

A man was upset because he was going to have to close his liquor store due to competition from a discount store in a new shopping mall nearby. In desperation, he decided to set fire to his store to collect the insurance. While looking through the basement for flammable material, he lit a match to read the label on a can. The match burned his finger and, in a reflex action, he dropped the match. It fell into a barrel and ignited some paper. The man made no effort to put out the fire but instead left the building. The fire spread and the store was destroyed by fire. The man was eventually arrested and indicted for arson.

What verdict should the jury return at the man's trial?

- A. Guilty, because the man could have put out the fire before it spread and did not do so because he wanted the building destroyed.
- B. Guilty, because the man was negligent in starting the fire.
- C. Not guilty, because even though the man wanted to burn the building, there was no concurrence between his mens rea and the act of starting the fire.
- D. Not guilty, because his starting the fire was the result of a reflex action and not a voluntary act.

### Explanation:

Most jurisdictions define **arson** as the malicious (ie, intentional or reckless) **burning of any structure or vehicle**—including the defendant's own property if the burning was committed to collect insurance proceeds. The burning can be **caused by a voluntary act**. But it can also be caused by an **omission** (ie, failure to act) if the defendant had a **legal duty to act** (eg, the defendant created the risk of harm) and **could have reasonably done so**.

Here, the man wanted to eventually set fire to his store to collect the insurance. And though he dropped the match in a reflex (not voluntary) action, he had a legal duty to put out the fire once it started. That is because he created the risk of fire by lighting the match **(Choice D)**. And since he could have put out the fire before it spread but did not do so because he maliciously wanted the building destroyed, the jury should return a guilty verdict.

**(Choice B)** Since arson requires proof of malice, the defendant must have acted intentionally or recklessly—not merely **negligently**. So the fact that the man negligently started the fire does not support his guilt.

**(Choice C)** An arson conviction requires proof of concurrence—ie, that the defendant had the required mens rea (ie, guilty mind) when the actus reus (ie, guilty act) occurred. Here, the actus reus occurred when the man failed to put out the fire—not when he started it. And since he had the required mens rea (malice) at that time, he is guilty.

### Educational objective:

Arson is the malicious burning of any structure or vehicle—including the defendant's own property if the burning was committed to collect insurance proceeds. The burning element can be met if the defendant acts voluntarily *or* fails to perform a legal duty when he/she could have reasonably done so.

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### Arson based on act or omission

