
Other Crimes

1. In which of the following cases is the defendant most likely to be convicted if she is charged with receiving stolen property?

- The defendant bought a car from a man, who operates a used car lot. Before the purchase, the man told the defendant that the car had been stolen, which was true. Unknown to the defendant, the man is an undercover police agent who is operating the lot in cooperation with the police in exchange for leniency in connection with criminal charges pending against him
- **The defendant bought a car from a man. Before the purchase, the man told the defendant that the car was stolen. The man had stolen the car with the help of his friend, who, unknown to the defendant or the man, was an undercover police agent who feigned cooperation with the man in the theft of the car**
- The defendant bought a car from a man. Before the purchase, the man told the defendant that the car was stolen. Unknown to the defendant, the man had stolen the car from a parking lot and had been caught by the police as he was driving it away. He agreed to cooperate with the police and carry through with his prearranged sale of the car to the defendant
- The defendant bought a car from a man. Before the purchase, the man told the defendant that the car was stolen. Unknown to the defendant, the man was in fact the owner of the car but had reported it as stolen and had collected on a fraudulent claim of its theft from his insurance company

Note:
The crime of receiving stolen property requires that the defendant receives stolen personal property that he knows was obtained through a criminal offense with the intent to permanently deprive the owner of his interest in the property. The property must be actually stolen at the time of receipt by the defendant.

B is correct. In this question, the element at issue is the "stolen" status of the property, and this is the only answer choice where all elements are present. First, the car the defendant purchased was, in fact, stolen. The facts say that the man had stolen the car with the help of a friend. The fact that the friend, unknown to the defendant or the man, was actually an undercover cop, does not change the stolen status of the car. Second, the defendant had knowledge. Before the purchase, the man told the defendant the car was stolen. Finally, the third element is met because by purchasing a car, the man is intending to permanently deprive the true owner of the car.

A is incorrect. Here, the first element of whether the property was in fact stolen is at issue. The facts state that the car had been stolen originally by the man, but afterward the man joined forces to work with the police as an agent. The car, therefore, was technically in custody of the police or a police agent at the time the defendant received it, and thus no longer qualified as stolen property.

C is incorrect. In this answer, the man had stolen the car from a parking lot and had been caught by the police as he was driving it away. He agreed to cooperate with the police and carry through with his prearranged sale of the car to the defendant. Because the car was stolen but subsequently recovered by the police before the sale to the man, it lost its status as stolen.

D is incorrect. In this answer choice, the man was, in fact, the owner of the car but had reported it as stolen and had collected on a fraudulent claim of its theft from his insurance company. As such, the car was never actually stolen. Property must, in fact, be stolen in order for a defendant to be convicted of receiving stolen property.

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2. The defendant is guilty of

Burglary in the jurisdiction is defined as "entering a building unlawfully with the intent to commit a crime." A defendant entered the county museum at a time when it was open to the public, intending to steal a Picasso etching. Once inside, he took what he thought was the etching from an unlocked display case and concealed it under his coat. However, the etching was a photocopy of an original that had been loaned to another museum. A sign over the display case containing the photocopy said that similar photocopies were available free at the entrance. The defendant did not see the sign.

- Burglary and larceny
- Burglary and attempted larceny
- **Larceny**
- Attempted larceny

Note:
Larceny is a specific intent crime and is defined at common law as the: (i) taking (obtaining control or possession) and carrying away (the slightest movement is sufficient); (ii) without consent (against the victim's free will, which includes duress); (iii) with the intent to permanently deprive the owner of the property (the specific intent to dispossess must exist during the taking). Factual impossibility, where the substantive crime is incapable of completion because of a fact unknown to the defendant, is not a valid defense.

Burglary, as defined by the statute provided in this question, is defined as "entering a building unlawfully with the intent to commit a crime."

C is correct. The defendant, in this case, entered the museum, with the intent to steal, and took the photocopy of the etching from its display case and concealed it. Because all of the elements of larceny are met, the defendant is guilty of larceny. The fact that the defendant did not know the etching was a copy does not negate his guilt for the crime of larceny. The defendant committed larceny and because factual impossibility does not negate the defendant's intent to commit the crime.

A is incorrect. In the question's jurisdiction, the charge of burglary requires that the defendant entered the building unlawfully and with the intent to commit a crime. The facts in the question state that the defendant entered the building at a time it was open to the public. Because the defendant's entry was lawful, he did not commit a burglary.

B is incorrect. As discussed above, the defendant did not commit burglary because his entrance into the museum was lawful. Further, the defendant successfully committed larceny as soon as he left with the painting. This goes beyond a mere substantial step towards actually committing the crime itself. Under the doctrine of merger, the attempt merged into the completed crime, which means the defendant is not guilty of attempted larceny. Further, as noted above, factual impossibility does not negate the defendant's intent to commit the crime.

D is incorrect. The attempted larceny charge merged into the larceny charge when the defendant actually left with the painting. Despite the fact that the painting was a photocopy, the defendant would not be guilty of attempted larceny because the crimes merged. As such, the defendant would be guilty of larceny.

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3. If the homeowner is charged with second-degree assault, which is defined in the jurisdiction as "maliciously causing serious physical injury to another," he is

Plagued by neighborhood youths who had been stealing lawn furniture from his backyard, a homeowner remained awake each night watching for them. One evening the homeowner heard noises in his backyard. He yelled out, warning intruders to leave. Receiving no answer, he fired a shotgun filled with nonlethal buckshot into bushes along his back fence where he believed the intruders might be hiding. A six-year-old child was hiding in the bushes and was struck in the eye by some of the pellets, causing loss of sight.

- Not guilty, because the child was trespassing and he was using what he believed was nondeadly force
- Not guilty, because he did not intend to kill or to cause serious physical injury
- **Guilty, because he recklessly caused serious physical injury**
- Guilty, because there is no privilege to use force against a person who is too young to be criminally responsible

Note:
C is correct. Proof of malice does not need to be proof of an actual specific intent to kill or harm another; it can be implied from a defendant's gross recklessness with regard to human life shown. In this case, the homeowner fired a shotgun into bushes where he believed people were hiding. This action would support a finding of malice. The shooting caused the child to lose his sight, which is a serious injury. Therefore, the homeowner is guilty of second degree assault.

A is incorrect. The child's status as a trespasser does not automatically allow the homeowner to inflict serious bodily harm. In addition, the homeowner's belief that the force would be non-deadly would not negate the finding that he acted maliciously.

B is incorrect. A finding of malice does not require the intent to kill or to cause serious physical injury. Malice can also be shown by the homeowner acting extremely recklessly with regard to human life.

D is incorrect. This is a misstatement of the law regarding the use of force. The homeowner, when he fired a shotgun into bushes by his back fence, acted maliciously and caused a serious injury to another. He should be found guilty of second degree assault.

4. At her trial, the court should

Sometime later, the woman returned for a visit with her family and was arrested and indicted as an accessory after the fact to child abuse. The man pleaded with the woman to forgive him and to run away with him. She agreed. They moved out of state and took the daughter with them. Without the testimony of the child, the prosecution was forced to dismiss the case. A man was engaged to marry a woman. One evening, the man became enraged at the comments of the woman's eight-year-old daughter who was complaining in her usual fashion that she did not want her mother to marry the man. The man, who had too much to drink, began beating her. The daughter suffered some bruises and a broken arm. The woman took her daughter to the hospital. The police were notified by the hospital staff. The man was indicted for felony child abuse.

- Dismiss the charge, because the man had not been convicted
- Dismiss the charge, because the evidence shows that any aid she rendered occurred after the crime was completed
- Submit the case to the jury, on an instruction to convict only if the woman knew the man had been indicted
- **Submit the case to the jury, on an instruction to convict only if her purpose in moving was to prevent the man's conviction**

Note:
An accessory after the fact is someone who assists: (i) a person who has committed a crime; (ii) after the person has committed the crime; (iii) with knowledge that the person committed the crime; and (iv) with the intent to help the person avoid punishment. Although accomplice liability is derivative, a defendant can be convicted of accessory after the fact, even if the principal criminal actor is not prosecuted or has been tried and acquitted for the offense. Standefer v. United States, 447 U.S. 10 (1980). A defendant can be liable for a crime even though she did not commit it and the person who did commit the crime was not convicted because, if a defendant helps another get away with a crime, punishing the accessory for that crime is appropriate.

D is correct. In this case, the man was indicted for felony child abuse and when the man pleaded with the woman to run away with him, she agreed and took the daughter with them. Without the testimony of the child, the prosecution was forced to dismiss the case. The woman could be found guilty as an accessory after the fact as long as she intended to help the man avoid apprehension. The woman knew the man committed child abuse by beating her daughter and assisted the man by taking away her daughter, the prosecution's witness. So, at trial, the jury only needs to ascertain whether the woman's purpose in moving was to prevent the man's conviction.

A is incorrect. The woman can still be tried and convicted of accessory after the fact to child abuse because punishment is appropriate if an accessory after the fact intended to help the man get away with his crime.

B is incorrect. Liability as an accessory after the fact is appropriate when a defendant (in this case the woman), aids the principal (in this case the man) after the principal committed the crime (in this case, felony child abuse). As such, the woman can be convicted as an accessory after the fact to child abuse, even if the evidence shows that any aid she rendered occurred after the crime was completed. Because accessory after the fact is a separate crime to the felony child abuse, the woman can be prosecuted for aiding the man after the crime was completed.

C is incorrect. This answer choice misstates the issue at hand. The issue is not whether the woman knew the man had been indicted, but rather, whether the woman's purpose in moving was to help the man avoid conviction for the crime of felony child abuse. Because the woman need not have known that the man had been indicted, as long as the woman knew that her aid was to prevent his prosecution or punishment, this choice is incorrect.

5. The man has committed

A man asked his friend if he would loan him $500, promising to repay the amount within two weeks. The friend loaned him the $500. The next day the man took the money to the race track and lost all of it betting on horse races. He then left town for six months. He has not repaid his friend.

- Both larceny by trick and obtaining money by false pretenses (although he can only be convicted on one offense)
- Larceny by trick only
- Obtaining money by false pretenses only
- **Neither larceny by trick nor obtaining money by false pretenses**

Note:
Larceny is a specific intent crime and is defined as the: (i) taking (obtaining control or possession) and carrying away (the slightest movement is sufficient); (ii) without consent (against the victim's free will, which includes duress because duress negates consent); and (iii) with the intent to permanently deprive the owner of the property (the specific intent to dispossess must exist during the taking).

Larceny by trick is an extension of larceny and is defined by obtaining possession of another's personal property using false statements of past or existing fact. On the other hand, theft by false pretenses is defined as: (i) obtaining title to another's property (this requires obtaining ownership, not mere possession); (ii) by the use of false statements of past or existing fact; with (iii) the intent to defraud (victim must be deceived by the false statement and pass title to the defendant). Larceny by trick is distinguished from false pretenses in that larceny by trick is where the defendant acquires possession of the property of another, whereas, for false pretenses, the defendant acquires title of another's property through fraud.

D is correct. Here, there is no evidence that the man intended to permanently deprive his friend of the money, or that he made misrepresentations to the friend to induce the friend to give him the money. Here the man merely promised to pay a debt, and even though he ended up not paying the debt, this is insufficient evidence that the man intended to permanently deprive the friend of his money. Furthermore, a promise to pay back a debt is insufficient to be considered a false or misleading statement. Accordingly, the man did not commit larceny by trick or false pretenses.

A is incorrect. As discussed above, there was no evidence of fraud or misrepresentation, and no evidence that the man did not intend to pay his friend back. Both larceny by trick and false pretenses require proof of intent to permanently deprive and the making of false or fraudulent statements. A promise to pay, even if never met, is insufficient for a finding of intent to permanently deprive or a finding of fraudulent statements.

B is incorrect. The man did not commit larceny by trick because he did not obtain possession of the money through false statements of past or existing fact, with the intent to defraud. As discussed above, there is no evidence of an intent to permanently deprive the friend of the money nor that he made fraudulent statements to induce the friend to give possession of the money to him.

C is incorrect. The man did not obtain money by false pretenses because he did not obtain title of the money through false statements of past or existing fact, with the intent to defraud. Here, there is no evidence that the man intended to permanently deprive the friend of the money nor that he made fraudulent statements to induce the friend to give title of the money to him.

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6. Which of the following is true?

The neighbor decided to have a party in the owner's house. He invited a number of friends. One friend, a pickpocket, went into the owner's bedroom, took some of the owner's rings, and put them in his pocket. The owner of a house told his neighbor that he was going away for two weeks and asked the neighbor to keep an eye on his house. The neighbor agreed. The owner gave the neighbor a key to use to enter the house.

- The neighbor and the pickpocket are guilty of burglary
- The neighbor is guilty of burglary and the pickpocket is guilty of larceny
- The neighbor is guilty of trespass and the pickpocket is guilty of larceny
- **The pickpocket is guilty of larceny and the neighbor is not guilty of any crime**

Note:
D is correct. The neighbor is not criminally responsible for the pickpocket's theft, and the neighbor had permission to be in the residence. Since the neighbor was given permission to watch the house, and without additional facts, the neighbor cannot be presumed to have exceeded the scope of his authority. Therefore, the neighbor is not guilty of any crime. The pickpocket, however, took the owner's property, without the owner's consent, put it in his pocket, and is thus guilty of larceny.

While trespass is mostly taught in the context of tort law, this question is classified under criminal law. A hint that this is a criminal law question is that the answer choices each use the word "guilty," which is a term that will appear in criminal law questions. On the contrary, if it was a torts question the answer choices would generally use the word "liable" instead of "guilty."

A is incorrect. Neither the neighbor nor the pickpocket committed a burglary. At common law, burglary is defined as the breaking and entering into a dwelling of another, at nighttime, with the intent to commit a felony therein. The neighbor had the owner's permission to be in the residence, and there is no evidence that the neighbor had the intent to commit a felony or theft in the residence. The neighbor is not guilty of burglary. Likewise, the pickpocket had permission to be in the residence and, since he was invited into the dwelling, there is no evidence that the pickpocket broke into the house. There is also no evidence that the pickpocket entered the party with the intent to commit a felony or a theft.

B is incorrect. The neighbor did not commit burglary and is not criminally responsible for the pickpocket's actions. He did not have the intent that the larceny occur and he did not knowingly aid and abet the pickpocket in the commission of the crime. However, the pickpocket did take and carry away the owner's rings with the intent to deprive the owner of them, and he is thus guilty of larceny.

C is incorrect. The neighbor did not commit a trespass. A criminal trespass occurs when a defendant does any of the following: (i) intentionally enters a person's land without permission; (ii) intentionally remains on the person's land without the right to be there; or (iii) intentionally puts an object on the person's land without permission. However, a defendant will not be guilty of trespass if he is privileged. The privilege implicated in this fact pattern is "consent." A defendant's action is privileged if the entry to the land is with the consent of the person who has rightful and legal possession of the land. The action becomes trespass if it is beyond the scope of the consent of the rightful owner. Consent can be implied from custom, usage or conduct.

Here, the neighbor had permission to be in the residence by the owner. The owner's consent was not limited by time or day or reason for being in the house. This constitutes a privilege of consent, so the neighbor being present in the house cannot be a trespass. The pickpocket is guilty of larceny, but the neighbor committed no crime.

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7. The employee's best argument that he is NOT guilty of murder is

An employee worked at a day-care center run by the Happy Faced Day Care Corporation. At the center, one of the young children often arrived with bruises and welts on his back and legs. A statute in the jurisdiction requires all day-care workers to report to the police cases where there is probable cause to suspect child abuse and provides for immediate removal from the home of any suspected child abuse victims. The employee was not aware of this statute. Nevertheless, he did report the child's condition to his supervisor, who advised him to keep quiet about it so the day-care center would not get into trouble for defaming a parent. About two weeks after the employee first noticed the child's condition, the child was beaten to death by his father. The employee has been charged with murder in the death of the child. The evidence at trial disclosed, in addition to the above, that the child had been the victim of beatings by the father for some time, and that these earlier beatings had been responsible for the marks that the employee had seen. The child's mother had been aware of the beatings but had not stopped them because she was herself afraid of the child's father.

- He was not aware of the duty-to-report statute
- **He lacked the mental state necessary to the commission of the crime**
- His omission was not the proximate cause of death
- The day-care corporation, rather than the employee, was guilty of the omission, which was sanctioned by its supervisory-level agent

Note:
To be guilty of a crime as an accomplice, a person must aid, abet, or facilitate that crime with the intent that the crime be committed.

To be guilty of murder, the defendant's actions must have been both the actual ("but for") and proximate cause of the victim's death. Proximate cause requires that the death was a reasonably foreseeable result of the defendant's acts.

B is correct. No facts indicate that the employee intended to aid, abet, or facilitate the father in murdering the child. In fact, the employee reported the child's condition to his supervisor, suggesting the opposite. Although the employee followed the advice of his supervisor and did not report the child's condition to the police, thus possibly contributing to a situation in which the father was able to abuse the child, the employee did not do so with the intent required of accomplice liability. Therefore, the employee's best argument is that he lacked the mental state necessary to the commission of the crime.

A is incorrect. Even if the employee did not know about the duty-to-report statute, he still could be held liable as an accomplice if he had aided, abetted, or facilitated the beating, such as by not reporting the suspected child abuse to the authorities, with the intent that the child's father would commit murder. The employee's awareness of the duty-to-report statute is irrelevant to whether he acted as an accomplice to the father's crime.

C is incorrect. A trier of fact could find that the child's death was a reasonably foreseeable result of the employee's failure to report the child's condition to the police, which likely is why the duty-to-report statute exists in the first place. Therefore, this option would not represent the employee's best argument.

D is incorrect. The statute places the burden of reporting suspected child abuse on the employee, not on the employee's corporation. The employee's guilt or innocence under the duty-to-report statute is, at best, incidental to the determination of whether the employee aided, abetted, or facilitated the child's murder with the intent that the murder was committed. If the employee had failed to report the child's condition to the police with the intent that the father would kill the child, then the employee could be guilty of murder as an accomplice, even if the supervisor had told the employee not to contact the police.

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8. The defendant is

A defendant was upset because he was going to have to close his liquor store due to competition from a discount store in a new shopping mall nearby. In desperation, he decided to set fire to his store to collect the insurance. While looking through the basement for flammable material, he lit a match to read the label on a can. The match burned his finger and, in a reflex action, he dropped the match. It fell into a barrel and ignited some paper. The defendant could have put out the fire, but instead left the building because he wanted the building destroyed. The fire spread and the store was destroyed by fire. The defendant was eventually arrested and indicted for arson.

- **Guilty, because he could have put out the fire before it spread and did not do so because he wanted the building destroyed**
- Guilty, because he was negligent in starting the fire
- Not guilty, because even if he wanted to burn the building there was no concurrence between his mens rea and the act of starting the fire
- Not guilty, because his starting the fire was the result of a reflex action and not a voluntary act

Note:
Arson is a malice crime and requires: (i) the malicious (with intent OR extreme recklessness); (ii) burning (some damage to structure caused by fire); (iii) of the dwelling house of another (under common law this means a structure where someone else lives, but on the MBE, it can be non-residential structure owned by the defendant).

As mentioned above, when the MBE tests on the crime of arson, it will impliedly follow the modern trend that the structure does not need to be the dwelling of another. Here, the answer choices focus on intent, so it's important to focus on the malicious intent rather than getting hung up on the fact that the defendant's actions do not fall within the common law definition of arson (the fact that the structure is not the dwelling of another).

A is correct. To establish malice in an arson case, the prosecution need only show that the defendant displayed extreme recklessness or recklessly disregarded an obvious or high risk that the burning of the structure would occur. Here, the facts state that the defendant, while looking through the basement for flammable material, he lit a match to read the label on a can. The match burned his finger and, in a reflex action, he dropped the match. It fell into a barrel and ignited some paper. The defendant could have put out the fire, but instead left the building because he wanted the building destroyed. This meets the malicious intent required for an arson conviction.

B is incorrect. As discussed above, arson is a malice crime. Malicious intent requires more than mere negligence. Negligence alone is insufficient proof of malicious burning. In this case, the defendant's recklessness, combined with the obvious risk of the burning, demonstrates malice and the defendant can properly be convicted of arson.

C is incorrect. Arson is a malice crime and not a specific intent crime. As such, arson requires only the malicious burning of the building, as evidenced by extreme recklessness, not the specific intent to burn the building down.

D is incorrect. The burning of the structure need not be intentional, as long as it is a foreseeable consequence of the defendant's extremely reckless lighting of a match around flammable materials and then letting the fire grow. Because the defendant allowed a minor fire, which he started, to spread throughout the building because he wanted the building destroyed, he is guilty of arson.

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9. They are

Unprepared for a final examination, a student asked his girlfriend to set off the fire alarms in the university building 15 minutes after the test commenced. The girlfriend did so. Several students were injured in the panic that followed as people were trying to get out of the building. The student and the girlfriend are prosecuted for battery and for conspiracy to commit battery.

- Guilty of both crimes
- **Guilty of battery but not guilty of conspiracy**
- Not guilty of battery but guilty of conspiracy
- **Not guilty of either crime**

Note:
B and D are correct. Although rare, on a few occasions the NCBE has released two correct answers for one question. For this question, when it was scored, either answer B or D was accepted as correct and given credit. However, moving forward, examinees should still approach each question as if only one answer is correct.

B is correct. At common law, battery is a general intent crime and is defined as the unlawful offensive touching of another. The girlfriend and the student, as accomplices, by pulling the fire alarm, caused many of the students to be offensively touched to the point of injury. These unlawful touchings were completely foreseeable from the pulling of the fire alarm, and they were the direct result of the student and his girlfriend's intentional act. Because battery is a general intent crime, the student and his girlfriend are guilty of battery.

Conspiracy to commit battery, on the other hand, is a specific intent crime and requires an agreement to commit the crime of battery. For a proper conspiracy charge, both parties must reach an agreement and intend that the crime of battery be committed. This requires proof that both the student and his girlfriend specifically intended for people to be the victims of criminal battery. Although the batteries were a foreseeable consequence of their actions, the student and his girlfriend did not have the specific intent that the batteries occur. Instead, they intended that the student get out of a final exam. Accordingly, the student and his girlfriend should be found not guilty of the offense of conspiracy to commit battery.

D is also correct. If the student and his girlfriend are found to have lacked the general intent necessary to commit the crime of battery, then they would be found not guilty of either crime. In this case, it is possible that the girlfriend, and the student as her accomplice, meant to pull the fire alarms, but there is no indication that they intended to cause unlawful offensive touchings.

A is incorrect. The student and his girlfriend did not have the specific intent to cause criminal battery, and, lacking that specific intent, cannot be found guilty of conspiracy. They can, however, be guilty of battery because battery is a general intent crime.

C is incorrect. Because battery is a general intent crime, the student and his girlfriend are guilty of battery. However, because conspiracy is a specific intent crime, and the student and his girlfriend did not have the specific intent to commit batteries, but rather get out of a test, the student and the girlfriend cannot be guilty of conspiracy.

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10. The employee is guilty of

An employee worked as the cashier in a restaurant. One night after the restaurant had closed, the employee discovered that the amount of cash in the cash register did not match the cash register receipt tapes. He took the cash and the tapes, put them in a bag, gave them to the manager of the restaurant and reported the discrepancy. The manager immediately accused him of taking money from the register and threatened to fire him if he did not make up the difference. The manager placed the bag in the office safe. Angered by what he considered to be an unjust accusation, the employee waited until the manager left the room and then reached into the still open safe, took the bag containing the cash, and left.

- **Larceny**
- Embezzlement
- Either larceny or embezzlement but not both
- Neither larceny nor embezzlement

Note:
A is correct. The employee took and carried away the money with the intent to permanently deprive the owner of it and without the owner's permission. After he turned over the cash and receipts to the manager and she placed it in the safe, the employee no longer had lawful possession of the property and is thus not guilty of embezzlement. At common law, embezzlement is the fraudulent conversion of another person's property by someone who had lawful possession of said property. Since the employee was no longer entitled to possession of the money, and because he did not convert the property, he is guilty of larceny and not embezzlement.

B is incorrect. The employee did not have lawful possession of the money and did not convert it.

C is incorrect. The employee did not commit embezzlement, but he did commit larceny.

D is incorrect. The employee did take the property of another with the intent to permanently deprive the owner of the property.