

TOPIC 6 – Property Offences 2

Robbery

Note: if there is no force on the facts by D, then there is no robbery. Refer to 2018 s2 example.

[D] may be charged with robbery (s75). To prove this, [P] must show BRD that [D] stole and immediately before or at the time of doing so and in order to do so, uses force on any person or puts them in fear of force being used against them (or someone else) then and there (s75(1)).

Step 1: D steals/Theft

Robbery can only be made out if [P] can prove all the elements of theft (including fault elements) under s72(1). As discussed above, it is [likely/unlikely] [P] would be able to do so.

- **If there is no theft** – As there is no theft, there has been no robbery, even if [D] is found to have used force (*Langham*) – look at attempts though.

Step 2: Force/Fear of Force

Actual force

[P] will argue that [D] used force against [V] by [force]. Force takes on its ordinary meaning and is wider than ‘violence’ (*Galas*). In fact, there is no minimum physical contact that can constitute force (even acts such as nudging or jostling (as in *R v Dawson*) may suffice).

- *R v Dawson*- the accused nudged a man in order to make him lose balance while another stole the Victim’s wallet. **In this context, it is not relevant whether the force was used to distract or overcome resistance.** Mere jostling/nudging V off balance to take wallet was held to be force.

OTF, force [was/was not] used through [use of force]. Ultimately, it is for the jury to determine if the relevant conduct amounted to the use of force (*Dawson*).

Fear of force

While [D] does not appear to have used physical force, [P] will argue that [D]’s actions caused [V] to fear that force was going to be used against [them/someone else – e.g., child] then and there (s75(1)). The threat must be sufficient to cause personal intimidation (*Galas*). OTF, [explain].

- **2018 s1 exam:** Alvin wants to confront and have it out with his father. He tiptoes down the hallway seeing his valuable camera which he thought he had lost. Believing his father took it, he grabs it intending to take the camera back but case was empty. Thinking no one was home he decides to leave, but he sees father coming down stairs. A takes out knife and waves it foolishly. Must be force or fear of force. It is possible his father may have been put in fear by the gorilla noises.
- **2020 exam:** Dylan was robbing a bank with an imitation weapon. The terrified bank teller was handing over the cash. It is clear that he was putting someone in fear of force then and there given the facts say that the bank teller was terrified. It would be sought to put in fear of force is they were not actually terrified.

Supporting analogy – Butcher – fear of force example

This can be analogised to **Butcher**, where it was held that holding a knife towards a person 3-4 feet away while demanding money was instilling in the victim a fear of force. Thus [D]'s actions likely satisfy this element.

Supporting analogy – Galas – fear of force example

This can be analogised to **Galas**, where it was held that the presentation of a firearm and accidentally discharging it while tying up the victim caused personal intimidation. This is because threats of force, like showing a weapon, is sufficient to induce fear or nullify resistance. Thus, [D]'s actions likely caused a fear of force being applied against [V], satisfying this element.

Counterargue – V did not actually fear, but D sought to put V in fear (FAIL)

[D] will attempt to counterargue that [V] [may not have/did not fear] that [they/someone else] would be subjected to force given that [evidence]. However, [P] is likely to successfully respond by arguing that it is not necessary for [V] to have actually feared, and that it is enough that [D] sought to put [V] in fear of force (**s75(1)**). [P] will argue that this is the case because [evidence of D seeking to put V in fear of force].

It is ultimately up to the jury to decide whether [relevant conduct] amounted to use of force (**Dawson**).

Step 3: Timing

Short hand

The use of force / threat of force must have occurred immediately before or at the time of the theft (Hale).

The force was used before or during

This is clearly the case because [REASON].

The appropriation was ongoing and force was used

Although [X] might argue [FACTS], the court in **Hale** held that in such circumstances an appropriation may be continuous. As such, [X] used force / made a threat of force during what was still an ongoing act of theft. Example: Tying someone up after the theft is complete but before [X] leaves will still count towards robbery (**Hale**).

Force was used well after

However, this is not the case here because [REASON].

Long hand

Next, it must be shown that [force/fear of force/seeking to put victim in fear of force] occurred 'immediately before or at the time of the theft (**s75(1)**).

- **Note:** Any force or threat of force long after theft, which cannot be said to have occurred during the course of theft, will not satisfy timing. I.e., a threat to do harm at some later date is not robbery, but rather blackmail or extortion.
- **2019 exam:** Wade and George are stealing laptops and cash from an commercial premises in an industrial area. When they are accosted by the security guards, Wade is startled and uses a sledgehammer to strike the security guard. When the security guard had discovered Wade, he was midst of appropriation, while he was packing the laptops in his backpack. So he is

	<p>being caught red-handed committing this offence, meaning he was effectively hitting the guard in order to effectively complete the stealing. This element is clearly satisfied.</p> <p>Supporting argument – immediately before or after P would argue that [D][used force/sought to put V in fear of force] [immediately before/at the time] of theft , as [action] occurred [when].</p> <p>Counterargument - Force was after threat [D] will attempt to counterargue that they only [used force/fear of force/sought to put V in fear of force] after [property] had been appropriated and theft complete in order to leave, meaning that there was no robbery. This is a similar argument to what the defendants argued in Hale, that the force that was used in tying up the victim had occurred after the appropriation of the jewellery box had been completed, and therefore they could not be liable for robbery.</p> <p>Response – Continuing appropriation – during theft [P] will respond by analogising with Hale in which it was held that the appropriation may be a continuing act and the jury must determine at what point the appropriation was complete. [P] will likely argue that the appropriation was not finished when [D] laid their hands on [property] but rather it was a continuing process, especially as [reason – all still occurring in the house, need to get out of the premises where the item was stolen – not as if they put the stolen property in the car and came back in to tie up the owner].</p> <p>Step 4: Victim The force also related to a person, [V] (s 75(1))....</p> <p>Continued in notes...</p> <p>Consequences Overall, it is likely that [D] is [guilty/not guilty] of Robbery.</p> <p>Robbery found This means that they have committed an indictable offence punishable by up to 15 years imprisonment) (s75(2)).</p> <p>If no robbery However, as a robbery charge expressly includes an allegation that [D] committed theft, [D] could be found guilty of theft in the alternative (s 239 CPA).</p>
Armed robbery	Continued in notes...
Burglary	<p>Introduction In respect of entering [building or part of building], [D] may be charged with burglary (s76).</p> <p>P must prove BRD that [D] entered a building (or part of a building) as a trespasser with criminal intent (s76(1)).</p> <p>Entering a building or part of a building</p>

P would argue that [D] entered [a building/part of a building] (**s 76(1) CA**), namely [specific building or part of a building].

- **Inhabited vehicles and vessels** - P would point out that inhabited vehicles and vessels are considered 'buildings' (**s 76(2) CA**)
- Part of a building does not need to be separated by walls or doors. It can be excluded by signs such as "only employees beyond this point" (**Walkington**)

Whether or not a structure is considered a building is a question of fact for the jury. Given the [size/weight/permanence/doors and locks/(in)availability of electricity], it is [likely/unlikely] that the jury would consider [area] to be a building.

- **Note:** size and permanence of a structure is important because it does not have to be a large facility or a home, it can be someone's shed or tent.
- E.g., entering a veranda – either way. Would be up to the jury to determine whether this counts as D entering the building, or if they only entered a space outside the building.

Counterargument – Whole body did not enter building (FAIL)

[D] will try to argue that they did not enter [building or part of building] because their whole body did not enter, only [body part – e.g., putting hand through window]. However, this would fail as P would argue that an entry is made as soon as a part of [D]'s body was inserted within the building.

Counterargument – Used an object to pull something out (FAIL)

[D] will try to argue that they did not enter [building or part of building] because their body did not enter the building, and they only used an object to pull [item] out of the building. However, this argument would fail as P would argue that where an object is used, 'effective' entry is sufficient

Counterargument – Walkington analogy No physical barrier in the building (FAIL)

[D] will try to argue that they did not enter part of a building because there were no walls or physical barriers separating [area – e.g., counter area in department store; someone else's room in share house]. However, this will fail as P will analogise with Walkington, where it was held that 'part of a building' need not be divided by walls or a physical barrier. P would argue that [area – e.g., counter area in department store] was demarcated to show that entry was not permitted, as [reason – e.g., showed no customers beyond this point; common sense, implied off limits to public?]. Further, if [D] knew that entry was not permitted, this would mean that [D] was acting as a trespasser.

- **Walkington** – (part of a building discussion) Mr Walkington entered a department store close to closing time and was observed loitering suspiciously around cash registers. He eventually went behind a counter, opened a till intending to steal from it, but found it empty. The court held that despite being moveable, the counter area was sufficiently demarcated to qualify as a distinct part of the building. While Walkington had general permission to be in the store, that permission did not extend to go behind the counter, which is impliedly off limits to the public.

On balance, it is [likely/unlikely] [D] entered a building or part of a building in the requisite sense.

Trespasser

	<p>Next, it must be proven that D entered [building/part] as a trespasser. Trespass is an entry without lawful authority or permission (which may be express or implied).</p> <p>P would argue that [D] entered as a trespasser because...</p> <p>Continued in notes...</p> <p>Conclusion On balance [D] will [likely/unlikely] be found guilty of burglary and therefore, [will/will not] be liable for an indictable offence carrying level 5 imprisonment (max. 10 years). (s76(3)).</p>
<p>Aggravated burglary (go to aggravated burglary)</p>	<p>Introduction In respect of entering [building or part of building], [D] may be liable for aggravated burglary pursuant to s 77 CA.</p> <p>P must prove BRD that [D] committed a burglary and at the time was either armed or knew (or was reckless) as to whether a person was present (in the building/part of building where the burglary was taking place) (s 77 CA).</p> <p>Burglary See above</p> <p><u>CHOOSE BETWEEN EITHER</u></p> <p>Armed – OR [P] will argue that at the time [D] committed the burglary, [D] was armed with one of the articles listed in s77(1) (S77(1)(a)), namely [specific article], which is a [firearm/imitation weapon/ offensive weapon/an explosive/an imitation explosive].</p> <ul style="list-style-type: none"> • <u>a firearm</u> • <u>an imitation firearm</u> (doesn't need to be capable of discharging: s 77(1A)) • <u>an offensive weapon</u> • <u>an explosive</u> (any article that is manufactured for the purpose of producing a practical effect by explosion; or which the accused intends to have that purpose (s 77(1A)) • <u>an imitation explosive</u> (any article that might reasonably be taken to be, or to contain, an explosive: s 77(1A)) <p><u>Offensive weapon</u> [P] will argue that [specific article] is an offensive weapon because:</p> <p>Reasons</p> <p>1. ...it is made for causing injury or incapacitation to a person (s77(1A)). This is regardless of how the accused intends to use them (Wilson).</p> <ul style="list-style-type: none"> • e.g., knuckle dusters/swords/nun-chucks • Wilson – objects normally used or its purpose is cause injury (e.g., knuckle dusters) are offensive weapons regardless of the accused's stated intention. So if someone is using a knuckle duster, the accused cannot make an argument as to how they intended to use that item, because it was clearly made for use for injury <p>2. ... while it is an otherwise harmless object, it was adapted for the use of causing</p>

injury or incapacitation to a person (**s77(1A)**). [Specific article] which is otherwise inoffensive has undergone some physical changed/alterd/specifically modified for this purpose (**Nguyen**)

- e.g., an intentionally broken bottle
- **Nguyen**: D robbed a pharmacy using a soft drink bottle which he swung at the shop assistant. Intended to use it for the purpose of causing injury and threatened injury with it - was an offensive weapon, even though it wasn't modified.
- **Nguyen**: the court ruled that an otherwise harmless object, like a soft drink bottle, only becomes an offensive weapon when it underwent physical transformation/alteration to become dangerous (broken to create jagged edged).

3. ...even though it is an ordinary object, [D] intended to use it or threaten to use it for the purpose of causing injury or incapacitation to a person (**s77(1A)**). Regard will be had to the intention [D] had prior to the use of the alleged weapon (**Wilson**). OTF as [reason].

- E.g., intention should be formulated at an earlier point in time to demonstrate that what you are doing is of injury and harm. **This is different to the intention of possessing the weapon for the purposes of robbery? Because we are merely trying to determine if this is an offensive weapon.**
- **Wilson** – everyday items like baseball bats and kitchen knives are not inherently offensive weapons unless the accused carried them intending to threaten or cause injury.
- **Example**: baseball bats, hockey sticks, crowbar, kitchen knife, potato peeler. These are all items that are not normally used to cause an injury or to threaten injury, so whether you are carrying the item with the intention to use it to injury or threaten to injury another person, it will be an offensive weapon.

Supporting argument – did not intend to inflict injury but using it to threaten force

[P] will posit that even if [D] did not intend to actually use the article to inflict force on someone else, it is enough for [D] to be carrying the article, intending to use it to threaten injury to [P] so as to rob them (**Wilson**).

- E.g., “a person found carrying a carving knife towards a chemist’s shop, intending to use it to menace the staff so as to rob the chemist, is found armed with an offensive weapon, although he has no intention of actually putting the knife to any of the staff.” – example from Wilson
- **Wilson** – accused was carrying a 30cm carving knife. The court held that an article that was not usually used to inflict injury or threaten injury can still be an offensive weapon if carried with an intention of using it to threaten injury to another person

Counterargument – intended to carry article defensively

[D] may analogise with **Woodward** and counter that [article – e.g., pocketknife] is not an article made or adapted to cause injury, and while it was found on their person, it was only carried defensively (and not offensively) in case [reason for defensive carrying – e.g., if he was attacked while burgling someone’s house], not to apply force/threaten to apply force.

- **Woodward**: D entered a house and stole a laptop. He had a pocket knife and screwdriver in his shorts. He claimed he always kept it in case of attack, but would not use it if confronted by somebody in the house. Held not to be an

offensive weapon

- **2018 s2 exam:** Dean was carrying a Swiss Army pocket knife. Woodward tells us that you can demonstrate that you had the article for other purposes, like carrying it defensively, and the court will not infer that you intended to use it in this fashion as an offensive weapon.
- **2018 s1 exam:** Alvin wants to confront and have it out with his father. It is dark, house looks empty. Alvin's key does not work at the front door as father changed the locks. He climbs through open window of his old bedroom. Thinking no one was home he decides to leave, but he sees father coming down stairs. A takes out knife and waves it foolishly but it was in fact his mother. If burglary is made out (unlikely because of intent), may be aggravated because he was potentially armed. The knife will be offensive weapon if not carried for defensive purposes (cf Woodward).

Counterargument – no pre-existing intent to use offensively

[D] may analogise with **Ohlson (UK)** and **Wilson (Vic, applying Ohlson)**, countering that [article – e.g., hammer used as a work tool/carving knife] is not an article made or adapted to cause injury, and in the absence of such, it was not carried offensively. [D] would argue this is because they were not carrying the article with a pre-existing intent to use it as an offensive weapon; instead, they were carrying it [reason – e.g., on their way home from work as a carpenter/carried for self-defence].

- **Ohlson:** illustrates an circumstance where the accused carries an object then changes their mind as to the objects purpose. D was a carpenter on his way home carrying his tools on the train. On his way home he became involved in an altercation and took the hammer, striking the other man with it. Held not to be an offensive weapon. **He was carrying the hammer lawfully, and had no pre-existing intent to use it as an offensive weapon.**
- In **Ohlson**, it was held that there was no pre-existing aggressive intent in a carpenter having a hammer in his tool bag and travelling home on the train
- **In class example:** an accused using a crowbar to force entry but does not intend to use it as a weapon will not fall under this category. But if they are surprised by the owner and uses assaults them with it, you could suggest that they have now used it in an offensive fashion. However, the accused was not intending to carry it to use it as a weapon, so therefore it is not an offensive weapon.
- the courts look at the purpose behind your possession of that item. If the defence can make out that the possession is part of a different purpose that sits outside robbery, then the courts will not consider the item to be an offensive weapon.
- **2019 exam:** George and Wade used a sledgehammer to pry the window up to enter the building. However, upon being surprised by the security guard while stealing the laptops, Wade struck the security guard with the sledgehammer. There is a clear intention at the time of the offence that this item is to be used to pry the window open to facilitate entrance, not for an assault/cause injury. While a sledgehammer could arguably be adapted for use of the application of force, when looking at the intention behind carrying the sledgehammer and only using it spontaneously, this suggests it is not an offensive weapon and armed burglary will not be made out.

Firearm

This is plainly satisfied on the facts, given that [firearm] is a device which is

designed/adapted to shoot bullets/other missiles by the expansion of gases/compressed gas.

- Firearm' is defined to have the same meaning as provided in **s.3 of the Firearms Act 1996 (CA s77(1A))**.
- Broadly includes devices that are:
 - Designed or adapted to discharge shot, bullets or other missiles
 - By the expansion of gases or by compressed gas.
- Some items are excluded by definition. E.g., Underwater spear guns; flare devices

Imitation firearm

This is plainly satisfied on the facts, given that [imitation firearm] has the appearance of [firearm] – meaning that D can be considered 'armed' even though [it is not capable of being discharged] (**s 75A(1); s 77(1)**). Counter – no appearance of a firearm (water pistol etc)

- An 'imitation firearm' is anything which has the appearance of being a firearm, **whether or not it is capable of being discharged (CA s77(1A))**.
- E.g. a water pistol that looks like a gun will make an armed robbery. A bright yellow and pink, obviously plastic super soaker will not

Explosives

This is plainly satisfied on the facts, given that [explosive] is an article that is manufactured for the purpose of producing a practical effect by explosion (**s 77(1A)**). Similarly, [D] clearly intends to have that purpose, given that [explain]

- An 'explosive' is any article that is:
 - Manufactured for the purpose of producing a practical effect by explosion; or
 - Which the accused intends to have that purpose (**CA s.77(1A)**).

Imitation explosives

This is plainly satisfied on the facts, given that [imitation explosive] could reasonably be taken to be/contain an explosive– meaning that D can be considered 'armed' even though [can't actually blow anything up] (**CA s 77(1A)**).

- An 'imitation explosive' is any article which might reasonably be taken to be, or to contain, an explosive (**CA s.77(1A)**).
- E.g., even if it is not an actual explosive, but someone brings in something that has a very close resemblance to a proper operating explosive (des not have to be working), if it puts fear in the victim and that it what it is intended to do, then it is reasonably taken to be that item

D knowingly has weapon with them

[P] would argue that this article was knowingly 'with' [D] at the time of the burglary because it was [on their person/readily available for use], as [reason – e.g., in their pocket; within reach].

Counterargue – not with them as it was not readily available for use

[D] may counter that the article was not 'with' them because it was neither on their person nor readily available for use, as [reason – e.g., in another room; possessed in a way it cannot be used (such as in a sealed package)].

Counterargue – not with D as they did not know about the item

[D] may counter that the article was not 'with' them because they did not know about it, as [reason].

Counterargue – not with them at the time of the robbery

[D] may counter that the article was not 'with' them at the time of the robbery, as [reason – temporal issue].

D was armed for the purpose of the burglary

Lastly, **Wilson** suggests that [D] must be armed for the context of the burglary – meaning that D must have possessed [weapon] intending to use it to [steal/assault V/damage property].

- YES - This is clear on the facts, as [some intent to use weapon to steal something or assault someone]
- NO – This appears unlikely to be satisfied on the facts, as

Knew or reckless about presence of others

Person present

Note: If D is charged with burglary in part of a building but not the whole building, and there are people present in the whole building but not in the part that D entered as a trespasser, this element will not be satisfied

Not part of the building

Although (police later arrived etc), it is clear that there was no one present in the [building/part] at [time of entry] . As such aggravated burglary with a person present cannot be established.

No one present at all

Although it is clear that [people are present in building], D will contend that no one was present in [part of building] at time of entry.

Present

On the facts, it is clear that there were [people in building/part at time] at [time of entry], as [facts].

Knowledge or recklessness

P must prove BRD that [D] knew or was reckless as to the presence of others in the [building/part of the building] when they entered as a trespasser (**s77(1)(b)**). OTF, [what does it say on the facts that D knew or notice about the presence of others]

- **Reckless example:** D is reckless about whether or not a person is present in a location if s/he is aware that a person is probably present Consider: lights being on, car in driveway etc
- **Example:** knowing security guard is present
- **In class example:** This was illustrated in a past exam scenario where students planned a theft of an exam paper. Though they timed the burglary at night assuming the building would be empty, they noticed lights on and heard someone nearby on the phone but proceeded anyway. Their awareness of someone nearby demonstrated at least recklessness. Additionally, the building's restricted (swipe-access) area, though part of a generally accessible space, marked a boundary that the students were unauthorized to cross for this purpose
- **2018 s2 exam:** Dean and Logan have entered the building using a swipe card.

Can argue that it was the part of the building from the corridor onwards, or the office. However, the more narrowly you define the premise, the harder it is to argue that someone is present in the building for the purposes of aggravated burglary. You could argue that D and L swiped into the hallway corridor. When they looked in the building, they were looking for lights and noticed that it was dark and it was after hours so everyone should be home. their intention is to not run into anyone. However, they clock a few lights on. This can hint that they were RECKLESS as to this particular presence.

- **2018 exam:** Wade and George have broken into a commercial premises to steal cash and laptops. A car pulls up and it turns out it contained local security services. They entered into the building and came across Wade. It can be argued that the person present is the security guard. It is harder to argue that Wade had knowledge or recklessness about this presence because they planned to enter when there were no people nearby because they waited until after business hours when everyone left the premises, it was in an industrial area, they cut the security cameras to not draw attention. He did everything to avoid detection. They could not have also had foresight of this. So likely not made out.
- **2017 s1 exam:** Tracey decides to visit Jackson, intending to confront him about the actions of last night. She knocks but no one answers. Discovering the door is unlocked, and enters the front room and finds him asleep. She sees a mobile phone which she thinks is hers and Jackson stole it. She tocks at it but has to wrestle it from his grip, leaving a slight bruise on his wrist. On the one hand no one answering the door can suggest that she knew no one was home. On the other hand, perhaps someone just did not hear the door and perhaps leaving the door unlocked can suggest that someone is home. More likely she was reckless that no one was home as someone could have foreseen that these are indications that someone is home.
- **2021 exam:** entering the bank to steal after hours: There's the foresight of the probability that a security guard is available on the premises of a bank after hours. So he was startled to see him, but nevertheless you can work with recklessness.
- **2016 exam:** If Theo is found guilty of burglary, he would also likely be guilty of aggravated burglary as Katya's present and he is aware that she is home as they just dropped her off from her launch party.
- Reckless because it is open hours and a reasonable person would have foresight that there are likely to have customers during that time.
- **2020 exam:** If it were made out, he could be liable for burglary while another person was present (s 77(1)(b)) because Harry was present in the building at the time of burglary, a fact that E knew. Would therefore be made out.

Consequences

On balance, [D] is [likely/unlikely] to be found guilty of aggravated burglary [if so - meaning they will guilty of aggravated burglary is guilty of an indictable offence and liable to level 2 imprisonment (25 years maximum)] (**s77(2)**).