

State authorities received information that a man had been making threats against his ex-wife. To determine whether the man was serious, an undercover officer introduced himself to the man at a bar. The officer said that he had previously taken care of problems for angry spouses. After some discussion in which the man expressed his extreme anger at his ex-wife, the man offered the officer \$5,000 to kill her. The officer agreed and made arrangements to meet the man at the bar the next day to collect the \$5,000 payment. When the man showed up the next day at the bar, authorities immediately arrested him.

The jurisdiction defines attempt, solicitation, and misprision of a felony as at common law, and also punishes bilateral conspiracies. The crimes below are listed in descending order of seriousness.

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

- A. Attempted murder. (39%)
- B. Conspiracy to commit murder. (12%)
- C. Solicitation of murder. (47%)
- D. Misprision of a felony. (0%)

Correct

47% Answered correctly

54 secs Time Spent

2023 Version

## Explanation:

### Inchoate crimes

<b>Attempt</b>	Specific intent to commit crime & overt act committed in furtherance of target crime Merges with intended crime if completed
<b>Conspiracy</b>	Agreement entered with specific intent to commit crime & overt act committed in furtherance of agreement No merger
<b>Solicitation</b>	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

At common law (and in most jurisdictions), **solicitation** is an inchoate offense that requires proof that the defendant:

enticed, **encouraged**, or commanded another to **commit a crime** (eg, [murder](#)) with the specific intent that the person commit that crime.

Here, the man encouraged the undercover officer to commit a crime, and specifically intended that the officer do so, when the man offered the officer \$5,000 to kill his ex-wife. Therefore, the man can be properly convicted of solicitation of murder.

**(Choice A)** Attempt occurs when a defendant has the specific intent to commit a crime, commits an [act](#) in furtherance of that crime, but does not complete it. Under the common-law dangerous-proximity test, an act occurs when it brings the defendant in dangerous proximity to completing the target offense. Therefore, the man's mere offer to pay the undercover officer to kill the ex-wife did not amount to an act.

**(Choice B)** [Conspiracy](#) occurs when two or more persons enter an agreement with the specific intent to commit a crime. The common-law bilateral theory of conspiracy requires proof of at least two guilty minds—the defendant and one other conspirator. Therefore, a defendant cannot be convicted when the only other conspirator feigns agreement (as seen here).

**(Choice D)** Misprision of a felony occurs if the defendant had knowledge that another committed a felony, failed to notify the authorities, and took an affirmative step to conceal the crime (not seen here).

### Educational objective:

Common-law solicitation occurs when a defendant (1) entices, encourages, or commands another to commit a crime (2) with the specific intent that the person commit that crime.

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