

A man discovered that his business partner was making separate deals with other companies and was filled with rage. The man immediately decided to scare the business partner to force him to stop. The man knew that the business partner went to fitness classes on Wednesday mornings before work, so the following week, the man waited for the business partner to arrive at the gym. Once the man saw the business partner walk inside, the man placed a small bomb under the business partner's car. When the class ended, the man watched as the business partner entered the car and started the engine, causing the bomb to explode and instantly kill him.

A statute in the jurisdiction defines first-degree murder as an intentional and premeditated killing, one occurring during the commission of a common law felony, or one resulting from a heinous act. The statute defines second-degree murder as all other common law murders. Voluntary manslaughter is defined as a killing in the heat of passion upon an adequate legal provocation. Involuntary manslaughter is defined as an unintentional killing committed during an unlawful act or with criminal negligence.

What is the most serious crime for which the man can properly be convicted?

- A. First-degree murder.
- B. Second-degree murder.
- C. Voluntary manslaughter.
- D. Involuntary manslaughter.

Explanation:

Murder

Common law

Unlawful killing committed with malice aforethought:
intent to kill
intent to cause serious bodily harm
depraved-heart murder
felony murder

Modern view*

First-degree – murder committed due to:
premeditation & deliberation
heinous act (eg, bombing, torture)
enumerated felony

Second-degree – any murder that is not first-degree murder

*The fact pattern on the MBE must supply a statute if you are to consider degrees of murder. Otherwise, apply the common-law rule.

Consistent with the modern view, the statute in this jurisdiction defines **first-degree murder** as:

an intentional and premeditated killing

a killing committed during the commission of a [common law felony](#) or

a killing **resulting** from a **heinous act** (ie, heinous murder).

A heinous murder is one that results from an especially egregious act, such as ambush (ie, lying in wait), torture, **bombing**, terrorism, or poisoning. Since the man used a bomb to cause the business partner's death, the man can be convicted of first-degree murder under the statute.

(Choice B) Second-degree murder is defined here as all other common law murders (listed in table above). Since the man only intended to scare the business partner, the man likely committed depraved-heart murder by acting with reckless indifference to human life. However, he can also be convicted of the more serious offense of first-degree murder.

(Choice C) Voluntary manslaughter is defined as a killing that is committed in the heat of passion upon adequate legal provocation.* Discovering that one's business partner is making separate deals is unlikely to constitute adequate provocation. Additionally, there was sufficient time (one week) between the provocation and the killing for a reasonable person to cool off. Therefore, the man would not be convicted of this crime.

*Remember that a killing committed in the heat of passion is not a defense to murder; it merely reduces murder to voluntary manslaughter.

(Choice D) Involuntary manslaughter is defined as an unintentional killing committed during an **unlawful act** (not seen here) or with criminal negligence—ie, the substantial failure to act as a reasonable person would act under similar circumstances. But the *affirmative* act of using a bomb goes beyond a mere failure to act.

Educational objective:

Under the modern view, a heinous murder—ie, one that results from an especially egregious act, such as ambush, torture, bombing, terrorism, or poisoning—constitutes first-degree murder.

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