

A man and a woman were partners in an automobile leasing agency. For some time, the man had been embezzling money from the agency. The woman became suspicious and told the man that she wanted to engage an accounting firm to audit the agency's books. In a panic to prevent the audit and avoid being discovered, the man decided to have the woman killed. He contacted a professional killer and hired him to kill the woman for \$10,000. A short time later, the woman died in a car crash arranged by the killer.

In addition to embezzlement, of what crime or crimes may the man properly be convicted?

- A. Conspiracy and murder.
- B. Murder.
- C. Solicitation and conspiracy.
- D. Solicitation, conspiracy, and murder.

Explanation:

A person who unlawfully kills another with **malice aforethought** is principally liable for murder. But a person who did *not* commit that killing is **equally liable** for murder if he/she acted as an **accomplice** by (1) intentionally aiding or encouraging the principal before or during the crime (2) with the specific intent that the crime be completed. As a result, a person can become an accomplice when he/she **commits** either:

solicitation – by inducing or encouraging another to commit a crime with the specific intent that the crime be committed *or*

conspiracy – by entering an agreement with the specific intent to commit a crime and, in most jurisdictions, at least one conspirator committing an overt act in furtherance of that agreement.

Here, the man committed solicitation *and* conspiracy when he contacted and hired a professional killer to kill the woman—subjecting the man to accomplice liability. And since the killer successfully arranged the deadly car crash pursuant to their agreement, the man can be convicted of murder **(Choice B)**. And though he cannot be convicted of solicitation since it *merges* with the solicited crime once completed **(Choices C & D)**, he can still be convicted of conspiracy since it remains a *separate* offense.

Educational objective:

A defendant who commits solicitation or conspiracy is often subject to accomplice liability for the encouraged crime. And if the encouraged crime is completed, the defendant can be convicted of the completed crime and conspiracy—but not solicitation since it merges with the completed crime.

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Merger of inchoate & completed crimes

