletion of any computer data contained in any computer or computer network, which if done on a tangible document or instrument would constitute forgery under Article 1 (§ 18.2-168 et seq.) of Chapter 6 of this Title, will also be deemed to be forgery. The absence of a tangible writing directly created or altered by the offender shall not be a defense to

any crime set forth in Article 1 (§ 18.2-168 et seq.) of Chapter 6 of this Title if a creation, alteration, or deletion of computer data was involved in lieu of a tangible document or instrument.

VI. Uttering

Section Introduction: Once a crime of forgery has been committed, any person who utilizes the forged documents is guilty of the crime of uttering. Read the section below for specific Virginia statutes regarding this crime.

Virginia Code § 18.2-181. Issuing bad checks, etc., larceny.

Any person who, with intent to defraud, shall make or draw or utter or deliver any check, draft, or order for the payment of money, upon any bank, banking institution, trust company, or other depository, knowing, at the time of such making, drawing, uttering or delivering, that the maker or drawer has not sufficient funds in, or credit with, such bank, banking institution, trust company, or other depository, for the payment of such check, draft or order, although no express representation is made in reference thereto, shall be guilty of larceny; and, if this check, draft, or order has a represented value of $200 or more, such person shall be guilty of a Class 6 felony. In cases in which such value is less than $200, the person shall be guilty of a Class 1 misdemeanor. The word "credit" as used herein, shall be construed to mean any arrangement or understanding with the bank, trust company, or other depository for the payment of such check, draft or order. Any person making, drawing, uttering or delivering any such check, draft or order in payment as a present consideration for goods or services for the purposes set out in this section shall be guilty as provided herein.

Virginia Code § 18.2-181.1. Issuance of bad checks.

It shall be a Class 6 felony for any person, within a period of ninety days, to issue two or more checks, drafts or orders for the payment of money in violation of § 18.2-181, which have an aggregate represented value of $200 or more and which (i) are drawn upon the same account of any bank, banking institution, trust company or other depository and (ii) are made payable to the same person, firm or corporation.

Virginia Code § 18.2-182. Issuing bad checks on behalf of business firm or corporation in payment of wages; penalty.

Any person who shall make, draw, or utter, or deliver any check, draft, or order for the payment of money, upon any bank, banking institution, trust company or other depository on behalf of any business firm or corporation, for the purpose of paying wages to any employee of such firm or corporation, or for the purpose of paying for any labor performed by any person for such firm or corporation, knowing, at the time of such making, drawing, uttering or delivering, that the account upon which such check, draft or order is drawn has not sufficient funds, or credit with, such bank, banking institution, trust company or other depository, for the payment of such check, draft or order, although no express representation is made in reference thereto, shall be guilty of a Class 1 misdemeanor; except that if this check, draft, or order has a represented value of $200 or more, such person shall be guilty of a Class 6 felony.

The word "credit," as used herein, shall be construed to mean any arrangement or understanding with the bank, banking institution, trust company, or other depository for the payment of such

check, draft or order.

In addition to the criminal penalty set forth herein, such person shall be personally liable in any civil action brought upon such check, draft or order.

Virginia Code § 18.2-182.1. Issuing bad checks in payment of taxes.
Any person who shall make, draw, utter, or deliver two or more checks, drafts, or orders within a period of ninety days which have an aggregate represented value of $1,000 or more, for the payment of money upon any bank, banking institution, trust company, or other depository on behalf of any taxpayer for the payment of any state tax under § 58.1-486 or § 58.1-637, knowing, at the time of such making, drawing, uttering, or delivering, that the account upon which such check, draft, or order is drawn has not sufficient funds or credit with such bank, banking institution, trust company, or other depository for the payment of such check, draft, or order, although no express representation is made in reference thereto, shall be guilty of a Class 1 misdemeanor.

The word "credit," as used herein, means any arrangement or understanding with the bank, banking institution, trust company, or other depository for the payment of such check, draft, or order.

VII. Robbery

Section Introduction: If an act that would otherwise be termed larceny is committed in junction with the use of force or threat of force upon a person, then the crime is called robbery. In Virginia, robbery can be a felony in the first, second or third degree depending on the specific nature of the crime. Below you will find the Virginia statute that addresses robbery and defines its punishment. Also included is a Virginia case on the crime. Note that “strong-arm” robbery, where a suspect merely “sweeps” the property from another’s grasp, is not specifically enumerated. Still, it constitutes robbery, but will likely result in a lesser sentence.

Virginia Code § 18.2-58. How punished.
If any person commit robbery by partial strangulation, or suffocation, or by striking or beating, or by other violence to the person, or by assault or otherwise putting a person in fear of serious bodily harm, or by the threat or presenting of firearms, or other deadly weapon or instrumentality whatsoever, he shall be guilty of a felony and shall be punished by confinement in a state correctional facility for life or any term not less than five years.

Pettus v. Peyton, 207 Va. 906, 153 S.E.2d 278 (1967)

Procedural History: At the December, 1957 term of the Circuit Court of Mecklenburg County two indictments were found against Daniel Pettus and four others. One indictment charged them with felonious escape. The other charged that they, ‘In and upon one W. F. Harris, feloniously did make an Assault, and the said W. F. Harris in bodily fear, feloniously did put, and one shotgun of the value of One Hundred ($100) Dollars, being the property of the Commonwealth of Virginia, in lawful possession and custody of the said W. F. Harris, from the person and against the will of the said W. F. Harris, then and there, on the day and year aforesaid, in the

county aforesaid, feloniously and violently did steal, take and carry away, against the peace and dignity of the Commonwealth.'

Issue(s): Appellant contends that convictions on both robbery and attempted murder constitute double jeopardy when they arise out of a single criminal episode.

Facts: On November 15, 1957, Pettus, a convict, was assigned to work on a public road in Mecklenburg County. He and other prisoners were guarded by W. F. Harris who had a shotgun in his possession. In some manner not clearly shown, Pettus got possession of the gun from the guard, and he and his four companions disarmed the guard and escaped from custody. Shortly thereafter they were apprehended and later indicted.

Holding: Affirmed.

Opinion: EGGLESTON, Chief Justice.

Jesse R. Overstreet, Jr., a local attorney, was appointed to represent Pettus on the charges preferred in the two indictments. On Overstreet's recommendation Pettus pleaded guilty to both indictments. Upon consideration of the plea and after hearing the evidence, the trial court entered an order sentencing Pettus to serve two years in the penitentiary on the escape indictment, and another order sentencing him to serve eight years on the other indictment. This latter order recites that the defendant 'stands indicted of a felony, to wit: Larceny and Assault;' that upon being 'duly arraigned and after being advised by his counsel (he) pleaded guilty to the indictment, which plea was tendered by the accused in person;' that 'the court being of the opinion that the accused fully understood the nature and effect of his plea, proceeded to hear and determine the case without the intervention of a jury provided by law, and having heard the evidence doth find the accused guilty of a felony (larceny and assault) as charged in the indictment, and ascertain his punishment to be confinement in the penitentiary of this Commonwealth for the term of eight (8) years.'

On April 10, 1964, Pettus filed in the Supreme Court of Appeals a petition for a writ of habeas corpus attacking the judgment of conviction entered on the second indictment, on the grounds among others, that the indictment was void because it charged two offenses, 'larceny and assault,' in a single count; that the order finding him guilty of such charges was void, and that he was denied the effective assistance of counsel at the trial.

The respondent filed an answer to the petition and, pursuant to Code, s 8-598, as amended, we entered an order remanding the case to the Circuit Court of Mecklenburg County for a plenary hearing on the allegations set forth in the petition. Falcon Hodges, a member of the Mecklenburg County bar, was appointed to represent the petitioner in the habeas corpus proceeding. After hearing the evidence the court entered an order denying and dismissing the petition for a writ of habeas corpus. We granted the petitioner a writ of error to review the latter order.

While the petitioner made several assignments of error, he says in his brief that they involve the single underlying contention that at the criminal trial he was denied the effective assistance of counsel guaranteed to him under the State and Federal Constitutions. He argues that the

assistance was ineffective because, he says, his court-appointed counsel failed to note and object to these fatal defects in the proceeding, that: (1) he was charged in a single count in the indictment with two separate offenses, robbery and larceny; (2) he was indicted and convicted of 'larceny and assault' when there is no such offense; and (3) the evidence introduced at the trial was insufficient to convict him of armed robbery.

Overstreet, who had been appointed to represent Pettus on the charges preferred in the two indictments, conferred with the Commonwealth's attorney with respect to what recommendation the latter would make to the court should Pettus plead guilty to the indictments. It was agreed between them that if Pettus would plead guilty the Commonwealth's attorney would recommend that he be sentenced to two years on the escape indictment and eight years on the robbery indictment, the terms to run consecutively.

Overstreet went to see Pettus at the camp where he was being confined and told him of the nature of the charges which had been made against him - that in one indictment he was charged with felonious escape and in the other 'with armed robbery.' He told him of his right to be tried by a jury or by the court. He further told Pettus of the agreement which he had with the Commonwealth's attorney with respect to the recommendation which the Commonwealth's attorney would make to the court for the punishment which he (Pettus) would receive should he plead guilty to the two indictments. Overstreet said that Pettus agreed to this arrangement.

Pettus testified that he knew from his talk with Overstreet that he (Pettus) 'was charged with robbery;' that he understood the agreement between Overstreet and the Commonwealth's attorney, and that pursuant thereto he agreed to plead guilty to the two indictments. He said that it was his own 'voluntary decision' to do so, because he knew what he had done and 'wanted to go ahead and plead guilty.' He further said that there were no witnesses to be called on his behalf at the trial and he so advised his counsel. Pettus was asked by the trial court, 'Did the attorney fail to do anything you requested him to do or anything of that nature?' He replied, 'No, sir, he did not.'

The evidence further shows that the agreement between Overstreet and the Commonwealth's attorney as to the recommended punishment was approved by the court and carried out. A charge of larceny as a separate charge was *nol prossed,* and Pettus received a term of eight years under the robbery indictment, which was the minimum sentence then prescribed in the statute for robbery by violence or intimidation. Code of 1950, s 18-163. He also received a sentence of two years for felonious escape. Code of 1950, ss 53-291, 53-293.

In this State there is no statutory definition of robbery, although Code of 1950, s 18-163, in effect at the time of the alleged offense, fixes the punishment therefore. Hence, with us, the elements of robbery are the same as at common law. Mason v. Commonwealth, 200 Va. 253, 105 S.E.2d149. In that case we adopted the common-law definition of robbery as 'the taking, with intent to steal, of the personal property of another, from his person or in his presence, against his will, by violence or intimidation.' 200 Va. at 254, 105 S.E.2d at 150. See also, Pierce v. Commonwealth, 205 Va. 528, 532, 138 S.E.2d 28, 31.
The indictment in the present case is sufficient to charge common-law robbery. It appears from the testimony of both the petitioner and his counsel that the petitioner knew and fully

understood that under the indictment he was charged with that offense. It further appears from petitioner's own testimony that he admitted to his counsel that he was guilty of the charge, that there were no witnesses who could be called in his behalf, and that he desired to plead guilty.

Critical Thinking Questions: What was the primary issue that defendant raised in this case? Is it proper to charge both assault and larceny as one charge? What would be the problem with such a charge if the defendant both assaulted and stole from the victim? In essence, this is the very definition of robbery. As noted in the statute above, strong-arm robbery was not defined. Should the state take the time to write the statute to include the definitional language in the opinion above?

IX. Carjacking

Section Introduction: Carjacking is a specific type of robbery that applies to the taking of a motor vehicle. As opposed to larceny or receiving stolen property, it includes taking the vehicle from the physical possession of a victim. Society's concern is that such circumstances lead to more potential dire consequences for the victim. Thus, this crime has a specific definition and specific punishment that are explained by the statute below.

Virginia Code § 18.2-58.1. Carjacking; penalty.
A. Any person who commits carjacking, as herein defined, shall be guilty of a felony punishable by imprisonment for life or a term not less than fifteen years.

B. As used in this section, "carjacking" means the intentional seizure or seizure of control of a motor vehicle of another with intent to permanently or temporarily deprive another in possession or control of the vehicle of that possession or control by means of partial strangulation, or suffocation, or by striking or beating, or by other violence to the person, or by assault or otherwise putting a person in fear of serious bodily harm, or by the threat or presenting of firearms, or other deadly weapon or instrumentality whatsoever. "Motor vehicle" shall have the same meaning as set forth in § 46.2-100.

C. The provisions of this section shall not preclude the applicability of any other provision of the criminal law of the Commonwealth which may apply to any course of conduct which violates this section.

X. Extortion

Section Introduction: Extortion is a crime that involves the threat of future violence or harm for the purpose of obtaining some advantage. This differs from crimes like robbery that require an immediate use of force or threat of immediate use of force. Notice that according to the Virginia statute below, no gain need actually be made for extortion to be committed.

Virginia Code § 18.2-59. Extortion of money, property or pecuniary benefit.
Any person who (i) threatens injury to the character, person, or property of another person, (ii) accuses him of any offense, (iii) threatens to report him as being illegally present in the United States, or (iv) knowingly destroys, conceals, removes, confiscates, withholds or threatens to

withhold, or possesses any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person, and thereby extorts money, property, or pecuniary benefit or any note, bond, or other evidence of debt from him or any other person, is guilty of a Class 5 felony.

Virginia Code § 18.2-470. Extortion by officer.
If any officer, for performing an official duty for which a fee or compensation is allowed or provided by law, knowingly demand and receive a greater fee or compensation than is so allowed or provided, he shall be guilty of a Class 4 misdemeanor.

Essay Questions:

1. Identify, describe, and give examples of each of the elements of larceny.

2. What are the primary differences between common theft offenses, fraud and embezzlement?

3. State the elements and describe the offense of robbery, paying particular attention to the amount of force required.