

INTRODUCTION

This program is designed to provide a review of basic concepts covered in a first-year criminal law class and is based on Kadish & Schulhofer, *Criminal Law: Cases and Materials*. You have accessed the tutorial for Chapter 7, “Group Criminality.” Prior to doing these exercises you should read the relevant material in Chapter 7.

OVERVIEW





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EXERCISE

Each question gives you a fact pattern, and then you must choose an answer that best reflects the law as you understand it. Be careful to read the question and the suggested answers thoroughly. Select your answer by clicking on it. If you give an incorrect answer, you will be given feedback on what was wrong with your answer. By clicking on the feedback you will be taken back to the question to try again. Once a correct answer is selected, click on the feedback to go to the next question.

You may begin the exercise by click on a question number below. Throughout the tutorial three Shortcut Buttons will be located in the bottom right-hand corner of each page. The Return Button  brings you back to this page allowing you jump to questions of your choice if you prefer. The Home Button  takes you to the Criminal Law Tutorial Home Page.

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Question 7-1

Mike is a computer "hacker" who knows a lot about getting access to computers using his home computer. One day by chance he gets through to some kind of giant computer system that gives him the number and expiration dates of three valid credit cards. Using the first credit card he calls up and orders a pizza, a new computer, and airline tickets. Eventually he is caught and charged with theft under Model Penal Code § 223.2(1).

Mike's friend Bill watched while Mike ordered the pizza and the computer. Bill would be guilty of conspiracy to commit theft:

- (A) Only if he himself committed an overt act in furtherance of the conspiracy.
- (B) Only if he agreed with Mike that Mike should commit the crime.
- (C) Only if a substantial step was taken toward completion of the crime.
- (D) Both (A) and (B) are correct.



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(A) is incorrect, since it is only necessary that *someone* in the conspiracy commit an overt act.



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(B) is correct, since agreement is the critical element of a conspiracy;



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(C) incorrect; conspiracy is not as demanding as attempt liability in terms of the amount of conduct that is required. If the prosecution proves that there was an agreement, they only have to prove the commission of an overt act, not a substantial step.



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(D) is incorrect, because (a) is incorrect.



Question 7-2

Acme Electronic Services placed an ad in a computer magazine for a computer program that would call credit card companies, attempt to get authorization using randomly generated credit card numbers, and record the ones that were successful. They charged \$29.95 for this program. Mike bought Acme's program and used it to get the credit card numbers. Would Acme be guilty of theft under § 223.2?

- (A) Yes, if Acme had the purpose of promoting or facilitating the commission of Mike's theft.
- (B) Yes, if Acme had substantial knowledge of the purpose for which their program was being used.
- (C) Yes, if Acme derived significant income from this program and it knew that the program could be used for criminal purposes.
- (D) All three of the above answers--(A), (B), and (C) --are correct.



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(A) is correct, since that is the definition of being an accomplice under § 2.06(3)(a)(ii).



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(B) is incorrect, because it sets too low a threshold; under the Code there must be the purpose of facilitating the commission of the offense;



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- (D) All three of the above answers--(A), (B), and (C) --are correct.

(D) is incorrect because it includes two incorrect responses.



Question 7-3

Roger and Gene agree to break into Betty's house to look for things to steal. While in the house Roger finds a portable stereo and a camera. He takes them both with him. He is later arrested at a pawn shop when the stolen items are identified. Which of the following is correct?

- (A) Roger could be convicted of theft and burglary.
- (B) Roger could be convicted of theft or burglary, but not both.
- (C) Gene could be charged with conspiracy to commit burglary or with burglary, but not both.
- (D) Gene could be convicted of theft only if Roger is also convicted of theft.



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(A) is incorrect. See § 221.1(3).



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(B) is correct, see MPC § 221.1(3).



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(C) is incorrect; he can be *charged* with both; only conviction for both is impermissible; see § 1.07(1).



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(D) is incorrect; at common law the accomplice could not be convicted unless the principal was, but the MPC has no such requirement (§ 2.07(7)).



Question 7-4

John Jackson is an accountant working for a multinational corporation. Billy Breaker, his boss, insisted that John "sweeten" the financial reports by omitting some information that would otherwise be included. When John demurred, Billy told him that "he'd go along if he knew what was good for him." If John is later charged with violating a statute stating, "It is a third degree felony to issue deceptive financial reports," which of the following is true:

- (A) John would have a defense if his boss told him that it was standard accounting practice to do so, and John reasonably relied upon that advice;
- (B) John would have a defense if he honestly believed that Billy was threatening him, but only if he made reasonable efforts to contact law enforcement;
- (C) John would have a defense if he reasonably believed that, since he didn't actually "issue" the information (his company did), the statute did not apply to him.
- (D) John could be convicted even if Billy were acquitted of the same charge.



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(A) is incorrect. Reliance upon a friend's legal advice is not a defense.



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(B) is incorrect. The defense of duress does not require that one contact law enforcement.



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(C) is incorrect. This is a mistake of law, and a reasonable (but erroneous) belief about the interpretation of the law is no defense.



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(D) is correct. Billy might have gone before a different jury.



Question 7-5

Morris's 9-year-old daughter Amy has a passion for Sponge Bob Squarepants, a cartoon character. The Burger King in Morris's town has been running an advertising campaign incorporating a large inflated balloon of Sponge Bob. Morris tells his friend Ron that Amy would think she'd died and gone to heaven if the giant Sponge Bob balloon appeared in his backyard at Amy's birthday party. "Do you mean, like, steal it?" asked Ron. Prior to that point Morris hadn't thought of stealing it, but when Ron mentioned it, he began to take the idea seriously. Still thinking, Morris said, "Well, I'd give it back."

(For purposes of this question only), suppose Ron said, "Okay, I think that would be a great idea." If Ron is charged with conspiracy to commit third degree felony theft, which of the following is correct:

- (A) Ron would NOT be guilty if Morris was only joking (even if Ron thought he really meant to steal Sponge Bob).
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(A) is incorrect; the MPC permits unilateral conspiracy



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(B) is correct; in order to conspire, one must agree; and here by hypothesis Ron does not believe he is agreeing.



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(C) is therefore incorrect, since (a) is incorrect;



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(D) is incorrect, since (b) is correct.



Question 7-6

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(For purposes of this question only), assume that Ron and Morris were both serious and intended to form an agreement to steal Sponge Bob. If Ron were charged with conspiracy to commit third degree felony theft, which of the following is correct:

- (A) Ron could NOT be convicted unless Ron committed an overt act in furtherance of the conspiracy;
- (B) No overt act is required, since it is a felony
- (C) Both (A) and (B) are correct;
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(A) is incorrect, since it is not necessary that Ron -- but only one of the conspirators -- commit an act in furtherance of the conspiracy.



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(B) is incorrect, since a conspiracy to commit third degree felony requires an overt act.



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(C) Is incorrect; there is at least one incorrect answer.



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(D) is therefore correct.



Question 7-7

Bob Brown owns a U-Stor-It facility. One of his customers, Tom Trillen, is a "fence"—he receives and then sells stolen property. Trillen stores the stolen property at Brown's facility. If Bob is charged with receiving stolen property, which of the following is correct?

- (A) Bob could be convicted (as an accomplice) if he is actually aware of the purpose for which Trillen uses Bob's rental space.
- (B) Bob could be convicted (as an accomplice) so long as he is aware of the risk that his space would be used to receive stolen property, and his continuing provision of space was a gross deviation from the standard of a law-abiding person.
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(C) Both (A) and (B) are correct.

(D) Neither (A) nor (B) is correct.

(A) is incorrect; accomplice liability requires aiding the principal with the *purpose* of facilitating the commission of the crime. Mere knowledge is not enough.



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(B) is incorrect; this statement contains only recklessness, which is still lower in culpability;



Question 7-7

Bob Brown owns a U-Stor-It facility. One of his customers, Tom Trillen, is a "fence"—he receives and then sells stolen property. Trillen stores the stolen property at Brown's facility. If Bob is charged with receiving stolen property, which of the following is correct?

- (A) Bob could be convicted (as an accomplice) if he is actually aware of the purpose for which Trillen uses Bob's rental space.
- (B) Bob could be convicted (as an accomplice) so long as he is aware of the risk that his space would be used to receive stolen property, and his continuing provision of space was a gross deviation from the standard of a law-abiding person.
- (C) Both (A) and (B) are correct.**
- (D) Neither (A) nor (B) is correct.

(C) Is incorrect; there is at least one wrong answer.



Question 7-7

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- (A) Bob could be convicted (as an accomplice) if he is actually aware of the purpose for which Trillen uses Bob's rental space.
- (B) Bob could be convicted (as an accomplice) so long as he is aware of the risk that his space would be used to receive stolen property, and his continuing provision of space was a gross deviation from the standard of a law-abiding person.
- (C) Both (A) and (B) are correct.
- (D) Neither (A) nor (B) is correct.**

(D) is therefore correct.



Question 7-8

Huey is angry about the destruction of the Amazon rain forest. Some friends of his decide they should commit acts of "eco-terrorism" by spiking trees in order to inhibit logging. When they ask him to join them, Huey tells them he is too old to climb trees, but he gives them \$100. When a logger tries to cut down a tree that has been spiked by a member of the group, the logger's saw hits the spike and the logger suffers fatal injuries. Which of the following is correct?

- (A) Huey could not be an accomplice to negligent homicide if he gave money with the purpose of aiding his friends in tree spiking, but he was unaware of the risk that spiking could cause death.
- (B) Huey could be charged with manslaughter (homicide committed recklessly) if the eco-terrorists who placed the spike actually wanted to kill loggers, and such a result was a natural and probable consequence of the conspiracy in which Huey participated.
- (C) Huey could be convicted of malicious destruction of property, or of conspiracy to destroy property, but not both;
- (D) All of the above;
- (E) None of the above.



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- (C) Huey could be convicted of malicious destruction of property, or of conspiracy to destroy property, but not both;
- (D) All of the above;
- (E) None of the above.

(A) is incorrect; so long as Huey is negligent with respect to the result (death), he may be an accomplice in the crime of negligent homicide;



Question 7-8

Huey is angry about the destruction of the Amazon rain forest. Some friends of his decide they should commit acts of "eco-terrorism" by spiking trees in order to inhibit logging. When they ask him to join them, Huey tells them he is too old to climb trees, but he gives them \$100. When a logger tries to cut down a tree that has been spiked by a member of the group, the logger's saw hits the spike and the logger suffers fatal injuries. Which of the following is correct?

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- (C) Huey could be convicted of malicious destruction of property, or of conspiracy to destroy property, but not both;
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- (E) None of the above.

(B) is incorrect; this states the *Pinkerton* rule, which is rejected by the MPC.



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- (C) Huey could be convicted of malicious destruction of property, or of conspiracy to destroy property, but not both;**
- (D) All of the above;
- (E) None of the above.

(C) is correct, because the MPC "merges" conspiracy with the crime itself.



Question 7-8

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- (C) Huey could be convicted of malicious destruction of property, or of conspiracy to destroy property, but not both;
- (D) All of the above;**
- (E) None of the above.

(D) Is incorrect; at least one of the answers is incorrect.



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- (C) Huey could be convicted of malicious destruction of property, or of conspiracy to destroy property, but not both;
- (D) All of the above;
- (E) None of the above.**

(E) Is incorrect; at least one of the answers is correct.



Question 7-9

Adam is mad at his girlfriend Jill and wants to punish her. Adam tells his friend Carl that Jill wants to have sex with Carl but will pretend to be asleep. Adam then drugs Jill and tells Carl that Jill is ready for him. Carl enters Jill's bedroom and has sexual intercourse with her. Under the Model Penal Code,

- (A) Carl could be convicted of rape if he negligently failed to discover that Jill was unconscious;
- (B) Adam could not be convicted of rape;
- (C) Adam could be convicted of rape even if Carl didn't commit rape;
- (D) All of the above are true;
- (E) None of the above is true.



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- (B) Adam could not be convicted of rape;
- (C) Adam could be convicted of rape even if Carl didn't commit rape;
- (D) All of the above are true;
- (E) None of the above is true.

(A) is incorrect, because the minimum mens rea for rape is *recklessness*.



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- (C) Adam could be convicted of rape even if Carl didn't commit rape;
- (D) All of the above are true;
- (E) None of the above is true.

(B) is incorrect, because Adam could be an accomplice to Carl's rape of Jill.



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- (C) Adam could be convicted of rape even if Carl didn't commit rape;**
- (D) All of the above are true;
- (E) None of the above is true.

(C) is correct, because the liability of the principal is not a precondition to liability as an accomplice.



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- (E) None of the above is true.

(D) is incorrect; at least one of the answers is incorrect.



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- (D) All of the above are true;
- (E) None of the above is true.**

(E) Is incorrect; at least one of the answers is true.



Question 7-10

Tom agreed with Sarah to host a "blog" on the topic of Italian cooking. Tom knew nothing about cooking, but knew about computers. Sarah knew nothing about computers, but she knew about cooking. She also knew that Tom had previously been convicted of felony child sexual abuse, but Tom assured her that he had reformed. Sarah didn't know that it was a condition of Tom's parole that he refrain from using the Internet. After Tom read an email from "Heather," who said that she lived in an apartment that only had a hot-plate, Tom emailed "Heather," offering to let her practice cooking at Tom's house. "Heather" said she didn't have a way to get there, so Tom offered to pick her up. When Tom arrived at the address that "Heather" gave him, he was arrested by a police officer.

A statute reads as follows: "A person is guilty of child molestation in the first degree (a second-degree felony) when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is less than twelve years old."

Suppose Sarah knew that Tom was seeking to have sexual contact with "Heather" but didn't know she was 10 years old. If she loaned Tom a car in order to facilitate Tom's rendezvous, could she be convicted of conspiring to commit aggravated child molestation?

- (A) No, because she didn't have the requisite mens rea for one of the material elements of the crime;
- (B) No, so long as her ignorance of "Heather's" age was not reckless;
- (C) Yes, if she agreed with Tom that he would have sexual contact with "Heather";
- (D) The Model Penal Code is ambiguous on this point.



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Suppose Sarah knew that Tom was seeking to have sexual contact with "Heather" but didn't know she was 10 years old. If she loaned Tom a car in order to facilitate Tom's rendezvous, could she be convicted of conspiring to commit aggravated child molestation?

- (A) **No, because she didn't have the requisite mens rea for one of the material elements of the crime;**
- (B) No, so long as her ignorance of "Heather's" age was not reckless;
- (C) Yes, if she agreed with Tom that he would have sexual contact with "Heather";
- (D) The Model Penal Code is ambiguous on this point.

(A) is incorrect, because there is no clear mens rea requirement for the circumstance element of this crime;



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Question 7-10

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- (C) Yes, if she agreed with Tom that he would have sexual contact with "Heather";
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(B) is incorrect, because the statute could be interpreted to impose no mens rea requirement for the circumstance element;



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- (B) No, so long as her ignorance of "Heather's" age was not reckless;
- (C) Yes, if she agreed with Tom that he would have sexual contact with "Heather";**
- (D) The Model Penal Code is ambiguous on this point.

(C) is incorrect, because the MPC is ambiguous with respect to this aspect of conspiracy law;



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Question 7-10

Tom agreed with Sarah to host a "blog" on the topic of Italian cooking. Tom knew nothing about cooking, but knew about computers. Sarah knew nothing about computers, but she knew about cooking. She also knew that Tom had previously been convicted of felony child sexual abuse, but Tom assured her that he had reformed. Sarah didn't know that it was a condition of Tom's parole that he refrain from using the Internet. After Tom read an email from "Heather," who said that she lived in an apartment that only had a hot-plate, Tom emailed "Heather," offering to let her practice cooking at Tom's house. "Heather" said she didn't have a way to get there, so Tom offered to pick her up. When Tom arrived at the address that "Heather" gave him, he was arrested by a police officer.

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- (C) Yes, if she agreed with Tom that he would have sexual contact with "Heather";
- (D) The Model Penal Code is ambiguous on this point.**

(D) is therefore the correct answer.



Question 7-11

Mike and Jim conspire to steal a sports car. Mike locates an expensive sports car that is parked on the street and tells Jim about it, who then acquires tools to hot-wire the ignition. Mike subsequently gets cold feet about the theft, and tells Jim that he will not have anything further to do with it. Jim then steals the car, but is quickly captured. Jim then tells the police about Mike. Which of the following is true?

- (A) Mike can avoid conviction of theft if he manifested a “complete and voluntary renunciation of his criminal purpose”;
- (B) Mike can avoid conviction of theft by showing that he didn’t actually steal the car;
- (C) Mike can be convicted of theft;
- (D) Mike can be convicted of conspiring to commit theft, but not of theft itself.



Question 7-11

Mike and Jim conspire to steal a sports car. Mike locates an expensive sports car that is parked on the street and tells Jim about it, who then acquires tools to hot-wire the ignition. Mike subsequently gets cold feet about the theft, and tells Jim that he will not have anything further to do with it. Jim then steals the car, but is quickly captured. Jim then tells the police about Mike. Which of the following is true?

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(A) is incorrect, because renunciation is a defense under § 2.06(6).



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- (B) Mike can avoid conviction of theft by showing that he didn’t actually steal the car;**
- (C) Mike can be convicted of theft
- (D) Mike can be convicted of conspiring to commit theft, but not of theft itself.

(B) only if the actor either "wholly deprives [his complicity] of effectiveness" or "gives timely warning to law enforcement";



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- (C) Mike can be convicted of theft;**
- (D) Mike can be convicted of conspiring to commit theft, but not of theft itself.

(C) is correct because Mike can be convicted as an accomplice under § 2.06(3)(a)(ii);



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- (B) Mike can avoid conviction of theft by showing that he didn’t actually steal the car;
- (C) Mike can be convicted of theft
- (D) Mike can be convicted of conspiring to commit theft, but not of theft itself.**

(D) is incorrect because Mike can be convicted as an accomplice under § 2.06(3)(a)(ii).



Question 7-12

Bob asked Susan to help him rob a bank. She agreed. Bob later robbed the bank. Bob could be convicted of:

- (A) robbery or conspiracy to commit robbery, but not both.
- (B) conspiracy to commit robbery or solicitation of robbery, but not both.
- (C) Both (A) and (B) are correct.
- (D) None of the above.



Question 7-12

Bob asked Susan to help him rob a bank. She agreed. Bob later robbed the bank. Bob could be convicted of:

- (A) robbery or conspiracy to commit robbery, but not both.**
- (B) conspiracy to commit robbery or solicitation of robbery, but not both.
- (C) Both (A) and (B) are correct.
- (D) None of the above.

(A) is only partially correct; Bob committed bank robbery and he conspired to rob the bank, but he can't be convicted of both.



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- (B) conspiracy to commit robbery or solicitation of robbery, but not both.**
- (C) Both (A) and (B) are correct.
- (D) None of the above.

(B) is only partially correct; one can only be convicted of one form of an inchoate crime;



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- (C) Both (A) and (B) are correct.**
- (D) None of the above.

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(C) Is the best answer, because both (A) and (B) are correct.



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- (D) None of the above.**

(D) is incorrect, because at least one of the answers is correct.



Question 7-13

Bob asked Susan to help him rob a bank. She agreed to do so. Bob later robbed the bank. Susan could be convicted of:

- (A) conspiracy to commit robbery, but not robbery.
- (B) attempted bank robbery, but not robbery.
- (C) any crime committed by Bob that was reasonably foreseeable as a result of her agreement;
- (D) None of the above.



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- (A) conspiracy to commit robbery, but not robbery.**
- (B) attempted bank robbery, but not robbery.
- (C) any crime committed by Bob that was reasonably foreseeable as a result of her agreement;
- (D) None of the above.

(A) is incorrect; Susan was an accomplice to robbery and therefore she could be convicted of robbery;



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Bob asked Susan to help him rob a bank. She agreed to do so. Bob later robbed the bank. Susan could be convicted of:

- (A) conspiracy to commit robbery, but not robbery.
- (B) attempted bank robbery, but not robbery.**
- (C) any crime committed by Bob that was reasonably foreseeable as a result of her agreement;
- (D) None of the above.

(B) is incorrect; Susan was an accomplice;



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- (A) conspiracy to commit robbery, but not robbery.
- (B) attempted bank robbery, but not robbery.
- (C) any crime committed by Bob that was reasonably foreseeable as a result of her agreement;**
- (D) None of the above.

(C) is incorrect; the MPC rejects the "natural and probable consequences" doctrine for accomplice liability.



Question 7-13

Bob asked Susan to help him rob a bank. She agreed to do so. Bob later robbed the bank. Susan could be convicted of:

- (A) conspiracy to commit robbery, but not robbery.
- (B) attempted bank robbery, but not robbery.
- (C) any crime committed by Bob that was reasonably foreseeable as a result of her agreement;
- (D) None of the above.**

(D) Is the best answer, because none of the other answers is correct. (A) is incorrect; Susan was an accomplice to robbery and therefore she could be convicted of robbery; (B) is incorrect; Susan was an accomplice; (C) is incorrect; the MPC rejects the "natural and probable consequences" doctrine for accomplice liability.



Question 7-14

Charlotte's boyfriend Daniel was physically abusive to Charlotte's 4-year-old son Peter. If Daniel killed Peter, could Charlotte be convicted of murder?

- (A) Yes, if Charlotte knew that Daniel planned to kill Peter, and she did nothing.
- (B) Yes, but only if Charlotte wanted Daniel to kill Peter and Charlotte had an opportunity to prevent Daniel from killing Peter and failed to stop him.
- (C) No, unless Charlotte agreed to help Daniel, or aided him or attempted to aid him in killing Peter.
- (D) No, if Daniel was not himself guilty of murder.



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Charlotte's boyfriend Daniel was physically abusive to Charlotte's 4-year-old son Peter. If Daniel killed Peter, could Charlotte be convicted of murder?

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(B) Yes, but only if Charlotte wanted Daniel to kill Peter and Charlotte had an opportunity to prevent Daniel from killing Peter and failed to stop him.

(C) No, unless Charlotte agreed to help Daniel, or aided him or attempted to aid him in killing Peter.

(D) No, if Daniel was not himself guilty of murder.

(A) is incorrect, because it only shows that she had *knowledge* of what Daniel was doing. To be guilty of murder she would have to have the purpose of aiding him.



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- (A) Yes, if Charlotte knew that Daniel planned to kill Peter, and she did nothing.
- (B) Yes, but only if Charlotte wanted Daniel to kill Peter and Charlotte had an opportunity to prevent Daniel from killing Peter and failed to stop him.**
- (C) No, unless Charlotte agreed to help Daniel, or aided him or attempted to aid him in killing Peter.
- (D) No, if Daniel was not himself guilty of murder.

(B) is correct, because she had a *duty* to protect Peter, and her failure to do so, if coupled with a desire to achieve the result, would make her an accomplice;



Question 7-14

Charlotte's boyfriend Daniel was physically abusive to Charlotte's 4-year-old son Peter. If Daniel killed Peter, could Charlotte be convicted of murder?

- (A) Yes, if Charlotte knew that Daniel planned to kill Peter, and she did nothing.
- (B) Yes, but only if Charlotte wanted Daniel to kill Peter and Charlotte had an opportunity to prevent Daniel from killing Peter and failed to stop him.
- (C) No, unless Charlotte agreed to help Daniel, or aided him or attempted to aid him in killing Peter.**
- (D) No, if Daniel was not himself guilty of murder.

(C) is incorrect; one can be an accomplice by doing nothing if one has a duty to act and fails to do so with the purpose of aiding the perpetrator;



Question 7-14

Charlotte's boyfriend Daniel was physically abusive to Charlotte's 4-year-old son Peter. If Daniel killed Peter, could Charlotte be convicted of murder?

- (A) Yes, if Charlotte knew that Daniel planned to kill Peter, and she did nothing.
- (B) Yes, but only if Charlotte wanted Daniel to kill Peter and Charlotte had an opportunity to prevent Daniel from killing Peter and failed to stop him.
- (C) No, unless Charlotte agreed to help Daniel, or aided him or attempted to aid him in killing Peter.
- (D) No, if Daniel was not himself guilty of murder.**

(D) is incorrect, because an accomplice can be guilty despite the innocence (or lesser guilt) of the principal.



Question 7-15

Penal Code § 321 makes it a felony to distribute (sell) heroin. Mark was known in the neighborhood to be a heroin dealer. When an undercover agent tried to buy heroin from him, Mark suspected he was an undercover agent. Which of the following is correct?

- (A) If Mark sold him milk sugar instead of heroin, Mark could be convicted of an attempt to violate § 321 so long as the agent thought it was heroin.
- (B) If Mark was prepared to sell him heroin, but waited until the agent asked for heroin, but the agent never did, Mark couldn't be convicted of an attempt to violate § 321.
- (C) Mark couldn't be convicted of conspiracy to violate § 321 because he and the agent never had a meeting of the minds.
- (D) None of the above.



Question 7-15

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- (B) If Mark was prepared to sell him heroin, but waited until the agent asked for heroin, but the agent never did, Mark couldn't be convicted of an attempt to violate § 321.
- (C) Mark couldn't be convicted of conspiracy to violate § 321 because he and the agent never had a meeting of the minds.
- (D) None of the above.

(A) is incorrect; it doesn't matter what the *agent* thought; it matters what *Mark* thought.



Question 7-15

Penal Code § 321 makes it a felony to distribute (sell) heroin. Mark was known in the neighborhood to be a heroin dealer. When an undercover agent tried to buy heroin from him, Mark suspected he was an undercover agent. Which of the following is correct?

- (A) If Mark sold him milk sugar instead of heroin, Mark could be convicted of an attempt to violate § 321 so long as the agent thought it was heroin.
- (B) If Mark was prepared to sell him heroin, but waited until the agent asked for heroin, but the agent never did, Mark couldn't be convicted of an attempt to violate § 321.**
- (C) Mark couldn't be convicted of conspiracy to violate § 321 because he and the agent never had a meeting of the minds.
- (D) None of the above.

(B) is incorrect, because Mark may have committed a substantial step planned to culminate in the commission of the crime;



Question 7-15

Penal Code § 321 makes it a felony to distribute (sell) heroin. Mark was known in the neighborhood to be a heroin dealer. When an undercover agent tried to buy heroin from him, Mark suspected he was an undercover agent. Which of the following is correct?

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- (B) If Mark was prepared to sell him heroin, but waited until the agent asked for heroin, but the agent never did, Mark couldn't be convicted of an attempt to violate § 321.
- (C) Mark couldn't be convicted of conspiracy to violate § 321 because he and the agent never had a meeting of the minds.**
- (D) None of the above.

(C) is incorrect, because the MPC permits unilateral conspiracy.



Question 7-15

Penal Code § 321 makes it a felony to distribute (sell) heroin. Mark was known in the neighborhood to be a heroin dealer. When an undercover agent tried to buy heroin from him, Mark suspected he was an undercover agent. Which of the following is correct?

- (A) If Mark sold him milk sugar instead of heroin, Mark could be convicted of an attempt to violate § 321 so long as the agent thought it was heroin.
- (B) If Mark was prepared to sell him heroin, but waited until the agent asked for heroin, but the agent never did, Mark couldn't be convicted of an attempt to violate § 321.
- (C) Mark couldn't be convicted of conspiracy to violate § 321 because he and the agent never had a meeting of the minds.
- (D) None of the above.**

(D) is the best answer, because each of the other answers has flaws. (A) is incorrect; it doesn't matter what the agent thought; it matters what Mark thought. (B) is incorrect, because Mark may have committed a substantial step planned to culminate in the commission of the crime; (C) is incorrect, because the MPC permits unilateral conspiracy.



Question 7-16

Nancy was married to Tom. They lived on a ranch in a rural area. Nancy had fallen in love with Brad, an employee of the ranch. One day while the three of them were riding horses in a remote area, Tom's horse reared up and threw him. Tom landed on his head and was paralyzed, but conscious. It was 40 degrees and would soon be dark. Tom asked Nancy and Brad to ride back to the ranch to get help. They agreed to do so. On the way back, Nancy suggested to Brad that they should simply leave him there to die, and pretend he had gone out riding alone and died of exposure.

At this stage, has Nancy committed a crime?

- (A) Yes, because she solicited someone to commit the crime of murder;
- (B) Yes, because she had conspired with Brad to commit murder;
- (C) Both (A) and (B).
- (D) Neither (A) nor (B).



Question 7-16

Nancy was married to Tom. They lived on a ranch in a rural area. Nancy had fallen in love with Brad, an employee of the ranch. One day while the three of them were riding horses in a remote area, Tom's horse reared up and threw him. Tom landed on his head and was paralyzed, but conscious. It was 40 degrees and would soon be dark. Tom asked Nancy and Brad to ride back to the ranch to get help. They agreed to do so. On the way back, Nancy suggested to Brad that they should simply leave him there to die, and pretend he had gone out riding alone and died of exposure.

At this stage, has Nancy committed a crime?

- (A) Yes, because she solicited someone to commit the crime of murder;**
- (B) Yes, because she had conspired with Brad to commit murder;
- (C) Both (A) and (B)
- (D) Neither (A) nor (B).

(A) is correct, because Nancy solicited Brad to fail to perform a legal duty that he had, which would have resulted in Tom's death.



Question 7-16

Nancy was married to Tom. They lived on a ranch in a rural area. Nancy had fallen in love with Brad, an employee of the ranch. One day while the three of them were riding horses in a remote area, Tom's horse reared up and threw him. Tom landed on his head and was paralyzed, but conscious. It was 40 degrees and would soon be dark. Tom asked Nancy and Brad to ride back to the ranch to get help. They agreed to do so. On the way back, Nancy suggested to Brad that they should simply leave him there to die, and pretend he had gone out riding alone and died of exposure.

At this stage, has Nancy committed a crime?

- (A) Yes, because she solicited someone to commit the crime of murder;
- (B) Yes, because she had conspired with Brad to commit murder;**
- (C) Both (A) and (B)
- (D) Neither (A) nor (B).

(B) is incorrect, because at this stage there was no agreement.



Question 7-16

Nancy was married to Tom. They lived on a ranch in a rural area. Nancy had fallen in love with Brad, an employee of the ranch. One day while the three of them were riding horses in a remote area, Tom's horse reared up and threw him. Tom landed on his head and was paralyzed, but conscious. It was 40 degrees and would soon be dark. Tom asked Nancy and Brad to ride back to the ranch to get help. They agreed to do so. On the way back, Nancy suggested to Brad that they should simply leave him there to die, and pretend he had gone out riding alone and died of exposure.

At this stage, has Nancy committed a crime?

- (A) Yes, because she solicited someone to commit the crime of murder;
- (B) Yes, because she had conspired with Brad to commit murder;
- (C) Both (A) and (B)**
- (D) Neither (A) nor (B).

(C) is incorrect; at least one of the answers is incorrect



Question 7-16

Nancy was married to Tom. They lived on a ranch in a rural area. Nancy had fallen in love with Brad, an employee of the ranch. One day while the three of them were riding horses in a remote area, Tom's horse reared up and threw him. Tom landed on his head and was paralyzed, but conscious. It was 40 degrees and would soon be dark. Tom asked Nancy and Brad to ride back to the ranch to get help. They agreed to do so. On the way back, Nancy suggested to Brad that they should simply leave him there to die, and pretend he had gone out riding alone and died of exposure.

At this stage, has Nancy committed a crime?

- (A) Yes, because she solicited someone to commit the crime of murder;
- (B) Yes, because she had conspired with Brad to commit murder;
- (C) Both (A) and (B)
- (D) Neither (A) nor (B).**

(D) is incorrect; at least one of the answers is correct.



Question 7-17

Nancy was married to Tom. They lived on a ranch in a rural area. Nancy had fallen in love with Brad, an employee of the ranch. One day while the three of them were riding horses in a remote area, Tom's horse reared up and threw him. Tom landed on his head and was paralyzed, but conscious. It was 40 degrees and would soon be dark. Tom asked Nancy and Brad to ride back to the ranch to get help. They agreed to do so. On the way back, Nancy suggested to Brad that they should simply leave him there to die, and pretend he had gone out riding alone and died of exposure.

Assume (for purposes of this question only) that in response to Nancy's proposal Brad said nothing, but about ten minutes later he said, "You know, we tied up Tom's horse. If it appears that he was paralyzed by the fall, and then died of exposure, won't it be fishy that his horse was tied up?" "You're right," said Nancy. "I'll go back and untie the horse." At this stage, has Brad committed a crime?

- (A) Yes, because he encouraged Nancy to commit a crime;
- (B) Yes, but only if Nancy acted on his suggestion;
- (C) No, if his purpose was to convince Nancy to change her mind, even if it had the effect of helping Nancy avoid detection;
- (D) No, if Tom was ultimately rescued and suffered no harm.



Question 7-17

Nancy was married to Tom. They lived on a ranch in a rural area. Nancy had fallen in love with Brad, an employee of the ranch. One day while the three of them were riding horses in a remote area, Tom's horse reared up and threw him. Tom landed on his head and was paralyzed, but conscious. It was 40 degrees and would soon be dark. Tom asked Nancy and Brad to ride back to the ranch to get help. They agreed to do so. On the way back, Nancy suggested to Brad that they should simply leave him there to die, and pretend he had gone out riding alone and died of exposure. Assume (for purposes of this question only) that in response to Nancy's proposal Brad said nothing, but about ten minutes later he said, "You know, we tied up Tom's horse. If it appears that he was paralyzed by the fall, and then died of exposure, won't it be fishy that his horse was tied up?" "You're right," said Nancy. "I'll go back and untie the horse." At this stage, has Brad committed a crime?

- (A) Yes, because he encouraged Nancy to commit a crime;
- (B) Yes, but only if Nancy acted on his suggestion;
- (C) No, if his purpose was to convince Nancy to change her mind, even if it had the effect of helping Nancy avoid detection;
- (D) No, if Tom was ultimately rescued and suffered no harm.

(A) is incorrect, because it omits any discussion of Brad's mens rea in pointing out the risk;



Question 7-17

Nancy was married to Tom. They lived on a ranch in a rural area. Nancy had fallen in love with Brad, an employee of the ranch. One day while the three of them were riding horses in a remote area, Tom's horse reared up and threw him. Tom landed on his head and was paralyzed, but conscious. It was 40 degrees and would soon be dark. Tom asked Nancy and Brad to ride back to the ranch to get help. They agreed to do so. On the way back, Nancy suggested to Brad that they should simply leave him there to die, and pretend he had gone out riding alone and died of exposure. Assume (for purposes of this question only) that in response to Nancy's proposal Brad said nothing, but about ten minutes later he said, "You know, we tied up Tom's horse. If it appears that he was paralyzed by the fall, and then died of exposure, won't it be fishy that his horse was tied up?" "You're right," said Nancy. "I'll go back and untie the horse." At this stage, has Brad committed a crime?

- (A) Yes, because he encouraged Nancy to commit a crime;
- (B) Yes, but only if Nancy acted on his suggestion;**
- (C) No, if his purpose was to convince Nancy to change her mind, even if it had the effect of helping Nancy avoid detection;
- (D) No, if Tom was ultimately rescued and suffered no harm.

(B) is incorrect, because to be an accomplice to murder, Brad's efforts do not have to be successful;



Question 7-17

Nancy was married to Tom. They lived on a ranch in a rural area. Nancy had fallen in love with Brad, an employee of the ranch. One day while the three of them were riding horses in a remote area, Tom's horse reared up and threw him. Tom landed on his head and was paralyzed, but conscious. It was 40 degrees and would soon be dark. Tom asked Nancy and Brad to ride back to the ranch to get help. They agreed to do so. On the way back, Nancy suggested to Brad that they should simply leave him there to die, and pretend he had gone out riding alone and died of exposure. Assume (for purposes of this question only) that in response to Nancy's proposal Brad said nothing, but about ten minutes later he said, "You know, we tied up Tom's horse. If it appears that he was paralyzed by the fall, and then died of exposure, won't it be fishy that his horse was tied up?" "You're right," said Nancy. "I'll go back and untie the horse." At this stage, has Brad committed a crime?

- (A) Yes, because he encouraged Nancy to commit a crime;
- (B) Yes, but only if Nancy acted on his suggestion;
- (C) No, if his purpose was to convince Nancy to change her mind, even if it had the effect of helping Nancy avoid detection;**
- (D) No, if Tom was ultimately rescued and suffered no harm.

(C) is correct, because in the absence of the mens rea of purpose, he can't be convicted of conspiracy, of attempt, or of complicity;



Question 7-17

Nancy was married to Tom. They lived on a ranch in a rural area. Nancy had fallen in love with Brad, an employee of the ranch. One day while the three of them were riding horses in a remote area, Tom's horse reared up and threw him. Tom landed on his head and was paralyzed, but conscious. It was 40 degrees and would soon be dark. Tom asked Nancy and Brad to ride back to the ranch to get help. They agreed to do so. On the way back, Nancy suggested to Brad that they should simply leave him there to die, and pretend he had gone out riding alone and died of exposure. Assume (for purposes of this question only) that in response to Nancy's proposal Brad said nothing, but about ten minutes later he said, "You know, we tied up Tom's horse. If it appears that he was paralyzed by the fall, and then died of exposure, won't it be fishy that his horse was tied up?" "You're right," said Nancy. "I'll go back and untie the horse." At this stage, has Brad committed a crime?

- (A) Yes, because he encouraged Nancy to commit a crime;
- (B) Yes, but only if Nancy acted on his suggestion;
- (C) No, if his purpose was to convince Nancy to change her mind, even if it had the effect of helping Nancy avoid detection;
- (D) No, if Tom was ultimately rescued and suffered no harm.**

(D) is incorrect, because to be an accomplice to murder, Brad's efforts do not have to be successful.



Question 7-18

Nancy was married to Tom. They lived on a ranch in a rural area. Nancy had fallen in love with Brad, an employee of the ranch. One day while the three of them were riding horses in a remote area, Tom's horse reared up and threw him. Tom landed on his head and was paralyzed, but conscious. It was 40 degrees and would soon be dark. Tom asked Nancy and Brad to ride back to the ranch to get help. They agreed to do so. On the way back, Nancy suggested to Brad that they should simply leave him there to die, and pretend he had gone out riding alone and died of exposure.

Assume (for purposes of this question only) that Brad and Nancy rode back to the ranch, never told anyone about Tom's condition, and simply waited for him to die. However, through a stroke of luck Tom was discovered by a hiker who used his cell phone to summon help. Tom was rescued without any physical injury resulting from Nancy and Brad's failure to summon help. Which of the following is true:

- (A) Brad could be charged with attempted murder, or conspiracy to commit murder, but not both;
- (B) Brad and Nancy could both be convicted of attempted murder;
- (C) Brad could not be an accomplice to attempted murder unless some action on his part was a but-for cause of injury to Tom;
- (D) Brad could only be convicted of attempted murder if Nancy was also guilty of attempted murder.



Question 7-18

Nancy was married to Tom. They lived on a ranch in a rural area. Nancy had fallen in love with Brad, an employee of the ranch. One day while the three of them were riding horses in a remote area, Tom's horse reared up and threw him. Tom landed on his head and was paralyzed, but conscious. It was 40 degrees and would soon be dark. Tom asked Nancy and Brad to ride back to the ranch to get help. They agreed to do so. On the way back, Nancy suggested to Brad that they should simply leave him there to die, and pretend he had gone out riding alone and died of exposure.

Assume (for purposes of this question only) that Brad and Nancy rode back to the ranch, never told anyone about Tom's condition, and simply waited for him to die. However, through a stroke of luck Tom was discovered by a hiker who used his cell phone to summon help. Tom was rescued without any physical injury resulting from Nancy and Brad's failure to summon help. Which of the following is true:

- (A) Brad could be charged with attempted murder, or conspiracy to commit murder, but not both;**
- (B) Brad and Nancy could both be convicted of attempted murder;
- (C) Brad could not be an accomplice to attempted murder unless some action on his part was a but-for cause of injury to Tom;
- (D) Brad could only be convicted of attempted murder if Nancy was also guilty of attempted murder.

(A) is incorrect, because although one can't be CONVICTED of multiple inchoate crimes arising from the same conduct, one can be CHARGED with multiple versions.



Question 7-18

Nancy was married to Tom. They lived on a ranch in a rural area. Nancy had fallen in love with Brad, an employee of the ranch. One day while the three of them were riding horses in a remote area, Tom's horse reared up and threw him. Tom landed on his head and was paralyzed, but conscious. It was 40 degrees and would soon be dark. Tom asked Nancy and Brad to ride back to the ranch to get help. They agreed to do so. On the way back, Nancy suggested to Brad that they should simply leave him there to die, and pretend he had gone out riding alone and died of exposure.

Assume (for purposes of this question only) that Brad and Nancy rode back to the ranch, never told anyone about Tom's condition, and simply waited for him to die. However, through a stroke of luck Tom was discovered by a hiker who used his cell phone to summon help. Tom was rescued without any physical injury resulting from Nancy and Brad's failure to summon help. Which of the following is true:

- (A) Brad could be charged with attempted murder, or conspiracy to commit murder, but not both;
- (B) Brad and Nancy could both be convicted of attempted murder;**
- (C) Brad could not be an accomplice to attempted murder unless some action on his part was a but-for cause of injury to Tom;
- (D) Brad could only be convicted of attempted murder if Nancy was also guilty of attempted murder.

(B) is correct, because both could have done everything they believed was necessary for the commission of the crime;



Question 7-18

Nancy was married to Tom. They lived on a ranch in a rural area. Nancy had fallen in love with Brad, an employee of the ranch. One day while the three of them were riding horses in a remote area, Tom's horse reared up and threw him. Tom landed on his head and was paralyzed, but conscious. It was 40 degrees and would soon be dark. Tom asked Nancy and Brad to ride back to the ranch to get help. They agreed to do so. On the way back, Nancy suggested to Brad that they should simply leave him there to die, and pretend he had gone out riding alone and died of exposure.

Assume (for purposes of this question only) that Brad and Nancy rode back to the ranch, never told anyone about Tom's condition, and simply waited for him to die. However, through a stroke of luck Tom was discovered by a hiker who used his cell phone to summon help. Tom was rescued without any physical injury resulting from Nancy and Brad's failure to summon help. Which of the following is true:

- (A) Brad could be charged with attempted murder, or conspiracy to commit murder, but not both;
- (B) Brad and Nancy could both be convicted of attempted murder;
- (C) Brad could not be an accomplice to attempted murder unless some action on his part was a but-for cause of injury to Tom;**
- (D) Brad could only be convicted of attempted murder if Nancy was also guilty of attempted murder.

(C) is incorrect, because an attempt to cause harm may not result in any actual harm;



Question 7-18

Nancy was married to Tom. They lived on a ranch in a rural area. Nancy had fallen in love with Brad, an employee of the ranch. One day while the three of them were riding horses in a remote area, Tom's horse reared up and threw him. Tom landed on his head and was paralyzed, but conscious. It was 40 degrees and would soon be dark. Tom asked Nancy and Brad to ride back to the ranch to get help. They agreed to do so. On the way back, Nancy suggested to Brad that they should simply leave him there to die, and pretend he had gone out riding alone and died of exposure.

Assume (for purposes of this question only) that Brad and Nancy rode back to the ranch, never told anyone about Tom's condition, and simply waited for him to die. However, through a stroke of luck Tom was discovered by a hiker who used his cell phone to summon help. Tom was rescued without any physical injury resulting from Nancy and Brad's failure to summon help. Which of the following is true:

- (A) Brad could be charged with attempted murder, or conspiracy to commit murder, but not both;
- (B) Brad and Nancy could both be convicted of attempted murder;
- (C) Brad could not be an accomplice to attempted murder unless some action on his part was a but-for cause of injury to Tom;
- (D) Brad could only be convicted of attempted murder if Nancy was also guilty of attempted murder.**

(D) is incorrect because even if Nancy were not convicted for some reason (insanity, or inability to assist in her own defense), Brad owed a duty based on his promise to render aid.



Question 7-19

Bill and Jack sat around one day and complained that they needed money. Bill suggested that they drive to the mall, walk through the parking lot, and look for unlocked cars with packages that they might steal and then exchange at the pawn shop for cash. Jack shrugged his shoulders and said, "Okay, I got nothin' better to do." Bill then walked to his car, got in, and started the engine.

At this stage, has Bill committed a crime?

- (A) Yes, because he has solicited Jack to engage in conduct that would constitute the crime of theft.
- (B) Yes, because he and Jack have made an agreement that one of them will engage in conduct constituting the crime of theft, and an overt act in furtherance of that agreement has been committed.
- (C) Both (1) and (2) are correct.
- (D) No, because Bill hasn't yet taken a substantial step in a course of conduct planned to culminate in the commission of the crime.



Question 7-19

Bill and Jack sat around one day and complained that they needed money. Bill suggested that they drive to the mall, walk through the parking lot, and look for unlocked cars with packages that they might steal and then exchange at the pawn shop for cash. Jack shrugged his shoulders and said, "Okay, I got nothin' better to do." Bill then walked to his car, got in, and started the engine.

At this stage, has Bill committed a crime?

(A) Yes, because he has solicited Jack to engage in conduct that would constitute the crime of theft.

(B) Yes, because he and Jack have made an agreement that one of them will engage in conduct constituting the crime of theft, and an overt act in furtherance of that agreement has been committed.

(C) Both (1) and (2) are correct.

(D) No, because Bill hasn't yet taken a substantial step in a course of conduct planned to culminate in the commission of the crime.

(A) Sorry, that's only partially correct; Bill's conduct would be a crime pursuant to MPC § 5.02.



Question 7-19

Bill and Jack sat around one day and complained that they needed money. Bill suggested that they drive to the mall, walk through the parking lot, and look for unlocked cars with packages that they might steal and then exchange at the pawn shop for cash. Jack shrugged his shoulders and said, "Okay, I got nothin' better to do." Bill then walked to his car, got in, and started the engine.

At this stage, has Bill committed a crime?

- (A) Yes, because he has solicited Jack to engage in conduct that would constitute the crime of theft.
- (B) Yes, because he and Jack have made an agreement that one of them will engage in conduct constituting the crime of theft, and an overt act in furtherance of that agreement has been committed.**
- (C) Both (1) and (2) are correct.
- (D) No, because Bill hasn't yet taken a substantial step in a course of conduct planned to culminate in the commission of the crime.

(B) Sorry, that's only partially correct, because Bill has conspired, pursuant to MPC § 5.03, to commit theft. The overt act is getting in the car.



Question 7-19

Bill and Jack sat around one day and complained that they needed money. Bill suggested that they drive to the mall, walk through the parking lot, and look for unlocked cars with packages that they might steal and then exchange at the pawn shop for cash. Jack shrugged his shoulders and said, "Okay, I got nothin' better to do." Bill then walked to his car, got in, and started the engine.

At this stage, has Bill committed a crime?

- (A) Yes, because he has solicited Jack to engage in conduct that would constitute the crime of theft.
- (B) Yes, because he and Jack have made an agreement that one of them will engage in conduct constituting the crime of theft, and an overt act in furtherance of that agreement has been committed.
- (C) Both (1) and (2) are correct.**
- (D) No, because Bill hasn't yet taken a substantial step in a course of conduct planned to culminate in the commission of the crime.

(C) That's correct. Both (a) and (b) are true statements. Bill's conduct would be a crime because he solicited (as solicitation is defined MPC § 5.02) to commit the crime of theft (see MPC § 223.1).



Question 7-19

Bill and Jack sat around one day and complained that they needed money. Bill suggested that they drive to the mall, walk through the parking lot, and look for unlocked cars with packages that they might steal and then exchange at the pawn shop for cash. Jack shrugged his shoulders and said, "Okay, I got nothin' better to do." Bill then walked to his car, got in, and started the engine.

At this stage, has Bill committed a crime?

- (A) Yes, because he has solicited Jack to engage in conduct that would constitute the crime of theft.
- (B) Yes, because he and Jack have made an agreement that one of them will engage in conduct constituting the crime of theft, and an overt act in furtherance of that agreement has been committed.
- (C) Both (1) and (2) are correct.
- (D) No, because Bill hasn't yet taken a substantial step in a course of conduct planned to culminate in the commission of the crime.**

(D) Sorry, that's incorrect. Although a substantial step is necessary for charging someone with an attempt to commit a crime, it is not necessary if someone is charged either with solicitation or conspiracy.



Question 7-20

Bill and Jack sat around one day and complained that they needed money. Bill suggested that they drive to the mall, walk through the parking lot, and look for unlocked cars with packages that they might steal and then exchange at the pawn shop for cash. Jack shrugged his shoulders and said, "Okay, I got nothin' better to do." Bill then walked to his car, got in, and started the engine.

At this stage, has Jack committed a crime?

- (A) Yes; his conduct constitutes a substantial step, strongly corroborative of criminal intent, planned to culminate in the commission of a crime.
- (B) Yes, because he has engaged in a conspiracy to commit a crime, and Bill has committed an overt act.
- (C) Yes, if the prosecutor can prove that the crime was inherently likely to be committed.
- (D) No, because at this stage Jack hasn't done anything criminal.



Question 7-20

Bill and Jack sat around one day and complained that they needed money. Bill suggested that they drive to the mall, walk through the parking lot, and look for unlocked cars with packages that they might steal and then exchange at the pawn shop for cash. Jack shrugged his shoulders and said, "Okay, I got nothin' better to do." Bill then walked to his car, got in, and started the engine.

At this stage, has Jack committed a crime?

(A) Yes; his conduct constitutes a substantial step, strongly corroborative of criminal intent, planned to culminate in the commission of a crime.

(B) Yes, because he has engaged in a conspiracy to commit a crime, and Bill has committed an overt act.

(C) Yes, if the prosecutor can prove that the crime was inherently likely to be committed.

(D) No, because at this stage Jack hasn't done anything criminal.

(A) Sorry, that's incorrect, because his behavior does not constitute a substantial step. See the definition of **attempt** in MPC § 5.01.



Question 7-20

Bill and Jack sat around one day and complained that they needed money. Bill suggested that they drive to the mall, walk through the parking lot, and look for unlocked cars with packages that they might steal and then exchange at the pawn shop for cash. Jack shrugged his shoulders and said, "Okay, I got nothin' better to do." Bill then walked to his car, got in, and started the engine.

At this stage, has Jack committed a crime?

- (A) Yes; his conduct constitutes a substantial step, strongly corroborative of criminal intent, planned to culminate in the commission of a crime.
- (B) Yes, because he has engaged in a conspiracy to commit a crime, and Bill has committed an overt act.**
- (C) Yes, if the prosecutor can prove that the crime was inherently likely to be committed.
- (D) No, because at this stage Jack hasn't done anything criminal.

(B) That's correct. Because Jack agreed with Bill that they will commit the crime, and an overt act has been committed by one of them (Bill's going to the car and starting the engine).



Question 7-20

Bill and Jack sat around one day and complained that they needed money. Bill suggested that they drive to the mall, walk through the parking lot, and look for unlocked cars with packages that they might steal and then exchange at the pawn shop for cash. Jack shrugged his shoulders and said, "Okay, I got nothin' better to do." Bill then walked to his car, got in, and started the engine.

At this stage, has Jack committed a crime?

- (A) Yes; his conduct constitutes a substantial step, strongly corroborative of criminal intent, planned to culminate in the commission of a crime.
- (B) Yes, because he has engaged in a conspiracy to commit a crime, and Bill has committed an overt act.
- (C) Yes, if the prosecutor can prove that the crime was inherently likely to be committed.**
- (D) No, because at this stage Jack hasn't done anything criminal.

(C) Sorry, that's incorrect; whether the crime was "inherently likely" -- whatever that means -- is irrelevant.



Question 7-20

Bill and Jack sat around one day and complained that they needed money. Bill suggested that they drive to the mall, walk through the parking lot, and look for unlocked cars with packages that they might steal and then exchange at the pawn shop for cash. Jack shrugged his shoulders and said, "Okay, I got nothin' better to do." Bill then walked to his car, got in, and started the engine.

At this stage, has Jack committed a crime?

- (A) Yes; his conduct constitutes a substantial step, strongly corroborative of criminal intent, planned to culminate in the commission of a crime.
- (B) Yes, because he has engaged in a conspiracy to commit a crime, and Bill has committed an overt act.
- (C) Yes, if the prosecutor can prove that the crime was inherently likely to be committed.
- (D) No, because at this stage Jack hasn't done anything criminal.**

(D) Sorry, that's incorrect. Jack's agreement with Bill may be a criminal act, if it is accompanied by an overt act.



Question 7-21

Bill and Jack sat around one day and complained that they needed money. Bill suggested that they drive to the mall, walk through the parking lot, and look for unlocked cars with packages that they might steal and then exchange at the pawn shop for cash. Jack shrugged his shoulders and said, "Okay, I got nothin' better to do." Bill then walked to his car, got in, and started the engine.

Bill and Jack drive to the mall. Jack opens the doors of three different cars and finds a purse in one of them. He takes it and places it in his car. At this stage, which of the following is true?

- (A) Jack has committed theft, assuming he had the purpose of depriving the owner of the purse.
- (B) Bill has also committed theft because he was an accomplice to Jack.
- (C) Both (1) and (2) are correct.
- (D) Jack has not yet committed theft, because he has not yet converted the purse to his own use.



Question 7-21

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- (A) Jack has committed theft, assuming he had the purpose of depriving the owner of the purse.
- (B) Bill has also committed theft because he was an accomplice to Jack.
- (C) Both (1) and (2) are correct.
- (D) Jack has not yet committed theft, because he has not yet converted the purse to his own use.

(A) Sorry, that's only partially correct. **Theft** is taking something with the purpose of depriving the owner of the property (MPC § 223.2).



Question 7-21

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- (B) Bill has also committed theft because he was an accomplice to Jack.**
- (C) Both (1) and (2) are correct.
- (D) Jack has not yet committed theft, because he has not yet converted the purse to his own use.

(B) Sorry, that's only partially correct. Bill solicited Jack to commit the crime and thus is an accomplice pursuant to MPC § **2.06(3)(a)(1)**.



Question 7-21

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- (C) Both (1) and (2) are correct.**
- (D) Jack has not yet committed theft, because he has not yet converted the purse to his own use.

(C) That's correct, because (a) and (b) are both true answers.



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- (B) Bill has also committed theft because he was an accomplice to Jack.
- (C) Both (1) and (2) are correct.
- (D) Jack has not yet committed theft, because he has not yet converted the purse to his own use.**

(D) Sorry, that's incorrect. The conversion of the property to your own use is not an element of theft.



Question 7-22

Bill and Jack sat around one day and complained that they needed money. Bill suggested that they drive to the mall, walk through the parking lot, and look for unlocked cars with packages that they might steal and then exchange at the pawn shop for cash. Jack shrugged his shoulders and said, "Okay, I got nothin' better to do." Bill then walked to his car, got in, and started the engine. Bill and Jack drive to the mall. Jack opens the doors of three different cars and finds a purse in one of them. He takes it and places it in his car. At this stage, which of the following is true?

While Jack was taking the purse, the car's owner ("O") saw him. O said "Stop, thief!" and Jack got into his own car to make a getaway. O ran toward Jack's car and as Jack was making his getaway he ran over O, causing him serious bodily injury. Which of the following is true?

- (A) Jack could be convicted of robbery, assuming he acted recklessly in running over O.
- (B) Bill could be convicted as an accomplice to robbery, assuming the prosecutor could prove Bill was reckless with respect to the injury caused to O.
- (C) Both (1) and (2) are correct.
- (D) Neither (1) nor (2) is correct.



Question 7-22

Bill and Jack sat around one day and complained that they needed money. Bill suggested that they drive to the mall, walk through the parking lot, and look for unlocked cars with packages that they might steal and then exchange at the pawn shop for cash. Jack shrugged his shoulders and said, "Okay, I got nothin' better to do." Bill then walked to his car, got in, and started the engine. Bill and Jack drive to the mall. Jack opens the doors of three different cars and finds a purse in one of them. He takes it and places it in his car. At this stage, which of the following is true?

While Jack was taking the purse, the car's owner ("O") saw him. O said "Stop, thief!" and Jack got into his own car to make a getaway. O ran toward Jack's car and as Jack was making his getaway he ran over O, causing him serious bodily injury. Which of the following is true?

- (A) Jack could be convicted of robbery, assuming he acted recklessly in running over O.**
- (B) Bill could be convicted as an accomplice to robbery, assuming the prosecutor could prove Bill was reckless with respect to the injury caused to O.
- (C) Both (1) and (2) are correct.
- (D) Neither (1) nor (2) is correct.

(A) Sorry, that's only partially correct. Try again.



Question 7-22

Bill and Jack sat around one day and complained that they needed money. Bill suggested that they drive to the mall, walk through the parking lot, and look for unlocked cars with packages that they might steal and then exchange at the pawn shop for cash. Jack shrugged his shoulders and said, "Okay, I got nothin' better to do." Bill then walked to his car, got in, and started the engine. Bill and Jack drive to the mall. Jack opens the doors of three different cars and finds a purse in one of them. He takes it and places it in his car. At this stage, which of the following is true?

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- (C) Both (1) and (2) are correct.
- (D) Neither (1) nor (2) is correct.

(B) Sorry, that's only partially correct. Try again.



Question 7-22

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- (A) Jack could be convicted of robbery, assuming he acted recklessly in running over O.
- (B) Bill could be convicted as an accomplice to robbery, assuming the prosecutor could prove Bill was reckless with respect to the injury caused to O.
- (C) Both (1) and (2) are correct.**
- (D) Neither (1) nor (2) is correct.

(C) That's correct. The crime of **robbery** (MPC § (1) is established by proof that the defendant, while in the course of a theft, caused bodily injury to another. Bill would be an accomplice because (1) he acted with the purpose of facilitating the conduct, and pursuant to § **2.06(4)**, he had the same mens rea with respect to a result (serious bodily injury) as would be required for the conviction of the offense itself.



Question 7-22

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- (C) Both (1) and (2) are correct.
- (D) Neither (1) nor (2) is correct.**

(D) Sorry, that's incorrect. At least one of the answers is correct.



Question 7-23

Bob and Ray agree to rob a bank. Ray is to hold the bag, while Bob threatens the tellers with a gun. They agree that if they encounter resistance they will leave. When they get to the bank, Bob hits George, a bank guard, and injures him. Ray then flees, and no money is taken from the bank.

Bob can be convicted of conspiracy to rob the bank:

- (A) Only if the robbery was in fact completed by one of the members of the conspiracy.
- (B) Only if the "substantial step" requirement is satisfied.
- (C) Only if he is not also convicted of an assault on George.
- (D) Even if Ray was insane at the time of the agreement.



Question 7-23

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(B) Only if the "substantial step" requirement is satisfied.

(C) Only if he is not also convicted of an assault on George.

(D) Even if Ray was insane at the time of the agreement.

(A) Sorry, that's incorrect. A conspiracy conviction can be obtained if there is an agreement between the defendant and another person, and an overt act is committed in furtherance of the conspiracy.



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- (C) Only if he is not also convicted of an assault on George.
- (D) Even if Ray was insane at the time of the agreement.

(B) Sorry, that's incorrect. A substantial step is required if the defendant is charged with an **attempt** to commit a crime. But here the charge is conspiracy. Try again.



Question 7-23

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- (C) Only if he is not also convicted of an assault on George.**
- (D) Even if Ray was insane at the time of the agreement.

(C) Sorry, that's incorrect. Conspiracy to rob a bank would not "merge" with assault, since conspiracy to rob a bank is not a conspiracy to commit assault. (See the merger rules in § 1.07.) (If he were charged with conspiracy to assault and assault, then there couldn't be a conviction for both.)



Question 7-23

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- (B) Only if the "substantial step" requirement is satisfied.
- (C) Only if he is not also convicted of an assault on George.
- (D) Even if Ray was insane at the time of the agreement.**

(D) That's correct. MPC § **5.03** specifically permits a conviction for conspiracy even if the person with whom the defendant conspires is incompetent, irresponsible, or otherwise unconvictable.



Question 7-24

Bob and Ray agree to rob a bank. Ray is to hold the bag, while Bob threatens the tellers with a gun. They agree that if they encounter resistance they will leave. When they get to the bank, Bob hits George, a bank guard, and injures him. Ray then flees, and no money is taken from the bank. Ray could be convicted of conspiracy to rob the bank:

- (A) Only if he were not at the same time convicted of attempting to rob the bank.
- (B) Only if he took a substantial step toward completion of the crime.
- (C) But he could not at the same time be charged with assaulting the guard, unless the jury found that the assault was a natural and probable consequence of the bank robbery.
- (D) None of the above.



Question 7-24

Bob and Ray agree to rob a bank. Ray is to hold the bag, while Bob threatens the tellers with a gun. They agree that if they encounter resistance they will leave. When they get to the bank, Bob hits George, a bank guard, and injures him. Ray then flees, and no money is taken from the bank. Ray could be convicted of conspiracy to rob the bank:

- (A) Only if he were not at the same time convicted of attempting to rob the bank.
- (B) Only if he took a substantial step toward completion of the crime.
- (C) But he could not at the same time be charged with assaulting the guard, unless the jury found that the assault was a natural and probable consequence of the bank robbery.
- (D) None of the above.

(A) That's correct. Where different forms of preparation (attempt, solicitation, or conspiracy) to commit *the same crime* are charged, only one conviction can be obtained.



Question 7-24

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- (A) Only if he were not at the same time convicted of attempting to rob the bank.
- (B) Only if he took a substantial step toward completion of the crime.**
- (C) But he could not at the same time be charged with assaulting the guard, unless the jury found that the assault was a natural and probable consequence of the bank robbery.
- (D) None of the above.

(B) Sorry, that's incorrect. A substantial step is required if the defendant is charged with an **attempt** to commit a crime. But here the charge is conspiracy. Try again.



Question 7-24

Bob and Ray agree to rob a bank. Ray is to hold the bag, while Bob threatens the tellers with a gun. They agree that if they encounter resistance they will leave. When they get to the bank, Bob hits George, a bank guard, and injures him. Ray then flees, and no money is taken from the bank. Ray could be convicted of conspiracy to rob the bank:

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- (B) Only if he took a substantial step toward completion of the crime.
- (C) But he could not at the same time be charged with assaulting the guard, unless the jury found that the assault was a natural and probable consequence of the bank robbery.**
- (D) None of the above.

(C) Sorry, that's incorrect. The first part of the statement is correct, but the last part is based upon the "Pinkerton rule," which the MPC rejects.



Question 7-24

Bob and Ray agree to rob a bank. Ray is to hold the bag, while Bob threatens the tellers with a gun. They agree that if they encounter resistance they will leave. When they get to the bank, Bob hits George, a bank guard, and injures him. Ray then flees, and no money is taken from the bank. Ray could be convicted of conspiracy to rob the bank:

- (A) Only if he were not at the same time convicted of attempting to rob the bank.
- (B) Only if he took a substantial step toward completion of the crime.
- (C) But he could not at the same time be charged with assaulting the guard, unless the jury found that the assault was a natural and probable consequence of the bank robbery.
- (D) None of the above.**

(D) Sorry, that's incorrect. One of the answers is correct.



Question 7-25

Richard is a violinist. Sam is his roommate. Richard and Sam have a disagreement over who is supposed to pay the rent. While Richard is gone one day, Sam takes Richard's violin to a pawnshop and pawns it. Richard arrives home at 6:00 with an important solo concert to play that night. Sam isn't home.

If Richard persuaded another person to burglarize the pawnshop on his behalf, Richard could be:

- (A) Tried for complicity in the burglary, or for conspiracy, but not for both.
- (B) Convicted of soliciting the burglary or of burglary, but not both.
- (C) Convicted of burglary and of theft of the violin.
- (D) None of the above.



Question 7-25

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(A) Tried for complicity in the burglary, or for conspiracy, but not for both.

(B) Convicted of soliciting the burglary or of burglary, but not both.

(C) Convicted of burglary and of theft of the violin.

(D) None of the above.

(A) Sorry, that's incorrect. Richard can be *tried* for both crimes, even though he can only be *convicted* of one.



Question 7-25

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- (A) Tried for complicity in the burglary, or for conspiracy, but not for both.
- (B) Convicted of soliciting the burglary or of burglary, but not both.**
- (C) Convicted of burglary and of theft of the violin.
- (D) None of the above.

(B) That's correct. Under MPC § **1.07**, a person cannot be convicted of two crimes where one is simply a form of preparation (**attempt, solicitation, or conspiracy**) to commit the other.



Question 7-25

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- (A) Tried for complicity in the burglary, or for conspiracy, but not for both.
- (B) Convicted of soliciting the burglary or of burglary, but not both.
- (C) Convicted of burglary and of theft of the violin.**
- (D) None of the above.

(C) Sorry, that's incorrect. A special rule applicable to **burglary** convictions, MPC § 221.1, does not permit a conviction for burglary and for the crime which the defendant intended to commit.



Question 7-25

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- (C) Convicted of burglary and of theft of the violin.
- (D) None of the above.**

(D) Sorry, that's incorrect. There's a correct answer in the group. Try again.



Question 7-26

John approaches Nathan with a proposal that Nathan help John sneak into an abortion clinic at night, located in a medical office building, and pour acid onto the instruments used by the personnel who work in the clinic, rendering them useless. Nathan agrees that this is a good idea, but warns John that he gets very nervous and that he probably couldn't assist him during the actual break-in and property destruction. However, he agrees that he will purchase the acid and get it to John.

At this stage, has a crime been committed?

- (A) Yes, because they have conspired to commit the crime of burglary (MPC § 221.1).
- (B) Yes, because John has solicited Nathan to commit the crime of burglary.
- (C) Both (a) and (b) are correct.
- (D) No, because no substantial step has been taken.



Question 7-26

John approaches Nathan with a proposal that Nathan help John sneak into an abortion clinic at night, located in a medical office building, and pour acid onto the instruments used by the personnel who work in the clinic, rendering them useless. Nathan agrees that this is a good idea, but warns John that he gets very nervous and that he probably couldn't assist him during the actual break-in and property destruction. However, he agrees that he will purchase the acid and get it to John.

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(A) Yes, because they have conspired to commit the crime of burglary (MPC § 221.1).

(B) Yes, because John has solicited Nathan to commit the crime of burglary.

(C) Both (a) and (b) are correct.

(D) No, because no substantial step has been taken.

(A) is incorrect, because there was no overt act, and the crime is only a third degree felony. Pursuant to MPC § 5.03(5), someone within the conspiracy has to commit an overt act.



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John approaches Nathan with a proposal that Nathan help John sneak into an abortion clinic at night, located in a medical office building, and pour acid onto the instruments used by the personnel who work in the clinic, rendering them useless. Nathan agrees that this is a good idea, but warns John that he gets very nervous and that he probably couldn't assist him during the actual break-in and property destruction. However, he agrees that he will purchase the acid and get it to John.

At this stage, has a crime been committed?

- (A) Yes, because they have conspired to commit the crime of burglary (MPC § 221.1).
- (B) Yes, because John has solicited Nathan to commit the crime of burglary.**
- (C) Both (a) and (b) are correct.
- (D) No, because no substantial step has been taken.

(B) is correct, because John encouraged another person to commit a crime; it sufficient if it establishes the other' s complicity in committing the crime. By encouraging Nathan to purchase the acid that would be used to commit the crime, Nathan would be an accomplice, and thereby John would be guilty of solicitation.



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- (C) Both (a) and (b) are correct.**
- (D) No, because no substantial step has been taken.

(C) is incorrect, because one of the answers is incorrect.



Question 7-26

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- (B) Yes, because John has solicited Nathan to commit the crime of burglary.
- (C) Both (a) and (b) are correct.
- (D) No, because no substantial step has been taken.**

(D) is incorrect because solicitation and conspiracy do not require a substantial step.



Question 7-27

John approaches Nathan with a proposal that Nathan help John sneak into an abortion clinic at night, located in a medical office building, and pour acid onto the instruments used by the personnel who work in the clinic, rendering them useless. Nathan agrees that this is a good idea, but warns John that he gets very nervous and that he probably couldn't assist him during the actual break-in and property destruction. However, he agrees that he will purchase the acid and get it to John.

For purposes of this question only, assume that Nathan calls up his sister Mary and asks her to pick up some acid at the hardware store, and drop it off at John's house. Mary does so and John carries out his attack on the abortion clinic. Which of the following is correct?

- (A) Mary could be convicted of burglary, but only if she provided her assistance with the purpose of facilitating the commission of the crime of burglary.
- (B) Mary could be convicted of burglary so long as she knew or should have known of the use to which the acid would be put.
- (C) Nathan could not be convicted of burglary, because he committed no *actus reus*.
- (D) Nathan could be convicted only of conspiracy to commit burglary.



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Question 7-27

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For purposes of this question only, assume that Nathan calls up his sister Mary and asks her to pick up some acid at the hardware store, and drop it off at John's house. Mary does so and John carries out his attack on the abortion clinic. Which of the following is correct?

- (A) Mary could be convicted of burglary, but only if she provided her assistance with the purpose of facilitating the commission of the crime of burglary.**
- (B) Mary could be convicted of burglary so long as she knew or should have known of the use to which the acid would be put.
- (C) Nathan could not be convicted of burglary, because he committed no *actus reus*.
- (D) Nathan could be convicted only of conspiracy to commit burglary.

(A) is correct, because Mary would then be an accomplice to burglary under MPC § 2.06.



Question 7-27

John approaches Nathan with a proposal that Nathan help John sneak into an abortion clinic at night, located in a medical office building, and pour acid onto the instruments used by the personnel who work in the clinic, rendering them useless. Nathan agrees that this is a good idea, but warns John that he gets very nervous and that he probably couldn't assist him during the actual break-in and property destruction. However, he agrees that he will purchase the acid and get it to John.

For purposes of this question only, assume that Nathan calls up his sister Mary and asks her to pick up some acid at the hardware store, and drop it off at John's house. Mary does so and John carries out his attack on the abortion clinic. Which of the following is correct?

- (A) Mary could be convicted of burglary, but only if she provided her assistance with the purpose of facilitating the commission of the crime of burglary.
- (B) Mary could be convicted of burglary so long as she knew or should have known of the use to which the acid would be put.**
- (C) Nathan could not be convicted of burglary, because he committed no *actus reus*.
- (D) Nathan could be convicted only of conspiracy to commit burglary.

(B) would be incorrect, because mere knowledge is insufficient; there must be the purpose to commit the crime.



Question 7-27

John approaches Nathan with a proposal that Nathan help John sneak into an abortion clinic at night, located in a medical office building, and pour acid onto the instruments used by the personnel who work in the clinic, rendering them useless. Nathan agrees that this is a good idea, but warns John that he gets very nervous and that he probably couldn't assist him during the actual break-in and property destruction. However, he agrees that he will purchase the acid and get it to John.

For purposes of this question only, assume that Nathan calls up his sister Mary and asks her to pick up some acid at the hardware store, and drop it off at John's house. Mary does so and John carries out his attack on the abortion clinic. Which of the following is correct?

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- (B) Mary could be convicted of burglary so long as she knew or should have known of the use to which the acid would be put.
- (C) Nathan could not be convicted of burglary, because he committed no *actus reus*.**
- (D) Nathan could be convicted only of conspiracy to commit burglary.

(C) is incorrect, because Nathan would be an accomplice to John's commission of burglary, and he thereby is guilty of the crime. The *actus reus* consists in the encouragement that he provided.



Question 7-27

John approaches Nathan with a proposal that Nathan help John sneak into an abortion clinic at night, located in a medical office building, and pour acid onto the instruments used by the personnel who work in the clinic, rendering them useless. Nathan agrees that this is a good idea, but warns John that he gets very nervous and that he probably couldn't assist him during the actual break-in and property destruction. However, he agrees that he will purchase the acid and get it to John.

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- (C) Nathan could not be convicted of burglary, because he committed no *actus reus*.
- (D) Nathan could be convicted only of conspiracy to commit burglary.**

(D) is incorrect, because of the preceding analysis demonstrating that other crimes would be available for conviction.



Question 7-28

John approaches Nathan with a proposal that Nathan help John sneak into an abortion clinic at night, located in a medical office building, and pour acid onto the instruments used by the personnel who work in the clinic, rendering them useless. Nathan agrees that this is a good idea, but warns John that he gets very nervous and that he probably couldn't assist him during the actual break-in and property destruction. However, he agrees that he will purchase the acid and get it to John.

Nathan calls up his sister Mary and asks her to pick up some acid at the hardware store, and drop it off at John's house. Mary does so and John carries out his attack on the abortion clinic. While at the abortion clinic, John ran into a night watchman who picked up his radio to call for police assistance. Without thinking, John grabbed the radio away from him in order to smash it. The two struggled, and John pushed the night watchman, who fell, striking his head on the sharp edge of a counter. The night watchman was found the next day and now suffers permanent brain damage. Which of the following is correct:

- (A) John would be guilty of attempted murder if, in the course of committing a felony, he caused life-threatening injury to the night watchman.
- (B) Nathan would be guilty of complicity in committing aggravated assault if he facilitated conduct that had the natural and probable consequence of resulting in aggravated assault.
- (C) Nathan would be guilty of complicity in committing aggravated assault if, but only if, he was at least reckless with respect to the possibility that an assault would occur.
- (D) None of the above is correct.



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Nathan calls up his sister Mary and asks her to pick up some acid at the hardware store, and drop it off at John's house. Mary does so and John carries out his attack on the abortion clinic. While at the abortion clinic, John ran into a night watchman who picked up his radio to call for police assistance. Without thinking, John grabbed the radio away from him in order to smash it. The two struggled, and John pushed the night watchman, who fell, striking his head on the sharp edge of a counter. The night watchman was found the next day and now suffers permanent brain damage. Which of the following is correct:

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(C) Nathan would be guilty of complicity in committing aggravated assault if, but only if, he was at least reckless with respect to the possibility that an assault would occur.

(D) None of the above is correct.

(A) is incorrect, because in order to be guilty of attempted murder one must have the purpose of causing death. That is lacking from the description.



Question 7-28

John approaches Nathan with a proposal that Nathan help John sneak into an abortion clinic at night, located in a medical office building, and pour acid onto the instruments used by the personnel who work in the clinic, rendering them useless. Nathan agrees that this is a good idea, but warns John that he gets very nervous and that he probably couldn't assist him during the actual break-in and property destruction. However, he agrees that he will purchase the acid and get it to John.

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- (C) Nathan would be guilty of complicity in committing aggravated assault if, but only if, he was at least reckless with respect to the possibility that an assault would occur.
- (D) None of the above is correct.

(B) is incorrect because in order to be an accomplice one must have the purpose of facilitating the commission of the crime. Here the standard is merely foreseeability.



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(C) is likewise incorrect, because it uses recklessness as the threshold; the standard is purpose.



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- (D) None of the above is correct.**

(D) is the best answer. (a) is incorrect, because in order to be guilty of attempted murder one must have the purpose of causing death. That is lacking from the description. (b) is incorrect because in order to be an accomplice one must have the purpose of facilitating the commission of the crime. Here the standard is merely foreseeability. (c) is likewise incorrect, because it uses recklessness as the threshold; the standard is purpose.



Question 7-29

If Y helps Z commit a burglary by driving Z to the scene and acting as a lookout, and Z completes the crime, Y can be charged with

- (A) Burglary.
- (B) Accomplice to burglary.
- (C) Attempted burglary.
- (D) None of the above.



Question 7-29

If Y helps Z commit a burglary by driving Z to the scene and acting as a lookout, and Z completes the crime, Y can be charged with

- (A) **Burglary.**
- (B) Accomplice to burglary.
- (C) Attempted burglary.
- (D) None of the above.

(A) An accomplice is charged with the underlying crime committed.



Question 7-29

If Y helps Z commit a burglary by driving Z to the scene and acting as a lookout, and Z completes the crime, Y can be charged with

- (A) Burglary.
- (B) Accomplice to burglary.**
- (C) Attempted burglary.
- (D) None of the above.

There is no such thing as a charge of “accomplice” so **(B)** is incorrect.



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- (A) Burglary.
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- (D) None of the above.

Attempt is an inchoate crime, and cannot be charged if the crime is completed, as here, so **(C)** is incorrect.



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If Y helps Z commit a burglary by driving Z to the scene and acting as a lookout, and Z completes the crime, Y can be charged with

- (A) Burglary.
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- (D) None of the above.**

Y can be charged with one of the named offenses, so **(D)** is incorrect.



Question 7-30

Over a couple of beers, Don tells Mathew that he should go over to his ex-girlfriend's house and beat up her new boyfriend. Mathew says "You're nuts, man, I'm not that stupid" and leaves. Charged with solicitation, Don would likely be

- (A) Convicted, because he intentionally encouraged another to commit a felony.
- (B) Acquitted, because Mathew immediately refused.
- (C) Acquitted, because Don did not offer anything of value to Mathew for committing the crime.
- (D) Acquitted, because the proposed crime was never committed.



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(A) Don has committed textbook solicitation. He has intentionally encouraged another to commit a felony or serious misdemeanor.



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(B) is incorrect because solicitation is complete once the offer is complete, regardless of acceptance or refusal.



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- (D) Acquitted, because the proposed crime was never committed.

(C) is incorrect because no value need be offered, mere words of encouragement are enough.



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(D) is incorrect because while solicitation does merge with conspiracy if the crime is committed, solicitation is itself a crime regardless of the ultimate result.



Question 7-31

Sarah, age 14, approaches Ben, age 19, at a party and suggests that they have sex. They have sex. Ben is arrested for statutory rape, and Sarah for solicitation. Ben is acquitted. Sarah will likely be

- (A) Acquitted, because the solicitor cannot be convicted if the solicitee is acquitted.
- (B) Acquitted, because she is within the class of persons that the statute was enacted to protect.
- (C) Acquitted, because she consented and therefore she was not soliciting a crime.
- (D) Convicted, because the crime of solicitation is completed when the offer is made.



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- (D) Convicted, because the crime of solicitation is completed when the offer is made.

(A) misstates the law: the solicitor can be convicted regardless of the outcome of charges against other parties.



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- (B) Acquitted, because she is within the class of persons that the statute was enacted to protect.**
- (C) Acquitted, because she consented and therefore she was not soliciting a crime.
- (D) Convicted, because the crime of solicitation is completed when the offer is made.

(B) One who is in the class of persons that a statute was enacted to protect cannot be charged with solicitation. Statutory rape laws were enacted to protect minors.



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- (C) Acquitted, because she consented and therefore she was not soliciting a crime.**
- (D) Convicted, because the crime of solicitation is completed when the offer is made.

(C) is incorrect because statutory rape is a strict liability crime.



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- (B) Acquitted, because she is within the class of persons that the statute was enacted to protect.
- (C) Acquitted, because she consented and therefore she was not soliciting a crime.
- (D) Convicted, because the crime of solicitation is completed when the offer is made.**

(D) correctly states the law, but is not the best answer because of the protected persons exception.



Question 7-32

“In a criminal conspiracy, every co-conspirator may be charged with each crime committed, whether or not he agreed to each crime.” This statement is a description of the

- (A) *Pinkerton* rule
- (B) *M’Naghten* rule
- (C) *Miranda* rule
- (D) *Gerstein* rule



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- (A) *Pinkerton* rule
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(A) This is the correct response; the statement describes the *Pinkerton* conspiracy rule.



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- (A) *Pinkerton* rule
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(B) is incorrect because *M’Naghten* is a rule regarding the defense of insanity.



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“In a criminal conspiracy, every co-conspirator may be charged with each crime committed, whether or not he agreed to each crime.” This statement is a description of the

- (A) *Pinkerton* rule
- (B) *M’Naghten* rule
- (C) *Miranda* rule**
- (D) *Gerstein* rule

(C) is incorrect because *Miranda* concerns reading of constitutional rights to a suspect.



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“In a criminal conspiracy, every co-conspirator may be charged with each crime committed, whether or not he agreed to each crime.” This statement is a description of the

- (A) *Pinkerton* rule
- (B) *M’Naghten* rule
- (C) *Miranda* rule
- (D) *Gerstein* rule**

(D) is incorrect because *Gerstein* has to do with holding a probable cause hearing within 48 hours of a warrantless arrest.



Question 7-33

If two people commit a crime that by definition requires two persons to commit

- (A) They can also be charged with conspiracy if they had a previous verbal agreement.
- (B) They cannot be charged with conspiracy under any circumstances.
- (C) One person will be charged with solicitation.
- (D) Only one can be charged because the other must be granted immunity and testify.



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- (B) They cannot be charged with conspiracy under any circumstances.
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- (D) Only one can be charged because the other must be granted immunity and testify.

(A) is incorrect because if a crime by its definition requires two persons to commit, those two persons cannot be convicted of both the underlying crime and conspiracy.



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(B) If a crime by its definition requires two persons to commit, those two persons cannot be convicted of both the underlying crime and conspiracy.



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- (D) Only one can be charged because the other must be granted immunity and testify.

(C) is not the best answer because it is not always true that there is solicitation just because there is a two-person crime.



Question 7-33

If two people commit a crime that by definition requires two persons to commit

- (A) They can also be charged with conspiracy if they had a previous verbal agreement.
- (B) They cannot be charged with conspiracy under any circumstances.
- (C) One person will be charged with solicitation.
- (D) Only one can be charged because the other must be granted immunity and testify.**

(D) is incorrect because other evidence may be sufficient to convict both.



Question 7-34

Gerald tells Nancy that he is planning to confront Dan, a known gang member, and “beat him senseless.” Nancy, whose sister was attacked by a member of the same gang, thinks this is a great idea and tells Gerald the name of a park which she knows Dan frequents. When Gerald gets there, he assaults Dan in front of Barry. Barry watches the entire attack, smiling, but does nothing to stop it.

On these facts, Nancy can be charged with

- (A) Solicitation.
- (B) Rendering criminal assistance.
- (C) Assault.
- (D) None of the above.



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On these facts, Nancy can be charged with

(A) Solicitation.

(B) Rendering criminal assistance.

(C) Assault.

(D) None of the above.

(A) is not the best answer because solicitation requires an offer to exchange value for a crime.



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On these facts, Nancy can be charged with

- (A) Solicitation.
- (B) Rendering criminal assistance.**
- (C) Assault.
- (D) None of the above.

(B) is not the best answer because rendering criminal assistance occurs after a crime has been committed, in concealing or assisting flight from a crime.



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On these facts, Nancy can be charged with

- (A) Solicitation.
- (B) Rendering criminal assistance.
- (C) Assault.**
- (D) None of the above.

(C) This is the best answer because Nancy’s conduct meets the elements for accomplice liability; she has the required *mens rea* for the substantive crime and she acts to aid or encourage Gerald. Accomplice liability creates liability for the target crime, in this case assault.



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On these facts, Nancy can be charged with

- (A) Solicitation.
- (B) Rendering criminal assistance.
- (C) Assault.
- (D) None of the above.**

(D) is incorrect because Nancy is guilty of one of the listed crimes.



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Barry is also charged with assault on a theory of accomplice liability. His best defense to that charge is

- (A) He was too frightened to act in Dan’s defense.
- (B) He did not take any action to assist Gerald.
- (C) He owed no legal duty to rescue Dan.
- (D) He did not have criminal intent.



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(B) He did not take any action to assist Gerald.

(C) He owed no legal duty to rescue Dan.

(D) He did not have criminal intent.

(A) is not the best answer because Barry’s smile during the attack suggests that he was not frightened.



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(B) This is the best answer because an action, even if it is just words of encouragement, is required to create accomplice liability.



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(C) is not the best answer because a “no legal duty to rescue” defense is applicable to a tort action, while the criminal law has numerous exceptions.



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- (D) He did not have criminal intent.**

(D) is not the best answer because onlookers who hope for the criminal result are considered to have the same criminal intent as the actor.



Question 7-36

Michael's wife, Terry, is suffering from end stage cancer and is in terrible pain. Michael, Terry's sister Brenda, and the doctor discuss Terry's situation in the waiting room. Michael asks the doctor to turn up the intravenous drip of morphine to a lethal level. The doctor initially agrees; Brenda says nothing but nods. However, a few moments later the doctor changes his mind and tells Michael. Michael returns to Terry's room followed by Brenda and the doctor. Michael turns up the drip himself, as Brenda looks on. The doctor tries to restrain Michael and calls security. Terry dies as a result of the morphine overdose.

In a Model Penal Code jurisdiction, what is the most serious crime of which the doctor can be convicted?

- (A) Attempted murder.
- (B) Conspiracy to commit murder.
- (C) Murder.
- (D) None of the above.



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- (A) **Attempted murder.**
- (B) Conspiracy to commit murder.
- (C) Murder.
- (D) None of the above.

(A) is incorrect because the doctor withdrew from the crime before a substantial step was taken, and thus has an affirmative defense.



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(B) is incorrect because conspiracy also requires an overt step in furtherance of the conspiracy, and the doctor withdrew immediately.



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(C) is incorrect because the doctor did not perform the *actus reus* for murder.



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(D) "None of the above" is the best answer because the doctor fulfilled the MPC requirements for withdrawal from a conspiracy; he ceased participation and attempted to prevent illegal acts of other conspirators. He did this before a substantial step was taken in furtherance of the crime.



END

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