

A man worked as the cashier in a restaurant. One night after the restaurant had closed, he discovered that the amount of cash in the cash register did not match the cash register receipt tapes. He took the cash and the tapes, put them in a bag, gave them to the manager of the restaurant, and reported the discrepancy. The manager immediately accused him of taking money from the register and threatened to fire him if he did not make up the difference. The manager placed the bag in the office safe. Angered by what he considered to be an unjust accusation, the man waited until the manager left the room and then reached into the still-open safe, took the bag containing the cash, and left.

Of which crime(s) is the man guilty?

- A. Embezzlement.
- B. Larceny.
- C. Both embezzlement and larceny.
- D. Neither embezzlement nor larceny.

Explanation:

Embezzlement occurs when a person:

lawfully possesses another's property—ie, has the property owner's permission to possess or control it *and*

fraudulently converts it—ie, substantially interferes with the owner's rights in property with the specific intent to defraud the owner of that property.

Here, the man no longer lawfully possessed the restaurant's money once he turned it over to his manager. Therefore, even though he later took the money (substantial interference), he is not guilty of embezzlement **(Choices A & C)**.

Larceny is the (1) **unlawful taking** and **carrying away** of another's personal property (2) with the **specific intent to permanently deprive** the owner of that property. An unlawful taking occurs when the defendant removes property from the owner's possession and control without the owner's consent. And property is carried away once it is moved even a small distance.

Here, the man became angry at his manager after being wrongfully accused of stealing money out of the cash register. After the manager left the room, the man reached into the open safe, took the bag of cash belonging to the restaurant (unlawful taking), and left with it (carrying away). And since the man presumably took the money with the intent to permanently deprive the restaurant of it, he is guilty of larceny **(Choice D)**.

Educational objective:

Embezzlement requires proof that a person in lawful possession of another's property fraudulently converted it. And larceny requires proof that a person (1) unlawfully took and carried away another's personal property (2) with the specific intent to permanently deprive the owner of that property.

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Larceny

v.

Embezzlement



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