



THEORETICAL AND PRACTICAL ASPECTS OF QUALIFYING PICKPOCKETING: ANALYSIS OF THE OBJECTIVE AND SUBJECTIVE ELEMENTS

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Abstract. The article addresses complex issues in qualifying pickpocketing. It argues for the priority of the subjective criterion when assessing the "secrecy" of the act. It examines the transformation of a secretly initiated act into robbery or assault. The analysis establishes that the crime is completed upon the "real possibility" to dispose of the property, and the "empty pocket" scenario ("attempt on an unfit object") must be qualified as an attempt. It is also substantiated that the subjective side is characterized only by direct intent and a mandatory mercenary motive; without this motive (e.g., revenge), the act cannot be qualified as pickpocketing.

Keywords: pickpocketing, qualification, objective side, subjective side, secrecy, mercenary motive, completed crime, real possibility, criminal attempt, attempt on an unfit object, empty pocket.

Introduction

The objective element of the pickpocketing offence consists in the perpetrator's covert and active seizure of another person's property, the resulting material damage to the victim, and the causal link between the conduct and the consequence. As a crime with a material corpus delicti, its objective element encompasses three mandatory signs: (1) a socially dangerous act; (2) a socially dangerous consequence; and (3) a causal link between them.

The disposition of Article 169 of the Criminal Code (CC) identifies only the method of committing this offence — covert misappropriation (theft),¹ and it is precisely this "secrecy" element, together with the determination of the moment of completion, the distinction from attempt, and the establishment of a mercenary motive, that constitute the central and most problematic aspects of qualifying pickpocketing. The purpose of this article is to analyse these contested aspects of the objective and subjective elements of pickpocketing.

Research methods

The study employs the formal-legal (dogmatic) method, interpretation of criminal law norms, analysis of resolutions of the Supreme Court Plenum,² and legal scholarship by A.M.

¹Ўзбекистон Республикасининг 1994 йил 22 сентябрдаги 2012-XII-сонли Қонуни билан тасдиқланган Ўзбекистон Республикасининг Жиноят кодекси // Ўзбекистон Республикаси Олий Мажлисининг Ахборотномаси. – 1995. – № 1. – 3-м. – URL: <https://lex.uz/docs/111453> (мурожаат санаси: 09.11.2025).

²Ўзбекистон Республикаси Олий суди Пленумининг 1999 йил 30 апрелдаги 6-сонли "Ўзгалар мулкани ўғрилик, талончилик ва босқинчилик билан талон-торож қилиш жиноят ишлари бўйича суд амалиёти тўғрисида"ги қарори // Ўзбекистон Республикаси Олий суди ахборотномаси. – 1999. – № 2. – URL: <https://lex.uz/docs/1443984> (мурожаат санаси: 09.11.2025).

Fetisov,³ N.A. Karpova,⁴ M. Gelfer,⁵ M.Zh. Kaibzhanov,⁶ A.I. Boytsov,⁷ R.V. Kilimbaev⁸ [14], M.Kh. Rustambaev,⁹ and B.V. Volzhenkin.¹⁰ The study also analyses specific cases drawn from the judicial practice of the district/city courts of Karshi, Samarkand, Yashnobod, Fergana, and Mirobod.

Results

1. The Problem of Assessing the "Secrecy" Criterion

Legal theory recognises two criteria for assessing secrecy: the objective criterion (actual non-observation) and the subjective criterion (the perpetrator's belief that "no one sees me"). When these two criteria conflict, law-enforcement practice treats the subjective criterion as prevailing.

"If the perpetrator believes that he is committing the act covertly ... yet his actions are being observed by the victim or other persons, the act must be qualified as theft (or pickpocketing)."

Moreover, even where third parties witness the seizure of property but fail to comprehend its criminal nature, the act is still classified as pickpocketing. For example, in a case examined by the Karshi City Court,¹¹ witness S. observed accused V. removing a telephone from the pocket of victim B. but assumed they were "joking with each other." Accused V., however, believed he was acting covertly. The investigator correctly qualified the act as pickpocketing on the basis of the subjective criterion, notwithstanding the presence of a witness.

2. Disclosure of Covert Actions (Transformation of the Offence)

³Фетисов А.М. Уголовно-правовая характеристика хищения : дис. ... канд. юрид. наук : 12.00.08 / Фетисов Артур Михайлович. – Ростов-на-Дону, 2005. – С.113.

⁴Карпова Н.А. Уголовная ответственность за кражу, совершенную из одежды, сумки или другой ручной клади, находившихся при потерпевшем : дис. ... канд. юрид. наук : 12.00.08 / Карпова Наталия Анатольевна. – Москва, 2006. – С.68.

⁵Гельфер М.А. Преступления против личной собственности граждан : (Учебное пособие) / М.А. Гельфер. – Минск : Изд-во М-ва высш., сред. спец. и проф. образования БССР, 1961. – 36 с. URL: https://rusneb.ru/catalog/010003_000061_125c6a4e45dd313f341b3b30a31de86e/. Мурожаат санаси: 01.08.2024.

⁶Кайбжанов М.Ж. Предупреждение краж в Республике Казахстан : дис. ... канд. юрид. наук : 12.00.08 / Кайбжанов Марат Жолмагамбетович. – Москва, 2017. – 231 с.

⁷Бойцов А.И. Преступления против собственности. – СПб.: Издательство «Юридический центр Пресс», 2002. – С.314. (775 с). URL: https://library.nlu.edu.ua/POLN_TEXT/KNIGI-2013/Boitsov_2002.pdf. Мурожаат санаси: 01.08.2024.

⁸Килимбаев Р.В. Общественная опасность и критерии ее оценки // Вестник института: преступление, наказание, исправление. – 2019. – Т. 13, № 3. – С. 330–335. – DOI: 10.46741/2686-9764-2019-13-3-330-335.

⁹Рустамбаев М.Х. Ўзбекистон Республикасининг Жиноят кодексига шарҳлар. Умумий қисм / М.Х. Рустамбаев. – Тошкент : «Yuridik adabiyotlar publish», 2021. – Б.178. (784 б.)

¹⁰Волженкин Б.В. Модельный Уголовный кодекс для государств - участников СНГ / Б.В. Волженкин // Уголовное право. – 1998. – № 1. – С. 100–106. – URL: <https://www.elibrary.ru/item.asp?id=22765354>. Мурожаат санаси: 16.08.2024.

¹¹Жиноят ишлари бўйича Қарши шаҳар суди архиви материаллари (Фуқаро В. ва Б. иши).



The most complex qualification issue arises when a covertly initiated act becomes openly apparent. If, upon realising that the victim has noticed him, the perpetrator abandons the property and flees, the act is qualified as attempted pickpocketing.

If the perpetrator, aware that he has been detected, continues to seize the property and makes off with it, the offence loses its "covert" character and transforms into open theft (robbery).¹² In a case from the practice of Samarkand City Court, accused Kh. was removing a wallet from victim Y.'s bag when Y. noticed and grabbed his hand. Kh. forcibly pushed Y. away and fled with the wallet. The investigating authority correctly qualified this under Article 166 of the CC.¹³

Where the perpetrator employs violence dangerous to life or health during this process, the act escalates to robbery.

3. The Problem of the Moment of Completion of the Offence

Correct distinction between a completed offence and an attempt is essential. Legal theory offers three competing views on this question — held respectively by A.M. Fetisov;¹⁴ N.A. Karpova and M. Gelfer;¹⁵¹⁶ and M.Zh. Kaibzhanov, S.V. Vinnik and A.I. Boytsov.¹⁷¹⁸ The Supreme Court Plenum adopts the third view:

"Theft of another's property ... is deemed completed from the moment the perpetrator has seized it and acquired the real opportunity to use or dispose of it at will ..."

Difficulties arise in practice when interpreting the concept of "real opportunity." In a case before Yashnobod District Court, pickpocket A. took the telephone from victim Sh.'s bag, took one step, and was apprehended just as he was about to pocket it.¹⁹ This does not constitute an attempt. The "real opportunity" does not mean that the property has been actually used (e.g., sold); it arises at the moment the property leaves the victim's lawful possession and passes into the perpetrator's unlawful control. The perpetrator's immediate apprehension at the scene

¹²Ўзбекистон Республикасининг 1994 йил 22 сентябрдаги 2012-XII-сонли Қонуни билан тасдиқланган Ўзбекистон Республикасининг Жиноят кодекси // Ўзбекистон Республикаси Олий Мажлисининг Ахборотномаси. – 1995. – № 1. – 3-м. – URL: <https://lex.uz/docs/111453> (мурожаат санаси: 09.11.2025).

¹³Жиноят ишлари бўйича Самарқанд шаҳар суди архиви материаллари (Фуқаро Х. ва Й. иши).

¹⁴Фетисов А.М. Уголовно-правовая характеристика хищения : дис. ... канд. юрид. наук : 12.00.08 / Фетисов Артур Михайлович. – Ростов-на-Дону, 2005. – С.113.

¹⁵Карпова Н.А. Уголовная ответственность за кражу, совершенную из одежды, сумки или другой ручной клади, находившихся при потерпевшем : дис. ... канд. юрид. наук : 12.00.08 / Карпова Наталия Анатольевна. – Москва, 2006. – С.68.

¹⁶Гельфер М.А. Преступления против личной собственности граждан : (Учебное пособие) / М.А. Гельфер. – Минск : Изд-во М-ва высш., сред. спец. и проф. образования БССР, 1961. – 36 с. URL: https://rusneb.ru/catalog/010003_000061_125c6a4e45dd313f341b3b30a31de86e/. Мурожаат санаси: 01.08.2024.

¹⁷Кайбжанов М.Ж. Предупреждение краж в Республике Казахстан : дис. ... канд. юрид. наук : 12.00.08 / Кайбжанов Марат Жолмагамбетович. – Москва, 2017. – 231 с.

¹⁸Бойцов А.И. Преступления против собственности. – СПб.: Издательство «Юридический центр Пресс», 2002. – С.314. (775 с). URL: https://library.nlu.edu.ua/POLN_TEXT/KNIGI-2013/Boitsov_2002.pdf. Мурожаат санаси: 01.08.2024.

¹⁹Жиноят ишлари бўйича Яшнобод туман суди архиви материаллари (Киссавур А. ва фуқаро Ш. иши).



does not affect the finding that the offence is completed, provided he has managed to take the property into his possession.

4. The "Empty Pocket" Problem (Attempt on an Unfit Object)

Based on the analysis of criminal case files examined, the situation most frequently giving rise to investigative errors is the "empty pocket" or "empty bag" scenario: the pickpocket reaches into the victim's bag but finds no valuables. In practice, some officers mistakenly refuse to open a criminal case or incorrectly apply Article 26 of the CC (voluntary renunciation of the commission of a crime).

In criminal law theory, this situation is referred to as an "attempt on an unfit object." The perpetrator's intent is fully formed and the act has been executed, but the criminal consequence has not materialised due to circumstances beyond the perpetrator's control (the absence of the object). The perpetrator has not "voluntarily renounced" the crime — he has simply been unable to complete it. Accordingly, such conduct must be qualified as attempted pickpocketing under Part 2 of Article 25 and sub-paragraph "a" of Part 2 of Article 169 of the CC. R.V. Kilimbaev likewise emphasises that the social danger of such acts is by no means low.²⁰

Results (subjective element)

1. Form of Guilt and Intent

Pickpocketing cannot be committed by negligence or with indirect intent. This offence is committed exclusively with direct intent. In accordance with Part 3 of Article 21 of the CC, the perpetrator fully understands his actions (reaching into the pocket), their unlawfulness, the covert manner of their commission, and the material damage caused to the victim — and desires precisely this consequence (property damage).²¹

Pickpocketing offences are frequently committed with indefinite intent (reaching into a pocket hoping to "find something"). In such cases, the act is qualified according to the actual value of the property stolen. In a case before Fergana City Court, defendant M., acting with indefinite intent, stole 50,000 soums and was charged under sub-paragraph "a" of Part 2 of Article 169 of the CC.²² Had he, with the same indefinite intent, stolen 130,000,000 soums (a large amount), the act would have been qualified under the more serious provision — sub-paragraph "v" of Part 3 of Article 169 of the CC.

2. Motive and Purpose

Pickpocketing, like all other forms of theft, requires a mercenary motive and purpose as a mandatory criminal law element. As M.Kh. Rustambaev notes, a mercenary purpose is the perpetrator's aspiration to obtain material gain through the unlawful and gratuitous

²⁰Килимбаев Р.В. Общественная опасность и критерии ее оценки // Вестник института: преступление, наказание, исправление. – 2019. – Т. 13, № 3. – С. 330–335. – DOI: 10.46741/2686-9764-2019-13-3-330-335.

²¹Ўзбекистон Республикасининг 1994 йил 22 сентябрдаги 2012-XII-сонли Қонуни билан тасдиқланган Ўзбекистон Республикасининг Жиноят кодекси // Ўзбекистон Республикаси Олий Мажлисининг Ахборотномаси. – 1995. – № 1. – 3-м. – URL: <https://lex.uz/docs/111453> (мурожаат санаси: 09.11.2025).

²²Жиноят ишлари бўйича Фарғона шаҳар суди архиви материаллари (Судланувчи М. ва жабрланувчи К. иши).



appropriation of another's property.²³ B.V. Volzhenkin likewise regards this as the defining feature of theft.²⁴

Where a person covertly takes another's property not with a mercenary intent but for another purpose (e.g., as a joke or in revenge), the *corpus delicti* of pickpocketing is absent. In a case before Mirobod District Court, defendant A., acting with the purpose of revenge against victim B., covertly removed B.'s telephone from his pocket without the latter noticing, and immediately smashed it on the ground.²⁵ The investigator correctly evaluated this act and, given the absence of a mercenary purpose (desire for enrichment) and the presence instead of a vengeful motive, qualified the conduct under Article 173 of the CC.

Discussion and conclusions

The analysis demonstrates that, in qualifying the objective element of pickpocketing, the subjective criterion must prevail when assessing "secrecy", and the concept of "real opportunity" must be applied when determining the moment of completion. The "empty pocket" scenario must be qualified not as voluntary renunciation but as criminal attempt. From a subjective standpoint, the existence of a mercenary purpose is a mandatory element, and its absence precludes classification of the act as pickpocketing.

In order to remedy these deficiencies, it is proposed to supplement Paragraph 2 of Resolution No. 6 of the Plenum of the Supreme Court of the Republic of Uzbekistan dated 30 April 1999 with paragraphs of the following content:

"When qualifying the objective element of offences involving the theft of another's property, and in particular the offence of theft (pickpocketing), the following rules shall be observed:

1. In distinguishing theft (pickpocketing) from robbery, reliance shall be placed on the perpetrator's intent — that is, his **subjective assessment** of his own actions. If a person believes he is acting covertly, without the knowledge of the victim or third parties, yet his actions are in fact observed by other persons — whether or not those persons comprehend their criminal nature — the act shall be qualified, on the basis of the perpetrator's covert intent, as theft (pickpocketing).

2. Where, in the course of committing theft (pickpocketing), the perpetrator becomes aware that his actions have been detected by the victim or third parties, the act shall be qualified according to his subsequent conduct.

If, upon realising that his actions have been detected, the perpetrator desists from seizing the property and flees the scene, the act shall be qualified as attempted theft (pickpocketing).

If, upon realising that his actions have been detected, the perpetrator continues to seize the property openly, the act shall be qualified as robbery.

²³Рустамбаев М.Х. Ўзбекистон Республикасининг Жиноят кодексига шарҳлар. Умумий қисм / М.Х. Рустамбаев. – Тошкент : «Yuridik adabiyotlar publish», 2021. – Б.178. (784 б.)

²⁴Волженкин Б.В. Модельный Уголовный кодекс для государств - участников СНГ / Б.В. Волженкин // Уголовное право. – 1998. – № 1. – С. 100–106. – URL: <https://www.elibrary.ru/item.asp?id=22765354>. Мурожаат санаси: 16.08.2024.

²⁵Жиноят ишлари бўйича Миробод туман суди архиви материаллари (судланувчи А. ва жабрланувчи Б. иши).

If, during this process, violence is used or the threat of violence is employed, the act shall be qualified as robbery or aggravated robbery, depending on the nature of the violence.

3. The offence of theft (pickpocketing) is deemed completed from the moment the perpetrator covertly seizes another's property and acquires a real opportunity to use or dispose of it at will.

It should be noted that a "real opportunity" is determined not by the perpetrator's actual use of the property (its sale or concealment), but by the moment at which the property leaves the victim's lawful possession and passes into the perpetrator's control, such that this opportunity arises objectively.

The perpetrator's immediate apprehension at the scene after seizing the property shall not preclude a finding that the offence is completed, provided he has managed to take the property into his possession.

4. Cases in which the perpetrator's actions were directed at committing theft (pickpocketing) but the offence was not completed because no valuables (the subject matter of the offence) were found in the victim's pocket, bag, or other hand luggage ('attempt on an unfit object') shall be treated as an attempt committed due to circumstances beyond the perpetrator's control.

Such conduct shall be qualified not under Article 26 of the CC (voluntary renunciation of the commission of a crime) but as attempted pickpocketing under Article 25 and sub-paragraph 'a' of Part 2 of Article 169 of the CC."

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