

Hoping to give his wife an advantage in a national figure skating competition, a man shot one of the wife's competitors in the leg. The man only intended to wound the figure skater enough to deprive her of the use of her leg for a few months, but the bullet struck a major artery and the figure skater bled to death.

The crimes below are listed from most to least serious.

In a common law jurisdiction, what is the most serious crime of which the man could properly be convicted?

- A. Murder.
- B. Voluntary manslaughter.
- C. Involuntary manslaughter.
- D. None of the above.

## Explanation:

### Homicide

Murder	Common law	Modern approach
	Unlawful killing committed with malice aforethought:	First-degree: murder committed with:
	Intent to kill	premeditation & deliberation
	Intent to cause serious bodily harm	heinous acts (eg, bombing, torture)
	Depraved-heart murder	enumerated felony murder
	Felony murder	Second-degree: any murder that is not first-degree murder
<b>Voluntary manslaughter</b>	Intentional killing mitigated by either: adequate provocation (ie, heat of passion) other mitigating factors (eg, imperfect self-defense)	
<b>Involuntary manslaughter</b>	Unintentional killing either: caused by criminal negligence (or recklessness under MPC) occurs during commission of criminal act (eg, misdemeanor manslaughter)	

**MPC** = Model Penal Code.

**Common law murder** occurs when a person unlawfully kills another with **malice aforethought**, which requires proof of one of the following mental states:

Intent to kill

#### **Intent to inflict serious bodily injury**

Reckless disregard of an obvious or unjustifiably high risk of causing death or serious bodily injury (ie, depraved-heart murder)

Intent to commit an **inherently dangerous felony** (ie, felony-murder rule)

Here, the figure skater bled to death after the man shot her. Although the man did not intend to kill the figure skater, he did intend to wound her badly enough to deprive her of the use of her leg for a few months (serious bodily injury). Therefore, the man acted with the malice aforethought necessary to support a conviction for the most serious offense—murder **(Choice D)**.

**(Choice B)** Voluntary manslaughter occurs when a person *intentionally* kills another based on (1) adequate provocation or (2) imperfect self-defense. Since the man was not provoked or acting in self-defense, he did not commit voluntary manslaughter.

**(Choice C)** Involuntary manslaughter is the unintentional killing of another with *criminal negligence* OR during the commission of an unlawful act *separate* from the killing itself. Here, the man cannot be convicted of involuntary manslaughter since the unlawful shooting was a *part of* the killing and was committed with *malice aforethought* (intent to seriously injure).

**Educational objective:**

A person who did not intentionally kill another may still be guilty of common law murder if he/she acted with (1) the intent to cause serious physical injury, (2) a reckless disregard of an obvious or high risk to human life, or (3) the intent to commit an inherently dangerous felony.