**Crimes Against Property**

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HIGH-STAKES TAX DEFENSE & COMPLEX CRIMINAL DEFENSE

* 1. Theft offenses
		1. Larceny
			1. Elements
				1. Trespassory,
				2. Taking and,

Requires the assertion of dominion and control over the property by a D who does n/ have lawful possession

* + - * 1. Carrying away (“asportation”),

However slight! The distance required for the asportation need n/ be substantial – a slight distance will do

Example: F was a passenger on the subway. She placed her pocketbook on the seat next to her and began to zip up her jacket. S was standing in front of F and holding onto the hand rail. Seeing the pocketbook unattended, he suddenly grabbed it and tried to run away. As he did so, F became frightened and fell backwards. She struck her head against the window and was knocked unconscious. In the commotion, S dropped the pocketbook and ran out of the subway empty-handed. S should be found guilty of larceny b/c sufficient asportation occurred when S took the pocketbook off the seat

* + - * 1. Of the personal property,

Property covered

Tangible personal property

Lost or mislaid property

Gas and electricity

Contraband

Property n/ covered

Fixtures

Nonpayment of services

Real property

Abandoned property

Wild animals

Intangible personal property

* + - * 1. Of another,
				2. W/ the intent to permanently deprive the owner thereof
			1. Timing requirement
				1. The taking and carrying away (asportation) must concur in time w/ the intent to permanently deprive (mens rea)
				2. Example: R worked as a deliveryman for the Rolling Rock Brewery. On Christmas Eve, R was loading his truck at the brewery when he decided to take a case of beer home for the holidays. He unloaded a case of beer off his truck and hid it underneath the loading dock. R planned to return after work and put the case in his car. When R returned from his delivery route, he had a change of heart and returned the beer that he had hidden to the warehouse stock room. Is R guilty of larceny? Yes. First, when R took the case of beer off the truck and hid it underneath the loading dock, a taking and carrying away occurred. Second, at the time R hid the case of beer underneath the loading dock he intended to take it home rather than return it to the stock room. The larceny was complete at the moment R hid the case of beer w/ the intent to take it home. Indeed, R intended to permanently deprive Rolling Rock Brewery of the case of beer.
			2. Mistake of fact is a defense
		1. Robbery
			1. Elements
				1. A trespassory,
				2. Taking and,
				3. Carrying away,
				4. Of the personal property,
				5. Of another,
				6. W/ the intent to permanently deprive the owner thereof,
				7. \* The taking must be accomplished by force, violence, threat, or intimidation, and

Robbery requires that the taking be done by means of violence or intimidation. The elements of force and fear (violence or intimidation) are alternatives. If there is force, there need be no fear, and vice versa. The word “fear” in connection w/ robbery does n/ so much mean “fright” as it means “apprehension.”

Where mention is made of a dangerous weapon being brandished, then an aggravated robbery charge is in order

Example of threat: “Your money or your life!”

The threat must be of imminent harm, not of future harm

The victim must be *actually* frightened by D into parting w/ his property at the time of the taking. As long as the victim is placed in fear, the fear may be baseless

Example: Quite intoxicated, G left a bar around midnight. He was staggering down the street when H approached him from behind. H took out a cucumber, stuck it against G’s back and said, “I gotta gun…give me your wallet or I’m gonna kill ya.” Frightened, G fainted and fell to the pavement. H reached into G’s pocket and stole his wallet. Here, G was clearly frightened. H is guilty of robbery despite the fact that he threatened G w/a non-lethal cucumber

* + - * 1. \* The taking must be from the person or presence of the victim
			1. Distinguish: Yanking a necklace is robbery. Picking a pocket is larceny
			2. Merger: Larceny as well as assault and battery merge into robbery. So D cannot be guilty of larceny and robbery for the same criminal transaction
		1. Embezzlement
			1. Elements
				1. The fraudulent conversion or misappropriation

The conversion must amount to a serious interference w/ the owner’s rights in such a way as to sell, damage, or withhold the property. Merely moving the property a short distance will n/ do. A serious interference w/ one’s ownership rights to property

Embezzler gets only possession, not title. Embezzler need not obtain a benefit. Example: Trustee of trust fund

* + - * 1. Of the property of another

Covers misappropriation of either personal or real property

* + - * 1. By one who is already in lawful possession

Larceny distinguished: Embezzlement involves misappropriation by a D who has lawful possession (as opposed to custody)

* + 1. Obtaining property by false pretenses
			1. Elements
				1. A false representation of
				2. A present or past material fact by D
				3. Which causes the victim to pass title to his property

Property includes money, goods, wares or merchandise

* + - * 1. To D
				2. Who knows his representation to be false
				3. And intends thereby to defraud the victim
			1. Anytime money changes hands, think false pretenses
			2. Examples: Securities fraud, con games, monetary schemes
			3. False promise to do something in the future cannot ground liability for false pretenses
		1. Larceny by trick
			1. Involves property (doe not include fixtures)
			2. Accomplished by lies
			3. Title never passes
		2. Receiving stolen property
			1. Elements
				1. The receiving of stolen property,
				2. Known to be stolen (actual or constructive notice)
				3. W/ the intent to permanently deprive the owner
			2. The stolen character of the property and the receiver’s receipt of the property must coincide in point of time. In other words, if the property has been recovered by the owner or by the police, it has lost its status as stolen property, and there can be no crime. as soon as that property comes back into the possession of the police, the property loses its stolen status
	1. Crimes against the habituation
		1. Burglary
			1. Elements
				1. The breaking

Actual: The breaking can be achieved by an actual breaking, involving use of force, or the creation or enlarging of an opening (but entering through an open door or a partially open window is insufficient)

Constructive: Breaking may also be achieved by a constructive breaking where entry is gained by fraud, misrepresentation of identity, or intimidation. D rings the front doorbell of V’s house. V asks, “Who’s there?” Misrepresenting his identity, D responds, “Domino’s.” Believing her son had ordered a pizza, V opens the door. D punches V, enters her home and steals her pocketbook

* + - * 1. And entering

Open door: Entry through an open door without the requisite intent where D later opens an inside closet door intending to steal is sufficient

Insufficient entry: Breaking to exit, rather than to gain entry, is insufficient

Entry of D’s person: Entry is achieved by placing any portion of the body inside the structure

Insertion of a tool: Insertion of a tool is sufficient for an entry if it is used to accomplish the felony, but insufficient if it is used merely to gain entry (inserting a tool merely to unlock the door)

* + - * 1. Of the dwelling house
				2. Of another
				3. In the nighttime

Many jurisdictions have eliminated the nighttime requirement

* + - * 1. W/ the intent to commit a felony or larceny therein

D must have the intent to commit a felony or larceny therein at the time of entry

The intent to commit a felony inside must be simultaneous w/ the breaking and entering

Example: E went to R’s home and rang the doorbell. When R opened the door, E pushed him aside and entered the home. E slapped R’s face and said, “You better pay S his money or I’ll come back and break your legs.” As E was leaving, he saw R’s Rolex lying on a table in the hallway. E took the watch and left. No burglary occurred b/c E did n/ have the intent to commit a larceny or felony at the time of the breaking and entering. His intent was to commit an assault which at CL was a misdemeanor

* + 1. Arson
			1. General intent crime
			2. Elements
				1. The malicious

Malice includes an intentional or reckless burning – not a mere negligent or accidental burning

* + - * 1. Burning

A mere blackening of the surface is n/ enough. There must be some charring (slight burning) of the premises

Doesn’t apply to smoke damage, water damage, or to explosions

* + - * 1. Of the dwelling

A place of business is a dwelling house if it is usually slept in by the proprietor (S and his family resided in the second-floor apartment of the convenience store)

* + - * 1. Of another

If you own the dwelling house, you can’t be charged w/ arson