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A2 GCE LAW

G154/01/RM Criminal Law Special Study

SPECIAL STUDY MATERIAL

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Duration: 1 hour 30 minutes

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CRIMINAL LAW

SPECIAL STUDY MATERIAL

SOURCE MATERIAL

SOURCE 1

Extract adapted from *Criminal Law*. 8th Edition. Catherine Elliott and Frances Quinn. Pearson Education Ltd. 2010. pp 209–212.

[The] offence [of robbery] is defined by s.8 of the Theft Act 1968: 'A person is guilty of robbery if he steals, and immediately before or at the time of doing so and in order to do so, he uses force on any person or puts or seeks to put any person in fear of being then and there subjected to force.'

...

The *actus reus* of robbery is the *actus reus* of theft, plus one of three things ...

Force is not defined in the Act. In *R v Dawson and James* (1978) [(1977) 64 Cr. App. R. 170] it was said that it was an ordinary English word and its meaning should be left to a jury. A mere nudge so that someone lost their balance could be sufficient. So in practice a relatively low level of physical contact can amount to force for the purposes of robbery.

The force or threat of force must be used in order to steal, so there is no robbery if the force is only used when trying to escape after the theft, or if the force was accidental. The force or threat of force must also be used immediately before or at the time of the theft. The theft occurs at the time of the appropriation, but again the courts have taken a very flexible approach to this rule. In *R v Hale* (1979) [(1979) 68 Cr. App. R. 415] ... the Court of Appeal upheld the convictions on the basis that appropriation was a continuing act, and it was open to the jury to conclude on [the] facts that it was still continuing at the [same] time the force was applied.

...

The defendant must have the *mens rea* of theft. This requirement led to surprising results in *R v Robinson* (1977) [(1977) Crim. L.R. 173]. The defendant threatened his victim with a knife in order to obtain payment of money he was owed. He was convicted of robbery, but the conviction was quashed by the Court of Appeal because the defendant lacked dishonesty according to the Theft Act ... .

Andrew Ashworth (2002) has carried out a study of how the law on robbery is working in practice. He observes that the offence of robbery is extremely broad.

...

The breadth of the offence of robbery carries the danger that relatively minor criminal conduct can incur unduly harsh sentences, with the offence of robbery potentially carrying a life sentence. The dividing line between robbery and theft is often a very fine one. 'Force' for the purposes of robbery has been interpreted to include minor violence, such as pulling on a handbag, or barging into someone. But the impact of a finding of force is significant because it raises the maximum possible sentence from seven years' to life imprisonment.

...

[He] argues persuasively that the law should distinguish between the different degrees of force ... [and] recommends that the current single offence should be divided into two separate offences, which would depend on the gravity of harm used or threatened.

SOURCE 2

Extract adapted from the judgment of Lawton LJ in *R v Dawson and James* (1977) 64 Cr. App R 170.

Mr Locke had submitted at the end of the prosecution's case that what had happened could not in law amount to the use of force. He called the learned judge's attention to some old authorities and ... submitted that because of those old authorities there was not enough evidence to go to the jury.

...

The object of the Act was to get rid of all the old technicalities of the law of larceny and to put the law into simple language which juries would understand and which they themselves would use. That is what has happened in section 8 which defines "robbery".

The choice of the word "force" is not without interest because under the Larceny Act 1916 the word "violence" had been used, but Parliament deliberately on the advice of the Criminal Law Revision Committee changed that word to "force". Whether there is any difference between "violence" or "force" is not relevant for the purposes of this case; but the word is "force". It is a word in ordinary use. It is a word which juries understand. The learned judge left it to the jury to say whether jostling a man in the way which the victim described to such an extent that he had difficulty in keeping his balance could be said to be the use of force. The learned judge, because of the argument put forward by Mr Locke, went out of his way to explain to the jury that force in these sort of circumstances must be substantial to justify a verdict.

Whether it was right for him to put that adjective before the word "force" when Parliament had not done so we will not discuss for the purposes of this case. It was a matter for the jury. They were there to use their common sense and knowledge of the world. We cannot say that their decision as to whether force was used was wrong. They were entitled to the view that force was used.

SOURCE 3

Extract adapted from the judgment of Eveleigh LJ in *Hale* [1978] 68 Cr. App. R. 415.

The appellant was charged with robbery. ... [H]e and one M, both wearing stocking masks, had forced their way into the house of a Mrs C who had answered the door to their knock. The appellant had then put his hand over Mrs C's mouth to stop her screaming while M went upstairs and returned carrying a jewellery box and had asked Mrs C "where the rest was." ... They again asked Mrs C where she kept her money and before leaving the house tied her up and threatened what would happen to her young boy if she informed the police within five minutes of their leaving.

...

In so far as the facts of the present case are concerned, counsel submitted that the theft was completed when the jewellery box was first seized and any force thereafter could not have been "immediately before or at the time of stealing" and certainly not "in order to steal." The essence of the submission was that the theft was completed as soon as the jewellery box was seized.

...

Section 8 of the Theft Act 1968 begins: "A person is guilty of robbery if he steals ..." He steals when he acts in accordance with the basic definition of theft in section 1 of the Theft Act; that is to say when he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it. It thus becomes necessary to consider what is "appropriation" or, according to section 3, "any assumption by a person of the rights of an owner." An assumption of the rights of an owner ... is conduct which usurps the rights of the owner. To say that the conduct is over and done with as soon as he lays hands upon the property, or when he first manifests an intention to deal with it as his, is contrary to common-sense and to the natural meaning of words.

...

In the present case there can be little doubt that if the appellant had been interrupted after the seizure of the jewellery box the jury would have been entitled to find that the appellant and his accomplice were assuming the rights of an owner at the time when the jewellery box was seized. However, the act of appropriation does not suddenly cease. It is a continuous act and it is a matter for the jury to decide whether or not the act of appropriation has finished. Moreover, it is quite clear that the intention to deprive the owner permanently, which accompanied the assumption of the owner's rights was a continuing one at all material times. This Court therefore rejects the contention that the theft had ceased by the time the lady was tied up. As a matter of common-sense the appellant was in the course of committing the theft; he was stealing.

There remains the question whether there was a robbery. Quite clearly the jury were at liberty to find the appellant guilty of robbery relying upon the force used when he put his hand over Mrs. Carrett's mouth to restrain her from calling for help. We also think that they were also entitled to rely upon the act of tying her up provided they were satisfied (and it is difficult to see how they could not be satisfied) that the force so used was to enable them to steal.

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SOURCE 4

Extract adapted from the judgment of Edmund Davies LJ in *R v Collins* [1973] Q.B. 100.

Now, one feature of the case which remained at the conclusion of the evidence in great obscurity is where exactly Collins was at the moment when, according to him, the girl manifested that she was welcoming him. Was he kneeling on the sill outside the window or was he already inside the room, having climbed through the window frame, and kneeling upon the inner sill? It was a crucial matter, for there were certainly three ingredients that it was incumbent upon the Crown to establish. Under section 9 of the Theft Act 1968 ... the entry of the accused into the building must first be proved. ... Secondly, it must be proved that he entered as a trespasser. ... Thirdly, it must lie proved that he entered as a trespasser with intent at the time of entry to commit rape therein.

The second ingredient of the offence – the entry must be as a trespasser – is one which has not, to the best of our knowledge, been previously canvassed in the courts.

...

What does this involve? According to the learned editors of Archbold's Criminal Pleading, Evidence and Practice ... "Any intentional, reckless or negligent entry into a building will, it would appear, constitute a trespass if the building is in the possession of another person who does not consent to the entry."

A view contrary to that ... was expressed in Professor Smith's book on *The Law of Theft* ... "... D should be acquitted on the ground of lack of *mens rea*. Though under the civil law he entered as a trespasser, it is submitted that he cannot be convicted of the criminal offence unless he knew of the facts which caused him to be a trespasser or, at least, was reckless." The matter has also been dealt with by Professor Griew ... "What if D wrongly believes that he is not trespassing? ... [F]or the purposes of criminal liability a man should be judged on the basis of the facts as he believed them to be ... D should be liable for burglary only if he knowingly trespasses or is reckless as to whether he trespasses or not." ...

We prefer the view expressed by Professor Smith and Professor Griew ... there cannot be a conviction for entering premises "as a trespasser" within the meaning of section 9 of the Theft Act unless the person entering does so knowing that he is a trespasser and nevertheless deliberately enters, or, at the very least, is reckless as to whether or not he is entering the premises of another without the other party's consent.

Having so held, the pivotal point of this appeal is whether the Crown established that this appellant at the moment when he entered the bedroom knew perfectly well that he was not welcome there or, being reckless as to whether he was welcome or not, was nevertheless determined to enter. That in turn involves consideration as to where he was at the time when the complainant indicated that she was welcoming him into her bedroom.

...

Unless the jury were entirely satisfied that the appellant made an effective and substantial entry into the bedroom without the complainant doing or saying anything to cause him to believe that she was consenting to his entering it, he ought not to be convicted of the offence charged.

...

We have to say that this appeal must be allowed on the basis that the jury were never invited to consider the vital question whether the appellant did enter the premises as a trespasser ... .

SOURCE 5

Extract adapted from *Criminal Law*. 4th Edition. Alan Reed and Ben Fitzpatrick. Sweet and Maxwell. 2009. pp 501–502, 507.

The prosecution must prove that the accused actually entered the building in question. ... However, on occasion, it may be difficult to say whether or not there has actually been an entry into the building within the meaning of s.9.

...

After the enactment of the Theft Act 1968 the question arose as to whether the old common law rules were still determinative, in a scenario where the Act itself was silent as to the definitional meaning of entry. The first case to address the point was that of *Collins*, a salacious authority ... .

The subsequent decision of the Court of Appeal in *Brown* [[1985] Crim. L.R. 212], in which it was said that "substantial" did not materially assist in the matter, but that a jury should be directed that in order to convict they must be satisfied that the entry was "effective", would appear to add little in the way of clarification to the matter. ... The Court of Appeal rejected the contention that the whole of the defendant's body had to be within a building, and refuted the dictum of Edmund Davies L.J in *Collins* that an entry has to be both effective and substantial.

...

The issue arose again before the Court of Appeal in *Ryan* [(1996) 160 J.P. 610] but unfortunately the picture still remains unclarified ... The defendant found himself charged with burglary and was in due course convicted. He contended that, as a matter of law, his action was not capable of constituting an entry within the meaning of s.9(1)(a) of the Theft Act 1968 since he could not have stolen anything from within the building because he was stuck firmly by his neck in the window. However, the Court of Appeal, following *Brown*, held that a person could enter a building even if only part of his body was actually within the premises. Further, it was totally irrelevant whether he was or was not capable of stealing anything because he was trapped halfway through the window. Consequently the law is now left in an extremely uncertain state.

...

Apart from a trespassory entry ... the offences of burglary requires, under s.9(1)(a), an ulterior intention to commit one of the three specified offences ... and under s.9(1)(b), both the *actus reus* and *mens rea* of one of the two specified ulterior offences ... Burglary is no longer confined to cases where the intention is to commit theft and it will be noted that this range of specified offences is wider under s.9(1)(a) than under s.9(1)(b) ... a conditional intent will suffice in relation to the s.9(1)(a) offence.

SOURCE 6

Extract adapted from *Criminal Law*. 10th Edition. Michael Jefferson. Pearson Education Ltd. 2011. pp 642–644.

By s 9 of the Theft Act 1968, as amended:

(1) A person is guilty of burglary if –

(a) he enters any building or part of a building as a trespasser and with intent to commit any such offence as is mentioned in subsection (2) below; or

(b) having entered any building or part of a building as a trespasser he steals or attempts to steal anything in a building or that part of it or inflicts or attempts to inflict on any person therein any grievous bodily harm.

(2) The offences referred to in subsection (1) above are offences of stealing anything in the building or part of a building in question, of inflicting on any person therein any grievous bodily harm therein, and of doing unlawful damage to the building or anything therein.

...

By sub-s (4) 'building' includes inhabited vehicles and vessels. The later part of sub-s (4) is to the effect that a vehicle or vessel remains inhabited even if no one is living there at the time of the burglary. An 'inhabited vehicle' includes a caravan. It is uncertain whether it covers a caravanette ... It seems a little inept to consider the crime to be burglary when the caravanette is being used as a holiday home and theft when it is not. A Crown Court held ... that a large freezer container resting on railway sleepers in a farmyard was a building. It does not include an articulated trailer used as a store despite its having electrical power, steps up to it, and lockable shutters: *Norfolk Constabulary v Seekings* [1986] Crim LR 167. Both the container and the trailer were being used as an extra store for shops. It does seem strange that burglary could be committed in the first instance but not the second. ... 'Part of a building' can also give rise to problems. In *Walkington* [1979] 2 All ER 716 (CA), the accused was guilty under s 9(1)(a) when he went into a three-sided partition in the middle of a shop where the till was. The area inside the partition was 'part of a building'. ... There may be difficulties in determining whether the accused has entered a part of a building. If he enters a shop, hides in a corner, comes out when the members of staff have gone home, and steals some items, is he a burglar? In the evening when he comes out, is his previously lawful presence converted into a trespassory entrance? Is he guilty only when he crosses some notional line?

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