

TROUBLESOME CONCEPTS CONCERNING CRIMINAL OFFENCES

Concepts used by the Retail Industry that may cause confusion

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It sometimes happen that the “subject terminology” used by the lay persons in retail and other industries, to describe crime incidents, may create confusion to either legal experts or the crime fighting fraternity. Many concepts used by the Consumer Goods Council of South Africa’s Crime Prevention Programme (here after referred to as CGCSA CPP), as well as other industries, are “newly created” sub-categories or part of definitions, used to better explain certain crimes, mostly committed in the industry, ending up with terms that are not defined in South African law. This article will attempt to clarify the need for so called “subject terminology” used among the different role-players.

Theft or shoplifting

Shoplifting is often only recorded when suspects have been apprehended, yet the crime of *theft* does not rely on the suspects being detained, it relies rather, on the conduct of the perpetrator, whether caught out or not. The definition of theft according to Snyman (2005:469) is “the unlawful appropriation of movable corporeal property which belongs to and is in the possession of another (...) provided that the intention to appropriate the property includes an intention to permanently deprive the person entitled to the possession of the property.”

From time to time, theft is also confused with robbery. People often say: “I’ve been robbed”, when in actual fact a theft or housebreaking has taken place. The distinguishing factor between theft and robbery is *violence*, or the *threat* thereof. If no violence accompanies the incident it is classified as theft or housebreaking not as a robbery. On the other hand, if violence is used against the body of another and no act of theft was carried out it is classified as an assault (Joubert, 2001:146).

Robbery

Robbery (except for the misconception that robbery is any kind of theft or fraud), specifically in the retail industry, is sometimes mistaken for a type of crime that only occurs during business hours. The nature of some robberies at business premises makes that this is often true, yet the legal definition of robbery actually is:

- “*theft* of property by unlawfully and intentionally using *violence* to take the property from somebody else or
- *threats of violence* to induce the possessor of the property to submit to the taking of the property” (Snyman, 2005:506).

It is clearly not a crime that is dependent on business hours, however for violence to occur there needs to be people in the store (other than in the case of housebreaking or burglaries). Lately, the use of night guards has altered the typical retail robbery trends (as discussed below under after hour robberies).

Certain “sub-categories” that are commonly used in the retail industry, were derived from the concept “robbery” to better explain specific criminal *Modus Operandi*. The objective with defining the concepts was not to re-define existing legal or academic definitions, but simply as a ‘classification’ which could be used to outline the different interpretations and to align reporting and recording of incidence with related industries (Petroleum, Banking, CIT etc.) and the SAPS. Examples of these are:

- ***After hour Robberies:*** Retail robberies occur predominantly during business hours, especially during opening and closing times, however CPP members are increasingly reporting robberies that occur during what was previously thought of as ‘burglary hours’. Perpetrators increasingly threaten security guards, that are on duty during the evenings, with weapons, and because of this threat of violence the incident would be classified (by the retail industry) as an after hour robbery but is still legally defined as a robbery.
- ***Armed robbery:*** Legally there is no such crime as armed robbery but rather robbery with aggravating circumstances. In view of the fact that violence or the threat of violence must be present during a robbery, suspects use knives and other forms of weapons as a means to attain this goal, for what is referred to as common robbery. However committing a robbery with a firearm serves as aggravating circumstances, therefore it is important to be aware of incidents where firearms, specifically, were used. In a court of law the use of a firearm can, at times, lead to a more harsh punishment thus supporting the significance of the use of firearms.
- ***Cash in Transit (CIT) robbery:*** CIT companies collect vast amounts of money from stores and transport it to the bank using armoured vehicles and armed security guards. Legally, again, there is no such crime as Cash in Transit robbery. It merely is a category used in practice to

describe a certain *Modus Operandi*. A cash-in-transit robbery (as described by the South African Banking Research Information Centre (SABRIC) in consultation with the SAPS) is the unlawful, intentional and violent removal and appropriation of movable assets in transit while it is under the control of a security company. It may include removal and appropriation of moveable assets under the threat of violence. Cash robberies do not only occur when money is taken from vehicles that are travelling between pick up points, many occur in banks and at retail outlets (shops, petrol service stations and post offices) itself. For this reason certain role players identified the need to sub-categorise CIT robberies to better explain these incidences, resulting in better understanding.

In all these incidents the guiding principle is two folded. Firstly the *possession* of the cash that is targeted and secondly the *place* where it occurs. In incidences where armed suspects succeed in robbing a store while the CIT security guards are entering the store or counting the money in the cash office (accompanied by a manager), the incident will be defined as a *robbery with aggravating circumstances*. For an incident to be classified as a CIT robbery the moveable assets must be *under the control* of the CIT security company or guard whether the robbery took place inside or outside the premises. For classification purposes 'under control' will only be after the acknowledgement of receipt by the CIT Company, by means of a signature (This is standing practice in the industry). It is important, however, to keep in mind that even though the following concepts are classified separately by the retail industry they are not legally defined in South African law.

In a *CIT on premises* robbery, the movable assets must be *under control* of the CIT security guard. In a classic CIT on premises scenario the CIT guard will have signed the acknowledgement of receipt but not yet left the store when the robber/s strike. In light of the fact that the CIT Company signed for the movable assets it is a CIT and because they have not left the store it is classified as on the premises. *Cross pavement* robberies can be described as incidents where money is intercepted as it is carried to or loaded on a stationary armoured vehicle or as it is offloaded from a stationary armoured vehicle. These types of crimes are inclined to take place on the retail outlets premises from which the CIT security guards collect the money. Lastly we will look at common CIT robbery. This occurs when the armoured vehicle is targeted in transit. The armoured vehicle will be 'rammed' with another vehicle or boxed in,

for example, and excessive violence will be used to get hold of the money inside the armoured vehicle. In general only large groups of suspects will attempt this type of robbery.

- **Hi-jacking:** A Hi-jacking is describes as a “robbery of a vehicle in transit or seizing control of a vehicle by the use of *force* (WordNet search: Hijacking, [sa])”, and may refer to aircraft hijacking, carjacking and maritime hijacking also known as piracy (Wikipedia: Hijacking, 2009). Important here is the word force, as it is linked with violence and the threat of violence.
 - *Truck Hi-jacking:* Certain criminal groups specifically target trucks because of the load they carry or the use of the truck itself. It is therefore separated from normal carjacking.

Please keep in mind that all of the above mentioned categories are forms of robbery. As a result, in a court of law a charge against the accused will consist of robbery with aggravating circumstances, irrespective of whether it is a CIT, Cross Pavement, hijacking or armed robbery.

Housebreaking

House breaking is defined as the unlawful and intentional, breaking and entering of a premises with the intent to commit an offence inside those premises (Joubert, 2001:148). From this definition it is clear that there must be an intention to commit a specific crime for example murder, theft or arson (to only mention a few). In the retail industry the intention would primarily be to commit theft, although ever so often suspects panic and commit murder while on the premises. The term premises is not only used to refer to a residence or dwelling, it also refers to any other structure where property is kept or stored. However this structure must be in the nature of a house or storeroom and must be used on a credibly permanent basis. Therefore breaking and entering into any of the following premises is also classified as housebreaking:

- a shop
- an office
- a garage
- a store-room and even
- an immovable display cabinet (outside the store, in the form of a ‘house’)

The CGCA CPP refers to these types of cases as burglaries rather than housebreaking with the intention to commit theft and theft. Burglary, as a term, is not recognised in South African law as a crime but is commonly used rather than housebreaking.

Damage to property

In most housebreaking incidents access to the property is gained through damaging part of the structure that forms part of the premises. When the attempt is interrupted or when the structure could not be penetrated and the attempt has to be forfeited, the crime would be that of 'attempted housebreaking'. It is however very difficult to prove the intention of housebreaking and when arrested such perpetrators are usually charged for malicious damage to property. The legal definition according to Snyman (2005:535) is that a person commits malicious damage to property if he or she unlawfully and intentionally damages:

- "property belonging to another; or
- His or her own insured property, intending to claim the value of the property from the insurer.

The damage does not have to be permanent (i.e. spray paint) nor does it have to be of great value".

In conclusion it should be noted that sub-categories or re-definitions of crimes are derived from practical descriptions with the goal to better categorise incidents across industries for capturing purposes. All of the above mentioned concepts, especially the sub-categories of robbery, each have a significant and important *Modus Operandi* which might be placed at risk of losing its uniqueness if not described and captured correctly. Linkages and better investigations can only be done when incidents are categorised and analysed according to the *Modus Operandi* as opposed to other characteristics such as the time of day or the type of crime. The purpose of correct definitions and sub-categories therefore becomes clear: to better capture, analyse and link incidents across industries and to better explain crime situations which in turn could assist in working out better crime prevention strategies.

Summary

	Legal definition	Industry definition
Theft/Shoplifting	<ul style="list-style-type: none"> The unlawful appropriation of movable corporeal property which belongs to and is in the possession of another (...) provided that the intention to appropriate the property includes an intention to permanently deprive the person entitled to the possession of the property. 	<ul style="list-style-type: none"> Incidents that occur when a person steals goods belonging to another person. Shoplifting is when a person steals from a self-service shop, during the shopping hours of the shop and that particular item is for sale.
Robbery	<ul style="list-style-type: none"> Theft of property by unlawfully and intentionally using violence to take the property from somebody else or threats of violence to induce the possessor of the property to submit to the taking of the property. 	<ul style="list-style-type: none"> Suspects using violence or the threat of violence against a person/s in order to steal property not belonging to them.
<i>After hour Robbery</i>	<ul style="list-style-type: none"> Classified by SA law as a robbery (with aggravating circumstances) 	<ul style="list-style-type: none"> Suspects using violence or the threat of violence against a person/s in order to take property not belonging to them during what is known as 'burglary hours'. For example violence or the threat of violence used to intimidate night security guards.
<i>Armed robbery</i>	<ul style="list-style-type: none"> Classified by SA law as a robbery (with aggravating circumstances) 	<ul style="list-style-type: none"> Suspects using violence or the threat of violence against a person/s in order to take property not belonging to them. Important here is that a firearm must be present or in some cases a weapon that could inflict serious bodily harm.
<i>Cash in Transit (CIT) robbery</i>	<ul style="list-style-type: none"> Classified by SA law as a robbery (with aggravating circumstances) 	<ul style="list-style-type: none"> The unlawful, intentional and violent removal and appropriation of movable assets in transit while it is under the control of a security company Armoured vehicle is targeted in transit. The armoured vehicle will be 'rammed' with

		another vehicle or boxed in, for example, and excessive violence will be used to steal the money.
<i>CIT on premises</i>	<ul style="list-style-type: none"> Classified by SA law as a robbery (with aggravating circumstances) 	<ul style="list-style-type: none"> Theft of movable assets in transit while it is under the control of a security company The movable assets must be under control of the CIT security guard and the guard must still be on the store premises.
<i>Cross pavement</i>	<ul style="list-style-type: none"> Classified by SA law as a robbery (with aggravating circumstances) 	<ul style="list-style-type: none"> Theft of movable assets in transit while it is under the control of a security company Incidents where money is intercepted as it is carried to or loaded on a stationary armoured vehicle or as it is offloaded from a stationary armoured vehicle. These types of crimes are inclined to take place on the retail outlets premises from which the CIT security guards collect the money.
<i>Hi-jacking</i>	<ul style="list-style-type: none"> Classified by SA law as a robbery (with aggravating circumstances) 	<ul style="list-style-type: none"> Robbery of a vehicle in transit or seizing control of a vehicle by the use of force.
Housebreaking	<ul style="list-style-type: none"> The unlawful and intentional, breaking and entering of a premises with the intent to commit an offence inside those premises 	<ul style="list-style-type: none"> Use the term burglary rather than housebreaking. Breaking and entering the premises of a retail outlet. Any structure in the form of a house or a store room (four walls and a roof or a fenced of space)
Damage to property	<ul style="list-style-type: none"> Unlawfully and intentionally damaging property belonging to another; or his or her own insured property, intending to claim the value of the property from the insurer. The damage does not have to be permanent (i.e. spray paint) nor does it have to be of great value. 	<ul style="list-style-type: none"> Damaging part/s of the structure that forms part of the premises, usually during an attempted burglary.

References:

Books:

Joubert, C. 2001. *Applied law for Police Officials*. 2nd ed. Florida: JUTA Law.

Snyman, C.R. 2005. *Criminal Law*. 4th ed. Butterworths: Lexis Nexis

Internet sources:

Wordnet search: Hijacking. 2009.

[O]. Available: <http://wordnetweb.princeton.edu/perl/webwn?s=hijacking>

Accessed on 2009/07/14

Wikipedia: Hijacking. 2009.

[O]. Available: <http://en.wikipedia.org/wiki/Hijacking>

Accessed on 2009/07/14