

A CRITIQUE OF THE OFFENCES OF STEALING AND THEFT UNDER THE NIGERIAN CRIMINAL JURISPRUDENCE\*

**Abstract**

*This paper analyses and critique the offences of stealing and theft under the Nigerian Criminal Jurisprudence. Stealing and Theft are very serious offences which affect the economy and stability of every country and have been considered as serious offences in all jurisdictions. This paper finds that stealing/theft as a criminal offence has been viewed globally and also in Nigeria, as permanent deprivation of a person's ownership in a property by another, and what constitutes property has often been limited to material and moveable things. This paper further finds that as a result of digitalisation, stealing and theft have gone beyond the obvious deprivation of a person's ownership/possession in a thing and that there are other things that should be considered property for the sake of defining the offence of stealing/theft and recommends the need to review and amend the Nigerian criminal laws to redefine what constitutes properties capable of being stolen/capable of being the subject of theft by expanding the scope of such properties to cover a wider range. In conducting this research, the doctrinal method was employed whereby the offences of stealing and theft in Nigeria and China were compared with a view to pointing out loopholes and lacunae in the Nigerian Legislations.*

**Keywords:** Criminal Jurisprudence, Permanent Deprivation, Property, Material Things, Moveable Things, Digitalisation.

**1. Introduction**

The offences of stealing and theft are among the most common crimes being committed on a daily basis all over the world and constitutes offence in all jurisdictions. Apart from being a crime, stealing is an act that is viewed as morally wrong. Thus, both the Criminal Code (CC) and the Penal Code (PC) criminalizes the act of stealing and theft respectively. It is no new phenomenon and Nigeria like all other countries is well aware of the detrimental effects of the crime on the individuals within the community and society as a whole. Property has been regarded as a very important possession of man, in fact, it has been regarded as the second most important possession of man next to life<sup>1</sup>. This is clearly seen in the Nigerian laws as the law permits a person to cause death in the defence of property, Section 33 (2) of the 1999 Constitution of the Federal Republic of Nigeria, for example, does not regard death resulting from the use of reasonable force for the defence of property as a violation of the right to life guaranteed by the constitution. It is referred to as 'stealing' in the Criminal Code and 'theft' in the Penal Code. The Criminal Code is applicable in Southern Nigeria while the Penal Code is applicable in Northern Nigeria. The offence of stealing is sometimes referred to as theft and it is sometimes conceived that both are different offences. The difference, if any, between 'Theft' and 'Stealing' is in the legislation. Most jurisdictions prefer to use the term 'theft' to lump all crimes against property (larceny, burglary, looting, robbery, shoplifting, fraud, embezzlement, etc). Stealing is generally used to describe the action of taking something specific.<sup>2</sup> This work is divided into five parts, part one introduces the work, part two proffer the meaning and nature of stealing and theft, part three discusses the ingredients of stealing and theft, part four delves into the loopholes/lacunae in the Nigerian Criminal Legislations making a comparison with the Chinese Criminal Legislation, the fifth part concludes the work and makes appropriate recommendations.

**2. Meaning and Nature of Stealing and Theft**

The Oxford Advanced Learner's Dictionary defines the word 'Steal' as 'to take something from a person without permission and without intending to return it or pay for it'<sup>3</sup> Black's Law Dictionary defines the word 'steal' as: '1. To take (personal property) illegally with the intent to keep it unlawfully. 2. To take (something) by larceny, embezzlement, or false pretences'<sup>4</sup>

Theft is defined as the physical removal of an object that is capable of being stolen without the consent of the owner and with the intention of depriving the owner of it permanently.<sup>5</sup> The thief need not intend to keep the property himself, an intention to destroy it, sell it, or abandon it in circumstances where it will not be found is sufficient. Automobile theft, for example, frequently involves selling the stolen car or its parts. In some instances, an intention to deprive the owner of the property temporarily also is sufficient, as in the case of stealing a car for a 'joyride' and then abandoning it in such a way that the owner is able to reclaim it.<sup>6</sup> Section 390 of the Criminal Code creates the offence of stealing by providing, inter alia: that '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,' Section 383(1) of the same Code clears the dust on what constitutes stealing. Thus, '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'. Section 286(1) of the Penal Code creates the offence of theft by providing, inter alia: that 'whoever intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to take it is said to commit theft.' It is also an offence of theft under section 286 (2) of the Penal Code to dishonestly abstract, divert, consume or use any electricity

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<sup>1</sup> K.S. Chukkol, *The Law of Crimes in Nigeria*, 1988, at 197.

<sup>2</sup> R.C. Lee, Mar. 27, 2015. Is there a difference between theft and stealing (legally speaking)? <<https://www.quora.com/is-there-a-difference-between-theft-and-stealing-legally-speaking>>. accessed-26/5/2024

<sup>3</sup> *Oxford Advanced Learner's Dictionary* 6th ed.

<sup>4</sup> B.A. Garner (ed.), *Black's Law Dictionary* (8th edn., 2004), at 1453.

<sup>5</sup> J. B. Thomas, 'theft' <<https://www.britannica.com/topic/theft>> accessed 28/05/2024.

<sup>6</sup> *Ibid.*

or electric current. Punishment for the offence of theft is imprisonment for a term which may extend to five years or with fine or both.<sup>7</sup>

### 3. Ingredients of Stealing and Theft

For an act to amount to stealing, the following elements must be present or follow the act:

**Taking or Converting:** Going by the definition of stealing in Section 383(1) of the Criminal Code and Section 286(1) of the Penal Code, there must be either a 'taking' or 'conversion' of something. Taking in this sense does not mean that the person alleged to have stolen should have had in his or her possession the thing said to be stolen. It is sufficient if the person accused of stealing merely moves or causes the property to be moved.<sup>8</sup> In the absence of taking, there must be a 'conversion' of property. Unlike taking, the Codes do not say what constitutes a conversion. Conversion in this sense is as defined at common law, which according to Atkin J. (as he then was) in *Lancashire and York Railway Company v. McNicol*<sup>9</sup> is dealing with goods in a manner inconsistent with the right of the true owner provided there is an intention on the part of the person converting the property to deny the owner's right or to assert a right which is inconsistent with that of the owner. In addition to the 'taking' or 'conversion' of property, the intention to be fraudulent/ dishonest must be present or accompany such acts on the part of the person taking or converting any property.

**Fraudulent Intention/ Dishonest Intention:** It is not every taking or conversion that amounts to stealing, in order to constitute stealing, the taking or conversion must have been done fraudulently or dishonestly at that material time. Section 383(2) of the Criminal Code sets out six intents, any of which will make a taking or conversion fraudulent. In considering whether or not there existed one of these fraudulent intents, the test is what was the intent of the accused at the time of the taking or conversion.<sup>10</sup> Such intention may not be immediately present at the initial time of converting the property but it is sufficient if the person thereafter forms that intention. See *R. v. Ekpenyong*. Under section 383(4) of the Criminal Code, in deciding whether a conversion is fraudulent, it is immaterial that the converter had an innocent possession of the property or that he held a power of attorney for its disposition or was otherwise authorized to dispose of the property. The position is the same under the Penal Code, although the word 'dishonestly' is used instead of the 'fraudulently' used in the Criminal Code. The mental element required to prove the offence of theft under section 286 of the Penal Code is 'dishonest intention', that is the 'intention to take the movable property'. The Penal Code states that: 'A person takes property dishonestly, if he takes the thing with the intention of causing a wrongful gain to himself or another or of causing a wrongful loss to any other person'<sup>11</sup>. 'A wrongful gain' is defined as 'a gain by unlawful means of property to which the person gaining is not legally entitled'<sup>12</sup>. 'A wrongful loss' is one which occurs 'by unlawful means of property to which the person losing it is legally entitled.'<sup>13</sup> Unlike under the Criminal Code, it has been held that the offence of theft under the Penal Code might be committed without the intention to permanently deprive the owner of his property.<sup>14</sup>

**Things capable of being stolen/ capable of being the subject of theft:** It is not everything that is capable of being stolen. A person can only be held to have stolen something if that thing is capable of being stolen. For a thing to be capable of being stolen, such thing must, firstly be shown to exist and within the things listed in Section 382 of the Criminal Code.<sup>15</sup> According to the section, every inanimate thing whatever which is the property of any person, and which is movable, and is capable of being made movable is capable of being stolen. The section also contains provisions about tame animals and animals wild by nature, however, if wild animals are in the enjoyment of their natural habitat, they are not capable of being stolen but their dead bodies are. A thing in action is also capable of being stolen. As earlier pointed out, it is not every property that is capable of being stolen. For instance, one cannot steal land because it is an immovable property and therefore not capable of being stolen. Also, a property which is abandoned or not capable of being owned at all, and as such cannot be said to be owned by anybody (ownerless property) is not capable of being stolen. At Common Law a corpse cannot be stolen.<sup>16</sup> But if a person has performed some work of skill on such a corpse in his lawful possession for its preservation or for scientific experiment, it may be stealing to dispossess him of it.<sup>17</sup> Under the Penal Code, the thing must be capable of being the subject of theft.<sup>18</sup> Under section 286(2) of the Penal Code, electricity or electric current is capable of being stolen by being abstracted, diverted or consumed. The punishment for stealing where no other punishment is stipulated by law is three years imprisonment (section 390 CC). There is however stiffer penalty of an imprisonment for life where the thing stolen concerns wills, postal matters or relating to property, etc., (section 390(1) CC). Stealing of animals and in other circumstances such as from a dwelling house, vehicle, etc., can attract stiffer punishments. Under the Penal Code theft attracts maximum imprisonment for five years or to both fine and imprisonment. See section 287. The punishment may be higher in other cases. See sections 288, 289 and 290.

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<sup>7</sup> Section 287 of the Penal Code

<sup>8</sup> Section 383 (6) of the Criminal Code

<sup>9</sup> (1919) 88 L.J.K.B. 601 at 605.

<sup>10</sup> *R v. Dickinson* (1820) R. & R. 420.

<sup>11</sup> Sec 16 Penal Code

<sup>12</sup> Sec 13 P.C

<sup>13</sup> Sec 14 PC

<sup>14</sup> *Keffi Native Authority v. Alagbo* (1960) NWLR 32

<sup>15</sup> H. Michael, *Criminal Law in Nigeria*, 1<sup>st</sup> ed

<sup>16</sup> See, A.T.H. Smith, *Stealing the Body and its Parts* (1976) Crim. L.R. 622.

<sup>17</sup> *Doodeward v. Spence* (1908) 6 C.L.R. 406

<sup>18</sup> Sec 286 PC

#### **4. Lacunae in the Nigerian Criminal Legislations vis-a-vis a Comparison with China**

Stealing has been identified under the Criminal Code as the intent to permanently deprive the owner of the thing of it. Theft has been identified under the Penal Code as the intent to dishonestly deprive another of his rightful possession in a property. Stealing, in the 21st century, has gone beyond the obvious deprivation of a person's ownership in a thing. Ngwu Godwin Emeka and Ogiri, Onyemaechi Titilayo, argue that technology has affected the concept of stealing in such a way that 'permanent deprivation' is no longer an ingredient of the offence of stealing.<sup>19</sup> This paper disagrees with these two scholars. Though stealing, now in recent years, has gone beyond physically moving a person's item from one spot to another, and having gone beyond permanently depriving another of his ownership of stolen items, 'permanent deprivation' is still an ingredient of the offence of stealing under the Criminal Code as the law has not been amended/changed yet. But this paper is of the view that 'permanent deprivation' should no longer be an ingredient of the offence of stealing under the Criminal Code. Stealing and theft are now in an era where an owner can still be in possessions/ownership of his/her property without knowing that another is depriving him/her of the benefits thereof. A writer can still have his name established as the owner of a literary idea while someone else makes use of the ideas and claim its originality as his without the knowledge of the original owner.<sup>20</sup> An example of this is plagiarism. 'Publishing fraudulent data and presenting ideas attributed to other researchers without appropriate recognition'.<sup>21</sup>

Stealing and theft have progressed to the extent of stealing passwords, though they are not physical things, passwords to internet devices, internet banking, social media accounts and internet data are now being stolen. Cybercrime is now on the rise, identities are not left out of the things that technology has made possible for people to steal,<sup>22</sup> On a daily basis, people are being scammed into entering business transactions believing that the other party is who he claims to be, in an age when forging an identity card and making it look like the original is an easy task for those involved, it is very easy for an offender to pretend to be a notable person worthy of dealing with in business transactions. The innocent party who, believing that he is dealing with the right person, is dispossessed of his properties which most times is monetary or landed property. The crime only becomes obvious after the thief must have succeeded. 'The internet allows people to mask their location, their intent, and their identity and to pretend to be someone else'.<sup>23</sup>

Ngwu Godwin Emeka and Ogiri, Onyemaechi Titilayo in their work 'The Effect of I.T on the Law of Stealing in Nigeria: A Comparative Perspective'<sup>24</sup> argue that stealing is not operated as it used to be anymore, that technology has created a huge influence on what the offence of stealing is now and it is essential that the appropriate authorities put this into consideration in defining the law as it is today and what it can be in the nearest future. This paper subscribes to this line of argument because the scope of stealing and theft as contained in the Criminal Code and Penal Code respectively is not all encompassing and does not cover the reality of life today. It is clearly seen that one can steal another person's thing without even depriving the owner of his/her ownership/possession. Temporal deprivation should also be considered as stealing, a person can take another's thing for a relatively long time without informing the owner, this can deprive the owner of the thing even if the person taking it has the intent to return the thing subsequently.

According to the Criminal Code<sup>25</sup>, every inanimate thing whatever which is the property of any person, and which is movable, or is capable of being made movable is capable of being stolen, also according to the Penal Code<sup>26</sup>, whoever intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to take it is said to commit theft, the Penal Code<sup>27</sup> goes further to state that, a thing so long as it is attached to the earth, not being movable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth, it is gathered from both Acts cited above, that stealing and theft entails the moving of a thing. As earlier stated in this work that stealing/theft, has now gone beyond moving a person's item from one spot to another, it has also gone beyond taking or converting corporeal properties, technology has made it easy to steal without having to move the thing stolen. Therefore, the scope of things capable of being stolen and things capable of being the subject of theft as contained in the Criminal Code and the Penal Code respectively, need to be widened. One can steal documents by just downloading them, password theft, identity theft, stealing of ideas, intellectual properties and even internet data without necessarily moving the originals from one spot to another.

Land cannot be stolen under the Criminal Code<sup>28</sup> and Penal Code<sup>29</sup> because it is immovable, but in reality, a land can be stolen, Section 12 of the Penal Code provides that 'the words movable property includes corporeal property of every

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<sup>19</sup> G. E. Ngwu and O. T Ogiri, 'The Effect of I.T on the Law of Stealing in Nigeria: A Comparative Perspective' (2021) *Scholars International Journal of Law, Crime and Justice* 4(5): 262-271 p 264

<sup>20</sup> Ibid.

<sup>21</sup> C. Gross, 'Scientific misconduct'. *Annual Review of Psychology* (2016) 67:693-711 <<https://doi.org/10.1146/annurev-Psych122414-0334>> accessed-- 26/5/2024

<sup>22</sup> Identity theft.

<sup>23</sup> UC Berkeley School of Information. 'The damaging effects of IP theft' (2018) < <https://cybersecurity.berkeley.edu/bloy/damagingeffects-IP-theft>> accessed 28/05/2024.

<sup>24</sup> *Scholars International Journal of Law, Crime and Justice*, May, 2021; 4(5): 262-271 p 264

<sup>25</sup> Sec 382

<sup>26</sup> Sec 286 (1)

<sup>27</sup> Sec 286

<sup>28</sup> Sec 382

<sup>29</sup> Sec 286

description except land and things attached to the earth or permanently fastened to anything which is attached to the earth'. Timothy F. Yerima and Olubayo Oluduro, in their work; *Criminal Law Protection of Property: A Comparative Critique of the Offences of Stealing and Theft in Nigeria*,<sup>30</sup> stated that it is unfortunate, that the two Codes do not provide exception(s) to this provision, leaving a lacuna as to whether a person who is given money to buy a land and indeed, he bought the land but later converted it to his own use, will be liable for stealing the land or the money. This loophole in the Nigerian Criminal Legislation was discovered in *Robinson Ojoko v. Inspector General of Police*,<sup>31</sup> where the accused/appellant was given money to buy a piece of land in the name of the financier. He indeed bought the land, but conveyed it unto himself instead of the owner of the money. The appellate Court acquitted him on the charge of stealing, stating that the appellant did not steal the money since it was given to him with the full consent of the owner and he applied it to purchase the land as was directed. It was further held that the accused converting the land to himself could not amount to theft since land cannot be stolen. Though the case was decided in the mid-50s, it still generates heated debates among scholars in Nigeria.

Ngwu Godwin Emeka and Ogiri, Onyemaechi Titilayo argues in their work<sup>32</sup> that landed properties can also be stolen these days with the use of technology. Apart from forgery of documents, landed properties that are not well taken care of by the owners could be sold by fraudulent people, pictures of these properties are posted online and marketed for a price, interested buyers indicate their interest and within a month or two, the transaction has been concluded. Usually, the sales of these kind of properties are supported by forged documents which is done by the use of technology. The medium through which the fraudulent seller and the buyer got in contact is also enabled by technology. They went further to state that with the rise of online markets like Jumia, Jiji.com, Konga etc, it is very easy for a fraudulent person to pass off a landed property as a legally owned one. This position is true, but this transaction can still be possible even without the use of technology/internet. One can steal another person's land by selling it off as if he/she is the owner, and one can also be in possession of the original documents of the land and sells the land off as if he was authorized by the owner without the knowledge of the owner.

The Criminal Code and Penal Code do not make provisions for Cybercrimes and internet fraud. Cybercrime refers to any criminal activity that uses a computer as its primary tool. It is also the use of a computer as a tool to commit fraud, identity theft and violation of privacy among others. Although cybercrime is committed using a computer network, it is not just about hackers; it goes beyond hacking passwords and transferring bank account funds.<sup>33</sup> The Cybercrime (prohibition, prevention) Act, 2015 is the Nigerian Act that provides for the prohibition, prevention, detection, response, investigation and prosecution of cybercrimes and other related matters. The Act covers a lot of aspects of cybercrimes and provides penalties for offenders of these cybercrimes. The Cybercrime Act also has provisions prohibiting identity theft and impersonation in section 22; theft of a registered business name, trademark, domain name or registered word or phrase in section 25; manipulation of Automated Teller Machines (ATM) or Point of Sales (POS) terminals with the intention to defraud in section 30; and theft and use of another person's financial cards without consent in section 33. The Cybercrime Act, 2015 has been able to close up to an extent the lacunae in the Criminal Code and Penal Code in the law of stealing/theft especially as it relates to technology influenced offences.

Section 25 of the Cybercrime Act prevents the theft of trademarks, trade names and all related names used for business. This is applaudable; however, the Cybercrime Act could have gone further to include the protection of all forms of intellectual property, especially copyrights. The absence of Copyright and other Intellectual Property Rights as protected aspects in the Act creates a big loophole in the fight against cybercrime. Theft of literary works, songs and even designs are on a rise today. Documents that are stored on Cloud are also subject to being stolen in the 21st century and are not covered by the Cybercrime Act.<sup>34</sup> The Criminal Code and Penal Code are also silent on the issue of Intellectual Property theft. Although, the Copyright Act, 2022 has made an effort by criminalizing Copyright infringement but the word 'stealing' or 'theft' is not mentioned in the Act. The Copyright Act, 2022 has also narrowly made provisions for online infringement;<sup>35</sup> but the Act seems to focus only on the upload of copyright infringed materials without also paying attention to the wrongful download of copyright works, there are instances where copyright works are illegally/wrongfully downloaded from the internet without approval from the owner. These provisions (online infringement and the criminalization of copyright infringement) can be made all-encompassing in the Criminal Code, Penal Code and even the Cybercrime Act to cover every form of intellectual property theft including copyright infringement. This attempt has, however, been made in the Criminal Law Act of China by including provisions which covers all forms of Intellectual Property Rights. Section 7, Article 213 – 231 of Criminal Law of China 2020, makes provision for Crimes of Infringing on Intellectual Property Rights which covers all forms of Intellectual Property Rights. The crime of theft carries similar penalties applicable to robbery under the Chinese Criminal Law. Theft is punishable for a jail term between three and ten years. More serious offences, such as that against banks and financial institutions, can be jailed for 10 years or more, life imprisonment, even death sentence, in addition to fines, and assets confiscation.

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<sup>30</sup> (2012) *Journal of Politics and Law* Vol. 5, No. 1 <<http://dx.doi.org/10.5539/jpl.v5n1p167>> accessed 16/05/2024.

<sup>31</sup> (1956) FSC 62

<sup>32</sup> G. E. Ngwu and O. T. Ogiri, 'The Effect of I.T on the Law of Stealing in Nigeria: A Comparative Perspective' (2021) *Scholars International Journal of Law, Crime and Justice* 4(5): 262-271 p 264

<sup>33</sup> K.A. Barfi, P. Nyagarme, N. Yahoah, 'The internet and cybercrime in Ghana: Evidence from senior high school in Brong Ahafo region' (2018) *Library Philosophy and Practice* (e-journal) 1715 <<https://digitalcommons.unl.edu/libphilprac/1715>> accessed 17 May 2024.

<sup>34</sup> G. E. Ngwu and O. T. Ogiri, 'The Effect of I.T on the Law of Stealing in Nigeria: A Comparative Perspective' (2021) *Scholars International Journal of Law, Crime and Justice* 4(5): 262-271 p 266

<sup>35</sup> Part VII.

### **5. Conclusion and Recommendations**

The offences of stealing and theft have been shown to be on the increase in all parts of the world. It has been observed that stealing has gone beyond the obvious deprivation of a person's ownership in a thing and that there are other things that should be considered property for the sake of defining the offence of stealing/theft which has not been considered, pointing out the need to criminalize intellectual property theft. This work has made an effort to comparatively analyse Nigerian Legislations with Chinese Legislation, pointing out the loopholes in the Nigerian Legislations. Therefore, this work makes the following recommendations: There is a need to review the laws prohibiting stealing/theft in Nigeria as there are lacunae in the Nigerian criminal laws. Although the Cybercrime Act, 2015, has closed the gap to an extent, there is a need to criminalise intellectual property thefts. The Criminal Code Act and the Penal Code should also criminalize the acts of cybercrimes. There is also a need to review the Nigerian criminal laws to redefine what constitutes properties capable of being stolen by expanding the scope of such properties to cover a wider range of properties discussed in this work as capable of being stolen. There is equally a need to review the Nigerian criminal laws to redefine the ingredients of staling and theft; the ingredient of permanent deprivation should be removed as one of the ingredients of stealing because one can steal another's thing without necessarily depriving the owner of the thing.