

CLAIM OF RIGHT ¹

If applicable, add the following before the paragraph which begins: "In order to find the defendant guilty of"

It is a defense to the charge of larceny that the property was taken, withheld, or obtained under a claim of right made in good faith.

In other words, a defendant who takes, withholds, or obtains property of another, believing in good faith², though perhaps mistaken, that he or she has a right to possess the property superior to that of the other person, does not have the intent necessary to be guilty of larceny.

Note:

If the defense of claim of right applies, add the following element to the list of elements:

and # _____. That the defendant did not take, withhold, or obtain the property under a claim of right made in good

¹ A claim of right defense to larceny by trespassory taking or embezzlement is set forth in Penal Law § 155.15(1). The declaration in that statute that a claim of right is an affirmative defense, rather than an ordinary defense, is unconstitutional. *People v. Chesler*, 50 NY2d 203 (1980). By case law, if the charge is robbery of a chattel, "because the prosecution must prove beyond a reasonable doubt that the defendant intended to take property from someone with a superior right to possession, a good-faith but mistaken claim of right might defeat a robbery prosecution." *People v. Green* 5 NY3d 538, 544 (2005). However, "a specific jury instruction on the claim-of-right defense is not available for robbery, regardless of the nature of the property taken" [*Id.* at 545], unless a jury question requires same. *People v. Harrison*, 35 AD3d 52 (1st Dept. 2006) (finding reversible error where the trial court answered in the affirmative the jury's question whether forcibly regaining property that one believes to be his or her own makes that person subject to the law of attempted robbery).

² See *People v. Zona*, 14 NY3d 488 (2010) ("it may be that a [defendant] could have no reasonable basis for such a belief, but subjective good faith, not reasonableness, is the test." *Id.* at 493.).

faith.