

House Breaking and Burglary

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The law provides protection^Â for the property of members of the society. This is achieved through the criminalisation of certain acts like house breaking and burglary.

It should be noted that these offences cover situations where the offender breaks into the house to commit a crime and then subsequently breaks out.

These two offences would be considered below.

Meaning and Ingredients of House Breaking

House breaking can be defined as the act of breaking and entering into a dwelling house in order to commit a felony. The following are the essential ingredients required to prove the offence of house breaking:

- Breaking
- Entering
- It must be a dwelling house
- Intent to Commit a felony

Breaking

Breaking can either be actual or constructive. It is actual breaking if the suspect breaks in the external or external part of a building by unlocking, pulling, pushing, lifting, or any other means whatever, any door, window or other thing, intended to close or cover an opening in a building, or an opening giving passage from one part of a building to another^[1].

The breaking is considered constructive if it is done through the means of trickery, threats or collusion with someone already in the building, or the entrance is through a chimney or other openings in the building which are permanently open but are not normally used for entrance into the building^[2].

In the case of *R vs. Boyle*^[3] it was held that the act of a person, intending to commit a felony, in gaining entrance into the house by posing as a sanitary inspector amounted to breaking.

In the case of *State vs. Onwemunlo*^[4] it was held that the act of a thief entering into a house through a door that was already open would not be considered as breaking. Also, if the door is partially open and the thief opens it fully, it cannot be fully regarded to be a breaking^[5].

It should also be noted that the breaking is not only of the external part of a building, it can also be of an internal part. For example, if a house help who is allowed into the house breaks into a locked room in the building, it would be regarded as a breaking^[6].

Entering

According to S.410 of the Criminal Code, a person is regarded as having entered a building when any part of his body or any instrument used by him in breaking is within the building. In the case of *Collins vs. State* it was held that the act of the accused in allowing just his leg into the building was sufficient to establish entering.

A Dwelling House

According to the provision of S.1 of the Criminal Code, a dwelling house is:

“any building or structure, or part of a building or structure, which is for the time being kept by the owner or occupier for the residence therein of himself, his family, or servants, or any of them: it is immaterial that it is from time to time uninhabited.

A building that is adjacent to and connected with a dwelling house by means of a passage is also deemed to be a dwelling house.

A structure would be regarded as a dwelling house if the owner lives in it, regardless of what the structure was

originally built for. In the case of *R vs. Rose*^[7] it was held that a caravan which was used by the owner as a place of residence qualified to be regarded to as a dwelling house.

Intent to Commit a Felony

Breaking into a house is not only to commit the offence of theft. It could be for the commission of other felony like murder, arson and so on. It should be noted that at the time of the breaking in, the suspect must have the intent of committing the felony. If for example, A enters a building which he believes is on fire but when he enters he carries valuables, it would not be regarded as house breaking^[8] ^[9].

Burglary

The ingredients for proving the offence of burglary are the same as ingredients required for proving house breaking. The differentiating factor is that while house breaking occurs in the daytime, burglary occurs during night time.

In the case of *Akosa vs. Commissioner of Police*^[10], it was established that the period for determination of night time for burglary was from 6.30 pm to 6.30 am. If the breaking occurs by 4 pm and the entering occurs by 7 pm it would not be regarded as burglary. So also, if the breaking occurs by 6.30 pm and it is concluded by 7 am, it would also not be qualified to be referred to as burglary.

It should be noted that the breaking and entering must not necessarily be in the same night. In the case of *R vs. Smith*^[11] the breaking was on Friday night and the entering was on Saturday night, it was regarded as burglary.

Punishment for the Offence

According to the provision of S.411 of the Criminal Code, the punishment for house breaking is 14 years while the punishment for burglary is life imprisonment.

References

^[1] S. 310 Criminal Code

^[2] *ibid*

^[3] (1954) 2 QB 292

^[4] (1967) MSNLR 137

^[5] Okonkwo and Naish: Criminal Law in Nigeria

^[6] *ibid*

^[7] (1965) QWN 35

^[8] It would only be regarded as House breaking if after committing the offence, he breaks out through another part of the building.

^[9] Okonkwo and Naish: Criminal Law in Nigeria, p 307.

^[10] (1950) 13 WACA 43

^[11] (1920) R & R 417