WHICH STRUCTURES DOES THE HOUSEBREAKING CRIME PROTECT?

> "Lay not up for yourselves treasures upon earth, where moth and rust doth corrupt, and where thieves break through and steal" (Gospel of St Matthew 6:19, The Holy Bible, Authorized King James Version).

1 Introduction

The origins of the housebreaking crime (for the sake of brevity this term will be used throughout this note, rather than the bulkier (but more accurate) "housebreaking with the intent to commit a crime") are inexorably bound up with the need to protect the dweller in his or her abode (see Hoctor "The Historical Antecedents of the Housebreaking Crime" 1999 *Fundamina* 97 101). From the earliest times the interest of a person in the safe and private habitation of his home has been treated reverently and regarded as deserving of special protection by the law (Dressler *Understanding Criminal Law* (1987) 223). This concern is reflected by the fact that common-law jurisdictions have typically classified housebreaking as a crime against the habitation (Perkins and Boyce *Criminal Law* (1982) 246), which implies the right to "feel secure in one's own home" (Maddan "Burglary: The Law" in Wright and Miller (eds) *Encyclopedia of Criminology Vol I* (2005) 129 130). With the broadening of the ambit of the crime (variously referred to as burglary or breaking and entering in other jurisdictions) beyond merely protecting habitation (for a discussion of the issue of an appropriate rationale for the crime see Hoctor "The Underlying *Rationale* of the Crime of Housebreaking" 1998 *Obiter* 96), differing approaches have been taken in defining the nature of the premises that can be broken into.

Thus in English law, to be a "building" within the definition of the crime (in terms of s 9(1) of the Theft Act, 1968) the structure is required to have some degree of permanence (Ormerod and Williams *Smith's Law of Theft* 9ed (2007) 257), and an inhabited vehicle or vessel is specifically included in the term "building" (s 9(4) of the Theft Act, 1968). In Canada, breaking and entering (in terms of s 348 of the Canadian Criminal Code, RSC 1985, c.C-46) include, within the understanding of a "structure" which can be broken into and entered, spaces enclosed by a fence (*R v Thibault* (1982), 66 CCC (2d) 422; and *R v Fajtl* [1986] BCJ No. 719, 53 CR (3d) 396), but not unenclosed spaces (*R v Ausland* 251 CCC (3d) 207). The position in South Africa has not been definitively resolved, although it can at least be accepted that it is incorrect to state (as do McQuoid-Mason, Lotz and Natsvlishvili *Criminal Law* (2009) 167) that the breaking into and entering can only be in respect of an immovable structure, and cannot be committed by breaking

into a movable structure. What then is the South African position regarding the nature of a "premises" which is protected by the housebreaking crime?

2 The context: *S v Mavungu*

In a recent case note (Snyman "Huisbraak Ten Opsigte van 'n Karavaan – *S v Mavungu 2009 1 SASV 425 (T)*" 2010 *THRHR* 157), Professor Snyman has once again critically examined the housebreaking crime (for which he has reserved some of his most pointed criticism – see, *eg*, "Reforming the Law Relating to Housebreaking" 1993 *SACJ* 38) in the context of the ambit of the "premises" requirement. Snyman comments on the case of *S v Mavungu* 2009 1 SACR 425 (T)), where the locus for the criminal conduct was a business selling caravans. The accused entered onto its premises, and proceeded to climb through the window of one of the caravans, where he was later discovered sleeping. The trial court rejected, as not reasonably possibly true, the accused's explanation that he had entered the caravan through the door after being chased by possible assailants (par [15]). Consequently, he was convicted of housebreaking with intent to commit an offence and trespassing. The magistrate referred the matter to the High Court for review in terms of section 304(4) of the Criminal Procedure Act 51 of 1977, requesting that the conviction should rather be described as housebreaking with intent to commit trespassing. The court (per Prinsloo J) considered this matter, as well as the further question whether a caravan could be regarded as a building for the purposes of the trespass offence (contained in s 1 of the Trespass Act 6 of 1959).

Regarding the first matter, the court noted that in terms of secion 262(2) of the Criminal Procedure Act, if on a charge of housebreaking with intent to commit a offence to the prosecutor unknown, evidence is placed before the court which establishes the crime of housebreaking with intent to commit a specific offence, the accused may be found guilty of the crime proved. A conviction of housebreaking with intent to trespass (or more specifically, with intent to contravene s 1(1) of the Trespass Act) is a possible verdict, but in the light of *R v Badenhorst* 1960 3 SA 563 (A), the nature of the trespass must be unlawful remaining rather than mere entry (par [22]-[24]). The wording suggested by the magistrate thus needed further clarification, and the reformulation had to take account of this limitation upon housebreaking liability (par [28]).

In respect of the second matter, for liability to ensue in terms of section 1(1) of the Trespass Act, it is required that the trespassory entry or remaining must occur in or on "any land or any building". In deciding whether "any building" includes a caravan the court examined the "premises" requirement in the analogous crime of housebreaking with intent to commit a crime (although it is not always appropriate to reason by analogy between these crimes – *S v Dyantyi* 2005 JDR 1009 par [10]). Having examined the relevant case authority, the court concluded, in particular in the light of the *dicta* in *S v Madyo* (1990 1 SACR 292 (E)) and *S v Temmers* (1994 1 SACR 357 (C)), that a breaking and entry into a caravan could constitute the crime of housebreaking with intent to commit a crime (par [29]-[37]). The court

proceeded to hold that just as a caravan could be regarded as "premises" for the purpose of housebreaking liability, it could be regarded as a "building" for the purposes of trespass liability (par [40]):

> "In my view, the reminder in *Madyo*, (*supra*) that a caravan is a 'house on wheels' and a 'woonwa' is good authority for the proposition that a caravan should be regarded as a 'building' for purposes of interpreting the Trespass Act".

Adopting the commonsensical approach described in *S v Madyo*, the court concluded that a "building" for the purposes of the trespass offence includes all "habitual" structures (by which it seems the court means "regular or usual" structures, in other words, all structures that are not temporary or transitory in nature) (par [43]):

> "To hold otherwise could lead to the absurd result that one can break into a caravan (as long as nothing is damaged or stolen) and sleep there with impunity because it does not amount to trespassing, and housebreaking, in itself, is not a crime …"

The conviction was consequently set aside and replaced with a conviction of housebreaking with intent to contravene section 1(1)(b) of the Trespass Act 6 of 1959, by "being in (or remaining in) the caravan, broken into, without permission" (par [45]).

3 Snyman's perspective

In typically thorough fashion Snyman (2010 *THRHR* 157) discusses the *Mavungu* case in the context of the premises requirement of the housebreaking crime. He renews his critique of the constituent elements of the crime (see his earlier criticism in (1993) *SACJ* 38), stating that elements like "breaking", "entry" and "premises" are very artificial and can give rise to differing interpretations ("baie kunsmatig, en kan tot verskillende vertolkings aanleiding gee" (157)). After setting out the details of the *Mavungu* judgment, and the relevant legal rules relating to housebreaking and trespass, Snyman proceeds to discuss the specific problem which arose in the case: on what basis breaking into a caravan should found criminal liability (159). In this regard Snyman refers to the lack of a general principle which can be applied to determine whether a particular structure or building falls within the ambit of the housebreaking crime (160). In the absence of such principle, Snyman subscribes to the working distinction developed by De Wet (*Strafreg* 4ed (1985) 366), which has been consistently followed by Snyman throughout all five editions of *Criminal Law* (as will be discussed below): between, in one category, structures used for human habitation, which may be regarded as "premises" whether movable or immovable, and, in another category, structures used for storage, which have to be immovable in order to be regarded as "premises". After making reference to two cases where the court was required to assess whether it is possible to commit the housebreaking crime in a caravan (*S v Jecha* 1984 1 SA 215 (ZH); and *S v Madyo* 1990 1 SACR 292 (E)), which he regards as being consistent with De Wet's distinction, Snyman proceeds to criticize roundly

the case of *S v Temmers* (1994 1 SACR 357 (C)), which adopted a contrary approach (161). Finding no useful guidance in the *Mavungu* decision in resolving this issue, Snyman sets out his suggested solution to this matter, consistent with the distinction proposed by De Wet.

4 The De Wet criterion

In the first two editions of *Strafreg* (1ed (1949); 2ed (1960)), the section of the book devoted to specific crimes, was authored by Swanepoel. Although there is only grudging recognition for the housebreaking crime (it being pointed out that in terms of the Roman-Dutch common law the appropriate crime was in fact aggravated theft ("inbraakdiefstal")), Swanepoel does praise some of the cases dealing with the housebreaking crime for their correct approach to the place of the breaking ((1960) 387, albeit that in dealing with the housebreaking crime they are not following pure Roman-Dutch law (!)). Notably, in the cases of *R v Johannes* (1918 CPD 488), *R v Lewis* (1929 CPD 488) and *R v Makoelman* (1932 EDL 194), where it was held that the structure or enclosed yard in question could not sustain a housebreaking conviction, Swanepoel argues that these cases were wrongly decided (387).

After the death of Swanepoel, De Wet took responsibility for the specific crimes section of *Strafreg*, and in typically caustic fashion describes the housebreaking crime as an "onding" ("monstrosity") (3ed (1975) 345). Significantly, however, whilst De Wet is very critical of the crime, he concedes the fact of its existence, and discusses it in terms of the decided case law. In relation to the "premises" requirement, De Wet surveys a number of cases relating to varying structures (350-351). He notes the convictions in respect of a tent occupied as a dwelling (*R v Thompson* 1905 ORC 127, which he regards as somewhat difficult to accept (350)); a tent wagon used as a residence (*R v Piet M'tech* 1912 TPD 1132 (in terms of Ordinance 26 of 1904 (T) – statutory housebreaking, which conviction he regards as unacceptable ("onaanneemlik"))); the cabin of a ship in dock occupied by an officer (*R v Lawrence* 1954 2 SA 408 (C)); concrete mine magazines (used for storing explosives – *R v Botha* 1960 2 SA 147 (T)); an immovable glass display cabinet (*S v Ndhlovu* 1963 1 SA 926 (T)); and a room in a building (*R v Coetzee* 1958 2 SA 8 (T); and *S v Tshuke* 1965 1 SA 582 (C) – although the nature of "premises" was not argued on appeal in this case). De Wet notes the following acquittals, which resulted from prosecutions for intrusion into: a fowl run made of iron tubes and wire netting (*R v Charlie* 1916 TPD 367 (statutory housebreaking, in terms of Ordinance 26 of 1904 (T)), a result which De Wet regards as self-evident); a railway truck (*R v Johannes* 1918 CPD 488); the Governor-General's Box at the Rosebank Showground (*R v Lewis* 1929 CPD 43); an enclosed yard (*R v Makoelman* 1932 EDL 194); a wardrobe (*R v Steyn* 1946 OPD 426); and a built-in wardrobe (*S v Meyeza* 1962 3 SA 386 (N)). On the basis of these cases, De Wet distils the criterion set out above (the discussion of this issue in the fourth and final edition of *Strafreg* is identical to that in the third edition). It bears noting that De Wet does not propose this criterion as

workable or desirable – he sees the distinction as unjustified and artificial (351: "Vir hierdie verskille is daar geen verantwoorde verklaring nie. Die hele gedoente bly gekunsteld ...").

As noted above, the distinction identified by De Wet has been approved by Snyman in *Criminal Law* (1ed (1984) 478 fn 19; 2ed (1989) 526 fn 19; 3ed (1995) 509; 4ed (2002) 542; and 5ed (2008) 550). It has also been cited with approval in *S v Ngobeza* (1992 1 SACR 610 (T) 613H-J), where breaking into an enclosed yard was held not to constitute the housebreaking crime.

5 In search of a principle – the cases

How useful is the distinction drawn by De Wet? The court in *S v Temmers* (*supra*) was not impressed with this approach (360f-g):

> "We do not agree with Professor Snyman's view that in the case of structures used, not for human habitation, but for the storing of goods, the structures must amount to an immovable before it can be broken into and entered in the sense required to support a charge of housebreaking with intent to steal. It has not been explicitly laid down that that is so, as far as we are aware, and Professor Snyman's opinion to the contrary rests upon an inference drawn by De Wet and Swanepoel ... from examples to be found in the cases ... There is a good deal of casuistry to be found in the cases and the distinctions drawn are sometimes arbitrary and illogical."

Later in the judgment, the court iterates this view in even stronger terms (361f-g):

> "What we find quite unacceptable, is the arbitrary insistence that where a structure is not used for human habitation, it has to be immovable in the technical sense of the common law before any breaking or entry into it to commit an offence can fall within the ambit of the crime of housebreaking with intent to commit an offence."

More than a decade ago, the present writer argued that the determination of the premises requirement in housebreaking ought to be founded upon a common-sense test, as to whether the structure in question may fall within the ambit of the crime, followed by an assessment of the intent of the owner/occupier/user in relation to the structure, which should be ultimately determinative of whether there should be liability for the housebreaking crime (Hoctor "The 'Premises' Requirement in the Crime of Housebreaking" 1998 *Obiter* 127). Without repeating any of the discussion contained in this earlier piece, this approach will be applied in the context of the relevant case law, in order to assess the validity of Snyman's argument. The analysis will proceed in two phases, first assessing the cases De Wet applied to formulate the distinction, and then discussing the subsequent cases.

5 1 Assessing the cases underpinning the De Wet distinction

No disagreement arises in respect of the fact that the housebreaking crime applies to all structures used for habitation, whether movable or immovable

in nature (Snyman (2008) 550; De Wet (1985) 366-7; Burchell *Principles of Criminal Law* 3ed (2005) 862; and Milton *South African Criminal Law and Procedure Vol II: Common-law Crimes* 3ed (1996) 803-4). Nor should it be otherwise, for the practical effect of restricting the ambit of the crime to immovable structures would be to deprive those who live in informal dwellings of the protection of the crime – as was stated in *S v Madini* ([2000] 4 All SA (NC) 20 25b-c: "Sight should not be lost of the fact that a substantial number of South Africans, particularly those in informal settlements, live in shanties ... [t]hey also require the protection of the law".

What of structures used for storage? Whilst De Wet, supported by Snyman, are of the view that only immovable structures used for storage found liability for housebreaking, Gardiner and Lansdown (*South African Criminal Law and Procedure Vol II: Specific Offences* 6ed (1957) 1719) take a different approach. At first sight they seem to place the emphasis on the *nature* of the premises, describing the requirement as premises "such as are, or might ordinarily be, used for human habitation or for the storage or housing of property of some kind". However, they proceed to assert (1719) a further qualification: that

> "[p]rovided the premises are devoted, or capable of being devoted, to the purposes before mentioned, it is of no concern that they are constructed of material which does not ordinarily compose a house or building".

As will be discussed below, this definition forms the basis of the discussion of the premises requirement by Hunt and Milton, and Burchell.

Thus the *purpose* may ultimately be determinative. Some judgments have taken this approach. In *R v Johannes* (*supra* 488) the court required the breaking to be "into some structure in the nature of a house or a store, into some structure permanently occupied" (citing *R v Thompson* (*supra*) as authority for this test). Whilst the Gardiner and Lansdown definition – *sans* qualification – is quoted and applied in *S v Meyeza* (*supra* 386-7) and *S v Ndhlovu* (*supra* 927D) (which distinguishes and doubts the correctness of the *Meyeza* verdict), in *R v Botha* (*supra* 149F-G) the court seems to acknowledge both the nature and the purpose of the structure in its reasoning:

> "Die stewige strukture onder bespreking het aan al die kenmerke van 'n huis beantwoord en is wel as stoorkamers gebruik. Bloot die feit dat mens nie daarin kon gaan nie kan die essensiële natuur van die struktuur nie verander nie."

Other cases excluding liability for the housebreaking crime do not provide much assistance: *R v Charlie* (*supra*) interprets a statutory definition of "premises" (it is interesting that Bristowe J would have found the iron-and-wire fowl run to be "premises" if not constrained by the definition); in *R v Makoelman* (*supra*) an enclosed yard (which cannot be regarded as any form of "premises" in terms of the common-law crime (unlike the statutory formulation – *R v Lushaba* 1956 4 SA 370 (N)), was broken into; and in *R v Steyn* (*supra* 429) the court unhelpfully simply states that breaking into a wardrobe "obviously" cannot be taken into account.

There are, however, a number of cases where, in conflict with the terms of the distinction, the courts have focused on the use or purpose of the structure. Thus, in *R v Thompson* (*supra*) the court followed Matthaeus in respect of the definition of *domus* (*De Criminibus ad Lib XLVII et XLVIII Dig Commentarius* (1644), in translation *On Crimes – A Commentary on Books XLVII and XLVIII of the Digest* (translated by Hewett and Stoop (1994)) in Book 48, Title IV, IV: "For a house is not established by nature but by the intention of men" (or, as translated in *R v Thompson*: "... the question is not determined by the nature of the house but by the use to which it is put"). Maasdorp CJ defines the test as "the permanency of the occupation, the use to which the structure broken into is put" (128), on this basis confirming the conviction of housebreaking in respect of a tent used as a dwelling. In *R v Piet M'tech* (*supra*) (in respect of a statutory housebreaking charge) the test applied (confirming a conviction in respect of a tent-wagon) was the use of the structure (1135, 1136). Whilst the court in *R v Lawrence* (*supra* 409F-G) cites both the Gardiner and Lansdown definition – *sans* qualification – and *R v Johannes* (as well as *R v Thompson*), it is significant that the conviction is based on the ordinary use of the ship's cabin (409). Similarly, in *R v Coetzee* (*supra*) it was held that the office was "used for the storage or housing of property of some kind" (10).

It bears noting that in *R v Lewis* (*supra*), that part of the court's reasoning for the court's acquittal on the housebreaking charge was that the Governor-General's Box was "not used for habitation or to store goods" (44).

5 2 Subsequent cases

In *S v Jecha* (1984 1 SA 209 (ZHC)) the verdict of the trial court, that the breaking into a caravan did not constitute the housebreaking crime, was confirmed. Though this verdict *prima facie* seems to fit with the De Wet distinction, the basis for the decision was the lack of evidence either that "the caravan was used periodically as a house even for holiday camping purposes or ordinarily used to keep the camping gear in it" (218B-C). If such evidence was present, the caravan would have been regarded as a "premises" for the purposes of the housebreaking crime (218C). The court (citing Hunt) stressed the need for a "degree of permanence about [the] purpose for which the structure is used" (217E), explaining that while a structure such as a house, being designed for human habitation, would naturally be regarded as premises, a tent used for human habitation or for storage of property would also be so regarded if the facts indicate such use (217F-H). Once again, the issue of the use or purpose of the structure is determinative (217H):

> "If the very nature of the premises broken into is not decisive of the question of the use to which it is put, then further evidence may be necessary to resolve the matter to show what it is in fact used for or for what it might ordinarily be used."

The judgment further makes reference to both the *Thompson* judgment, and the passage from Matthaeus on which it is based.

It is worth adverting to the work of Hunt at this point. In the first edition of *South African Criminal Law and Procedure Vol II: Common-law Crimes* (1970) 670-1, Hunt adopts the first part of the Gardiner and Lansdown definition, and proceeds to add "three relevant and closely-related factors", to wit:

> "*First*, whether what has been broken and entered is a structure (or part of a structure) in the nature of a house or store-room. *Secondly*, whether the structure is, or might ordinarily be, used for human habitation or the storage of property. *Thirdly*, whether there is some degree of permanency about this purpose to which the thing is devoted."

This explanation has remained in the work (under the subsequent authorship of Milton, see 3ed (1996) 803; and also features in Burchell 862).

Snyman comments that the reason for the acquittal in *Jecha* appears to be that the court proceeded from the assumptions that (i) since the caravan in this case still had its wheels it ought to be regarded as a movable, and (ii) that if the caravan (being a movable, since it still had wheels) was merely used for the storage of goods, it could not found housebreaking liability, since a structure used for this purpose is required to be immovable (2010 *THRHR* 160-1). Unfortunately these comments are entirely unsupported by the judgment.

The question of whether breaking into a caravan could found liability for the housebreaking crime arose once again in *S v Madyo* (*supra*). Citing with approval the approach adopted in the *Lawrence* and *Jecha* cases, the court stressed that the focus of the test was that there be "some degree of permanence about the purpose for which the premises are used and not ... that there should be some degree of permanence in the user thereof for that purpose" (294d-e). This reasoning obviously mirrors the exposition of Hunt, and indeed, citations from his work feature throughout the discussion (293h and 294h). Kannemeyer JP reasoned that just as the permanence of the purpose for which a seaside cottage is designed or intended, *viz* human habitation, is not undermined by irregular occupation, so too a caravan, would fall into the same category (294e-f). The fact that a caravan is a "house on wheels", according to the court "does not in any way prevent it from being a house for purposes of housebreaking" (294g-h). This "common-sense" approach does not

> "require evidence as to user to be produced where the premises in question consist of what normally is used, when it is used, as a human habitation, whether it be a house fixed to a foundation or a house on wheels" (294j-295a).

The court thus confirmed the conviction, and, it is evident, would have convicted the accused in the *Jecha* case, applying this reasoning. Snyman comments that this approach can entirely be reconciled with the criterion suggested by De Wet (2010 *THRHR* 161). If a caravan is always to be classified as a dwelling, as opposed to a place of storage, then indeed this must be so.

As noted above, the De Wet criterion was accepted in *S v Ngobeza* (*supra*), although the facts of the case – all that was actually broken into was

an enclosed yard – meant that nothing turned on its application. However, as indicated above, in *S v Temmers* (*supra*) the court strongly demurred in respect of this criterion. The court placed the issue of what constituted "premises" in the context of the development of the crime, noting that whilst dwellings "however movable and however flimsy" were accepted as such, where a structure was used for the purpose of housing goods, courts have been "more concerned to draw distinctions" (360i-361a). Acknowledging that extracting "a truly consistent, coherent and logical principle from the cases", or formulating one which will be satisfactory across all possible factual scenarios, is not easy, the court sets out what it deems to be the crucial distinction in this regard, and elaborates on its application (361b-e):

> "[T]he real distinction is between, on the one hand, a structure or *quasi*-structure in which the goods are kept or stored *to safeguard them from the elements or misappropriation*, or *placed for functional reasons*, and on the other hand, structures or quasi-structures (like packing cases or containers) in which goods are *placed for ease of storage or conveyance*. Thus, to break, with the intention of stealing, into a modern steel container lying on the wharf-side prior to being loaded onto a vessel for conveyance, will not fall within the ambit of the crime. Similarly, if that container is *used* as a storeroom, or as an office, or as a shop, it will *acquire a character* which makes it appropriate to regard a breaking and entry into it as conduct properly falling within the particular mischief which the common-law crime of housebreaking with the intent to commit an offence is there to prevent. So too, in our view, should breaking and entering into a caravan *used*, not as a mobile shop, but as a static shop situated in a particular position in a particular place with a relative degree of permanency."

As the italicized (by the present writer) words indicate, the focus in the test favoured in *Temmers* is on the purpose or use to which the structure is put. The court acknowledges that "nice distinctions can be postulated that will confound broad generalizations of this kind and that the dividing line may sometimes be fine", but that this should not prevent structures "which do plainly fall within the mischief sought to be prevented" by the housebreaking crime, within it (361e-f; notably the court indicates that the discussion of Hunt in this regard is "helpful").

Whilst Snyman has been roundly critical of the *Temmers* decision, criticizing the criterion it proposes for its "vagueness" ((2008) 551), it is notable that other recent cases are consistent with the approach adopted in this case. In *S v Lekute* (1991 2 SACR 221 (C) 222g) the court states that the structure in respect of which the housebreaking crime can be committed does not need to be immovable (although this does not directly address the question of whether this applies to places of storage). Furthermore, in *S v Abrahams* (1998 2 SACR 655 (C)), where in a decision remarkable for its lack of consideration of the case law, (Snyman (2008) 550 argues (correctly, it is submitted) that this decision was wrong) the court held that a breaking into a tent could not found criminal liability for the housebreaking crime, the purposive approach was nevertheless supported. The court held that in the absence of evidence indicating that the tent was intended to be *used* as a dwelling or a storage space, there could not be a conviction (656i). In *S v Mavungu* (*supra*) the court cited *Jecha*, *Lawrence*, *Madyo* and *Temmers* with approval, before concluding (par [40]) that in respect of the

housebreaking crime a caravan should be regarded as a dwelling (following *Madyo*, a "house on wheels"), and that (citing *Temmers*) even for structures not used for human habitation it does not matter whether the structure is movable or immovable.

6 Concluding remarks

In the light of Snyman's consistent support for the distinction suggested by De Wet, it is noteworthy to examine his response to the *Mavungu* case. Although Snyman (not without some justification) regards the judgment as inconclusive, given its apparent reliance on both De Wet and *Temmers*, he ultimately concludes that *Mavungu* was correctly decided (162). Given that this judgment explicitly approves of *Temmers*, it is interesting to examine this conclusion a little further.

Snyman argues that the "common-sense" approach adopted in *Madyo* should be followed in assessing whether a structure constitutes "premises" for the purposes of the housebreaking crime (2010 *THRHR* 162). On this basis, a caravan, which is normally intended to serve as a habitation, would be regarded as premises, whether movable or immovable (2010 *THRHR* 162). Consequently, he concludes, *Mavungu* was correctly decided. It appears from this reasoning that Snyman has adopted a purposive approach to the inquiry into premises, but this is not so. Snyman proceeds to argue that a caravan can be used for the purpose of storing goods, and that in such a case, albeit that the purpose is reasonably permanent, the caravan ought *not* to be regarded as premises – particularly if the caravan still has its wheels (2010 *THRHR* 162). The position would be different, Snyman argues, if the caravan has been changed into an immovable structure through the removal of its wheels (2010 *THRHR* 162; whether a caravan becomes an immovable when its wheels are removed, as Snyman argues was the case in *Temmers* (4ed (2008) 552), is certainly questionable – can it really be said that such a caravan necessarily accedes, through *inaedificatio*, to the land on which it is placed, in terms of its nature and purpose? (See Van der Merwe "Things" in Lee and Honoré *Family, Things and Succession* 2ed (1983) par 323.)

This reasoning is difficult to follow – if a caravan is by virtue of its ordinary purpose, human habitation, regarded as premises, then why should it matter that it is being used for the storage of goods for any length of time? And why should the issue of whether a caravan is movable or immovable be significant, except that this classification is important to fit into the distinction (of De Wet) supported by Snyman? To add to the difficulty, Snyman has criticized *Abrahams* (*supra*), where it was held that a tent attached to a caravan could not be regarded as premises, as incorrectly decided (4ed (2008) 550):

> "The tent was probably attached to the caravan and was used for human habitation or the storage of goods. The fact that the 'walls' of this structure were of canvas and not of brick or some more solid material, is immaterial."

It is, however, difficult to square this criticism with the criterion Snyman supports, *viz* that places of storage are required to be immovable before they can be regarded as premises (a point clearly reaffirmed by Snyman 2010 *THRHR* 163).

In conclusion, the approach adopted by Hunt in fact reconciles more truly with the case law than does the De Wet/Snyman distinction. It is submitted that the test employed by Hunt is correct in all respects if the nature of a structure is regarded to be a function of its purpose, which is ultimately determinative of whether one is dealing with premises which properly fall within the protection of the housebreaking crime. It is further submitted that the proposed test in *Temmers* is worthy of support in its adoption of the purposive approach.

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