

In which of the following situations is the defendant most likely to be convicted, even though he did not intend to bring about the harm that the statute defining the offense is designed to prevent?

- A. The defendant burglarized a jewelry store, intending to steal some diamonds. As he entered the store, he short-circuited the store's burglar alarm system, thereby preventing a warning of his entry to police. The smoldering wires eventually caused a fire that destroyed the store. Defendant is charged with arson.
- B. The defendant struck the victim in the face with a baseball bat, intending to inflict a serious injury. The victim died after being hospitalized for three days. The defendant is charged with murder.
- C. The defendant wanted to frighten the victim's friend by placing a plastic rattlesnake in his lunch box. When the victim mistakenly took the lunch box and opened it, believing it to be his own, the plastic rattlesnake popped out. As a result of the fright, the victim suffered a heart attack and died. The defendant is charged with involuntary manslaughter.
- D. The defendant was the president of an aspirin manufacturing company. A federal inspector discovered that a large number of aspirin tablets randomly scattered through several bottles in a carton ready for shipment were laced with arsenic. The defendant is charged with attempted introduction of adulterated drugs into interstate commerce.

## Explanation:

### Homicide

Murder	Common law	Modern approach
	Unlawful killing committed with malice aforethought:	First-degree: murder committed with:
	Intent to kill	premeditation & deliberation
	Intent to cause serious bodily harm	heinous acts (eg, bombing, torture)
	Depraved-heart murder	enumerated felony murder
	Felony murder	Second-degree: any murder that is not first-degree murder
<b>Voluntary manslaughter</b>	Intentional killing mitigated by either: adequate provocation (ie, heat of passion) other mitigating factors (eg, imperfect self-defense)	
<b>Involuntary manslaughter</b>	Unintentional killing either: caused by criminal negligence (or recklessness under MPC) occurs during commission of criminal act (eg, misdemeanor manslaughter)	

**MPC** = Model Penal Code.

**Murder** is an **unlawful killing** committed with **malice aforethought**. The malice-aforethought requirement can be satisfied by *any* of these mental states:

intent to kill

#### **intent to inflict serious bodily injury**

reckless disregard of an obvious or unjustifiably high risk of causing death or serious bodily injury (ie, depraved-heart murder) *or*

intent to commit an **inherently dangerous felony** (ie, felony-murder rule).

Here, the defendant intended to inflict a serious injury when he struck the victim in the face with a baseball bat. And since the victim died as a result, the defendant is guilty of murder—even though he did not intend to kill the victim. Therefore, this defendant is *most* likely to be convicted of the charged offense.

**(Choice A)** Arson is the malicious (ie, intentional or reckless) burning of any structure. But this defendant did not intend to burn the store. Nor did he recklessly disregard an obvious

or high risk that disabling the store's burglary alarm would result in a fire. Therefore, he is unlikely to be convicted of arson.

**(Choice C)** Involuntary manslaughter is an *unintentional* killing committed with criminal negligence or during an unlawful act. But this defendant is unlikely to be convicted of this crime since he did not grossly deviate from a reasonable standard of care, or commit an unlawful act, by pranking the victim with a plastic rattlesnake.

**(Choice D)** *Attempt* always requires proof of specific intent to commit the target crime. And since there is no indication that this defendant intended to introduce adulterated aspirin into interstate commerce, he is unlikely to be convicted of attempt. This is true even though the completed crime is likely a *strict liability* offense.

**Educational objective:**

Murder need not be committed with the intent to kill. Instead, this crime can be committed with *any* type of malice aforethought—eg, intent to inflict serious bodily injury.

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