

A woman wanted to kill a business competitor. She contacted a man who she believed was willing to commit murder for hire and offered him \$50,000 to kill the competitor. The man agreed to do so and accepted \$25,000 as a down payment. Unbeknownst to the woman, the man was an undercover police officer.

In a jurisdiction that has adopted the unilateral theory of conspiracy, is the woman guilty of conspiracy to murder the business competitor?

- A. No, because it would have been impossible for the woman to kill the competitor by this method.
- B. No, because the man did not intend to kill the competitor.
- C. Yes, because the woman believed that she had an agreement with the man that would bring about the competitor's death.
- D. Yes, because the woman took a substantial step toward bringing about the competitor's death by paying the man \$25,000.

Explanation:

Conspiracy

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

MPC = Model Penal Code.

Conspiracy occurs when:

two or more persons enter an agreement with the specific intent to commit a crime *and* in most jurisdictions, an overt act is committed in furtherance of that agreement.

The common law **bilateral theory** of conspiracy required proof of at least **two guilty minds**, so a defendant could not be convicted if the other conspirators had feigned agreement. But most jurisdictions now follow the **unilateral theory** of conspiracy, where only **one guilty mind** is required. That means a defendant can be convicted even if the other conspirators feigned agreement to commit the crime.

Here, the woman hired a man to kill her business competitor (agreement and intent) and gave him a \$25,000 down payment (overt act). Therefore, the woman is guilty under the unilateral theory of conspiracy even though the man (an undercover police officer) did not intend to commit the crime. But had this jurisdiction followed the bilateral theory of conspiracy, the man's feigned agreement would have absolved the woman of this crime **(Choice B)**.

(Choice A) It would have been impossible for the woman to kill the competitor by this method since the man was an undercover police officer. But the woman is still guilty since factual impossibility is no defense to conspiracy.

(Choice D) Most jurisdictions require proof of an overt act to convict a defendant of **attempt** or conspiracy. While attempt requires proof of a substantial step—ie, conduct strongly corroborating criminal intent (more than mere preparation)—conspiracy only requires discernible evidence that the conspiracy is at work (including acts of mere preparation). Here, the woman's \$25,000 down payment is an overt act under both standards. But it would only support her conviction if an overt act is an element of conspiracy in this jurisdiction.

Educational objective:

The unilateral theory of conspiracy requires only one guilty mind, so a defendant is guilty even if the other conspirators feigned agreement to commit the crime. But since the bilateral theory requires two guilty minds, a defendant would not be guilty if the other conspirators feigned agreement.

References

16 Am. Jur. 2d Conspiracy § 16 (2019) (unilateral theory of conspiracy).

Model Penal Code § 5.03 (Am. Law Inst. 2019) (criminal conspiracy).

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