Applied Critical Thinking and Legal Analysis

PERFORMANCE OPTIMIZATION FOR LAW STUDENTS AND PROFESSIONALS

CASE FILE, ASSESSMENTS, AND MATERIALS ("CAM") SUPPLEMENT SAMPLE

Brett Brosseit

Elizabeth Mortenson

Sarah Murphy

CAROLINA ACADEMIC PRESS
Durham, North Carolina

Carolina Academic Press
700 Kent Street
Durham, North Carolina 27701
Telephone (919) 489-7486
Fax (919) 493-5668
E-mail: cap@cap-press.com
www.cap-press.com

CASE FILE, ASSESSMENTS, AND MATERIALS ("CAM") SUPPLEMENT SAMPLE

TABLE OF CONTENTS

*This is a working spreadsheet that can be downloaded from the supplement's Dropbox folder. We have included it here as a placeholder for reference.

ADMINISTRATIVE MATERIALS

COURSE CALENDAR INSTRUCTOR VERSION*

*This is a working spreadsheet that can be downloaded from the supplement's Dropbox folder. We have included it here as a placeholder for reference.

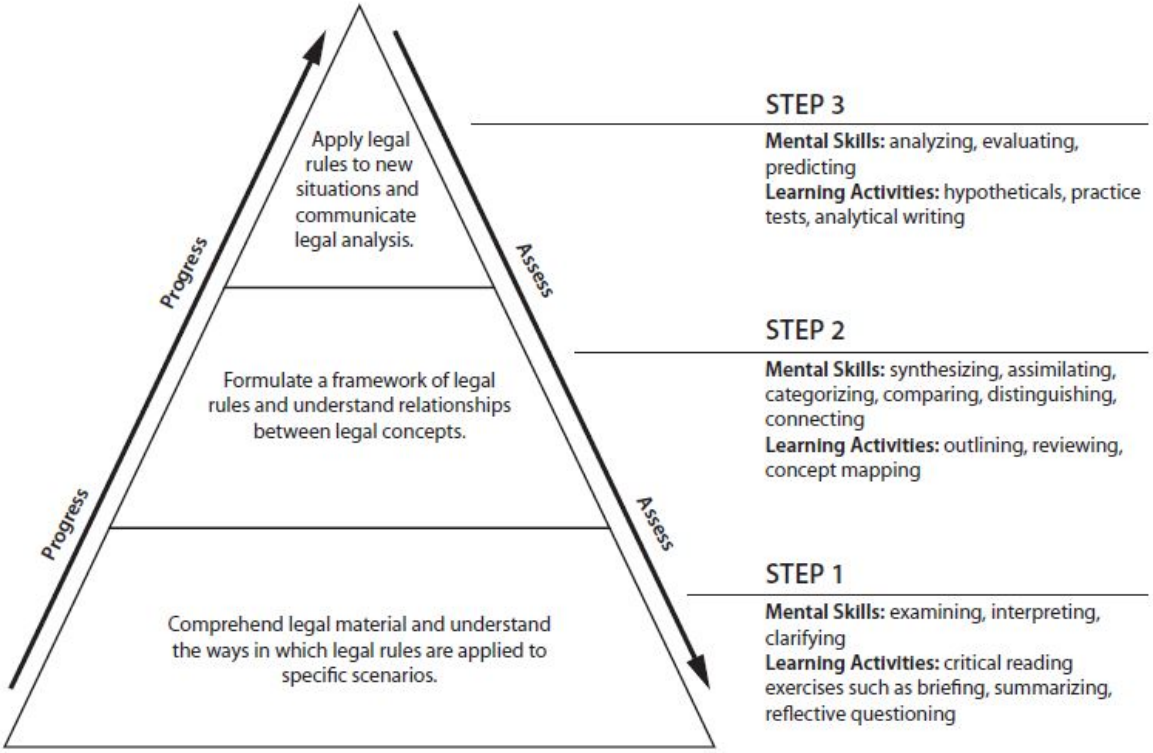
Applied Critical Thinking and Legal Analysis Course Calendar*

** Please note that this course calendar is subject to change at the discretion of the professor.*

***All assignments must be submitted prior to start of class or lab on the date it is due.*

Case File	Mon. Lab 120 min.	Wed. Class 50 min.	Date	Assignment(s) Due Prior to Start of Class or Lab	Class Agenda	Submit Assignments to Drop Box as: Date_Name_ Assignment Name	Instructor Notes
Introduction	**Lab**			1. Read Syllabus (posted on course page) 2. Complete Syllabus Quiz (posted on course page) 3. Read *Introduction to ACTLA* 4. Complete *Introductory Exercises* (Assign #1)	*Student Panel *Discussion of Course Objectives & Format *Reivew of Syllabus & Syllabus Quiz	Date_First & Last Name_Syllabus quiz Date_First & Last Name_Assign 1	1 - 2 weeks ahead of first session post: 1. Syllabus 2. Syllabus Quiz 3. Introductory Survey 4. LLPSI Pre-Test
		Class 1a		1. Read *Chapter 1: Level I, Step 1* 2. Complete *Level I, Step 1 Learning Exercises* (Assign #2)	*Pre-ACTLA Assessment Administration *Step 1 Strategies	Date_First & Last Name_Assign 2	1. Post *Level I Case File: Assignment A* 2. Print *Level I Case File: Assignment B*
Level I	**Lab 2**			1. Complete *Level I Case File: Assignment A* (posted on course page)	Step 1 Lab Exercise (*Assignment B*)	Date_First & Last Name_Assign A	Distribute *Assignment B* at start of Lab
		Class 1b		1. Read *Chapter 2: Level I, Step 2* 2. Complete *Level I, Step 2 Learning Exercises* (Assign #3)	Step 2 Strategies	Date_First & Last Name_Assign 3	1. Post *Level I Case File: Assignment C* 2. Print *Level I Case File: Assignment D*
Level I	**Lab 3**			1. Complete *Level I Case File: Assignment C* (posted on course page)	Step 2 Lab Exercise (*Assignment D*)	Date_First & Last Name_Assign C	Distribute *Assignment D* at start of Lab
		Class 1c		1. Read *Chapter 3: Level I, Step 3* 2. Complete *Level I, Step 3 Learning Exercises* (Assign #4)	Step 3 Strategies	Date _First & Last Name_Assign 4	1. Post *Level I Case File: Assignment E* *2.* Print *Level I Case File: Assignment F*
Level I	**Lab 4**			1. Complete *Level I Case File: Assignment E* (posted on course page)	Step 3 Lab Exercise (*Assignment F*)	Date_First & Last Name_Assign E	Distribute *Assignment F* at start of Lab
		Class 1d		1. Submit Step 1 - Course Progress Submission	Preparation for Level I Case File Exam	Date_First & Last Name_CPS Step 1	
Level I Case File Exam	**Lab 5**			**Prepare for Level I Case File Exam**	**Exam Administration**		Post the Post Exam Self-Assessment

THE LEARNING SKILLS PYRAMID



- Complete process in sequence for each doctrine without skipping or combining Steps.
- Each Step requires written work product.
- Use Steps 2 and 3 work product to self-assess work product and skill development in prior Steps.

SAMPLE CASE FILE

INTEROFFICE MEMORANDUM

TO: ASSOCIATES

FROM: PARTNER OF LAW FIRM

SUBJECT: SAMPLE CASE FILE: ASSIGNMENT A

NEW ASSOCIATE ASSIGNMENT

A new client recently called our firm to discuss a potential legal action. Please read and review the attached synopsis of my discussion with the client. Keep the facts of our client's situation in mind when reading the legal authority, and consider the potential legal issues and rules that may apply to our client's situation. In light of the potential issues that you discover, please brief the attached cases provided to you by our law clerk.

Because we are located in Jurisdiction X, a state with no controlling law, you are to give equal weight to all of the authority received. Please limit your focus and review to the materials provided; outside research is not relevant in Jurisdiction X, and will therefore not be considered.

Please submit your assignment in the course page's drop box on the date and in the format indicated on the course calendar.

BRIEF SYNOPSIS OF FACTS

While vacationing over the weekend with her friends, Bill and Charlie, Annie found herself out late on Saturday night. Annie and her friends were all staying at the same beach front hotel. After having several drinks at one of the bars in town, Annie was reading to call it a night, but could not remember at which hotel she was staying. She had relied on Bill and Charlie to get her around the area, however, Bill and Charlie left the bar earlier in the evening.

After finding what she believed to be her hotel room, Annie remembered that she had left her key inside the room. Determined to get a good night sleep, Annie broke a window, climbed into the room and fell asleep. When Annie awoke the next morning, she realized that she was not in her room, but in the room next door. Before leaving the vacant room, she spotted the shampoo and took the extra shampoos for her shower.

Annie has sought our advice regarding any potential legal issues that may arise from this incident.

JURISDICTION X

R.J.K., Appellant,
v.
STATE of Florida, Appellee.

SALCINES, Judge.

R.J.K. appeals a disposition order adjudicating him delinquent based on a finding that he committed burglary of a dwelling and grand theft. Because the evidence was insufficient to prove that R.J.K. committed either offense, we reverse the disposition order.

The State filed a petition for delinquency alleging that R.J.K. committed second-degree felony burglary of a dwelling and third-degree felony grand theft. The matter proceeded to an adjudicatory hearing at which only one witness testified-the victim of the burglary and theft.

The victim, Marlon Hodge, is R.J.K.'s uncle. He testified that he was at his home during the morning of March 5, 2004, when "some guys" he did not know knocked on the door and asked for someone named "Kiki." Mr. Hodge told them that no one by that name lived there. Afterward, Mr. Hodge watched as "this gentleman" got in a green and black Jeep Cherokee.

Mr. Hodge then left his home for forty-five minutes to have lunch. When he returned, his front door was knocked in and the lock was removed. He walked into his bedroom and noticed that things were in disarray. He then walked to a second bedroom, where he kept money hidden under a pile of clothes, and discovered that his money was gone. He testified that he had $8000 in cash and $700 in change. He also testified that the burglar took a PlayStation 2, several games, and a hat. He testified that he had paid $150 for the PlayStation 2 a year earlier, and it was in good condition. Mr. Hodge did not see the burglar or burglars who entered his home.

Mr. Hodge testified that he reported the burglary and the "police" responded. However, no law enforcement officer testified at the adjudicatory hearing, and no evidence was introduced concerning the content of the incident report or the details of any investigation conducted by law enforcement.

Mr. Hodge testified that he was suspicious of his nephew, R.J.K., so he located R.J.K. later that evening and confronted him. At that time, R.J.K. was sitting on a porch with a girl. Mr. Hodge "snatched him up," put him in his car, and took him to another location-R.J.K.'s aunt's house. Mr. Hodge testified that he was upset during this confrontation and asked R.J.K., "how could he come to my house with these guys and break in." In response, R.J.K. said that he told "these guys," "oh, I'm going to go to my uncle's house and get some money that he keeps in a jar."

Mr. Hodge testified that R.J.K. then telephoned someone named "Bird." According to Mr. Hodge, R.J.K. instructed Bird to "bring my uncle his money." Rather than waiting, Mr. Hodge told R.J.K. to take him directly to Bird, and R.J.K. proceeded to do so.

When they arrived at their destination, R.J.K. got out of Mr. Hodge's car and walked to a vehicle parked nearby-an Altima. R.J.K. jumped in the Altima, in which there were other boys, and the vehicle drove away. Mr. Hodge was unable to catch up to the Altima, but the Altima "double-backed" on him and went to R.J.K.'s aunt's house. Mr. Hodge also went to R.J.K.'s aunt's house. When Mr. Hodge arrived, R.J.K.'s aunt handed him $500.

Mr. Hodge testified that he did not give R.J.K. permission to enter his home at any time or to take any of his property or money. However, no testimony was elicited from Mr. Hodge to establish whether R.J.K. had ever entered Mr. Hodge's home.

No other witnesses testified, and no physical evidence was introduced. Defense counsel moved for a judgment of dismissal in regard to both counts at the end of the State's case and renewed the motion at the close of all the evidence. The defense argued with specificity a number of grounds in support of the motion explaining how the State had failed to sufficiently establish each element of each offense. The State responded that R.J.K. admitted that he "went" to Mr. Hodge's home to get some money. R.J.K.'s motion was denied.

The purpose of a motion for judgment of dismissal in a juvenile case is to test the legal sufficiency of the evidence presented by the state. *A.P.R. v. State,* 894 So.2d 282 (Fla. 5th DCA 2005). In considering such a motion, all reasonable inferences that may be drawn from the evidence must be viewed in a light most favorable to the state; when viewed in that light, if a rational trier of fact could find that the elements of the offense have been proven beyond a reasonable doubt, the evidence is sufficient to sustain the conviction and the motion should be denied. *Id.* at 285. The denial of a motion for judgment of dismissal is reviewed by this court de novo. *Id.* (citing *Pagan v. State,* 830 So.2d 792 (Fla.2002)).

Application of the foregoing standard leads us to the conclusion that the trial court erred in denying the motion for judgment of dismissal.

A conviction for the crime of burglary of a dwelling requires proof of: (1) knowing entry into a dwelling, (2) knowledge that such entry is without permission, and (3) criminal intent to commit an offense within the dwelling. *See* § 810.02(1)(b), Fla. Stat. (2003); *D.R. v. State,* 734 So.2d 455 (Fla. 1st DCA 1999). Additionally, ownership of the building or structure is a material element of the crime of burglary. *D.S.S. v. State,* 850 So.2d 459 (Fla.2003). However, the sufficiency of the State's proof regarding Mr. Hodge's superior possessory right to the burglarized dwelling was uncontested.

The evidence failed to establish a knowing entry by R.J.K. into Mr. Hodge's dwelling. Indeed, as the defense argued when moving for dismissal, no testimony was offered or physical evidence introduced to demonstrate that R.J.K. had entered Mr. Hodge's home during the brief period of time in which the burglary and theft occurred. The only individuals Mr. Hodge saw in the proximity of his home close to the time of the burglary were people he did not know.

Contrary to the State's characterization of the testimony at the hearing and on appeal, Mr. Hodge's recitation of R.J.K.'s statement to him-"I'm going to go to my uncle's house and get some money that he keeps in a jar"-was not an admission, by R.J.K., that he actually went to his uncle's home. With regard to R.J.K.'s phone call to Bird, while it might have tended to demonstrate that R.J.K. had knowledge about who burglarized the home and stole the money, it was similarly insufficient to establish that R.J.K. was the person who burglarized Mr. Hodge's home. The essential elements of the crime were not proven beyond a reasonable doubt, and the charge against R.J.K. for burglary of a dwelling should have been dismissed.

Likewise, the evidence failed to establish that R.J.K. knowingly obtained, used, or endeavored to obtain Mr. Hodge's property with the intent to either temporarily or permanently deprive Mr. Hodge of its use as alleged in the petition. *See* § 812.014(1), (2)(c)(1), Fla. Stat. (2003). The foregoing allegations, as well as the value of the stolen property, *see D.H. v. State,* 864 So.2d 588 (Fla. 2d DCA 2004), had to be established in order to demonstrate that R.J.K. committed third-degree felony grand theft of property. There was no evidence that R.J.K. was in possession of any of his uncle's money or property or that he had endeavored to obtain that property. The essential elements of the crime were not

proven beyond a reasonable doubt, and the charge against R.J.K. for grand theft should have been dismissed.

***

Reversed and remanded with directions.

JURISDICTION X

James JACOBS, Appellant,
v.
STATE of Florida, Appellee.

CLARK, J.

James Jacobs was convicted as charged with burglary of a dwelling in violation of section 810.02(3), Florida Statutes. The charges resulted from the events of July 23, 2008, when Appellant and another man were arrested for removing aluminum siding from the walls of a vacant house. The back yard was bounded by fences, but there was a gap in the fence for the driveway. The house was built in 1912 and had been the family home until 1996, when it was damaged by a fire. The house has not been lived in since the fire, but the owner has slowly renovated the house in the intervening years.

On appeal, Jacobs challenges the trial court's denials of his motions for judgment of acquittal. While he concedes on appeal that the State proved that he removed aluminum siding from the exterior of the structure, he asserts the evidence was not legally adequate to support the charge of burglary of a dwelling because the State failed to prove the elements of "dwelling" as defined in section 810.011(2) Florida Statutes.[FN1] Specifically, Appellant argues that the State failed to present sufficient proof that he entered the curtilage of the building and that the building remained suitable for lodging by people. We disagree and affirm.

> FN1. "Dwelling" means a building or conveyance of any kind, including any attached porch ... which has a roof over it and is designed to be occupied by people lodging therein at night, together with the curtilage thereof. Fla. Stat. § 810.011(2) (2009).

The question presented by a motion for judgment of acquittal is "whether the evidence is legally adequate to support the charge." *Jones v. State,* 790 So.2d 1194, 1197 (Fla. 1st DCA 2001). As stated in *Jackson v. State,* 18 So.3d 1016, 1025 (Fla.2009):

> If the State presents direct evidence, which the State did here, the trial court's determination will be affirmed if the record, viewed in the light most favorable to the State, contains competent, substantial evidence supporting each element of the offenses.... The trial court should not grant a motion for judgment of acquittal "unless the evidence is such that no view which the jury may lawfully take of it favorable to the opposite party can be sustained under the law." (citations omitted).

The evidence presented by the State supporting the charge that Appellant entered the curtilage of the house included the property owner's testimony describing the fencing on three sides of the home, the opening for the driveway, and the low-walled "stoop" in the front of the house. Photographs showing fencing were admitted into evidence, and the next-door neighbor testified that the man he saw closest to the house was "inside the fences." The Florida Supreme Court has held that "some form of an enclosure" is required to establish curtilage of a dwelling or structure. *State v. Hamilton,* 660 So.2d 1038, 1044 (Fla.1995). The enclosure need not be continuous and an ungated opening for ingress and egress does not preclude a determination that the yard is included in the curtilage of the house. *Chambers v. State,* 700 So.2d 441 (Fla. 4th DCA 1997). The State presented sufficient evidence that the yard in this case was delineated by some form of enclosure and the trial court's denial of the motion for judgment of acquittal on this point was not error.

The State's evidence that the building qualified as a dwelling consisted of the owner's testimony that the house has a roof over it, has floors and walls, was designed to be occupied by people lodging therein at night, that such lodging took place until the fire in 1996, and

that the house was equipped with plumbing and electric utilities which were not turned on because the home was unoccupied. The fact that the home had been unoccupied for years and remained so at the time of the crime does not rule out the building's status as a "dwelling" for purposes of the burglary statute. As stated by the Florida Supreme Court: "the legislature has extended broad protection to buildings or conveyances of any kind that are designed for human habitation. Hence, an empty house in a neighborhood is extended the same protection as one presently occupied." *Perkins v. State,* 682 So.2d 1083, 1085 (Fla.1996).

Appellant urges on appeal that the State failed to prove that the house in question remained a "dwelling" after the 1996 fire. Although the conviction for burglary of a dwelling was affirmed in *Perkins,* Appellant relies on the Court's suggestion that a dwelling could lose this status thusly: "If a structure ... initially qualifies under this definition, and its character is not substantially changed or modified to the extent that it becomes unsuitable for lodging by people, it remains a dwelling irrespective of actual occupancy." *Perkins,* 682 So.2d at 1084. In *Munoz v. State,* 937 So.2d 686 (Fla. 2nd DCA 2006), the conviction for burglary of a dwelling was reversed because the house was undergoing "total restoration" and was "missing interior walls, sheetrock and insulation." *Munoz,* 937 So.2d at 689. The court found that "this construction site," littered with "garbage, buckets, and work supplies" was not suitable for lodging and the structure was therefore not a "dwelling" at the time of the burglary. *Id.*

In this case, there was no evidence that the fire substantially changed the character of the house to the extent that it was unsuitable for lodging by people, and no evidence that the interior of the house was in a state of ruin comparable to that described in *Munoz.* Upon viewing the record in the light most favorable to the State, the record contains competent, substantial evidence to support the status of the house in question as a "dwelling" under the statutory definition. The trial court did not err in denying the motions for judgment of acquittal because the evidence was sufficient to create a jury question of whether the home was suitable for lodging and thus remained a "dwelling." The judge instructed the jury as to the definition of "dwelling" and properly allowed the finders of fact to decide the issue.

Affirmed.

JURISDICTION X

Jeremy FERRARA, Appellant,
v.
STATE of Florida, Appellee.

GRIFFIN, J.

Jeremy Ferrara ["Ferrara"] appeals his conviction of burglary of a dwelling for stealing a screen door and attempting to steal copper tubing from the air conditioning unit of a vacant residence. He mainly contends that he cannot be convicted of burglary of a dwelling because he did not enter the structure. We affirm.

On October 19, 2007, between 5 and 6 a.m., Ralph Philbin, an employee of the St. Petersburg Times, was standing outside the Times building when he noticed a dark colored car pull into the carport of the unoccupied property across the street. The employee then heard a loud noise, and he called 911. The car remained at the dwelling for about five minutes and then it departed.

In response to the dispatch of a burglary in progress, Detective Brian Mott approached the residence. As he was approaching, he saw a dark colored pick-up truck departing. The truck accelerated to seventy-five miles per hour, then made an abrupt u-turn and stopped. The driver fled on foot. A search of the vehicle revealed Ferrara's identification and a screen door in the bed of the truck.

Meanwhile, Deputy Jill Morrell was the first officer at the premises. She heard a hissing sound, which she determined to be the sound of Freon escaping from an outdoor air conditioner situated underneath the roof of an attached carport. The air conditioner had been pulled away from the house and the copper wiring had been cut. She then went around to the front of the house and found that a screen door appeared to have been removed from its hinges. She did not find any other signs of forced entry.

Ferrara contends that the trial court erred in denying his motion for judgment of acquittal on the burglary of a dwelling charge because the evidence was insufficient to support a conviction for burglary of a dwelling. Specifically, he contends that the State failed to prove that a burglary of a dwelling occurred with regard to either the screen door or the copper tubing from the air conditioner because neither involved an entry into the house, an attached porch, or the curtilage.

To prove a burglary of a dwelling, the State needs to prove that a defendant entered a dwelling with the intent to commit an offense therein. *See* § 810.02, Fla. Stat. (2008). Section 810.011(2), Florida Statutes (2008), defines "dwelling" as: "a building or conveyance of any kind, *including any attached porch,* whether such building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging therein at night, *together with the curtilage thereof* ...." (Emphasis added). The standard jury instructions define "dwelling" as "a building or conveyance of any kind, including any attached porch, whether such building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging therein at night, together with the enclosed space of ground and outbuildings immediately surrounding it." Fla. Std. Jury Instr. (Crim.) 13.1 Burglary. It also provides that the entry necessary "need not be the whole body of the defendant. It is sufficient if the defendant extends any part of the body far enough into the [structure] to commit [burglary]." *Id.*

Ferrara contends that, because the property was not enclosed, going to the front door of the house and removing the screen door did not constitute entry into a dwelling under the burglary statute. In *Weber v. State,* 776 So.2d 1001 (Fla. 5th DCA 2001), the defendant was convicted of burglary of a dwelling for

stealing a ceiling fan lying on a cement slab. The slab adjoined the rear of the apartment, had a roof over it and was supported by posts. This Court held that the slab from which the fan was stolen qualified as an attached porch pursuant to section 810.011(2), Florida Statutes. *Id.* at 1003. Here, similar to *Weber,* Ferrara had to enter a covered porch at the front of the residence to steal the door. The front porch is part of the dwelling as defined under section 810.011(2), Florida Statutes.[FN1] By entering the attached porch to steal the screen door, Ferrara committed a burglary.

> FN1. Ferrara also claims that the State never presented any evidence that the screen door was affixed to the front of the house at the time it was stolen. We find the evidence, though circumstantial, is sufficient.

Ferrara also asserts that he is entitled to a judgment of acquittal with regard to the copper tubing attached to the outside air conditioner because the carport where the air conditioner is located is neither an "attached porch," nor within the curtilage of the home. Ferrara asserts that the trial court's reliance on *State v. Burston,* 693 So.2d 600 (Fla. 2d DCA 1997), and *Small v. State,* 710 So.2d 591 (Fla. 4th DCA 1998) in denying his motion was error. In *Burston,* the Second District Court of Appeal determined that an attached carport, similar to the carport in this case, constituted part of the curtilage of the dwelling. There, the defendant was charged with burglary of a dwelling for stealing a lawnmower from a carport. The carport was contiguous to the home and consisted of a cement slab, a roof that was flush with the roof of the dwelling, and four aluminum poles supporting the roof. The carport, no longer used for storing vehicles, shared a wall with the dwelling and the kitchen door opened onto the carport.

In *Small,* the defendant was charged with burglary of a *structure.* The subject of the charge was an open carport that was attached to a residence. The carport shared one wall with the residence and was otherwise supported only with poles. The Fourth District Court of Appeal held that the open carport was not a "structure" for purposes of the burglary statute. It held that the carport was not itself an independent structure, as defined in section 810.011, because it had only one wall. It also held that the carport was not "an integral part of the main structure, such that entry into the carport constitutes entry into the structure." 710 So.2d at 593. Lastly, the court did not find that the carport constituted "curtilage of the residence" as suggested by the State. *Id.* Importantly, the basis for the *Small* court's conclusion was that the defendant was charged with burglary of a structure and not burglary of a dwelling. The *Small* court noted in its opinion that had the defendant been charged with burglary of a dwelling, the court would have agreed that the carport would have been a burglarizable portion of the dwelling. The *Small* court would have determined that the carport was an "attached porch," where the *Burston* court determined that the carport constituted curtilage of the dwelling. Either way, we hold that a carport attached to a dwelling is a burglarizable part of the dwelling. Ferrara's conviction was proper.

AFFIRMED.

Commentaries of the Law of England, Sir William Blackstone

BOOK 4, CHAPTER 16
Of Offenses Against the Habitations of Individuals

[Portions have been edited for educational purposes]

THE only two offenses, that more immediately affect the habitations of individuals or private subjects, are those of arson and burglary.

II. BURGLARY, or nocturnal housebreaking, *burgi latrocinium*, which by our ancient law was called *hamesecken*, as it is in Scotland to this day, has always been looked upon as a very heinous offense: not only because of the abundant terror that it naturally carries with it, but also as it is a forcible invasion and disturbance of that right of habitation, which every individual might acquire even in a state of nature; an invasion, which in such a state, would be sure to be punished with death, unless the assailant were the stronger. But in civil society, the laws also come in to the assistance of the weaker party: and, besides that they leave him this natural right of killing the aggressor, if he can, (as was shown in a former chapter[15]) they also protect and avenge him, in case the might of the assailant is too powerful. And the law of England has so particular and tender a regard to the immunity of a man's house, that it stiles it his castle, and will never suffer it to be violated with impunity: agreeing herein with the sentiments of ancient Rome, as expressed in the words of Tully;[16] "*quid enim sanctius, quid omni religione munitius, quam domus uniuscujusque civium*?" ["For what is more sacred, what more inviolable, than the house of every citizen?"] For this reason no doors can in general Commentaries be broken open to execute any civil process; though, in criminal causes, the public safety supersedes the private. Hence also in part arises the animadversion of the law upon eavesdroppers, nuisancers, and incendiaries: and to this principle it must be assigned, that a man may assemble people together lawfully (at least if they do not exceed eleven) without danger of raising a riot, rout, or unlawful assembly, in order to protect and defend his house; which he is not permitted to do in any other case.[17]

THE definition of a burglar, as given us by Sir Edward Coke,[18] is, "he that by night breaks and enters into a mansion house, with intent to commit a felony." In this definition there are four things to be considered; the time, the place, the manner, and the intent.

1. THE time must be by night, and not by day; for in the day time there is no burglary. We have seen,[19] in the case of justifiable homicide, how much more heinous all laws made an attack by night, rather than by day; allowing the party attacked by night to kill the assailant with impunity. As to what is reckoned night, and what day, for this purpose: anciently the day was accounted to begin only at sunrising, and to end immediately upon sunset; but the better opinion seems to be, that if there be daylight or *crepusculum* [twilight] enough, begun or left, to discern a man's face withal, it is no burglary.[20] But this does not extend to moonlight; for then many midnight burglaries would go unpunished: and besides, the malignity of the offense does not so properly arise from its being done in the dark, as at the dead of night; when all the creation, except beasts of prey, are at rest; when sleep has disarmed the owner, and rendered his castle defenseless.

2. AS to the place. It must be, according to Sir Edward Coke's definition, in a mansion house; and therefore to account for the reason why breaking open a church is burglary, as it undoubtedly is, he quaintly observes that it is *domus mansionalis Dei* [the mansion house of God].[21] But it does not seem

absolutely necessary, that it should in all cases be a mansion-house; for it may also be committed by breaking the gates or walls of a town in the night;[22] though that perhaps Sir Edward Coke would have called the mansion-house of the garrison or corporation. Selman defines burglary to be, "*nocturna diruptio alicujus habitaculi, vel ecclesiae, etiam murorum portarumve burgi, ad feloniam perpetrandam*." ["The nocturnal breaking open of any habitation or church, or even the walls or gates of a town, for the purpose of committing a felony"] And therefore we may safely conclude, that the requisite of its being *domus mansionalis* is only in the burglary of a private house; which is the most frequent, and in which it is indispensably necessary to form its guilt, that it must be in a mansion or dwelling house. For no distant barn, warehouse, or the like, are under the same privileges, nor looked upon as a man's castle of defense: nor is a breaking open of houses wherein no man resides, and which therefore for the time being are not mansion-houses, attended with the same circumstances of midnight terror. A house however, wherein a man sometimes resides, and which the owner has only left for a short season, *animo revertendi* [intending to return], is the object of burglary; though no one be in it, at the time of the fact committed.[23] And if the barn, stable, or warehouse be parcel of the mansion-house, though not under the same roof or contiguous, a burglary may be committed therein; for the capital house protects and privileges all its branches and appurtenances, if within the curtilage or homestall.[24] A chamber in a college or an inn of court, where each inhabitant has a distinct property, is, to all other purposes as well as this, the mansion-house of the owner.[25] So also is a room or lodging, in any private house, the mansion for the time being of the lodger. The house of a corporation, inhabited in separate apartments by the officers of the body corporate, is the mansion-house of the corporation. And not of the respective officers.[26] But if I hire a shop, parcel of another man's house, and work or trade in it, but never lie there; it is no dwellinghouse, nor can burglary be committed therein: for by the lease it is severed from the rest of the house, and therefore is not the dwellinghouse of him who occupies the other part; neither can I be said to dwell therein, when I never lie there.[27] Neither can burglary be committed in a tent or booth erected in a market or fair; though the owner may lodge therein:[28] for the law regards thus highly nothing but permanent edifices; a house or church, the wall, or gate of a town; and it is the folly of the owner to lodge in so fragile a tenement: but his lodging there no more makes it burglary to break it open, than it would be to uncover a tilted wagon in the same circumstances.

3. AS to the manner of committing burglary: there must be both a breaking and an entry to complete it. But they need not be both done at once: for, if a hole be broken one night, and the same breakers enter the next night through the same, they are burglars.[29] there must be an actual breaking; not a mere legal *clausum fregit* [breaking the close], (by leaping over invisible ideal boundaries, which may constitute a civil trespass) but a substantial and forcible irruption. As at least by breaking; not a mere legal clausum fregit, (by leaping over invisible ideal boundaries, which may constitute a civil trespass) but a substantial and forcible irruption. As at least by breaking, or taking out the glass of, or otherwise opening, a window; picking lock, or opening it with a key; nay, by lifting up the latch of a door, or unloosing any other fastening which the owner has provided. But if a person leaves his doors or windows open, it is his own folly and negligence; and if a man enters therein, it is no burglary: yet, if he afterwards unlocks an inner or chamber door, it is so.[30] But to come down a chimney is held a burglarious entry; for that is as much closed, as the nature of things will permit.[31] So also to knock at a door, and upon opening it to rush in, with a felonious intent; or, under pretense of taking lodgings, to fall upon the landlord and rob him; or to procure a constable to gain admittance, in order to search for traitors, and then to bind the constable and rob the house; all these entries have been adjudged burglarious, though there was no actual breaking: for the law will not suffer itself to be trifled with by such evasions, especially under the cloak of legal process.[32] And so, if a servant opens and enters his

master's chamber door with a felonious design; or if any other person lodging in the same house, or in a public inn, opens and enters another's door, with such evil intent; it is burglary. Nay, if the servant conspires with a robber, and lets him into the house by night, this is burglary in both:[33] for the servant is doing an unlawful act, and the opportunity afforded him, of doing it with greater ease, rather aggravates than extenuates the guilt. As for the entry, any the least degree of it, with any part of the body, or with an instrument held in the hand, is sufficient: as, to step over the threshold, to put a hand or a hook in at a window to draw out goods, or a pistol to demand one's money, are all of them burglarious entries.[34] The entry may be before the breaking, as well as after: for by statute 12 Ann. c. 7. if a person enters into or is within, the dwelling house of another, without breaking in, either by day or by night, with intent to commit felony, and shall in the night break out of the same, this is declared to be burglary; there having before been different opinions concerning it: lord Bacon[35] holding the affirmative, and Sir Matthew Hale[36] the negative. But it is universally agreed, that there must be both a breaking, either in fact or by implication, and also an entry, in order to complete the burglary.

4. AS to the intent; it is clear, that such breaking and entry must be with a felonious intent, otherwise it is only a trespass. And it is the same, whether such intention be actually carried into execution, or only demonstrated by some attempt or overt act, of which the jury is to judge. And therefore such a breach and entry of a house as has been before described, by night, with intent to commit a robbery, a murder, a rape, or any other felony, is burglary; whether the thing be actually perpetrated or not. Nor does it make any difference, whether the offense were felony at common law, or only created so by statute; since that statute, which makes an offense felony, gives it incidentally all the properties of a felony at common law.[37]

THUS much for the nature of burglary; which is, as has been said, a felony at common law, but within the benefit of clergy. The statute however of 18 Eliz. c. 7. takes away clergy from the principals, and that of 3 & 4 W. & M. c. 9. from all accessories before the fact. And, in like manner, the laws of Athens, which punished no simple theft with death, made burglary a capital crime.[38]

NOTES

1. Ff. 48. 19. 28. § 12.
2. 1 Hal. P. C. 567.
3. 3 Inst. 69.
4. 1 Hawk. P. C. 105.
5. Cro. Car. 377.
6. 1 Hal. P. C. 568. 1 Hawk. P. C. 106.
7. Fost. 115.
8. 1 Hawk. P. C. 106.
9. 1 Hal. P. C. 569.
10. Ff. 1. 15. 4.
11. LL. Inne. c. 7.
12. Britt. c. 9.
13. SSteph. *de jure Goth.* l. 3. c. 6.
14. 11 Rep. 35. 2 Hal. 346, 347. Foster. 336.
15. See pag. 180.
16. Pro. domo, 41.

17. 1 Hal. P. C. 547.
18. 3 Inst. 63.
19. See pag. 180, 181.
20. 3 Inst. 63. 1 Hal. P. C. 1 Hawk.
21. 3 Inst. 64.
22. Spelm. Gloss. t. Burglary. 1. Hawk. P. C. 103.
23. 1 Hal. P. C. Fost. 77.
24. 1 Hal. P. C. 558. 1 Hawk. P. C. 104.
25. 1 Hal. P. C. 556.
26. Foster. 38, 39.
27. 1 Hal. P. C. 558.
28. 1 Hawk. P. C. 104.
29. 1 Hal. P. C. 551.
30. Ibid. 553.
31. 1 Hawk. P. C. 102. 1 Hal. P. C. 552.
32. Hawk. P. C. 102.
33. 1 Hal. P. C. 553. 1 Hal. P. C. 103.
34. 1 Hal. P. C. 1 Hawk. P. C. 103.
35. Elem. 65.
36. 1 Hal. P. C. 554.
37. 1 Hawk. P. C. 105.
38. Pott. Antiq. b. 1. c. 26.

JURISDICTION X

Nicholas CAPPETTA, Appellant,
v.
The STATE of Florida, Appellee.

PER CURIAM.

We have for consideration three cases which were tried together and the appeals consolidated for the purposes of briefing and oral argument.

Nicholas Cappetta, having waived jury, was tried and convicted by one of the judges of the Criminal Court of Record for Dade County, of breaking and entering the dwelling at 6201 La Gorce Drive, Miami Beach, Florida, with the intent to commit grand larceny (Case #62-5350), breaking and entering the dwelling house at 17300 N. E. 12th Avenue, Miami, Florida, with intent to commit grand larceny (Case #62-6069), and possessing burglary tools (Case #62-5584).

He was sentenced to five years in the State Penitentiary on each of the three convictions with the sentences running consecutively.

This court has examined the record on appeal and considered the points of law presented by appellant's brief and after hearing, found no reversible error in Case #62-5350 or in Case #62-5584. We affirm the judgment and sentences appealed in these two cases. No novel questions are presented and no useful purpose would be served by a further discussion of these two appeals.

In Case #62-6069 which was upon a charge of breaking and entering a dwelling house with intent to commit grand larceny, the state failed to prove breaking. This is an essential element of the crime charged. Dedge v. State, 128 Fla. 343, 174 So. 725. The breaking must be an act of physical force although it may be as slight as the pushing open of a closed door. See Scott v. State, Fla.App.1962, 137 So.2d 625, and cases cited therein. In this instant case no physical act was proved. The accused was simply found inside a house which was not shown to have been closed.

We therefore reverse the judgment and sentence in Case #62-6069.

Affirmed as to part and reversed as to part.

JURISDICTION X

Thomas S. BAKER, Petitioner,
v.
STATE of Florida, Respondent.

McDONALD, Senior Justice.

We review *Baker v. State,* 622 So.2d 1333 (Fla. 1st DCA 1993), in which the district court certified the following question as being of great public importance:

> IS PROOF OF A CRIMINAL MISCHIEF TO A DWELLING (A BROKEN WINDOW) COMMITTED WHILE ON THE CURTILAGE IN A STEALTHY MANNER A BURGLARY UNDER SECTION 810.02, FLORIDA STATUTES, GIVEN THE LEGISLATIVE INTENT OF SECTION 810.02 AND THE COMMON LAW OF BURGLARY COMMITTED ON THE CURTILAGE?

Id. at 1339. We have jurisdiction pursuant to article V, section 3(b)(4), of the Florida Constitution. We do not directly answer the question but hold that, under the facts presented, Baker was properly convicted of burglary.

On October 15, 1990, Thomas S. Baker entered the yard of a home belonging to Robert Wilson. The property involved is a private home, hidden from the road in front by trees and shrubs and separated from the neighbor's house by a six-foot privacy fence. A chain-link fence surrounds the backyard of the victim's residence. In addition to the fences, this area is secluded by shrubs. Baker removed a board from under a plastic tarp in the front yard and crept into the back yard. While hidden from view in the seclusion of the back yard, Baker removed a screen from a rear window and used the board to break a lower windowpane. An alarm sounded and Baker fled.

The victim's next-door neighbor heard the burglar alarm sound at Wilson's house. Within three or four seconds after hearing the alarm, she looked out a window and saw Baker come around the far side of the house riding a bicycle, continue around the front of the victim's home, and down the driveway to the street. Her 20-year-old daughter saw Baker emerge from the far side of the victim's home on a bicycle. Neither witness saw Baker jump the fence or enter the victim's house.

After hearing the burglar alarm and seeing Baker flee, the neighbor called the police to report the alarm and describe the person she saw hurrying away. The neighbor described the area where she had seen Baker as containing shrubbery and a small pathway. An officer was sent to investigate and stopped Baker within two or three minutes of receiving the dispatch describing the suspect. The officer returned Baker to the scene where the neighbor identified him as the man she had seen fleeing a few moments earlier. The officer noted that the lower panel of a window in the back of the victim's house had been smashed. Next to the broken window lay a window screen and a board with glass fragments. He found similar boards under a plastic tarp at the front of the house. He arrested Baker for burglary of a dwelling, in violation of section 810.02(1), Florida Statutes (1989).

The State charged Baker with burglary of a dwelling, specifically alleging that Baker unlawfully entered or remained in the victim's dwelling with the intent to commit an unspecified offense therein. The trial court gave the standard jury instructions that include within the definition of structure "the enclosed space of ground and outbuildings immediately surrounding that structure" and that intent could be inferred from stealthy entry. Fla.Std. Jury Instr. (Crim.) 135, 135-36. The jury convicted Baker as charged.

The First District Court of Appeal affirmed Baker's conviction and sentence. The court held that the trial court had correctly instructed the jury and that there was ample evidence of Baker's stealthy entry onto the curtilage which, by definition, was part of the dwelling. It certified the above question as being of great public importance.

It is well established that construction and interpretation of a statute are unnecessary when it is unambiguous. *State v. Egan,* 287 So.2d 1 (Fla.1973). "Whether the law be expressed in general or limited terms, the Legislature should be held to mean what they [sic] have plainly expressed, and consequently no room is left for construction." *Van Pelt v. Hilliard,* 75 Fla. 792, 798-99, 78 So. 693, 695 (1918). The courts "are obliged to give effect to the language the Legislature has used." *Cobb v. Maldonado,* 451 So.2d 482, 483 (Fla. 4th DCA 1984). "Courts have then no power to set it aside or evade its operation.... If it has been passed improvidently the responsibility is with the Legislature and not with the courts." *Van Pelt,* 75 Fla. at 798, 78 So. at 695. The proper remedy for a harsh law will not be found through construction or interpretation; it rests only in amendment or repeal.

The legislature has defined "dwelling" such that the definition includes the curtilage. § 810.011(2), Fla.Stat. (1989). Where the legislature has used particular words to define a term, the courts do not have the authority to redefine it. *State v. Graydon,* 506 So.2d 393, 395 (Fla.1987). Therefore, for the purposes of the burglary statute, it would not matter whether Baker was in Wilson's secluded back yard or back bedroom; in either circumstance, the courts must consider him to have been within Wilson's dwelling.

Citing to the dissent below, Baker argues that statutes in derogation of the common law should be strictly interpreted so as to displace the common law no farther than is necessary. *Baker v. State,* 622 So.2d 1333, 1338 (Fla. 1st DCA 1993) (Ervin, J., dissenting) (citing *Carlile v. Game & Fresh Water Fish Comm'n,* 354 So.2d 362 (Fla.1977)). This argument is fallacious on three counts: first, as discussed above, interpretation is inappropriate in the absence of ambiguity; second, a strict and literal reading of the statute is what led to the result below; and third, the legislature has so thoroughly modified the burglary statute that the present statute must be said to completely abrogate and supersede the common law crime of burglary.

"The common law crime of burglary consisted of breaking and entering a dwelling house of another at night with the intent to commit a felony therein." *State v. Hicks,* 421 So.2d 510, 511 (Fla.1982). There are five constituent elements of this common law crime: breaking; entering; dwelling house; night time; and felonious intent. "Breaking" and "night time" have been completely eliminated. The legislature added remaining on the property without invitation or license to the "entering" element. If the property involved is a conveyance, the burglar need neither enter nor remain if he takes apart any portion of the conveyance. § 810.011(3), Fla.Stat. (1989). [FN*] The burglar no longer need intend to commit a felony; the intention to commit any offense, even criminal mischief, is sufficient to satisfy this element of the present statutory crime.

> FN* The definition of "conveyance" includes the following provision:
> "'[T]o enter a conveyance' includes taking apart any portion of the conveyance." § 810.011(3), Fla.Stat. (1989).

Perhaps most dramatic is the extent to which the legislature has altered the common law "dwelling house" element. Although the fact that a structure is a "dwelling" enhances the penalty for burglary, the statutory proscription applies to any building of any kind and to any conveyance. § 810.02(1). The legislature added curtilage to the definitions of "structure" and "dwelling." There is no crime

denominated burglary of a curtilage; the curtilage is not a separate location wherein a burglary can occur. Rather, it is an integral part of the structure or dwelling that it surrounds. Entry onto the curtilage is, for the purposes of the burglary statute, entry into the structure or dwelling. Baker entered Wilson's yard which was protected by a fence and shrubbery where the owner had an expectation of privacy. Even though he did not enter Wilson's house, he did enter Wilson's "dwelling."

Stealth is not an element of burglary. Stealthy entry, together with the absence of owner or occupant consent, is an evidentiary tool with which to establish prima facie proof of intent to commit an offense. § 810.07 Fla.Stat. (1989). Nonetheless, even with a stealthy entry, the jury must be convinced beyond a reasonable doubt and in light of all the surrounding facts and circumstances that the accused had a fully-formed, conscious intent to commit an offense. *See* Fla.Std. Jury Instr. (Crim.) 135. As with any other fact in a case, this intent may be established by circumstantial evidence. *Id.* Stealthy entry is simply one such circumstance.

The power to prohibit and criminalize certain acts is within the province of the legislature, not the courts. The burglary statute is clear and unambiguous, and this Court "may not modify it or shade it out of any consideration of policy or regard for untoward consequences." *McDonald v. Roland,* 65 So.2d 12, 14 (Fla.1953). Baker has clearly and unambiguously done exactly that which the burglary statute prohibits. Accordingly, we approve the district court's decision affirming his conviction and sentence.

It is so ordered.

ANSWER – SAMPLE CASE FILE: ASSIGNMENT A

R.J.K v. State

Issue:

Under statutory burglary, did the state prove a knowing entry by the defendant into the dwelling, when the defendant stated that he was going to go to his uncle's house to get some money that he keeps in a jar and defendant called his friend to retrieve the money that was stolen from the uncle's home?

Holding:

No, the state failed to establish a knowing entry by defendant into uncle's dwelling because no physical evidence or testimony was offered that defendant had entered the house during the time of the burglary.

Reasoning:

The State offered the following reasons to prove that defendant had committed burglary: 1) "I'm going to go to my uncle's house and get some money that he keeps in a jar," and 2) defendant's phone call to a friend to try to get his uncle's money back. The court reasoned that while the phone call might have tended to demonstrate that defendant had knowledge about who burglarized the home and stole the money, it was similarly insufficient to establish that defendant was the person who entered the home and stole the money. In addition, the court concluded that the defendant's statement "going to go to [his] uncle's house and get some money" was not an admission that defendant had gone to his uncle's house.

Rule:

Burglary of a dwelling requires proof of: 1) knowing entry into a dwelling 2) knowledge that such entry is without permission and 3) criminal intent to commit an offense within the dwelling.

Jacobs v. State

Issue:

Under statutory burglary, is the burglarized home a dwelling for the purposes of the statute, when the home had been unoccupied for years and remained unoccupied at the time of the crime?

Holding:

Yes, the fact that the home had been unoccupied for years and remained so at the time of the crime did not rule out the building's status as a "dwelling" for purposes of offense of burglary of a dwelling.

Reasoning:

The court reasoned that the building qualified as dwelling because the house had a roof over it, had floor and walls, was designed to occupy people at night. Despite the fact that the fire left the home unoccupied does not change the fact that home is a dwelling under the statute. "an empty house in a neighborhood is extended the same protection as one presently occupied." There was no evidence that the first substantially changed the character of the house to the extent that it was unsuitable for lodging by people, and no evidence that the interior of the house was in a state of ruin.

Rule:

Dwelling means a building or conveyance of any kind, including any attached porch, which has a roof over it and is designed to be occupied by people lodging therein at night, together with the curtilage thereof.

Ferrera v. State

Issue:

Under statutory burglary, did the defendant enter a dwelling with the intent to commit an offense, when the defendant walked through an unenclosed but covered porch to arrive at the front door and remove the screen door?

Holding:

Yes, the defendant entered a dwelling because he had to go through a covered porch, even though it was not enclosed, to get to the front door.

Reasoning:

In relying on precedent, the court reasoned that because the front door was under a covered porch that it constituted a dwelling because dwelling is defined as "a building or conveyance of any kind, including any attached porch." Because Ferrera entered into the attached porch, which was a dwelling, the court thought it was sufficient for "entering" purposes.

Rule(s):

A dwelling is a building or a conveyance of any kind, including an attached but unenclosed porch.

Blackstone Commentaries

Common Law Burglary

Burglary is that "he that by night breaks and enters into a mansion house, with intent to commit a felony." In this definition there are four things to be considered; the time, the place, the manner, and the intent.

Time – It must be by night and not by day.

Place – Must be a dwelling house and all the immediate surroundings in which someone lives, not a church or office.

Manner – Breaking & Entering

Breaking – Must be an actual breaking (i.e., taking out glass of a window, picking a lock, opening it with a key). If owners leave door open, then that is his own fault and it will not be a breaking. In other words, there must be an actual opening that was created by the burglar.

Entering – Entry is thought as sufficient as soon as the burglar steps over the threshold. Any degree of entry should suffice. An entry can come before the breaking and still constitute burglary if they somehow break out of the dwelling house.

Intent – The breaking and entering must be with felonious intent to commit a crime inside. It doesn't matter if the crime actually happens; it is enough that they had the intent to a felony inside.

Cappetta v. State

Issue:

Under burglary, is breaking established when the accused was found inside a house which was not shown to have been closed?

Holding:

No, breaking is an essential element of breaking and entering dwelling with intent to commit grand larceny.

Reasoning:

No evidence demonstrated that the accused took action to enter a closed home. Rather, he was merely found inside.

Rule:

Breaking requires an act of physical force, though it may be as slight as pushing open a closed door.

Baker v. State

Issue:

Under statutory burglary, did the defendant satisfy the requisite elements of burglary, when he entered into a person's backyard with intent to commit a crime?

Holding:

Yes. All elements have burglary were satisfied when the defendant entered someone's backyard.

Reasoning:

Breaking and night time have been completely eliminated from the common law crime of burglary. In addition, the burglar no longer needs intent to commit a felony; the intention to commit any offense, even criminal mischief, is sufficient of the present statutory crime. Perhaps most dramatic is the "dwelling house" element — the dwelling for statutory purposes applies to any building of any kind and to any conveyance. The legislature added curtilage to the definition of structure and dwelling. Entry into the curtilage is, for purposes of the burglary statute, entry into the structure of dwelling. Baker entered into Wilson's yard which was protected by a fence and shrubbery where the owner had an expectation of privacy.

Rule:

Burglary has five elements that must be satisfied:

(1) Breaking
(2) Entering – remaining on the property w/o license or invitation
(3) Dwelling house – curtilage is included because it is considered an integral part of the structure or dwelling
(4) Night time – has been eliminated
(5) Felonious intent no longer required; intent to commit any offense is sufficient

INTEROFFICE MEMORANDUM

TO: ASSOCIATES

FROM: PARTNER OF LAW FIRM

SUBJECT: SAMPLE CASE FILE: ASSIGNMENT B

INSTRUCTIONS

Our legal intern has found more relevant material regarding our client's situation. In the following form and with the help and contribution of your team, please read and brief the following case using UDW, holding, reasoning, rule format.

When reading the attached legal authority, please consider it in light of the facts of our client's case and all of the other legal authority you have reviewed and summarized thus far in the case file.

Be sure to consult the ACTLA readings as appropriate, and to deliberately employ all of the tools, strategies, and approaches from your readings. Please submit via the drop box and save the assignment in the following format: "Firm Name_Case File_ Assign B."

Issue (UDW):

Holding:

Reasoning:

Rule(s):

JURISDICTION X
COMMONWEALTH of Pennsylvania
v.
Harvey William LYONS, Appellant.

June 22, 1971.

Herman M Rodgers, Sharon, for appellant.

R. Banks, Asst. Dist. Atty., Joseph J. Nelson, Dist. Atty., Mercer, for appellee.

Before WRIGHT, P.J., and WATKINS, MONTGOMERY, JACOBS, HOFFMAN, SPAULDING and CERCONE, JJ.

JACOBS, Judge.

Appellant was convicted by a jury of larceny of a garden tractor. Motions in arrest of judgment and for a new trial were refused by the court below and sentence imposed.

The evidence, treated in the light most favorable to the Commonwealth, was that a truck bearing Ohio license No. 5 C 2220 was seen hauling the victim's tractor away from his property on the night of November 29, 1967. Two unidentified men were in the truck. This same license was seen on one occasion on a truck parked in the driveway of appellant's house in Campbell, Ohio. At appellant's extradition hearing in Ohio, his attorney was seen holding a registration card with the number 5 C 2220 on it, but the name on the registration card was not seen.

A witness, by the name of Feiling, who was arrested for receiving the tractor as stolen goods, testified that appellant and Harry Barnes delivered a tractor to him on or about November 30, 1967. The police later came to Feiling's home and seized two tractors that were in Feiling's possession. One of the tractors recovered by the police was identified as the stolen tractor. The witness was unable to state which tractor appellant had delivered to him.

The lower court held that the cumulative effect of the evidence was such as to warrant submission of the case to the jury. We disagree and are of the opinion that the evidence was insufficient as a matter of law to sustain the conviction.

The Commonwealth's case is based on circumstantial evidence. 'The test of the sufficiency of the evidence, irrespective of whether it is direct or circumstantial, is whether accepting as true all of the evidence upon which, if believed, the jury could properly have based its verdict, it is sufficient in law to prove beyond a reasonable doubt that the defendant is guilty of the crime charged.' Commonwealth v. Whiting, 409 Pa. 492, 494, 187 A.2d 563, 564 (1963). All the evidence must be read in a light most favorable to the Commonwealth and the Commonwealth must be given the benefit of all reasonable inferences arising therefrom. Commonwealth v. Simpson, 436 Pa. 459, 260 A.2d 751 (1970). 'The inference of guilt must be based on facts and conditions proved; mere conjecture or surmise is not sufficient. Commonwealth v. Bausewine, 354 Pa. 35, 46 A.2d 491 (1946); Commonwealth v. Cohen, 203 Pa.Super. 34, 199 A.2d 139 (1964).' Commonwealth v. Garrett, 423 Pa. 8, 12, 222 A.2d 902, 905 (1966). 'All circumstantial evidence is based in part upon 'positive' or direct evidence, or what Wigmore calls 'testimonial evidence.' The circumstances from which the major fact in issue is to be inferred have to be proved chiefly by testimonial or positive evidence. If the so-called 'positive' evidence is erroneous or merely conjectural, no reliable inference can be drawn from it.' Commonwealth v. Woong Knee New, 354 Pa. 188, 194, 47 A.2d 450, 454 (1946).

The basic facts on which the lower court based an inference of guilt were (1) the ownership of the truck in which the tractor was taken, and (2) delivery of a tractor to Feiling by

appellant. However, proof of ownership of the truck was at best conjectural. The best evidence of ownership, the records of Ohio's licensing bureau, was never produced and the Commonwealth relied on the facts that the truck was parked in appellant's driveway and that his attorney, in cross-examining a witness at appellant's extradition hearing, had in his hand an Ohio registration card with the license number on it. These facts, if analyzed, are of such slight weight as to raise practically no inference of ownership. The truck was only seen once in the driveway, and there was nothing to connect the registration card with appellant except that his attorney was holding it. The truck could just as well have belonged to a member of appellant's family, or a visitor at his house, as to appellant. That the truck was owned by appellant could only be the product of a guess.

It is true that a tractor was delivered by appellant to Feiling; however, of the two tractors seized at Feiling's home he could not say which one appellant had delivered. There was no testimony describing or identifying the truck on which the tractor was delivered. Nor was there any testimony as to the purpose of the delivery. Had it been shown that appellant had delivered the stolen tractor to Feiling, or that it was delivered on a truck bearing Ohio license number 5 C 2220, it might have been sufficient to raise a reasonable inference of guilt. However, the delivery of an unidentified tractor on an unidentified truck does not raise an inference of guilt which can be considered reasonable.

Larceny in Pennsylvania is common-law larceny and consists in the taking and carrying away of the personal property of another with the mind of a thief, that is, with the specific intent to deprive the owner permanently of his property. Hilliard Lumber Co. v. Harleysville Co., 175 Pa.Super. 94, 103 A.2d 436 (1954). In order to convict appellant, it was necessary for the Commonwealth to show that appellant took the tractor and intended to deprive the owner of it. All that the Commonwealth showed was that someone took the tractor and that appellant delivered a tractor to Feiling.

Judgment reversed and appellant discharged.

JURISDICTION X

THE PEOPLE, RESPONDENT,
v.
JOHN BROWN, APPELLANT.

No. 21169.

GAROUTTE, J.

The appellant was convicted of the crime of burglary, alleged by the information to have been committed in entering a certain house with intent to commit grand larceny. The entry is conceded, and also it is conceded that appellant took therefrom a certain bicycle, the property of the party named in the information, and of such a value as to constitute grand larceny.

The appellant is a boy of seventeen years of age, and for a few days immediately prior to the taking of the bicycle was staying at the place from which the machine was taken, working for his board. He took the stand as a witness, and testified:

"I took the wheel to get even with the boy, and of course I didn't intend to keep it. I just wanted to get even with him. The boy was throwing oranges at me in the evening, and he would not stop when I told him to, and it made me mad, and I left Yount's house Saturday morning. I thought I would go back and take the boy's wheel. He had a wheel, the one I had the fuss with. Instead of getting hold of his, I got Frank's, but I intended to take it back Sunday night; but before I got back they caught me. I took it down by the grove, and put it on the ground, and covered it with brush, and crawled in, and Frank came and hauled off the brush and said: 'What are you doing here'? Then I told him …. I covered myself up in the brush so that they could not find me until evening, until I could take it back. I did not want them to find me. I expected to remain there during the day, and not go back until evening."

Upon the foregoing state of facts the court gave the jury the following instruction: "I think it is not necessary to say very much to you in this case. I may say, generally, that I think counsel for the defense here stated to you in this argument very fairly the principles of law governing this case, *except in one particular*. In defining to you the crime of grand larceny he says it is essential that the taking of it must be felonious. That is true; the taking with the intent to deprive the owner of it; but he adds the conclusion that you must find that the taker intended to deprive him of it *permanently*. I do not think that is the law. I think in this case, for example, if the defendant took this bicycle, we will say for the purpose of riding twenty-five miles, for the purpose of enabling him to get away, and then left it for another to get it, and intended to do nothing else except to help himself away for a certain distance, it would be larceny, just as much as though he intended to take it all the while. A man may take a horse, for instance, not with the intent to convert it wholly and permanently to his own use, but to ride it to a certain distance, for a certain purpose he may have, and then leave it. He converts it to that extent to his own use and purpose feloniously."

This instruction is erroneous, and demands a reversal of the judgment. If the boy's story be true he is not guilty of larceny in taking the machine; yet, under the instruction of the court, the words from his own mouth convicted him. The court told the jury that larceny may be committed, even though it was only the intent of the party taking the property to deprive the owner of it *temporarily*. We think the authorities form an unbroken line to the effect that the felonious intent must be to deprive the owner of the property *permanently*. The illustration contained in the instruction as to the man taking the horse is too broad in its terms as stating a correct principle of law. Under the circumstances depicted by the illustration the man might, and again he might not, be guilty of larceny. It would be a pure question of fact for the jury, and dependent for

its true solution upon all the circumstances surrounding the transaction. But the test of law to be applied to these circumstances for the purpose of determining the ultimate fact as to the man's guilt or innocence is, did he intend to permanently deprive the owner of his property? If he did not intend so to do, there is no felonious intent, and his acts constitute but a trespass. While the felonious intent of the party taking need not necessarily be an intention to convert the property to his own use, still it must in all cases be an intent to wholly and permanently deprive the owner thereof. As directly and fully sustaining this principle we cite: *State v. Davis,* 38 N. J. L. 176; 20 Am. Rep. 367; *State v. Homes,* 17 Mo. 379; 57 Am. Dec. 269, and note 275; *State v. South,* 28 N. J. L. 28; 75 Am. Dec. 250; *State v. Ryan,* 12 Nev. 401; 28 Am. Rep. 802; *State v. Slingerland,* 19 Nev. 135; Desty's American Criminal Law, sec. 155 J; *People v. Juarez,* 28 Cal. 380.

For the foregoing reasons it is ordered that the judgment and order be reversed and the cause remanded for a new trial.

ANSWER – SAMPLE CASE FILE: ASSIGNMENT B

Commonwealth v. Lyons

Issue:

Under the crime of larceny, did the defendant intend to take the victim's tractor and deprive the owner of it, when the truck that was identified as carrying the victim's tractor was seen in the defendant's driveway and when a witness testified that the defendant had dropped off one of two tractors, but the witness could not remember which tractor he had dropped off.

Holding:

No, this was not enough evidence to prove that defendant was guilty of larceny as it did not prove that defendant took or intended to deprive the owner of it permanently.

Reasoning:

The only evidence that the lower court based an inference of guilt on was 1) the ownership of the truck in which the tractor was taken and 2) delivery of a tractor to Feiling by defendant. This was not enough because the state never proved who owned the truck that hauled the victim's tractor. The truck was only seen once in the driveway of defendant, and there was nothing to connect the registration card with defendant except that his attorney was holding it. The truck could just as well have belonged to a member of defendant's family, or a visitor at his house. That defendant owned the truck could only be a product of a guess. In addition, there were two tractors seized at Feiling's home. Feiling could not say which one defendant had delivered. The delivery of an unidentified tractor on an unidentified truck does not raise an inference of guilt, which can be considered reasonable.

Rule(s):

Common law larceny consists in the taking and carrying away of the personal property of another with the mind of a thief, that is, with the specific intent to deprive the owner permanently of his property.

People v. Brown

Issue:

Under the common law crime of larceny, did the defendant intend to permanently deprive the boy of his bike, when the defendant took the wheel to get even with the boy and the defendant returned the bike a couple days later?

Holding:

Maybe. It is a question of fact for a jury to decide whether the boy intended to permanently deprive the boy of his bike. Court remanded the case for a new trial.

Reasoning:

If the boy did not intent to permanently deprive the other of his bike he will not be liable for larceny as he did not satisfy the requisite elements of the crime. However, because this is an issue for the jury to determine on whether the boy intended to deprive the other of his bicycle the court did not make an opinion on the matter. The court corrected the lower court's ruling that the larceny may be committed even though it was only the intent of the party taking the property to deprive the owner of it temporarily.

Rule(s):

The intent for larceny must be to permanently deprive the owner of the property permanently, not temporarily.

INTEROFFICE MEMORANDUM

TO: ASSOCIATES

FROM: PARTNER OF LAW FIRM

SUBJECT: SAMPLE CASE FILE: ASSIGNMENT C

INSTRUCTIONS

Based on ***all of the authority you have received in this case file thus far***, outline the legal doctrine governing the matter at hand, including any general rules, interpretive rules, exceptions, etc. so as to create a comprehensive framework of the legal doctrine. Remember that in Step 2 of the Learning Skills Pyramid you are concerned with seeing the "big picture" by understanding the relationships between important concepts, thus be sure to assimilate the key legal rules and standards by looking at all of the legal authority you have received collectively, as opposed to considering any particular case(s) in isolation. Upon completion, submit via the drop box and save as indicated in the course calendar.

ANSWER – SAMPLE CASE FILE: ASSIGNMENT C

I. Statutory Burglary

A. Knowing entry into a dwelling
   1. Dwelling means a building or conveyance of any kind, including any attached porch…which has a roof over it and is designed to be occupied by people lodging therein at night, together with the curtilage thereof. Dwelling includes the curtilage. (*Jacobs v. State*; *Baker v. State*)
   2. Entry*:* "need not be the whole body of the defendant. It is sufficient if the defendant extends any part of the body far enough into the structure to commit burglary." (*Ferrera v. State)*
      a. *Ex: Burglar who stole the screen door from the front door of a dwelling "entered" into the dwelling, as necessary to support conviction for burglary because the front door was under a covered porch that constituted part of the dwelling.*
      b. Entry onto the curtilage is, for the purposes of the burglary statute, entry into the structure or dwelling. *Baker v. State*
      c. Knowledge that such entry is without permission
   3. Criminal intent to commit an *offense* within the dwelling.

II. Common Law Burglary

A. Burglary is that "he that by night breaks and enters into a mansion house, with intent to commit a felony." In this definition there are four things to be considered; the time, the place, the manner, and the intent.

1. Time – It must be night and not day. It must be dark enough not to discern a man's face. Moonlight will not destroy the definition of night.
2. Place – Must be a dwelling house, permanent structure, and all the immediate surroundings in which someone lives (includes an inn), not a church, office, or tent/booth. The dwelling house protects all its branches and appurtenances, even if not contiguous or under the same roof, as long as they are within the curtilage of the property.
3. Manner
    a. Breaking – Must be an actual breaking (i.e., taking out glass of a window, picking a lock, opening it with a key). If owners leave door open, then that is his own fault and it will not be a breaking. In other words, there must be an actual opening that was created by the burglar.
        i. The breaking must be an act of physical force although it may be as slight as the pushing open of a closed door. (*Cappetta v. State*)
    b. Entering – Entry is thought as sufficient as soon as the burglar steps over the threshold with any part of his body or instrument. Any degree of entry should suffice. An entry can come before the breaking and still constitute burglary if they somehow break out of the dwelling house.
4. Intent – The breaking and entering must be with felonious intent to commit a crime inside. It doesn't matter if the crime actually happens or is completed; it is enough that they had the intent to commit a felony inside.

III. Larceny

A. The taking and carrying away of the personal property of another
B. with the intent to deprive the owner wholly and permanently of his property. (This is largely a question of fact. *Commonwealth v. Lyons; People v. Brown*)

INTEROFFICE MEMORANDUM

TO: ASSOCIATES

FROM: PARTNER OF LAW FIRM

SUBJECT: SAMPLE CASE FILE: ASSIGNMENT D

INSTRUCTIONS

Based on ***all of the authority you have received in this case file thus far***, outline the legal doctrine governing the matter at hand, including any general rules, interpretive rules, exceptions, etc. so as to create a comprehensive framework of the legal doctrine. Remember that in Step 2 of the Learning Skills Pyramid you are concerned with seeing the "big picture" by understanding the relationships between important concepts, thus be sure to assimilate the key legal rules and standards by looking at all of the legal authority you have received collectively, as opposed to considering any particular case(s) in isolation. Upon completion, submit via the drop box and save as: Date_Assign D_Team Name.

Firm Name: _____
Case Name: _____

DEAN
v.
STATE.

May 16, 1899.

TAYLOR, C. J.

At the spring term, 1898, of the circuit court of Jackson county, the plaintiff in error was convicted of the crime of larceny of an ox, and was sentenced to pay a fine of $150 and costs, and, in default in the payment thereof, that he be confined at hard labor in the state penitentiary for the period of six months. A reversal of this judgment is sought by writ of error.

The only error assigned and urged is that the evidence was not sufficient to sustain a conviction. The defense set up was that the ox alleged to have been stolen was not taken with the animo furandi necessary to the crime of larceny, but was taken with a bona fide belief on the part of the defendant that the ox belonged to him, and that he had a right to take it. Some of the testimony for the state, and the evidence for the defendant, tended strongly to sustain such defense. It showed that the defendant took the ox about midday, openly, in the presence of several persons, whose assistance he procured in capturing it, asserting at the time that the animal was his property, and that he led it off on the public highway to his home in the neighborhood; that he sold it shortly afterwards to another party in the same neighborhood, and the party to whom he sold it worked and drove it around in the neighborhood where the prosecuting and alleged owner lived, frequently driving it to a small town, where the prosecuting and alleged owner had his home. Several witnesses, and the defendant himself, swear positively that the animal belonged to the defendant; that he had raised it from a calf, and still owned its mother. The alleged owner and prosecuting witness testified simply that the animal belonged to him; that he had missed it for about a year, and that when it voluntarily came up to his place it had a bell on, and that one of his employés turned it into his inclosure; that shortly afterwards the defendant's wife and several other parties came to his place, and, after looking at the animal in his pasture, laid claim to the ox as being the property of the defendant. The bell that the animal had on when it came up to the prosecutor's place was shown to belong to the party to whom the defendant had sold the ox. There was no evidence tending to show any concealment on the part of the defendant either of the fact of his having taken the ox, or of his assertion of ownership thereof, or of the fact of his having sold it to the third party to whom he did sell it; and there was nothing to show any alteration or obliteration of the animal's marks, though there was testimony to show that the ox was in the mark of the prosecutor, and not in that of the defendant. There was testimony also to show that the defendant, after the ox had been taken possession of by the prosecuting witness, applied to a justice of the peace for process to recover possession of the animal from the prosecuting witness.

The rule, as laid down in 2 Bish. Cr. Law, § 851, and approvingly cited in Baker v. State, 17 Fla. 406, and in Charles v. State, 36 Fla. 691, 18 South. 369, is that 'in all cases where one in good faith takes another's property under claim of title in himself, he is exempt from the charge of larceny, however puerile or mistaken the claim may in fact be. And the same is true where the taking is on behalf of another, believed to be the true owner. Still, if the claim is dishonest,-a mere pretense,-it will not protect the taker.' And in Baker v. State, supra, this court said: 'The gist of the offense is the intent to deprive another of his property in a chattel, either for gain, or out of wantonness or malice to deprive another of his right in the thing taken. This cannot be where the taker honestly believes the property is his own, or that of another, and that he has a right to take possession of it for himself or for another, for

the protection of the latter.' Another rule, clearly and correctly laid down, as we think, in McMullen v. State, 53 Ala. 531, is that, 'where the taking is open, and there is no subsequent attempt to conceal the property, and no denial, but an avowal, of the taking, a strong presumption arises that there was no felonious intent, which must be repelled by clear and convincing evidence before a conviction is authorized.' Applying these principles to the facts as disclosed by the record in this case, we think that the ends of justice will best be subserved by the grant of another trial to the defendant, as, in our judgment, the evidence gives rise to a strongly reasonable doubt as to the presence in the case of that intent to steal that is necessary to make out larceny.

It is proper for us to point out another error in the sentence imposed, though it has not been assigned as error, and no notice of it is taken in the briefs of counsel. The primary penalty imposed here was a money fine and the costs of prosecution, but, in case of default in the payment of such fine and costs, the defendant was sentenced to imprisonment in the state penitentiary. This court has repeatedly held that under the provisions of chapter 4026, Acts 1890-91, where the primary punishment imposed was a fine and costs of prosecution only, the court should fix a period of imprisonment in the county jail, instead of in the state penitentiary, for nonpayment of such fine and costs. Bueno v. State, 40 Fla. --, 23 South. 862; Eggart v. State, 40 Fla. --, 25 South. 144.

The judgment of the court below is reversed, and a new trial awarded to the defendant.

ANSWER – SAMPLE CASE FILE: ASSIGNMENT D

I. Statutory Burglary

A. Knowing entry into a dwelling

1. Dwelling means a building or conveyance of any kind, including any attached porch…which has a roof over it and is designed to be occupied by people lodging therein at night, together with the curtilage thereof. Dwelling includes the curtilage. (*Jacobs v. State*; *Baker v. State*)
2. Entry*:* "need not be the whole body of the defendant. It is sufficient if the defendant extends any part of the body far enough into the structure to commit burglary." (*Ferrera v. State)*
    a. Ex: Burglar who stole the screen door from the front door of a dwelling "entered" into the dwelling, as necessary to support conviction for burglary because the front door was under a covered porch that constituted part of the dwelling.
    b. Entry onto the curtilage is, for the purposes of the burglary statute, entry into the structure or dwelling. *Baker v. State*
    c. Knowledge that such entry is without permission
3. Criminal intent to commit an *offense* within the dwelling.

II. Common Law Burglary

A. Burglary is that "he that by night breaks and enters into a mansion house, with intent to commit a felony." In this definition there are four things to be considered; the time, the place, the manner, and the intent.

1. Time – It must be night and not day. It must be dark enough not to discern a man's face. Moonlight will not destroy the definition of night.
2. Place – Must be a dwelling house, permanent structure, and all the immediate surroundings in which someone lives (includes an inn), not a church, office, or tent/booth. The dwelling house protects all its branches and appurtenances, even if not contiguous or under the same roof, as long as they are within the curtilage of the property.
3. Manner
    a. Breaking – Must be an actual breaking (i.e. taking out glass of a window, picking a lock, opening it with a key). If owners leave door open, then that is his own fault and it will not be a breaking. In other words, there must be an actual opening that was created by the burglar.
        i. The breaking must be an act of physical force although it may be as slight as the pushing open of a closed door. (*Cappetta v. State*)
    b. Entering – Entry is thought as sufficient as soon as the burglar steps over the threshold with any part of his body or instrument. Any degree of entry should suffice. An entry can come before the breaking and still constitute burglary if they somehow break out of the dwelling house.
4. Intent – The breaking and entering must be with felonious intent to commit a crime inside. It doesn't matter if the crime actually happens or is completed; it is enough that they had the intent to commit a felony inside.

III. Larceny

A. The taking and carrying away of the personal property of another
B. with the intent to deprive the owner wholly and permanently of his property. (This is largely a question of fact. *Commonwealth v. Lyons; People v. Brown*)

IV. *Defense – Mistake of Fact:*

A. *In all cases where one in good faith takes another's property under claim of title in himself, he is exempt from the charge of larceny, however puerile or mistaken the claim may in fact be. The same is true where the taking is on behalf of another, believed to be the true owner. (Dean v. State*)

INTEROFFICE MEMORANDUM

TO: ASSOCIATES

FROM: PARTNER OF LAW FIRM

SUBJECT: SAMPLE CASE FILE: ASSIGNMENT E

INSTRUCTIONS

Based on all of the legal authority you have received in this case file, please provide a complete written analysis of the legal issues identified in Part A below. Remember that in Step 3 of the Learning Skills Pyramid you are concerned with applying principles, concepts, and rules to new situations using sound reasoning, deductive logic, and focused analogy to reach valid conclusions. You are also concerned with self-assessing your level of mastery of the subject matter and with developing strong learning and problem-solving skills. While Part A focuses on the former, Part B (which you should complete after you have finished Part A) will provide you an opportunity to do the latter. Upon completion, submit via the drop box and save as indicated in the course calendar.

PART A:

Deb and Eve have been neighbors for years. They live in adjacent townhomes and their front doors are right next to each other. Last month, Eve received a job offer in another state and must relocate. And Deb found a deal on a condo across town. The women then spent the next few weeks packing their respective townhomes. As moving day approached, each woman reserved a moving truck and continued to fill her respective townhome with moving boxes. As it turned out, when Eve awoke on moving day, not one but two moving trucks were parked outside her townhome. Coincidentally, Deb was moving out on the same day.

As the moving day began, Eve saw the box labeled "shoes" sitting in Deb's living room. Eve had always been envious of Deb's amazing shoe collection, worth thousands of dollars. So when Eve saw the box in Deb's house, Eve considered for a brief moment whether Deb would notice if Eve packed the box into her moving truck.

The day wore on and each woman had made many trips between the townhome and moving truck. Fatigue started to set in for both women. The parking lot lights had come on and the temperature started to drop. Eve noticed it was getting more difficult to see where she was walking and mistook her brother for Deb as they passed on the sidewalk. In an effort to complete the task Eve started moving boxes quickly paying less attention to labels and organizing the truck as she loaded the boxes. Eve entered Deb's townhome without realizing it because both doors had been propped open all day and the layout of Deb's townhouse was the same as Eve's townhouse. Eve grabbed a box and loaded it into her moving truck. About a half hour later both women had finished loading the moving trucks and sat on the front steps to share some memories before going their own ways.

A few days later, as Deb was unpacking she quickly noticed that her box of precious shoes was missing. After eliminating all other explanations, she was sad to conclude that Eve must have taken them. She reported the discovery to the police. The police investigated and arrested Eve. Eve has been charged with statutory burglary, common law burglary, and larceny. Utilizing all of the authority and materials in your case file, analyze Eve's potential criminal liability and advise regarding the likely outcome of each charge.

PART B (COMPLETE AFTER YOU HAVE FINISHED PART A):

1. Reread your written analysis and answer the questions that follow:

   A. Identify and highlight each rule statement.

   B. Identify and underline the key concepts inherent in each rule statement provided. (These are the important concepts that must be included in your rule statement for it to be accurate and complete.)

   C. Identify each analysis section in your answer. For each analysis section, provide a rating on a scale of 1–5, with 5 being the highest, indicating how well the written analysis parallels and addresses the key concepts contained within the applicable rule statement.

   D. Identify any gaps in reasoning and explanation by highlighting the particular area of analysis where the gap exists. (Be on the alert for isolated factual recitations and assertions that are not directly tied to a key concept of a legal rule through explicit explanation/analysis.)

2. Identify the type(s) of legal test(s) (element, factor, totality of circumstances) implicated by each legal doctrine involved in this fact pattern.

3. Identify the reasoning method(s) that you employed in your written analysis. Explain why you chose the particular method(s) used in each section of analysis, and rate on a scale of 1-5, with 5 being the highest, how effective the particular method(s) proved in developing a strong and complete analysis.

4. Using all of the tools, strategies, and approaches covered in ACTLA:

   A. Identify the strongest aspects of your answer.

   B. Identify the aspects of your answer with which you are not 100% comfortable.

   C. For the aspects of your answer with which you are not 100% comfortable, identify the exact strategies and tools you will utilize to obtain greater comfort.

ANSWER – SAMPLE CASE FILE: ASSIGNMENT E

ANSWER TO PART A:

Eve may be liable for common law burglary if the state can demonstrate that Eve's actions satisfy the requirements of ***breaking*** and ***entering*** of a ***dwelling house*** of another at ***night*** with the ***intent to commit a felony*** therein. *[Element test]*

The time must be **night** and not day, meaning that it must be *dark enough to be unable to discern a man's face*, however, moonlight will not destroy the definition of night. The facts suggest that it is night because the lights had come on and the temp was dropping. But moreover, night is satisfied because Eve mistook her brother for Deb showing it was dark enough to be unable to discern a man's face. Thus, night is satisfied because it is dark enough that Eve mistook Deb for her brother.

The place must be a **dwelling house**, permanent *structure*, and all the immediate surroundings *in which someone lives* (includes an inn), not a church, office, or tent/booth. The dwelling house protects all its branches and appurtenances, even if not contiguous or under the same roof, *as* long as they are within the curtilage of the property. Here, the townhouse is a dwelling house because Deb lives in it and it is a permanent structure. Dwelling house is satisfied because the townhome is a permanent structure occupied by Deb.

With regard to "manner," the **breaking** must be an *actual, physical force* such as taking out glass of a window, picking a lock, opening it with a key. *Cappetta v. State* If owners leave door open, then that is his own fault and it will not be a breaking. Here, the door through which Eve walked was propped open by Deb, the owner. Eve did not exert any physical force, thus, there is no breaking. As for **entry**, *any degree* of entry, with any part of the body should suffice. This element is clearly satisfied as the facts state that Eve entered Deb's townhome.

To satisfy the element of intent, one must have the **intent to commit a felony**. It does not matter if the crime intended is completed; it is enough that one has the *intent to commit a felony while she breaks and enters*. For purposes of clarity and organization, I will discuss whether Eve can be found guilty of larceny as this will determine whether or not she had the necessary intent to commit a felony under common law burglary.

One is guilty of larceny when there is: ***a taking and carrying away*** of the personal property of another and the ***intent to deprive the owner wholly and permanently of his property*** (not partially and not temporarily). *Commonwealth v. Lyons; People v. Brown [Element test]*

Eve satisfies the taking and carrying away of the personal property of another because she entered Deb's townhome, carried the box of shoes to her moving truck, loaded the truck and relocated to another state with the shoes. With regard to whether Eve intended to permanently deprive Deb of the shoes Eve will argue she lacked the intent to permanently deprive because she entered and carried out the box without realizing she was not in her townhome. She will point to the fact that it was getting dark, the townhomes shared the same layout and she was moving too quickly to notice the labels on the boxes. Additionally, Eve

will argue that although she was envious of Deb's shoe collection, when she carried the box out to the truck, she did not do so with knowledge of the contents. The state will argue that Deb intended to deprive Deb of her shoes because she had always been envious of the shoes and that Eve capitalized on the opportunity presented by the chaos and confusion of the move. In the end, Deb will likely be successful in arguing that her lack of the knowledge of the box's contents prevented her from forming the required intent for larceny.

Because Eve does not have the intent to commit a larceny, the state will be unable to prove that Eve is guilty of common law burglary because Eve lacked the requisite intent when she entered Deb's townhouse and carried out the box of shoes to her moving truck. Also, even if Eve has the requisite intent under common law burglary, because she her actions do not satisfy the breaking element, she cannot be found guilty of common law burglary.

The state may also charge Eve with ***statutory burglary.*** Statutory burglary requires: *entry into a* ***dwelling***, *knowledge that such* ***entry*** *is without permission*, and *criminal* ***intent to*** *commit* ***an offense*** *within the dwelling.* *[Element test]*

Dwelling with regard to statutory burglary refers to a building or conveyance of any kind, including any attached porch, which has a roof over it and is designed to be occupied by people lodging therein at night, together with the curtilage of the dwelling. The townhome is a dwelling because it is a building that is occupied by Deb. Deb resides in the townhome thus, it is a building designed and occupied by people.

Next, we must determine whether Eve **entered** the dwelling. The facts state that Eve entered Deb's townhome. Thus, this element is satisfied.

Finally, to convict Eve of statutory burglary, the state will have to prove that Eve had the intent to commit **any offense** within the dwelling. The requisite intent does not have to be a felony; criminal mischief would suffice. Based on the authority in our case file it would be hard to determine whether Eve had the requisite intent to commit an offense within the dwelling, but based on the facts and Eve's entering Deb's townhome thinking it was her own house would likely negate any criminal intent. Thus, Eve does not have the intent to commit any offense. Because all elements are not satisfied, Eve will not be convicted of statutory burglary.

In conclusion, the state will be unable to convict Eve of any of the charged crimes.

PART B (COMPLETE AFTER YOU HAVE FINISHED PART A):

1. Reread your written analysis and answer the questions that follow:

   A. Identify and highlight each rule statement.

      Boxed in above analysis to Part A.

   B. Identify and underline the key concepts inherent in each rule statement provided. (These are the important concepts that must be included in your rule statement for it to be accurate and complete.)

Italicized in above analysis to Part A.

C. Identify each analysis section in your answer. For each analysis section, provide a rating on a scale of 1–5, with 5 being the highest, indicating how well the written analysis parallels and addresses the key concepts contained within the applicable rule statement

D. Identify any gaps in reasoning and explanation by highlighting the particular area of analysis where the gap exists. (Be on the alert for isolated factual recitations and assertions that are not directly tied to a key concept of a legal rule through explicit explanation/analysis.)

E. Identify the type(s) of legal test(s) (element, factor, totality of circumstances) implicated by each legal doctrine involved in this fact pattern.

2. Identify the reasoning method(s) that you employed in your written analysis. Explain why you chose the particular method(s) used in each section of analysis, and rate on a scale of 1–5, with 5 being the highest, how effective the particular method(s) proved in developing a strong and complete analysis.

3. Using all of the tools, strategies, and approaches covered in ACTLA:

   A. Identify the strongest aspects of your answer.

      The strongest aspect of the answer are the organization because it clearly utilized IRAC organization structure to present the issues, rules, analysis and conclusions clearly for the reader. Additionally, it utilized mini-IRAC as called for by common law burglary because it is an element based test with interpretive rules for each element.

   B. Identify the aspects of your answer with which you are not 100% comfortable.

      I think I missed a possible defense.

   C. For the aspects of your answer with which you are not 100% comfortable, identify the exact strategies and tools you will utilize to obtain greater comfort.

      I will go back to my Step 2 work and verify whether there is a possible defense. If there is a defense that I missed, I will review the rules and then rewrite that portion of the essay so that I will assess whether I understand how to apply that defense in Step 3.

INTEROFFICE MEMORANDUM

TO: ASSOCIATES
FROM: PARTNER OF LAW FIRM
SUBJECT: SAMPLE CASE FILE: ASSIGNMENT F

NEW INFORMATION REGARDING CLIENT

I recently had a follow-up meeting with our new client, during which the client provided some additional information. I have updated the original memo with the new information from the interview in bold. Based on all of the authority you have examined in this case file, and the facts as they now stand, please advise Susan as to any potential constitutional challenges that she might raise and the outcome of each. **Using the attached form, address: (1) all potential legal issues, (2) the rule(s) with regard to each issue, (3) the analysis for each issue, and (4) the potential outcome(s) of any legal action(s).**

Remember that we are in Jurisdiction X, thus all judicial authority shall have equal weight and precedential value. Upon completion, please submit one form for each team. Submit the memorandum in the following format: "Date_Team Name_Assign F."

BRIEF SYNOPSIS OF FACTS

While vacationing with her friends Bill and Charlie, Annie found herself out until the early morning hours. Annie and her friends were all staying at the same beach front hotel. After having several drinks, Annie could not remember at which hotel she was staying. Annie had relied on Bill and Charlie to get her around the area, however, Bill and Charlie left the bar earlier in the evening, leaving her without any idea how to get back to her room.

In her previous conversation with us, Annie did not remember how she found the hotel room; however, Annie remembers that Charlie later returned to the bar to help Annie find her way to her room. Annie remembers that Charlie brought her to her room and told Annie that he had forgotten his wallet on Annie's TV stand. Annie told Charlie that she had left her key in the room and without it there would be no way to get inside her room. Charlie, knowing that he had brought Annie to the wrong room in order to steal the wallet he had seen through a window, suggested that Annie break the window, go into the room and hand the wallet to him. Annie followed Charlie's suggestion and fell asleep shortly thereafter. Upon waking up, Annie immediately left the room, but only after grabbing some extra shampoo for her shower.

Step 3 Team Exercise

Based on all of the authority you have examined in this case, and the facts as they now stand, prepare a brief memorandum to your senior partner in the following format:

Firm: _____

Issue(s) (please present ***all*** the issues you identify in the above fact pattern):

Rule(s) (please present the rule for common law burglary found in your cases or outline):

Analysis (list best argument(s) on both sides, providing specific factual support for each argument relating to common law burglary and Annie's liability):

Conclusion(s) (predict the outcome of the case; explicitly articulate the specific rule(s), fact(s), and reasoning supporting your conclusion(s)):

ANSWER – SAMPLE CASE FILE: ASSIGNMENT F

Step 3 Team Exercise

Based on all of the authority you have examined in this case, and the facts as they now stand, prepare a brief memorandum to your senior partner in the following format:

Firm: _____

Issue(s) (please present ***all*** the issues you identify in the above fact pattern):

1. Is Annie guilty of common law burglary?
2. Is Annie guilty of statutory burglary?
3. Is Annie guilty of larceny?
4. Is Charlie guilty of common law burglary?
5. Is Charlie guilty of statutory burglary?
6. Is Charlie guilty of larceny?

Rule(s) (please present the complete **rule for common law burglary, including the general rule and all interpretive/definitional rules,** found in your cases or outline):

> Common law burglary is defined as "he that by night breaks and enters into a mansion house, with intent to commit a felony." In this definition, there are four things to be considered: time, place, manner, and intent. Time must be by night and not by day, after sunset before sunrise, so that it is dark enough to discern a man's face. Place must be a dwelling house and all the immediate surroundings in which someone lives (includes inn), not a church or office. The manner must be a breaking and entering. Breaking must be an actual breaking. There must be an actual opening that was created by the burglar. An entering is sufficient if the burglar steps over the threshold. The intent must be to commit a felony inside. It doesn't matter if the intended crime is completed; the intent to commit a felony is enough.

Analysis (Limit the analysis to the issue of whether Annie is guilty of common law burglary. Be sure to include the strongest argument(s) on both sides and provide specific factual support for each argument):

> **Time** must be by night and not by day, after sunset before sunrise, so that it is dark enough to discern a man's face. The events took place in the "early morning hours." Annie will argue that it is morning and therefore the night element is not satisfied. However, the state will argue that even though it is "morning hours" there are no facts indicating that there was sunlight sufficient to discern a man's face so the night element is satisfied. It is likely that night is satisfied.
>
> **Place** must be a dwelling house and all the immediate surroundings in which someone lives (includes inn), not a church or office. Annie will argue that a hotel room is not a dwelling house because hotels are not typically permanent homes. On the other hand,

the state will argue that the hotel room fits within the spirit of the law because a hotel is a place designed for the short term living. Under a public policy argument, the state has a strong argument that a hotel room satisfies the requirement of dwelling house because a hotel room is appropriate for human habitation.

The **manner** must be a **breaking and entering**. **Breaking** requires that an actual opening be created. Under these facts, breaking is satisfied because Annie broke the window at Charlie's suggestion. Additionally, **entering** must be satisfied. An entry is sufficient if the burglar steps over the threshold. Here, Annie entered the hotel room and fell asleep in the room. The breaking and entering elements are satisfied.

The **intent** must be to commit a felony inside, although the intended crime does not have to be completed. Annie will argue that she did not intend to commit a felony when she entered the hotel room. Charlie told Annie the room was her room, and Annie wanted to enter the room to sleep. Annie broke the window because she did not have her key not for the purpose of gaining entry into someone else's room. Additionally, taking the shampoo upon waking up is irrelevant, because the intent must be present when the breaking and entering occurs. Finally, Annie will also argue that she lacked felonious intent because when she handed Charlie the wallet, she believed it was Charlie's property.

On the other hand, the state will argue that Annie had felonious intent because she took the wallet and gave it to Charlie. State will argue that Annie's statement is mere pretext and that Annie knew that this wallet was not Charlie's because she would have remembered Charlie placing the wallet on the table in her room. In conclusion, Annie likely lacked the felonious intent required because she did not enter the room intending to commit a felony because she believed the wallet was Charlie's.

Conclusion(s) (predict the outcome of the issue addressed in the analysis section; explicitly articulate the specific rule(s), fact(s), and reasoning supporting your conclusion(s)):

State will not be successful in convicting Annie of common law burglary because Annie did not satisfy the requisite intent requirements and was most likely under a mistake of fact as to the true owner of the watch.

SAMPLE CASE FILE EXAM QUESTION

Prince Louie is a remarkable diamond necklace decorated with exquisite stones that were handpicked by skilled French jewelry makers. Margo received Prince Louie as part of her inheritance from her wealthy, deceased parents. Joanie Jelly, jealous of Margo's wealth and possessions, has become completely obsessed with this remarkable piece of jewelry. Margo insists on wearing the necklace everywhere, even if she is only in jeans and a t-shirt. Joanie finds Margo's behavior with regard to her necklace obnoxious, and vows to do something about it. Joanie knows that in two weeks Margo will be going to visit Nevis Island where a group of fine craftsman will clean, polish and correct any defects in the necklace. During this trip, Joanie plans on taking the necklace so that she can wear it to an upcoming black tie event. Joanie relishes in the fact that Margo will be in absolute panic when she cannot find the necklace. However, Joanie plans on returning the necklace to Margo via a wrapped present for Margo's upcoming birthday party.

When the time for the trip arrived, Margo traveled to Nevis Island. Margo was unaware, however, that Joanie also made the trip. Joanie arrived on Nevis Island and immediately began surveillance on Margo's villa. Based on information from those staying around the villa resort, Joanie found out that Margo had a fancy dinner party to attend. Margo left her villa around 4pm; Joanie did not see Margo wearing the necklace. After waiting several hours, Joanie cased the surroundings of the villa. She found an open window with bars covering its entrance. When Joanie peered through the bars into the moonlit room, she could make out the faint outline of the necklace on a nightstand next to Margo's bed. To remain undetected, Joanie used his multi-purpose fishing rod with lure to access the necklace on the nightstand. When the necklace was removed, it triggered a silent alarm to the police. Joanie was so elated that she was able to get possession of the necklace that she resolved then and there to keep the necklace for her own.

The police arrived before Joanie could retreat. The police are now considering filing criminal charges against Joanie and Joanie has sought your counsel. Utilizing all of the authority and materials in your case file, analyze Joanie Jelly's potential criminal liability and advise her regarding the likely outcome of any charges filed.

SAMPLE CASE FILE: EXAM SAMPLE ANSWER

Joanie may be liable for ***common law burglary*** if her actions satisfy the requisite elements of a **breaking** and **entering** of a **dwelling house** of another **at night** with the **intent to commit a felony** therein.

The **time** must be by night and not by day, meaning that it must be dark enough not to be able to discern a person's face. Moonlight, however, will not destroy the definition and meaning of night. In our case, it is uncertain the time of day or the amount of light available to discern a person's face. The facts state that Margo left her home around 4 pm, and that Joanie waited "several hours" to case the surroundings of the villa. It could be reasonable to expect that after waiting several hours past 4 pm that it would be dark. Also, the facts state that the room was "moonlit" and that Joanie could see the outline of the necklace on the nightstand, suggesting that there may have been sufficient ambient light to discern a person's face. However, moonlight does not affect this element as it is exempt from the meaning of the rule. Night will most likely be satisfied in this case because Joanie waited "several hours" after 4 pm to act which implies that it was dark outside.

The **place** must be a **dwelling house** and all immediate surroundings in which someone lives or sleeps, not a church or office, includes the buildings on the dwelling's curtilage. In our case, the facts tell us that Margo is staying in a villa at a resort, a temporary residence. This will most likely satisfy the element of dwelling because the rule states that an inn will be sufficient. Because the villa is a resort/inn it will satisfy the rule for dwelling.

With regard to "**manner**," the **breaking** must be an actual, physical force such as taking out the glass, picking the lock, opening it with a key. If an owner leaves a door open this is not a breaking; however, it may be as slight as pushing open of a closed door to constitute breaking. This element seems to be indisputable with regard to our facts; nothing seems to indicate that Joanie "broke" or "pushed" anything open to obtain the necklace. In fact, she found an open window that allowed her to access the necklace. Accordingly, Joanie's action may not be enough to constitute a breaking because there was no force that could be classified as "physical" however slight with regard to Joanie accessing the necklace through an open window. As for **entry**, any degree of it, with any part of the body, or with an instrument held in hand is sufficient. Joanie did not use any part of her body to enter the villa. However, she did use the multi-purpose rod to obtain the necklace. Because the instrument will be viewed as an extension of her body, the state will most likely satisfy this element.

To satisfy the **intent** element, one must have the intent to commit a felony. It doesn't matter if the crime actually happens; all that is required is the intent to commit a felony occurs at the time of the breaking and entering. In this particular case, for the state to satisfy this element they will have to show that Joanie had the intent to commit a larceny, the only felony other than burglary for which we have authority in our case file. For purposes of clarity and organization, I will discuss whether Joanie can be found guilty of larceny, as this will demonstrate whether or not she had the requisite intent to commit a felony under common law burglary.

In order to determine whether Joanie can be convicted of a ***larceny***, we have to analyze whether there was: **a taking and carrying away** of the personal property of another and with the **intent to deprive the owner wholly and permanently of his property (**not

partially and not temporarily). Applying the rules of larceny, it could be shown that Joanie satisfies the taking and carrying away of the personal property of another because she stole and took the diamond necklace from Margo's villa. With regard to whether Joanie had the intent to permanently deprive Margo of the necklace Joanie could argue that she never had the intent to permanently deprive Margo because she was only taking it for the purposes of wearing it to the ball and the facts suggest that Joanie would return the necklace to Margo on her birthday. However, one could argue that Joanie did have the requisite intent to deprive Margo of the necklace because once Joanie had the necklace within his possession, but before she carried the necklace away, Joanie resolved then and there to keep the necklace for her own. It should be noted, however, that her intent to keep the necklace was formulated after Joanie completed the breaking and entering. While this may be a legal technicality, it may be enough to absolve Joanie from any liability with regard to common law burglary because Joanie may need the intent to permanently steal the necklace from Margo while the breaking and entering was occurring. Thus, while the intent requirement for larceny would likely be satisfied because the facts indicate that Joanie intended to permanently deprive Margo of the necklace, it is unlikely that the intent requirement for common law burglary could be satisfied because the state will not be able to prove that Joanie had the requisite intent to commit a felony at the time the breaking and entering occurred.

The state may also charge Joanie with ***statutory burglary.*** Statutory burglary requires: 1) Knowing entry into a **dwelling**; 2) Knowledge that such **entry** is without permission; and 3) Criminal **intent to commit an offense** within the dwelling.

Dwelling with regard to statutory burglary refers to a building or conveyance of any kind, including any attached porch, which has a roof over it and is designed to be occupied by people lodging therein at night, together with the curtilage of the dwelling. The fact that the villa is used for lodging and that Margo stays there is sufficient to prove that the villa resort is a dwelling for purposes of the statute. Thus, because this is Margo's temporary vacation home the villa will constitute a dwelling for purposes of the statute because Margo lodges there.

Next, we must determine whether Joanie **entered** the dwelling. Entry need not be the whole body of the defendant; it is sufficient if the defendant extends any part of the body far enough into the structure to commit burglary. Because the facts do not suggest that Joanie extended any part of his body into the dwelling, Joanie will argue that this is not sufficient to satisfy entry under the statute. However, the state could make the argument that the use of the instrument was an extension of his body and that would satisfy the entry requirement. In addition, the state will argue that entry could have occurred if any part of Joanie's body entered the villa's curtilage, regardless of whether his body entered into the actual structure of the villa. Based on the facts provided, the state will likely be able to demonstrate that Joanie entered the dwelling because his body arguably entered the curtilage and he extended an instrument into the dwelling structure.

Finally, to convict Joanie of statutory burglary, the state will have to prove that Joanie had the criminal intent to commit **any offense** within the dwelling. The requisite intent does not have to be a felony; criminal mischief would suffice. Based on the authority in our case file it would be hard to determine whether Joanie had the requisite intent to commit an offense within the dwelling, but considering the invasive nature of Joanie's scheme it would not be unreasonable to assume that Joanie's intent constituted a wrongdoing punishable by

law. Accordingly, Joanie may be liable for statutory burglary based her entry into Margo's dwelling.

SAMPLE CASE FILE: RUBRIC AND PERSONAL PERFORMANCE REPORT*

* This is a working spreadsheet that can be downloaded from the supplement's Dropbox folder. We have included it here as a placeholder for reference.

Applied Critical Thinking and Legal Analysis

CONFIDENTIAL INSTRUCTOR MATERIALS - DO NOT POST, CIRCULATE, DISTRIBUTE, OR SHARE

Sample Case File Exam Rubric: Criminal Law

student:

	points earned	available
Issue #1: Common Law		1
Rule (general)		3
Analysis:		
sub-issue #1: Night		1
rule		3
analysis		5
conclusion		1
sub-issue #2: Place		1
rule:		3
analysis		5
conclusion		1
sub-issue #3: Breaking		1
rule		3
analysis		5

Performance Summary

	points earned	points available	% correct
Issues:	0	11	0%
Rules:	0	33	0%
Analysis:	0	45	0%
s:	0	11	0%
Org. & Clarity	0	10	0%
Total:	0	110	0%

ACTLA Sample Case File Exam Performance Summary

Student: **Total Score:** **0 / 100**

Your Individual Performance Report (depicts your performance in each of the available point categories for this assessment)

Allocation of Total Points Available (depicts relative weight of available points in each category - *not* your performance in each