GILSHENAN & LUTON
LEGAL PRACTICE



# Stealing, robbery and burglary – what's the difference?

**Author:** Caprice Gobie-Smith
**Email:** cgobiesmith@gnl.com.au
**Phone:**
**Date:** **Monday June 6, 2022**

Whilst stealing, robbery and burglary may appear to the public to be the same offences, there are significant differences between them. These differences can result in:

- different elements for the prosecution to prove their case;
- the availability of different defences; and
- different penalties following conviction.

## What is stealing?

Stealing (often referred to as theft), is defined as fraudulently taking the moveable property of another person, or to fraudulently convert the property of another person to one's own use, without the owner's consent.

To take or convert an item capable of being stolen in a fraudulent manner requires a degree of intention in the act of stealing. Fraudulence is present where there is an intent to:

- permanently deprive the owner or any person who has special property in the thing;
- use the thing as a pledge or security;
- take the thing on a condition about its return that the person taking the thing may be unable to perform;

- deal with the thing in such a manner that it cannot be returned in the condition in which it was at the time it was stolen; or
- use it at the defendant's will if the property is money, even if the defendant intends to repay the other person afterwards.

Actions that might constitute stealing include:

- consuming food within a supermarket without paying for it;
- taking a sum of money from your employer;
- shoplifting goods from a store valuing more than $150.00; or
- removing a person's wallet without them knowing.

# Applicable penalties for stealing

The maximum penalty for the offence of stealing is five years' imprisonment, or three years' imprisonment if the matter is resolved in the Magistrates Court. The maximum penalty increases to 10 years' imprisonment if:

- the thing stolen is property (including an animal) and exceeds $5,000.00 in value;
- the property was stolen from a dwelling and exceeds $1,000.00 in value, or was taken with a threat of violence;
- the property was stolen from a motor vehicle;
- there is a relationship between the stealing and the accused's position (e.g. public servant, company director, agent); or
- the property stolen is a firearm.

Where the property stolen is a firearm and is stolen for the purpose of committing an indictable offence, or the property stolen is a vehicle, the maximum penalty can be increased to 14 years' imprisonment.

# What defences are available for stealing?

Possible defences to the offence of stealing can include:

- The property or thing was not capable of being stolen;
- The accused had the consent of the owner;
- The accused mistakenly thought they had the consent of the owner; and/or
- The property was abandoned by the owner.

# What is robbery?

Robbery is the use or threatened use of violence to facilitate the act of stealing.

Pursuant to section 409 of the *Criminal Code Act* (Qld) 1889 ('the Criminal Code'), robbery is said to occur where a person steals anything and, immediately before or after the time of stealing, uses or threatens to use actual violence to the person or property in order to obtain the thing being stolen or to prevent or overcome resistance to its being stolen.

Actions that might constitute robbery include:

- Threatening a taxi driver for the retrieval of a $30 ride fare;
- Holding up a newsagent with a weapon and demanding money from the register; or
- Violently shoving someone to snatch their property.

# Applicable penalties and defences for robbery

The maximum penalty for the offence of robbery is 14 years' imprisonment.

Possible defences to the offence of robbery can include:

- The accused did not intend to steal the item;
- The accused did not take any property from the person;
- The accused thought they had a claim of right to the property; and/or
- The accused was acting under duress or in self-defence.

# What is burglary?

Burglary differs from robbery in that the victim does not necessarily need to be present at the time.

Burglary occurs when a person enters or is in the dwelling of another with the intention to commit an indictable offence in the dwelling. Stealing is the most common offence intended during a burglary; however, the crime is committed if the offender commits any indictable offence in the dwelling, including assault or murder.

Actions that might constitute burglary include:

- Breaking into a residential property to steal an item whilst the occupant was out of town; or
- Unlawfully entering a store outside operating hours and removing property.

# Applicable penalties and defences for burglary

The maximum penalty for burglary is generally 14 years' imprisonment.

Possible defences to the offence of burglary include:

- the accused was forced to commit the offence under duress;
- the accused did not intend to commit a crime within the dwelling; and/or
- the premises entered do not meet the definition of a dwelling.

## What does it mean when charges for dishonesty offences incorporate the word ‘aggravated’?

In criminal law, an ‘aggravated’ offence generally means that there is a factual circumstance alleged by police which makes the charge more serious than the standard charge.

An aggravated offence will attract harsher penalties in recognition of the circumstances of the offending. At least one circumstance of aggravation must be proved beyond reasonable doubt for the offence to be an aggravated offence.

For example, the penalty for robbery will be increased to life imprisonment if any of the following aggravating features are present:

- The offender pretends to be armed with any dangerous or offensive weapon or instrument;
- The offender is in company with one or more other persons; and/or
- The offender, at, immediately before or after the time of the robbery wounds or uses personal violence to any person.

Similarly, the penalty for burglary increases from 14 years imprisonment to life imprisonment if any of the following aggravating features are present:

- The offender enters the dwelling by means of any break (e.g. opening, unlocking, pulling, pushing, lifting or any other means, any door, window or other thing intended to close or cover an opening to premises);
- The offender damages or threatens to damage property;
- The offender is or pretends to be armed;
- The offender uses or threatens to use actual violence;
- The offender commits an indictable offence in the dwelling; and/or
- the offender is in company with one or more persons.

Importantly, circumstances of aggravation do not create separate offences; robbery and aggravated robbery and burglary and aggravated burglary are still the same offence. The differences between the two categories (aggravated and not aggravated) are that the maximum penalty is increased when aggravating circumstances are present.

## Get help from a criminal lawyer

The offences of stealing, robbery and burglary are serious criminal offences. If you or a loved one has been charged with these offences you should obtain urgent advice about your options.

## Contacting Gilshenan &Luton

07 3361 0222 (24/7)

gnl@gnl.com.au

---

*This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.*