

The Offences of Stealing, Robbery and Armed Robbery Distinguished

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Abstract. This work examined the property related offences of stealing (theft), robbery and armed robbery and draws a dividing line between them as legal concepts. It is observed that persons accused of committing any or all of these offences have common state of mind, which is to fraudulently or dishonestly deprive the owners or persons in possession of the subject matters of these offences permanently of their rights or interest in them under different circumstances or modes of operation. In the case of stealing or theft, no harm or threat is posed to the life and limb of the victim as the accused simply takes his victim's property without his knowledge, consent or authorization. But in the case of robbery and armed robbery, there is threat and even application of force and sometimes the possession and use of dangerous weapons by the accused in actualizing his intention. It is not therefore surprising that legal consequences, sanction or punishment accruing to the accused in each case is a measure of the physical element of the offence, otherwise called the actus reus.

1. Introduction

Law students and indeed, legal practitioners interested in criminal law would appreciate the nature and substance of real and personal property laws as forming the background for understanding criminal property laws deeply. In discussions relating to the offence of stealing (also called theft), two important rights are found to dominate, namely, the right of

ownership and the right of possession of the property.

In reaction to the confinement of property related offences to the concept of *possession*, Glanville Williams said:

The common law got itself into a tangle over theft, or larceny as it was called. Basically, this crime was confined to the taking of a thing from the possession of another without his consent. It did not cover misappropriation by a possessor of the thing (he could not take what he already possessed), and it did not (at least in its original form) cover the theft of a notional balance of account. However, the proposition that possessors could not steal what they possessed was eroded by subtle rules. For example, a servant (employee) was said not to possess his master's article, although he held it in his hands. He only had custody of it, his master retained possession; so a dishonest appropriation by the servant was taking from his master's possession and therefore larceny.

It would nonetheless, seem that *possession*, though a fundamental ingredient of the offence of stealing, may require other factors to complement its hold thereon. The terms *stealing* and *theft* as used by most common law criminal statutes mean the same thing and are therefore, words of convenience or choice. Under the Common Law:

A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it and theft and stealing shall be construed accordingly.

The Nigerian Criminal statutes created the offence of stealing or theft. Under the Criminal Code, any person who steals anything capable of being stolen is guilty of a felony, and is liable, if no other punishment is provided, to imprisonment for three years. The Penal Code provides that whoever commits theft shall be punished with imprisonment for a term which may extend to five years with or without fine. Robbery and armed robbery are species of stealing or theft, with violence and without arms or weapons in cases of robbery and with arms or weapons in cases of armed robbery.

2. Stealing/Theft Defined

Stealing and theft are statutorily defined. Accordingly:

A person who fraudulently takes anything capable of being stolen or fraudulently converts to his own use or to the use of any other person, anything capable of being stolen, is said to steal that thing.

The law further explains what it means to *fraudulently* take or convert another person's property for the purposes of the law of stealing. Thus, a person who takes or converts anything capable of being stolen is deemed to do so *fraudulently*, if he does so with any of the following intents:

- (i) An intent permanently to deprive the owner of the thing of it;
- (ii) An intent permanently to deprive any person who has any *special property* in the thing of such property;
- (iii) an intent to use the thing as a pledge or security;
- (iv) an intent to part with it on a condition as to its return which the person taking or converting it may be unable to perform or fulfill;
- (v) an intent to deal with it in such a manner that it cannot be returned in the condition in which it was, at the time of the taking or conversion; and
- (vi) in the case of money, an intent to use it at the will of the person who

takes or converts it, although he may intend afterwards to repay the amount to the owner.

Under the penal code, whoever, intending to take dishonestly, any moveable property out of the possession of a person without that person's consent, moves that property in order to take it, is said to commit theft. In *State v. Ajuluchukwu*, the Court of Appeal, held that it is sufficient to establish the offence of stealing where the accused person has fraudulently taken money or has fraudulently converted it to his own use or to the use of another person, especially where there is evidence on record that the accused had either the intention permanently to deprive the owner of its use or an intention to use it at the will of the person who takes or converts it, although he may intend afterwards to repay the amount to the owner.

In this case, the respondents conspired to steal the sum of N6.2 million, property of Motor and Motorcycles Spare Parts Association of Nigeria, Calabar. The 1st and 2nd respondents, with intent to defraud, obtained the sum of N6.2 million from the Association by falsely pretending that they had two hectares of land at Ikot Eneobong in Calabar to sell to the Association. The respondents did not procure any land or document until the Association mounted pressure and the respondents then tendered documents that did not bear the name of the Association and there was no accurate description of the land. The police were invited and the respondents did not deny the receipt of N6.2 million from the Association, but rather opted to refund the money. Though the High court exonerated the accused persons pursuant to a no case submission by their counsel, the Court of Appeal held otherwise and convicted them of the offence of stealing.

3. Analysis of Actus Reus of Stealing

The *actus reus* of the offence of stealing has three components, namely (a) appropriation of (b) property and (c) belonging to another. Each of these components may be analysed as hereunder:

(a) Appropriation

This word means *taking*, or *asportation* and these words can be used interchangeably. To constitute *taking*, *asportation* or *appropriation*, the thief need not necessarily and completely take the thing into his physical possession. Taking, therefore is a continuous process. It suffices if the accused starts to move or grab hold of the thing in the possession of another and it must not be understood as *taking away*. In the *State v. Anyadiiegwu*, the accused moved some money from one safe to another in the same room but both safes belonged to his employer. He was not convicted of stealing since he did not put the money into his pocket. In the law of stealing, the accused can steal even though the victim consents to the taking. What is material is that such taking was done fraudulently or dishonestly. Thus, in *Lawrence v. MPC*, an Italian student handed over extra money to a taxi driver who had deceived him as to the exact taxi-fare, the House of Lords held that the accused can steal even though the victim consents to the taking. In *R v. Morris*, the accused took goods from the shelves of a supermarket and substituted lower price tags to those on the goods. He paid the lower price at the counter but was then arrested and charged with stealing. The House of Lords was faced with the question as to whether the swapping of the price tags amounted to an appropriation. Lord Roskill, who delivered the lead judgment, held that the accused was guilty of stealing. Jefferson sums it up thus:

Under the present law, an article can be stolen without being taken away. For example, if the accused puts his hand into the victim's pocket and grabs hold of a watch, there is an appropriation because ... any assumption by a person of the rights of an owner amounts to an appropriation.

(b) Property

The second element of the *actus reus* of the offence of stealing is property which has been defined to include:

Money and all other property, real or personal, including things in action and other intangible property. Intangible property means property

that does not exist in a physical sense, and a thing in action (also called choses in action) is a technical term to describe property that does not exist physically but which gives the own legal rights that are enforceable by a court action. For example, when a bank account is in credit, the bank owes the customer money, and if the bank refuses to pay the customer that money when asked, the customer can sue the bank for the amount in the account. This right is the thing in action. Other examples of things in action are shares in a company and copyright.

One of the requirements of the law is that the property, in respect of which the accused is charged with stealing, must be something which is capable of being stolen. In *R v. Marshall*, the English Court of Appeal, held that a transport Company which has the exclusive right to sell tickets, also has a right of action over its tickets to prevent them being used by persons who did not purchase or pay for them. Intangible property which by their nature and definition, cannot be touched, can be taken or appropriated by accused assuming any of the owner's right.

Nonetheless, services are not property, therefore a ride in a taxi cannot be stolen. In *Low v. Polease* the accused was held not guilty when he used another's telephone. But in *R. v. Kohn*, the accused, an accountant, drew a cheque on his employer's account and was held guilty of stealing because, causing the bank account to be reduced was taking or appropriation, while the account itself was property.

It may be further buttressed that for anything or property to be larcenable (i.e., capable of being stolen), it must be tangible, it must be moveable, it must have some value and it must have an owner. It has been opined that:

Nothing is larcenable at common law unless it can be perceived by the sense of touch. One cannot be guilty of larceny of an idea, or of value, or a balance of accounts, or of a debt, or of copyright, or of any other notional, incorporeal thing. But it has been held that gas is larcenable at common law.

This statement appears oversweeping as it is now trite that intangible things such as choses in

action are larcenable, more so as copyright laws are there to protect ideas from being stolen in the technical sense.

It is nonetheless agreeable that today, the word “movable” means entirely disconnected from the land and there can be no larceny of land in its usual legal connotations. This is usually expressed by saying that, at common law, larceny cannot be committed of things real, or which savour of the reality.

As to the requirement of *value*, it would seem to mean economic value, capable of being expressed in monetary terms. Though the common law was not precise on the quantum or measure of value, it required that the thing could reasonably be held to be of some value to somebody without any sentimental attachment. As earlier pointed out, the relationship or the alliance between the offence of stealing and the concept of ownership and possession has been discredited and may no longer hold water. Originally, the owner needed to have actual physical possession of the thing, and larceny was conceived as fundamentally taking of the thing *viet arms* out of its owner’s control. Nonetheless, with the passage of time, the conception of *legal possession* as distinct from mere physical control was developed, with all its complications, by the courts, the offence of larceny became less associated with force, and the scope of the term *owner* progressively widened.

As a basic rule, land or anything forming part of it, which is severed therefrom by the accused or at his direction cannot be stolen except:

- (i) where accused is a trustee or personal representative or is authorized by power of attorney, or as liquidator of a company or otherwise, to sell or dispose of land belonging to another, and appropriates the land or anything forming part thereof by dealing with it in breach of the trust or confidence reposed in him;
- (ii) where accused is not in possession of the land but appropriates anything forming part of the land by severing it or causing it to be

severed or after it has been severed;
or

- (iii) where accused, being in possession of the land under a tenancy agreement, appropriates or takes the whole or part of any fixture or structure let to him to be used with the land.

It would seem that grazing cattles on the land will cause the grass which forms part of the land to be severed and this amount to taking while the land is the property. A person who picks mushroom growing wild on the land or who picks flowers, fruits or foliage from a plant growing wild on land does not steal what he picks, unless he does so for reward or for sale or other commercial purposes.

(c) Belonging to Another

This is the third component of the *actus reus* of the offence of stealing. A thing or property is said to belong to another when that other has possession or control of it, or has in it, a proprietary right or interests. Equitable interest may not suffice. A thief may steal from several persons, namely, the owner, the possessor and the person in physical control. It then follows that even the owner of a property may be guilty of stealing it if he tries to regain the possession of his property from another without the other’s consent. This is because the phrase “*belong to*” refers not just to ownership as is normally assumed but extends to possession and control. Thus in *R v. Woodman*, a company sold off all the scrap on the site of its disused factory, but retained control of the site. It did not know that the purchaser of the scrap had left some behind. The accused removed some of the metals and was convicted for stealing from the company because a person or company in control of the site is deemed *prima facie* to have control over things on the land. This case demonstrates the legal position to the effect that the owner of a property need not know or recall that he owns or possesses it before he could be convicted for stealing. What is important is that the property was in possession or control of another at the time of *taking* or *asportation*.

4. Analysis of the Mens Rea of Stealing

The *mens rea* of stealing has two elements, namely: (a) Fraud/dishonesty and (b) intention to permanently deprive/convert.

(a) Fraud/Dishonesty

It is not every *taking* or *conversion* that would support or substantiate a charge of stealing. To constitute stealing, there must be an element of fraud or dishonesty or *animus furandi*

Most of the offences under the law of stealing (such as, robbery, armed robbery, burglary and housebreaking etc), require fraud or dishonesty and where dishonesty or fraud is not expressly mentioned in the statute creating the offence, it may be implied as a rule of statutory construction. For instance, robbery requires stealing, which in turn requires fraud. Burglary consists of entering a building as a trespasser with intent to steal.

It is immaterial whether the *taking* is made with intent to gain or for the accused's benefit, more so as the accused steals property by destroying or with the intent to destroy it and it is irrelevant that the item is of no use to the accused. Thus, in *R v. Welsh*, the accused poured a sample of his urine down a sink, the sample was for testing. He was held guilty of stealing by pouring his urine away though without any benefit to himself. In *R v. Ghosh*, the test for fraud or dishonesty was laid thus:

An accused is dishonest if his conduct is dishonest according to current standards of ordinary decent people and if the accused knows that his conduct is regarded as dishonest according to those standards.

This test is both *objective* and *subjective* and it would seem that the accused may be exonerated from liability where he does not know that his conduct is dishonest. In that case, the accused, a surgeon, acting *in locum* (assistant or deputy) in a hospital, claimed fees for performing operations.

Those fees were not owed to him (i.e. do not belong to him). He was charged with dishonestly obtaining money by deception, contrary to the English Theft Act. He was found guilty of stealing or theft. In dismissing his appeal, the Court of Appeal laid a twofold test thus:

- (i) The Courts are to apply the *ordinary* standards of reasonable and honest people and if the accused is not dishonest by those standards, he is not guilty;
- (ii) If the accused is dishonest by the first test, the court must consider whether the accused himself must have realized that what he was doing was by those standards dishonest. The accused is dishonest if he acts in a way which he knows ordinary people would regard as dishonest;

The *Ghosh rules* were criticized, on grounds, inter alia, that they might be quite difficult to explain to the court, coupled with the fact that they were subjective than objective thereby creating an escape route for the accused.

(b) Intention to Permanently Deprive

The second element of the *mens rea* of stealing is the intention permanently to deprive the owner of the property of his rights therein. The law of theft or stealing preserves the common law rule to the effect that appropriation of the property of another with intention of depriving him only temporarily of it is not stealing. An intention to return sooner or later does not constitute the *mens rea* of stealing. Thus, if 'A' takes 'B's horse without authority or consent and rides it for an afternoon, a week or a month, he commits no offence under the law if he intends to return the horse at the end of this period. But an afterthought will not suffice.

The word *permanently* prevents most unauthorized borrowings from amounting to stealing. Even prolonged dishonest borrowing, though morally wrong, cannot constitute the offence of stealing because, a borrowing does not amount to permanent taking. Such

borrowings are not common and criminalizing them would amount to trivializing the offence of stealing. But:

A person appropriating property belonging to another without meaning the other permanently to lose the thing itself is nevertheless to be regarded as having the intention of permanently depriving the other of it if his intention is to treat the thing as his own to depose of regardless of the other's rights and the borrowing or lending of it may amount to so treating or lending it for a period and in circumstances making it equivalent to an outright taking or disposal.

This provision of the English Theft Act has been interpreted *inter alia*, to the effect that it speaks of intention permanently to deprive and that it deals with the *mens rea* of the offence of stealing rather than its *actus reus*. The accused having formed the intention to permanently deprive, it does not matter that the owner of the property got it back after some time. Moreover the offence of stealing is one that requires specific intent to deprive the owner of permanent possession of the property and this may be proved by direct or circumstantial evidence. This may be inferred by the court from the conducts of the accused and once this is the case, subsequent neutralizing or exonerating acts of the accused may not be entertained by the court.

5. Conversion of Property

Some Penal statutes make *conversion* part and parcel of fraudulent or dishonest taking which is one of the components of the *men rea* of stealing. It would, nonetheless seem that no penal statute has so far attempted a definition of *conversion* for the purposes of the offence of stealing. The Nigerian legal writers, were compelled by this situation to opine that “*unlike taking, the code does not say what constitutes a conversion*” and therefore suggested that the word *conversion* in section 383 of the Nigeria Criminal Code, be ascribed the same meaning it bears at common law. The writers then adopted the views of Atkin J (as he then was) in *Lancashire and Yorkshire Railway Company v. MacNicol* thus:

Dealing with goods in a manner inconsistent with the right of the true owner amounts to a

conversion, provided that it is also established that there is also an intention on the part of the defendant in so doing to deny the owner's right or to assert a right which is inconsistent with the owner's right.

It may recalled that under the law of torts, to destroy, alter, pledge, or use property belonging to another is to convert it. Nonetheless, it must be noted that unlike in torts law, which is a civil matter, the conversion under the offence of stealing, must be accompanied with a fraudulent or dishonest state of mind.

6. Lost But Found Items

Under the Nigerian Law:

When a thing converted has been lost by the owner and found by the person who converts it, the conversion is not deemed to be fraudulent or dishonest, if at the time of the conversion, the person taking or converting the thing does not know who is the owner and believes on reasonable grounds that the owner cannot be discovered.

If the property has been abandoned or if the owner of the property cannot be located, stealing cannot be proved. Abandonment occurs where the rights to property has been surrendered or relinquished. A finder who appropriates property commits the *actus reus* of theft but is not dishonest unless he believes that the owner can be discovered by taking reasonable steps and fails to take such steps.

7. Robbery

Under the Nigerian Law, robbery is committed when any person steals anything, and at or immediately before or after the time of stealing it, uses or threatens to use actual violence on any person or property in order to obtain or retain the thing stolen or to prevent or overcome resistance to its being stolen or retained. In *Shurumo v. The State*, the Nigerian Court of Appeal held that:

Any person who with intent to steal, anything, assaults any other person and at or immediately after the time of the assault, uses or threatens to use actual violence or force on any other person or any property in order to obtain the thing intended to be stolen, shall upon conviction be

sentenced to imprisonment for not less than 14 years but not more than 20 years.

The Court in *Shurumo case*, went further to hold that if the accused is armed with any firearms or any offensive weapon or is in company of any other person so armed, or at or immediately before or after the time of the assault, the said offender wounds or uses any other personal violence on any person, the accused shall upon conviction be sentenced to imprisonment for life. In England, 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 or being then and there subjected to force.

Robbery as defined is essentially an aggravated form of stealing and there can be no robbery without stealing. Thus, there is no robbery where “A”, by force takes a car from “B” not intending to permanently deprive him of it. The offence of robbery is complete when the stealing is complete, that is when the appropriation is complete. Any use or threat of force, against the person suffices and under the law, robbery is nothing but stealing accompanied by force against the person. Force is used to overpower the victim’s resistance and not merely to seize the property and it is not necessary that the force used or threatened should amount to an assault. What is important is that the victim’s resistance to the taking of the property is weakened by force. The crime of robbery creates a great deal of anxiety because, the victim is threatened not only with the use of force and violence, but also with the loss of his property.

8. Armed Robbery

This has been defined as an aggravated form of robbery in which the accused is armed with a dangerous weapon, though it is not necessary to prove that he used the weapon to effectuate the robbery. It is also the taking of property from a person or presence of another by use of force or by threatening use of force while armed with a dangerous weapon.

In the *Shurumo case*, the Nigerian Court of Appeal defined *armed Robbery* as stealing plus the use of violence or threat of violence. The Supreme Court agreed with or adopted same

definition in *Eke v. The State*, and also outlined the ingredients of the offence of armed robbery thus:

- (a) that there was a robbery or series of robbery;
- (b) that the robbery or each of the robberies was an armed robbery; and
- (c) that the accused was one of those who robbed;.

In *Ebeinwe v. The State*, the Supreme Court held that:

Theft in all its ramifications is robbery if, in order to commit it, or in committing it, or in carrying away or attempting to carry away property belonging to another, the accused for that purpose, voluntarily causes or attempts to cause any person’s death, or hurt or wrongful restraint or fear of instant death or hurt or of instant wrongful restraint.

The Court also listed the essential ingredients of the offence of armed robbery as follows:

- (a) that robbery took place;
- (b) that the robbers were armed; and
- (c) that accused participated in the robbery.

9. Conclusion

Apart from the distinguishing factors, one common thread that runs through the offences of stealing, robbery and armed robbery is *mens rea*. The mode of *appropriation, taking or asportation* may be different, but there must be fraudulent or dishonest taking with intention to permanently deprive. Again, *stealing* as a legal concept runs through the concepts of *robbery* and *armed robbery* as there can neither be robbery nor armed robbery without stealing. Robbery may be distinguished from stealing by the extraction of certain factors such as the property being taken from the victim or taken from the presence of the victim, and that the use of force or the threat of the use of force was used in the taking. If there is no force or fear of the use of force, then the crime of robbery has not been committed and as a general rule, the force or threat of force must occur before or during the taking of the property. Armed robbery involves the possession or use of dangerous weapons in the act of taking. Stealing involves neither force,

threat of force nor possession or use of dangerous weapons.

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