

## Criminal Law Specific Crimes Case Law

### *S v Ndebele 2012 (1) SACR 245 (GSJ)*

The three accused were charged with theft for the unlawful use of electricity vending machines known as credit dispensing units that could be used to dispense pre-paid vouchers for electricity. They were alleged to have used the machines to steal electricity and electricity credits.

**Legal question:** Is electricity capable of being the object of common-law theft?

**Finding:** Yes, it can be stolen.

**Reasons for finding:** In *Ndebele* it was held that the courts have moved away from the physical handling of the property to a more abstract requirement of appropriation such as the manipulation of credit. There need not be physical removal but rather the deprivation of a characteristic and depriving the owner of a characteristic. Energy by electricity consists of electrons and the characteristic attached to electrons is energy which is consumed and is capable of theft. This case is contrary to the case of *S v Mintoor* which held that electricity is not capable of being stolen.

### *S v Gardener and Another 2011 (1) SACR 570 (SCA)*

Two chief executive officers of company A failed to disclose their interests in company B to the board of company A. Company A had bought shares in company B and as a result of this transaction X and Y secured substantial profits. They were charged with fraud and duly convicted, and appealed.

**Legal question:** Did they have the intention of defrauding company A and did their failure to disclose their interests result in actual or potential prejudice to the company?

**Finding:** The court upheld the conviction of fraud.

**Reasons for finding:** The court found that the conduct of X and Y was potentially prejudicial to company A since, inter alia, it precluded company A from considering the advantages and disadvantages of the sale and induced company A to raise the finance and pay X and Y for their interest in company B. Moreover, their conduct was deliberate since it was done to avoid proper consideration of the transaction by the board in the self-interest of X and Y (para 57). In considering the intention to cause prejudice, the court deemed it unnecessary to be more specific as to the nature of that prejudice. The court stated (at para 58) that when company directors directly withhold information material to the affairs of their company from the board of directors there is, in the absence of an explanation for such conduct which may reasonably be true, a case of fraudulent non-disclosure. That is because the company can only make decisions through a board that is properly informed.

### ***S v Mshumpa* 2008 (1) SACR 126 (E)**

A young pregnant woman (S) was 'hijacked' together with the father of the child (B). She was shot in the stomach and the baby was stillborn. B was shot in the shoulder and valuables were taken. It transpired the father of the child (B) arranged for the incident. B and M (the 'hijacker') were both charged with various offences including: attempted murder; assault; robbery; attempting to defeat the course of justice and unlawful possession of firearms. M and B were found guilty of the attempted murder of S.

**Legal question:** Can they (B and M) be charged with murder of an unborn child/ foetus?

**Finding:** No, they cannot.

**Reasons for finding:** One cannot be found guilty of the murder of an unborn child since it is not included in definition of murder. It will offend the principle of legality. If the definition of murder is to be broadened, the legislature must effect such change. The Constitution does not confer rights to nasciturus and the right to life does not extend to an unborn child. The development of common law (as allowed in Masiya-case) must be done incrementally and cautiously in accordance with dictates of the Constitution. There are practical difficulties with including the killing of an unborn child in the definition of murder (see para 59 of the judgment for the various difficulties).

### ***S v Sibiya* 1955 (4) SA 247 (A)**

X removed Y's car without his consent and took a joyride in it, intending to return it to Y. However the car overturned and landed in a donga. When the police arrived at the scene, X was still standing near the car (he did not abandon the car). X was convicted of theft.

**Legal question** - Does *furtum usus* (the mere temporary use of another's property without the intention of permanently depriving the owner) amount to theft in South African law?

**Reasons for the judgment** - The Appellate Division held that Sibiya had not committed theft because he did not have the intention to deprive Y permanently of the property. Following English law, our courts have held that the perpetrator must have the intention permanently to deprive the owner of his property. However, if X intends to deprive Y only temporarily of his property, then he still respects and recognizes Y's right to the property throughout and does not have an intention to deprive Y permanently of the property – as required for theft.