

**LAW 726-002: INTRODUCTION TO
SUBSTANTIVE CRIMINAL LAW**

Lanny Glinberg

First Assignment, Fall 2019

Our first classes will be devoted to a course introduction and discussion of the burglary and robbery problems outlined below. We will apply the relevant statutes and assigned readings to the facts provided. You need not answer each of the following questions in writing, but it would be helpful to do so—helpful because these are the sort of questions you’ll be facing as a practicing lawyer, and on the final exam. In fact, these are the sort of questions we will address in every class meeting.

Before answering the following questions, please read pages 27-34 in the textbook. This will give you a brief overview of the structure of the court system and the role of the prosecutor, judge, and jury. You will then need to find and read the relevant statutes from the statute book.

(1) Burglary

Vic (the victim) and Dave (the defendant) were roommates until their inability to get along led Dave to move to another apartment last month. When Dave moved out, Vic told him never to set foot in the place again.

Fact Situation 1

At trial, Vic testifies that he came home and found Dave carrying Vic’s television, valued at \$3,000, out of the apartment. Vic says he did not give Dave permission to enter the apartment.

Fact Situation 2

Vic testifies that he was home when Dave came to the door and demanded the television, claiming he had paid for it when the two originally furnished the apartment. Vic says Dave then barged past him into the apartment and, when he saw that the TV was a new one—and not the TV originally in the apartment—said he would take it in payment anyway. Dave denies “barging” past Vic, saying instead that Vic invited him in, that they initially chatted amicably, and that he took the TV when Vic refused to pay him for the TV he (Dave) had originally bought.

Fact Situation 3

At the time of the alleged crimes, Vic told the police the facts as stated in Fact Situation 2 above. At trial, however, he admits he invited Dave to enter the apartment. Dave testifies as he did in Fact Situation 2.

Fact Situation 4 Same facts as in Fact Situation 1. In addition, Vic testifies that he blocked Dave from leaving the apartment until Dave put the TV down and stormed out.

In each fact situation presented above, the District Attorney's Office charged Dave with Burglary in violation of § 943.10 of the Wisconsin Statutes, Criminal Trespass to Dwellings in violation of Wis. Stat. § 943.14 and Theft in violation of § 943.20. In each case, the trial judge is asked to instruct the jury on all the charged offenses and on Attempted Theft in violation of § 939.32. (While not mandatory, it may be helpful to review pages 49-60 of the textbook when considering the lesser charge of Attempt.)

- (a) You are the trial judge. With respect to each fact situation described above, explain what offense or offenses you will submit to the jury for its verdict(s).
- (b) You are the jury. Consider the offenses submitted, return a verdict and explain your answer.
- (c) You are the judge in Scenario 3. The jury has returned verdicts of "guilty" on the charge of Theft and "not guilty" on the other charges. Sentence Dave under Wis. Stat. §§ 973.01 and 973.09. Explain your decision.

(2) **Robbery**

Fact Situation 1

Doris, the defendant, entered a clothing store and took several thousand dollars' worth of dresses off the rack. She walked out of the store and was apprehended by the police several blocks away with the dresses in her possession. The clerk, Vivian, testifies that she saw Doris take the dresses and that she saw the barrel of a gun held by Doris. She also testifies that she moved out of Doris's way as Doris was leaving the store because Doris said, "Get out of my way or I'll send you to kingdom come."

No gun was found in Doris' possession when she was apprehended. She denies that she had a gun in the store and denies that she said anything to Vivian. Indeed, she says she never saw Vivian at all.

Doris is charged with Armed Robbery in violation of Wis. Stat. § 943.32(2).

- (a) You are the trial judge. The prosecutor has requested that you submit the crime charged to the jury for its verdict. Should you do so? Explain.
- (b) There has been a request that simple robbery (Wis. Stat. § 943.32(1)) and theft (Wis. Stat. § 943.20) also be submitted. Should you do so? Explain.
- (c) You are the jury. What verdict or verdicts should you return?

Fact Situation 2

The facts are the same as in Fact Situation 1, except Vivian testifies that Doris entered the clothing store with a man. As Doris walked toward Vivian with the dresses, the man, Frank, started yelling and making a ruckus. Vivian was distracted by the noise as Doris moved past her. The man was never apprehended. Doris is charged with Armed Robbery in violation of Wis. Stat. § 943.32(2) as a Party to the Crime under Wis. Stat.

§ 939.05.

You are the trial judge. The prosecutor has requested that you submit the crimes charged. How should you instruct the jury? Explain.

Fact Situation 3

The facts are the same as in Fact Situation 2, except Vivian says Frank struck her with his fist as he left the shop, and knocked out two of her teeth. Frank was apprehended. Both Doris and Frank are charged with Armed Robbery in violation of Wis. Stat. § 943.32(2) and with Aggravated Battery in violation of Wis. Stat. § 940.19(5) as Parties to the Crime under Wis. Stat. § 939.05.

You are the trial judge. The prosecutor has requested that you submit the crimes charged. How should you instruct the jury? Explain.