



Criminal procedure: Example

Receiving

Section *Section 148(1) Criminal Offences Act (Cap. 18) - Tonga*

Description Any person is guilty of an offence who receives any property knowing or believing it to be stolen or obtained in any way whatsoever under circumstances which amount to a criminal offence.

Elements **Each of the following elements must be proved by the prosecution**

1. The defendant received a property; and
2. The defendant –
 - i. at the time of receiving the property knew or believed the property to be stolen; or
 - ii. obtained the property in any way whatsoever under circumstances which amounted to a criminal offence.

Commentary Burden and standard of proof
The prosecution must prove all the elements beyond reasonable doubt. The defence does not need to prove anything, however if the defence establishes to your satisfaction that there is a reasonable doubt, then the prosecution has failed.

Receiving
For the purposes of all laws relating to receivers or receiving, a person shall be treated as receiving property if they dishonestly undertake or assist in its retention, removal, disposal or realisation, or if they arrange to do so: *s 148(5) Criminal Offences Act*.

Intention
The prosecution will need to provide evidence that the accused knew or believed the property had been stolen or obtained in any way which amounted to a criminal offence.

Defences

If the prosecution has proved the elements of the offence, beyond reasonable doubt, the accused may still have a legal defence.

The accused will have to establish their defence to your satisfaction, on the balance of probabilities (that is, more likely than not).