

A foreign diplomat discovered that a small person could enter a particular jewelry store by crawling through an air vent. The diplomat befriended a woman he met in a bar who he believed was small enough to crawl through the air vent. Without telling her that he was a diplomat, he explained how she could get into the jewelry store. She agreed to help him burglarize the store. Someone overheard their conversation and reported it to the police. Shortly thereafter, the police arrested the diplomat and the woman. Both were charged with conspiracy to commit burglary.

Before trial, the diplomat moved to dismiss the charge against him on the ground that he was entitled to diplomatic immunity. The court granted his motion. The woman then moved to dismiss the conspiracy charge against her. The jurisdiction has adopted the Model Penal Code version of conspiracy.

Should the court grant the woman's motion to dismiss the conspiracy charge against her?

- A. No, because the diplomat's defense does not negate any element of the crime.
- B. No, because the woman was not aware of the diplomat's status.
- C. Yes, because a conspiracy requires two guilty participants.
- D. Yes, because but for the diplomat's conduct, no conspiracy would have occurred.

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.

Under the **Model Penal Code** (MPC) and in most jurisdictions, **conspiracy** requires proof that:

a person entered into an **agreement** to commit a crime with the **specific intent to commit that crime** *and*

one of the conspirators committed an overt act in furtherance of that agreement.

This definition of conspiracy departs from the traditional view that there must be at least *two* guilty parties to form a conspiracy. As a result, another conspirator's guilt (or lack thereof) has no effect on the defendant's liability.

Here, the diplomat and the woman were charged with conspiracy after they agreed to burglarize a jewelry store. The conspiracy charge against the diplomat was dismissed due to his diplomatic immunity. But the diplomat's immunity defense does not affect the woman's liability for conspiracy since this MPC jurisdiction only requires proof of *one* guilty participant (**Choice C**). As a result, her motion to dismiss this charge should be denied.

(Choice B) The woman's awareness of the diplomat's status has no bearing on her liability for conspiracy.

(Choice D) Although the diplomat's conduct was a but-for cause of the conspiracy, his actions do not excuse the woman's criminal liability. Instead, those actions support her conviction since they satisfy the overt act requirement.

Educational objective:

Under the Model Penal Code (MPC), conspiracy occurs when (1) a person enters into an agreement with the specific intent to commit a crime and (2) any conspirator commits an overt act in furtherance of that agreement. Therefore, the MPC only requires proof of *one* guilty participant.

References

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

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