

CRIMLAW: Larceny

At common law, larceny is defined as the trespassory taking and carrying away of the property of another with the intent to steal. A complete defense to larceny is that the taking is under the claim of right (i.e., the property actually belongs to the person taking it). Extortion is a form of larceny that consists of the taking of property of another through the use of a threat, with the intent to steal. Robbery is another form of larceny, which includes the use of force or threat of force in the commission of a larceny that is from a person's body or in the person's physical presence.

In this case, Dan went to Ann's home, but there is no indication that he did so as a trespasser. He had a preexisting relationship with Ann (as evidenced by his willingness to lend her money), and therefore he was likely to be invited to her residence. He also did not covertly take property from her residence, so he did not commit a trespass to chattel while he was at her residence. Therefore, he is not guilty of traditional common law larceny. However, he may still be guilty of Extortion, a form of larceny, if he threatened Ann in order to take her property with an intent to steal. Dan did make threats to harm Ann and her property in the future if he was not paid. However, when Dan took the check for \$900, he did so under a claim of right, since he believed that it was rightfully his property which he was entitled to have returned under the terms of their agreement. His threats of force and the taking of the money directly from Ann's person may also lead to a conclusion of robbery, but the threats were of future (not imminent) harm, and, once again, the intent to steal element is missing.

Since Dan's taking of the check from Ann was under a claim of right, and not with the intent to steal, he is not guilty of larceny.

2. Ann's Bad Check:

The issue is whether writing a check with the knowledge that there is not enough money to cover the amount of the check is sufficient for the commission of the crime of issuing a bad check.

CRIMLAW: Issuing a Bad Check

The crime of issuing a bad check consists of writing a check, and placing it into commerce, conveying it as consideration for an obligation, with the knowledge that there are insufficient funds to cover the check. There are defenses if the issuer reasonably believed that there were sufficient funds available. In addition, the statutory affirmative defenses to all crimes are available - i.e., 1) insanity, 2) extreme emotional disturbance, 3) entrapment, and 4) duress. Duress is a defense if a person committed a crime due to the threat of imminent harm, which they would not have otherwise committed. An affirmative defense such as duress must be raised by the Defendant and proven by a preponderance of the evidence.

CRIMLAW: Duress

In this case, Ann could be guilty of issuing a bad check because she wrote a check for \$900, gave it to Dan in satisfaction of a debt she owed to him, and she had knowledge that she only had \$300 in her account. However, she may be able to plead the affirmative defense of duress, since Dan threatened to use force against her and her property. Ann would have to raise the defense of duress and prove its elements by a preponderance of the evidence to succeed. In this case, Dan's threat was to come back tomorrow, so she is likely to fail to prove a threat of "imminent" harm. Ann may also claim to have a defense because, upon demand to "make good" on the check, Ann deposited sufficient funds into her account to cover the check. Therefore, Dan received payment on the check, albeit with a slight delay and possible fees from the bank.