

BURGLARY

INTRODUCTION

Section 9 of the Theft Act 1968 provides:

“(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 the 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)(a) 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 or raping any person therein, and of doing unlawful damage to the building or anything therein.”

There are thus two types of offence: s9(1)(a) burglary and s9(1)(b) burglary.

1. ENTERS

The defendant must enter, or have entered, a building in order to be guilty of burglary. Whether there has been an entry is a question of fact for the jury. In giving them guidance, the Court of Appeal has held that there has to be an “effective” entry:

R v Brown [1985] Crim LR 212

R v Ryan [1996] Crim LR 320.

2. AS A TRESPASSER

Reference must be made to the civil law in order to understand the term “trespass”. In simple terms it could be said that D enters a building owned by V as a trespasser if D has no express or implied permission from V, or the law, to do so.

For the offence of burglary to be made out there must be a finding of civil trespass, but the Court of Appeal has held that a defendant charged with burglary must have *mens rea* as to whether or not he is trespassing. That is, the defendant must enter “knowing that he is a trespasser ... or, at the very least, is reckless whether or not he is entering the premises of another without the other party's consent.” See:

R v Collins [1973] QB 100.

Even if there is consent, if the defendant acts in a way which goes beyond what the possessor would have consented to, he may be deemed to enter as a trespasser:

R v Jones and Smith [1976] 3 All ER 54.

3. ANY BUILDING OR PART OF A BUILDING

Two issues are raised here.

- First, what constitutes a “building”? In each case, whether or not a structure constitutes a building is a mixed question of law and fact to be determined by the jury after guidance from the trial judge. According to Smith and Hogan, *Criminal Law*, 1996, p632: “To be a building the structure must

have some degree of permanence, permanence relating to the nature of the structure rather than the residence of the occupier. But movable structures, which are intended for permanent use as offices, workshops and stores (portakabins) may fairly be regarded as buildings though their intended use on a given site is only temporary."

Section 9(4) gives an extended meaning to the term building by including within it "an inhabited vehicle or vessel, and shall apply to any such vehicle or vessel at times when the person having a habitation in it is not there as well as at times when he is".

- The second issue relates to "part of a building". This does not necessarily mean a separate room. It includes areas, eg those behind counters in shops, from which the defendant is either expressly or impliedly excluded. See:

R v Walkington (1979) 68 Cr App R 427

R v Laing [1995] Crim LR 395.

4. DWELLING

Section 9(3) of the TA 1968, as amended by s26(2) of the Criminal Justice Act 1991, provides that burglary committed in respect of a building which is a dwelling is punishable by imprisonment for up to fourteen years (see below).

Dwelling is not defined but presumably means a building (or vehicle or vessel) in which someone lives as their home.

5. MENS REA

The *mens rea* requirement for burglary under s9 is:

- (1) Intention or recklessness as to trespass, and
- (2) It must be proved that the defendant, either
 - (a) entered with intent to commit one of the following offences: stealing, inflicting g.b.h., rape, unlawful damage to the building or anything therein (for the s9(1)(a) offence); or
 - (b) entered and committed or attempted to commit one of the following offences: stealing, inflicting g.b.h. (for the s9(1)(b) offence).

For these purposes, the defendant has one of the relevant intents though his intent is conditional - that he will steal anything worth stealing in the building, or that he will cause g.b.h. to V if V is there. That there is nothing in the building worth stealing or that V is out of town is no bar to the defendant's conviction (*A-G's References (Nos. 1 and 2 of 1979)* [1979] 3 All ER 143.)

6. PUNISHMENT

Section 9(3) provides:

"A person guilty of burglary shall on conviction on indictment be liable to imprisonment for a term not exceeding-

- (a) where the offence was committed in respect of a building or part of a building which is a dwelling, fourteen years;
- (b) in any other case, ten years."

AGGRAVATED BURGLARY

s10 THEFT ACT 1968

The offence of aggravated burglary is created by s10 of the TA 1968 which provides:

“(1) A person is guilty of aggravated burglary if he commits any burglary and at the time has with him any firearm or imitation firearm, any weapon of offence, or any explosive; and for this purpose-

(a) ‘firearm’ includes an airgun or air pistol, and imitation firearm means anything which has the appearance of being a firearm, whether capable of being discharged or not; and

(b) ‘weapon of offence’ means any article made or adapted for use for causing injury to or incapacitating a person, or intended by the person having it with him for such use; and

(c) ‘explosive’ means any article manufactured for the purpose of producing a practical effect by explosion, or intended by the person having it with him for that purpose.

(2) A person guilty of aggravated burglary shall on conviction on indictment be liable to imprisonment for life.”

The defendant must be proved to have had the weapon with him at the time the burglary is committed. In the case of s9(1)(a) burglary this is the moment of entry as a trespasser with intent. In the case of s9(1)(b), it is the moment when the offence of theft or g.b.h. is attempted or committed.

It will not avail a defendant charged under s10 to contend that, despite his possession of a weapon at the time of the burglary, it had not been his intention to use it. See:

R v Stones [1989] 1 WLR 156.

An ordinary tool can become a weapon of offence if it is contemplated for use. See:

R v Kelly [1993] Crim LR 763.