

**THE LAW OF ROBBERY** by Rick Libman (Carswell, 1990)

*The Law of Robbery*, written by Mr. Rick Libman, an Ontario Crown prosecutor, attempts to provide a detailed analysis of the offence of robbery as defined under the Canadian Criminal Code. In addition to reviewing the Canadian cases, including a large number of unreported decisions, the author makes extensive use of case law and statutes from other Commonwealth jurisdictions and the United States. He also refers to the work of various law reform bodies.

Under the common law, robbery was in essence theft accompanied by violence or threats of violence. In section 343, the Canadian Criminal Code defines robbery as follows:

343. Every one commits robbery who

- (a) steals, and for the purpose of extorting whatever is stolen or to prevent or overcome resistance to the stealing, uses violence or threats of violence to a person or property;
- (b) steals from any person and, at the time he steals or immediately thereafter, wounds, beats or strikes or uses any personal violence to that person;
- (c) assaults any person with intent to steal from him;
- (d) steals from any person while armed with an offensive weapon or imitation thereof.

The Canadian statute thus provides four discrete modes by which the offence of robbery can be committed. In an introductory chapter, the author provides an historical background tracing the development of the Canadian Criminal Code provisions and comparing them with statutory provisions in other jurisdictions.

A brief chapter discussing the required forms and wording of criminal informations and indictments is followed by chapters analyzing each of four subsections of section 343 of the Code in detail. The author organizes his material by breaking each subsection into its constituent words and phrases and discussing the cases which have interpreted them.

These chapters point up the difficulties of interpretation which have arisen as a result of the wording of the subsections of Section 343. Subsection a) uses the phrase "violence or threats of violence", while subsection b) refers to "personal violence". Subsection c) uses the word "assault", raising the issue of whether the Criminal Code definition of "assault" was to be applied. The result has been that differing degrees of force have been found to be required to constitute the offence, depending on the subsection under which an accused is charged.

In the subsequent chapter on *mens rea* the author states that the *mens rea* required for robbery is "the intent to steal with accompanying violence". While this is true for robbery under the common law, it is not necessarily so under the Criminal Code. As Mr. Libman

points out elsewhere, it may be that the inept pickpocket or purse snatcher is guilty of robbery, while his more skilful colleague is guilty of theft. Yet their intent may be identical. Further, it would appear that, in theory, robbery can be committed pursuant to subsection 4 without regard to whether an accused "armed" with a weapon intended or was prepared to use it.

The two following chapters review the law relating to parties to the offence of robbery, and conspiracy to commit robbery. These two chapters are little more than a series of case summaries, the facts being reviewed in detail. In at least one instance, a case summary almost a page in length is repeated.

The subsequent chapter discusses the law relating to attempts to commit robbery. While the law of criminal attempts is a difficult area to discuss in brief, the chapter contains an interesting review of cases in which robberies were foiled at various stages by police intervention.

Two specific defences to robbery, colour of right negating the intent to steal, and duress, are addressed in the succeeding chapters. Section 17 of the Criminal Code provides for a defence of duress under defined circumstances, but specifies that it is not available, *inter alia*, in the case of robbery. However, as discussed in this chapter, the common law defence of duress is available to those offenders who are parties, rather than principle offenders, and arguably, also where the offender is charged with attempted robbery. As the author notes, neither the statutory provisions nor the cases seem to provide a consistent approach to this defence.

The final chapters of the book address the problems of multiple convictions for related offences, the application of the *Keinapple* doctrine, and the treatment of included offences.

There is certainly entertainment value in the many inept and bizarre attempts at robbery which have come before the courts, but this work suffers somewhat from the author's decision to continually resummairize the facts of cases in the text; the degree of repetition seems unnecessary. Given the differing degrees of violence which will give rise to a conviction for robbery and the availability of multiple convictions arising out of the use of weapons, a chapter on the principles of sentencing which have been applied would have been interesting. As the author notes, a robbery comprised of an assault with an attempt to steal would amount to an attempt to commit robbery, attracting a lesser maximum punishment, were it not for section 343 (c). Have the courts taken this into consideration in sentencing?

This work is likely to be used primarily as a reference work by practitioners of criminal law. In this regard, it should be noted that, while the material and citations from other jurisdictions are interesting and useful, the author sometimes fails to specify when he is discussing foreign law. In some sections, statements of law derived from foreign cases

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can only be identified from the footnotes. However, as a detailed summary of the law of robbery, including many unreported cases, this work will be of substantial value as a source for practitioners.

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