

Question 2

Michael and his girlfriend Betty were going to an expensive nightclub. On their way to the club Betty asked Michael to stop by the store where she worked as a checker. Michael knew the store was closed but didn't question why she wanted to stop. When they arrived at the store they both got out of the car. Betty used her key to open the store's door. They both went in. Betty went to the cash register and took \$200, intending to return it before the store opened the next day. Michael saw her take the money. They then left the store.

When they got outside Michael asked Betty why she took the \$200 from the cash register. Betty told him that her employer owed her money and that she was taking it so that they could have fun that evening. Michael did not believe that Betty was entitled to take the money. Betty gave Michael the \$200 and he put it in his pocket.

In fact, Betty was not entitled to take money from the cash register and she did not return the \$200 the next day. The store's security system had filmed Betty's and Michael's actions and both Betty and Michael were arrested.

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

Answer A to Question 2

2)

Question 2 - Criminal Law

Crimes against Betty

Issue 1 - Can Betty be charged with Burglary?

Burglary in common law is the breaking and entering [into] the dwelling of another with the intent to commit a felony. Modern law has relaxed many of these elements. A breaking is no longer required, opening an unlocked door or window is sufficient. The building does not have to be a dwelling[;] it can be an office. And in some jurisdictions an intent to commit any crime including misdemeanors is sufficient.

Here we have Betty entering the locked store where she worked as a checker. While [she] did have access, she may not of [sic] been authorized to unlock the door and enter outside of normal working hours. If not, then she did commit the breaking and entry requirement element when she unlocked the door and entered the store. Under modern law, even though this is a store, it would be sufficient for the dwelling element. Finally, her taking the \$200 which she intended to do would constitute a felony, larceny.

Betty has several defenses she can argue here. If the law in this jurisdiction follows the strict common law definition of burglary, the store is not a dwelling place[;] therefore this element is not satisfied and there is no burglary.

She can argue consent, by having a key and access to the store as an employee, she can argue that the owner has consented to her entering the store.

She can also argue that she had no intent to commit a felony. To do this she would have to convince the jury that she believed that the money was already owed to her and she was simply retrieving what was already hers.

Considering all of these facts she will be charged with burglary.

Issue 2 - Can Betty be charged with Larceny?

Larceny is the trespassory taking of the personal property of another with the intent to permanently deprive them of it.

Betty entered into the owner[']s store, and took \$200 of the owner[']s money. Whether or not she intended to permanently deprive the owner of [it] will be determined by the jury[;] therefore the elements needed to charge Betty of Larceny are there in the facts.

She will argue that the money was owed to her and therefore she was entitled to retrieve

it, however the facts indicate that she was not entitled to the money.

She will also argue that there was no trespassory taking. Since she was authorized as an employee as a checker with a key to the store she was in legal possession of the money and therefore the trespassory taking element of Larceny is not satisfied.

Finally she can argue that she did not intent [sic] to permanently deprive the owner of the money. Here the facts are not as clear as to whether or not she intended to keep the money. The facts state that she did intend to return it, but again it[']s a matter for the jury to decide.

Most likely Betty will be charged with larceny.

Issue 3 - Can Betty be charged with Embezzlement?

Embezzlement is a larceny of personal property in which the actor is in legal possession of.

If Betty is allowed the defense in the larceny charge, of already being in possession of the money in the store due to her status as a checker and not simply a cleaning person or stocker, she can be charged with embezzlement, if it can be proven that after taking the money she intended to permanently deprive the owner of it.

Her defense here would be to show that she was going to return it and not permanently deprive the owner of it.

Issue 4 - Can Betty be charged with Larceny by continuing trespass?

Another option in larceny, if Betty did in fact did [sic] intend to return the money, however she later decided to keep it, is to charge her with Larceny by continuing trespass.

Her defense here would be that she did in fact intend to return it and that between the taking and the time of her arrest there was insufficient time for her to do this.

Crimes against Michael

Issue 1 - Can Michael be charged with Accessory to the crime?

An accessory before the fact is one who helps or encourages another to commit a crime. An accessory after the fact is one who helps one, whom he knows has committed a crime, to keep from being arrested or prosecuted.

Here Michael drove Betty to the store when the store was closed[,] coupled with the fact that Betty took money he didn't believe belonged to her, it may be shown that he should have known she was committing a crime and he was helping her.

His defense [is] lack of intent to help[.]

Issue 2 - Can Michael be charged with Receiving stolen property?

Receiving stolen property is a crime when the actor[,] knowing that the personal property has been stolen, accepts the property into his possession with the intent to permanently deprive the owner of it.

He didn't believe the money belonged to [B]etty, therefore it must be stolen. He accepted the money and put it in his pocket, and he didn't return nor intend to return it, thereby intending to permanently deprive the owner of it.

Defenses -

Mistake in fact - no intent to permanently deprive the owner

No knowledge that the money was stolen

Answer B to Question 2

2)

1. State v. Betty

Solicitation

Requesting, urging or tempting another to commit a crime, with the specific intent that the solicitee commit a crime.

While Betty's asking Michael "to stop by the store where she worked as a checker" would be considered her requesting or urging him to commit a crime, since as discussed below, at that point she did not have the specific intent to commit any crime, or she was mistaken as to the actions she was taking, her asking Michael to come along would not be considered a solicitation.

Conspiracy

An agreement between two or more people to commit a crime with the specific intent that the crime be committed.

When Betty asked Michael to stop by the store where she worked, and Michael did so when he knew the store was closed and didn't question why she wanted to stop, this was not an agreement to commit a crime because (discussed infra) at this point Betty did not intend to commit any crime and Michael further did not agree to anything.

Thus, no conspiracy.

Burglary

A trespassory breaking and entering into the dwelling house of another, in the nighttime, with the specific intent to commit a felony therein.

When Betty stopped by the store that she worked as a checker on the way to the nightclub, and used her key to open the store's door, she did not commit a trespassory or wrongful entry, since as a checker, she had been entrusted with the keys. If Betty had the requisite mens rea for the crime of burglary (discussed below), the entering would have been considered wrongful by virtue of the fact that she entered by fraud, or for reasons not reasonable [sic] related to her employment. As such, the fact that Betty entered the store with her own keys even after store hours, would not constitute a wrongful entry. While we may reasonably infer that it was the nighttime since she and Michael were "going to an expensive night club", since the store is not a dwelling house used for sleeping purposes, common law burglary does not apply.

Statutory Burglary

Entry into any structure, at any time, with the specific intent to commit any crime or misdemeanor within.

Modernly, a burglary does not require that the structure be used for sleeping purposes. Because of this, entering into a store[,] at any time, would satisfy the structure requirement. However, since Betty went to the cash register and took \$200 “intending to return it before the store opened the next day”, she did not have the specific intent to commit a felony therein, namely the felony of larceny, since she did not intend to deprive the store of the money permanently.

Thus, Betty may not be charged with either common law or statutory burglary.

Larceny

Larceny is the trespassory taking and carrying away of the personal property of another with the specific intent to permanently deprive, steal, or cause a substantial risk of loss to the owner.

When Betty went to the cash register and “took \$200”, she obtained control and dominion on the personal property of the store. Furthermore, when she left the store with the money, she committed asportation of the money. The money was the personal property of the store. However, since Betty told Michael that “her employer owed her the money and that she was taking it so that they could have fun that evening”, she lacked the requis[ite] mental state for the crime of larceny as she did not have the specific intent to permanently deprive.

Wrongful Trespass Doctrine

Although Betty may not have had the specific intent to permanently deprive when she committed the actus reus, the physical act of removing the money from the store, under the Wrongful Trespass Doctrine, there need not be concurrence of actus reus and mens rea, if the mens rea is formed later. In this case, since Betty was actually “not entitled to take the money from the cash register and she did not return the \$200 the next day[“], there need not be the concurrence of physical and mental state and the court may deem Betty as guilty of larceny.

Thus, unless the court determines that the Wrongful Trespass Doctrine applies, Betty will not be charged with larceny.

Embezzlement

Wrongful conversion of property rightfully possessed, with the specific intent to permanently deprive or steal.

If the court believes Betty’s assertion of her being owed the \$200, she may have been in rightful possession of the \$200 when she took it from the store. As such, when she “did not return the \$200 the next day”, she wrongfully converted the money at that point.

Thus, Betty may be charged with embezzlement.

Defenses

Mistake of Fact - reasonable

Mistake of fact will be a defense for specific intent crimes such as larceny and embezzlement, if the facts, as the defendant thought them to be, did not constitute a crime.

While Betty will attempt to invoke mistake of fact as a defense, since she thought that she was taking money that was owed to her, if she is charged with larceny, this may negate the mental state because it is not the crime of larceny to take property that rightfully belongs to you. However, this defense will not work for embezzlement since wrongfully converting property in one's rightful possession is a crime.

2. State v. Michael

Conspiracy defined above

Since Betty did not believe that she was committing a crime, there was no agreement by Michael to commit any crime.

Thus, Michael is not liable for conspiracy.

Accomplice

One who aids, counsels, or encourages another to commit a crime with the specific intent to aid that crime.

Once again, since Betty did not commit a burglary, and likely did not commit a larceny, Michael's driving her to the store would not constitute aid or encouragement. Even though intent may be found by what stake a person has in the outcome, and in this case Michael would benefit since Betty took \$200 so that they could have fun, there was still no intent to help in committing the crime.

Accessory after the fact

Aiding another knowing that she has committed a felony, for the purpose of helping the defendant to escape arrest, trial or punishment.

When Michael did not believe the [sic] Betty was entitled to the money and when at that point he did not do anything to stop Betty from taking the money, and he did not notify the authorities, he may be charged with being an accessory after the fact. As such, he will not be liable for the underlying crimes of larceny and embezzlement committed by Betty.

Misprision

Concealment and non-disclosure of known felonious conduct of another.

When Michael knew that Betty had taken money that did not belong to her, and he did not

tell the authorities or even tell her to stop, when he put it (the money) in his pocket, he concealed the known felonious conduct of Betty.

Receiving Stolen Property

Receiving control or possession over stolen property, knowing it to be stolen, with the specific intent to permanently deprive.

When after Betty told Michael that she was taking money that she felt was owed to her, and Michael “did not believe that Betty was entitled to the money”, when he subsequently “put it in his pocket”, he received control or possession over the money. Since they were planning on spending the money at the club, he specifically intended to permanently deprive the store of the money.

Defenses

Defenses

Mistake of fact
defined above

While Michael will assert the defense of fact, the “fact” remains that he was not mistaken about any fact, and Betty, in truth, did commit the crimes that Michael thought she did, as is indicated by Betty’s not being entitled to take the money and her not returning it the following day.