

A man who owned a business believed that one of his employees was stealing computer equipment from the business. He decided to break into the employee's house one night, when he knew that the employee and her family would be away, to try to find and retrieve the equipment.

The man had brought a picklock to open the employee's back door. But when he tried the door, he found that it was unlocked, so he entered. As the man was looking around the house, he heard sounds outside and became afraid. He left the house but was arrested by police on neighborhood patrol.

What is the man's strongest defense to a burglary charge?

- A. The back door to the house was unlocked.
- B. The burglary was abandoned.
- C. The house was not occupied at the time of his entry.
- D. The man did not intend to commit a crime inside the house.

**Explanation:**

Most jurisdictions broadly define **burglary** as:

the **unlawful entry** of a building or other structure  
with the **specific intent** to **commit any crime therein**.

An entry occurs when any part of a person's body (or an object in his/her control) crosses into the structure. And that entry is unlawful if it occurred without permission from the rightful possessor or legal privilege. But it only amounts to burglary if the person intended to commit a crime therein—not merely to retrieve his/her own property (as seen here). Therefore, the man's strongest defense is that he lacked the requisite intent.

**(Choice A)** Most jurisdictions have eliminated the common law "breaking" requirement for burglary—ie, the use of *any* amount of force to gain entry. But even if this requirement existed here, it was satisfied when the man opened the unlocked door.

**(Choice B)** Abandonment is a defense when a person intends to commit a crime but has a change of heart before completing it. Here, the man intended to recover his business equipment, not to commit a crime. Therefore, his best defense is that he never formed the requisite intent—not that he later abandoned it.

**(Choice C)** There is no requirement that the structure be occupied at the time of the entry, so the fact that the house was unoccupied would not serve as a defense to burglary.

**Educational objective:**

In most jurisdictions, burglary requires proof of two elements: (1) an unlawful entry of a building or other structure (2) with the specific intent to commit any crime therein. Therefore, a burglary does not occur if a person unlawfully enters a structure to retrieve his/her own property—not to commit a crime.

Copyright © 2019 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.

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

