

A man who had retired from a career in music was asked to play some of his old songs at a local bar. Because he was anxious about singing after being retired for a few years, the man drank several shots of liquor at his friend's house and became intoxicated. Before he left for the bar, the man saw his friend's guitar, which was much nicer than the man's. The man wanted to give a good performance, so he took his friend's guitar to use that evening without the friend's permission. On his way to return the friend's guitar the next day, the man tripped and fell, breaking the friend's guitar outside of the friend's house. Upset by the man's actions, his friend called the police, and the man was charged with larceny.

Can the man be properly convicted of larceny?

- A. No, because the man did not intend to deprive the friend of his guitar indefinitely.
- B. No, because the man's intoxication prevented the formation of the requisite intent.
- C. Yes, because the man took possession of the friend's guitar without permission.
- D. Yes, because the man's destruction of the guitar constituted a continuing trespass.

### Explanation:

**Larceny** is the unlawful taking and carrying away of another's personal property (eg, guitar) with the **specific intent** to **permanently deprive the owner of that property**. Generally, the intent to permanently deprive the owner of the property must exist at the time of the taking. As a result, the requisite intent **does not exist when**, at the time of the taking, the defendant intends to:

pay for merchandise that the defendant has the means to buy

retrieve property that the defendant owns

take money as repayment of a debt *or*

**borrow property** with the **ability to return** it (as seen here).

Under the "**continuing trespass rule**," larceny may be committed at a later time if a defendant who took property without the requisite intent **later forms that intent**. However, such an intent is not later formed merely because the property is **accidentally damaged or destroyed**.

Here, the man did not intend to deprive the friend of his guitar indefinitely. Instead, he accidentally broke the guitar while he was on his way to return it to the friend (**Choice D**). As a result, the man *cannot* be properly convicted of larceny.

**(Choice B)** In a majority of jurisdictions, **voluntary intoxication** is a defense to specific intent crimes (eg, larceny) if the intoxication prevented the defendant from forming the requisite intent. Here, the man was voluntarily intoxicated, but his intent was only to borrow the guitar and then return it to the friend. Therefore, this defense is unnecessary.

**(Choice C)** Although the man took the friend's guitar without lawful permission, he only planned to use the guitar that evening and sought to return it the next morning. As a result, the man did not have the requisite intent to permanently deprive the friend of his property.

### Educational objective:

Larceny requires the specific intent to permanently deprive another of his/her property. Such intent does not exist if the defendant intends to borrow property with the ability to return it, and it is not later formed by accidentally damaging or destroying the property.

### Specific intent for property crimes

Intent to permanently deprive  
= Intent to defraud



Intent & ability to return  
≠ Intent to defraud



Intent to retrieve own property  
≠ Intent to defraud



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