

An executive of an accounting firm was fired and told to immediately leave the building where she worked. The executive went home, but she returned that night to retrieve personal items from her office. When she discovered that her key no longer opened a door to the building, she forced the door open and went to her former office. To avoid attracting attention, she did not turn on any lights. In the dark, she knew that she was taking some items that were not hers; she planned to sort these out later and return them.

Upon arriving home, she found that she had taken a record book and some financial papers that belonged to the firm. After thinking it over and becoming angrier over being fired, she burned the book and papers in her fireplace. The jurisdiction has expanded the common law definition of burglary to include all buildings.

What crime(s) has the executive committed?

- A. Burglary and larceny.
- B. Burglary, but not larceny.
- C. Larceny, but not burglary.
- D. Neither larceny nor burglary.

### Explanation:

**Common law burglary** is (1) the **unlawful breaking and entering** of another's dwelling at night (2) with the **intent to commit a felony therein**. Such intent must exist **at the time of entry**. And this jurisdiction (like most others) has expanded this definition to include all buildings—not just dwellings.

Here, the executive was fired and told to immediately leave the building. When she returned to the building later that night, she discovered that her key no longer worked. She then forced the door open and went inside (unlawful breaking and entry). But since she entered the building with the intent to collect her personal items—not to commit a felony—the executive did not commit burglary (**Choices A & B**).

**Larceny** is (1) the **unlawful taking and carrying away** of another's personal property (2) with the **intent to permanently deprive** the owner of that property. Such intent must generally exist **when the taking occurs**. But under the doctrine of **continuing trespass**, a person who unlawfully takes and carries away another's property without the intent to permanently deprive becomes guilty of larceny if he/she **later forms such intent**.

Here, after entering the building, the executive decided to gather items that did not belong to her (unlawful taking) and brought them home (carrying away). She initially planned to return these items. But once she arrived home, she became angry and burned them (intent to permanently deprive). Therefore, the executive is guilty of larceny under the doctrine of continuing trespass (**Choice D**).

### Educational objective:

For burglary, the intent to commit a felony must exist when the unlawful breaking and entry occurs. For larceny, the intent to permanently deprive another of his/her property must generally exist when the unlawful taking occurs. But under the doctrine of continuing trespass, a person can also be guilty of larceny if he/she forms that intent *after* the unlawful taking.

Copyright © 2011 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.

**Burglary**  
(specific intent to commit crime in dwelling)

