

At a party for coworkers at the manager's home, a salesman accused the manager of making advances toward his wife. The salesman and his wife left the party. The next day at work, the manager saw the salesman and struck him on the head with a glass bottle. The salesman fell into a coma and died two weeks after the incident.

This jurisdiction defines aggravated assault as an assault with any weapon or dangerous implement and punishes it as a felony. It defines murder as the unlawful killing of a person with malice aforethought or in the course of an independent felony.

Under what circumstance may the manager be found guilty of murder?

- A. If the jury finds that the killing occurred in the course of an aggravated assault.
- B. If the jury finds that the manager intended either to kill or to inflict serious bodily harm.
- C. Only if the jury finds that the manager did not act in a rage provoked by the salesman's accusations.
- D. Only if the jury finds that the manager intended to kill the salesman.

Explanation:

In this jurisdiction, a defendant is guilty of **murder** if a jury finds **beyond a reasonable doubt** that he/she unlawfully killed another person (1) with **malice aforethought** or (2) in the course of an independent felony. Malice aforethought exists when the **defendant acts with:**

intent to kill

intent to inflict serious bodily harm

reckless disregard of an obvious or high risk to human life (ie, depraved-heart murder) *or* intent to commit an **inherently dangerous felony** (ie, felony murder).

Here, the manager killed the salesman by striking him on the head with a glass bottle (unlawful killing). Therefore, the manager may be found guilty of murder if the jury also finds that he intended to kill the salesman *or* to inflict serious bodily harm upon him (malice aforethought) **(Choice D)**.

(Choice A) In this jurisdiction, murder also includes the unlawful killing of another during an independent felony—a felony committed for a purpose other than causing physical harm or death (eg, burglary). Since aggravated assault requires proof that a dangerous implement was used to inflict (or create imminent apprehension of) *harmful* contact, it is not an independent felony. Therefore, the manager cannot be found guilty of murder on this basis.

(Choice C) Voluntary manslaughter typically requires proof that a defendant intentionally killed another in an immediate response to adequate provocation—murder does not. Therefore, whether the manager acted in a rage provoked by the salesman's accusations will not affect the manager's potential murder conviction.

Educational objective:

A jury can convict a defendant of murder if it finds beyond a reasonable doubt that the defendant unlawfully killed another person with malice aforethought (eg, intended to kill or inflict serious bodily harm).

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Malice aforethought

