

A woman promised to pay \$10,000 to a hit man if he would kill her neighbor in any manner that could not be traced to her. The hit man bought a gun and watched the neighbor's house for an opportunity to shoot him. One evening, unaware of the hit man's presence, the neighbor tripped as he was walking toward his house, falling and hitting his head against the front steps. Believing that the neighbor was unconscious, the hit man ran over to him and shot him twice in the chest.

When the woman learned of the neighbor's death, she paid the hit man \$10,000. A medical examiner determined that the neighbor was already dead when the hit man shot him.

The crimes below are listed in descending order of seriousness.

What is the most serious crime of which the woman properly could be convicted?

- A. Murder.
- B. Attempted murder.
- C. Conspiracy.
- D. Solicitation.

## Explanation:

### Inchoate crimes

- Attempt**      Specific intent to commit crime & overt act committed in furtherance of target crime  
Merges with intended crime if completed
- Conspiracy**      Agreement entered with specific intent to commit crime & overt act committed in furtherance of agreement  
No merger
- Solicitation**      Inducing or encouraging another to commit crime with specific intent that crime be committed, but solicited party need not agree  
Merges with solicited crime if completed

Criminal liability is imposed equally upon:

**principals** – persons who **commit a criminal act** with the requisite mental state *and*

**accomplices** – persons who (1) intentionally **aid or encourage** the principal to commit a crime (2) with the specific intent that the principal complete that crime.

Both parties are **liable for the encouraged crime** and any crimes that occur as a **natural and probable** (ie, foreseeable) **consequence** of that crime.

Here, the woman became an accomplice when she promised to pay the hit man \$10,000 to commit a murder—ie, an unlawful killing committed with **malice aforethought**. But even though the man shot the neighbor twice in the chest, neither the man nor the woman can be convicted of murder because the fall (not the shooting) caused the neighbor's death **(Choice A)**. However, they can be convicted of *attempted* murder since the shooting was an **act** committed in furtherance of the intended but unsuccessful murder.

**(Choice C)** The woman could be convicted of conspiracy—an agreement entered with the specific intent to commit a crime—even though the agreed-upon murder was not completed. But the conspiracy would also create accomplice liability for the more serious crime of attempted murder.

**(Choice D)** The woman committed solicitation (the least serious crime) when she requested that the hit man commit a murder with the specific intent that he do so. This request also established the woman's accomplice liability for attempted murder (a more serious crime).

### Educational objective:

The principal commits a criminal act with the requisite mental state, while the accomplice intentionally aids or encourages the principal with the specific intent that the principal

complete that crime. Both are equally liable for the encouraged crime and its natural and probable consequences.

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