

An unemployed man was planning to rob a convenience store and staked out the store for several weeks. One evening, the man opened and entered through the front door of the store just before closing time and reached for the gun in his waistband as he approached the checkout counter. However, upon seeing the elderly clerk who reminded the man of his grandfather, the man changed his mind and ran out of the store. Finding the man's behavior suspicious, the clerk called the police, who later apprehended the man and charged him with burglary.

In the jurisdiction, burglary is defined as "breaking and entering any building or structure with the intent to commit a felony or to steal therein."

Is the man likely to be found guilty of burglary?

- A. No, because the man had permission to enter the convenience store.
- B. No, because the man is guilty of only attempted burglary of the convenience store.
- C. Yes, because the man intentionally broke into and entered the convenience store.
- D. Yes, because the man lost his status as an invitee when he entered the convenience store with the intent to commit robbery.

Explanation:

This jurisdiction defines **burglary** as:

the breaking and entering of any building or structure
with the intent to commit a felony (eg, **robbery**) or to steal therein.

Breaking occurs when the defendant uses any degree of force to gain entry (eg, opening a door), and **entering** occurs when any part of the defendant's body or an object in his/her possession crosses into the structure. The breaking and entering also must have been **unlawful**—ie, **without the owner's permission** or legal privilege. A business gives the public permission to enter its premises during business hours, but not when it is closed.

Here, the man opened the front door and entered the convenience store with the intent to commit a robbery therein **(Choice C)**. But since the store was still open to the public at that time, the man entered the store with the owner's permission. As a result, the man's entry was lawful, and he likely will *not* be found guilty of burglary.

(Choice B) A defendant is guilty of attempted burglary if he/she (1) intended to commit burglary, (2) committed an **act** in furtherance of the burglary, but (3) did not complete it. Legal impossibility is a defense to attempt if the defendant's actions would not constitute a crime even if completed. And since it is legally impossible to unlawfully break and enter a store that is open to the public, the man is not guilty of attempted burglary.

(Choice D) A minority of jurisdictions hold that a person loses his/her status as an invitee when entering an open business with the intent to commit a crime. However, a person retains that status in most jurisdictions (default rule on the MBE). Therefore, the man retained his status as an invitee, despite his intent to rob the store.

Educational objective:

Burglary requires that a breaking and entering be unlawful—ie, without the owner's permission or legal privilege. A business gives the public permission to enter its premises during business hours, but not when it is closed.

Burglary