

**October 2005 Baby Bar  
Question 2 – Criminal Law**

1. **With what crime or crimes can Betty be reasonably charged and what defenses, if any, does Betty have available to her? Discuss.**

**State v Betty**

**Common Law Burglary**

Burglary, at common law, is the night time breaking and entering into the dwelling house of another with the specific intent to commit a felony therein.

The facts are silent as to the time of day. However, since the store is closed it will be assumed to be night time. Thus, night time can be shown.

Betty stopped by the store where she worked as a checker and used her key to unlock the store's door. Since Betty was given a key so she could enter the store, she gained access with the owner's consent. Thus, there was no breaking when she entered the store. However, the store owner will argue Betty was given permission to use the key for the purpose to open the store during business hours only, and not to enter after closing to take money. Since Betty exceeded the store owner's consent, there was a breaking.

Betty used the key to open the door and went in the store. Thus, there was an entry. Betty entered a store. Thus, not a dwelling house of another.

At the time Betty entered into the store, she went to the cash register and took \$200. As discussed infra, she intended to commit a felony therein, i.e., a larceny as discussed infra. Thus, she had the specific intent commit a felony therein.

In light of the above argument, not all of the elements of a common law burglary are present. Thus, Betty will not be charged with common law burglary.

**Modern Law Burglary**

Modern law burglary is the trespassory entry into a structure to commit an unlawful act.

Betty entered the store to take \$200. Although Betty was given a key, she exceeded the store owner's consent by entering for a purpose unrelated to work and at a time unrelated to business hours. Thus, her entry was trespassory. Betty entered the store, which is a structure. As discussed above, Betty had the specific intent to commit a crime in the store when she entered.

Therefore, Betty will be charged with modern law burglary.

**Larceny**

Larceny is the trespassory taking and carrying away of the personal property of another with the intent to permanently deprive.

Betty took the \$200 from the cash register. Betty did not have the owner's consent to take the money. Moreover, she was not entitled to the money. Thus, there was a trespassory taking. Further, when Betty left the store with the money, she carried away the store owner's property. Thus, the personal property of another. Given that Betty intended to spend the money at an expensive nightclub and had no apparent way of paying it back, she had the intent to permanently deprive the store owner of the money.

Betty will counter that at the time of entry she was intending to return the \$200 before the store opened the next day. However, she also stated that money was owed to her. Taking these contradictory positions indicates that Betty never really intended to return the money.

Thus, she will be charged with larceny.

### **Mistake of Fact**

As a general rule mistake of fact is not a defense where there is an ignorance or mistake as to the fact.

Betty claimed she was owed \$200 from her employer. Betty claims she was entitled to take the money since she was owed the money. However, even if Betty is under a mistaken belief of fact that she was entitled to take the money, in fact no such right existed.

Therefore, mistake of fact is no defense.

### **Embezzlement**

Embezzlement is the fraudulent conversion of the rightfully entrusted property.

Betty was a checker at the store. Her job is to tender the money given to her by the customers and to give any change due to the customer. Betty took the \$200 out of the cash register after business hours and she was off duty. Thus, she was not rightfully entrusted with the property evident by the fact the store was closed and she was off duty.

Thus, Betty will not be charged with embezzlement.

- 2. With what crime or crimes can Michael be reasonably charged and what defenses, if any, does Michael have available to him? Discuss.**

### **State v Michael**

#### **Accomplice Liability – Principal In Second Degree**

Accomplice liability arises when someone knowingly and intentionally abets or incites a crime that is performed by another. An accomplice is a principal in the second degree when present at the scene of the crime when it is performed by the actual perpetrator.

After business hours, Betty asked Michael to stop by the store where she worked and then entered the store with a key provided by the store's owner. Michael knew the store was closed but did not question Betty as to why she wanted to stop at the store. Although Michael may have entered the store without knowledge that Betty intended to steal money, when Betty took the money he did not believe that she was entitled to take it. Thus, when he took possession of the money after Betty stole it he knowingly and intentionally aided Betty in the theft. Moreover, since he was with Betty when she took the money, he was present when the crime was performed by the perpetrator, Betty.

Thus, Michael will be charged as a principal in the second degree.

### **Receiving Stolen Property**

The receiving of stolen property is where a defendant receives property knowing that it is stolen.

After Betty took the \$200 out of the register she gave it to Michael. Thus, Michael received stolen property. Not only did Michael believe that Betty was not entitled to take the money, but he was correct in his belief. Thus, Michael received property knowing that it is stolen.

Therefore, Michael will be charged with receiving stolen property.