



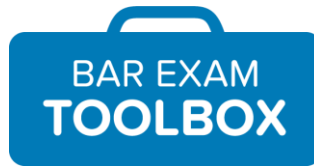
Lee Burgess: Welcome to the Bar Exam Toolbox podcast. Today, we're going to do another in our "Listen and Learn" series – this one is on property crimes. Your Bar Exam Toolbox hosts are Alison Monahan and Lee Burgess, that's me. We're here to demystify the bar exam experience, so you can study effectively, stay sane, and hopefully pass and move on with your life. We're the co-creators of the [Law School Toolbox](#), the [Bar Exam Toolbox](#), and the career-related website [CareerDicta](#). Alison also runs [The Girl's Guide to Law School](#). If you enjoy the show, please leave a review on your favorite listening app, and check out our sister podcast, the [Law School Toolbox podcast](#). If you have any questions, don't hesitate to reach out to us. You can reach us via the [contact form](#) on [BarExamToolbox.com](#), and we'd love to hear from you. And with that, let's get started.

Lee Burgess: Welcome back to the "Listen and Learn" series from the Bar Exam Toolbox podcast! Today we are focusing on criminal law, specifically property crimes. These include robbery, larceny, embezzlement, extortion, burglary, receipt of stolen property, false pretenses, and arson. Questions about property crimes appear on both the MBE and in essays.

Lee Burgess: Criminal law questions can be highly specific or completely open-ended, and it's critical to be prepared for both types. To prepare for an open-ended question, such as "Discuss all possible charges that may be brought against defendant and any possible defenses", you need to be able to quickly spot the types of facts that trigger each of the crimes. For a more pointed question, such as "Is defendant likely to be convicted of burglary?", you'll need to have the rule for burglary down cold, as well as which defenses are likely to apply. Today's podcast will prepare you to answer both broad and specific questions about property crimes.

Lee Burgess: Before we get to the rules for each of these crimes, I want to touch on a few general notes. First, when you're answering an open-ended question and raising all of the crimes for which a defendant might be charged, remember to keep the merger doctrine in the back of your mind. This is the principle that if a defendant commits a single act that meets the elements of two offenses, the lesser offense will "merge" with the greater offense and drop out, such that the defendant will only be charged with the greater offense. Crimes that don't merge can be charged simultaneously. You'll still need to IRAC each possible crime charged in your answer, but you'll also need to point out when one crime merges with another.

Lee Burgess: Also, let's be clear on the lingo. There are no plaintiffs in criminal law; you have a defendant (the party who is charged with the crime), and a prosecutor. The



prosecutor doesn't bring claims or assert causes of action like in civil cases; he or she brings criminal charges against the defendant on behalf of the government.

Lee Burgess:

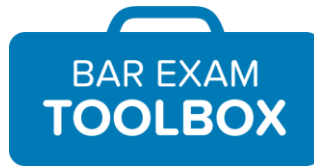
Now that we've got those preliminary matters out of the way, let's dive into the rules. We'll start with two property crimes that are so similar, one merges into the other if the elements of both are met – larceny and robbery. Here's the rule to write down for larceny: Larceny is, one, a trespassory taking; and two, carrying away; three, of the personal property of another; four, with the intent to permanently deprive the owner of the property. What exactly is a "trespassory taking", you might ask? Well, this means that without the owner's consent, and "taking" is removing the property from the owner's control. Notably, it can include keeping property delivered to the thief by mistake or lost by the rightful owner. "Carrying away" is satisfied by a slight movement of the property – no need to drive it across state lines or anything like that. And this may be obvious – the "personal" modifies property in the rule because we are not talking about land.

Lee Burgess:

There are two other pieces of the rule for larceny that you want to make sure you don't miss. First, the thief must intend to permanently deprive the rightful owner of the property. This rules out situations like your brother borrowing your bike for an hour to go to the grocery store. Second, that intent must exist at the time of the taking. So if your brother borrowed your bike intending to return it to you once he ran his errands, but upon later realizing what a sweet bike it was, changed his mind and decided to keep it forever – the "intent" element won't be met. Also keep in mind that a defense to larceny is an honest belief on the perpetrator's part that he or she has a right to possess the property. So, if your friend grabbed your backpack in the dark garage, mistakenly believing it was hers, and took it home, this defense would be available to her. One last point while we're talking larceny: If the thief obtains possession of the stolen property by trick or deception, this is called "larceny by trick".

Lee Burgess:

Now, robbery has the same elements as larceny with two additional pieces. The rule to write down is: Robbery is the, one, trespassory taking and carrying away; two, of the personal property of another; three, in their presence; four, by the use of force or threat of immediate physical harm; five, with the intent to permanently deprive the owner of the property. As you can see, the additional requirements for robbery are that the theft occurs in the presence of the property owner and by using actual force or a threatened harm. If you have these elements plus a dangerous weapon, it's armed robbery. As I mentioned, if



the requirements for robbery are met and both robbery and larceny are charged, larceny will be merged into robbery.

Lee Burgess: Now let's look at the other four theft crimes – embezzlement, receipt of stolen property, extortion, and false pretenses. Let's start with false pretenses. A false pretense is, one, obtaining title; two, to personal property of another; three, through an intentional false statement of material fact; four, with the intent to defraud. Here again we have the “personal property” requirement, which tells us that we aren't talking about obtaining title to land. This time, however, the thief is using a false statement to acquire the stolen property, not a threat or force like we had with robbery. False pretenses also has a different intent requirement from the other theft crimes – the perpetrator must intend to defraud the property owner.

Lee Burgess: Embezzlement is similar to false pretenses in that it also involves fraud. Here's the rule to write down: Embezzlement is, one, fraudulent; two, conversion; three, of the personal property of another; four, by a person in lawful possession of that property; five, with the intent to permanently deprive the owner of the property. Here again we've got a requirement of intent to permanently keep the stolen property. “Conversion” means a substantial interference in the owner's possession of the property. The key element here for distinguishing embezzlement from other theft crimes is that the thief has lawful possession of the property. A common real life illustration of this is a financial advisor who has lawful access to his clients' money for purposes of making investments. If that advisor, using fraudulent means, transfers that money into his own personal bank account with no intention of paying it back, he is guilty of embezzlement.

Lee Burgess: Extortion consists of obtaining property by means of a threat to do harm or expose information. Traditionally, this crime only applied to actions by public or government officials. Today, however, it applies to private citizens as well, although some states refer to extortion by private citizens as “blackmail”. Actionable threats can be verbal, written, or even a non-verbal gesture, and include accusing the victim of a crime, revealing private or damaging information about the victim, or threatening physical harm.

Lee Burgess: Our last theft crime – receiving stolen property – is a bit more straightforward and has only three elements. Receiving stolen property requires, one, receiving control of stolen property; two, with the knowledge that the property is stolen; and three, with the intent to permanently deprive the owner. There's that same specific intent we've seen with the other theft crimes so far. The key thing to remember here is that the receiver of the stolen property must know it is



stolen. This is not about the initial theft of the property, but rather what happens afterwards. If you have multiple defendants and one comes into play only after another theft crime is committed by a different defendant, you know you should be thinking about receiving stolen property. We'll see this illustrated in a hypo in a few minutes.

Lee Burgess:

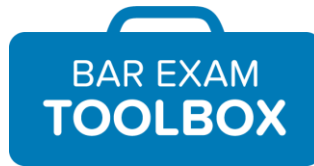
Alright, let's move on to the last two property crimes we'll discuss today – arson and burglary. I call these the “dwelling crimes”, because at common law both involved homes, although today most jurisdictions have extended these crimes to apply to any building or structure. We'll start with arson because it's an easy one. The rule to write down is: Arson is the malicious burning of a dwelling of another. As I said, the majority of states now have expanded “dwelling” to include other types of buildings, vehicles, boats, and other personal property. Unlike the other property crimes we've discussed, which only concern personal property, arson even includes burning of land in most states. Most states also consider damage caused by explosives to qualify as “burning”. The trickiest element of arson is what is required for a “malicious burning”. The answer is, not much. Ill will is not required, nor is any particular motive. What you're looking for is intentional – as opposed to accidental – action or outrageously reckless conduct.

Lee Burgess:

Lastly, let's discuss burglary. At common law, burglary had five elements: The one, breaking and entering; two, of a dwelling; three, of another; four, at night; five, for the purpose of committing a felony inside. As I mentioned, there is no longer a “dwelling” requirement in most states; breaking into any structure will qualify. Most jurisdictions also no longer require that the break-in occur at night. So, let's break down the remaining elements. A “breaking” means creating or enlarging an opening by at least minimal force, fraud, or intimidation, while “entering” is defined as placing any portion of the body or any instrument used to commit the crime into the dwelling or structure. The dwelling or structure must be someone else's, but that's about occupancy, not ownership. It basically can't be where the burglar lives. One other thing to note is that it is enough that the burglar intends to commit a felony inside to satisfy the fifth element, even if the felony ultimately isn't carried out.

Lee Burgess:

Okay, so now you've got the rules for all the property crimes. Before we tackle our first hypo, let's briefly talk about specific intent versus general intent. All of the property crimes we've discussed except for arson are specific intent crimes. For each of those, we have discussed the required intent as part of our rule statement. The specific intent required for larceny, robbery, embezzlement, and receiving stolen property for example, is the intent to permanently deprive the owner of the property. For a general intent crime like arson, the specific intent



of the actor doesn't matter; all that matters is the intent to act. With arson, this means that the act of lighting a fire or setting off an explosive was intentional as opposed to accidental.

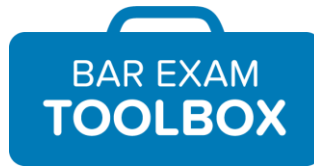
Lee Burgess: The significance of the distinction between general and specific intent lies in the defenses that are available to the defendant. For specific intent crimes, there are a variety of defenses that negate the required intent. Any time you're answering one of these open-ended questions we discussed, where you're asked about all possible charges and defenses, you'll want to address these for specific intent crimes.

Lee Burgess: Some of the defenses are what are called complete defenses, meaning they completely acquit the defendant of the crime. Conveniently these all begin with the same letter – "I", which is helpful for remembering them – insanity, involuntary intoxication, and infancy. Voluntary intoxication and withdrawal are partial defenses that also may apply to a specific intent property crime. Lastly, you have the defenses of mistake of law, mistake of fact, consent, and entrapment. We'll touch on the various defenses in our hypos.

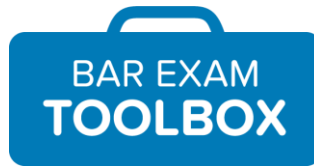
Lee Burgess: I know I'm throwing a lot of rules at you at once today, and many are very similar. But we can use both the similarities and the differences to our advantage. The similarities will help you remember the rules. For example, most of the theft crimes require the specific intent to permanently deprive the owner of the property. Then, try to focus on what makes each one different. That will usually be the key to figuring out which specific intent crimes are implicated by your facts. For example, you'll always want to IRAC false pretenses when you see a theft crime involving a statement. Similarly, if a question describes a theft involving a threat of harm or use of force, this is a big clue to discuss robbery in your answer. A signal that embezzlement is implicated is when your facts tell you that the defendant has a lawful right to the property; you won't see that with other theft crimes.

Lee Burgess: Okay, I think we are ready for a hypo. This one is loosely adapted from essay one of the [July 2004 California bar](#):

Lee Burgess: "Dana and Beth entered Vince's convenience store. Dana pointed a gun at Vince as Beth removed \$750 from the cash register. They then fled in Beth's car, driving to Cathy's house. At Cathy's, they decided to divide the \$750. Cathy threatened to go to the police if Dana and Beth didn't give her part of the money, so Beth gave her \$150. What crime or crimes could the court properly convict Dana, Beth, and Cathy?"



- Lee Burgess: Alright, let's start with Dana and Beth. We know that they've stolen money from Vince, so we have a theft crime. And they pointed a gun at him to get him to turn over the money, which tips us off that we're dealing with a robbery and not just larceny. Let's quickly restate the rule for robbery: A trespassory taking of the personal property of another in their presence by the use of force or threat of immediate physical harm with the intent to permanently deprive the owner of the property. Remember that "trespassory taking" just means taking without the owner's consent. Here, Vince gave Dana and Beth the \$750 only because they pointed a gun at him, which is a pretty clear threat of physical harm. Dana and Beth fled with the money and then divided it up, confirming that they did not intend to return it to Vince. Thus, the specific intent to permanently deprive the owner requirement is met.
- Lee Burgess: Because these elements for robbery are met, Dana and Beth are also guilty of larceny, which also requires a trespassory taking and carrying away of the personal property of another with the intent to permanently deprive the owner of the property. In your answer, you'd want to do a header for larceny and IRAC it, and then explain how Dana and Beth would only be charged with robbery, not both larceny and robbery, under the merger doctrine.
- Lee Burgess: We don't have any false statements here, or fraud or trickery, nor are there any facts suggesting that Dana and Beth had lawful access to the money they stole, such as might be the case if they were Vince's employees. And while they entered Vince's store, there was no "breaking" requirement; he let them in like any other customers while the store was open for business. So there aren't really any other property crimes implicated here for them.
- Lee Burgess: Now let's talk now about Cathy. We know Cathy threatened to rat out Dana and Beth to the police if they didn't give her a share of the loot from the robbery. When you see a threat to expose information like this, it's a big clue that you're dealing with extortion. So, let's recap the elements: Obtaining property by means of a threat to do harm or expose information. Here, Cathy threatened to expose Dana and Beth's crime (robbing Vince) if they didn't give her some of the money they stole. Therefore, Cathy is liable for extortion.
- Lee Burgess: Are we done with our answer? Not quite. This is one of those open-ended criminal law questions that I mentioned earlier, so we know that we're looking for all the crimes Cathy could be properly charged with, not just extortion. So let's think about which other crime or crimes might apply here. What about the receipt of stolen property? That crime requires that the defendant receive control of stolen property with the knowledge it's stolen, and the same intent we see often with property crimes – the intent to permanently deprive the



owner. Applying our facts to these elements, we know that Cathy obtained a share of the money that Dana and Beth stole from Vince, so the first requirement is met. She knew that the money was stolen because she threatened to turn Dana and Beth into the police. And nothing in our facts suggests that she did not intend to keep the money she got forever, permanently depriving Dana and Beth of that amount.

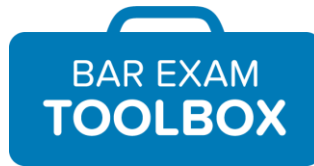
Lee Burgess: Okay, let's tackle one more hypo before we finish up. This one is adapted from Question 6 of the [July 2012 California bar exam](#):

Lee Burgess: "Dan worked at a church. One day, a woman came to the church and told Dan she wanted to donate some property to the church, and handed Dan an old book and a handgun. Dan had originally intended to deliver the book and the gun to the church administrators, but he changed his mind and delivered only the book. He put the gun on the front seat of his car. The next day, Dan was pulled over by a police officer at a sobriety checkpoint. The police officer observed the gun on the front seat and asked Dan if he was the owner. Dan answered, 'No, I stole the gun. But I was planning to give it back.' Dan is charged with theft. Is he likely to be convicted at trial?"

Lee Burgess: Okay, so we have some good news here – the question is on the narrower end of the criminal law spectrum. It's not as specific as, "Is Dan likely to be convicted of robbery?" for example, but we know that our focus should be on theft crimes. The only thing Dan has arguably stolen here is the gun, which the lady gave to his employer, the church. So with that in mind, let's recap the possible theft crimes we've talked about today – larceny, robbery, embezzlement, false pretenses, receipt of stolen property, and extortion. We can rule out at least a few of these pretty quickly, which is what you'll need to do on test day.

Lee Burgess: First, there is no evidence that the gun was stolen, or if it was, that Dan knew that. So, receipt of stolen property is out. We can also take robbery off our list, because there is nothing to suggest that Dan used force or a threat of immediate harm to obtain the gun, nor does he seem to have taken it in the presence of anyone else. The lack of any threat means that extortion is also off the list. Lastly, we can rule out false pretenses, because there is no indication that Dan made any sort of fraudulent representation in order to obtain the gun. He seems to have just walked out of the church with it, instead of turning it over to the church administrators.

Lee Burgess: So, it looks like we are dealing with larceny and embezzlement. Let's start with larceny. Do you remember the elements? There are quite a few. First, we need a trespassory taking. Remember that "trespassory" just means without consent of



the property owner. Here, the owner of the gun became the church when the lady donating it. Dan took the gun without first bringing it to the attention of the church administrators, so he did not have consent. He put the gun in his car, which qualifies as a taking because he removed it from the church's possession and into his control. Next, we are looking for a carrying away. As I said earlier, even a small movement of the property will satisfy this element. Here, Dan drove the gun away in his car, so we've got that one. Third, the taking and carrying away must be of personal property of another. The gun qualifies because it is not real property and because the woman donated it to the church, so it's the church's property. She only gave it to Dan in his capacity as an employee of the church. Finally, we need to look at Dan's intent. Did he intend to permanently deprive the church of the gun at the time he took it? The answer is "Yes". How do we know? Because he told the officer, "I stole it." That he says he planned to return it doesn't undo his intent at the time he took it. Restoring property to a rightful owner is not a defense to larceny. So, Dan is guilty of larceny here.

Lee Burgess:

Moving on to embezzlement. Remember what sets embezzlement apart from the other theft crimes? That the thief at one point had lawful possession of the property. Often, this requirement will be met by an employee who later steals from his employer, and that's what we have here. Dan is a church employee, so he had lawful possession of the gun when the woman donated it to the church. But he didn't turn it over to church administrators; instead, he drove away with it in his car. Sound like embezzlement? Maybe. Let's quickly restate the rule: Embezzlement is the fraudulent or wrongful conversion of the personal property of another by a person with lawful possession of the property with the specific intent to permanently deprive the owner.

Lee Burgess:

We know the "personal property" element is met from our discussion of larceny. In your answer, you'd save time by writing your header for "Personal Property" followed by "see rule above", and then making a conclusion that the gun was personal property. Also, Dan had lawful possession of the gun. If, as he said, he intended to return it, he may have still had lawful possession when it was in his car, as the church's bailee. Conversion is an act that interferes with an owner's right of possession to his or her property. Dan definitely interfered with the church's right to possession by removing the gun from the church and keeping it in his car for a period of time. But the church never demanded the gun back and Dan did tell the police that he planned to return it. So the conversion element likely is not met here. Dan likely did not commit embezzlement.





Lee Burgess:

And with that, we're going to wrap up our podcast for today. If you enjoyed this episode of the Bar Exam Toolbox podcast, please take a second to leave a review and rating on your favorite listening app. We'd really appreciate it. And be sure to subscribe so you don't miss anything. If you have any questions or comments, please don't hesitate to reach out to myself or Alison at [lee@barexamtoolbox.com](mailto:lee@barexamtoolbox.com) or [alison@barexamtoolbox.com](mailto:alison@barexamtoolbox.com). Or you can always contact us via our website [contact form](#) at BarExamToolbox.com. Thanks for listening, and we'll talk soon!

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