

Question 1

Vicky operates a successful retail computer sales business out of the garage of her house. Vicky told Dan that she intended to go on vacation some days later. Dan subsequently informed Eric of Vicky's intended vacation and of his plan to take all of her computers while she was away. Eric told Dan that he wanted nothing to do with taking the computers, but that Dan could borrow his pickup truck if Dan needed it to carry the computers away.

While Vicky was scheduled to be away on vacation, Dan borrowed Eric's pickup truck. Late that night, Dan drove the truck over to Vicky's house. When he arrived, he went into the garage by pushing a partially open side door all the way open. Vicky, who had returned home early from her vacation, was awakened by noise in her garage, opened the door connecting the garage to the house, and stepped into the garage. When she saw Dan loading computers into the back of the truck, she stepped between Dan and the truck and yelled, "Stop, thief!"

Dan pushed Vicky out of the way, ran to the truck, and drove off. He immediately went to Fred's house where he told Fred what had happened. In exchange for two of the computers, Fred allowed Dan to hide the truck behind Fred's house.

What crimes, if any, have Dan, Eric, and/or Fred committed? Discuss.

Answer A to Question 1

I. Dan's Crimes

By plotting to break into Vicky's home to steal her computers and then actually doing so, Dan committed the crimes of burglary, larceny, robbery, and battery. He may have also conspired to commit burglary and/or larceny with Eric.

Burglary

At common law, burglary was defined as the unlawful breaking and entering of the dwelling house of another at night with the intent to commit a felony therein. Most modern jurisdictions have amended the elements to include burglary of any structure and have not limited it to nighttime burglaries.

Here, Dan committed burglary when he entered Vicky's home to steal the computers.

Breaking and Entering

Burglary requires that the burglar break and enter into the structure. "Breaking" constitutes any form of forcible entry, including pushing open a partially open door. "Entry" requires physical entry by any part of the burglar's body or a tool under his control.

Here, Dan pushed a partially open side door to V's garage fully open in order to gain entry. This is evidence of breaking. Further, Dan entered the garage, which is a part of Vicky's residence. Thus, the elements of breaking and entering are satisfied.

Structure of Another

Dan entered into Vicky's garage, both the location of her retail sales business and part of her home (her dwelling place). This is sufficient to constitute a protected structure for purposes of burglary, which belonged to another (Vicky). Therefore, this element is met.

With the Intent to Commit a Felony Therein

Burglary requires the intent to commit a felony (or a misdemeanor in some jurisdictions) inside the structure at the time of the breaking and entering.

In this case, Dan had the intent to commit larceny of Vicky's computers when he entered her garage. He had previously expressed this desire to Eric, and nothing in the facts suggests he changed his mind prior to entering. In fact, his actions of actually taking the computers demonstrates that the intent was present.

Therefore, Dan committed burglary.

Larceny

Larceny at common law was the trespassory taking and carrying away of the personal property of another with the intent to permanently deprive the victim of the property.

Trespassory

Trespass is the unprivileged, nonconsensual invasion of another's protected space.

Here, Dan did not have the consent of Vicky to enter the garage at night and therefore his decision to do so was a trespass. While Dan might argue it was not trespassing because Vicky opened her business up to the public and her business was located in the garage, this argument will fail because he clearly did not have implied or actual authorization to force his way into the garage at night when Vicky was not operating her business and was in fact supposed to be on vacation.

Asportation

Asportation is the taking and carrying away of another's property. For larceny purposes, even slight movement of the property is sufficient.

In this case, Dan took computers from Vicky's garage, loaded them into his truck and drove off with them. Thus, he moved the computers and this element is satisfied.

Personal Property of Another

The computers were the tangible, moveable personal property of Vicky and her business. The computers did not belong to Dan and he had no claim of right to the computers. Therefore, this element is satisfied.

Intent to Permanently Deprive

At the time of the taking, the defendant in a larceny case must have the intent to permanently deprive the owner of the property.

Here, Dan had the intent to permanently deprive because he planned to steal the computers and presumably sell them for value. Nothing in the facts indicates a contrary intent on Dan's part, so this element is satisfied.

Therefore, Dan also committed larceny.

Robbery

Common-law robbery requires that the defendant take and carry away the personal property of another from their person or presence by force or threat of force, with the intent to permanently deprive.

The requirements that Dan took and carried away the computers belonging to Vicky with the intent to permanently deprive have been described above. The remaining elements follow.

Person or Presence

Robbery requires that the items be taken from the victim's person or presence, which has been broadly defined to include anything the victim is holding or, indoors, items from the same room that the victim was in at the time of the taking.

Here, Vicky was present in the garage when Dan loaded some of her computers into the truck. In fact, she stepped between Dan and the truck as he was attempting to flee with the computers, so it suggests that she was immediately present when her property was taken. Therefore, this element is likely satisfied because the computers were taken from within a very close proximity to Vicky. As such, they were taken from her immediate presence.

Force or Threat of Force

A robber must use physical force or threaten to use physical force to commit robbery.

Here, as he was attempting to flee, Dan physically pushed Vicky out of the way. Shoving another person is physical force, which Dan used to accomplish and complete his taking of Vicky's computers.

Dan will argue that he did not accomplish the taking by force because he already had the computers in his possession before Vicky confronted him. He will defend by saying that the force was only used to effectuate his escape, and not the robbery itself. However, because the robbery would not have succeeded but for the physical force to the victim, it's likely to satisfy the requirement of forcible robbery.

For those reasons, Dan also robbed Vicky.

Battery

Battery is the intentional unlawful application of physical force to another person. Battery is a general intent crime, meaning there is no requirement that the defendant intend to cause injury to the victim. He must only intend to commit the physical action that constitutes the force.

Here, Dan physically shoved Vicky out of the way as he was escaping. He intended to complete the shoving action because it allowed him to get Vicky out of his way and proceed to the truck. Therefore, Dan committed a battery.

Conspiracy to Commit Burglary/Larceny

Conspiracy is an inchoate offense that required at common law an agreement between two or more people to accomplish the same unlawful objective with the intent to complete that objective. Many jurisdictions require proof of an "overt act" to establish conspiracy. In a majority of states, only bilateral conspiracies are permissible, but a minority of states recognize the idea of a "unilateral conspiracy," where the defendant

believes he is conspiring with another "guilty mind" who in fact shares a different objective.

The prosecution may attempt to argue here that Dan conspired with Eric to rob Vicky because he discussed his plans with Eric in advance and Eric loaned Dan his truck for purposes of the robbery. However, as will be addressed below, it is not clear that Eric had the intent for the robbery to be completed. If Eric lacked the requisite intent to accomplish the robbery, then Dan can only be convicted of conspiracy in a jurisdiction that recognizes unilateral conspiracy.

II. Eric's Crimes

Conspiracy to Commit Burglary/Larceny

The issue is whether Eric had the intent to enter into an agreement with Dan for an illegal purpose (the burglary/larceny) and if Eric intended for the illegal object to transpire as planned. Here, the facts suggest that Eric lacked that intent, so he is likely not guilty of conspiracy.

The prosecution will argue that Eric's decision to loan his truck to Dan knowing that Dan intended to use it to burglarize Vicky's business is evidence that Eric conspired to commit that crime. However, Eric specifically told Dan that he wanted "nothing to do with taking the computers." Although the prudence of nonetheless letting Dan use his truck to commit the robbery is questionable, the facts do not prove that Eric intended to participate in the burglary or that he shared Dan's goal for the burglary to succeed. He may have been indifferent to the theft being committed or even favorable to the idea, but this is not persuasive evidence that he intended for Dan to succeed in the burglary. Since the prosecution will have the burden to show intent beyond a reasonable doubt, this is unlikely to be a persuasive argument.

Therefore, it's likely that neither Dan nor Eric could be convicted of conspiracy.

Accomplice Liability

An accomplice is someone who aids, abets, counsels or encourages the principal to commit a crime with the intent that the principal succeed. A majority of jurisdictions

hold accomplices liable for all reasonably foreseeable crimes that the principal committed.

Burglary and Larceny

Here, Eric was likely an accomplice to the burglary and larceny committed by Dan, and he should be convicted of those offenses. By offering to let Dan use his truck to carry away the computers after he stole them, Eric aided Dan by giving him a getaway vehicle. Without Eric's participation in loaning Dan his truck, it's not clear that Dan would have been able to commit the crimes. Therefore, if it was foreseeable that Dan would commit burglary and larceny, Eric is liable therefor.

In this case, Eric knew that Dan intended to enter Vicky's business and take her computers. Therefore, he was personally informed of Dan's intent to commit larceny and burglary. In fact, he specifically told Dan that he could use Eric's truck "if Dan needed it to carry the computers away." Therefore, Dan is liable as an accomplice to burglary and larceny.

Robbery

Eric will argue he is not an accomplice to the robbery of Vicky because it was unforeseeable that Vicky would be home and therefore that Dan would take anything from her person or presence. He will claim that he thought Vicky was on vacation, and that therefore, the most that Dan could be guilty of is burglary and/or larceny.

On balance, however, this argument is likely to fail. Eric had no personal knowledge of Vicky's travel plans, and by agreeing to lend Dan his truck for the purposes of escaping with Vicky's computers, he assumed the risk that Dan might have erred in determining Vicky's travel plans. Further, because the business was in Vicky's garage and therefore on her property, it would not be unforeseeable that someone might be either on Vicky's property for business purposes or that someone else besides Vicky was living there. As such, the presence of another person was reasonably foreseeable, and so was the robbery of the computers from that person's presence.

Eric is therefore guilty of robbery as an accomplice.

Battery

Similarly, Eric will argue that it was not reasonably foreseeable that Dan would commit battery against Vicky because he didn't even know that Vicky would be present. For the reasons discussed above, this argument will likely fail. Committing a home invasion always carries with it inherent risks that someone will be present, and breaking into a business carries similar concerns. It was foreseeable that Vicky or another person might be there during the burglary, and therefore, that Dan might use force against them in order to effectuate his escape.

As such, Eric is guilty as an accomplice to battery.

III. Fred's Crimes

Accessory After the Fact

Most jurisdictions will label an individual who aids, abets, counsels or encourages a criminal in avoiding apprehension to be an "accessory after the fact" if they did not play any role in the crimes before they happened. Such a defendant is an accomplice, but is generally only punished for his own behavior in obstructing justice rather than the crimes of the principal.

Here, Fred knew that the computers Dan brought to his home were stolen from Vicky by Dan. Nonetheless, in exchange for two of them, he agreed to let Dan hide his truck on Fred's property. This action aided Dan in covering up the crime and aiding detection. Hiding the getaway vehicle that Vicky had seen Dan driving away increased the chances that Dan would get away with the theft of her property, and therefore Fred acted as an accessory after the fact.

Receipt of Stolen Property

If the jurisdiction in this case recognizes knowing receipt of stolen property as a criminal offense, Fred is likely guilty of that crime as well.

Dan specifically informed Fred that the computers were stolen, but Fred agreed to take them in exchange for hiding Dan's truck. Therefore, the scienter requirement is

met here because Fred had firsthand knowledge of the computers' stolen status but agreed to take them into his possession.

Answer B to Question 1

Dan's criminal liability:

Burglary:

Burglary is the breaking and entering at nighttime into the dwelling house of another with the intent to commit a felony therein.

Breaking and Entering:

A person must physically enter the dwelling house of another to commit a burglary. Here, Dan entered into the garage of Vicky's house by pushing a partially open side door all the way open. Although he did not literally break anything to enter into the garage because the door was already open, this element is still met. Only the slightest movement is required to "break" into the house. The door need not be locked either. Thus, by pushing the partially opened door to the garage open and subsequently entering the garage, Dan committed a breaking and entering.

At nighttime:

Although modern statutes have eliminated the requirement that a burglary be committed at night, the common law crime of burglary required that the burglary happen at night. Here, the facts indicate that Dan drove over to Vicky's house at nighttime. Thus, the common law element and any modern statutory elements are met.

Dwelling house of another:

The common law definition of burglary required that the breaking and entering be of the dwelling house of another, that is, where the person lived and slept. Modern statutes have expanded this element to include any structure such as an office building. Here, Dan broke into the garage of Vicky's house. Vicky did not sleep in her garage, but she did conduct her computer business out of her garage and frequently spent time in there. Additionally, the garage was connected to the house by the door that Vicky entered when she heard the noise. Thus, the garage is part of Vicky's dwelling house, and this

element is met under the common law definition of burglary. The element is also met under a modern statutory definition because a garage would be considered a structure.

Intent to commit a felony therein:

A person must have an intent to commit a felony inside the dwelling house at the time that they committed the breaking and entering. Here, when Dan learned that Vicky was going away on vacation, he informed Eric that he planned to take all of her computers. Thus, Dan intended to commit larceny, analyzed below, once he broke into Vicky's house. He had this intent at the time he pushed the partially open side door. Thus, Dan had the requisite intent to commit a felony once inside the garage, and his intent was simultaneous with his breaking and entering.

Because Dan broke and entered into Vicky's garage, at nighttime, with the intent to commit a larceny, he has committed burglary.

Larceny:

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

Trespassory taking and carrying away:

A person must take the personal property from the possession of another and move the property, if only the slightest bit. Here, Dan loaded Vicky's computers into the back of the truck. The computers were in Vicky's possession because they were stored in her garage as part of her retail computer sales business. Thus, Dan has met the element of a trespassory taking and carry away

Personal Property of another:

Here, the computers belonged to Vicky as she ran a retail computer business out of her garage. Thus, this element is met.

Intent to Permanent Deprive:

A person must intend to permanently deprive the victim of the possession of the personal property or act knowing that their actions will result in a substantial risk of loss. Dan intended to take all of her computers, which he told Eric. Although the facts do not indicate what he was going to do with the computers once he took them, it is unlikely that he was going to return them to Vicky, especially after he pushed her out of the way and drove off with them. Thus, Dan acted with the intent to permanently deprive Vicky of the computers. Because all the elements for larceny are met, Dan committed larceny when he took Vicky's computers.

Robbery:

Robbery is the trespassory taking and carrying away of the personal property of another by the use or threat of force from the person of another. Here, Dan took the computers from Vicky's garage and loaded them into his truck meeting the requirement of a trespassory taking and carrying away. The computers were Vicky's personal property, which she stored in her garage. Although Dan thought Vicky was away when he entered the garage, Vicky heard him and stepped into the garage as Dan was loading the computers into the back of the truck. She stepped in between Dan and the truck, at which point Dan pushed her. Although the computers were not on Vicky's person, the computers were in the immediate area. When she yelled at Dan, he pushed her by using force. Therefore, Dan used force to take the computers from the area in Vicky's immediate control. Because of the use of force when he took Vicky's computer, he has committed robbery as well.

Battery:

Battery is the unlawful application of force on the person of another, committed with the intent to cause the application of force to another. Here, Dan pushed Vicky out of the way when she stepped in between him and the truck. This was the unlawful application of force on Vicky. He acted with the intent to push Vicky out of the way because he was trying to move her to escape. Thus, Dan committed a battery as well.

Eric's Criminal Liability:

Conspiracy:

A conspiracy is the agreement of two or more person for an unlawful objective, with the intent that the unlawful objective be obtained. Additionally, statutes now include that an overt act be committed in furtherance of the conspiracy. Here, Dan told Eric of his plan to take all of Vicky's computers while she was away on vacation. Eric told Dan that he wanted nothing to do with the theft although he let Dan borrow his truck knowing Dan would use the truck to take the computers away. Eric did not agree with Dan to commit the burglary of Vicky's home. He did not have the same unlawful as Dan. Although he handed Dan his keys, which would qualify as an overt act, he did not have the intent to burglarize Vicky's home and steal her computers. Thus, he did not enter an agreement with Dan for the unlawful purpose of stealing from Vicky. Eric is not liable for conspiracy.

Accomplice Liability:

An accomplice to a crime aids, encourages, counsels, or abets a person committing the crime, with the intent that the person commit the target crime. Here, Eric gave Dan his keys to his pickup truck so that Dan could use the truck to move the computers. This was aid to the principal, Dan, who actually committed the burglary because Dan was able to move the computers once he could use Eric's truck. Although Eric wanted nothing to do with Dan taking the computer away, he told Dan that he could borrow his truck if he needed it to carry the computers away. Thus, although Eric did not want to actually take part in the burglary, he acted knowing that burglary would take place. He knew that Dan would use the truck to burglarize Vicky's house. Eric had the requisite intent for accomplice liability. Because he both aided Dan in committing the crime against Vicky, and acted with the intent to aid Dan, Eric is liable as an accomplice.

Vicarious Liability for the Target Crime:

An accomplice is liable for the crimes committed by the principal if the principal's crimes were foreseeable. It was completely foreseeable that once Eric gave Dan the keys to his car, Dan would steal all of Vicky's computers and Dan would use Eric's truck to move them. Additionally, it was foreseeable that Vicky might be home even though she told Dan that she would be on vacation; it is possible that her vacation plans had to be cancelled, as it turned out. If Vicky or anyone else was in the house, it was foreseeable

that Dan would use some measure of force to take the computers. Thus, Eric is liable for Dan's crimes of burglary, larceny, robbery and battery because all of these crimes were foreseeable once Eric gave Dan his keys to his truck knowing Dan would try and steal the computers.

Fred's Criminal Liability:

Accessory after the fact:

Under the common law, accomplices were liable as accomplices in the first degree or in the second degree based on how they aided the principal and when their aid occurred. Modernly, a person who aids a felon in his escape is liable as an accessory after the fact. This is a separate crime, and an accessory is not liable for the principal's target crime. Here, Dan immediately went to Fred's house after he drove off from Vicky's house. He immediately told Fred what he had done. Thus, Fred knew that Dan was a felon and that he was trying to escape after he stole Vicky's computers. He aided Dan because he allowed Dan to hide the truck behind Fred's house. This would make it harder for the police to spot that truck that Vicky would report, and thus help Dan in his escape. Fred is liable as an accessory after the fact. Unlike Eric who acted as an accomplice, Fred's liability as an accessory does not mean that he is also liable for the separate crimes that Dan committed.

Receipt of Stolen Property:

Receipt of stolen property requires that the person receive, buy, or accept property knowing that the property was stolen. Here, Dan immediately told Fred what he had done once he arrived at Fred's house. Fred was aware that the computers belonged to Vicky, and that Dan had just unlawfully taken them from Vicky's garage. When Fred accepted two of the stolen computers in exchange for allowing Dan to hide his truck behind Fred's house, he accepted the property knowing that it was stolen from Vicky. Thus, Fred is criminally liable for the crime of receipt of stolen property.

Question 2

Doctor performed surgery on Perry's spine to insert a metal rod designed by Bolton, Inc. (Bolton). Shortly after the surgery, Perry developed severe back pain at the location where the rod was inserted. Within the applicable statute of limitations for a tort action for negligence, Perry sued Doctor in federal district court, alleging that she was negligent in using Bolton's rod for the kind of back condition from which he suffered. Personal jurisdiction, subject matter jurisdiction, and venue were proper.

During a deposition, Perry's attorney asked Doctor to state whether she had performed any other spine surgeries using Bolton's rods and, if so, whether any of those surgeries had resulted in complications. Doctor's attorney objected to the questions on the ground that the information requested had nothing to do with whether Doctor was negligent as to Perry, and Doctor refused to answer. After the attorneys properly met and conferred concerning Doctor's refusal, Perry's attorney filed a motion to compel Doctor to answer the questions.

Shortly after the statute of limitations had run, Perry learned through a newspaper article that Bolton had been sued by several patients who alleged that they suffered severe back pain after Bolton's rod was inserted into their spines during surgery. Perry immediately sought and obtained leave to amend his federal complaint to join and include a claim against Bolton, alleging that it had negligently designed the rod. Bolton immediately filed a motion to dismiss Perry's claim against it on the ground that the statute of limitations had already run.

Perry also learned that Doctor had lost a lawsuit brought by another patient with a back condition like his who had also alleged negligence by Doctor for inserting Bolton's rod into his spine. Perry filed a motion for summary judgment against Doctor on the basis of preclusion.

1. How should the court rule on Perry's motion to compel Doctor to answer? Discuss.
2. How should the court rule on Bolton's motion to dismiss Perry's claim on the ground that the statute of limitations had run? Discuss.
3. How should the court rule on Perry's motion for summary judgment? Discuss.