

A man who had become very drunk left a bar and started to walk home. Another patron of the bar, who had observed the man's condition, followed him. The patron saw the man stumble and fall to the ground near an alley. The patron then began to pull out a gun but saw that the man had passed out in the gutter. The patron reached into the man's pocket, grabbed his wallet, and started to walk away. When the patron heard police officers approaching, he dropped the wallet and ran off.

The crimes below are listed in descending order of seriousness.

What is the most serious crime of which the patron properly could be convicted?

- A. Robbery.
- B. Larceny.
- C. Attempted robbery.
- D. Attempted larceny.

### Explanation:

A defendant can be convicted of **larceny** if he/she:

unlawfully took and carried away the victim's property (even a short distance)  
with the intent to permanently deprive the victim of that property (ie, intent to steal).

And the defendant can be convicted of the **more serious crime of robbery** if the **property was taken** from the victim's person or presence **by force or intimidation**. But if these (or any other) crimes are **not completed**, the defendant can be convicted of the **less serious crime of attempt** if he/she:

specifically intended to commit the crime *and*  
performed an **act** in furtherance of the crime.

Here, the elements of larceny were met when the patron intentionally took a wallet from the man's pocket and started to walk away. And though the patron later dropped the wallet when he heard the police approaching, this is no defense. Therefore, the patron can be convicted of *larceny*—not attempted larceny **(Choice D)**.

The patron likely intended to commit robbery when he followed the man and pulled out a gun in furtherance of the crime. But since the man then passed out in the gutter, the patron was able to take the wallet *without* using force or intimidation. As a result, the patron could be convicted of *attempted* robbery—but not a completed robbery **(Choice A)**. Nevertheless, larceny is the most serious crime of which the patron could be convicted **(Choice C)**.

### Educational objective:

Larceny evolves into the more serious crime of robbery when the defendant takes property from the victim's person or presence by force or intimidation. But if an element of those (or any other) crimes is not completed, a defendant may be convicted of a less serious attempted crime.

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## Robbery



by either

