

A babysitter, while working one night, noticed that her next-door neighbor had left his house but the door had not closed completely behind him. The babysitter said to the 11-year-old boy she was watching, "Let's play a game. You go next door and see if you can find my laptop, which I lent to my neighbor, and bring it over here." The babysitter knew that the neighbor had a laptop and the babysitter planned to keep the laptop for herself.

The boy thought the laptop belonged to the babysitter. He went next door, found the laptop, and carried it out the front door. At that moment, the neighbor returned home and discovered the boy in his front yard with the laptop. The boy explained the "game" he and the babysitter were playing. The neighbor then took back his laptop and called the police.

What is the most serious crime for which the babysitter can be convicted?

- A. No crime, because the boy did not commit any crime.
- B. Attempted larceny, because the babysitter never acquired possession of the laptop.
- C. Larceny as an accomplice to the boy.
- D. Larceny by the use of an innocent agent.

Explanation:

Parties to a crime

(modern & majority approach)

Party	Definition	Liability
Principal	Commits criminal act with requisite mens rea <i>or</i> Tricks or forces another (ie, innocent agent) to commit criminal act	Liable for resulting crime
Accomplice	Aids or encourages principal before or during crime with intent that principal commit crime	Liable to same extent as principal
Accessory after the fact	Knows principal has committed felony & helps principal avoid arrest or conviction	Liable for independent crime (not principal's)

Larceny occurs when there is a trespassory taking and carrying away of another's personal property (actus reus) with the specific intent to permanently deprive that person of the property (mens rea). A conviction can stem from either:

principal liability – when the actus reus is **committed by the defendant** OR a person acting on the defendant's behalf without the requisite mens rea (ie, **innocent agent**) *or*

accomplice liability – when the defendant **intentionally aids or encourages the principal** before or during a crime with the intent that the crime be completed (making both parties **equally liable** for the crime).

Here, the babysitter intended to steal the neighbor's laptop, but did not personally take it. Instead, she encouraged the boy to do so by prompting him to retrieve what he believed to be her laptop. His mistaken belief negated the necessary intent for larceny. Therefore, the boy did not commit larceny, and the babysitter cannot be convicted as his accomplice (**Choices A & C**). But the babysitter can still be convicted as a principal since she used the boy (an innocent agent) to steal the laptop.

(Choice B) Attempt occurs when a defendant (1) has the specific intent to commit a crime, (2) commits an **act** in furtherance of that crime, but (3) does not complete it. Since the larceny was completed when the boy took the laptop on the babysitter's behalf, she will be convicted of the completed crime—not attempt.

Educational objective:

A defendant can be criminally liable if he/she (1) personally commits a crime or uses an innocent agent to do so (principal liability) or (2) intentionally aids or encourages the principal before or during a crime with the intent that the crime be completed (accomplice liability). But an accomplice is only liable to the same extent as the principal.

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