

**October 2004 Baby Bar
Question 4 – Criminal Law**

1. **Do the facts support each of the charges against Dan and Otto, and what, if any, defenses might they each assert? Discuss.**

State v Dan and Otto

Solicitation – Dan

Solicitation is the enticing or encouraging of another to commit an unlawful act.

Dan intensely disliked Mona and knew Mona's husband suspected her of infidelity. Hoping secretly that it would provoke him, he told Mona's husband, Otto, that he has seen Mona with another co-worker in a compromising position on several occasions. Thus, Dan's statements to Otto enticed, encouraged, and provoked Otto to attempt to commit murder, an unlawful act.

Thus, Dan can be charged with solicitation.

Solicitation – Otto

Defined supra.

There are no facts to support charges that Otto encouraged or enticed anyone to commit an unlawful act.

Thus, no solicitation

Conspiracy – Dan

Conspiracy is an agreement between two or more persons to commit an unlawful act.

Dan disliked Mona, and knowing of her husband's suspicions of Mona's infidelity and hoping to provoke Otto to kill Mona, Dan told Otto of seeing Mona in a compromising situation with a coworker. Otto had no knowledge of Dan's intent. Thus, no agreement.

Under the MPC, one can unilaterally be found guilty of an agreement, even if there was no formal agreement. Dan hoping that Otto would kill, shows a unilateral agreement between two or more individuals.

Dan hoping Otto would kill Mona, shows specific intent to do an unlawful act, i.e., murder.

Thus a conspiracy exists.

Conspiracy – Dan

Conspiracy is defined supra.

Since there was no bilateral agreement between Dan and Otto, only Dan will be charged for the conspiracy.

Attempted Murder – Dan

Conspiracy

Defined and discussed supra re Dan.

Pinkerton’s Rule

Each member of a conspiracy is chargeable with all crimes in furtherance of or the natural and probable consequence of the conspiracy.

Otto was told Mona was seen with a co-worker in a compromising position in the storeroom at work. Since he already had the belief of her cheating on him, he waited for her in the storeroom at work with a gun. When Mona went to the storeroom to get supplies, Otto jumped out and stated I am going to kill you. Thus, Otto had specific intent. Since Dan wanted Mona dead and told Otto that Mona was seen with a co-worker, Otto’s attempt to kill Mona is in furtherance of the probable conduct of the conspiracy.

Thus, under Pinkerton’s Rule, Dan will be liable for the attempted murder.

Attempted Murder – Otto

An attempted crime is the taking of a substantial step with the specific intent to commit a crime where one has the apparent ability to commit the crime. A substantial step is more than mere preparation, but less than perpetration of the crime.

Believing what Dan had told him, Otto went to Mona’s workplace and hid in the storeroom. Mona entered the storeroom to get some supplies when Otto jumped and began to strangle her. Thus, Otto performed a substantial act towards perpetration of the intended murder. When Otto began to strangle Mona it manifested Otto’s specific intent to kill her. Otto flew into an uncontrollable rage, and yelled, “ I’m going to kill you,” and began to strangle her. Except for the fact that Mona’s screams attracted a security guard, Otto would have killed Mona and would have perpetrated a murder.

Thus, Otto should be convicted of attempted murder.