

An 18-year-old student and his 14-year-old girlfriend made plans to meet in the student's apartment to have sexual intercourse, and they did so. The girlfriend later told her mother about the incident.

The student was charged with statutory rape and conspiracy to commit statutory rape. In the jurisdiction, the age of consent is 15, and the law of conspiracy is the same as at common law. The student was convicted of both charges and given consecutive sentences.

On appeal, he contends that his conspiracy conviction should be reversed.

Should the student's conviction be affirmed or reversed?

- A. Affirmed, because he agreed with the girlfriend to commit the crime.
- B. Reversed, because one cannot conspire with a person too young to consent.
- C. Reversed, because the crime is one that can only be committed by agreement and thus Wharton's Rule bars conspiracy liability.
- D. Reversed, because the girlfriend could not be a conspirator to this crime.

## Explanation:

### Conspiracy

	Agreement	Overt act
<b>Majority view</b> (modern & MPC)	Unilateral approach – at least one person specifically intends to enter agreement	At least one conspirator must commit overt act
<b>Minority view</b> (common law)	Bilateral approach – two or more persons specifically intend to enter agreement	Not required

**MPC** = Model Penal Code.

Common law jurisdictions follow the **bilateral theory of conspiracy**, which requires proof that two or more persons entered an agreement with the specific intent to accomplish a criminal act. In other words, there must be **at least two guilty minds**—the defendant and another conspirator. But when the agreed-upon act was **criminalized to protect** a certain class of persons, **members of that class** cannot supply a guilty mind. As a result, these protected persons **cannot be convicted** of the target crime or conspiracy to commit it.

Here, the 18-year-old student was convicted of conspiracy to commit statutory rape after he and his 14-year-old girlfriend agreed to have sexual intercourse. And though the student likely had a guilty mind since he specifically intended to commit this crime, the girlfriend could not supply the other guilty mind. That is because this jurisdiction's statutory-rape law is designed to protect persons under 15 years old—like the girlfriend (**Choice A**). As a result, there was no conspiracy and the student's conviction should be reversed.

**(Choice B)** A victim's **consent** is not a defense to conspiracy (or statutory rape) since consent does not negate an element of either crime. And regardless, persons can conspire with anyone who has the capacity to consent (ie, make reasonable judgments). So though the girlfriend was not too young to enter a conspiracy, she could not do so here because she is the type of person the statute was designed to protect.

**(Choice C)** **Wharton's Rule** bars liability for conspiracy to commit a crime that requires at least two culpable parties (eg, dueling, adultery, bigamy) and the crime is completed by only the necessary number of parties. But this rule does not apply here since the girlfriend cannot be culpable under the statutory-rape statute.

### Educational objective:

Common law conspiracy requires proof that at least two persons entered an agreement with the specific intent to accomplish a criminal act (ie, bilateral theory). But when the

conspired act violates a statute designed to protect members of a given class, a member of that class cannot be guilty of the criminal act or conspiracy to commit it.

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