

FELONIOUS LARCENY OF HORSES, MULES, SWINE, CATTLE, OR DOGS.  
FELONY. G.S. 14-81.

NOTE WELL: Although the subject of the statute is plural under G.S. 12-3(1), it is interpreted to include theft of only one of the specified animals. Where appropriate the instruction should be changed to reflect the singular.

The defendant has been charged with felonious larceny of [horses] [mules] [swine] [cattle] [dogs].

For you to find the defendant guilty of this offense, the State must prove five things beyond a reasonable doubt:

First, that the defendant took [horses] [mules] [swine] [cattle] [dogs] belonging to the victim. ((Describe conduct) would be a taking.)

Second, that the defendant carried away<sup>1</sup> the [horses] [mules] [swine] [cattle] [dogs].

Third, that the owner did not consent to the taking and carrying away of the [horses] [mules] [swine] [cattle] [dogs].

Fourth, that the defendant intended to deprive the owner of the use of the [horses] [mules] [swine] [cattle] [dogs] permanently.<sup>2</sup>

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<sup>1</sup>In the event that there is some dispute as to asportation, the jury should be told that the slightest movement is sufficient.

<sup>2</sup>In the event there is some dispute as to permanent deprivation, the jury should be told that a temporary deprivation will not suffice for the crime of larceny. But see N.C.P.I.--Crim. 216.97, as to the temporary taking of such animals.

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And Fifth, that the defendant knew he was not entitled to take the [horses] [mules] [swine] [cattle] [dogs].<sup>3</sup>

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant took and carried away the victim's [horses] [mules] [swine] [cattle] [dogs] without his consent, knowing that he, the defendant, was not entitled to take the animals and intending at that time to deprive the owner of the use of the animals permanently, it would be your duty to return a verdict of guilty. If you do not so find, or have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.<sup>4</sup>

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<sup>3</sup>In the event the defendant relies on claim of right, the jury should be told that if the defendant honestly believed that he was entitled to take the animal, he cannot be guilty of larceny.

<sup>4</sup>If the charge is theft of horses or mules and defendant's intent to deprive permanently is an issue, an instruction on the lesser offense of wrongful appropriation (N.C.P.I.--Crim. 216.98) should be considered.