

A wife decided to kill her husband because she was tired of his infidelity. She managed to obtain some cyanide, a deadly poison. One evening, she poured wine laced with the cyanide into a glass, handed it to her husband, and proposed a loving toast. The husband was so pleased with the toast that he set the glass of wine down on a table, grabbed his wife, and kissed her passionately. After the kiss, the wife changed her mind about killing the husband. She hid the glass of wine behind a lamp on the table, planning to leave it for the maid to clean up. The husband did not drink the wine.

The maid found the glass of wine while cleaning the next day. Rather than throw the wine away, the maid drank it. Shortly thereafter, she fell into a coma and died from cyanide poisoning.

In a common law jurisdiction, of what crime(s), if any, could the wife be found guilty?

- A. Attempted murder of the husband and murder or manslaughter of the maid.
- B. Only attempted murder of the husband.
- C. Only murder or manslaughter of the maid.
- D. No crime.

## Explanation:

Common law homicide is divided into three degrees:

**Murder** – unlawfully killing another with **malice aforethought**—eg, intent to kill, reckless disregard of a high risk of serious bodily harm or death (ie, depraved-heart murder)

Voluntary manslaughter – intentionally killing another (1) in the heat of passion upon adequate provocation or (2) in imperfect self-defense

**Involuntary manslaughter** – unintentionally killing another (1) during an unlawful act *or* (2) with **criminal negligence**—the substantial failure to act as a reasonable person would act

A defendant cannot be convicted of a homicide offense if no killing occurred. However, a defendant can be convicted of **attempted murder** if he/she (1) had the specific intent to kill, (2) committed an **act** in furtherance of the killing, but (3) did not complete the killing. Under the common law **dangerous proximity test**, an overt act occurs when the defendant was **dangerously close to completing** the crime. And a defendant cannot avoid criminal liability for attempted murder by abandoning his/her plan to kill after committing the overt act.

Here, the wife decided to kill her husband (specific intent) and came dangerously close to doing so when she gave him a glass of poisoned wine (overt act). She did not complete the killing because she changed her mind (abandonment) and hid the wine. But since she had already committed the act, the wife should be found guilty of attempted murder of her husband (**Choices C & D**).

The next day, the maid drank the poisoned wine and died. The wife did not intend to kill the maid. But a jury could find that the wife recklessly disregarded the high risk of death by leaving the wine out for the maid to clean up (depraved-heart murder) or that a reasonable person would have disposed of it (criminal negligence). Therefore, the wife could be found guilty of murder or manslaughter of the maid (**Choices B & D**).

## Educational objective:

Attempted murder occurs when the defendant (1) has the specific intent to kill, (2) commits an act in furtherance of the killing, but (3) does not complete the killing. And once the defendant comes dangerously close to completing the crime (act), he/she cannot avoid criminal liability by abandoning his/her plan.

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