

A woman who wanted to rob a bank offered to pay her friend one-third of the money she stole if the friend would drive the getaway car to be used in the robbery. The friend agreed but made the woman promise not to hurt anyone during the robbery.

The woman then drove to a sporting goods store, where she explained to the store owner that she needed a small firearm for use in a bank robbery. The store owner responded that he would charge extra because the woman was so unwise as to confide her unlawful plans for using the weapon, and he sold her a handgun at four times the regular price.

During the robbery, the woman used the gun to threaten a bank teller, who handed over money. The gun discharged by accident and killed a bank customer. The friend drove the woman away from the bank.

In addition to the woman, who could properly be convicted of murder in the death of the customer at common law?

- A. Both the friend and the store owner.
- B. Neither the friend nor the store owner.
- C. Only the friend.
- D. Only the store owner.

Explanation:

Parties to a crime

Modern view	Common law	Definition	Liability
Principal	Principal (first degree)	Performs criminal act with requisite intent or uses innocent agent to commit criminal act	Target & foreseeable crimes
Accomplice	Principal (second degree)	Present at crime & aids/encourages principal with intent that principal commit crime	
	Accessory before the fact*	Not present at crime but aids/encourages principal with intent that principal commit crime	
Accessory after the fact		Knows principal has committed felony & helps principal avoid arrest or conviction	Independent crime

*Common law liability requires conviction of principal.

Accomplice liability extends to anyone who:

intentionally aids or encourages a principal before or during the commission of a crime with the specific intent that the **principal commit the encouraged crime**.

Common law jurisdictions (as seen here) divide accomplices into two categories—those who were **present** for the crime (**principals in the second degree**) and those who were **not** (**accessories before the fact**). But accomplices under either category are liable to the same extent as the principal for the **encouraged crime** and any crimes that occurred as a **natural and probable** (i.e., foreseeable) **consequence** of that crime.

Here, the woman (principal in the first degree) can be convicted of **murder** because she killed a customer in the course of a bank robbery. The friend intentionally aided in that robbery by driving the woman away from the bank after the robbery was completed—as they previously agreed. And since the killing was a foreseeable consequence of the robbery, the friend (who was at the crime) can be convicted of murder as a principal in the second degree (**Choices B & D**).

The store owner's intent to aid in the woman's robbery cannot be inferred from his decision to sell her a gun after learning of her criminal plan. But it can be inferred from his sale of the gun at four times the regular price since the sale shows that the store owner has an interest in the outcome of the criminal venture. And since it was foreseeable that the gun would be used to kill someone during the robbery, the store owner (who was not at the crime) can be convicted of murder as an accessory before the fact **(Choice C)**.

Educational objective:

Principals in the second degree (accomplices at the crime) and accessories before the fact (accomplices *not* at the crime) are liable at common law for (1) any crimes that they encouraged a principal in the first degree to commit and (2) any crimes that occurred as a foreseeable consequence of the encouraged crime.

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