

A woman who owned a prestigious art gallery was looking for paintings by a recently deceased artist. One of her clients had offered to pay over market price for one of the artist's paintings if the woman could deliver it to the client's home in time for a lavish party that he was throwing the following week. The woman was unable to acquire any of the artist's paintings. However, she knew that her grandfather, an avid art collector, owned one of the artist's earlier works. Knowing that her grandfather was out of town on vacation, the woman decided to have one of her employees pick up the painting from her grandfather's house. The woman falsely told the employee that the grandfather had given her the painting as a gift. When the employee arrived at the grandfather's house, he noticed that the garage door was open and saw the painting leaned up against a wall. The employee walked into the garage, took the painting, and delivered it to the woman. When the grandfather returned from his vacation the following day, he realized that the painting was missing and immediately called the police.

Can the woman be properly convicted of larceny?

- A. No, because the employee, as the woman's agent, was unaware of her criminal intent.
- B. No, but the woman can be convicted of larceny by trick.
- C. Yes, because the woman told the employee to take the artwork with the intent to steal it.
- D. Yes, provided the woman does not return the artwork after the client's party.

### **Explanation:**

**Larceny** is the **unlawful taking** and carrying away of another's personal property with the specific intent to permanently deprive the owner of that property. The taking requirement is satisfied by **any trespassory removal** of the property from the owner's possession into another's control. As a result, the taking can be committed **by the defendant** personally or **by the defendant's agent**—even one who is unaware of the defendant's criminal intent.

Here, the woman ordered her employee (agent) to take her grandfather's painting. Although the employee had no knowledge of the woman's criminal intent, an unlawful taking still occurred when he took the painting from the grandfather's garage and delivered it to the woman **(Choice A)**. And since the woman had the specific intent to permanently deprive her grandfather of the painting at the time the taking occurred, she can be convicted of larceny.

**(Choice B)** Larceny by trick is larceny accomplished by a knowing misrepresentation of a past or present material fact that results in the conversion of another's property. The misrepresentation must be made to and relied upon by the victim. But here, the woman's misrepresentation that she was gifted the artwork was made to induce the employee—not the grandfather. Therefore, she cannot be convicted of larceny by trick.

**(Choice D)** Larceny is complete at the time of the taking. As a result, there is no defense of restoration if the defendant later has a change of heart and returns the property to the rightful owner.

### **Educational objective:**

The taking requirement for larceny is satisfied by any trespassory removal of the property from the owner's possession into another's control. The taking can be committed by the defendant personally or by an agent—even one who is unaware of the defendant's criminal intent.

**Larceny**  
(Unlawful taking requirement)

By defendant personally



By defendant's agent

