

An artist facing financial difficulty asked her friend, who worked as a security guard in an art museum, to help her by leaving the museum's warehouse unlocked so she could steal paintings and replace them with forgeries. The artist said she would reward the friend with half of her profits. The friend said that he agreed, but in fact he did not have access to the museum's warehouse and did not intend to leave the warehouse unlocked. Later that day, he informed the police of her plans. The artist was arrested immediately.

The applicable jurisdiction follows the common law for all relevant rules.

Which of the following crimes has the artist committed?

- A. Attempted larceny.
- B. Bribery.
- C. Conspiracy.
- D. Solicitation.

Explanation:

Defenses unique to solicitation

Impossibility	Legal – when solicited act would not be criminal if completed Factual – no defense
Withdrawal /	Majority/common law – no defense
Renunciation	Minority/MPC – when solicitor voluntarily renounces & thwarts commission of solicited crime
Exemption from solicited crime	Not guilty of solicited crime if legislature intended to protect solicitor

MPC = Model Penal Code.

Solicitation is an inchoate crime that occurs when a person:

entices, encourages, requests, or commands another to commit a crime (eg, requests another to act as an **accomplice** to larceny)

with the **specific intent** that the solicited **crime be committed**.

Solicitation is complete once these elements are met. This is true regardless of whether the solicited party agrees to commit the crime or takes any step toward doing so. As a result, **factual impossibility**—eg, the solicited party's inability or lack of intent to commit the offense—is **not a defense**.

Here, the crime of solicitation was committed the moment the artist asked the friend to help her commit larceny. Therefore, the artist committed solicitation even though the friend did not have the ability or intent to open the warehouse or leave it unlocked.

(Choice A) Attempt occurs when the defendant (1) had the specific intent to commit a crime, (2) performed an **act** in furtherance of the crime, but (3) did not complete it. Under the common law dangerous-proximity test, the act must bring the defendant sufficiently close to completing the crime. But here, the artist was arrested before she could take an action that brought her close to stealing the paintings.

(Choice B) Common law bribery is the corrupt payment of something of value for the purpose of influencing the action of a *public official* in the discharge of his/her public or legal duties. A security guard is not a public official, so the artist did not commit bribery.

(Choice C) The common law, bilateral approach to **conspiracy** requires proof of at least *two* guilty minds. As a result, a defendant could not be convicted if the other conspirator feigned agreement (as seen here).

Educational objective:

Solicitation is complete once a person (1) entices, encourages, requests, or commands another to commit a crime (2) with the specific intent that the solicited crime be committed. Factual impossibility is not a defense to solicitation.

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