

Upon the recent passing of her mother, a sister inherited a valuable antique chair that her brother had coveted for a long time. Unbeknownst to the sister, the brother had accumulated a large amount of gambling debt that required immediate payment, so he decided to steal the chair when he knew that his sister would be out with friends. Early the next evening, just after the sister left, the brother entered her home through the front door, which he knew she always left unlocked. After entering the living room, the brother grabbed the chair and quickly exited the home. The sister's neighbor, who happened to be outside getting her mail, noticed the brother as he was leaving. She was able to see his face because it was illuminated by the setting sun. Upon recognizing him, she immediately called the police and reported the crime she had just witnessed. The brother was subsequently arrested and charged with burglary.

In a common-law jurisdiction, is the brother guilty of burglary?

- A. No, because the front door to the sister's house was unlocked.
- B. No, because there was sufficient sunlight to see the brother's face.
- C. Yes, because the brother had the specific intent to commit robbery.
- D. Yes, because the brother intended to permanently deprive the sister of the chair.

**Explanation:**

**Common-law burglary** is defined as the unlawful breaking and entering of another's dwelling **at night** with the specific intent to commit a **felony** therein—eg, larceny (as seen here). Nighttime is the period of **darkness between sunset and sunrise**. Therefore, it is **not considered nighttime** when there is **sufficient natural daylight** to see the burglar's face.

Here, the brother entered the sister's home early in the evening while she was out with friends, with the intent to steal the sister's chair. But since it was early in the evening, there was sufficient sunlight for the neighbor to see the brother's face when he was outside. Therefore, the common-law nighttime requirement for burglary was not met.

**(Choice A)** An unlawful breaking occurs when the defendant uses any degree of force to gain entry (eg, opening a door) without the owner's permission or legal privilege. Since the brother waited until his sister left the house before opening the door and entering the living room, this element is met even though the door was left unlocked.

**(Choice C)** **Robbery** is larceny committed in the victim's presence by force or intimidation. Here, the brother stole the sister's chair while she was out with friends—not in her presence.

**(Choice D)** Larceny is the unlawful taking and carrying away of another's personal property with the specific intent to permanently deprive the owner of that property (here, the chair). The brother entered the sister's home with the intent to commit this felony therein. But since the nighttime requirement has not also been met, he is not guilty of common-law burglary.

**Educational objective:**

Common-law burglary is defined as the unlawful breaking and entering of another's dwelling at night with the specific intent to commit a felony therein. When there is sufficient natural daylight to see the burglar's face, it is not considered nighttime.

## Burglary

(common law v. **modern (majority)** definition)

Unlawful ~~breaking and~~ entry of another's <sup>building/structure</sup> dwelling <sup>v</sup> at night  
with the specific intent to commit a ~~felony~~ <sup>^</sup> crime therein.