

SUMMER SKILLS SESSION, CLASS #6

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At our Summer Skills Session Class #6 on July 22, we will be working with the hypothetical facts below. Please review this document in advance of the class so you will be prepared to work on it in groups, as described below.

Using the crime of burglary as our example, we will describe how legal rules are broken down into distinct legal “elements” that must be proven if a court is to find a defendant guilty in a criminal case. Legal “elements” must also be proven to find a defendant liable in a civil case. We will outline some of the history and policy underpinning elemental reasoning, and then we will offer students a chance to try their hands at constructing legal arguments.

After introductory remarks by your professors, each student will be placed at random into one of 10 Zoom breakout groups. Each group will have 20—30 minutes to work on one of the five legal elements of burglary: **breaking; entry; dwelling house; nighttime; and intent to commit larceny.**

Each group will be assigned a particular role regarding one element. Using the facts of the Chloe Cardashian hypothetical below, each group will construct reasons why a given element is either **met**; or **not met**. The goal of each group is to generate a list of arguments supporting their assigned role—either supporting or opposing that a legal element is satisfied on the facts. When one minute remains on your time together as a group, please nominate a spokesperson for your group. Then, when our entire class reassembles as a whole, the spokesperson for each of the ten groups will have 2—3 minutes to identify for the rest of the class: (1) the element you addressed in your group; and (2) the list of reasons why the element is either met, or not met, depending on your group’s role.

- Group #1 will have the role of **supporting** the idea that element #1, “**breaking**” has been met on the Chloe Cardashian facts.
- Group #2 will have the role of **opposing** the idea that element #1, “**breaking**” has been met on the facts.
- Group #3 will have the role of **supporting** the idea that element #2, “**entry**” has been met on the Chloe Cardashian facts.
- Group #4 will have the role of **opposing** the idea that element #2, “**entry**” has been met on the Chloe Cardashian facts.
- Group #5 will have the role of **supporting** the idea that element #3, “**dwelling house**” has been met on the Chloe Cardashian facts.
- Group #6 will have the role of **opposing** the idea that element #3, “**dwelling house**” has been met on the Chloe Cardashian facts.
- Group #7 will have the role of **supporting** the idea that element #4, “**nighttime**” has been met on the Chloe Cardashian facts.
- Group #8 will have the role of **opposing** the idea that element #4, “**nighttime**” has been met on the Chloe Cardashian facts.
- Group #9 will have the role of **supporting** the idea that element #5, “**intent to commit larceny**” has been met on the Chloe Cardashian facts.

- Group #10 will have the role of **opposing** the idea that element #5, “**intent to commit larceny**” has been met on the Chloe Cardashian facts.

Chloe Cardashian Hypothetical

(adapted, with permission, from “The Surfing Burglar,” found in Charles R. Calleros, Legal Method and Writing 75-76 (5th ed. 2006))

Facts:

Chloe Cardashian (Chloe) fell on hard times and placed her Bel Aire estate up for sale. Vowing to start a “simpler life,” she moved her Stella McCartney suits, an ice chest filled with Dom Perignon and caviar, and her Jimmy Choo shoe collection into her limousine, placing all the items in the rear of the limo. The cab of the limousine was separated from the rear by a window that the driver could operate to open or close. Chloe didn’t know how to operate the window, so she left it closed. Before she left Bel Aire, Chloe folded down the rear seats in the limo and placed a foam mattress fitted with silk sheets and a down comforter in the rear of the limo.

On her third day on the road, Chloe pulled into a truck stop just out of Sacramento, thinking that she would drop in on Governor Gavin Newsom the next day. She checked her messages and learned that her estate had gone into escrow. She wasn’t terribly hungry, so she moved a small ice chest to the front seat of the limousine and had a bit of caviar and champagne to celebrate, while sitting in the front seat and listening to the radio. She then washed up in the bathroom at the truck stop and fell into a peaceful sleep in the rear of the limousine.

At about 5:30a.m. the following day, , the first rays of the sun were starting to peek out over the hills to the east, when Tracy Tompkins saw the limousine. Chloe had inadvertently left the driver’s side window partly down, although the driver’s side door was locked. Tracy had to turn her head sideways to stick it through the driver’s side window to see what was inside. She saw the ice chest, withdrew her head, and carefully reached into the window with her right hand to try to reach the ice chest and check for edibles. Before her hand could reach the lid of the ice chest, Chloe awoke and started banging on the window that separated the cab from the rear of the limo. Tracy tried to run away, but a police officer eating a donut in her patrol car saw Tracy and arrested her for burglary.

Assume the following statute* was in effect in California at the time of this offense:

Criminal Code § 459. – Burglary of an Inhabited Dwelling.

(a) Every person who breaks and enters the dwelling house of another in the nighttime with the intent to commit larceny is guilty of burglary of an inhabited dwelling.

(b) In determining whether the offense of burglary of an inhabited dwelling has been committed, the following definitions will apply:

(1) A person creates a **breaking** by the physical act of creating a means of entry into a dwelling. The act need not be accomplished through violence or destruction. But if the owner of the dwelling invites entry by leaving a door or window open, a person's further opening of the door or window is not a breaking.

(2) A person's **entry** in to the dwelling is the act of going into the dwelling house of another without the occupant's consent. The act is complete when some part of the body has entered.

(3) A **dwelling house** is a house or other structure where someone lives or has lived and plans to return. Portions of a house or other structure, where the main activities of living do not occur, are not part of the dwelling house.

(4) **Nighttime** is that period of time during which people are asleep, and occurs after sunset and before sunrise.

(5) A person's **intent to commit larceny** is determined at the time the person entered the dwelling house. Larceny is the crime of taking and carrying away, with the intent to steal, the personal property of another.

*Note this statute is not intended to reflect the actual law in California, nor any other jurisdiction. It is drafted solely for the purpose of this exercise