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**Question 2 - Criminal Law - General Principles**

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**The question was:**

A state statute requires any person licensed to sell prescription drugs to file with the State Board of Health a report listing the types and amounts of such drugs sold if his sales of such drugs exceed \$50,000 during a calendar year. The statute makes it a misdemeanor to "knowingly fail to file" such a report.

The defendant, who is licensed to sell prescription drugs, sold \$63,000 worth of prescription drugs during 2006 but did not file the report. Charged with the misdemeanor, the defendant testifies that he did a very poor job of keeping records and did not realize that his sales of prescription drugs had exceeded \$50,000. If the jury believes the defendant, he should be found

**A:** guilty, because this is a public welfare offense.

**B:** guilty, because he cannot be excused on the basis of his own failure to keep proper records.

**C:** not guilty, because the statute punishes omissions and he was not given fair warning of his duty to act.

**D:** not guilty, because he was not aware of the value of the drugs he had sold.

**The explanation for the answer is:**

The correct answer is D. The statute itself defines the required mental state by stating that the defendant must "knowingly" fail to file the required report. Here, if the jury believes the defendant did not know that he had sold over \$50,000 worth of prescription drugs, and thus he did not know that he had to file the report, they should find him not guilty. The mens rea requirement was not met in this case. Answer D is correct.

Answer A is incorrect. Since the statute specifically states the mens rea requirement, it takes precedence over common law requirements of a public welfare offense, which generally are strict liability offenses. Answer B is incorrect because while the defendant's poor record keeping may violate a different offense, it did negate the mens rea requirement of "knowingly" failing to file, and is thus a valid defense to the criminal charge. Answer C is incorrect because there is no general requirement that a criminal statute give fair warning before guilt can be established, and there is no evidence that the defendant, in fact, did not know of his duty to report.

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The correct answer is D. The statute itself defines the required mental state by stating that the defendant must "knowingly" fail to file the required report. Here, if the jury believes the defendant did not know that he had sold over \$50,000 worth of prescription drugs, and thus he did not know that he had to file the report, they should find him not guilty. The mens rea requirement was not met in this case. Answer D is correct.

Answer A is incorrect. Since the statute specifically states the mens rea requirement, it takes precedence over common law requirements of a public welfare offense, which generally are strict liability offenses. Answer B is incorrect because while the defendant's poor record keeping may violate a different offense, it did negate the mens rea requirement of "knowingly" failing to file, and is thus a valid defense to the criminal charge. Answer C is incorrect because there is no general requirement that a criminal statute give fair warning before guilt can be established, and there is no evidence that the defendant, in fact, did not know of his duty to report.

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**Question 28 - Criminal Law - Homicide**

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**The question was:**

A state statute divides murder into degrees. First degree murder is defined as murder with premeditation and deliberation or a homicide in the commission of arson, rape, robbery, burglary or kidnapping. Second degree murder is all other murder at common law.

In which of the following situations is the defendant most likely to be guilty of first degree murder?

- A:** Immediately after being insulted by the victim, the defendant takes a knife and stabs and kills him.
- B:** Angered over having been struck by the victim, the defendant buys rat poison and puts it in the victim's coffee. The victim drinks the coffee and dies as a result.
- C:** Intending to injure the victim, the defendant lies in wait and, as the victim comes by, the defendant strikes him with a broom handle. As a result of the blow, the victim dies.
- D:** The defendant, highly intoxicated, discovers a revolver on a table. He picks it up, points it at the victim, and pulls the trigger. The gun discharges, and the victim is killed.

**The explanation for the answer is:**

The correct answer is B. The fact pattern tells us that first degree murder is defined as murder with premeditation and deliberation or homicide in the commission of certain felonies; the answer to this question is discernible relying solely on the first part of the definition. There are two qualifications for a homicide to fall into the category of first degree murder: specific intent and premeditation or deliberation (as required by the statute). The preceding purchase of rat poison, the implied intent to commit murder, and the inherent deliberation necessary for a poisoning clearly show the defendant's premeditation and deliberation.

In Answer A, there is a clear lack of premeditation and deliberation because of the proximity in time between the insult and the death. Although words are insufficient provocation for a self-defense claim, and although only a short amount of time is, in some cases, all that is necessary for premeditation, there is no evidence of deliberation.

Answer C is incorrect because the defendant was lacking deliberation and intent to murder the victim. While lying in wait is normally an indication of premeditation, a stated lack of specific intent, while not dispositive, is an indication of a lack of deliberation necessary for first degree murder. His choice of a broom handle and the indicated intent only to injure do not fit the given definition of first degree murder.

Answer D is incorrect because, while voluntary intoxication may not be a defense to murder, the fact that the defendant "discovered" the revolver, and the lack of any premeditation or clear indications of intent to murder the victim, show that the requirements of the statute are not fulfilled by this act.

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**Question 29 - Criminal Law - General Principles**

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**The question was:**

On a camping trip in a state park, a camper discovered metal signs near a rubbish heap stating, "Natural Wildlife Area - No Hunting." She took two of the signs and used them to decorate her room at home. She is charged with violation of a state statute which provides, "Any person who appropriates to his own use property owned by the state shall be guilty of a crime and shall be punished by a fine of not more than \$1,000, or by imprisonment for not more than five years, or by both such fine and imprisonment."

At trial, the camper admits taking the signs but says she believed they had been thrown away. The jury accepts that the camper honestly believed the signs had been abandoned. However, the signs had not in fact been abandoned.

The camper should be found

**A:** guilty, because this is a public welfare offense.

**B:** guilty, because she should have inquired whether the signs were abandoned.

**C:** not guilty because the jury found she honestly believed the signs had been abandoned.

**D:** not guilty because the state had not taken adequate steps to inform the public that the signs had not been abandoned.

**The explanation for the answer is:**

The correct answer is C. Although there is no mental state requirement for the offense listed in the statute, one will be presumed by the courts to avoid strict liability offenses. In larceny cases, courts will presume the statute requires an intentional act on the part of the defendant. Because the jury found that the camper honestly believed the signs had been abandoned, the camper will not have the presumed requisite mental state and should be found not guilty. Larceny is generally a specific intent crime and, even if the statute does not specifically list it, it will be presumed to require intent as the mental state. If the camper honestly believed the signs had been abandoned, she did not have the requisite mental state to be found guilty. Answer C is correct.

Answer A is incorrect. Because the offense is punishable by imprisonment, the charge is not a public welfare offense, and due process applies. The camper should not be convicted unless she knew the property was not abandoned. Answer B is incorrect. The camper's failure to inquire as to the status of the signs does not establish an intent to steal. There should be no presumption that the camper must determine whether the property was abandoned. Answer D is incorrect. The failure of the state to take adequate steps to inform the public about the status of the signs does not create a presumption about the camper's intent. C is the better answer.

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**Question 30 - Criminal Law - Homicide**

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**The question was:**

A neighbor frequently visited a woman who lived in the house next to him. The woman was separated from her husband. The husband resided with his mother but jointly owned the house in which the woman resided. Late one night, the neighbor and the woman were sitting and drinking on the bed in the woman's bedroom when the husband burst through the door and told the neighbor, "Get out." When the neighbor refused, the husband challenged him to go outside and "fight it out." The neighbor again refused. The husband then pulled a knife from his pocket and lunged at the neighbor. The neighbor grabbed a lamp, struck the husband on the head, and killed him. The neighbor is charged with murder. On a charge of murder, the neighbor should be found

- A:** not guilty, because the neighbor had as much right as the husband to be in the house.
- B:** not guilty, because the husband attacked the neighbor with a deadly weapon.
- C:** guilty, because the neighbor's presence in the woman's bedroom prompted the husband's attack.
- D:** guilty, because the neighbor's failure to obey the husband's order to leave the house made him a trespasser.

**The explanation for the answer is:**

B is the correct answer. The issue is whether the neighbor was privileged to use deadly force in self-defense given the situation. A person may use deadly force in self-defense when: (1) he is without fault (i.e., not the aggressor or provoker), (2) he is confronted with unlawful force, and (3) he is threatened with imminent death or great bodily harm. In this case, the husband was clearly the aggressor, and used unlawful deadly force in attacking the neighbor with the knife. Additionally, there is no indication that the neighbor provoked the attack. Therefore, the neighbor was privileged to use deadly force in self-defense, and is not guilty of murder.

A is incorrect because the neighbor's right to be in the house is not the proper justification for self-defense. C is incorrect because the neighbor's presence in the woman's bedroom is not an act of provocation that would invalidate the neighbor's privilege of self-defense. D is incorrect because even if the husband's order made the neighbor a trespasser, the husband's use of deadly force would still be unlawful and the neighbor would still be privileged to use deadly force in self-defense.

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A neighbor frequently visited a woman who lived in the house next to him. The woman was separated from her husband. The husband resided with his mother but jointly owned the house in which the woman resided. Late one night, the neighbor and the woman were sitting and drinking on the bed in the woman's bedroom when the husband burst through the door and told the neighbor, "Get out." When the neighbor refused, the husband challenged him to go outside and "fight it out." The neighbor again refused. The husband then pulled a knife from his pocket and lunged at the neighbor. The neighbor grabbed a lamp, struck the husband on the head, and killed him. The neighbor is charged with murder. On a charge of murder, the neighbor should be found

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A is incorrect because the neighbor's right to be in the house is not the proper justification for self-defense. C is incorrect because the neighbor's presence in the woman's bedroom is not an act of provocation that would invalidate the neighbor's privilege of self-defense. D is incorrect because even if the husband's order made the neighbor a trespasser, the husband's use of deadly force would still be unlawful and the neighbor would still be privileged to use deadly force in self-defense.

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**Question 46 - Criminal Law - Other Crimes**

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**The question was:**

In which of the following cases is a conviction for robbery *LEAST* likely to be upheld?

- A:** A defendant forced his way into a woman's home, bound her, and compelled her to tell him that her jewelry was in an adjoining room. The defendant went to the room, took the jewelry and fled.
- B:** A confederate of the defendant pushed a man in order to cause him to lose his balance and drop his briefcase. The defendant picked up the briefcase and ran off with it.
- C:** Having induced a woman to enter his hotel room, the defendant forced her to telephone her maid to tell the maid to bring certain jewelry to the hotel. The defendant locked the woman in the bathroom while he accepted the jewelry from the maid when she arrived.
- D:** The defendant unbuttoned the vest of a man too drunk to notice and removed his wallet. A minute later, the victim missed his wallet and accused the defendant of taking it. The defendant pretended to be insulted, slapped the victim, and went off with the wallet.

**The explanation for the answer is:**

The correct answer is D. Robbery is defined at common law as the taking, by force or threat of force, of personal property of another with the intent to permanently deprive the owner of the property. There must be a nexus between the use or threat of force, and the taking. The defendant's unbuttoning of his victim's vest is insufficient to be considered the taking by force, and his later slap did not coincide with the taking, but rather was done to aid in his pretending to be insulted. Of the answer choices, choice D has the most tenuous connection between the force or threat of force and the taking of the property.

Answer A is incorrect because here the defendant used force by binding his victim and compelling her to tell him the whereabouts of the jewelry, and he then took her property. Answer B is incorrect because here the defendant took the property of another, with the intent to deprive the owner of the property, by the use of force. Since the other man who used the force was his confederate, the defendant is responsible for both the taking and the use of force. Answer C is incorrect because here the defendant's forcing the woman to have the jewelry brought to him, accompanied by his locking her in the bathroom, were force and the threat of force. This use of force and threat of force were necessary to help him with the taking of her jewelry.

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**Question 50 - Criminal Law - Other Crimes**

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**The question was:**

A homeowner met a man, who was known to him to be a burglar, in a bar. The homeowner told the man that he needed money. He promised to pay the man \$500 if the man would go to the homeowner's house the following night and take some silverware. The homeowner explained to the man that, although the silverware was legally his, his wife would object to his selling it.

The homeowner pointed out his home, one of a group of similar tract houses. He drew a floor plan of the house that showed the location of the silverware. The homeowner said that his wife usually took several sleeping pills before retiring, and that he would make sure that she took them the next night. He promised to leave a window unlocked.

Everything went according to the plan except that the man, deceived by the similarity of the tract houses, went to the wrong house. He found a window unlocked, climbed in and found silver where the homeowner had indicated. He took the silver to the cocktail lounge where the payoff was to take place. At that point police arrested the two men.

The man's best argument for acquittal of burglary is that he

- A:** acted under a mistake of law.
- B:** had the consent of the owner.
- C:** reasonably thought he was in the homeowner's house.
- D:** found the window unlocked.

**The explanation for the answer is:**

The correct answer is C. Burglary is defined at common law, as the breaking and entering of a dwelling with the intent to commit a felony therein. If the man reasonably believed he was in the homeowner's house, there would be no intent to commit a felony. The man's reasonable belief that he was in the homeowner's house shows the man did not have the intent to commit a felony in the neighbor's house and is the man's best argument for acquittal.

Answer A is incorrect. The man's mistake regarding which house belonged to the homeowner negates the intent required for burglary. The mistake of law defense only comes into play if there is an official interpretation of the law, or if the statute specifically requires that the defendant know he is violating the law. In this case, there was no mistake of law; it was a factual mistake, and no official legal interpretation was involved. Answer B is incorrect because the man did not, in fact, have the consent of the owner to break into the house that he did; he had consent of the homeowner to break into the homeowner's house. The homeowner's consent does not transfer to the owner of another house, and there is no indication that the owner of the other house consented. Answer D is incorrect because the house was not open to the public, and when the man opened the window to gain entry, he committed a breaking.



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**Question 51 - Criminal Law - Other Crimes**

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A homeowner met a man, who was known to him to be a burglar, in a bar. The homeowner told the man that he needed money. He promised to pay the man \$500 if the man would go to the homeowner's house the following night and take some silverware. The homeowner explained to the man that, although the silverware was legally his, his wife would object to his selling it.

The homeowner pointed out his home, one of a group of similar tract houses. He drew a floor plan of the house that showed the location of the silverware. The homeowner said that his wife usually took several sleeping pills before retiring, and that he would make sure that she took them the next night. He promised to leave a window unlocked.

Everything went according to the plan except that the man, deceived by the similarity of the tract houses, went to the wrong house. He found a window unlocked, climbed in and found silver where the homeowner had indicated. He took the silver to the cocktail lounge where the payoff was to take place. At that point police arrested the two men.

If the homeowner and the man are charged with a conspiracy to commit burglary, their best argument for acquittal is that

- A:** the man was the alter ego of the homeowner.
- B:** they did not intend to commit burglary.
- C:** there was no overt act.
- D:** there was no agreement.

**The explanation for the answer is:**

The correct answer is B. A charge of conspiracy requires an agreement to commit a crime. Specifically, at least two of the co-conspirators must intend that the crime be committed. Although the man and the homeowner did agree to carry out certain actions, they did not have intent to commit a crime. This lack of intent is their best defense to a conspiracy charge.

Answer A is incorrect. Even if the man were considered an alter ego of the homeowner, that would not be a defense to a charge of conspiracy. Conspiracy punishes the agreement, regardless of who has proposed it. Answer C is incorrect. In some states, conspiracy requires the commission of an overt act, and the actions taken here by the man and homeowner were sufficient. The planning, the homeowner's encouragement and providing of the plans, and the man's breaking into the house, were all overt actions done in the commission of the conspiracy. Answer D is incorrect; although lack of an agreement is a defense to conspiracy, the facts here clearly indicate that there was an agreement.

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**Question 67 - Criminal Law - General Principles**

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**The question was:**

A defendant is charged with assault and battery. The state's evidence shows that the victim was struck in the face by the defendant's fist. In which of the following situations is the defendant most likely to be not guilty of assault and battery?

- A:** The defendant had been hypnotized at a party and ordered by the hypnotist to strike the person he disliked the most.
- B:** The defendant was suffering from an epileptic seizure and had no control over his motions.
- C:** The defendant was heavily intoxicated and was shadow boxing without realizing that the victim was near him.
- D:** The defendant, who had just awakened from a deep sleep, was not fully aware of what was happening and mistakenly thought the victim was attacking him.

**The explanation for the answer is:**

The correct answer is B. Assault and battery both require an act. The act can be any bodily movement, but it must be voluntary. The defendant having the epileptic seizure had no control over his movements, so his act of striking the victim was not voluntary and he will be found not guilty of assault and battery. A is not the best answer because there is a jurisdictional split about whether hypnosis is sufficient to negate volition, and thus *actus reus*, with the majority declining to recognize hypnosis as a valid defense. C is incorrect because even though the defendant was intoxicated, his movements while shadow boxing were still voluntary. D is incorrect. Although an act performed while sleeping or unconscious will not be considered voluntary, here the defendant has awakened and his striking of the victim can still be considered voluntary.

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**Question 77 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

A police officer stopped the defendant for speeding late one night. Noting that the defendant was nervous, he ordered him from the car and placed him under arrest for speeding. By state law, the officer was empowered to arrest the defendant and take him to the nearest police station for booking. He searched the defendant's person and discovered a package of heroin in his jacket pocket.

The defendant is charged with possession of heroin. At trial, the defendant's motion to prevent introduction of the heroin into evidence, on the ground that the search violated his federal constitutional rights, will most probably be

**A:** denied, because the search was incident to a valid custodial arrest.

**B:** denied, because the officer acted under a reasonable suspicion and legitimate concern for his own personal safety.

**C:** granted, because there was no reasonable or proper basis upon which to justify conducting the search.

**D:** granted because the officer was not in fear and had no suspicion that the defendant was transporting narcotics.

**The explanation for the answer is:**

A is the correct answer. Authorities may conduct a warrantless search incident to a lawful arrest as long as the scope of the search is constrained to the defendant's wingspan and contemporaneous with the arrest. Here, the officer was empowered by state law to arrest the defendant for speeding, the search was within the defendant's wingspan, and the search was incident to incarceration. Therefore, the search was valid and the defendant's motion should be denied.

B is incorrect because it provides the standard for a stop and frisk search (also known as a *Terry* stop). Generally the scope of the frisk is limited to a pat down of the outer clothing for dangerous weapons. Therefore, unless the officer could identify the heroin through "plain feel", it would be inadmissible if found incident to a stop and frisk. C is incorrect because the search was incident to a lawful arrest. D is incorrect because the arrest for speeding was allowed by state law. Therefore, the police officer could make a warrantless search incident to the arrest even if he was not in fear for his safety or have a reasonable suspicion about the defendant transporting narcotics.

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**Question 78 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

The defendant was arrested and taken to police headquarters, where she was given her Miranda warnings. The defendant indicated that she wished to telephone her lawyer and was told that she could do so after her fingerprints had been taken. While being fingerprinted, however, the defendant blurted out, "Paying a lawyer is a waste of money because I know you have me."

At trial, the defendant's motion to prevent the introduction of the statement she made while being fingerprinted will most probably be

- A:** granted, because the defendant's request to contact her attorney by telephone was reasonable and should have been granted immediately.
- B:** granted, because of the "fruit of the poisonous tree" doctrine.
- C:** denied, because the statements were volunteered and not the result of interrogation.
- D:** denied, because fingerprinting is not a critical stage of the proceeding requiring the assistance of counsel.

**The explanation for the answer is:**

The correct answer is C. The exclusionary rule only extends to a defendant's statements made in the course of a custodial interrogation, and does not extend to voluntary statements made by the defendant that are not the result of police interrogation or misconduct. Here, the defendant's statement during fingerprinting was voluntarily made and not the result of a custodial interrogation. Therefore, her motion to exclude them should be denied.

Answer A is incorrect because the Constitution does not require that officers stop every single procedure and immediately allow a defendant to speak with an attorney when requested. The officers must only stop the interrogation of the defendant. Answer B is incorrect because the "fruit of the poisonous tree" doctrine does not apply to this situation. There was no initial police misconduct that would bar the introduction of her statement at trial. Answer D is incorrect because constitutional protections against self-incrimination and right to counsel apply not only to "critical stages" of proceedings, but also to any custodial interrogations.

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**Question 88 - Criminal Law - Other Crimes**

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**The question was:**

Driving down a dark road, the defendant accidentally ran over a man. The defendant stopped and found that the victim was dead. The defendant, fearing that he might be held responsible, took the victim's wallet, which contained a substantial amount of money. He removed the identification papers and put the wallet and money back into the victim's pocket. The defendant is *not guilty* of

- A:** larceny, because he took the papers only to prevent identification and not for his own use.
- B:** larceny, because he did not take anything from a living victim.
- C:** robbery, because he did not take the papers by means of force or putting in fear.
- D:** robbery, because he did not take anything of monetary value.

**The explanation for the answer is:**

The correct answer is C. Robbery is the taking of property of another, by use of force or the threat of force, with the intent to permanently deprive the owner of the property. There must be a nexus between the force or threat of force and the taking. Larceny is the taking and carrying away of the property of another with the intent to permanently deprive the owner of the property. In this question, the defendant took property of another with the intent to permanently deprive the owner of the property, and, although there was force used on the victim, there was no nexus between the taking and the use of force. The defendant, by taking the personal property of the victim and having the intent to permanently deprive, committed larceny, but because the taking was not done by force or threat of force, he did not commit robbery.

Answer A is incorrect. The purpose of the taking in this case is irrelevant to the charge of larceny; the defendant need not take the property for his own use to be guilty of larceny. Answer B is incorrect because the fact that the victim is dead is not a defense to the charge of larceny. The property taken was not the defendant's to take; it belonged to another, the estate of the victim. Answer D is incorrect because the property taken need not have a specific monetary value. The fact that it is the personal property of another is sufficient.

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**Question 92 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

Suspecting that students were using narcotics, the president of a private college arranged for local police to place concealed microphones in several suites of the dormitory. Using these microphones, the college security officers recorded a conversation in which the defendant, a student, offered to sell marijuana to another student. The tape was turned over to the local police, who played it for a local judge. The judge issued a warrant to search the defendant's room. The room was searched by police, and marijuana was discovered.

The defendant is charged with unlawful possession of narcotics. At trial, the defendant's motion to prevent the introduction of the marijuana into evidence will most probably be

- A:** denied, because the college president, *in loco parentis*, had the responsibility of preventing unlawful activity by students under the president's supervision.
- B:** denied, because there was probable cause to make the search and police obtained a warrant before commencing the search.
- C:** granted, because the defendant's privacy was unreasonably invaded.
- D:** granted, because the electronic surveillance was "fundamentally unfair."

**The explanation for the answer is:**

C is the correct answer. Any electronic surveillance that violates a reasonable expectation of privacy constitutes a search under the Fourth Amendment. Because the search violated the expectation of privacy, a warrant was required. Therefore, the defendant's motion will be granted.

A is incorrect because the president of the college cannot waive the privacy rights of the students. B is incorrect because the actual wiretapping required a warrant because it violated a reasonable expectation of privacy. D is incorrect because the correct test is whether a "reasonable expectation of privacy" is violated, not whether the surveillance is "fundamentally unfair." See *Katz v. United States*, 389 U.S. 347 (1967).

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**Question 93 - Criminal Law - Homicide**

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**The question was:**

A man had a heart ailment so serious that his doctors had concluded that only a heart transplant could save his life. They therefore arranged to have him flown to a city to have the operation performed.

The man's nephew, who stood to inherit from him, poisoned him. The poison produced a reaction which required postponing the journey. The plane on which the man was to have flown crashed, and all aboard were killed. By the following day, the man's heart was so weakened by the effects of the poison that he suffered a heart attack and died. If charged with criminal homicide, the nephew should be found

**A:** guilty.

**B:** not guilty, because his act did not hasten the deceased's death, but instead prolonged it by one day.

**C:** not guilty, because the deceased was already suffering from a fatal illness.

**D:** not guilty, because the poison was not the sole cause of death.

**The explanation for the answer is:**

The correct answer is A. The nephew, hoping to collect his inheritance, intentionally caused the death of the man, and should be found guilty of criminal homicide. The issue in this question is what actions are sufficient to be considered as "causing" the death of another. The actions must be an actual and proximate cause of the victim's death, but they need not be the sole cause of death. In this case, the man was poisoned by his nephew, which weakened the man's heart, and eventually lead to his death, and is thus sufficient causation to sustain a homicide charge.

Answer B is incorrect. The fact that a victim may have died in another manner if the defendant's actions were not taken is not a defense to a homicide charge. The nephew's poisoning did shorten the man's life, and the fact that it was possible that the man could have died in another manner does not serve as a defense to the charge. Answer C is incorrect. The nephew's poisoning shortened the man's life, and the fact that the man may have died from a fatal illness, while it shows the nephew isn't so smart, does not serve as a defense to the charge of murder. The facts given show that the poison did weaken the man's heart, leading to the heart attack. Answer D is incorrect. The action need not be the only cause for a homicide conviction; it merely must be a cause. The nephew will be held criminally liable for the foreseeable consequences of his acts. The man's death was clearly foreseeable, and was in fact intended. The nephew's actions are both an actual cause and a proximate cause of the man's death.

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**Question 94 - Criminal Law - Inchoate Crimes**

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**The question was:**

In which of the following situations is the defendant most likely to be *not guilty* of the charge made?

- A:** Police arrested a thief and recovered goods he had stolen. At the direction of the police, the thief took the goods to the defendant. The defendant, believing the goods to be stolen, purchased them. The defendant is charged with attempting to receive stolen property.
- B:** The defendant misrepresented his identity to secure a loan from a bank. The banker was not deceived and refused to grant the loan. The defendant is charged with attempting to obtain property by false pretenses.
- C:** Believing that state law made it a crime to purchase codeine without a prescription, the defendant purchased, without a prescription, cough syrup containing codeine. Unknown to the defendant, the state law had been repealed and codeine could be legally purchased without a prescription. The defendant is charged with attempting to purchase codeine without a prescription.
- D:** The defendant, intending to kill his neighbor, shot at his neighbor. Unknown to the defendant, the neighbor had died of a heart attack minutes before he shot at her. The defendant is charged with attempted murder.

**The explanation for the answer is:**

The correct answer is C. This question deals with the impossibility defenses to an attempt charge. Factual impossibility is not a defense to an attempt charge. However, legal impossibility is a defense. Factual impossibility arises when the defendant unsuccessfully takes a criminal action, whereas legal impossibility arises when the intended action is not actually a crime. Answer C is the only example of legal impossibility given and is the correct answer. In answer C, the defendant attempted a legal act, so he will be found not guilty.

In answers A,B, and D, if the facts had been as the defendant believed them to be, then a crime would have been committed. Therefore, all three defendants had the specific intent to commit the crimes they are charged with attempting. Since factually impossibility does not provide a defense to an attempt charge, A, B, and D are incorrect.



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**Question 115 - Criminal Law - Homicide**

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**The question was:**

In which of the following situations is the defendant most likely to be guilty of common-law murder?

- A:** Angered because his neighbor is having a noisy party, the defendant fires a rifle into the neighbor's house. The bullet strikes and kills a guest at the party.
- B:** During an argument, a man slaps the defendant. Angered, the defendant responds by shooting and killing the man.
- C:** The defendant drives his car through a red light and strikes and kills a pedestrian who is crossing the street.
- D:** Using his fist, the defendant punches a man in the face. As a result of the blow, the man falls and hits his head on a concrete curb, suffers a concussion, and dies.

**The explanation for the answer is:**

The correct answer is A. At common law, murder is defined as the unlawful killing of another human being with malice aforethought or reckless indifference to an unjustifiably high risk to human life. The defendant in answer A fired a rifle into an occupied house, which is clearly reckless indifference to an unjustifiably high risk to human life. Further, the intentional use of a deadly weapon (such as a rifle) in a manner likely to produce death or serious bodily injury permits the court to infer the intent to kill. Thus, the defendant in answer A acted with the malice aforethought necessary to support a conviction for common-law-murder.

Answer B is incorrect because the shooting occurred during an argument and immediately after a physical assault. Therefore, the defendant may have the adequate provocation to mitigate his crime to voluntary manslaughter. Answer C is incorrect because the accidental killing of a pedestrian will not be sufficient proof of "malice aforethought" for a conviction of murder. There is no indication that the defendant acted with a reckless indifference to a high risk to human life. Answer D is incorrect because it is possible the defendant in answer D did not intend to inflict great bodily injury to the man, and the man's injuries were an unintended consequence of the fall. Only the defendant in answer A clearly demonstrates the requisite mental state for common-law-murder.

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**Question 136 - Criminal Law - Homicide**

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**The question was:**

The defendant became intoxicated at a bar. He got into his car and drove away. Within a few blocks, craving another drink, he stopped his car in the middle of the street, picked up a brick, and broke the display window of a liquor store. As he was reaching for a bottle, the night watchman arrived. Startled, the defendant turned and struck the watchman on the head with the bottle, killing him. Only vaguely aware of what was happening, the defendant returned to his car, consumed more liquor, and then drove off at a high speed. He ran a red light and struck and killed a pedestrian who was crossing the street.

Relevant statutes define burglary to include "breaking and entering a building not used as a dwelling with the intent to commit a crime therein." Manslaughter is defined as the "killing of a human being in a criminally reckless manner." Criminal recklessness is "consciously disregarding a substantial and unjustifiable risk resulting from the actor's conduct." Murder is defined as the "the premeditated and intentional killing of another or the killing of another during the commission of a rape, robbery, burglary, or arson." Another statute provides that intoxication is not a defense to crime unless it negates an element of the offense.

The defendant was charged with the murder of the watchman and manslaughter in the death of the pedestrian. Assume that he is tried separately on each charge.

At the defendant's trial for the murder of the watchman, the court should in substance charge the jury on the issue of the defense of intoxication that

- A:** intoxication is a defense to the underlying crime of burglary if the defendant, due to drunkenness, did not form an intent to commit a crime within the building, in which case there can be no conviction for murder unless the defendant intentionally and with premeditation killed the watchman.
- B:** voluntary intoxication is not a defense to the crime of murder.
- C:** The defendant is guilty of murder despite his intoxication only if the state proves beyond a reasonable doubt that the killing of the watchman was premeditated and intentional.
- D:** voluntary intoxication is a defense to the crime of murder if the defendant would not have killed the watchman but for his intoxication.

**The explanation for the answer is:**

The correct answer is A. The defendant is charged with murder, which means the state must prove either 1) the defendant premeditated and intentionally killed the watchman, or, 2) the murder occurred in the commission of a burglary. As the statute outlines, intoxication is not a defense to a crime unless it negates an element of the offense. Therefore, intoxication would be available as a defense to the burglary charge if it negated the element that the defendant had the intent to commit a theft when he broke and entered the building. Since there are two ways for the jury to possibly find the defendant guilty of murder, the jury must be instructed that the felony-murder way of charging would be unproven if they believed that the defendant was not guilty, by reason of his intoxication, of the burglary, AND the jury must be instructed that, if they so find, the state must prove the defendant premeditated and intentionally killed the watchman. Thus, answer A is correct. The statute regarding intoxication, which controls over common law, indicates it could be a defense to the specific intent crime of burglary, so the jury must be instructed as to the possibility of that defense on the underlying charge of burglary. Without the underlying felony burglary charge, the defendant cannot be found guilty of felony murder.

Answer B is incorrect. The jury, as fact finders, could easily find that the defendant did kill the watchman in the course of the commission of burglary, despite his intoxication, and so they must be instructed as to the availability of the felony murder charge. Answer C ignores the felony-murder method of committing murder and is thus incorrect. Answer D misstates the requirements for the intoxication defense by applying a "but for" test rather than the statutory requirements. When the jury is instructed, they must be allowed to consider both methods of committing the offense of murder and that intoxication is a defense to the burglary charge which, in turn, could negate the felony-murder charge.

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**Question 137 - Criminal Law - Homicide**

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**The question was:**

The defendant became intoxicated at a bar. He got into his car and drove away. Within a few blocks, craving another drink, he stopped his car in the middle of the street, picked up a brick, and broke the display window of a liquor store. As he was reaching for a bottle, the night watchman arrived. Startled, the defendant turned and struck the watchman on the head with the bottle, killing him. Only vaguely aware of what was happening, the defendant returned to his car, consumed more liquor, and then drove off at a high speed. He ran a red light and struck and killed a pedestrian who was crossing the street.

Relevant statutes define burglary to include "breaking and entering a building not used as a dwelling with the intent to commit a crime therein." Manslaughter is defined as the "killing of a human being in a criminally reckless manner." Criminal recklessness is defined as "consciously disregarding a substantial and unjustifiable risk resulting from the actor's conduct." Murder is defined as the "the premeditated and intentional killing of another or the killing of another during the commission of a rape, robbery, burglary, or arson." Another statute provides that intoxication is not a defense to a crime unless it negates an element of the offense.

The defendant was charged with the murder of the watchman and manslaughter of the pedestrian. Assume that he is tried separately on each charge.

At the defendant's trial on the charge of manslaughter of the pedestrian, his best argument would be that

- A:** he was too intoxicated to realize he was creating a substantial and unjustifiable risk in the manner in which he was operating his car.
- B:** when he got in the car his acts were not voluntary because he was too intoxicated to know where he was or what he was doing.
- C:** the pedestrian was contributorily negligent in failing to see the defendant's car approaching.
- D:** he was too intoxicated to form any intent to voluntarily operate the automobile.

**The explanation for the answer is:**

The correct answer is A. According to the statute, manslaughter is defined as the killing of a human being in a criminally reckless manner, and criminal recklessness is defined as "consciously disregarding a substantial and unjustifiable risk resulting from the actor's conduct." The mens rea requirement for manslaughter is therefore, that the defendant "consciously" disregarded the risks of his conduct. Since intoxication is a defense if it negates an element of the offense, if the defendant was too intoxicated to "consciously" disregard a substantial and unjustifiable risk, he should be found not guilty of manslaughter as defined by statute.

Answer B is incorrect. While criminal law does not punish actions that are involuntary, at common law, and in the statute, voluntary intoxication does not mitigate the voluntariness of an action taken while intoxicated. Answer C is incorrect. Contributory negligence does not apply in criminal statutes. Answer D is incorrect. The statute does not require the state prove that the defendant intended to operate the automobile.

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**Question 138 - Criminal Law - General Principles**

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**The question was:**

The defendant became intoxicated at a bar. He got into his car and drove away. Within a few blocks, craving another drink, he stopped his car in the middle of the street, picked up a brick, and broke the display window of a liquor store. As he was reaching for a bottle, the night watchman arrived. Startled, the defendant turned and struck the watchman on the head with the bottle, killing him. Only vaguely aware of what was happening, the defendant returned to his car, consumed more liquor, and then drove off at a high speed. He ran a red light and struck and killed a pedestrian who was crossing the street.

Relevant statutes define burglary to include "breaking and entering a building not used as a dwelling with the intent to commit a crime therein." Manslaughter is defined as the "killing of a human being in a criminally reckless manner." Criminal recklessness is defined as "consciously disregarding a substantial and unjustifiable risk resulting from the actor's conduct." Murder is defined as the "the premeditated and intentional killing of another or the killing of another during the commission of a rape, robbery, burglary, or arson." Another statute provides that intoxication is not a defense to a crime unless it negates an element of the offense.

The defendant was charged with the murder of the watchman and manslaughter of the pedestrian. Assume that he is tried separately on each charge.

The state's best argument to counter the defendant's argument that he was too intoxicated to realize he was creating a substantial risk in the way that he drove car is that

**A:** intoxication is no defense to the crime charged, because manslaughter is historically a general intent crime.

**B:** intoxication is a defense only to a specific intent crime, and no specific intent is involved in the definition of the crime of manslaughter.

**C:** conscious risk-taking refers to the defendant's entire course of conduct, including drinking with the knowledge that he might become intoxicated and seriously injure or kill someone while driving.

**D:** whether the defendant was intoxicated or not is not the crucial issue here; the real issue is whether the manner in which the defendant was operating his car can be characterized under the facts as criminally reckless.

**The explanation for the answer is:**

The correct answer is C. The mens rea requirement of the statutory manslaughter charge is that the defendant "consciously" disregarded the risk of his actions. With that in mind, the best argument the state could make to counter the defendant's intoxication argument is that the defendant, by becoming intoxicated, "consciously" disregarded the risks that come from driving while intoxicated. The best argument the state can make to counter the intoxication defense is that by voluntarily becoming intoxicated, he consciously disregarded the risks of his actions. Answer C is correct.

Answer A is incorrect. When a statute specifically states the mens rea requirements, the common law or history of the named charge does not apply. Although manslaughter may have historically been a general intent crime, the statute supersedes that history. Answer B is incorrect; if a statute specifically defines the applicability of an intoxication defense, the common law and historical background of the defense are superseded. With this statute, intoxication is a defense if it negates an element of the crime. The crime does not need to be a specific intent crime for the statutory intoxication defense to apply. Answer D is a misstatement of the statutory requirements for the raising of an intoxication defense. Therefore, answer D is incorrect.

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**Question 144 - Criminal Law - Inchoate Crimes**

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**The question was:**

Statutes in a jurisdiction define criminal assault as "an attempt to commit a criminal battery" and criminal battery as "causing an offensive touching."

As a man was walking down the street, a gust of wind blew his hat off. The man reached out, trying to grab his hat, and narrowly missed striking a woman in the face with his hand. The woman, fearful of being struck by the man, pushed the man away.

If charged with criminal assault, the man should be found

- A:** guilty, because he caused the woman to be in apprehension of an offensive touching.
- B:** guilty, because he should have realized he might strike someone by reaching out.
- C:** not guilty, because he did not intend to hit the woman.
- D:** not guilty, because he did not hit the woman.

**The explanation for the answer is:**

The correct answer is C. Assault is the attempt to commit a criminal battery. To attempt to commit a crime, one must have the intent that the crime be committed and take a substantial step towards its commission. The man had no intent to commit a criminal battery; he was attempting to grab his hat.

The mens rea requirement of assault requires the intent to commit a battery. Answer A is incorrect because it ignores the mens rea requirement of an assault charge. Answer B is incorrect because it misstates the mens rea requirement. The possibility of striking someone is not the same as the intent to strike someone. The charge of assault does not require actual contact occur, just the attempt to commit battery. Answer D is incorrect. Under these facts, the man did not ever have to actually hit the woman; he just needed to intend to hit her.

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**Question 145 - Criminal Law - General Principles**

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**The question was:**

Statutes in a jurisdiction define criminal assault as "an attempt to commit a criminal battery" and criminal battery as "causing an offensive touching."

As a man was walking down the street, a gust of wind blew his hat off. The man reached out, trying to grab his hat, and narrowly missed striking a woman in the face with his hand. The woman, fearful of being struck by the man, pushed the man away.

If charged with criminal battery, the woman should be found

- A:** guilty, because she intentionally pushed the man.
- B:** guilty, because she caused the touching of the man whether she meant to do so or not.
- C:** not guilty, because a push is not an offensive touching.
- D:** not guilty, because she was justified in pushing the man.

**The explanation for the answer is:**

The correct answer is D. The woman only pushed the man because she reasonably believed that the man was going to strike her. Thus, she should be found not guilty of criminal battery because she was acting in self-defense. The woman believed that the push was necessary to defend herself against the imminent use of unlawful force and, given the fact situation, that belief was reasonable. Answer A ignores the woman's obvious self-defense claim and is thus incorrect. Likewise with Answer B. A push is generally considered offensive, so Answer C is incorrect. The woman's actions in pushing the man were not done with any criminal intent but rather to protect herself from what she reasonably believed to be the man's attempt to strike her.

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**Question 146 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

Police officers were concerned about an increase in marijuana traffic in the defendant's neighborhood. One night, several police officers, accompanied by dogs trained to sniff out marijuana, went into the back yard of the defendant's house and onto his porch. The defendant and his friend were inside having dinner. The dogs acted as if they smelled marijuana. The police officers knocked on the back door. The defendant answered the door and let them in. The defendant was immediately placed under arrest. After a brief search, the police officers confiscated a large quantity of marijuana which they found in the defendant's linen closet.

The defendant's motion to prevent introduction of the marijuana into evidence will most probably be

- A:** denied, because the search was incident to a valid arrest.
- B:** denied, because the defendant permitted the police officers to enter his house.
- C:** granted, because under the circumstances the police activity violated the defendant's reasonable expectations of privacy.
- D:** granted, because this kind of detection by trained dogs has not been scientifically verified and cannot be the basis for probable cause.

**The explanation for the answer is:**

The correct answer is C. The defendant has a reasonable expectation of privacy in his back yard and porch, and the police, by entering the porch with the dogs, were conducting an illegal, warrantless search. The defendant's motion to exclude the evidence should be granted. Answer A is incorrect because the arrest was not valid; the defendant was arrested due to the illegal, warrantless search. Furthermore, a search incident to arrest is limited to the defendant and the area within his immediate control. In this case, the evidence was found in a linen closet in the defendant's residence after the defendant had been placed under arrest. This exceeded the scope of a valid search incident to an arrest.

Answer B is incorrect because permitting police officers to enter a residence does not allow the police to search the entire residence. The police officers would have needed to obtain the consent to search as well as the consent to enter if the evidence was not in plain sight. Since the evidence was in a closet and no consent to search was given, the evidence should be excluded. Answer D is incorrect because dogs trained in drug detection can be used to provide the basis for probable cause to search.

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**Question 159 - Criminal Law - Inchoate Crimes**

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**The question was:**

An already married man went through a marriage ceremony with a woman and thereby committed bigamy. The man's friend, who did not know of the man's previous marriage, had encouraged the man to marry the woman and was best man at the ceremony. If the friend is charged with being an accessory to bigamy, he should be found

- A:** not guilty, because his encouragement and assistance was not the legal cause of the crime.
- B:** not guilty, because he did not have the mental state required for aiding and abetting.
- C:** guilty, because he encouraged the man, and his mistake as to the existence of a prior marriage is not a defense to a charge of bigamy.
- D:** guilty, because he was present when the crime occurred and is thus a principal in the second degree.

**The explanation for the answer is:**

The correct answer is B. To be an accessory to a criminal charge, the defendant must have the intent that the crime be committed and aid and abet in the commission of the crime. The friend, not knowing that the man was committing bigamy, had no intent to aid or assist the man in the commission of bigamy and should be found not guilty.

Answer A is incorrect. An accessory, if he has the requisite intent, need only give encouragement or aid in the commission of the offense; he need not be the legal cause of the action.

Answer C ignores the requirement that the friend have the proper mental state for the commission of the offense before he can bear criminal responsibility. Answer C is incorrect.

Answer D is incorrect. Principal in the second degree, like other common law descriptions of accessories, also requires intent that the offense be committed. Because the friend did not know about the man's prior marriage, he cannot be said to have the intent necessary to bear criminal responsibility for the man's actions.



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**Question 160 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

A defendant was arrested on a murder charge. She was given Miranda warnings and refused to talk further to the police. At trial, she testified in her own defense. She recounted in some detail her whereabouts on the day of the crime and explained why she could not have committed the crime. On cross-examination and over the defense's objection, the prosecution emphasized the fact that she did not tell the police this story following her arrest.

The defendant was convicted. On appeal, she claims error in the prosecutor's cross-examination. Her conviction will most probably be

**A:** affirmed, because the defendant's silence at the time of arrest is tantamount to a prior inconsistent statement, giving rise to an inference that the story was fabricated.

**B:** affirmed, because the defendant's silence was not used as direct evidence but only for impeachment, a purpose consistent with legitimate cross-examination.

**C:** reversed, because post-arrest silence constituted the defendant's exercise of her Miranda rights, and use of that silence against her at trial violated due process.

**D:** reversed, because to require the defense to acquaint the prosecution with the defendant's testimony prior to trial would constitute unconstitutional pre-trial discovery.

**The explanation for the answer is:**

C is the correct answer. The defendant had a right to remain silent after her arrest as part of her Fifth Amendment right not to incriminate herself. The prosecution may not use that silence against her at trial to imply that the silence had a particular meaning.

A is incorrect because the silence was an exercise of a constitutional right, not tantamount to a prior inconsistent statement. B is incorrect because we cannot infer from the silence that the events did not happen. Consequently, the exercise of the right to remain silent cannot be used even as impeachment. We can only infer that the defendant was invoking her constitutional right. D is not correct because the silence at issue was the silence at the time of the arrest.

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**Question 172 - Criminal Law - Other Crimes**

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**The question was:**

In which of the following situations is the defendant most likely to be guilty of larceny?

- A:** The defendant took a woman's television set, with the intention of returning it the next day.
- B:** The defendant went into a man's house and took \$100 in the belief that the man had damaged the defendant's car to that amount.
- C:** Mistakenly believing that larceny does not include the taking of a dog, the defendant took his neighbor's dog and sold it.
- D:** Unreasonably mistaking a man's car for his own, the defendant got into the man's car in a parking lot and drove it home.

**The explanation for the answer is:**

The correct answer is C. Larceny, at common law, is the taking of another's property without the owner's consent with the intent to permanently deprive the owner of that property. The defendant in answer C took the neighbor's dog with the intent to permanently deprive ownership. Mistake of law is not a defense to larceny, so the defendant will be found guilty.

Answer A is incorrect. Larceny is a specific intent crime. If the defendant did not have the intent to permanently deprive the owner of the property, the defendant cannot be found guilty of larceny. Answer B is incorrect. If the defendant honestly believes that he is entitled to the money or property of another for the payment of a debt, then the defendant will not have the intent to take the property of another. The defendant in answer B believed he had a valid claim to the property, and thus lacked the requisite intent to commit larceny. Answer D is incorrect. Larceny is a specific intent crime. Therefore, the defendant's mistake of fact about the ownership of the car would preclude a conviction for larceny as the defendant did not have the intent to take the property of another.

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**Question 173 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

Acting on an anonymous telephone call, police went to the defendant's apartment, knocked on the door, and demanded to search it for narcotics. When the defendant refused, the police forced the door open and placed him under arrest. As they were removing him from the apartment, the defendant offered to give the officers "valuable information" in exchange for his release. Before he could say anything else, the defendant was given Miranda warnings by the police. Thereafter he told the police that he had stored some heroin in his friend's apartment and that he and his friend had been going to sell it. The heroin was recovered, and the defendant was prosecuted for conspiracy to sell narcotics and for possession of narcotics. At his trial, the defendant moved to suppress his statements. Which of the following is the defendant's best argument in support of the motion to suppress?

- A:** The defendant is entitled to know the identity of his accuser, and the state cannot supply this information.
- B:** The police should have given the defendant Miranda warnings prior to entry into the apartment, and the warnings were ineffectual once the defendant offered to give the police information.
- C:** The defendant was intimidated by the forced entry into the apartment, and since the statements were involuntary and coerced, their use against him would violate due process of law.
- D:** The statements were fruits of an unlawful arrest, and though the Miranda warnings may have been sufficient to protect his right against self incrimination, they were not sufficient to purge the taint of the illegal arrest.

**The explanation for the answer is:**

The correct answer is D. The police officers, without a warrant or probable cause, forced their way into the defendant's home and placed him under arrest. As a direct result of these unconstitutional actions, the defendant gave an incriminating statement. The defendant's best argument for the suppression of the statement is that it was the product of an illegal arrest, and should be excluded as fruit of the poisonous tree.

Answer A is incorrect because the defendant does not have the right to know the identity of the person who gave the anonymous tip; the right to confront only applies to adverse witnesses.

Answer B is incorrect because the defendant's first statement that he had "valuable information" was voluntary and not the result of an interrogation, and the police officers gave the defendant his Miranda rights before he gave his second incriminating statement. The police were not constitutionally required to inform the defendant of his Miranda rights before entering the home, as long as the rights were given and waived before his incriminating second statement.

Answer C is incorrect because, although the forced entry may have been intimidating, there is no evidence that the statements were involuntary or coerced. Instead, the police officers fully apprised the defendant of his Miranda rights before he stated where the heroin could be found. Therefore, the defendant's best argument is that his statements should be suppressed because they were tainted by the illegal arrest and the Miranda warnings were insufficient to purge that taint.

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**Question 182 - Criminal Law - Inchoate Crimes**

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**The question was:**

A man and a woman planned to break into a federal government office to steal food stamps. The man telephoned an associate one night and asked whether the associate wanted to buy some "hot" food stamps. The associate, who understood that "hot" meant stolen, said, "Sure, bring them right over." The man and the woman then successfully executed their scheme. That same night they delivered the food stamps to the associate, who bought them for \$500. The associate did not ask when or by whom the stamps were stolen. All three were arrested. The man and the woman entered guilty pleas in federal court to a charge of larceny in connection with the theft. The associate was brought to trial in the state court on a charge of conspiracy to steal food stamps.

On the evidence stated, the associate should be found

- A:** guilty, because, when a new confederate enters a conspiracy already in progress, he becomes a party to it.  
**B:** guilty, because he knowingly and willingly aided and abetted the conspiracy and is chargeable as a principal.  
**C:** not guilty, because, although the associate knew the stamps were stolen, he neither helped to plan nor participated or assisted in the theft.  
**D:** not guilty, because the man and woman had not been convicted of or charged with conspiracy, and the associate cannot be guilty of conspiracy by himself.

**The explanation for the answer is:**

The correct answer is C. Conspiracy is an agreement between two or more people to commit a crime. A charge of conspiracy requires an agreement that a crime be committed and that at least two of the co-conspirators intend that the crime be committed. The associate did not agree to commit the theft, nor did he help to plan, participate or assist in the theft of the food stamps. Although the associate may be guilty of conspiracy to receive stolen property, he did not agree to steal the food stamps. Therefore, he should not be found guilty of conspiracy to steal food stamps.

Answer A is incorrect because the agreement that the associate may have entered into with the man and woman was for the receipt stolen property, not for the commission of theft. At the time of the conversation, the associate was not aware that the theft had not already taken place. The associate did not agree to this theft. Answer B is incorrect; conspiracy punishes the agreement, not the actual commission of the offense. The associate will not be criminally liable for aiding and abetting a conspiracy that he did not intend to be a part of. Answer D is incorrect because the co-conspirators need not all be convicted or even charged with conspiracy before one of the conspirators can be found guilty.

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**Question 191 - Criminal Law - General Principles**

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**The question was:**

A man and a woman planned to hold up a bank. They drove to the bank in the man's car. The man entered while the woman remained as lookout in the car. After a few moments, the woman panicked and drove off.

The man looked over the various tellers, approached one and whispered nervously, "Just hand over the cash. Don't look around, don't make a false move--or it's your life." The teller looked at the fidgeting man, laughed, flipped him a dollar bill and said, "Go on, beat it." Flustered, the man grabbed the dollar and left.

Soon after leaving the scene, the woman was stopped by the police for speeding. Noting her nervous condition, the police asked the woman if they might search the car. She agreed. The search turned up heroin concealed in the lid of the trunk.

The woman's best defense to a charge of robbery would be that

- A:** the man alone entered the bank.
- B:** the woman withdrew before commission of the crime when she fled the scene.
- C:** the woman had no knowledge of what the man whispered to the teller.
- D:** the teller was not placed in fear by the man.

**The explanation for the answer is:**

The correct answer is D. A person will bear criminal responsibility for the actions of another if they have the intent that those actions be committed and they aid and abet the commission of the offense. The woman and the man had planned on holding up the bank, and the woman aided in the planning and drove the vehicle to the bank. She will bear criminal responsibility for the man's actions. The woman's best defense to the charge of robbery would be that the man did not commit a robbery because the teller was not placed in fear by the man's threat. Thus, although she had the requisite intent and did aid and abet the man, an actual robbery did not occur. Answer D is correct.

Answer A is incorrect; the woman did not have to enter the bank herself. The aid she gave the man by driving him to the bank and helping him plan it would suffice to find her criminally liable for the man's actions. Answer B is incorrect; the woman's later withdrawal does not affect her liability for her actions up to that point. While it is possible to withdraw from a conspiracy, after one has aided or abetted another with the intent that the actions be committed, withdrawal will not apply. Answer C is incorrect; the woman did not need to know the exact specifics of the man's conduct to bear criminal responsibility for them.

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**Question 192 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

A man and a woman planned to hold up a bank. They drove to the bank in the man's car. The man entered while the woman remained as lookout in the car. After a few moments, the woman panicked and drove off.

The man looked over the various tellers, approached one and whispered nervously, "Just hand over the cash. Don't look around, don't make a false move--or it's your life." The teller looked at the fidgeting man, laughed, flipped him a dollar bill and said, "Go on, beat it." Flustered, the man grabbed the dollar and left.

Soon after leaving the scene, the woman was stopped by the police for speeding. Noting her nervous condition, the police asked the woman if they might search the car. She agreed. The search turned up heroin concealed in the lid of the trunk.

The prosecution's best argument to sustain the validity of the search of the man's car would be that

- A:** the search was reasonable under the circumstances, given the woman's nervous condition.
- B:** the search was incident to a valid arrest.
- C:** The woman had, under the circumstances, sufficient standing and authority to consent to the search.
- D:** exigent circumstances, including the inherent mobility of a car, justified the search.

**The explanation for the answer is:**

The correct answer is C. The woman, as the driver and sole person in the vehicle, had standing and the apparent authority to consent to the search of the vehicle, even if she did not own the vehicle. By obtaining the woman's consent to search the vehicle, the police acted reasonably, and the evidence should be admitted.

Answer A is incorrect because a driver acting nervous is not a sufficient basis to allow for the search of the entire vehicle. Although a nervous driver may be suspicious, it does not amount to probable cause that would permit the officers to search the trunk of the vehicle. In addition, the woman gave consent for the search of the vehicle.

Answer B is incorrect because the woman was not under arrest when the vehicle was searched; she was merely detained for a speeding offense. In addition, a search incident to arrest is limited to the person being arrested and the items in her immediate control and would not extend to the search of the lid of the trunk.

Answer D is incorrect because the woman was stopped for speeding, and there were no exigent circumstances that would allow the immediate search of her trunk. In addition, the automobile exception to the warrant requirement of the Fourth Amendment does not authorize every search of every vehicle stopped by the police. The prosecutor's best argument to sustain the search of the man's car was that the driver, who had care and control over the property, consented to the search.

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**Question 207 - Criminal Law - Homicide**

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**The question was:**

A defendant was driving his automobile at a legal speed in a residential zone. A child darted out in front of him and was run over and killed before the defendant could prevent it. The defendant's driver's license had expired three months previously; the defendant had neglected to check when it was due to expire. Driving without a valid license is a misdemeanor in the jurisdiction. On a charge of manslaughter, the defendant should be found

- A:** guilty under the misdemeanor-manslaughter rule.
- B:** guilty, because the licensing requirements are to protect life, and failure to obey is negligence.
- C:** not guilty, because the offense was not the proximate cause of the death.
- D:** not guilty, because there was no criminal intent.

**The explanation for the answer is:**

The correct answer is C. For the defendant to be found guilty of manslaughter, a proximate cause between the illegal act and the resulting death of the victim must exist. This causation must be more than simple cause-in-fact; it must be somehow foreseeable from the illegal action taken. In this case, the fact the defendant did not possess a valid license was not a causal factor in the death of the child.

Answer A is incorrect. The common law misdemeanor-manslaughter rule, while permitting the prosecution of involuntary manslaughter for misdemeanor offenses, still requires that there be a proximate cause between the illegal action and death. Answer B is incorrect. While the licensing requirements may be to protect life, criminal liability for manslaughter requires more than simple negligence, but also proximate cause. Finally, answer D is incorrect; manslaughter does not require that the defendant have any criminal intent to commit an offense. Recklessness is sufficient. The lack of the foreseeability between driving without a license and the death of the child shows the lack of proximate cause.

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**Question 218 - Criminal Law - General Principles**

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**The question was:**

In which of the following situations is the defendant's claim of intoxication most likely to result in his being found not guilty?

- A:** The defendant is charged with manslaughter for a death resulting from an automobile accident. The defendant, the driver, claims he was so drunk he was unable to see the other car involved in the accident.
- B:** The defendant is charged with assault with intent to kill the victim as a result of his wounding the victim by shooting him. The defendant claims he was so drunk he did not realize anyone else was around when he fired the gun.
- C:** The defendant is charged with armed robbery. He claims he was so drunk he did not know if the gun was loaded.
- D:** The defendant is charged with statutory rape after he has sexual intercourse with a girl aged 15 in a jurisdiction where the age of consent is 16. The defendant claims he was so drunk he did not realize the girl was a minor.

**The explanation for the answer is:**

The correct answer is B. Voluntary intoxication is only a defense to specific intent crimes and only applies if the intoxication negates the requisite mental state for the charge. The defendant in answer B could not have intended to assault with intent to kill if his intoxication did not allow him to realize that anyone was around. Therefore, the defendant will likely be found not guilty.

Answer A is incorrect. The defendant's intoxication did not negate his intent to drive, and will provide no defense to the manslaughter charge.

Answer C is incorrect. While armed robbery is generally considered a specific intent crime, the defendant's intoxication did not negate the defendant's intent to commit the robbery, and only made him uncertain about the gun.

Answer D is incorrect. Statutory rape is not a specific intent crime, and does not require the defendant to know that the girl was under the age of 16. Therefore, intoxication leading to a lack of knowledge would not provide a valid defense.



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**Question 225 - Criminal Law - General Principles**

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**The question was:**

A defendant was tried for robbery. The victim and a bystander were the only witnesses called to testify. The victim testified that the defendant threatened her with a knife, grabbed her purse, and ran off with it. The bystander testified that he saw the defendant grab the victim's purse and run away with it but that he neither saw a knife nor heard any threats. On this evidence the jury could properly return a verdict of guilty of

- A:** robbery only.
- B:** larceny only.
- C:** either robbery or larceny.
- D:** both robbery and larceny.

**The explanation for the answer is:**

The correct answer is C. The jury, as fact-finder, can find that the victim was correct and credible and that the defendant took her property by threat of force. The jury could then find the defendant guilty of robbery. The jury could also find that the bystander was correct and credible and find that the defendant took the property without force, and find the defendant guilty of larceny. However, in this question, larceny is a lesser included offense of robbery and will be merged into the higher charge if the jury finds the robbery was committed. So the jury can find the defendant guilty of larceny only or guilty of robbery only, but under the merger doctrine, cannot find him guilty of both. Answer C is correct.

Answers A and B are incorrect; the jury is the finder of fact in the case, and there is sufficient evidence presented for them to make a finding of guilt as to either robbery or larceny. Answer D is incorrect because under the merger doctrine, they cannot find the defendant guilty of both.

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**Question 225 - Criminal Law - General Principles**

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**The question was:**

A defendant was tried for robbery. The victim and a bystander were the only witnesses called to testify. The victim testified that the defendant threatened her with a knife, grabbed her purse, and ran off with it. The bystander testified that he saw the defendant grab the victim's purse and run away with it but that he neither saw a knife nor heard any threats. On this evidence the jury could properly return a verdict of guilty of

- A:** robbery only.
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**The explanation for the answer is:**

The correct answer is C. The jury, as fact-finder, can find that the victim was correct and credible and that the defendant took her property by threat of force. The jury could then find the defendant guilty of robbery. The jury could also find that the bystander was correct and credible and find that the defendant took the property without force, and find the defendant guilty of larceny. However, in this question, larceny is a lesser included offense of robbery and will be merged into the higher charge if the jury finds the robbery was committed. So the jury can find the defendant guilty of larceny only or guilty of robbery only, but under the merger doctrine, cannot find him guilty of both. Answer C is correct.

Answers A and B are incorrect; the jury is the finder of fact in the case, and there is sufficient evidence presented for them to make a finding of guilt as to either robbery or larceny. Answer D is incorrect because under the merger doctrine, they cannot find the defendant guilty of both.

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**Question 236 - Criminal Law - Other Crimes**

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**The question was:**

The defendant visited a fellow college student in the student's dormitory room. They drank some beer. The student produced a box containing marijuana cigarettes and asked if the defendant wanted one. The defendant, afraid of being caught, declined and urged the student to get rid of the marijuana. The student refused.

Shortly thereafter, both went out to get more beer, leaving the door to the student's room standing open. Making an excuse about having dropped his pen, the defendant went back into the student's room. Still apprehensive about their being caught with the marijuana cigarettes, he took the cigarettes and flushed them down the toilet. He was sure the student was too drunk to notice that the cigarettes were missing.

The defendant is charged with larceny and burglary (defined in the jurisdiction as breaking and entering the dwelling of another with intent to commit any felony or theft). He should be found guilty of

- A:** burglary only.
- B:** larceny only.
- C:** both burglary and larceny
- D:** neither burglary nor larceny.

**The explanation for the answer is:**

The correct answer is B. The defendant took the property of another, the student's marijuana, without the owner's consent and with the intent to permanently deprive the owner of the property. It is irrelevant that the owner's possession of the property was likely illegal. Thus, the defendant should be found guilty of larceny. Here, burglary is defined as breaking and entering the dwelling of another with intent to commit any felony or theft. The defendant is not guilty of burglary because the door was open, so the defendant did not break into the dormitory room. Thus, A, C, and D are incorrect.

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**Question 280 - Criminal Law - Homicide**

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**The question was:**

This question describes an offense. Select from the choices (A-D) the most serious offense of which the defendant could be properly convicted.

The defendant, an avid fan of his home town football team, shot at the leg of a star player for a rival team, intending to injure his leg enough to hospitalize him for a few weeks, but not to kill him. The victim died of loss of blood.

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

**The explanation for the answer is:**

The correct answer is C. Murder is defined at common law as the unlawful killing of another with malice aforethought. The malice aforethought requirement can be satisfied by an intent to kill, an intent to inflict great bodily harm, reckless indifference to an unjustifiably high risk to human life, or intent to commit certain dangerous felonies. In this question, the defendant acted with the intent to commit great bodily harm, shown by his intent to hospitalize the player for a few weeks. Since the killing was done with malice aforethought, the most serious offense that the defendant can be properly convicted of is murder.

Answer B is incorrect. There was no legally adequate provocation, and the shooting was not done in the sudden heat of passion. Therefore, there is no defense that would mitigate the killing to voluntary manslaughter. Answer A is incorrect. The killing was not done pursuant to a lawful act recklessly done, nor does the misdemeanor manslaughter rule apply.

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**Question 289 - Criminal Law - General Principles**

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**The question was:**

The plaintiff took a diamond ring to a pawnshop and borrowed \$20 on it. It was agreed that the loan was to be repaid within 60 days and if it was not, the pawnshop owner, the defendant, could sell the ring. A week before expiration of the 60 days, the defendant had an opportunity to sell the ring to a customer for \$125. He did so, thinking it unlikely that the plaintiff would repay the loan and if he did, the defendant would be able to handle him somehow, even by paying him for the ring if necessary. Two days later, the plaintiff came in with the money to reclaim his ring. The defendant told him that it had been stolen when his shop was burglarized one night and that therefore he was not responsible for its loss:

Larceny, embezzlement, and false pretenses are separate crimes in the jurisdiction.

It is most likely that the defendant has committed which of the following crimes?

- A:** Larceny
- B:** Embezzlement
- C:** Larceny by trick
- D:** Obtaining by false pretenses

**The explanation for the answer is:**

The correct answer is B. At common law, larceny is the taking possession and carrying away of the personal property of another, without the owner's consent and with the intent to permanently deprive the owner of said property. At common law, larceny by trick is the obtaining of possession, with the owner's consent, of the property of another by fraud or misrepresentation, with the intent to permanently deprive the owner of said property. At common law, false pretenses is obtaining the possession and title of property of another through fraud or misrepresentation, with the intent to permanently deprive the owner of the property. At common law, embezzlement is the fraudulent conversion of another person's property by someone who had lawful possession of said property.

In the question, the defendant had lawful possession of the ring, and fraudulently converted it by selling it to another customer for \$125. The defendant had a fiduciary relationship with the plaintiff, and was properly in possession of the ring, but illegally converted it. Answer B is correct.

Answers A and C are incorrect. Larceny and larceny by trick involve the taking of the possession of the property with the intent to permanently deprive. The defendant did not take the property. He was given the property by the plaintiff and had lawful possession of it.

Answer D is incorrect. The defendant did not obtain the full title of the ring by the transfer, merely the possession, and he did not originally obtain the ring through fraud or deceit. The actions the defendant took best fit the charge of embezzlement.

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**Question 290 - Criminal Law - General Principles**

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**The question was:**

The plaintiff took a diamond ring to a pawnshop and borrowed \$20 on it. It was agreed that the loan was to be repaid within 60 days and if it was not, the pawnshop owner, the defendant, could sell the ring. A week before expiration of the 60 days, the defendant had an opportunity to sell the ring to a customer for \$125. He did so, thinking it unlikely that the plaintiff would repay the loan and if he did, the defendant would be able to handle him somehow, even by paying him for the ring if necessary. Two days later, the plaintiff came in with the money to reclaim his ring. The defendant told him that it had been stolen when his shop was burglarized one night and that therefore he was not responsible for its loss.

Larceny, embezzlement, and false pretenses are separate crimes in the jurisdiction.

Suppose that instead of denying liability, the defendant told the plaintiff the truth--that he sold the ring because he thought the plaintiff would not reclaim it--and offered to give the plaintiff \$125. The plaintiff demanded his ring. The defendant said, "Look buddy, that's what I got for it and it's more than it's worth." The plaintiff reluctantly took the money. The defendant could most appropriately be found guilty of

- A:** Larceny
- B:** Embezzlement
- C:** False Pretenses
- D:** None of the above

**The explanation for the answer is:**

The correct answer is B. At common law, larceny is the taking possession and carrying away of the personal property of another, without the owner's consent and with the intent to permanently deprive the owner of said property. At common law, embezzlement is the fraudulent conversion of another person's property by someone who had lawful possession of said property. At common law, false pretenses is obtaining the possession and title of property of another through fraud or misrepresentation, with the intent to permanently deprive the owner of the property.

The fact that the defendant, after his illegal action, offered to make restitution for the ring does not excuse his guilt, nor change the offense under which he should be found guilty. The defendant still had the fiduciary relationship with the plaintiff, he still had lawful possession of the ring, and he still unlawfully converted the ring. He is guilty of embezzlement. A later attempt to make restitution does not change the charge.

Answers A and C are incorrect because the defendant had permission to possess the ring from its rightful owner, the plaintiff.

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**Question 325 - Criminal Law - General Principles**

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**The question was:**

This question is based on the four case summaries A - D. Select the case that would be most applicable as a precedent.

A man, a heroin addict, broke into a house and took several cameras and watches, which he promptly pawned to obtain cash with which to obtain a "fix." The man was later charged with larceny of the cameras and watches.

**A: *Commonwealth v. Mason*.** Two sisters see a wealthy neighbor's pedigree dog on the street. They take the dog home, intending to conceal it until the owner offers a reward. Held, guilty of larceny.

**B: *Saferite v. State*.** Two young men saw a motor car on the street with the keys in the ignition lock. They drove the car to a neighboring town with the intention, they said, of visiting the wife of one of the them. The car was wrecked on their way back. Conviction for larceny reversed.

**C: *People v. Noblett*.** The defendant, a tenant of a city apartment, advertised it for sublease. A person agreed to sublease for three months, and on March 12, paid the defendant \$550, the total agreed rental. The person was to receive possession on March 20, but possession was never given him. Held, not guilty of common law larceny.

**D: *King v. Pear*.** From a stablekeeper, the defendant hired a horse to go to Sutton and back, saying he would be back at 8 p.m. He did not return. Investigation shows that the defendant had given a false address, and that he had sold the horse the same day. Conviction of larceny affirmed.

**The explanation for the answer is:**

Answer A is correct. Using a prior judicial decision as binding authority requires that the two cases be factually analogous and involve the same legal issues. The case in the question involves the taking of property of another when the ultimate intent of the thief is to obtain money. The legal issue is whether the intent to convert the property taken to money is sufficient for a larceny conviction. In answer A, the factual situation involves the taking of another's property with the intent to convert that property into something else with monetary value. The legal issue was whether a conviction is proper when the property taken was taken in an attempt to obtain further money. Answer A is correct.

In answer B, there was no intent to permanently deprive the owner, and no attempt to convert that property to money. Answer B is incorrect. Answer C deals with a breach of a deal to take possession of real property. Answer C is incorrect. Answer D deals with obtaining lawful possession of property using fraud and then selling the property, which, at common law, would be embezzlement. Since the man did not obtain possession of the property with the owner's consent, and did not rely on fraud to obtain the property, Answer D is incorrect. The fact situation in the question is most clearly analogous, and the legal issue the same, to those in answer A.

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**Question 336 - Criminal Law - General Principles**

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**The question was:**

A man suffered from the delusion that he was a special agent of God. He frequently experienced hallucinations in the form of hearing divine commands. The man believed God told him several times that the local Roman Catholic bishop was corrupting the diocese into heresy, and that the bishop should be "done away with." The man, a devout Catholic, conceived of himself as a religious martyr. He knew that shooting bishops for heresy is against the criminal law. He nevertheless carefully planned how he might kill the bishop. One evening the man shot the bishop, who was taken to the hospital where he died two weeks later.

The man told the police he assumed the institutions of society would support the ecclesiastical hierarchy, and he expected to be persecuted for his God-inspired actions. A psychiatrist examined the man and found that the man suffered from schizophrenic psychosis, that in the absence of this psychosis he would not have shot the bishop, and that because of the psychosis the man found it extremely difficult to determine whether he should obey the specific command that he do away with the bishop or the general commandment "Thou shalt not kill." The man was charged with murder.

If the man interposes an insanity defense, and the jurisdiction in which he is tried has adopted only the M'Naghten test of insanity, then the strongest argument for the defense under that test is that

- A:** The man did not know the nature of the act he was performing.
- B:** The man did not know that his act was morally wrong.
- C:** The man did not know the quality of the act he was performing.
- D:** The man's acts were the product of a mental disease.

**The explanation for the answer is:**

B is correct. The M'Naughten rule is the test that should be applied to determine if a defendant will be held criminally responsible for his actions, or if he was insane at the time of the commission of the offense. The test is whether at the time of committing the act, the accused was laboring under such a defect of reason from disease of the mind as not to know the nature and quality of the act he was doing or, if he did know it, that he did not know what he was doing was wrong. With this fact situation, the man was operating under a mental defect that made him believe the actions he took were, in fact, the right thing to do.

Answers A and C are incorrect because the man understood the nature and quality of his actions. He had the intent to kill the bishop, he carefully planned the killing, and he knew the actions he took would result in the death of the bishop. The quality and nature of his actions were intended to, and did, kill the bishop. Answer D is a statement of the product test, a different test for insanity, and not the applicable M'Naughten test. Answer D is incorrect.

Although he understood the nature and quality of his actions, he did not know that what he was doing was wrong. The man's best argument, using the M'Naughten test, is that he did not know his act was wrong.



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**Question 355 - Criminal Law - Inchoate Crimes**

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**The question was:**

A state statute makes it a felony for any teacher at a state institution of higher education to accept anything of value from a student at the same institution. A student at the state university offered his English teacher \$50 in exchange for a good grade in his English course. The teacher agreed and took the money. The teacher and the student are tried jointly for violation of the state statute. The teacher is charged with violating the statute and the student with aiding and abetting him.

The student's best argument for a dismissal of the charge against him is that

- A:** a principal and an accessory cannot be tried together, since the principal must be convicted first.
- B:** he cannot be an accessory, since he is the victim of the crime.
- C:** the legislature did not intend to punish the person giving the thing of value.
- D:** he did not assist the teacher in violating the statute.

**The explanation for the answer is:**

C is correct. The best argument the student has is that the statute, by its wording, excludes him as a possible party to the crime, so he cannot be held criminally responsible. For this argument to work, the statute must, by its nature, involve two necessary parties to the crime, with only one of the parties identified in the statute. If the statute leaves the other one unnamed and unpunished, courts will hold that the legislature did not intend to punish the second necessary party, and he thus cannot be liable as an accessory. When a statute specifically names only one party as being criminally liable when there must be at least 2 or more actors to commit the offense, there is a clear indication that the legislature did not intend the other actor to be punished, and a court will not hold that other actor criminally liable. That is the student's best argument for a dismissal here. Answer C is correct.

Answer A is incorrect; a principal and an accessory can be tried together, and an accessory can be convicted without the principal even being charged. Answer B is incorrect because the statutory offense is not a crime against a person or property, and the student is not the victim; he is a participant in the bribery. Answer D is incorrect because by making the offer, and giving the teacher the money, the student's actions clearly assisted the teacher in the commission of the offense. In fact, it would be impossible for the teacher to commit this offense without the student's actions.

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**Question 360 - Criminal Law - General Principles**

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**The question was:**

While testifying in a civil trial, a witness was asked on cross-examination if he had been convicted in the circuit court of stealing \$200 from his employer on August 16, 2007. The witness said, "No, I have never been convicted of any crime." In fact, the witness had pleaded guilty to such a charge and had been placed on probation.

The witness was then charged with perjury on the ground that his statement denying the conviction was false. A statute in the jurisdiction defines perjury as knowingly making a false statement while under oath.

At trial, the state proved the witness's statement and the prior conviction. The witness testified that the attorney who represented him in the theft case had told him that, because he had been placed on probation, he had not been convicted of a crime. The witness had served his probationary period satisfactorily and been discharged from probation. The alleged advice of the attorney was incorrect.

If the jury believes the witness, it should find him

- A:** guilty, because his mistake was one of law.
- B:** guilty, because reliance on the advice of an attorney is not a defense.
- C:** not guilty because the jury accepted that the witness reasonably relied on the attorney's advice.
- D:** not guilty, because he lacked the necessary mental state.

**The explanation for the answer is:**

The correct answer is D. The statute defines perjury as knowingly making a false statement while under oath. The mental state required by this statute is that the defendant know he made a false statement. If the jury believes the witness and finds that he honestly believed he had not been convicted of a crime, then they should find him not guilty of perjury because he did not knowingly make a false statement. The witness lacked the knowledge that his statement was false, and thus did not have the requisite mental state for a conviction of perjury.

Answer A is incorrect because it ignores the mental state required for the perjury charge and, even if the witness's mistake is considered a mistake of law, that mistake should not result in the witness being found guilty. Answer B is incorrect because reliance on the advice of an attorney can be a defense if it negates the "knowingly" requirement of the perjury charge. Answer C is incorrect because the witness was lacking the proper mental state; it does not matter whether his reliance on his attorney was reasonable or not. The witness did not knowingly make a false statement under oath, which is what the charge of perjury requires. He should be found not guilty.

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**Question 365 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

A defendant was driving through an apartment building area plagued with an unusually high incidence of burglaries and assaults. Acting pursuant to a police department plan to combat crime by randomly stopping automobiles in the area between midnight and 6:00 a.m., a police officer stopped the defendant and asked him for identification. As the defendant handed the officer his license, the officer directed a flashlight into the automobile and saw what appeared to be the barrel of a shotgun protruding from under the front seat on the passenger side of the car. The officer ordered the defendant from the car, searched him, and discovered marijuana cigarettes and a shotgun.

At the defendant's trial for unlawful possession of narcotics, his motion to suppress the use of the marijuana as evidence should be

**A:** sustained, because the marijuana was discovered as a result of the unlawful stopping of the defendant's automobile.

**B:** sustained, because the use of the flashlight constituted a search of the interior of the defendant's automobile without probable cause.

**C:** denied, because the officer's conduct was consistent with the established police plan.

**D:** denied, because the discovery of the gun in plain view created the reasonable suspicion necessary to justify the arrest and search of the defendant.

**The explanation for the answer is:**

The correct answer is A. Stopping a car is a seizure for the purposes of the Fourth Amendment, and generally requires a reasonable suspicion that a law is being violated. However, the Court has allowed random automobile stops if: (1) the stop is based on a neutral standard, and (2) the stop is designed to serve a purpose closely related to automobiles. See *Indianapolis v. Edmond*, 531 U.S. 32 (2000). Here the stops have a neutral standard (every automobile during a certain time frame). However, the prevention of burglaries and assaults are not closely related to automobiles. Therefore, the traffic stop was improper and evidence found as a result of the unconstitutional seizure will be suppressed.

Answer B is incorrect because the use of a flashlight to illuminate the interior of a vehicle, if the vehicle is properly stopped, does not constitute an unreasonable search, and does not need to be accompanied by probable cause. Had the defendant's vehicle been properly stopped, the officer would have been able to use the flashlight to see what was in plain view in the vehicle. Answer C is incorrect because the random stops were not designed to serve purposes closely related to automobiles and their mobility. Answer D is incorrect because it ignores the illegality of the initial seizure of the defendant's vehicle.

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**Question 366 - Criminal Law - Homicide**

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**The question was:**

In which of the following situations is the defendant most likely to be guilty of common-law murder?

- A:** During an argument in a bar, a man punches the defendant. The defendant, mistakenly believing that the man is about to stab him, shoots and kills the man.
- B:** While committing a robbery of a liquor store, the defendant accidentally drops his revolver, which goes off. The bullet strikes and kills the victim, a customer in the store.
- C:** While hunting deer, the defendant notices something moving in the bushes. Believing it to be a deer, the defendant fires into the bushes. The bullet strikes and kills the victim, another hunter.
- D:** In celebration of the Fourth of July, the defendant discharges a pistol within the city limits in violation of a city ordinance. The bullet ricochets off the street and strikes and kills the victim.

**The explanation for the answer is:**

The correct answer is B. At common law, murder is defined as the unlawful killing of another human being with malice aforethought. Murder can also be committed under the felony murder rule if the killing occurs in the commission of a violent felony. The defendant in answer B was committing the violent felony of armed robbery, which resulted in the death of the victim. Therefore, the defendant in answer B is the most likely to be found guilty of common-law murder.

Answer A is incorrect because the defendant can claim self-defense because he reasonably believed he was facing great bodily harm. Answer C is incorrect because the defendant also did not act with malice aforethought. His actions, while possibly negligent, are not a sufficient showing of the reckless indifference necessary to sustain a murder charge. Answer D is incorrect because while shooting a gun within city limits is likely negligent, it does not rise to the level of recklessness indifference necessary for murder. Thus, the most likely defendant to be found guilty of common-law murder is the defendant in answer B.

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**Question 398 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

A defendant held up a gasoline station. During the robbery he shot and killed a customer who attempted to apprehend him. The defendant was prosecuted for premeditated murder and convicted. Thereafter, he was indicted for armed robbery of the station.

Before the trial, his attorney moved to dismiss the indictment on the ground that further proceedings were unconstitutional because of the defendant's prior conviction.

The motion to dismiss should be

**A:** granted, because once the defendant was convicted on any of the charges arising out of the robbery, the prosecution was constitutionally estopped from proceeding against the defendant on any charge stemming from the same transaction.

**B:** granted, because the double jeopardy clause prohibits a subsequent trial on what is essentially a lesser included offense.

**C:** denied, because there is no constitutional requirement that all known charges against the defendant be brought in the same prosecution.

**D:** denied, because estoppel does not apply when the defendant is charged with violating two different statutes.

**The explanation for the answer is:**

C is the correct answer. There is no constitutional requirement that all known charges against a person be brought in the same prosecution. Even though both crimes are based on the same conduct, because armed robbery and murder each require at least one additional element that the other does not require, the two crimes are not considered the same offense and can be tried at separate prosecutions. A is incorrect because the double jeopardy clause prohibits a subsequent trial on lesser included offenses even if the prosecution is for an offense which arose from a "transaction" that gave rise to other offenses. B is incorrect because armed robbery is an offense separate from premeditated murder; it is not a lesser included offense. D is incorrect because collateral estoppel can apply when prosecution under both statutes would violate the prohibition against double jeopardy.

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**Question 405 - Criminal Law - Inchoate Crimes**

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**The question was:**

A man, his brother, and his cousin are charged in a common law jurisdiction with conspiracy to commit larceny. The state introduced evidence that they agreed to go to a neighbor's house to take stock certificates from a safe in the neighbor's bedroom, that they went to the house, and that they were arrested as they entered the neighbor's bedroom.

The man testified that he thought the stock certificates belonged to the cousin, that the neighbor was improperly keeping them from the cousin, and that he went along to aid in retrieving the cousin's property.

The brother testified that he suspected the man and the cousin of being thieves and joined up with them in order to catch them. He also testified that he made an anonymous telephone call to the police alerting them to the crime and that the call caused the police to be waiting for them when they walked into the neighbor's bedroom.

The cousin did not testify.

If the jury believes both the man and the brother, they should find the cousin

- A:** guilty, because there was an agreement, and the entry into the bedroom is sufficient for the overt act.
- B:** guilty, because he intended to steal.
- C:** not guilty, because a conviction would penalize him for exercising his right not to be a witness.
- D:** not guilty, because the man and the brother did not intend to steal.

**The explanation for the answer is:**

The correct answer is D. A charge of conspiracy requires an agreement between at least two individuals with the intent to achieve the objective of the agreement. Because neither the man nor the brother entered the agreement with the intent to commit the larceny, there is no conspiracy to commit the crime, and the cousin cannot be found guilty of conspiracy to commit larceny.

Answers A and B are incorrect because only the cousin entered into the agreement with the intent to achieve the objective of the agreement (larceny). Therefore, there was no true conspiracy between two or more parties. Answer C is incorrect as a misstatement of the law. A conviction would not be a penalty for failing to testify because the conviction would not be based upon an inference drawn from the cousin's silence.

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**Question 422 - Criminal Law - General Principles**

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**The question was:**

Which of the following is most likely to be found to be a strict liability offense?

- A:** A city ordinance providing for a fine of not more than \$200 for shoplifting.
- B:** A federal statute making it a felony to possess heroin.
- C:** A state statute making it a felony to fail to register a firearm.
- D:** A state statute making the sale of adulterated milk a misdemeanor.

**The explanation for the answer is:**

D is the correct answer and can be reached through the process of elimination. A strict liability crime is a light-penalty public welfare offense, which does not require that the actor have mens rea; rather, the actor need only perform the action prohibited by statute. Although for public policy concerns we impose punishment without mens rea, the punishment is usually lighter than that for a crime where intent, recklessness, or knowledge has been proved.

Answers B and C can be eliminated immediately as they are both felony crimes, which are subject to more severe penalties. Answer A is not the best answer because it is not a public welfare offense, but an ordinance against theft. This leaves choice D as the best answer. The sale of adulterated milk is clearly a matter of public welfare and as such could be subject to a strict liability statute. A, B, and C are incorrect.

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**Question 426 - Criminal Law - Other Crimes**

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**The question was:**

A student broke into a professor's office in order to look at examination questions. The questions were locked in a drawer, and the student could not find them. The student believed that looking at examination questions was a crime, but this belief was mistaken.

Charged with burglary, the defendant should be

- A:** acquitted, because he did not complete the crime, and he has not been charged with attempt.
- B:** acquitted, because what he intended to do when he broke in was not a crime.
- C:** convicted, because he had the necessary mental state and committed the act of breaking and entering.
- D:** convicted, because factual impossibility is not a defense.

**The explanation for the answer is:**

The correct answer is B. Burglary is defined as the crime of breaking and entering into a structure for the purpose of committing a felony therein. Since merely looking at examination questions is not a crime, and thus not a felony in this fact pattern's jurisdiction, the student cannot be said to have the intent to commit a crime and therefore, does not have the requisite mental state to be guilty of burglary.

Answer A is incorrect because a burglary charge does not require the actual commission of the felony. Breaking and entering with the intent to commit the felony would be sufficient. Although the student did not actually find the questions, he could have been found guilty of burglary if he had the intent to commit a felony.

Answer C is incorrect because the requisite mental state for burglary is having the intent to commit a felony or theft. The fact that the action the student intended to take was not a felony or theft, even though he believed that it was, is a proper defense to a burglary charge.

Answer D is incorrect because factual impossibility is inapplicable to this situation. It was legally impossible for the student to commit a felony, not factually impossible.



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**Question 437 - Criminal Law - Other Crimes**

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**The question was:**

An inventor, believing that a woman suffered from arthritis, told her that for \$100 he could cure her with a device he had invented. The device was a large box with a series of electric light bulbs along the sides. The woman, after examining the device, agreed to take the treatment, which consisted of placing her hands inside the box for several ten-minute periods. The woman gave the inventor \$100 and went through the treatment.

The inventor is charged with obtaining money by false pretenses. Each of the following, if true, will absolve the inventor of guilt for obtaining money by false pretenses *EXCEPT*:

- A:** The inventor honestly believed that the device would cure arthritis, but his belief was unreasonable.
- B:** The woman honestly believed that the device would cure arthritis, but her belief was unreasonable.
- C:** The inventor was playing a practical joke on the woman and intended to return the money.
- D:** The woman was an undercover police officer and did not believe that the device would cure arthritis.

**The explanation for the answer is:**

The correct answer is B. At common law, false pretenses is defined as obtaining possession and title of another's property through fraud or misrepresentation while intending to steal the property. B is correct because a victim's unreasonable belief is not an element of false pretenses. Hence, the woman's unreasonable belief in the inventor's false statement will not absolve the inventor of false pretenses.

Answer A is incorrect because if the inventor thought his device cured arthritis, he did not knowingly mislead the woman and is not guilty of false pretenses. Answer C is incorrect because if the inventor did not intend to steal the woman's money, he is not guilty of false pretenses. Answer D is incorrect because if the inventor did not deceive the woman into relinquishing the property, the inventor is not guilty of false pretenses.

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**Question 449 - Criminal Law - Other Crimes**

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**The question was:**

A husband and wife were walking to their car one evening after having seen a movie. As they were passing a dark alleyway, the defendant leaped out brandishing a gun. He pushed the wife against the wall of a nearby building, held the gun to her head, and demanded money from the husband. The husband handed over his cash. The defendant grabbed the cash and ran away.

Which of the following, listed in descending order of seriousness, is the most serious crime for which the defendant may be convicted?

- A:** Robbery of the husband
- B:** Larceny from the husband
- C:** Assault on the husband and wife
- D:** Assault on the wife

**The explanation for the answer is:**

The correct answer is A. The most serious offense that the defendant may be convicted of is robbery of the husband. Robbery is the taking, by force or threat of force, of personal property of another with the intent to permanently deprive the owner of the property. In this question, the defendant, having the clear intent to deprive the husband of his money, used the threat of force against the wife to obtain the property. The threatened force need not be toward the owner of the property; it may also be toward another party. Answer A is the most serious offense listed and is correct.

Answer B is incorrect because it is less serious than the robbery and would be merged into the robbery charge. Answer C is incorrect because it is less serious than the robbery charge, and the assault on the husband would merge into the robbery charge. Answer D is incorrect because it is less serious than the robbery charge. Although the defendant committed all of the listed offenses, robbery is the most serious offense.

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**Question 451 - Criminal Law - General Principles**

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**The question was:**

The defendant and her friend went into a drugstore, where the defendant reached into the cash register and took out \$200. The store owner came out of a back room, saw what had happened, and told the defendant to put the money back. The friend then took a revolver from under his coat and shot and killed the store owner.

The defendant claims that the store owner owed her \$200 and that she went to the drugstore to try to collect the debt. She said that she asked her friend to come along just in case the store owner made trouble but that she did not plan on using any force and did not know that her friend was armed.

If the defendant is prosecuted for murder on the basis of being an accessory to her friend in committing a murder and the jury believes her claim, she should be found

- A:** guilty, because in firing the shot her friend was trying to help her.
- B:** guilty, because she and her friend were acting in concert in a dangerous undertaking.
- C:** not guilty, because she had no idea that her friend was armed and she did not plan to use force.
- D:** not guilty, because she was exercising self-help and did not intend to steal.

**The explanation for the answer is:**

The correct answer is C. The defendant was not an accessory to her friend and does not bear criminal responsibility for her actions. To be an accessory to a criminal charge, the defendant must have the intent that the crime be committed and aid and abet in the commission of the offense. If the jury believes the defendant, then the defendant did not have the intent to commit murder and did not aid, abet, or encourage her friend in the murder. The defendant did not know her friend was armed, did not plan to use force, and did not have the intent that a murder occur.

Answer A is incorrect because the friend's motive for the murder is immaterial in determining the defendant's accountability as an accessory. Unless the defendant had the requisite intent and aided and abetted in the offense, she does not bear criminal responsibility for her friend's actions, regardless of his reason for pulling the trigger. Answer B is incorrect because it misstates the requirements for criminal responsibility as an accessory; the defendant did not aid and abet her friend in the murder, and, if the jury believes the defendant's claim, the undertaking was not necessarily dangerous. Answer D is incorrect because the defendant's intent to steal would only be relevant under the felony-murder application and not when the defendant is charged as an accessory. If the jury believes the defendant, then she did not have the intent that the crime be committed, did not aid and abet in the commission, and should be found not guilty of murder.

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**Question 451 - Criminal Law - General Principles**

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**The question was:**

The defendant and her friend went into a drugstore, where the defendant reached into the cash register and took out \$200. The store owner came out of a back room, saw what had happened, and told the defendant to put the money back. The friend then took a revolver from under his coat and shot and killed the store owner.

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If the defendant is prosecuted for murder on the basis of being an accessory to her friend in committing a murder and the jury believes her claim, she should be found

- A:** guilty, because in firing the shot her friend was trying to help her.
- B:** guilty, because she and her friend were acting in concert in a dangerous undertaking.
- C:** not guilty, because she had no idea that her friend was armed and she did not plan to use force.
- D:** not guilty, because she was exercising self-help and did not intend to steal.

**The explanation for the answer is:**

The correct answer is C. The defendant was not an accessory to her friend and does not bear criminal responsibility for her actions. To be an accessory to a criminal charge, the defendant must have the intent that the crime be committed and aid and abet in the commission of the offense. If the jury believes the defendant, then the defendant did not have the intent to commit murder and did not aid, abet, or encourage her friend in the murder. The defendant did not know her friend was armed, did not plan to use force, and did not have the intent that a murder occur.

Answer A is incorrect because the friend's motive for the murder is immaterial in determining the defendant's accountability as an accessory. Unless the defendant had the requisite intent and aided and abetted in the offense, she does not bear criminal responsibility for her friend's actions, regardless of his reason for pulling the trigger. Answer B is incorrect because it misstates the requirements for criminal responsibility as an accessory; the defendant did not aid and abet her friend in the murder, and, if the jury believes the defendant's claim, the undertaking was not necessarily dangerous. Answer D is incorrect because the defendant's intent to steal would only be relevant under the felony-murder application and not when the defendant is charged as an accessory. If the jury believes the defendant, then she did not have the intent that the crime be committed, did not aid and abet in the commission, and should be found not guilty of murder.

**Question 466 - Criminal Law - Homicide**

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**The question was:**

Which of the following is *LEAST* likely to be the underlying felony in a prosecution for felony murder?

- A:** Arson
- B:** Manslaughter
- C:** Attempted rape
- D:** Burglary

**The explanation for the answer is:**

The correct answer is B. At common law, the underlying felony in a prosecution for felony murder must be sufficiently different from the facts and circumstances of the murder so as to not merge with the murder charge. Manslaughter is a lesser-included offense of murder, and has many, if not all, of the same elements as murder, and will merge into the murder offense if it is used as the underlying felony for felony murder. Thus, manslaughter will not be a proper underlying felony for a prosecution for felony murder.

Answers A, C, and D are incorrect because, at common law, arson, attempted rape, and burglary are all felonies, are all inherently dangerous enough for felony murder to apply, and will all not merge into the murder offense. Manslaughter is the least likely charge to be an underlying felony in a prosecution for felony murder.

**Question 466 - Criminal Law - Homicide**

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**The question was:**

Which of the following is *LEAST* likely to be the underlying felony in a prosecution for felony murder?

- A:** Arson
- B:** Manslaughter
- C:** Attempted rape
- D:** Burglary

**The explanation for the answer is:**

The correct answer is B. At common law, the underlying felony in a prosecution for felony murder must be sufficiently different from the facts and circumstances of the murder so as to not merge with the murder charge. Manslaughter is a lesser-included offense of murder, and has many, if not all, of the same elements as murder, and will merge into the murder offense if it is used as the underlying felony for felony murder. Thus, manslaughter will not be a proper underlying felony for a prosecution for felony murder.

Answers A, C, and D are incorrect because, at common law, arson, attempted rape, and burglary are all felonies, are all inherently dangerous enough for felony murder to apply, and will all not merge into the murder offense. Manslaughter is the least likely charge to be an underlying felony in a prosecution for felony murder.

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**Question 480 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

A defendant is indicted in state court for bribing a public official. During the course of the investigation, police had demanded and received from the defendant's bank the records of the defendant's checking account for the preceding two years. The records contained incriminating evidence.

On the basis of a claim of violation of his constitutional rights, the defendant moves to prevent the introduction of records in evidence. His motion should be

**A:** granted, because a search warrant should have been secured for seizure of the records.

**B:** granted, because the records covered such an extensive period of time that their seizure unreasonably invaded the defendant's right of privacy.

**C:** denied, because the potential destructibility of the records, coupled with the public interest in proper enforcement of the criminal laws, created an exigent situation justifying the seizure.

**D:** denied, because the records were business records of the bank in which the defendant had no legitimate expectation of privacy.

**The explanation for the answer is:**

The correct answer is D. The records sought were the records of the bank, not the defendant, and the Supreme Court has held that a person has no reasonable expectation of privacy in the bank records of their account. See *U.S. v. Miller*. Answer A is incorrect because, since there is no reasonable expectation of privacy in records that belong to the bank, there is no constitutional requirement that the police obtain a search warrant before the records can be seized. Answer B is incorrect because the period of time of the records seized is of little or no relevance to the determination of the propriety of the seizure itself. Because the defendant did not have a reasonable expectation of privacy in his bank records, obtaining those records, even for the previous two years, did not violate his rights. Answer C is incorrect because it misstates the reason the records can be seized. There were no exigent circumstances to authorize the seizure of the bank records. However, the seizure is proper because the defendant did not have a reasonable expectation of privacy.

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**Question 497 - Criminal Law - Inchoate Crimes**

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**The question was:**

A statute in a jurisdiction makes it a crime to sell ammunition to a minor (defined as a person under the age of eighteen). The courts have interpreted this statute as creating a strict liability offense that does not require knowledge of the age of the purchaser and as creating vicarious liability. A minor, who was sixteen years old, but looked four or five years older, entered a store and asked a clerk for a box of .22 caliber shells. The store owner had instructed her employees not to sell ammunition to minors. The clerk asked the minor his age. The minor said he was twenty. The clerk then placed a box of shells on the counter and asked, "Anything else?" The minor said that was all he wanted but then discovered he did not have enough money to pay for the shells, so the clerk put the box back onto the shelf.

If the owner of the store is charged with attempting to violate the statute, her best argument would be that

- A:** it was impossible for the sale to have occurred.
- B:** she had strictly instructed her employees not to sell ammunition to minors.
- C:** the minor lied about his age.
- D:** the clerk did not have the mental state needed for attempt.

**The explanation for the answer is:**

The correct answer is D. To be convicted of attempt, a person must have the intent that the crime be committed, and take a substantial step toward the commission of the offense. In this case, the clerk did not have the intent to sell ammunition to minors, and the store owner, as his accessory, should be found not guilty of attempting to sell ammunition to minors.

Answer A is incorrect because it was not, in fact, impossible for the offense to occur and only legal impossibility is a defense to an attempt charge. Although the sale of the ammunition was not completed, that is insufficient for a showing of impossibility, and factual impossibility is not a defense to an attempt charge.

Answer B is incorrect because, even though she instructed her employees not to sell ammunition to minors, the crime is one of strict liability. For strict liability crimes, it does not matter what the store owner's, or the clerk's as her agent, state of mind was. If they sold ammunition to a minor, they would be guilty of the offense. However, for a charge of attempt, there must exist the intent to commit the offense.

Answer C is incorrect because, once again, the crime is one of strict liability. The minor's lie about his age, the clerk's belief of his age, or whether that belief was reasonable, are all irrelevant for strict liability offenses. The store owner's best argument for acquittal would be that, since the clerk had no intent to commit the crime, there can be no proper attempt charge.



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**Question 501 - Criminal Law - Homicide**

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**The question was:**

A husband decided to kill his wife by poisoning her. He asked his friend, a pharmacist, to obtain some Curare, a deadly poison, and to give it to him without recording the transaction. Because the pharmacist suspected the husband's motive, she supplied the husband with a small quantity of Marvane, an antibiotic, instead of Curare. Marvane is harmless if administered in small quantities, except for the less than 1 percent of the population who are allergic to the drug. The husband injected his wife with Marvane while she slept. She was allergic to the drug and died from the injection. The pharmacist was distraught and confessed the entire affair to the police, explaining that she had failed to report the husband's conduct to the authorities because she feared that it would end their friendship if she did.

In a common-law jurisdiction, the husband is guilty of

- A:** murder only.
- B:** murder and conspiracy.
- C:** attempted murder only.
- D:** attempted murder and conspiracy.

**The explanation for the answer is:**

The correct answer is A. Murder is causing the death of a human being with malice aforethought. The husband, with the intent to kill his wife, poisoned her, which was an immediate, actual, and proximate cause of her death. Although the wife's death was, unknown to the husband, unlikely, the husband's actions did cause her death, and he did so intentionally and with malice aforethought. The husband is guilty of murder.

Answer B is incorrect, because, since the pharmacist did not have the intent that the crime be committed, there was no agreement for the commission of the offense, and, thus, no conspiracy. The husband cannot be convicted of conspiracy. Answer C is incorrect because not only did the husband attempt to kill his wife, he did kill his wife. He did so in an unlikely fashion, but he did cause his wife's death, and once the crime was completed, the attempt charge merged into the murder charge. Answer D is incorrect because there was no conspiracy, and the attempted murder charge merged into the murder charge. The husband caused the death of his wife with malice aforethought and is guilty of murder.

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**Question 505 - Criminal Law - Other Crimes**

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**The question was:**

During the night, the defendant broke into a house with the intention of stealing a typewriter. On not finding a typewriter, she became angry, poured lighter fluid onto a couch, and set it on fire. The flames destroyed the couch and also burned a portion of the ceiling in the room.

In a common-law jurisdiction, the defendant is guilty of

- A:** burglary only.
- B:** arson only.
- C:** burglary and attempted arson.
- D:** burglary and arson.

**The explanation for the answer is:**

The correct answer is D. Burglary is defined at common law as the breaking and entering into a dwelling at night with the intent to commit a felony therein. Arson is defined at common law as the malicious or intentional burning of the dwelling of another. The defendant broke and entered into a dwelling, with the intention of stealing a typewriter, so she is guilty of burglary. It is irrelevant to the charge of burglary whether she actually found the typewriter or not; merely having the intent is sufficient. The defendant also intentionally burned the dwelling place of another, so she is guilty of arson. The burning was intentional, and the burning of the portion of the ceiling is sufficient damage to the structure to sustain a conviction for arson.

Answer A is incorrect because it ignores the fact that the defendant committed arson. Answer B is incorrect because it ignores the fact that the defendant committed burglary. Answer C is incorrect because there was actual burning damage to the structure of the dwelling, and the attempted arson merged into the offense of arson. The defendant committed both burglary and arson.

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**Question 510 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

A defendant broke into a victim's house one night. As he started to stuff silverware into a sack, he was surprised by the victim, who had arrived home earlier than usual. The defendant struck the victim on the head with a candlestick and tied her up. He finished filling his sack and left.

The police discovered the victim several hours later and rushed her to the hospital. The defendant was apprehended by the police early the following morning with the loot still in his possession. He was taken to police headquarters, given Miranda warnings, and asked if he wished to make a statement about the prior evening's events. The police did not mention that the victim had been seriously injured and was in the hospital. The defendant said he understood his rights and was willing to talk. He then admitted that he committed the burglary of the victim's house. The following day, the victim died from injuries caused by the blow to her head.

If, at the defendant's trial for murder, the defendant moves to prevent introduction of the confession into evidence, his motion should most probably be

- A:** denied, because failure of the police to advise the defendant of the victim's condition was harmless error since felony murder does not require intent to kill or injure.
- B:** denied, because the defendant's waiver of his rights did not depend upon the nature of the charges that were later filed against him.
- C:** granted, because the defendant could not make a knowing and intelligent waiver unless he had information concerning the victim's condition.
- D:** granted, because the use of a confession to burglary in a prosecution for murder violates due process where the police withheld information about the potential seriousness of the offense.

**The explanation for the answer is:**

The correct answer is B. Because the police had Mirandized the defendant, who voluntarily confessed during the custodial interrogation, his motion to suppress should be denied. Information on the nature of the charge and the condition of the victim is irrelevant to determining if a defendant's confession is admissible.

Answer A is incorrect because officers do not have to advise the defendant of the victim's health for the statement to be voluntary. Answer C is incorrect because, again, officers do not have to inform a defendant of a victim's condition for a confession to be voluntary. Answer D is incorrect because officers need not inform a defendant of a victim's condition or present the defendant with the entire case against him for a confession to be voluntary.

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**Question 519 - Criminal Law - General Principles**

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**The question was:**

The defendant was charged with the murder of his wife. In his defense, he testified that at the time he killed her he believed that his wife was planning to destroy the world by detonating a massive explosive device that she had developed and built in the basement of their home. He further testified that he had tried many times to dissuade his wife from her plan and had tried to destroy devices that she stored in the basement. She had, he testified, foiled his efforts by, on two occasions, signing papers for his hospitalization, which lasted for a brief period each time. He said that he had concluded that the only way to prevent her scheme was to kill her and that he had become so obsessed with the importance of doing so that he could think of nothing else. One day when he saw her open the door to the basement he lunged at her and pushed her down the steps to her death.

The best defense raised by the defendant's testimony is

- A:** lack of the requisite mental element.
- B:** lack of the requisite act element.
- C:** insanity.
- D:** belief that the situation justified his actions.

**The explanation for the answer is:**

The correct answer is C. The defendant's best defense to a murder charge is that he was insane at the time of the killing. The defendant's testimony shows that at the time of the killing, he was laboring under such a defect of reason, from disease of the mind, as not to know that what he was doing was wrong. The defendant's testimony indicates he had been involuntarily committed twice, was delusional and obsessed, and thought his actions were necessary to save the world. His best defense is insanity.

Answer A is incorrect because the defendant did have the requisite mental state for murder; he had the intent to kill his wife. Even though, in his delusions, he thought it was necessary to save the world, he still intended to kill his wife, so he did have the requisite mental state for murder. Answer B is incorrect because the defendant did meet the requisite act element; he caused her death by pushing her down the steps. Answer D is incorrect because belief alone that he was acting in defense of the planet is insufficient to justify killing his wife. That belief, and the force used, must be reasonable. In light of the unreasonableness of the defendant's delusions that his wife was going to destroy the world, the defendant's defense of others claim would probably fail. The defendant's best defense to the charge of murder is that he was insane at the time of the murder.

**Question 529 - Criminal Law - Homicide**

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**The question was:**

The defendant and his friend were fooling around with a pistol in the friend's den. The defendant aimed the pistol in the friend's direction and fired three shots slightly to the friend's right. One shot ricocheted off the wall and struck his friend in the back, killing him instantly.

The most serious crime of which the defendant can be convicted is

- A:** murder.
- B:** voluntary manslaughter.
- C:** involuntary manslaughter.
- D:** assault with a dangerous weapon.

**The explanation for the answer is:**

The correct answer is A. At common law, murder is defined as the unlawful killing of another human with malice aforethought. By firing multiple shots from a pistol extremely close to his friend's head, the defendant was acting with reckless indifference to an unjustifiably high risk to human life. This reckless indifference would qualify as malice aforethought, and would support a murder conviction. Because the defendant's actions could support a murder conviction, B, C, and D are incorrect as they are less serious offenses.

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**Question 539 - Criminal Law - Homicide**

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**The question was:**

A building owner decided to destroy his dilapidated building in order to collect the insurance money. He hired a friend to burn down the building. The friend broke into the building and carefully searched it to make sure no one was inside. He failed, however, to see a vagrant asleep in an office closet. He started a fire. The building was destroyed, and the vagrant died from burns a week later. Two days after the fire, the building owner filed an insurance claim in which he stated that he had no information about the cause of the fire.

If the building owner is guilty of a felony-murder, it is because the vagrant's death occurred in connection with the felony of

- A:** arson.
- B:** fraud.
- C:** conspiracy.
- D:** burglary.

**The explanation for the answer is:**

The correct answer is A. Arson is an inherently dangerous felony and may serve as the basis for a felony-murder conviction. Because the friend intentionally burnt the building of another, an arson was completed (as the majority of states no longer require that the burnt building be a dwelling). As an accomplice to the arson, the building owner would be responsible for the friend's burning of the building and the resulting death.

The felony-murder doctrine only applies to the crimes of burglary, arson, rape, robbery, and kidnapping (commonly remembered with the acronym BARRK). Therefore, B and C are incorrect. D is incorrect because the friend entered the building with permission from the owner so there was no "breaking" and thus no burglary.

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**Question 552 - Criminal Law - Homicide**

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**The question was:**

A two-year-old child became ill with meningitis. Her parents were members of a group who believed fervently that if they prayed enough, God would not permit their child to die. Accordingly, they did not seek medical aid for the child and refused all offers of such aid. They prayed continuously. The child died of the illness within a week.

The parents are charged with murder in a common-law jurisdiction.

Their best defense to the charge is that

- A:** they did not intend to kill or to harm their child.
- B:** they were pursuing a constitutionally protected religious belief.
- C:** their child's death was not proximately caused by their conduct.
- D:** they neither premeditated nor deliberated.

**The explanation for the answer is:**

The correct answer is A. The parents' best defense to the murder charge is that they did not act with the intent to kill or harm their child, and therefore they did not have malice aforethought necessary for a murder conviction. Failure to seek medical attention for an illness is generally insufficient for the finding of malice aforethought, so the parents, since they did not intend to kill or harm their child, in their criminal negligence may have committed involuntary manslaughter, but not murder.

Answer B is incorrect because acting pursuant to constitutionally protected religious beliefs will not serve as a defense to an otherwise criminal act. Answer C is incorrect because they owed a duty of care to their child, and her death was a foreseeable consequence of their refusal to seek medical treatment. Their inaction contributed to the illness, and was thus a "proximate" cause of their child's death. Answer D is incorrect because it misstates the requirements for a murder charge at common law. At common law, murder is defined as the unlawful killing of another human being with malice aforethought, not with premeditation and deliberation. The parents' best defense to the charge of murder is that their lack of intent to kill or harm their child means they did not have the requisite malice aforethought for a murder conviction.

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**Question 564 - Criminal Law - Other Crimes**

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**The question was:**

A defendant asked his girlfriend to spend a weekend with him at his apartment and promised her they would get married on the following Monday. The girlfriend agreed and also promised the defendant that she would not tell anyone of their plans. Unknown to the girlfriend, the defendant had no intention of marrying her. After the girlfriend came to his apartment, the defendant told his girlfriend he was going for cigarettes. He called his girlfriend's father and told him that he had his daughter and would kill her if he did not receive \$100,000. The defendant was arrested on Sunday afternoon when he went to pick up the \$100,000. The girlfriend was still at the apartment and knew nothing of the defendant's attempt to get the money.

The defendant is guilty of

- A:** kidnapping.
- B:** attempted kidnapping.
- C:** kidnapping or attempted kidnapping but not both.
- D:** neither kidnapping nor attempted kidnapping.

**The explanation for the answer is:**

The correct answer is D. Kidnapping is defined as the movement of a human being against that person's will. Attempted kidnapping requires that the defendant have the intent to commit a kidnapping and take a substantial step toward the commission of kidnapping. In this fact situation, the girlfriend's actions, although done under a fraudulent belief that the defendant wanted to marry her, were never against her will. She voluntarily went to his apartment and voluntarily remained there. The defendant is not guilty of kidnapping or of attempted kidnapping. Although there are other crimes the defendant may be charged with, he cannot be charged with kidnapping or attempted kidnapping. Answers A, B, and C are incorrect.



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**Question 572 - Criminal Law - General Principles**

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**The question was:**

The general manager and chief executive officer of a knitting mill delegated all operational decision making to the supervising manager of the mill. The child labor laws in the jurisdiction provide, "It is a violation of the law for one to employ a person under the age of 17 years for full-time labor." Without the chief executive officer's knowledge, the supervising manager hired a number of 15- and 16-year olds to work at the mill full time. He did not ask their ages and they did not disclose them. The supervising manager could have discovered their ages easily by asking for identification, but he did not do so because he was not aware of the law and believed that company policy was to hire young people.

If the statute is interpreted to create strict liability and the supervising manager is charged with violating it, he is

- A:** guilty, because he should have inquired as to the ages of the children.
- B:** guilty, because he hired the children.
- C:** not guilty, because the knitting mill, not the supervising manager, is the employer of the children.
- D:** not guilty, because he believed he was following company policy and was not aware of the violation.

**The explanation for the answer is:**

The correct answer is B. Since the statute is interpreted to create strict liability, there is no mens rea requirement before the supervising manager can be found guilty of the offense. Because the supervising manager hired the children, he is guilty.

Answer A is incorrect because, although the supervising manager should have inquired into the age of the children, answer A ignores the fact this is a strict liability offense. The supervising manager did not have to inquire into the ages of the children to be found guilty. Answer C is incorrect because the supervising manager was responsible for the hiring of the children by the company. He had the intent to hire the children, and did hire the children, and thus is criminally responsible for the employment of the children. Answer D is incorrect because a company's policy will not excuse criminal conduct and, because this is a strict liability offense, the supervising manager did not need to be aware that his actions were a violation. The supervising manager, because he hired the children, is guilty of the strict liability offense in the statute.

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**Question 578 - Criminal Law - Other Crimes**

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**The question was:**

A new lawyer has three clients, all of whom are indigent. To improve the appearance of his office, he decided to purchase some new furniture and to pay for it out of future earnings. Wearing an expensive suit borrowed from a friend, the lawyer went to a furniture store and asked to purchase on credit a desk and various other items of furniture. The lawyer told the store owner that he was a very able lawyer with a growing practice and that he expected to do very well in the future. The store owner agreed to sell him the items on credit, and the lawyer promised to make monthly payments of \$800. The lawyer has never had an income from his practice of more than \$150 a month. The lawyer's business did not improve, and he did not make any payments to the furniture store. After three months, the store owner repossessed the items.

If the lawyer is charged with obtaining property by false pretenses, his best argument for being NOT guilty would be that

- A:** even if he misled the store owner, he intended to pay for the items.
- B:** he did not misrepresent any material fact.
- C:** the store owner got his property back and so suffered no harm.
- D:** the store owner could have asked for payment in full at the time of the purchase.

**The explanation for the answer is:**

The correct answer is B. Obtaining property by false pretenses requires the transfer of title to the property through fraud or false statements. The lawyer, when he obtained the property, did not misrepresent any material fact, and so did not obtain the property through fraud or false statements. The lawyer honestly believed his business would grow and, although his payment schedule was over his income level, he did not perpetrate fraud on the owner. The lawyer's best argument for being not guilty is that he did not obtain the property as the result of knowingly fraudulent misrepresentations of fact.

Answer A is incorrect because guilt under the charge of false pretenses does not require that the lawyer never intend to pay for the furniture. If the owner gave over title and possession of property based on material misrepresentations, it does not matter if the lawyer meant to pay for it; he would still be guilty of false pretenses. Answer C is incorrect because the eventual return of the property obtained is not a defense to a charge of false pretenses. In addition, the owner did suffer the loss of the furniture for three months and the loss of the payments for the furniture, so he did, in fact, suffer harm. Answer D is incorrect because the mere fact that the store owner could have arranged for a different payment plan or for the total payment to be made up front is not a defense to the charge of false pretenses. The lawyer's best argument for being not guilty of false pretenses is that he did not misrepresent any material fact.

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**Question 594 - Criminal Law - Inchoate Crimes**

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**The question was:**

A jurisdiction has the following decisional law on questions of principal and accomplice liability:

CASE A: The defendant, a hardware store owner, sold several customers an item known as "SuperTrucker," which detects police radar and enables speeders to avoid detection. When one of the devices broke down and the speeder was arrested, he confessed that he often sped, secure in the knowledge that his "SuperTrucker" would warn him of police radar in the vicinity. Held: The defendant guilty as an accomplice to speeding.

CASE B: The defendant told a man that the defendant had stored some stereo equipment in a self-storage locker. He gave the man a key and asked the man to pick up the equipment and deliver it to the defendant's house. The man complied, and removed the equipment from the locker, using the key. In fact, the equipment belonged to the defendant's neighbor, whose locker key the defendant had found in the driveway. Held: The defendant guilty as an accomplice to burglary.

CASE C: A city council member accepted a bribe from the defendant in exchange for his vote on the defendant's application for a zoning variance. A statute prohibits the taking of bribes by public officials. Held: The defendant not guilty as an accomplice to the city council member's violation of the bribery statute.

CASE D: The defendant, an innkeeper, sometimes let his rooms to prostitutes, whom he knew to be using the rooms to ply their trade. He charged the prostitutes the same price as other guests at his inn. Held: The defendant not guilty as an accomplice to prostitution.

In this jurisdiction, conviction for statutory rape requires proof of the defendant's knowledge that the victim is underage. The defendant, who knew that a girl was underage, encouraged a friend, who was unaware of the girl's age, to have sex with her. The defendant has been charged as an accomplice to statutory rape.

He should be

- A:** convicted on the authority of Case A.
- B:** convicted on the authority of Case B.
- C:** acquitted on the authority of Case C.
- D:** acquitted on the authority of Case D.

**The explanation for the answer is:**

The correct answer is B. Case B illustrates the rule that a defendant who provides substantial encouragement or assistance to an unwitting third-person in the commission of a crime can be liable as an accomplice to the crime. However, the defendant must intend that the aid or encouragement will assist in the commission of a crime. In the present case the defendant encouraged the friend to have sex with an underage girl. The defendant intended that his words would encourage the friend to commit statutory rape. Therefore, case B is the proper authority, and the defendant should be convicted as an accomplice.

Case A illustrates the rule that a defendant is guilty as an accomplice if he provides an individual with the means to commit an offense and the assistance could not be for a legitimate purpose. The defendant did not provide the means to commit statutory rape, he only encouraged the man, so case A is not the proper authority. Case C presents an instance where the person being charged as an accomplice is not the person the statute intended to penalize. The defendant in the present case facilitated statutory rape, and is the type of person the statute was meant to cover. Thus, case C is not a proper source of authority. Case D illustrates the rule that a defendant would not be guilty as an accomplice for providing a means for an offense to occur when there is a legitimate purpose for providing the good or service. The defendant did not provide the man with the means to commit statutory rape, so case D is not the proper authority.

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**Question 619 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

Police received information from an undercover police officer that she had just seen two men (whom she described) in a red pickup truck selling marijuana to schoolchildren near the city's largest high school. A few minutes later, two police officers saw a pickup truck fitting the description a half block from the high school. The driver of the truck matched the description of one of the men described by the undercover officer.

The only passenger was a young woman who was in the back of the truck. The police saw her get out and stand at a nearby bus stop. They stopped the truck and searched the driver. In the pocket of the driver's jacket, the police found a small bottle of pills that they recognized as narcotics. They then broke open a locked toolbox attached to the flatbed of the truck and found a small sealed envelope inside. They opened it and found marijuana. They also found a quantity of cocaine in the glove compartment.

After completing their search of the driver and the truck, the police went over to the young woman and searched her purse. In her purse, they found a small quantity of heroin. Both the driver and the young woman were arrested and charged with unlawful possession of narcotics.

If the driver moves to suppress the use as evidence of the marijuana and cocaine found in the search of the truck, the court should

- A:** grant the motion as to both the marijuana and the cocaine.
- B:** grant the motion as to the marijuana but deny it as to the cocaine.
- C:** deny the motion as to the marijuana but grant it as to the cocaine.
- D:** deny the motion as to both the marijuana and the cocaine.

**The explanation for the answer is:**

The correct answer is D. Under the automobile exception to the warrant requirement of the Fourth Amendment, the police may properly search a vehicle, including any containers contained therein, that might contain the evidence they seek without first obtaining a warrant. Therefore, if the police have reason to believe there is illegal contraband in the car, they can search the entire car for the contraband.

Here, a police officer reported that the driver of the vehicle was selling marijuana, and gave a description of the truck and the driver. This information gave the two police officers the probable cause needed to search a vehicle matching the description. The automobile exception allows the warrantless search of the vehicle, of any container in the vehicle which may contain the evidence sought, and the belongings of the people inside the vehicle. The police were thus constitutionally permitted to search the glove compartment, the locked toolbox, and the sealed envelope for more evidence of marijuana. Answers A, B, and C are incorrect because the automobile exception allows for a warrantless search of the entire car and any compartment that might contain the marijuana as long as there is probable cause for the search.

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**Question 624 - Criminal Law - General Principles**

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**The question was:**

A young woman joined a neighborhood gang. At a gang meeting, as part of the initiation process, the leader ordered the young woman to kill a member of a rival gang. The young woman refused, saying she no longer wanted to be part of the group. The leader, with the approval of the other members, told the young woman that she had become too involved with the gang to quit and that they would kill her if she did not accomplish the murder. The next day the young woman shot a member of a rival gang to death while the rival gang member was sitting on his motorcycle outside a restaurant.

The young woman is charged with first-degree murder. First-degree murder is defined in the jurisdiction as the intentional premeditated killing of another. Second-degree murder is any other murder at common law.

If the young woman killed the rival gang member because of the threat to her own life, the young woman should be found

- A:** not guilty, because of the defense of duress.
- B:** not guilty, because of the defense of necessity.
- C:** guilty of first-degree murder.
- D:** guilty of second-degree murder.

**The explanation for the answer is:**

The correct answer is C. The young woman, intentionally and with premeditation, shot and killed the rival gang member, and should be convicted of first degree murder. Since the young woman had known she was to commit this murder the day before and, having armed herself with a gun, had gone to the restaurant with the intent to kill the rival gang member, and did, in fact, kill the rival gang member, the young woman is guilty of intentional and premeditated murder in the first degree.

Answer A is incorrect because duress does not provide a defense to a murder charge; the law recognizes no duress so severe that it will mitigate the intentional killing of another human being. Answer B is incorrect because necessity is not available as a defense when the charge is murder; there is no necessity great enough to mitigate the intentional killing of another human being. Answer D is incorrect because the young woman intentionally, and with premeditation, killed the rival gang member, and is thus guilty of first degree murder and not second degree murder. Since the young woman killed the rival gang member intentionally and with premeditation, and the defenses of duress and necessity cannot be raised to a charge of murder, the young woman is guilty of first degree murder.

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The correct answer is C. The young woman, intentionally and with premeditation, shot and killed the rival gang member, and should be convicted of first degree murder. Since the young woman had known she was to commit this murder the day before and, having armed herself with a gun, had gone to the restaurant with the intent to kill the rival gang member, and did, in fact, kill the rival gang member, the young woman is guilty of intentional and premeditated murder in the first degree.

Answer A is incorrect because duress does not provide a defense to a murder charge; the law recognizes no duress so severe that it will mitigate the intentional killing of another human being. Answer B is incorrect because necessity is not available as a defense when the charge is murder; there is no necessity great enough to mitigate the intentional killing of another human being. Answer D is incorrect because the young woman intentionally, and with premeditation, killed the rival gang member, and is thus guilty of first degree murder and not second degree murder. Since the young woman killed the rival gang member intentionally and with premeditation, and the defenses of duress and necessity cannot be raised to a charge of murder, the young woman is guilty of first degree murder.

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**Question 639 - Criminal Law - General Principles**

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**The question was:**

The owner of an old warehouse decided to destroy the warehouse because the taxes on the structure exceeded the income that he could receive from it. He crept into the building in the middle of the night with a can of gasoline and a fuse and set the fuse timer for 30 minutes. He then left the building. The fuse failed to ignite and the building was not harmed.

Arson is defined in this jurisdiction as "the intentional burning of any building or structure of another, without the consent of the owner." The warehouse owner believed, however, that burning one's own building was arson, having been so advised by his lawyer.

Has the warehouse owner committed attempted arson?

**A:** Yes, because factual impossibility is no defense.

**B:** Yes, because a mistake of law, even on the advice of an attorney, is no defense.

**C:** No, because his mistake negated a necessary mental state.

**D:** No, because even if his actions had every consequence he intended, they would not have constituted arson.

**The explanation for the answer is:**

The correct answer is D. Because the warehouse owner, even if everything went as he had intended, could not have committed the crime of arson, he cannot be convicted of committing attempted arson. Arson requires that the building being burned be owned by "another" and that it be burned without the consent of the owner. Because he owned the building and consented to the burning, it was legally impossible for him to commit the crime of arson. Legal impossibility is a defense to an attempt charge, so the owner did not commit attempted arson.

Answer A is incorrect because, although factual impossibility is not a defense, the owner also had a legal impossibility claim that served as a defense to the attempt charge. Answer B is incorrect because mistake of law can be a defense, and it confuses the mistake of law defense to a criminal charge with the legal impossibility defense to an attempt charge. It was impossible for the owner to commit the crime of arson, regardless of whether the owner made the mistake of believing it was. This kind of legal impossibility is a defense to a charge of attempted arson. Answer C is incorrect because the owner's "mistake" did not negate a necessary mens rea. The owner did have the requisite mental state for arson, which is intentionally burning a building. However, he could not be convicted of attempted arson, because the building he intended to burn was his own.

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**Question 648 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

Suspecting that a defendant had slain his wife, police detectives persuaded one of the defendant's employees to remove a drinking glass from the defendant's office so that it could be used for fingerprint comparisons with a knife found near the body. The fingerprints matched. The prosecutor announced that he would present comparisons and evidence to the grand jury. The defendant's lawyer immediately filed a motion to suppress the evidence of the fingerprint comparisons to bar its consideration by the grand jury, contending that the evidence was illegally acquired.

The motion should be

- A:** granted, because, if there were no probable cause, the grand jury should not consider the evidence.
- B:** granted, because the employee was acting as a police agent and his seizure of the glass without a warrant was unconstitutional.
- C:** denied, because motions based on the exclusionary rule are premature in grand jury proceedings.
- D:** denied, because the glass was removed from the defendant's possession by a private citizen and not a police officer.

**The explanation for the answer is:**

The correct answer is C. Motions to suppress evidence based on the exclusionary rule are premature in grand jury proceedings and will be denied. Answer A is incorrect because the motion is premature; the grand jury is allowed to consider almost all kinds of evidence (fingerprints in this case), even if there was no probable cause for obtaining it. Answer B is incorrect because the motion is premature. Answer D is incorrect because the motion should be denied because it is premature. Any ruling on the merits of the motion to suppress would be premature because the exclusionary rule for Fourth Amendment violations is inapplicable to grand jury proceedings.



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**Question 656 - Criminal Law - General Principles**

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**The question was:**

In which of the following cases is the defendant most likely to be convicted if she is charged with receiving stolen property?

**A:** The defendant bought a car from a man, who operates a used car lot. Before the purchase, the man told the defendant that the car had been stolen, which was true. Unknown to the defendant, the man is an undercover police agent who is operating the lot in cooperation with the police in exchange for leniency in connection with criminal charges pending against him.

**B:** The defendant bought a car from a man. Before the purchase, the man told the defendant that the car was stolen. The man had stolen the car with the help of his friend, who, unknown to the defendant or the man, was an undercover police agent who feigned cooperation with the man in the theft of the car.

**C:** The defendant bought a car from a man. Before the purchase, the man told the defendant that the car was stolen. Unknown to the defendant, the man had stolen the car from a parking lot and had been caught by the police as he was driving it away. He agreed to cooperate with the police and carry through with his prearranged sale of the car to the defendant.

**D:** The defendant bought a car from a man. Before the purchase, the man told the defendant that the car was stolen. Unknown to the defendant, the man was in fact the owner of the car but had reported it as stolen and had collected on a fraudulent claim of its theft from his insurance company.

**The explanation for the answer is:**

The correct answer is B. The crime of receiving stolen property requires that the defendant receives stolen personal property that he knows was obtained through a criminal offense with the intent to permanently deprive the owner of his interest in the property. The property must be stolen at the time of receipt by the defendant. In answer B, a stolen car is sold to the defendant after he is told of its stolen status. Therefore, the answer B is the situation in which the defendant is most likely to be convicted.

Answers A, C, and D are incorrect because the car did not have a "stolen" status at the time it was sold to the defendant. In answers A and C the car was stolen, but subsequently recovered by the police before the sale to the man, thus losing its status as a stolen item. In answer D, the property was never stolen.

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**Question 661 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

A man entered the police station and announced that he wanted to confess to a murder. The police advised the man of his Miranda rights, and the man signed a written waiver. The man described the murder in detail and pinpointed the location where a murder victim had been found a few weeks before. Later, a court-appointed psychiatrist determined that the man was suffering from a serious mental illness that interfered with his ability to make rational choices and to understand his rights and that the psychosis had induced his confession.

The man's confession is

- A:** admissible, because there was no coercive police conduct in obtaining the man's statement.
- B:** admissible, because the man was not in custody.
- C:** inadmissible, because the man's confession was a product of his mental illness and was therefore involuntary.
- D:** inadmissible, because under these circumstances, there was no valid waiver of Miranda warnings.

**The explanation for the answer is:**

The correct answer is A. The exclusionary rule is a rule meant to deter police conduct that would violate the protections afforded to the accused in the Constitution, and suppressing the evidence in this case would serve no purpose in enforcing those constitutional rights. Because there was no coercive police conduct in obtaining the man's statement, the statement should not be suppressed, and the confession is admissible.

Answer B is incorrect because it ignores the non-coercive effect of the police conduct, and the man may well have been in custody at the time of the interrogation. Answer C is incorrect because the scope of the exclusionary rule does not include the right of the defendant to confess to a crime only when totally rational and properly motivated. There must be some type of coercive police activity necessary to find that the man's confession was not voluntary and inadmissible. Answer D is incorrect because the protections of Miranda, as well as the exclusionary rule, will only apply to cases involving police misconduct; the confession was voluntarily given here. This analysis derives from the United States Supreme Court case of *Colorado v. Connelly*.

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**Question 665 - Criminal Law - General Principles**

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**The question was:**

In which of the following situations would a court applying common law doctrine be most likely to convict the defendant of the crime charged, despite the defendant's mistake?

**A:** The defendant was charged with bigamy. He married his neighbor four years after her husband was reported missing at sea. The rescued husband returns alive. A state statute provides that a person is presumed dead after five years of unexplained absence. The defendant believed the statutory period was three years.

**B:** The defendant was charged with murder after he shot and killed a man who had extorted money from him. The defendant mistakenly thought the victim had raised his hand to shoot, when, in fact, the victim was shaking his fist at the defendant to frighten him.

**C:** The defendant was charged with assault with intent to rape a woman whom he mistakenly believed had agreed to have sexual intercourse with him.

**D:** The defendant was charged with burglary. He had broken into an office where he once worked and had taken a typewriter that he erroneously believed had been given to him before he was fired.

**The explanation for the answer is:**

The correct answer is A. At common law, bigamy is a strict liability crime, and a mistake of fact will not serve as a defense to strict liability crimes. In addition, mistake of law is, in general, never a valid defense. A mistake may only be a valid defense if it creates another defense, or if it acts to negate the mental state requirement of the offense. The defendant in answer A knowingly married a person who was already married, thereby committing the strict liability offense of bigamy, and the defendant's mistaken belief that he was allowed to marry her is no defense.

Answer B is incorrect because a mistake as to the necessity for the use of force to protect oneself may still serve as a defense if the mistake is reasonable. In answer B, the defendant's belief that he was in imminent danger of being killed by the man who was extorting money from him, if it was reasonable, would be a defense to the murder.

Answer C is incorrect because assault with intent to rape is a specific intent crime that requires the intent to commit the rape. Since the defendant's mistake in answer C negates his intent to commit the rape, he should be acquitted of assault with intent to rape.

Answer D is incorrect because burglary is a specific intent crime that requires the intent to commit a felony or theft. Since the defendant's mistake in answer D negates his intent to commit a felony or theft, he should be acquitted of burglary. Answer A involves a strict liability offense, so a mistake of fact will not be a valid defense, and the defendant is most likely to be convicted of the crime charged.

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**Question 694 - Criminal Law - Other Crimes**

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**The question was:**

A defendant entered the county museum at a time when it was open to the public, intending to steal a Picasso etching. Once inside, he took what he thought was the etching from an unlocked display case and concealed it under his coat. However, the etching was a photocopy of an original that had been loaned to another museum. A sign over the display case containing the photocopy said that similar photocopies were available free at the entrance. The defendant did not see the sign.

Burglary in the jurisdiction is defined as "entering a building unlawfully with the intent to commit a crime."

The defendant is guilty of

- A:** burglary and larceny.
- B:** burglary and attempted larceny.
- C:** larceny.
- D:** attempted larceny.

**The explanation for the answer is:**

The correct answer is C. In the question's jurisdiction, the charge of burglary requires that the defendant entered the building unlawfully and with the intent to commit a crime. The facts in the question state that the defendant entered the building at a time it was open to the public. Because the defendant's entry was lawful, he did not commit a burglary. Larceny, at common law, requires the taking of personal property with the intent to permanently deprive the owner of possession. The defendant, with the intent to steal, took the photocopy of the etching from its display case and concealed it. Therefore, the defendant is guilty of larceny.

Answers A and B are incorrect because the defendant did not commit a burglary as his entry was lawful. Answer D is incorrect because the attempted larceny charge merged into the larceny charge.

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**Question 696 - Criminal Law - Homicide**

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**The question was:**

A bank teller was fired by the president of a bank. The teller wanted to take revenge against the president, but decided against attempting it personally, because he knew the president was protected around the clock by bank security guards. The teller knew a man who had a violent temper and was very jealous. The teller falsely told the man that the man's wife was having an affair with the bank president. Enraged, the man said, "What am I going to do?" The teller said, "If it were my wife, I'd just march into his office and blow his brains out." The man grabbed a revolver and rushed to the bank. He walked into the bank, carrying the gun in his hand. One of the security guards, believing a holdup was about to occur, shot and killed the man.

If charged with murder of the man, the teller should be found

**A:** guilty, based upon extreme recklessness.

**B:** guilty, based upon transferred intent.

**C:** not guilty, because he did not intend for the man to be shot by the security guard.

**D:** not guilty, because he did not shoot the man, and he was not acting in concert with the security guard.

**The explanation for the answer is:**

The correct answer is A. Murder is the unlawful killing of a human being with malice aforethought. Malice does not require the intent to kill; in some cases, there may be "implied malice" if there was gross or extreme recklessness to human life on the part of the defendant. In the question, the teller, knowing the man to be violent and jealous, lied to him, and suggested he commit murder. By taking actions that ensured the man would be walking into a heavily guarded bank with a gun, the teller acted with extreme recklessness; this is enough to show implied malice aforethought. Therefore, the teller should be found guilty of murder. An additional facet of the question raises the issue of whether the teller was a "proximate cause" of the man's death. The general test is whether the death was foreseeable; a defendant will be held criminally liable for the foreseeable consequences of their actions. In this case, by ensuring the man would enter a heavily guarded bank with the intent to kill the president and armed with a gun, it was foreseeable that the man would be killed.

Answer B is incorrect because transferred intent does not apply in cases where the actor doing the killing is different than the one who has the intent to kill the president. The teller's intent to kill the president will not transfer to the security guard's action of killing the man. Answer C is incorrect because the "implied malice" doctrine does not require that the teller have the intent that the man be killed; it is sufficient that the death of the man was a foreseeable result of the actions the teller put into motion, and that those actions were taken with extreme recklessness. Answer D is incorrect because the charge does not require that the teller be the one to shoot the man or that he act in concert with the security guard. Because the teller proximately caused the death of the man and did so with malice aforethought, the teller should be found guilty of murder.

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**Question 700 - Criminal Law - Inchoate Crimes**

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**The question was:**

A girl told a man she would like to have sexual intercourse with him and that he should come to her apartment that night at 7 p.m. After the man arrived, he and the girl went into the bedroom. As the man started to remove the girl's blouse, the girl said she had changed her mind. The man tried to convince her to have intercourse with him but after ten minutes of her sustained refusals, the man left the apartment. Unknown to the man, the girl was 15 years old. Because she appeared to be older, the man believed her to be about 18 years old.

A statute in the jurisdiction provides: "A person commits rape in the second degree if he has sexual intercourse with a girl, not his wife, who is under the age of 16 years."

If the man is charged with attempting to violate this statute, he is

- A:** guilty, because no mental state is required as to the element of rape.
- B:** guilty, because he persisted after she told him she had changed her mind.
- C:** not guilty, because he reasonably believed she had consented and voluntarily withdrew after she told him she had changed her mind.
- D:** not guilty, because he did not intend to have intercourse with a girl under the age of 16.

**The explanation for the answer is:**

The correct answer is D. An attempt charge requires that the defendant have the intent to commit the crime and that the defendant take substantial steps toward the commission of the crime. The man did not have the intent to commit rape in the second degree, and therefore, should be found not guilty.

Answer A is incorrect because, although the charge of rape in the second degree does not require the man to know that the girl is under the age of 16, he cannot be found to have committed attempted rape because he did not have the requisite intent to commit the crime. Attempt is a specific intent crime. Even if the underlying crime has a lesser mens rea requirement, the man cannot be convicted of attempt without having the specific intent that rape in the second degree be committed.

Answer B is incorrect because it ignores the specific intent requirement for an attempt charge and instead addresses the issue of whether or not the man committed a "substantial step" toward the commission of the offense. However, he cannot be convicted of rape in the second degree even if he is found to have committed a substantial step toward it, because he lacked the requisite mental state.

Answer C is incorrect because it ignores the specific intent requirement for an attempt charge, and because consent is irrelevant to rape in the second degree or attempt to commit rape in the second degree. Therefore, because the man lacked the requisite mental state for an attempt charge, he should be found not guilty.

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**Question 708 - Criminal Law - Homicide**

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**The question was:**

One evening, a bar patron had several drinks and then started to drive home. As he was proceeding down Main Boulevard, an automobile pulled out of a side street to his right. The bar patron's car struck this automobile broadside. The driver of the other car was killed as a result of the collision. A breath analysis test administered after the accident showed that the bar patron satisfied the legal definition of intoxication.

If the bar patron is prosecuted for manslaughter, his best chance for acquittal would be based on an argument that

- A:** the other driver was contributorily negligent.
- B:** the collision would have occurred even if the bar patron had not been intoxicated.
- C:** because of his intoxication he lacked the *mens rea* needed for manslaughter.
- D:** driving while intoxicated requires no *mens rea* and so cannot be the basis for misdemeanor manslaughter.

**The explanation for the answer is:**

The correct answer is B. The bar patron's best argument for acquittal is that, because the accident would have occurred even if the bar patron had not been intoxicated, his reckless action giving rise to the manslaughter charge was not a cause in fact ('but for' cause) of the other driver's death. Because the action that the bar patron took was not a cause in fact, he cannot be convicted of manslaughter.

Answer A is incorrect because contributory negligence is a civil issue and does not apply to criminal manslaughter cases. Answer C is incorrect because voluntary intoxication is only a defense to specific intent crimes, not to crimes involving criminal negligence, such as manslaughter. The bar patron's argument that he was too intoxicated to be criminally negligent will not succeed. Answer D is incorrect because the argument that the bar patron did not commit manslaughter by virtue of there being no underlying misdemeanor ignores the possibility that the bar patron committed manslaughter by virtue of carrying out a criminally negligent act. Answer D is an ineffective defense. The bar patron's best chance for acquittal is to argue that, because the collision would have occurred even if the bar patron had not been intoxicated, the criminally negligent acts he took were not the cause in fact of the death.

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**Question 736 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

A department store had experienced a growing incidence of shoplifting. At the store's request, the police concealed an undercover detective at a vantage point above the women's apparel fitting rooms where she could see into these rooms, where customers tried on clothes. The detective saw a customer enter a fitting room, stuff a dress into her pocketbook, leave the fitting room, and start for the street door. By prearranged signal, the detective notified another police officer near the door, who detained the customer as the customer started to go out into the street. The customer was placed under arrest, and the dress was retrieved from her purse.

The customer is charged with shoplifting.

Her motion to prevent the introduction of the dress into evidence will be

**A:** granted, because the police should have secured a search warrant to search her bag.

**B:** granted, because a customer has a reasonable expectation of privacy while using a department store fitting room.

**C:** denied, because the search and seizure were made incident to a valid arrest based on probable cause.

**D:** denied, because the detective could see into the room and thus the customer's activities were legitimately in plain view.

**The explanation for the answer is:**

The correct answer is B. The Fourth Amendment protects people from unreasonable searches and seizures by the state. The motion to suppress evidence will be granted in this case, if the customer can show that she was subject to an illegal search by the state.

The first issue is to determine if there was a search or seizure. In this case, by watching the customer in the fitting room, the detective was conducting a search. The customer had a reasonable expectation of privacy in a department store fitting room, which was private and could only be seen by the detective when she was concealed at a vantage point above the rooms. A person has a reasonable expectation that they will not be watched in a place that is closed from public view such as the fitting room. The customer had an expectation of privacy in the fitting room, and that expectation is one that society has recognized as justified. The second issue to determine is whether the search was conducted by a state actor. The detective was working for the police department which was conducting surveillance. The detective was clearly a state actor. Finally, there is no exception to the warrant requirement that would allow for the search. The fitting room was not in plain view; the detective had to conceal herself above the fitting room to be able to see in, which is not a place visible in plain view. Therefore, the customer's motion to suppress should be granted because her reasonable expectation of privacy was violated by the detective's search.

Answer A is incorrect because the police officer who stopped the customer as she was exiting did not need to acquire a search warrant for the purse. He had been given information from the detective that gave him probable cause to arrest the customer and search her purse. The illegal search occurred when the detective observed the customer in the fitting room, not when the other officer made the arrest and searched the purse. Answer C is incorrect because the arrest, or seizure, of the customer and her purse were properly based on probable cause. However, the observations of the detective constituted an illegal search, which would allow suppression of the dress as evidence. If it weren't for the detective's illegal search, there would not have been probable cause for the arrest, and the seizure of the dress would be fruit of the poisonous tree. Answer D is incorrect because the detective was able to observe the customer's actions only by concealing herself in a vantage point above the fitting room, and the customer had a reasonable expectation of privacy in the fitting room. Therefore, the plain view exception to the warrant requirement does not apply here. Since the customer has a legitimate and reasonable expectation of privacy in the fitting room, the detective's watching her from above was an illegal search, and the dress should not be allowed into evidence.



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**Question 757 - Criminal Law - General Principles**

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**The question was:**

The general manager and chief executive officer of a knitting mill delegated all operational decision making to the supervising manager of the mill. The child labor laws in the jurisdiction provide, "It is a violation of the law for one to employ a person under the age of 17 years for full-time labor." Without the general manager's knowledge, the supervising manager hired a number of 15- and 16-year-olds to work at the mill full time. He did not ask their ages and they did not disclose them. The supervising manager could have discovered their ages easily by asking for identification, but he did not do so because he was not aware of the law and believed that company policy was to hire young people.

If the statute is interpreted to create strict liability and the general manager is convicted of violating it, his contention that his conviction would violate the federal Constitution is

- A:** correct, because it is a violation of due process to punish without a voluntary act.
- B:** correct, because criminal liability is personal and the knitting mill is the employer of the children, not the general manager.
- C:** incorrect, because regulatory offenses are not subject to due process limitations.
- D:** incorrect, because he was in a position to exercise control over the hiring employees for the knitting mill.

**The explanation for the answer is:**

The correct answer is D. Because the general manager is the CEO and the person who delegated the authority to the supervising manager, he will bear criminal responsibility for the actions of his agents who are acting on his behalf. Because the general manager had control over the hiring of employees for the knitting mill, and he delegated that authority to the supervising manager, he is responsible for the actions taken in the hiring of children by his agent. The offense is a strict liability crime and neither the general manager nor the supervising manager needs to have actual knowledge that the children were under the age of 17. Answer A is incorrect because the general manager is criminally responsible for the actions of his agents; there is no violation of due process even if he did not do the act of hiring the children himself. Assigning the responsibility to his agent was a sufficient actus reus for criminal liability. Answer B is incorrect because corporate officers, such as the general manager and the supervising manager, can be held criminally liable for strict liability crimes involving corporations. Although the named employer is the knitting mill, the supervising manager, as the hirer, and the general manager, as his superior, will bear responsibility for those corporate actions in strict liability crimes. Answer C is incorrect because even regulatory offenses are subject to certain due process limitations. Because the general manager had the authority to hire the children, and he specifically delegated that authority to the supervising manager, he will bear criminal responsibility for the supervising manager's actions that violated the strict liability crime of hiring children.

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**Question 787 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

A defendant was charged with the murder of a man who had been strangled and whose body was found in some woods near his home. The defendant suffers from a neurological problem that makes it impossible for him to remember an occurrence for longer than 48 hours.

After the defendant was charged, the police visited him and asked if they might search his home. The defendant consented. The police found a diary written by the defendant. An entry dated the same day as the victim's disappearance read, "Indescribable excitement. Why did no one ever tell me that killing gave such pleasure to the master?"

The defendant was charged with murder. His attorney has moved to exclude the diary from evidence on the ground that its admission would violate the defendant's privilege against self-incrimination. Counsel has also argued that the defendant could not give informed consent to the search because more than 48 hours had passed since the making of the entry and hence he could not remember the existence of the incriminating entry at the time he gave his consent. There is no evidence that the police officers who secured the defendant's consent to the search were aware of his memory impairment.

With regard to the diary, the court should

- A:** admit it, because the defendant's consent was not obtained by intentional police misconduct and the defendant was not compelled to make the diary entry.
- B:** admit it, pursuant to the good-faith exception to the exclusionary rule.
- C:** exclude it, because the defendant was not competent to consent to a search.
- D:** exclude it, because use of the diary as evidence would violate the defendant's privilege against self-incrimination.

**The explanation for the answer is:**

The correct answer is A. The exclusionary rule serves to protect persons from illegal police conduct. There is no evidence that the police had acted improperly, and they had, in fact, obtained consent for the search. The consent to search was voluntarily given, and the fact that the police were completely unaware of the defendant's condition shows the police acquired the diary without violating his constitutional rights. The statement in the diary was not made under any police coercion or as the subject of custodial interrogation, so it too should be admissible.

Answer B is incorrect because the good faith exception applies to reliance on a judicially ordered search warrant and does not apply to consent searches. Answer C is incorrect because the defendant's voluntary consent to search is not made incompetent because of his lack of knowledge that the police would find incriminating evidence. The defendant was competent to give consent and the consent was voluntarily given, not subject to coercion, and therefore valid. Answer D is incorrect because the statement in the diary was also voluntarily given and was not done under police coercion or subject to custodial interrogation. The use of the statement in the diary would not violate the defendant's privilege against self-incrimination.

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**Question 800 - Criminal Law - Inchoate Crimes**

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**The question was:**

A defendant wanted to kill his neighbor because the defendant believed his neighbor was having an affair with his wife. Early one morning, armed with a pistol, he crouched behind some bushes on a park hillside overlooking a path upon which his neighbor frequently jogged. On this morning, however, the defendant saw his neighbor jogging on another path about a half mile away. Unaware of the limited range of his pistol, the defendant fired five shots at his neighbor. None of the five shots came anywhere close to the neighbor as he was well out of the range.

The defendant is

**A:** guilty of attempted murder, because he was not aware of the limited range of his pistol.

**B:** guilty of attempted murder, because a reasonable person would not have been aware of the limited range of his pistol.

**C:** not guilty of attempted murder, or any lesser included offense, because, under the circumstances, it was impossible for him to have killed his neighbor.

**D:** not guilty of attempted murder, but guilty of assault.

**The explanation for the answer is:**

The correct answer is A. To be found guilty of attempted murder, a defendant must have the intent to commit murder, and take a substantial step toward the commission of murder. In this question, the defendant had, prior to the shooting, the intent to kill his neighbor, and took the substantial step of firing the weapon at the neighbor. He is guilty of attempted murder. However, if the defendant was aware that it was impossible for his shots to actually reach his neighbor, it cannot be said that the defendant, by shooting at his neighbor, had the intent and took a substantial step to kill the neighbor. However, because the defendant was unaware of the limited range of his pistol he can be convicted of attempted murder.

Answer B is incorrect because the standard applied is the actual intent of the defendant and the substantiality of the step taken; it doesn't matter what a reasonable person would know with respect to the range of the pistol. Answer C is incorrect because only legal impossibility, not factual impossibility, is a defense to an attempt charge. Although it was impossible for the defendant to kill his neighbor, he still had the intent to kill him and took a substantial step toward doing so. This is a case of factual impossibility, and is not a defense to an attempt charge. Answer D is incorrect because the defendant is guilty of attempted murder, as well as assault.

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**Question 803 - Criminal Law - Homicide**

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**The question was:**

A defendant and a sports fan were engaged in a heated discussion over the relative merits of their favorite professional football teams when the defendant said, "You have to be one of the dumbest people around." The sports fan slapped the defendant. The defendant drew a knife and stabbed the sports fan in the stomach. Other people then stepped in and stopped any further fighting. Despite the pleas of the other people, the sports fan refused to go to a hospital or to seek medical treatment. About two hours later, he died as the result of a loss of blood. The defendant was charged with the murder of the sports fan. At trial, medical evidence established that if the sports fan had been taken to a hospital, he would have survived.

At the end of the case, the defendant moves for a judgment of acquittal or, in the alternative, for an instruction on the elements of voluntary manslaughter.

The court should

**A:** grant the motion for acquittal.

**B:** deny the motion for acquittal, but instruct on manslaughter because there is evidence of adequate provocation.

**C:** deny both motions, because the defendant failed to retreat.

**D:** deny both motions, because malice may be proved by the intentional use of a deadly weapon on a vital part of the body.

**The explanation for the answer is:**

The correct answer is B. The defendant's motion for acquittal should be denied because there is sufficient evidence for the jury to find the defendant guilty of murder. The sports fan's refusal to seek medical treatment is an insufficient intervening act to allow the defendant to escape criminal liability for stabbing the sports fan. Whether an intervening act is sufficient to break the chain of causality in a homicide cases rests on the foreseeability of the intervening act. A defendant will be held criminally responsible for the foreseeable consequences of his actions; however, if an unforeseeable act intervenes, a defendant will not be deemed responsible for the death. The defendant stabbed the sports fan in the stomach, and as a result of the injury, the sports fan died. A refusal to get medical treatment by the victim is foreseeable and is insufficient to allow the defendant to escape criminal responsibility for his actions. The motion for judgment of acquittal should be denied.

A jury should be instructed as to voluntary manslaughter if there is at least some evidence that the murder was done in the "heat of passion." In this case, the sports fan's slapping the defendant may be considered adequate provocation, and a reasonable jury could find that the defendant was acting in the "heat of passion" when he stabbed the sports fan. Because there is some evidence such that a reasonable jury could find the defendant guilty of voluntary manslaughter, the jury should be instructed on that issue.

Answer A is incorrect because the sports fan's refusal to obtain medical treatment will not break the chain of causality, and there is sufficient evidence for a reasonable jury to find him guilty of murder. Answer C is incorrect because the defendant, even if he did not retreat, could still be found to have acted in the "heat of passion" as a result of adequate provocation. Answer D is incorrect because, although malice may be proved by the intentional use of a deadly weapon on a vital part of the body, there was still some evidence presented that the defendant did so in the "heat of passion." Because it is possible for a reasonable jury to find the defendant guilty of voluntary manslaughter, the jury should be so instructed.

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**Question 808 - Criminal Law - General Principles**

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**The question was:**

Plagued by neighborhood youths who had been stealing lawn furniture from his back yard, a homeowner remained awake each night watching for them. One evening the homeowner heard noises in his backyard. He yelled out, warning intruders to leave. Receiving no answer, he fired a shotgun filled with nonlethal buckshot into bushes along his back fence where he believed the intruders might be hiding. A six-year-old child was hiding in the bushes and was struck in the eye by some of the pellets, causing loss of sight.

If the homeowner is charged with second-degree assault, which is defined in the jurisdiction as "maliciously causing serious physical injury to another," he is

- A:** not guilty, because the child was trespassing and he was using what he believed was nondeadly force.
- B:** not guilty, because he did not intend to kill or to cause serious physical injury.
- C:** guilty, because he recklessly caused serious physical injury.
- D:** guilty, because there is no privilege to use force against a person who is too young to be criminally responsible.

**The explanation for the answer is:**

The correct answer is C. Proof of malice does not need to be proof of an actual specific intent to kill or harm another; it can be implied from a defendant's gross recklessness with regard to human life shown. In this case, the homeowner fired a shotgun into bushes where he believed people were hiding. This action would support a finding of malice. The shooting caused the child to lose his sight, which is a serious injury. Therefore, the homeowner is guilty of second-degree assault.

Answer A is incorrect because the child's status as a trespasser does not automatically allow the homeowner to inflict serious bodily harm. In addition, the homeowner's belief that the force would be non-deadly would not negate the finding that he acted maliciously. Answer B is incorrect because a finding of malice does not require the intent to kill or to cause serious physical injury. Malice can also be shown by the homeowner acting extremely recklessly with regard to human life. Answer D is incorrect because it is a misstatement of the law regarding the use of force. The homeowner, when he fired a shotgun into bushes by his back fence, acted maliciously and caused a serious injury to another. He should be found guilty of second degree assault.

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**Question 820 - Criminal Law - Homicide**

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**The question was:**

A marksman bought a new rifle and wanted to try it out by doing some target shooting. He went out into the country to an area where he had previously hunted. Much to his surprise, he noticed that the area beyond a clearing contained several newly constructed houses that had not been there before. Between the houses there was a small playground where several children were playing. Nevertheless, the marksman nailed a paper target to a tree and went to a point where the tree was between himself and the playground. He then fired several shots at the target. One of the shots missed the target and the tree and hit and killed one of the children in the playground.

The marksman was convicted of murder. He appealed, contending that the evidence was not sufficient to support a conviction of murder.

The appellate court should

- A:** affirm the conviction, because the evidence is sufficient to support a conviction of murder.
- B:** reverse the conviction and remand for a new trial, because the evidence is not sufficient for murder but will support a conviction of voluntary manslaughter.
- C:** reverse the conviction and remand for a new trial, because the evidence is not sufficient for murder but will support a conviction of involuntary manslaughter.
- D:** reverse the conviction and order the case dismissed, because the evidence is sufficient only for a finding of negligence and negligence alone cannot support a criminal conviction.

**The explanation for the answer is:**

The correct answer is A. When determining the sufficiency of the evidence to sustain a charge, the appellate court considers the evidence in the light most favorable to the state. In this case, the marksman placed his target so that, if he missed, he would be shooting in the direction of the children; he fired numerous shots from a rifle in the direction of an occupied playground and killed a child. Even though he did not have the intent to kill, the evidence is sufficient for a jury to find that the marksman acted with extreme recklessness toward human life, which is sufficient for a finding of malice aforethought for the murder conviction. The appellate court should affirm the conviction of murder.

Answer B is incorrect because the evidence was sufficient and because there was no "heat of passion" defense presented which might allow for a voluntary manslaughter charge. Answer C is incorrect because the evidence was sufficient to prove malice aforethought, and because the marksman's actions were more than just negligent; they were grossly reckless. Answer D is incorrect because the evidence was sufficient to sustain a conviction, and because criminal negligence can indeed support a criminal conviction. Because the appellate court considers only whether there is sufficient evidence to support the conviction, the jury could have found that the marksman's extreme recklessness was sufficient for a finding of malice aforethought necessary for a murder conviction. Therefore, his conviction should be affirmed.

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**Question 825 - Criminal Law - Homicide**

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**The question was:**

Suffering from painful and terminal cancer, a wife persuaded her husband to kill her to end her misery. As they reminisced about their life together and reaffirmed their love for each other, the husband tried to discourage the wife from giving up. The wife insisted, however, and finally her husband held a gun to her head and killed her.

The most serious degree of criminal homicide of which the husband can be legally convicted is

- A:** no degree of criminal homicide.
- B:** involuntary manslaughter.
- C:** voluntary manslaughter.
- D:** murder.

**The explanation for the answer is:**

The correct answer is D. The husband, with deliberation and premeditation, and with the intent to kill his wife, put a gun to her head and shot her. The husband is guilty of murder. The motive (which is not the same thing as intent) behind the husband's actions does not excuse this murder and does not negate his premeditation, deliberation, and malice aforethought.

Answer A is incorrect because a "good" motive for murder is not a legally acceptable defense to a murder charge. Answer B is incorrect because involuntary manslaughter is not the most serious degree of criminal homicide for which the husband can be convicted. Additionally, it ignores the fact that the husband acted with malice aforethought. Answer C is incorrect because voluntary manslaughter is not the most serious degree of criminal homicide for which the husband can be convicted; it ignores the husband's premeditation and deliberation in the commission of the homicide. The husband, with premeditation, deliberation, and malice aforethought, killed his wife, and the most serious degree of homicide that the husband can be legally convicted of is murder.

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**Question 849 - Criminal Law - General Principles**

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**The question was:**

A man was engaged to marry a woman. One evening, the man became enraged at the comments of the woman's eight-year-old daughter who was complaining in her usual fashion that she did not want her mother to marry the man. The man, who had too much to drink, began beating her. The daughter suffered some bruises and a broken arm. The woman took her daughter to the hospital. The police were notified by the hospital staff. The man was indicted for felony child abuse.

The man pleaded with the woman to forgive him and to run away with him. She agreed. They moved out of state and took the daughter with them. Without the testimony of the child, the prosecution was forced to dismiss the case.

Some time later, the woman returned for a visit with her family and was arrested and indicted as an accessory-after-the-fact to child abuse.

At her trial, the court should

**A:** dismiss the charge, because the man had not been convicted.

**B:** dismiss the charge, because the evidence shows that any aid she rendered occurred after the crime was completed.

**C:** submit the case to the jury, on an instruction to convict only if the woman knew the man had been indicted.

**D:** submit the case to the jury, on an instruction to convict only if her purpose in moving was to prevent the man's conviction.

**The explanation for the answer is:**

The correct answer is D. An accessory-after-the-fact is one who, having knowledge that a crime has been committed, aids, or attempts to aid, the criminal in escaping apprehension or punishment. If the jury finds that the woman aided the man in avoiding punishment by helping him move out of the state and rendering the victim unavailable to the prosecution, the jury should convict her of being an accessory after the fact to child abuse.

Answer A is incorrect because a principal need not have been convicted of the offense before an accessory-after-the-fact will bear criminal responsibility for her actions. Answer B is incorrect because accessory-after-the-fact liability allows for the prosecution of the woman even though the aid was given after the initial crime was committed. Accessory-after-the-fact is a separate crime, and can be used to prosecute a person for aid given to a defendant after the crime was completed. Answer C is incorrect because the woman need not have known that the man had been indicted, as long as the woman knew that her aid was to prevent his prosecution or punishment. If the jury finds that the woman, in helping the man and the daughter move, was attempting to aid the man in avoiding prosecution or punishment for the crime, they can convict her as an accessory-after-the-fact.



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**Question 854 - Criminal Law - Inchoate Crimes**

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**The question was:**

A man walked into a store that had a check-cashing service and tried to cash a \$550 check which was payable to him. The attendant on duty refused to cash the check because the man did not have two forms of identification, which the store's policies required. The man, who had no money except for the check and who needed cash to pay for food and a place to sleep, became agitated. He put his hand into his pocket and growled, "Give me the money or I'll start shooting." The attendant, who knew the man as a neighborhood character, did not believe that he was violent or had a gun. However, because he felt sorry for the man, he handed over the cash. The man left the check on the counter and departed. The attendant picked up the check and found that the man had failed to endorse it.

If the man is guilty of any crime, he is most likely guilty of

- A:** robbery.
- B:** attempted robbery.
- C:** theft by false pretenses.
- D:** larceny by trick.

**The explanation for the answer is:**

The correct answer is B. The man attempted to take the property of another, with the intent to permanently deprive the owner of the property, by the threat of force. The man had the intent to commit a robbery, and took substantial steps, by putting his hand in his pocket and threatening the attendant, toward the commission of that robbery. Although it was factually impossible for the man to have committed robbery, because the attendant was not afraid and gave the money to the man out of sympathy rather than because of force or the threat of force, factual impossibility is not a defense to an attempt charge. The man committed attempted robbery.

Answer A is incorrect because the man did not commit a robbery. The attendant did not give the man the money because of force or the threat of force, but rather because he felt sorry for the man. A conviction for robbery requires the money be given due to force or the threat of force, and not because of sympathy.

Answer C is incorrect because, at common law, false pretenses requires the obtaining of the possession and title of property of another through fraud or misrepresentation. Regardless of whether the check was properly endorsed, the man did not obtain the money through fraud, but rather through the sympathy of the attendant. Therefore, he did not commit false pretenses.

Answer D is incorrect for the same reason. At common law, larceny by trick is obtaining the possession, with the owner's consent, of the property of another by fraud or misrepresentation, with the intent to permanently deprive the owner of said property. The attendant did not give away the property because of misrepresentation, but rather sympathy. The man, however, did have the intent to commit a robbery, and took substantial steps towards the commission of the offense, and is most likely guilty of attempted robbery.

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**Question 883 - Criminal Law - Other Crimes**

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**The question was:**

The owner of a house told his neighbor that he was going away for two weeks and asked the neighbor to keep an eye on his house. The neighbor agreed. The owner gave the neighbor a key to use to check on the house.

The neighbor decided to have a party in the owner's house. He invited a number of friends. One friend, a pickpocket, went into the owner's bedroom, took some of the owner's rings, and put them in his pocket.

Which of the following is true?

- A:** The neighbor and the pickpocket are guilty of burglary.
- B:** The neighbor is guilty of burglary and the pickpocket is guilty of larceny.
- C:** The neighbor is guilty of trespass and the pickpocket is guilty of larceny.
- D:** The pickpocket is guilty of larceny and the neighbor is not guilty of any crime.

**The explanation for the answer is:**

The correct answer is D. The neighbor is not criminally responsible for the pickpocket's theft, and the neighbor had permission to be in the residence. The neighbor is not guilty of any crime. The pickpocket, however, took the owner's property, without the owner's consent, and put them in his pocket, and is thus guilty of larceny.

Answer A is incorrect because neither the neighbor, nor the pickpocket, committed a burglary. At common law, burglary is defined as the breaking and entering into a dwelling with the intent to commit a felony therein. The neighbor had the owner's permission to be in the residence, and there is no evidence that the neighbor had the intent to commit a felony or theft in the residence. The neighbor is not guilty of burglary. Likewise, the pickpocket had permission to be in the residence and, since he was invited into the dwelling, there is no evidence that the pickpocket broke into the house. There is also no evidence that the pickpocket entered the party with the intent to commit a felony or a theft.

Answer B is incorrect because the neighbor did not commit a burglary and is not criminally responsible for the pickpocket's actions, because he did not have the intent that the larceny occur, and he did not knowingly aid and abet the pickpocket in the commission of the crime. However, the pickpocket did take, and carry away, the owner's rings, with the intent to deprive the owner of them, and is thus guilty of larceny.

Answer C is incorrect because the neighbor had permission to be in the residence by its owner. Trespass does not appear in the area of criminal law as a crime on its own, but as an element of other crimes, i.e. if a taking must be by trespass, then it must occur without the victim's consent. However, trespass is only a prima facie action by itself in torts. It is true that the neighbor likely committed that tort because having a party was likely outside the scope of the owner's consent. However, since trespass is generally a tort and not a crime, the neighbor committed no crime. The pickpocket is not guilty of trespass either. The pickpocket is guilty of larceny, but the neighbor committed no crime.

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**Question 891 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

The police received an anonymous tip that the defendant was growing marijuana in her backyard, which was surrounded by a 15-foot high, solid wooden fence. A police officer was unable to view the yard from the street, so he used a police helicopter to fly over the defendant's house. The officer identified a large patch of marijuana plants growing right next to the house and used this observation to obtain a search warrant.

The defendant is prosecuted for possession of marijuana and moves to suppress use of the marijuana in evidence.

The court should

- A:** grant the motion, because the only purpose of the officer's flight was to observe the yard.
- B:** grant the motion, because the defendant had a reasonable expectation of privacy in the curtilage around her house and the police did not have a warrant.
- C:** deny the motion, because a warrant is not required for a search of a residential yard.
- D:** deny the motion, because the defendant had no reasonable expectation of privacy from aerial observation.

**The explanation for the answer is:**

The correct answer is D. The officer's action of looking into the yard from the police helicopter is not considered a search within the meaning of the Fourth Amendment. The defendant did not have an objective, reasonable expectation of privacy from aerial observation because the observations were made from the public airspace and were no more than any private citizen could have seen from the same location. Because the marijuana was properly seen in plain view, and the actions of the officers did not violate the Fourth Amendment, the defendant's motion to suppress should be denied.

Answer A is incorrect because the officer's purpose in looking at the curtilage is irrelevant to the determination of whether a search occurred or whether the defendant had a reasonable expectation of privacy in something that could be viewed by the public. Answer B is incorrect because, although the defendant may have had a subjective expectation of privacy, the Supreme Court has ruled that subjective expectation is not reasonable, and thus not afforded protection under the fourth amendment. Answer C is incorrect because a warrant may be required to search a residential yard; however, the officer's actions did not amount to a search protected by the Fourth Amendment. Because the defendant had no objective, reasonable expectation of privacy from aerial observation, the motion to suppress should be denied.

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**Question 898 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

On October 22, a police officer submitted an application for a warrant to search a particular address for cocaine. In the application, the officer stated under oath that he believed there was cocaine at that location because of information supplied to him on the morning of October 22 by an informant. He described the informant as a cocaine user who had previously supplied accurate information concerning the use of cocaine in the community and summarized what the informant had told him as follows: the previous night, October 21, the informant was in the defendant's house at the particular address. The defendant gave her cocaine. She also saw three cellophane bags containing cocaine in his bedroom.

The warrant was issued and a search of the address was conducted on October 22. The search turned up a quantity of marijuana but no cocaine. The defendant was arrested and charged with possession of marijuana. The defendant moved to suppress the use of the marijuana as evidence contending that the informant was not in the particular address on October 21 or at any other time.

After hearing the evidence, the judge concluded that the statement in the application attributed to the informant was incorrect, and the informant knowingly lied to the police officer. The judge also concluded that the police officer knew the informant was lying.

Based on these conclusions, the judge should grant the motion to suppress

- A:** because the application contains a material statement that is false.
- B:** because of the false statement and because no cocaine was found in the house.
- C:** because the informant's statement was a deliberate lie.
- D:** because the police officer knew the statement was false.

**The explanation for the answer is:**

The correct answer is D. Even if the information included in a search warrant is incorrect, the evidence seized pursuant to the search warrant will not be excluded from evidence unless there is evidence that the officer knew the information was false. The exclusionary rule is meant to prevent law enforcement officers from acting improperly, but if the officer acted in good faith reliance on the warrant, the evidence will not be suppressed. Thus, because the police officer knew that the warrant contained false information, the motion to suppress will be granted.

Answer A is incorrect because, even if the warrant has a material statement that is false, if the police officers meet the good faith exception to the exclusionary rule, the evidence will be admissible. Answer B is incorrect for the same reason and also because what exactly was found in the house is irrelevant to the determination of the propriety of the warrant or the good faith of the officers. Answer C is also incorrect because it ignores the good faith exception to the exclusionary rule. Only if the police officer knew that the warrant contained a material false statement should the judge grant the motion to suppress. Otherwise, the evidence falls within the good faith exception to the exclusionary rule.

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**Question 903 - Criminal Law - Homicide**

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**The question was:**

A defendant, in desperate need of money, decided to hold up a local convenience store. Determined not to harm anyone, he carried a toy gun that resembled a real gun. In the store, he pointed the toy gun at the clerk and demanded money. A customer who entered the store and saw the robbery in progress pulled his own gun and fired at the defendant. The bullet missed the defendant but struck and killed the clerk.

The defendant was charged with felony murder.

His best argument for being found NOT guilty is that he

- A:** did not intend to kill.
- B:** did not commit the robbery because he never acquired any money from the clerk.
- C:** did not intend to create any risk of harm.
- D:** is not responsible for the acts of the customer.

**The explanation for the answer is:**

The correct answer is D. The defendant's best argument for being found not guilty of felony murder is that he is not responsible for the customer's actions in shooting the clerk. The courts are split regarding whether a defendant is liable for felony murder when the death is caused by a third party. Under the proximate cause theory, a defendant can be liable where the innocent party is killed as the result of resistance from the victim or police. However, under the agency theory, the defendant will only be found liable for felony murder when someone is killed by a person acting as an accomplice of the defendant. Given that the customer is neither a victim nor the police, and that the customer is not an agent or an accomplice of the defendant, the defendant's best argument is that he is not responsible for the customer's actions. Therefore, answer D provides the best possible defense.

Answer A is incorrect because felony murder does not require that the defendant have the specific intent to kill the clerk. It is sufficient that the underlying felony was dangerous and that the killing was foreseeable.

Answer B is incorrect because attempted robbery, even with a toy gun, is still dangerous enough to be considered a proper underlying felony for felony murder. Arguing that he did not actually complete the robbery is not the defendant's best argument for acquittal.

Answer C is incorrect because, once again, the defendant's intent to create a risk of harm is irrelevant under felony murder. Regardless of his intent that nobody get hurt, he did create a situation by committing a dangerous felony, and, if he bore criminal responsibility for the actor who did the killing, he would be found guilty. The defendant's best argument against the application of the felony murder charge is that, because it was the third party who shot the clerk, the defendant should not bear responsibility for his actions.

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**Question 909 - Criminal Law - Inchoate Crimes**

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**The question was:**

An employee worked at a day-care center run by the Happy Faced Day Care Corporation. At the center, one of the young children often arrived with bruises and welts on his back and legs. A statute in the jurisdiction requires all day-care workers to report to the police cases where there is probable cause to suspect child abuse and provides for immediate removal from the home of any suspected child abuse victims. The employee was not aware of this statute. Nevertheless, he did report the child's condition to his supervisor, who advised him to keep quiet about it so the day-care center would not get into trouble for defaming a parent. About two weeks after the employee first noticed the child's condition, the child was beaten to death by his father. The employee has been charged with murder in the death of the child. The evidence at trial disclosed, in addition to the above, that the child had been the victim of beatings by the father for some time, and that these earlier beatings had been responsible for the marks that the employee had seen. The child's mother had been aware of the beatings but had not stopped them because she was herself afraid of the child's father.

The employee's best argument that he is NOT guilty of murder is

- A:** he was not aware of the duty-to-report statute.
- B:** he lacked the mental state necessary to the commission of the crime.
- C:** his omission was not the proximate cause of death.
- D:** the day-care corporation, rather than the employee, was guilty of the omission, which was sanctioned by its supervisory-level agent.

**The explanation for the answer is:**

The correct answer is B. The employee will not bear criminal responsibility for the actions of another unless he intended that those actions be committed and he aided and abetted in the commission of the offense. Because the employee never intended that the child be murdered, he should be found not guilty.

Answer A is incorrect because it is not the best argument for the employee to be found not guilty, and the employee's awareness of the duty-to-report statute is irrelevant to whether or not he will bear criminal responsibility for the actions of another. Answer C is incorrect because it is not the best argument to be found not guilty, and because it is possible that the child's death was foreseeable by the employee's failure to act. It is possible that, if the murder was foreseeable, then the employee's inaction may be considered a proximate cause of death. Answer D is incorrect because the burden is on the employee to report to the authorities, not to his corporation, and because the employee's guilt or innocence as to the failure to report statute is, at best, incidental to the determination of guilt as to the murder. The employee's best argument is that he was not criminally responsible for the actions of the child's father.

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**Question 918 - Criminal Law - Homicide**

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**The question was:**

Despondent over losing his job, a businessman drank all night at a bar. While driving home, he noticed a car following him and, in his intoxicated state, concluded he was being followed by robbers. In fact, a police car was following him on suspicion of drunk driving. In his effort to get away, the businessman sped through a stop sign and struck and killed a pedestrian. He was arrested by the police.

The businessman is prosecuted for manslaughter. He should be

- A:** acquitted, because he honestly believed he faced an imminent threat of death or severe bodily injury.
- B:** acquitted, because his intoxication prevented him from appreciating the risk he created.
- C:** convicted, because he acted recklessly and in fact was in no danger.
- D:** convicted, because he acted recklessly and his apprehension of danger was not reasonable.

**The explanation for the answer is:**

The correct answer is D. The businessman should be convicted of manslaughter because he recklessly caused the death of a human being, and he has no valid self-defense claim. The businessman is charged with manslaughter, which is the killing of another person without malice aforethought. He did recklessly kill another person by driving while intoxicated and speeding through a stop sign. The businessman's claim of self-defense will fail because his belief that he was acting in self-defense was not reasonable.

Answer A is incorrect because, to successfully raise a self-defense claim, the businessman must not only believe that he faced an imminent threat of death or severe bodily injury, but also that belief must be reasonable. The businessman's apprehension of danger was unreasonable on its face, so he cannot make a proper self-defense claim. Answer B is incorrect because the businessman did not need to appreciate the risk he was creating to be found guilty of manslaughter. In addition, his voluntary intoxication was one of the reasons for his recklessness and will not serve as a defense. Answer C is incorrect because a proper claim of self-defense does not require that the person actually be in danger, but rather that the person reasonably believe he is in danger, even if it is not true. Since the businessman's belief that he was acting in self-defense was unreasonable, and because he recklessly killed another human being, he should be convicted of manslaughter.

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**Question 924 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

The police suspected that a 16-year-old high school student had committed a series of burglaries. Two officers went to the student's high school and asked the principal to call the student out of class and to search his backpack. While the officers waited, the principal took the student into the hall where she asked to look in his backpack. When the student refused, the principal grabbed it from him, injuring the student's shoulder in the process. In the backpack, she found jewelry that she turned over to the officers.

The officers believed that the jewelry had been taken in one of the burglaries. They arrested the student, took him to the station, and gave him Miranda warnings. The student asked to see a lawyer. The police called the student's parents to the station. When the student's parents arrived, the police asked them to speak with the student. They put him in a room and secretly recorded their conversation with a concealed electronic device. The student broke down and confessed to his parents that he had committed the burglaries.

The student was charged with the burglaries.

The student moves to suppress the use of the jewelry.

The court should

- A:** deny the motion on the ground that the search was incident to a lawful arrest.
- B:** deny the motion on the ground that school searches are reasonable if conducted by school personnel on school grounds on the basis of reasonable suspicion.
- C:** grant the motion on the ground that the search was conducted with excessive force.
- D:** grant the motion on the ground that the search was conducted without probable cause or a warrant.

**The explanation for the answer is:**

The correct answer is D. The principal searched the student's backpack under the direction of the police officers and did so without probable cause or a search warrant. The jewelry should be suppressed. If a third person, not a police officer, acts under the direction or control of police officers, which is what occurred in this case, there is sufficient state action for the Fourth Amendment to apply. In this case, the police officers would have been unable to search the student's backpack themselves because they had not yet developed probable cause and they hadn't obtained a warrant. The officers are forbidden from ordering somebody to conduct a search that they themselves cannot conduct.

Answer A is incorrect because the principal did not have probable cause, did not have authority to arrest, and did not, in fact, arrest the student. The search the principal conducted was not incidental to a lawful arrest, but was instead done to collect evidence. Answer B is incorrect because the principal did not search the student on her own or at the school's request, but rather at the direction of the police officers. The police cannot avoid the proscriptions of the Fourth Amendment simply by having someone else conduct the search or seizure at their direction. Answer C is incorrect because the amount of force used to conduct a search is not relevant to the determination of whether the search could have been conducted in the first place. Since there was no probable cause to search the student's backpack, and there was no warrant, the police could not conduct the search; they could not direct someone else to conduct the search either. Therefore, the jewelry should be suppressed.



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**Question 925 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

The police suspected that a 16-year-old high school student had committed a series of burglaries. Two officers went to the student's high school and asked the principal to call the student out of class and to search his backpack. While the officers waited, the principal took the student into the hall where she asked to look in his backpack. When the student refused, the principal grabbed it from him, injuring the student's shoulder in the process. In the backpack, she found jewelry that she turned over to the officers.

The officers believed that the jewelry had been taken in one of the burglaries. They arrested the student, took him to the station, and gave him Miranda warnings. The student asked to see a lawyer. The police called the student's parents to the station. When the student's parents arrived, the police asked them to speak with the student. They put him in a room and secretly recorded their conversation with a concealed electronic device. The student broke down and confessed to his parents that he had committed the burglaries.

The student was charged with the burglaries.

The court denied the motion to suppress the jewelry. The student moves to suppress the use of the statement the student made to his parents.

The best argument for excluding it would be that

- A:** the student was in custody at the time the statement was recorded.
- B:** the police did not comply with the student's request for a lawyer.
- C:** once the student had invoked his right to counsel, it was improper for the police to listen to any of his private conversations.
- D:** the meeting between the student and his parents was arranged by the police to obtain an incriminating statement.

**The explanation for the answer is:**

The correct answer is D. Once the student requested to see an attorney, any additional statements made by him as a result of custodial interrogation should be suppressed. The student's best argument to have his statements to his parents suppressed is that, by arranging the meeting with his parents, the police were attempting to elicit incriminating statements in violation of his request for an attorney.

Answer A is incorrect because, although the student was in custody at the time, his statements to his parents were voluntarily made. The student must establish not only that he was in custody, but also that there was an interrogation. Answer B is incorrect because the police are not required to immediately obtain a lawyer for a defendant; the police are only required to cease their questioning. Only if the statements made by the student after he requested an attorney were the result of "interrogation" will the statements be suppressed. Answer C is incorrect because there is no reasonable expectation of privacy in a police station. The police officers were within their rights to overhear and audiotape any conversations that occurred. Only if the student's statements were made pursuant to questioning will they be suppressed. Thus, the student's best argument for excluding his confession is that the police officers used his parents to obtain incriminating statements.

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**Question 942 - Criminal Law - Other Crimes**

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**The question was:**

Unprepared for a final examination, a student asked his girlfriend to set off the fire alarms in the university building 15 minutes after the test commenced. The girlfriend did so. Several students were injured in the panic that followed as people were trying to get out of the building. The student and the girlfriend are prosecuted for battery and for conspiracy to commit battery.

They are

- A:** guilty of both crimes.
- B:** guilty of battery but not guilty of conspiracy.
- C:** not guilty of battery but guilty of conspiracy.
- D:** not guilty of either crime.

**The explanation for the answer is:**

Both B and D are correct answers. At common law, battery is a general intent crime and is defined as the unlawful offensive touching of another. The girlfriend and the student as her accessory, by pulling the fire alarm, caused many of the students to be offensively touched to the point of injury. These unlawful touchings were completely foreseeable from the pulling of the fire alarm, and they were the direct result of the student and his girlfriend's intentional act. Because battery is a general intent crime, the student and his girlfriend are guilty of battery. Conspiracy to commit battery, on the other hand, is a specific intent crime and requires an agreement to commit the crime of battery. For a proper conspiracy charge, both parties must reach an agreement and intend that the crime of battery be committed. Because conspiracy is a specific intent crime, there must be proof that both the student and his girlfriend specifically intended for people to be the victims of criminal battery. In this case, although the batteries were a foreseeable consequence of their actions, the student and his girlfriend did not have the specific intent that the batteries occur. Instead, they intended that the student get out of a final exam. The student and his girlfriend should be found not guilty of the offense of conspiracy to commit battery. Therefore answer B is correct.

Answer D is also correct. When this question appeared on the bar exam, so many students chose answer D, that credit was given for both answers. If the student and his girlfriend are found to have lacked the general intent necessary to commit the crime of battery, then they would be found not guilty of either crime. In this case, it is possible that the girlfriend, and the student as her accessory, meant to pull the fire alarms, but there is no indication that they intended to cause unlawful offensive touchings. Answer A is incorrect because the student and his girlfriend did not have the specific intent to cause criminal battery, and, lacking that specific intent, cannot be found guilty of conspiracy. Answer C is incorrect for that same reason, and also because battery is a general intent crime.

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**Question 946 - Criminal Law - General Principles**

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**The question was:**

In which of the following situations is the defendant most likely to be convicted, even though he did not intend to bring about the harm that the statute defining the offense is designed to prevent?

**A:** The defendant was the president of an aspirin manufacturing company. A federal inspector discovered that a large number of aspirin tablets randomly scattered through several bottles in a carton ready for shipment were laced with arsenic. The defendant is charged with attempted introduction of adulterated drugs into interstate commerce.

**B:** The defendant struck the victim in the face with a baseball bat, intending to inflict a serious injury. The victim died after being hospitalized for three days. The defendant is charged with murder.

**C:** The defendant burglarized a jewelry store, intending to steal some diamonds. As he entered the store, he short-circuited the store's burglar alarm system, thereby preventing a warning of his entry to police. The smoldering wires eventually caused a fire that destroyed the store. The defendant is charged with arson.

**D:** The defendant wanted to frighten the victim's friend by placing a plastic rattlesnake in his lunch box. When the victim mistakenly took the lunch box and opened it, believing it to be his own, the plastic rattlesnake popped out. As a result of the fright, the victim suffered a heart attack and died. The defendant is charged with manslaughter.

**The explanation for the answer is:**

The correct answer is B. Although the defendant intended only to inflict serious bodily injury, he can be convicted of murder. At common law, murder is a crime defined as the unlawful killing of another with malice aforethought. Malice aforethought can be shown by a defendant's intent to inflict great bodily injury, so the defendant in B can be properly convicted of murder.

Answer A is incorrect because attempt is a specific intent crime. There is no evidence that the defendant in answer A had the intent to introduce adulterated drugs into interstate commerce, or that he took substantial steps toward the commission of that offense. Answer C is incorrect because arson requires the malicious burning of the real property of another, and that malice is proved by showing a reckless disregard for an obvious or high risk that the structure would burn. In answer C, the burning due to the smoldering wires was not obvious or even foreseeable, so the burning was not malicious. Answer D is incorrect because manslaughter requires either the reckless or negligent killing of another. In answer D, the actions the defendant took were neither reckless nor negligent and would not be enough to sustain a conviction for manslaughter.

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**Question 962 - Criminal Law - Other Crimes**

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**The question was:**

An employee worked as the cashier in a restaurant. One night after the restaurant had closed, the employee discovered that the amount of cash in the cash register did not match the cash register receipt tapes. He took the cash and the tapes, put them in a bag, gave them to the manager of the restaurant and reported the discrepancy. The manager immediately accused him of taking money from the register and threatened to fire him if he did not make up the difference. The manager placed the bag in the office safe. Angered by what he considered to be an unjust accusation, the employee waited until the manager left the room and then reached into the still open safe, took the bag containing the cash, and left.

The employee is guilty of

- A:** larceny.
- B:** embezzlement.
- C:** either larceny or embezzlement but not both.
- D:** neither larceny nor embezzlement.

**The explanation for the answer is:**

The correct answer is A. The employee took and carried away the money with the intent to permanently deprive the owner of it and without the owner's permission. After he turned over the cash and receipts to the manager and she placed it in the safe, the employee no longer had lawful possession of the property, and is thus not guilty of embezzlement. At common law, embezzlement is the fraudulent conversion of another person's property by someone who had lawful possession of said property. Since the employee was no longer entitled to possession of the money, and because he did not convert the property, he is guilty of larceny and not embezzlement.

Answer B is incorrect because the employee did not have lawful possession of the money and did not convert it. Answer C is incorrect because the employee did not commit embezzlement, but he did commit larceny. Answer D is incorrect because the employee did take the property of another with the intent to permanently deprive the owner of the property.

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**Question 963 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

A grand jury returned an indictment charging the defendant with bank robbery, and when he could not make bond he was jailed pending trial. He had received Miranda warnings when arrested and had made no statement at that time. The prosecutor arranged to have an informant placed as the defendant's cellmate and instructed the informant to find out about the bank robbery without asking any direct questions about it. The informant, once in the cell, constantly boasted about the crimes that he had committed. Not to be outdone, the defendant finally declared that he had committed the bank robbery with which he was charged.

At the defendant's trial, his attorney moved to exclude any testimony from the informant concerning the defendant's boast.

The motion should be

- A:** granted, because the defendant's privilege against self-incrimination was violated.
- B:** granted, because the defendant's right to counsel was violated.
- C:** denied, because the defendant had received Miranda warnings.
- D:** denied, because the defendant was not interrogated by the informant.

**The explanation for the answer is:**

The correct answer is B. A prisoner's Sixth Amendment right to counsel is violated when the prosecutor uses, as evidence, statements made by the defendant which it had deliberately elicited from him after he had been indicted and in the absence of his counsel. The defendant's right to counsel continues throughout the period of his arrest, and any statements directly elicited by the police or prosecution after indictment will be suppressed.

Answer A is incorrect because it is not his right against self-incrimination that is being violated; it is his right to counsel. The defendant had already been given his Miranda warnings and the statements made were voluntarily made, so they may not violate his right against self-incrimination. However, the statements were made to a government agent without his counsel present, which is a violation of his right to counsel.

Answer C is incorrect because, even though the defendant received his Miranda warnings, the statements were elicited in violation of his right to counsel, and should be suppressed. Prior Miranda warnings will not permit the state to elicit statements without his attorney.

Answer D is incorrect because the informant did not have to interrogate, or even ask any questions at all, for there to be a violation of the defendant's right to counsel. Although the informant, acting as an agent of the state, did not ask specific questions, the prosecution did create a situation likely to induce the defendant to make incriminating statements without the assistance of counsel. This has been held by the Supreme Court of the United States, in *U.S. v. Henry*, as sufficient to be considered eliciting statements in violation of the defendant's right to counsel. The government elicited statements from the defendant without his counsel present, and the defendant's motion to suppress should be granted.

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**Question 975 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

A defendant was prosecuted for selling cocaine to an undercover police agent. At his trial, he testified that he only sold the drugs to the agent, whom the defendant knew as "Speedy," because Speedy had told him that he (Speedy) would be killed by fellow gang members unless he supplied them with cocaine. The prosecution did not cross-examine the defendant. As rebuttal evidence, however, the prosecutor introduced records, over the defendant's objection, showing that he had two prior convictions for narcotics-related offenses. The court instructed the jury concerning the defense of entrapment and added, also over the defendant's objection but in accord with state law, that it should acquit on the ground of entrapment only if it found that the defendant had established the elements of the defense by a preponderance of the evidence. The defendant was convicted.

On appeal, the defendant's conviction should be

- A:** reversed, because it was an error for the court to admit the evidence of his prior convictions as substantive evidence.
- B:** reversed, because it was a violation of due process to impose on the defense a burden of persuasion concerning entrapment.
- C:** reversed, for both of the above reasons.
- D:** affirmed, because neither of the above reasons constitutes a ground for reversal.

**The explanation for the answer is:**

The correct answer is D. The court acted properly in admitting the defendant's prior narcotics evidence in rebuttal to show the defendant was not entrapped but rather had the willingness to commit the crime of selling cocaine. The court also acted properly by following state law and instructing the jury that the defendant must prove entrapment by a preponderance of the evidence. Neither of the reasons the defendant raised on appeal constitute a ground for reversal, and his conviction should be upheld.

Answer A is incorrect because the prior convictions were properly introduced as rebuttal evidence to show the defendant's willingness to commit the crime. Once a defendant has raised an entrapment defense, the prosecution, in rebuttal, is allowed to introduce prior related convictions as substantive evidence to disprove the entrapment defense by showing the defendant's willingness to commit the crime. Answer B is incorrect because the state is allowed, under the due process clause, to determine that a defendant must bear the burden of proof of affirmative defenses. The state must prove all the substantive elements of the crime beyond a reasonable doubt, and shifting the burden of proof with respect to those elements would violate due process. However, entrapment is an affirmative defense, and the state is permitted to shift the burden of proof of an affirmative defense to the defendant without violating due process. Answer C is incorrect because neither reason constitutes a ground for reversal. The trial court acted properly, and the defendant's conviction should be affirmed.

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**Question 983 - Criminal Law - Inchoate Crimes**

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**The question was:**

A defendant wanted to make some money, so she decided to sell cocaine. She asked her neighbor, who was reputed to have access to illegal drugs, to supply her with cocaine so she could resell it. The neighbor agreed and sold the defendant a bag of white powder. The defendant then repackaged the white powder into smaller containers and sold one to an undercover police officer who promptly arrested the defendant. The defendant immediately confessed and said that her neighbor was her supplier. Upon examination, the white powder was found not to be cocaine or any type of illegal substance.

If the neighbor knew the white powder was not cocaine but the defendant believed it was, which of the following is correct?

- A:** Both the neighbor and the defendant are guilty of attempting to sell cocaine.
- B:** Neither the neighbor nor the defendant is guilty of attempting to sell cocaine.
- C:** The neighbor is guilty of attempting to sell cocaine, but the defendant is not.
- D:** The neighbor is not guilty of attempting to sell cocaine, but the defendant is.

**The explanation for the answer is:**

The correct answer is D. To attempt to commit a crime, one must have the intent that the crime be committed and take a substantial step towards its commission. The neighbor, knowing that the white powder was not cocaine, did not have the intent to sell cocaine; he intended to sell a look-alike substance. The defendant, on the other hand, had the intent to sell cocaine, and took substantial steps toward the commission of that offense. The fact that it was factually impossible for her to commit the crime of selling cocaine is not a valid defense to the attempt charge. The neighbor is not guilty of attempting to sell cocaine, but the defendant is guilty.

Answer A is incorrect because the neighbor did not have the intent to sell cocaine, and cannot be found guilty of attempting to sell cocaine. Answer B is incorrect because the defendant intended to sell cocaine, she took substantial steps toward the commission of the offense, and the fact that the powder was not, in fact, cocaine is not a defense to an attempt charge. Answer C is incorrect because the defendant is guilty of attempting to sell cocaine and the neighbor is not. The neighbor is not guilty of attempting to sell cocaine because he did not have the intent to sell cocaine. On the other hand, the defendant did have the intent to sell cocaine, and took substantial steps toward the commission of the offense and is guilty.

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**Question 988 - Criminal Law - General Principles**

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**The question was:**

After being fired from his job, a defendant drank almost a quart of vodka and decided to ride the bus home. While on the bus, he saw a briefcase he mistakenly thought was his own, and began struggling with the passenger carrying the briefcase. The defendant knocked the passenger to the floor, took the briefcase, and fled. The defendant was arrested and charged with robbery.

The defendant should be

- A:** acquitted, because he used no threats and was intoxicated.
- B:** acquitted, because his mistake negated the required specific intent.
- C:** convicted, because his intoxication was voluntary.
- D:** convicted, because mistake is no defense to robbery.

**The explanation for the answer is:**

The correct answer is B. Robbery is the taking of the personal property of another, with the intent to permanently deprive the owner of it, by force or threat of force. The defendant's mistaken belief that the briefcase was his negated his intention to permanently deprive the owner of the property. He believed he was the owner and that it was his property. Because the defendant did not have the requisite mens rea (in this case, specific intent to deprive), he should be acquitted of the charge of robbery.

Answer A is incorrect because, although he did not use the threat of force, he did use actual force by struggling with the passenger and pushing him to the floor, and robbery can be committed through either threat of force or actual force. In addition, intoxication, by itself, is not a defense to a crime. Only when the intoxication negates the requisite mental state can it be a defense to a criminal charge.

Answer C is incorrect because, although his intoxication was voluntary, he still lacked the requisite mental state to make the actions he took criminal. He believed the briefcase was his, and he had no intent to permanently deprive the owner of the property.

Answer D is a misstatement of the law and ignores the fact that a mistake can negate the specific intent necessary to commit a robbery. The defendant's mistaken belief that he was the owner of the property negated the specific intent necessary for a proper robbery charge and he should be acquitted.



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**Question 1003 - Criminal Law - General Principles**

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**The question was:**

In which of the following situations would the defendant's mistake most likely constitute a defense to the crime charged?

**A:** A local ordinance forbids the sale of alcoholic beverages to persons under 18 years of age. Relying on false identification, the defendant sells champagne to a 16-year-old high school student. The defendant is charged with illegal sale of alcoholic beverages.

**B:** Mistaking the defendant for a narcotics suspect, an undercover police officer attempts to arrest him. The defendant, unaware that the person who has grabbed him is an officer, hits him and knocks him unconscious. The defendant is charged with assault.

**C:** The defendant, aged 23, has sexual intercourse with a 15-year-old prostitute who tells the defendant that she is 18. The defendant is charged with the felony of statutory rape under a statute that makes sexual relations with a child under 16 a felony.

**D:** Relying on erroneous advice from his attorney that, if his wife has abandoned him for more than a year, he is free to remarry. The defendant remarries and is subsequently charged with bigamy.

**The explanation for the answer is:**

The correct answer is B. A mistake of fact will only be a successful defense if it negates the requisite mens rea of an offense. The defendant in Answer B is charged with assault, which is the attempt to commit a criminal battery. The defendant's mistake as to the identity of the person grabbing him would negate his intent to commit a criminal unlawful touching of another. The defendant could not be said to have had the intent to commit a battery, because he did not believe that his use of force was unlawful; he believed it was in self-defense.

Answer A is incorrect because illegal sale of alcohol is a strict liability offense so the defendant's mistake does not negate the mental state necessary for the offense. Because the defendant need not have intended to sell to an underage person to be convicted of the offense, his mistake as to the age of the person is not a valid defense.

Answer C is incorrect because statutory rape is also a strict liability offense, so the defendant's mistake does not negate the mental state necessary for the offense. Because the defendant need not have known that the child was under the age of 16, his mistake as to her age is not a valid defense.

Answer D is incorrect because relying only on the advice of an attorney does not provide a successful mistake of law defense. There must be a more official statement than merely the advice of an attorney before the defendant can properly raise a mistake of law defense. Only in Answer B, where the crime is a specific intent crime, can the defendant's mistake, which negated the specific intent, constitute a defense to the crime charged.

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**Question 1010 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

A state enacted a statute to regulate administratively the conduct of motor vehicle junkyard businesses in order to deter motor vehicle theft and trafficking in stolen motor vehicles or parts thereof. The statute requires a junkyard owner or operator to permit representatives of the Department of Motor Vehicles or any law enforcement agency upon request during normal business hours to take physical inventory of motor vehicles and parts thereof on the premises. The statute also states that a failure to comply with any of its requirements constitutes a felony.

Police officers assigned to a particular city's automobile crimes unit periodically visited all motor vehicle junkyards in town to make the inspections permitted by the statute. A woman owned such a business in the city. One summer day, the officers asked to inspect the vehicles on her lot. The woman said, "Do I have a choice?" The officers told her she did not. The officers conducted their inspection and discovered three stolen automobiles.

The woman is charged with receiving stolen property. She moves pretrial to suppress the evidence relating to the three automobiles on the ground that the inspection was unconstitutional.

The woman's motion should be

**A:** sustained, because the statute grants unbridled discretion to law enforcement officers to make warrantless searches.

**B:** sustained, because the stated regulatory purpose of the statute is a pretext to circumvent the warrant requirement in conducting criminal investigations.

**C:** denied, because the statute deals reasonably with a highly regulated industry.

**D:** denied, because administrative searches of commercial establishments do not require warrants.

**The explanation for the answer is:**

The correct answer is C. Because owners and operators of commercial properties in highly regulated industries have a lower expectation of privacy, and because the state's interest in the regulations are heightened, warrantless inspections of those commercial properties will be found reasonable under the Fourth Amendment. The Supreme Court has ruled that as long as there is a high governmental interest at stake, the warrantless inspections are necessary to further those interests, and the statute allowing the inspections serves the same functions as a warrant, then evidence found pursuant to those searches should not be suppressed. In *Burger v. New York*, the Supreme Court found the searches pursuant to the regulation of the automobile junkyard industry to be valid.

Answer A is incorrect because the discretion of the officers is not unbridled; it is limited in time, place, and scope. The searches can only be conducted during normal business hours, they can only be conducted on the premises of the junkyard, and they can only be of the vehicles and parts. Answer B is incorrect because the regulations are not a pretext; they are valid enforcement mechanisms, and, even if it were a pretext, the purpose is a valid government interest, and serves the same purposes and offers the same protections of a warrant. Answer D is incorrect because not all administrative searches of commercial establishments are allowable. The industry must be closely regulated, the regulations allowing the searches must be necessary to further valid governmental interests, and the discretion must be limited. Only in select cases, such as the one in this question, will administrative searches be valid.

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**Question 1010 - Criminal Law - Constitutional Protection of Accused Persons**

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Police officers assigned to a particular city's automobile crimes unit periodically visited all motor vehicle junkyards in town to make the inspections permitted by the statute. A woman owned such a business in the city. One summer day, the officers asked to inspect the vehicles on her lot. The woman said, "Do I have a choice?" The officers told her she did not. The officers conducted their inspection and discovered three stolen automobiles.

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The woman's motion should be

- A:** sustained, because the statute grants unbridled discretion to law enforcement officers to make warrantless searches.
- B:** sustained, because the stated regulatory purpose of the statute is a pretext to circumvent the warrant requirement in conducting criminal investigations.
- C:** denied, because the statute deals reasonably with a highly regulated industry.
- D:** denied, because administrative searches of commercial establishments do not require warrants.

**The explanation for the answer is:**

The correct answer is C. Because owners and operators of commercial properties in highly regulated industries have a lower expectation of privacy, and because the state's interest in the regulations are heightened, warrantless inspections of those commercial properties will be found reasonable under the Fourth Amendment. The Supreme Court has ruled that as long as there is a high governmental interest at stake, the warrantless inspections are necessary to further those interests, and the statute allowing the inspections serves the same functions as a warrant, then evidence found pursuant to those searches should not be suppressed. In *Burger v. New York*, the Supreme Court found the searches pursuant to the regulation of the automobile junkyard industry to be valid.

Answer A is incorrect because the discretion of the officers is not unbridled; it is limited in time, place, and scope. The searches can only be conducted during normal business hours, they can only be conducted on the premises of the junkyard, and they can only be of the vehicles and parts. Answer B is incorrect because the regulations are not a pretext; they are valid enforcement mechanisms, and, even if it were a pretext, the purpose is a valid government interest, and serves the same purposes and offers the same protections of a warrant. Answer D is incorrect because not all administrative searches of commercial establishments are allowable. The industry must be closely regulated, the regulations allowing the searches must be necessary to further valid governmental interests, and the discretion must be limited. Only in select cases, such as the one in this question, will administrative searches be valid.

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**Question 1033 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

The legislature of a state is debating reforms in the law governing insanity. Two reforms have been proposed. Proposal A would eliminate the insanity defense altogether. Proposal B would retain the defense but place on the defendant the burden of proving insanity by a preponderance of the evidence. Opponents of the reforms argue that the proposals would be unconstitutional under the due process clause of the United States Constitution. Which of the following proposed reforms would be unconstitutional?

- A:** Both proposals.
- B:** Neither proposal.
- C:** Proposal A only.
- D:** Proposal B only.

**The explanation for the answer is:**

The correct answer is B. A state is not constitutionally required to recognize any form of an insanity defense. Although many states do, there is no constitutional requirement that states allow defendants to argue insanity. Answer A is incorrect because states can regulate who bears the burden to prove insanity, and even deny the use of the insanity defense altogether. Likewise, answers C and D are incorrect. There is simply no constitutional right to raise an insanity defense, and both of the proposals would be constitutional.

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**Question 1040 - Criminal Law - Homicide**

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**The question was:**

A clerk lived on the second floor of a small convenience store/gas station that he owned. One night he refused to sell the defendant a six-pack of beer after hours, saying he could not violate the state laws. The defendant became enraged and deliberately drove his car into one of the gasoline pumps, severing it from its base. There was an ensuing explosion causing a ball of fire to go from the underground gasoline tank into the building. As a result, the building burned to the ground and the clerk was killed.

In a common-law jurisdiction, if the defendant is charged with murder and arson, he should be

- A:** convicted of both offenses.
- B:** convicted of involuntary manslaughter and acquitted of arson.
- C:** convicted of arson and involuntary manslaughter.
- D:** acquitted of both offenses.

**The explanation for the answer is:**

The correct answer is A. At common law, murder is defined as the unlawful killing of another human being with malice aforethought. Malice can be shown by having an intent to kill, or by having an intent to inflict great bodily harm. Malice can also be implied in actions that demonstrate gross recklessness toward human life. In addition, felony murder is the killing of someone during the commission of a violent felony. Arson is defined at common law as the malicious burning of the dwelling of another.

In this case, the defendant maliciously burned the clerk's dwelling and, during the commission of that arson, caused the clerk's death. Additionally, the defendant acted with malice aforethought when he caused the clerk's death. Deliberately driving a car into a gasoline pump demonstrates a reckless indifference to a high risk to human life; this is sufficient for a finding of malice aforethought for the murder charge. The defendant could be convicted of either murder with malice aforethought or felony murder with arson as the underlying felony. In addition, the defendant's driving his vehicle into a gasoline pump also had the foreseeable consequences of igniting the gasoline, creating a ball of fire, and burning the building the clerk was in. Therefore, the defendant is guilty of both arson and murder.

Answer B is incorrect because the defendant's actions were not merely negligent, which would support only an involuntary manslaughter charge; they were done with the type of reckless disregard for human life that would qualify the clerk's homicide as murder committed with malice aforethought. In addition, answer B is incorrect because the defendant could be convicted of felony murder. Additionally, because the defendant maliciously burned the clerk's dwelling, he should also be convicted of arson. The charge of arson does not require an intentional setting of a fire. It is sufficient for the burning to be foreseeable from a defendant's action, such as deliberately driving a vehicle into gasoline pumps. Answer C is incorrect because the defendant committed murder, not involuntary manslaughter. Answer D is incorrect because the defendant committed both offenses.

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**Question 1042 - Criminal Law - Homicide**

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**The question was:**

At a party, the defendant and the victim agreed to play a game they called "spin the barrel." The victim took an unloaded revolver, placed one bullet in the barrel, and spun the barrel. The victim then pointed the gun at the defendant's head and pulled the trigger once. The gun did not fire. The defendant then took the gun, pointed it at the victim, spun the barrel, and pulled the trigger once. The gun fired, and the victim fell over dead.

A statute in the jurisdiction defines murder in the first degree as an intentional and premeditated killing or one occurring during the commission of a common-law felony, and murder in the second degree as all other murder at common law. Manslaughter is defined as a killing in the heat of passion upon an adequate legal provocation or a killing caused by gross negligence.

The most serious crime for which the defendant can properly be convicted is

**A:** murder in the first degree, because the killing was intentional and premeditated and, in any event, occurred during commission of the felony of assault with a deadly weapon.

**B:** murder in the second degree, because the defendant's act posed a great threat of serious bodily harm.

**C:** manslaughter, because the defendant's act was grossly negligent and reckless.

**D:** no crime, because the victim and the defendant voluntarily agreed to play a game and each assumed the risk of death.

**The explanation for the answer is:**

The correct answer is B. The defendant's pointing a loaded weapon at the victim and pulling the trigger posed a great threat of serious bodily injury to the victim, and, because it resulted in the victim's death, the defendant should be convicted of murder in the second degree. Murder in the second degree is murder with malice aforethought, done without premeditation and deliberation. The defendant's actions were done with reckless indifference to an unjustifiably high risk to human life, and will support a finding of malice aforethought.

Answer A is incorrect because there is no evidence that the defendant intended to kill the victim. Because the statute defines first degree murder as the premeditated and intentional killing of another, and there is no evidence that the defendant intended to kill the victim, she will not be convicted of murder in the first degree. In addition, answer A is also incorrect because the underlying felony in a felony murder charge must be sufficiently independent of the actual killing. In this case, the underlying felony of assault with a deadly weapon would merge into the homicide charge and would not be independent enough to allow for a proper felony murder charge. The defendant cannot be properly convicted of first degree murder under either theory.

Answer C is incorrect because manslaughter is not the most serious crime for which the defendant can properly be convicted. In addition, the defendant's actions were beyond mere negligence, and the killing of the victim was done with malice aforethought. The defendant should be convicted of murder in the second degree.

Answer D is incorrect because a victim's voluntarily playing the game and his assumption of risk are irrelevant to the determination of criminal responsibility. The most serious crime for which the defendant can be properly convicted is second degree murder.

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**Question 1048 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

The police had, over time, accumulated reliable information that a suspect operated a large cocaine-distribution network, that he and his accomplices often resorted to violence, and that they kept a small arsenal of weapons in his home.

One day, the police received reliable information that a large brown suitcase with leather straps containing a supply of cocaine had been delivered to the suspect's home and that it would be moved to a distribution point the next morning. The police obtained a valid search warrant to search for and seize the brown suitcase and the cocaine and went to the suspect's house.

The police knocked on the suspect's door and called out, "Police. Open up. We have a search warrant." After a few seconds with no response, the police forced the door open and entered. Hearing noises in the basement, the police ran down there and found the suspect with a large brown suitcase and put handcuffs on the suspect. A search of his person revealed a switchblade knife and a .45-caliber pistol. The suspect cursed the police and said, "You never would have caught me with the stuff if it hadn't been for that lousy snitch Harvey!" The police then fanned out through the house, looking in every room and closet. They found no one else, but one officer found an Uzi automatic weapon in a box on a closet shelf in the suspect's bedroom. In addition to charges relating to the cocaine in the suitcase, the suspect is charged with unlawful possession of weapons.

The suspect moves pretrial to suppress the use as evidence of the weapons seized by the police and of the statement he made.

As to the suspect's statement, his motion to suppress should be

- A:** granted, because entry by forcing open the door was not reasonable.
- B:** granted, because the police failed to read the suspect his Miranda rights.
- C:** denied, because the statement was volunteered.
- D:** denied, because the statement was the product of a lawful public safety search.

**The explanation for the answer is:**

The correct answer is C. The suspect's statements were voluntarily made and were not made during a custodial interrogation, so they should not be suppressed. Answer A is incorrect because police officers are allowed to use force to open a door pursuant to a proper search warrant and because the statement itself was voluntarily made. Answer B is incorrect because a failure to read the Miranda warnings will lead to the suppression of statements only if those statements were obtained as a result of a custodial interrogation. In this case, the suspect, while he may have been in custody, was not subject to interrogation. Answer D is a misstatement of the law regarding the admissibility of a defendant's confession. The fact that the police's presence was authorized does not, in itself, have a bearing on whether the defendant's statements were made voluntarily. The suspect voluntarily blurted out his statement without being questioned and that statement is admissible against him. His motion to suppress should be denied.



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**Question 1049 - Criminal Law - Constitutional Protection of Accused Persons**

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In addition to charges relating to the cocaine in the suitcase, the suspect is charged with unlawful possession of weapons.

The suspect moves pretrial to suppress the use as evidence of the weapons seized by the police and of the statement he made.

As to the Uzi automatic weapon, the suspect's motion to suppress should be

**A:** granted, because the search exceeded the scope needed to find out if other persons were present.

**B:** granted, because once the object of the warrant--the brown suitcase--had been found and seized, no further search of the house is permitted.

**C:** denied, because the police were lawfully in the bedroom and the weapon was immediately identifiable as being subject to seizure.

**D:** denied, because the police were lawfully in the house and had probable cause to believe that weapons were in the house.

**The explanation for the answer is:**

The correct answer is A. Police officers are allowed to conduct a sweep of the residence that they are searching to protect themselves from others in the residence, even if the object of the warrant had already been found. While this would allow police officers to check the other rooms and closets in the residence for people, it would not authorize the searching of the box on a closet shelf where there is no possibility of a person hiding there. The opening of the box exceeded the scope of a protective sweep.

Answer B is incorrect, because as stated above, the police may conduct a sweep of the residence if they believe accomplices may be present, aside from searching and seizing the contraband described in the warrant. Answer C is incorrect because the Uzi was only readily identifiable as being subject to seizure after the box was opened, which was the invalid search. The Uzi was not in plain view, and the police did not have any authority to open the box. Answer D is incorrect because, although they were lawfully in the house, their search of the house exceeded the scope of the warrant. The warrant only authorized the search and seizure of the suitcase and the cocaine contained in it. By exceeding the scope of the warrant and the scope of a protective sweep, the police officers were acting in violation of the suspect's Fourth Amendment rights and the evidence should be suppressed.



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**Question 1051 - Criminal Law - Inchoate Crimes**

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**The question was:**

A teenager and two of his friends were members of a teenage street gang. While they were returning from a dance late one evening, their car collided with a car driven by an elderly woman. After an argument, the teenager attacked the elderly woman with his fists and beat her to death. The teenager's two friends watched, and when they saw the woman fall to the ground they urged the teenager to flee. The teenager was eventually apprehended and tried for manslaughter, but the jury could not decide on a verdict.

If the teenager's companions are subsequently tried as accomplices to manslaughter, they should be

- A:** acquitted, because the teenager was not convicted of the offense.
- B:** acquitted, because they did not assist or encourage the teenager to commit the crime.
- C:** convicted, because they urged him to flee.
- D:** convicted, because they made no effort to intervene.

**The explanation for the answer is:**

B is the correct answer. Don't be lured in by the fact that the friends were members of a street gang or that the victim was a helpless elderly lady. The Examiners will try to sway your emotions and trick you into a wrong choice. B is the best answer because it addresses the fact that the friends stood there and did not encourage or help the teenager in his actions and so did not aid in the commission of manslaughter.

D is incorrect because there is generally no affirmative duty to rescue an attack victim, and mere presence at an attack is insufficient for accomplice liability. In addition, the charge is accomplice to manslaughter, which requires knowledge by the friends that the teenager was committing a crime and their intention to aid or abet its commission. C is incorrect because urging a perpetrator to flee is not aiding or abetting, like driving a getaway car would be. Finally, A is incorrect because only under the common law was a conviction of the principal required before an accessory could be convicted. The majority rule today treats all offenders as principals. A, C and D are incorrect.

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D is incorrect because there is generally no affirmative duty to rescue an attack victim, and mere presence at an attack is insufficient for accomplice liability. In addition, the charge is accomplice to manslaughter, which requires knowledge by the friends that the teenager was committing a crime and their intention to aid or abet its commission. C is incorrect because urging a perpetrator to flee is not aiding or abetting, like driving a getaway car would be. Finally, A is incorrect because only under the common law was a conviction of the principal required before an accessory could be convicted. The majority rule today treats all offenders as principals. A, C and D are incorrect.

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**Question 1057 - Criminal Law - General Principles**

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**The question was:**

During an altercation between a boss and her employee at a company picnic, the boss suffered a knife wound in her abdomen and the employee was charged with assault and attempted murder. At his trial, the employee seeks to offer evidence that he had been drinking at the picnic and was highly intoxicated at the time of the altercation.

In a jurisdiction that follows the common-law rules concerning admissibility of evidence of intoxication, the evidence of the employee's intoxication should be

- A:** admitted without limitation.
- B:** admitted subject to an instruction that it pertains only to the attempted murder charge.
- C:** admitted subject to an instruction that it pertains only to the assault charge.
- D:** excluded altogether.

**The explanation for the answer is:**

The correct answer is A or B; either choice would be counted as correct. At common law, voluntary intoxication can be the basis for a defense to a specific intent crime if the intoxication negated the requisite mens rea of the offense. In this case, the employee is charged with assault and attempted murder, both of which are specific intent crimes. Assault requires the intent to commit a battery or the intent to create a reasonable apprehension of imminent bodily harm. Attempted murder requires proof that the employee had the intent to kill his boss and took substantial steps toward the commission of the offense. If the employee was unable to form the intent to commit a battery or the intent to commit a murder due to his intoxication, he would have a valid defense to the charge. The evidence of the employee's intoxication should be admitted without limitation.

Answer B can also be correct because the assault was actually brought to fruition by the commission of the battery. By stabbing his boss, the employee did not merely commit an assault; he committed criminal battery. The charge of assault would thus merge into the battery offense, and the evidence of the intoxication should be admitted only to the attempted murder charge.

Answer C is incorrect because the evidence of intoxication may negate the employee's intent to commit the murder and should be admitted for that purpose. Answer D is incorrect for the same reason. Because the evidence of the intoxication could negate the mental state requirement of the assault charge and the attempted murder, it should be admitted as to both. However, it is also possible that the assault charge merged into a battery, and the evidence of the intoxication should only be admissible to the attempted murder charge. Therefore, answers A and B are both acceptable.

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**Question 1072 - Criminal Law - Homicide**

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**The question was:**

In a jurisdiction that has abolished the felony-murder rule, but otherwise follows the common law of murder, a man and woman, both armed with automatic weapons, went into a bank to rob it. The man ordered all the persons in the bank to lie on the floor. When some were slow to obey, the woman, not intending to hit anyone, fired about 15 rounds into the air. One of these ricocheted off a stone column and struck and killed a customer in the bank.

The man and woman were charged with murder of the customer.

Which of the following is correct?

- A:** The woman can be convicted of murder, because she did the act of killing, but the man cannot be convicted of either murder or manslaughter.
- B:** Neither can be guilty of murder, but both can be convicted of manslaughter based upon an unintentional homicide.
- C:** The woman can be convicted only of manslaughter, but the man cannot be convicted of murder or manslaughter.
- D:** Both can be convicted of murder.

**The explanation for the answer is:**

The correct answer is D. Common law murder is not a specific intent crime. At common law, murder is defined as the unlawful killing of another human being with malice aforethought. Malice can be shown by having an intent to kill, or by having an intent to inflict great bodily harm. Malice can also be implied by actions that show a reckless indifference to an unjustifiably high risk to human life. In this case, the woman's act of firing an automatic weapon in a populated bank demonstrates the reckless indifference necessary to show malice aforethought, and the woman can be convicted of murder. The woman was acting with gross recklessness toward human life and thus with malice aforethought. The man is the woman's accomplice - a person who aids or encourages the principal to commit the illegal conduct. He is liable for the principal crime so long as he intended to aid or encourage the crime. In most jurisdictions, unless otherwise noted, all parties to a crime may be found guilty of the principal crime; in this case, murder. Thus, the man can also be convicted of murder.

Answer A is incorrect because the man, as the woman's accomplice, is criminally liable for the woman's actions, and can be convicted of murder. Answer B is incorrect because even unintentional homicides can be the basis for murder if they are done with malice aforethought. In this case, the gross recklessness toward human life shown by the woman and the man's actions is sufficient for a finding of malice aforethought. Answer C is incorrect because the woman can be convicted of murder, not just manslaughter. Answer C is also incorrect because the man is criminally responsible for the woman's actions. Although there is no felony-murder liability in this jurisdiction, both the woman and the man can be convicted of murder.

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**Question 1082 - Criminal Law - Homicide**

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**The question was:**

At 11:00 p.m., a couple was accosted in the entrance to their apartment building by the defendant, who was armed as well as masked. The defendant ordered the couple to take him into their apartment. After they entered the apartment, the defendant forced the woman to bind and gag her husband and then to open a safe which contained a diamond necklace. The defendant then tied her up and fled with the necklace. He was apprehended by apartment building security guards. Before the guards could return to the apartment, but after the defendant was arrested, the husband, straining to free himself, suffered a massive heart attack and died.

The defendant is guilty of

- A:** burglary, robbery, and murder.
- B:** robbery and murder only.
- C:** burglary and robbery only.
- D:** robbery only.

**The explanation for the answer is:**

The correct answer is A. Robbery is defined at common law as the taking, by force or threat of force, of personal property of another with the intent to permanently deprive the owner of the property. Burglary is the breaking and entering into a dwelling with the intent to commit a felony or theft therein. Felony murder is the killing of a human being in the course of a violent felony. In this case, the defendant is guilty of burglary, robbery, and murder. The defendant forced, at weapon point, the couple to allow him to enter their dwelling, which is sufficient for breaking and entering. When this breaking and entering occurred, the defendant had the intent to commit a theft of their property, and he is guilty of burglary. In addition, the defendant used force by tying and binding the couple, and the threat of force by threatening them, to take the necklace from the couple, and he had the intent to permanently deprive them of the necklace. Therefore, the defendant is guilty of robbery. Finally, the husband died as a result of the commission of those two violent felonies, so the defendant is guilty of felony murder. During the commission of the robbery and burglary, the defendant had the husband bound and gagged. That the husband would die from these actions, and the stress of attempting to escape, is foreseeable from the commission of the crime, and the defendant is guilty of murder.

Answer B is incorrect because it ignores the forced entry with the intent to commit felony theft into the apartment. Answer C is incorrect because it ignores the defendant's guilt under felony murder. Answer D is incorrect because it ignores both the burglary and the murder.

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**Question 1088 - Criminal Law - Inchoate Crimes**

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**The question was:**

A babysitter, while baby-sitting one night, noticed that the next-door neighbor had left his house but that the door did not close completely behind him. The babysitter said to the 11-year-old boy she was baby-sitting, "Let's play a game. You go next door and see if you can find my portable television set, which I lent to the neighbor, and bring it over here." The babysitter knew that the next-door neighbor had a portable television set and the babysitter planned to keep the set for herself. The boy thought the set belonged to the babysitter, went next door, found the television set, and carried it out the front door. At that moment, the neighbor returned home and discovered the boy in his front yard with the television set. The boy explained the "game" he and the babysitter were playing. The neighbor took back his television set and called the police.

The babysitter is

- A:** not guilty of larceny or attempted larceny, because the 11-year-old boy did not commit any crime.
- B:** not guilty of larceny but guilty of attempted larceny, because she never acquired possession of the television.
- C:** guilty of larceny as an accessory to the 11-year-old boy.
- D:** guilty of larceny by the use of an innocent agent.

**The explanation for the answer is:**

The correct answer is D. The babysitter is criminally responsible for the 11-year-old boy's actions, and, even though the boy did not have the mens rea necessary for the commission of larceny, the babysitter did, so she is guilty of larceny. With the intent to commit larceny, the babysitter aided and abetted the boy in the taking of the next-door neighbor's property, so she is criminally responsible for the larceny.

Answer A is incorrect because, although the 11-year-old boy did not commit a crime, the babysitter did because she used him as an innocent agent in the commission of larceny, and she had the requisite mental state. Answer B is incorrect because larceny requires the taking of the property of another without the owner's consent, and with the intent to deprive the owner of the property. The television need not have been in the babysitter's possession for her to bear criminal responsibility for the taking of the television. Answer C is incorrect because, although she bears criminal responsibility for the 11-year-old boy's actions, she is not his accessory because he did not have the intent to commit the larceny. The boy was the babysitter's innocent agent, and the babysitter used him to commit larceny.

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**Question 1094 - Criminal Law - General Principles**

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**The question was:**

A college student and his friend were watching a football game at the student's home when they began to argue. The friend became abusive, and the student asked him to leave. The friend refused, walked into the kitchen, picked up a knife, and said he would cut the student's heart out. The student pulled a gun from under the sofa, walked to his front door, opened it, and again told the friend to leave. The friend again refused. Instead, he walked slowly toward the student, brandishing the knife in a threatening manner. The student, rather than running out the door himself, shot in the friend's direction, intending only to scare him. However, the bullet struck the friend, killing him instantly.

Charged with murder, the student should be

- A:** convicted, because the use of deadly force was unreasonable under the circumstances.
- B:** convicted, because he had a clear opportunity and duty to retreat.
- C:** acquitted, because he did not intend to kill the friend.
- D:** acquitted, because he was acting in self-defense and had no duty to retreat.

**The explanation for the answer is:**

The correct answer is D. The college student, when he shot his friend, was acting in self-defense and should be acquitted of murder. A claim of self-defense will be successful against a murder charge if the action resulting in the death is reasonably necessary to prevent imminent death or great bodily harm to himself from the use of unlawful force. In this case, the friend had verbally threatened to kill the student, and was walking toward the student, brandishing the knife in a threatening manner. The student believed shooting the gun was necessary to protect himself from the friend's unlawful use of force, and that belief was, in light of all the circumstances, reasonable.

Answer A is incorrect because the friend had threatened to cut the student's heart out, was coming directly at the student, and was brandishing a deadly weapon, the knife, in a threatening manner. The student's firing of the gun to protect himself was not unreasonable. Answer B is incorrect because the student was in his own house and had asked the friend to leave twice. The student was under no obligation to retreat from his own house before using force to protect himself. Answer C is incorrect because it ignores the student's self-defense claim and because it is possible to be convicted of murder with malice aforethought without having the intent to kill the victim. The student, in his own house and having no duty to retreat, killed the friend in self-defense, and should be acquitted of murder.

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**Question 1106 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

A defendant held up a drugstore at 10:30 at night and drove away. His car broke down in an isolated area just outside the small city in which the crime occurred. The defendant walked to the nearest house and asked the homeowner if he could stay until the next morning, explaining that he had been searching for his sister's home and had run out of gas. The homeowner agreed to let him sleep on a couch in the basement. During the course of the night, the homeowner began to doubt the story the defendant had told him. Early the next morning, the homeowner called the police and said he was suspicious and frightened of a stranger whom he had allowed to stay the night. The police went immediately to the house to assist the homeowner and walked through the open front door. They found the defendant and the homeowner drinking coffee in the kitchen. When they saw the defendant, they realized he matched the description of the drugstore robber. They arrested the defendant and in his jacket they found drugs taken during the robbery.

The defendant moves to suppress the evidence of the drugs.

If the court finds that the police did not have probable cause to believe the defendant was the robber until they saw him inside the homeowner's house and realized he matched the description, the court should

- A:** grant the motion, because, as a guest, the defendant has sufficient standing to contest the entry of the house without a warrant.
- B:** grant the motion, because, as a guest, the defendant has sufficient standing to contest the lack of probable cause at the time of the entry.
- C:** deny the motion, because the defendant had no ownership or other possessory interest in the premises.
- D:** deny the motion, because the police had the permission of the owner to enter the house.

**The explanation for the answer is:**

The correct answer is D. The police officers were in the house at the request of the owner, and what they observed was in plain view. The defendant's motion to suppress should be denied.

Answer A is incorrect because, even if the defendant has standing to contest the entry to the house, the police did not need a warrant because the homeowner gave them permission to enter the house. Answer B is incorrect because, even if the defendant has standing to contest the entry to the house, the police did not need probable cause because the homeowner gave them permission to enter the house. Answer C is incorrect because the defendant may have standing to challenge the entry even without ownership or possessory interest in the house; however, his standing is not dispositive because the owner of the house gave the officers consent to enter. The defendant's motion to suppress should be denied because the police officers had the consent of the owner to enter the house.



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**Question 1113 - Criminal Law - Inchoate Crimes**

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**The question was:**

An eighteen-year-old boyfriend and his 14-year-old girlfriend made plans to meet in the boyfriend's apartment to have sexual intercourse, and they did so. The girlfriend later told her mother about the incident. The boyfriend was charged with statutory rape and conspiracy to commit statutory rape.

In the jurisdiction, the age of consent is 15, and the law of conspiracy is the same as at common law.

The boyfriend was convicted of both charges and given consecutive sentences. On appeal, he contends that his conspiracy conviction should be reversed.

That conviction should be

- A:** affirmed, because he agreed with the girlfriend to commit the crime.
- B:** reversed, because the girlfriend could not be a conspirator to this crime.
- C:** reversed, because the crime is one that can only be committed by agreement and thus Wharton's Rule bars conspiracy liability.
- D:** reversed, because one cannot conspire with a person too young to consent.

**The explanation for the answer is:**

The correct answer is B. Because the charge of statutory rape is meant to protect minor children, and the girlfriend is a member of the protected class, the girlfriend cannot be charged with the crime of conspiracy to commit statutory rape. Because it is impossible for the girlfriend to commit the crime, she cannot be a conspirator to the crime, and the boyfriend's conviction for conspiracy should be reversed.

Answer A is incorrect because a conspiracy charge not only requires that there be an agreement, but also that both parties be capable of committing the offense. Because the girlfriend cannot be a conspirator to statutory rape, the boyfriend cannot be convicted of conspiring with her.

Answer C is incorrect because Wharton's rule only applies in cases where the crime to be committed is one that, by definition requires the voluntary concerted criminal participation of two persons. Statutory rape can be committed without the voluntary concerted criminal participation of the minor victim. Because statutory rape can be committed by only one of the participants, Wharton's rule does not apply.

Answer D is incorrect because it is possible to conspire with a minor to commit a crime. The reason the girlfriend cannot be a conspirator is because she is the protected victim, not because she is presumed incapable of consenting. Because the boyfriend was convicted of conspiring with someone who is incapable of committing the underlying charge, his conviction should be reversed.

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**Question 1114 - Criminal Law - Homicide**

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**The question was:**

An employee decided to kill his boss after she told him that he would be fired if his work did not improve. The employee knew his boss was scheduled to go on a business trip on Monday morning. On Sunday morning, the employee went to the company parking garage and put a bomb in the company car that his boss usually drove. The bomb was wired to go off when the car engine started. The employee then left town. At 5 a.m. Monday, the employee, after driving all night, was overcome with remorse and had a change of heart. He called the security officer on duty at the company and told him about the bomb. The security officer said he would take care of the matter. An hour later, the officer put a note on the boss's desk telling her of the message. He then looked at the car but could not see any signs of a bomb. He printed a sign saying, "DO NOT USE THIS CAR," put it on the windshield, and went to call the police. Before the police arrived, a company vice president got into the car and started the engine. The bomb went off, killing her.

The jurisdiction defines murder in the first degree as any homicide committed with premeditation and deliberation or any murder in the commission of a common-law felony. Second-degree murder is defined as all other murder at common law. Manslaughter is defined by the common law.

The employee is guilty of

**A:** murder in the first degree, because, with premeditation and deliberation, he killed whoever would start the car.

**B:** murder in the second degree, because he had no intention of killing the company vice president.

**C:** manslaughter, because at the time of the explosion, he had no intent to kill, and the death of the company vice president was in part the fault of the security officer.

**D:** only attempted murder of his boss, because the death of the company vice president was the result of the security officer's negligence.

**The explanation for the answer is:**

The correct answer is A. The employee, with premeditation and deliberation, caused the company vice president's death. Although his intent was to kill his boss, the doctrine of transferred intent will presume that intent to go with whomever started the vehicle.

Answer B is incorrect because the employee had the requisite intent to kill, and the requisite premeditation and deliberation, and that intent is transferred to the person who started the car. Although the employee did not intend to kill the company vice president in particular, he is guilty of first degree murder.

Answer C is incorrect because, although at the precise moment the company vice president was killed, the employee did not have the intent to kill anyone, when he took the actions that led to the vice president's death, he did have the intent to kill. The employee cannot escape liability for murder merely because he changed his mind after he set the murder in motion. Regardless of the employee's attempt to stop anyone from using the vehicle, he will still bear criminal responsibility for originally placing the bomb in the vehicle with the intent to murder his boss.

Answer D is incorrect because the security officer's failure to save the company vice president's life is not an intervening act that would negate the employee's responsibility in causing the vice president's death. It was completely foreseeable that someone other than the boss would be killed as a result of the employee's actions, and the security guard's failure to stop the company vice president will not negate the employee's guilt. Therefore, the employee is guilty of first degree murder.

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**Question 1120 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

A marijuana farmer had been missing for several months. The sheriff's department received an anonymous tip that a rival marijuana farmer had buried the marijuana farmer in a hillside about 200 yards from the rival's farmhouse. The sheriff's deputies went to the rival's farm. They cut the barbed wire that surrounded the hillside and entered, looking for the grave. They also searched the adjacent fields on the rival's farm that were within the area enclosed by the barbed wire and discovered clothing that belonged to the marijuana farmer hanging on a scarecrow. The rival observed their discovery and began shooting. The deputies returned fire. The rival dashed to his pickup truck to escape. Unable to start the truck, he fled across a field toward the barn. A deputy tackled him just as he entered the barn.

As the rival attempted to get up, the deputy pinned his arms behind his back. Another deputy threatened, "Tell us what you did with the marijuana farmer or we will shut you down and see your family on relief." The rival responded that he had killed the marijuana farmer in a fight but did not report the incident because he did not want authorities to enter his land and discover his marijuana crop. Instead, he buried him behind the barn. The rival was thereafter charged with murder.

If the rival moves to exclude the introduction of the marijuana farmer's clothing into evidence, the court should

- A:** grant the motion, because the deputies had not obtained a warrant.
- B:** grant the motion, because the deputies' conduct in its entirety violated the rival's right to due process of law.
- C:** deny the motion, because the rival had no expectation of privacy in the fields around his farmhouse.
- D:** deny the motion, because the clothing was not the rival's property.

**The explanation for the answer is:**

The correct answer is C. The fields around the rival's farmhouse are considered held out to the public under the "open fields" doctrine, so the rival did not have a reasonable expectation of privacy in them or in the scarecrow on which the victim's clothes were hanging. Because the fields were not protected by the Fourth Amendment, the police officers' search did not violate the rival's constitutional rights. The rival's motion to suppress should be denied.

Answer A is incorrect because the rival had no reasonable expectation of privacy in lands visible to the public, and the police officer's did not need to obtain a warrant to see the evidence.

Answer B is incorrect because it is a misstatement of the relevant law regarding search and seizure; answer B refers to the rival's right to due process of law, whereas search and seizure law is covered by the fourth amendment.

Answer D is incorrect because actual ownership of the searched or seized property is not the deciding factor in determining the propriety of the search. Because the clothing was on the rival's land when the search and seizure occurred, the fact that it belonged to somebody else is irrelevant. Therefore, because the rival did not have a reasonable expectation of privacy in the lands around his farmhouse, the clothing should not be suppressed.

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**Question 1120 - Criminal Law - Constitutional Protection of Accused Persons**

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The correct answer is C. The fields around the rival's farmhouse are considered held out to the public under the "open fields" doctrine, so the rival did not have a reasonable expectation of privacy in them or in the scarecrow on which the victim's clothes were hanging. Because the fields were not protected by the Fourth Amendment, the police officers' search did not violate the rival's constitutional rights. The rival's motion to suppress should be denied.

Answer A is incorrect because the rival had no reasonable expectation of privacy in lands visible to the public, and the police officer's did not need to obtain a warrant to see the evidence.

Answer B is incorrect because it is a misstatement of the relevant law regarding search and seizure; answer B refers to the rival's right to due process of law, whereas search and seizure law is covered by the fourth amendment.

Answer D is incorrect because actual ownership of the searched or seized property is not the deciding factor in determining the propriety of the search. Because the clothing was on the rival's land when the search and seizure occurred, the fact that it belonged to somebody else is irrelevant. Therefore, because the rival did not have a reasonable expectation of privacy in the lands around his farmhouse, the clothing should not be suppressed.

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**Question 1133 - Criminal Law - Homicide**

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**The question was:**

A teenager's high school teacher told her that she was going to receive a failing grade in history, which would prevent her from graduating. Furious, she reported to the principal that the teacher had fondled her, and the teacher was fired. A year later, still unable to get work because of the scandal, the teacher committed suicide. The teenager, remorseful, confessed that her accusation had been false.

If the teenager is charged with manslaughter, her best defense would be that she

- A:** committed no act that proximately caused the teacher's death.
- B:** did not intend to cause the teacher's death.
- C:** did not act with malice.
- D:** acted under extreme emotional distress.

**The explanation for the answer is:**

The correct answer is A. The teacher committed suicide, and the teenager committed no act that was a proximate cause of the teacher's death. A defendant will only be held criminally responsible for the foreseeable consequences of her actions. The suicide by the teacher was not a foreseeable consequence of the teenager's lying.

Answer B is incorrect because a charge of manslaughter does not require proof of intent to kill. Answer C is incorrect because a charge of manslaughter does not require proof of malice, either. Manslaughter is generally defined as causing the death of another without malice aforethought. The teenager's lack of intent to kill and her lack of malice are not defenses to a manslaughter charge. Answer D is incorrect because acting under extreme emotional distress generally is not a defense to a manslaughter charge. Unless the teenager could show that she was legally insane, emotional distress may be insufficient to raise a valid defense. The fact that the teacher killed herself and the teenager did not proximately cause that death is the teenager's best defense to the charge of manslaughter.

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**Question 1159 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

On May 1, 1987, a car driven by the defendant struck a pedestrian. On July 1, 1987, with regard to this incident, the defendant pleaded guilty to reckless driving (a misdemeanor) and was sentenced to 30 days in jail and a fine of \$1,000. She served the sentence and paid the fine. On April 1, 1988, the pedestrian died as a result of the injuries she suffered in the accident. On March 1, 1991, a grand jury indicted the defendant on a charge of manslaughter of the pedestrian. On May 15, 1991, trial had not begun and the defendant filed a motion to dismiss the indictment on the ground of double jeopardy in that her conviction of reckless driving arose out of the same incident, and on the ground that the three-year statute of limitations for manslaughter had run.

The defendant's motion should be

- A:** granted only on double jeopardy grounds.
- B:** granted only on statute of limitations grounds.
- C:** granted on either double jeopardy grounds or statute of limitations grounds.
- D:** denied on both grounds.

**The explanation for the answer is:**

The correct answer is D. The charge of manslaughter has additional elements that reckless driving does not, namely the causing of the death of another; therefore, reckless driving is not a lesser included offense of manslaughter. The state may properly charge the defendant with the offense of manslaughter after the pedestrian died as a result of the accident, without it being a violation of the defendant's rights under the double jeopardy clause. The death of the pedestrian, which occurred on April 1, 1988, was the final element of the offense of manslaughter to occur, and the state had 3 years from that date to charge the offense. Because the defendant was indicted on March 1, 1991, the state was within the statute of limitations in charging her with manslaughter, so the defendant's motion to dismiss on that ground should also be denied.

Answer A is incorrect because the defendant, when she pleaded guilty to reckless driving, was not put in jeopardy for the later death of the pedestrian, which was the basis for the manslaughter charge. Answer B is incorrect because the defendant was indicted within the three year statute of limitations from the date of the pedestrian's death. Answer C is incorrect for both of those reasons. The defendant's motion to dismiss the manslaughter charge should be denied on both grounds.

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**Question 1164 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

FBI agents, without a warrant and without permission of Mexican law enforcement or judicial officers, entered Mexico, kidnapped an American citizen wanted in the United States for drug smuggling violations, and forcibly drove him back to Texas. Thereafter, the agents, again without a warrant, broke into the Texas home of a woman wanted as a confederate of the kidnapped person, and arrested her.

The kidnapped person and the woman were both indicted for narcotics violations. Both moved to dismiss the indictment on the ground that their arrests violated the Fourth Amendment.

The court should

- A:** grant the motions of both the kidnapped person and the woman.
- B:** grant the motion of the kidnapped person and deny the motion of the woman.
- C:** grant the motion of the woman and deny the motion of the kidnapped person.
- D:** deny the motions of both the kidnapped person and the woman.

**The explanation for the answer is:**

The correct answer is D. An unlawful arrest does not serve an adequate reason to dismiss an indictment. Although the kidnapped person and the woman may have been arrested in violation of the Fourth Amendment, the remedy for that violation is not the dismissal of the indictment against them. Answers A, B, and C are incorrect because the remedies for an unlawful arrest do not include the dismissal of an indictment against properly charged defendants. Regardless of the propriety of the arrest, a court will not dismiss an otherwise properly obtained indictment.

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**Question 1203 - Criminal Law - Homicide**

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**The question was:**

Nine gang members were indicted for the murder of a tenth gang member who had become an informant. The gang leader plead guilty. At the trial of the other eight, the state's evidence showed the following: The gang leader announced a party to celebrate the recent release of a gang member from jail. But the party was not what it seemed. The gang leader had learned that the recently released gang member had earned his freedom by informing the authorities about the gang's criminal activities. The gang leader decided to use the party to let the other gang members see what happens to a snitch. He told no one about his plan. At the party, after all present had consumed large amounts of liquor, the gang leader announced that the released gang member was an informant and stabbed him with a knife in front of the others. The eight other gang members watched and did nothing while the informant slowly bled to death. The jury found the eight gang members guilty of murder and they appealed.

Should the appellate court uphold the convictions?

- A:** No, because mere presence at the scene of a crime is insufficient to make one an accomplice.
- B:** No, because murder is a specific intent crime, and there is insufficient evidence to show that they intended to kill.
- C:** Yes, because the gang members made no effort to save the informant after he had been stabbed.
- D:** Yes, because voluntary intoxication does not negate criminal responsibility.

**The explanation for the answer is:**

Answer A is correct. Murder is the intentional killing of another human being with malice aforethought. The eight gang members are not guilty of murder because they took no affirmative act and were merely present at what turned out to be a crime scene.

Answer B is incorrect. This answer correctly states that the convictions should not be upheld, but it misstates the legal basis for this conclusion. Murder does not require specific intent to kill; it may be committed in other circumstances (e.g., intent-to-do-serious-bodily-harm murder, depraved-heart murder, and felony murder). In this case, the eight gang members are not guilty of murder because they took no affirmative act and were merely present at what turned out to be a crime scene.

Answer C is incorrect. The eight gang members did not have a legal duty, enforceable by the criminal laws, to save the informant. Moreover, they are not responsible for the murder because they took no affirmative act and were merely present at what turned out to be a crime scene.

Answer D is incorrect. The conclusion is wrong and the stated principle is irrelevant here. In this case, the eight gang members were not responsible for the murder regardless of whether they were sober or intoxicated. This is because they took no affirmative act and were merely present at what turned out to be a crime scene.



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**Question 1217 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

A state legislature passed a statute providing that juries in criminal trials were to consist of 6 rather than 12 jurors, and providing that jury verdicts did not have to be unanimous but could be based on 5 votes out of 6 jurors. A defendant was tried for murder. Over his objection, he was tried by a jury composed of 6 jurors. The jurors found him guilty by a vote of 5 to 1 and, over the defendant's objection, the court entered a judgment of conviction, which was affirmed on appeal by the state supreme court. The defendant seeks to overturn his conviction in a habeas corpus action in federal court, claiming his constitutional rights were violated by allowing a jury verdict that was not unanimous and by allowing a jury composed of fewer than 12 members.

How is the federal court likely to rule in this action?

- A:** It will set aside the conviction, because the jury was composed of fewer than 12 members.
- B:** It will set aside the conviction, because the 6-person jury verdict was not unanimous.
- C:** It will set aside the conviction for both reasons.
- D:** It will uphold the conviction.

**The explanation for the answer is:**

Answer B is correct. The Constitution requires unanimity where only a 6-person jury is used. Thus, answer B is correct, and answer D is incorrect.

Answer A is incorrect. This answer correctly states that the conviction will be set aside, but it misstates the legal basis for the conclusion. The Constitution does not require 12-person juries.

Answer C is incorrect. This answer correctly states that the conviction will be set aside, but it misstates the legal basis for the conclusion. The Constitution does not require 12-person juries, although it does require unanimity where only a 6-person jury is used.

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**Question 1222 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

Police officers received a tip that drug dealing was occurring at a certain ground-floor duplex apartment. They decided to stake out the apartment. The stakeout revealed that a significant number of people visited the apartment for short periods of time and then left. A man exited the apartment and started to walk briskly away. The officers grabbed the man and, when he struggled, wrestled him to the ground. They searched him and found a bag of heroin in one of his pockets. After discovering the heroin on the man, the police decided to enter the apartment. They knocked on the door, which was opened by the woman who lived there. The police asked if they could come inside, and the woman gave them permission to do so. Once inside, the officers observed several bags of heroin on the living room table. The woman is charged with possession of the heroin found on the living room table. She moves pretrial to suppress the heroin on the ground that it was obtained by virtue of an illegal search and seizure.

Should the woman's motion be granted?

**A:** No, because the tip together with the heroin found in the man's pocket provided probable cause for the search.

**B:** No, because the woman consented to the officers' entry.

**C:** Yes, because the officers' decision to enter the house was the fruit of an illegal search of the man.

**D:** Yes, because the officers did not inform the woman that she could refuse consent.

**The explanation for the answer is:**

Answer B is correct. In the absence of an exception, the Fourth Amendment requires that police have both probable cause and a search warrant before they are able to enter a private dwelling. Here, no such warrant existed. However, police may conduct a valid warrantless search if they have a voluntary and intelligent consent to do so. Here, the facts do not indicate that the police improperly obtained the woman's consent. The woman's consent justified the officers' entry. Once inside, the police properly seized the heroin because it was in plain view. Police may make a warrantless seizure when they are legitimately on the premises and discover evidence that is in plain view that they have probable cause to believe is evidence or a fruit or instrumentality of crime. Here, the woman's consent gave the police legitimate authority to be inside the building, they discovered the heroin on a living room table, and the criminal nature of the heroin was readily apparent.

Answer A is incorrect. This answer correctly states that the woman's motion to suppress the heroin should not be granted, but it misstates the legal basis for this conclusion. Even assuming there was probable cause to search the home, a warrant would have been required for entry had the woman not consented. The woman's consent justified the officers' entry, and the heroin was properly seized because it was in plain view.

Answer C is incorrect. The search of the man, even assuming it was improper, did not violate the woman's rights, and therefore provides no basis for suppressing evidence found in her house. The woman's consent justified the officers' entry, and the heroin was properly seized because it was in plain view.

Answer D is incorrect. There is no requirement that officers inform individuals of their right to refuse consent. The woman's consent justified the officers' entry, and the heroin was properly seized because it was in plain view.

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**Question 1226 - Criminal Law - Homicide**

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**The question was:**

A husband and wife took their 12-year-old son to a political rally to hear a controversial United States senator speak. The speaker was late, and the wife stepped outside to smoke a cigarette. While there, she saw a man placing what she believed to be a bomb against a wall at the back of the building. She went back inside and told her husband what she had seen. Without alerting anyone, they took their son and left. Some 20 minutes later, the bomb exploded, killing eight persons and injuring 50. In the jurisdiction, murder in the first degree is defined as an intentional homicide committed with premeditation and deliberation; murder in the second degree is defined as all other murder at common law; and manslaughter is defined as either a homicide in the heat of passion arising from adequate provocation or a homicide caused by gross negligence or reckless indifference to consequence.

As to the deaths of the eight persons, what crime, if any, did the wife commit?

- A:** Manslaughter.
- B:** Murder in the first degree.
- C:** Murder in the second degree.
- D:** No crime.

**The explanation for the answer is:**

D is correct. The wife is not guilty of any crime because she did not have a legal duty, enforceable by the criminal laws, to warn the others about the bomb. Thus, answer D is correct, and answers A, B, and C are incorrect.

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**Question 1227 - Criminal Law - Other Crimes**

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**The question was:**

A woman decided to steal a necklace that belonged to her neighbor. She knew where the neighbor kept the necklace because she had been in the neighbor's house on many occasions when the neighbor had taken off the necklace and put it away in a jewelry box in the bathroom. One night, the woman went to the neighbor's house. The neighbor was away, and the house was dark. The woman opened the bathroom window, saw the jewelry box on the counter, and started to climb inside. As her leg cleared the window sill, the neighbor's cat let out a loud screech. Terrified, the woman bolted back outside and fled.

The crimes below are listed in descending order of seriousness. What is the most serious crime committed by the woman?

- A:** Burglary.
- B:** Attempted burglary.
- C:** Attempted larceny.
- D:** No crime.

**The explanation for the answer is:**

Answer A is correct. The woman is guilty of burglary because she unlawfully entered the neighbor's house at night with intent to commit a felony (larceny). The woman's actions constituted the requisite "entry" of the neighbor's house. To constitute burglary it is sufficient if any part of the actor's person intruded, even momentarily, into the structure. Thus it has been held that the intrusion of a part of a hand in opening a window, or the momentary intrusion of part of a foot in kicking out a window, constituted the requisite entry. Answers B and D are incorrect.

Answer C is incorrect. The woman may have been guilty of attempted larceny, but that crime arguably would merge into, and in any event was less serious than, the crime of burglary. As explained above, the woman is guilty of burglary because she unlawfully entered the neighbor's house at night with intent to commit a felony (larceny). The woman's actions constituted the requisite "entry" of the neighbor's house.

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**Question 1235 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

A defendant was charged with manslaughter. At the preliminary hearing, the magistrate dismissed the charge on the grounds that the evidence was insufficient. The prosecutor then brought the case before a grand jury. After hearing the evidence presented by the prosecutor, the grand jury refused to return an indictment. The prosecutor waited a few months until a new grand jury had been impaneled and brought the case before that grand jury, which returned an indictment charging the defendant with manslaughter. The defendant moves to dismiss the indictment on double jeopardy grounds.

Should the motion be granted?

- A:** No, because jeopardy had not attached.
- B:** No, because there has been no conviction or acquittal.
- C:** Yes, because any proceeding after the preliminary hearing would violate double jeopardy.
- D:** Yes, because bringing the case before the second grand jury was a violation of double jeopardy.

**The explanation for the answer is:**

Answer A is correct. Jeopardy does not attach at a preliminary hearing (*Collins v. Loisel*, 262 U.S. 426, 429 (1923)) or at a grand jury proceeding (*United States v. Williams*, 504 U.S. 36, 49 (1992)). Jeopardy attaches in a jury trial when the jury is sworn and in a bench trial when the court begins to hear evidence. Jeopardy did not attach at either hearing--the preliminary hearing, or the grand jury proceeding.

Answer B is incorrect. This answer correctly states that the motion should not be granted, but it misstates the legal basis for this conclusion. Jeopardy attaches prior to judgment (whether on conviction or acquittal).

Answer C is incorrect. As explained above, the double jeopardy clause does not attach to preliminary hearings.

Answer D is incorrect. The double jeopardy clause does not bar a grand jury from returning an indictment when a prior grand jury refused to do so. *United States v. Williams*, 504 U.S. 36, 49 (1992).

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**Question 1247 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

A woman who is a computer whiz decided to dedicate herself to exposing persons who traffic in child pornography. She posted a number of sexually oriented photographs on her web site. The file for each photograph contained an embedded Trojan horse program. The defendant downloaded one of those photographs onto his personal computer. Using the embedded program, the woman entered the defendant's computer and found a file containing a pornographic photograph of a child. She copied the file and turned it over to a federal law enforcement agency. A federal agent told her that a successful prosecution would require more than one photograph and offered her a monetary reward for additional photos leading to a conviction of the defendant. The woman entered the defendant's computer again, and this time she found hundreds of child pornography photos, which she turned over to the federal agency. The defendant is charged with multiple counts of violating federal statutes regarding child pornography. He moves to suppress the photographs that the woman discovered on his computer. The motion is based on both the Fourth Amendment and a federal statute forbidding interception of electronic communication without permission. The parties have stipulated that the woman's conduct in downloading photos from the defendant's computer violated the interception statute.

How should the court rule on the defendant's motion to suppress?

- A:** Deny it as to all photographs.
- B:** Grant it as to all photographs, because the woman acted without probable cause.
- C:** Grant it as to all photographs, because the woman violated the federal interception statute.
- D:** Grant it only as to the second set of photographs.

**The explanation for the answer is:**

Answer D is correct. A court will only grant a motion to suppress evidence based on a Fourth Amendment violation if the actor who obtained the evidence was a government agent. The woman's first entry of the computer and copying of the file constituted an entirely private search and did not trigger Fourth Amendment protections. The second set of photographs should be suppressed because authorities encouraged and offered to reward the second computer search. As such, the woman was acting as a government agent with regard to that search, which did in fact violate the Fourth Amendment because it was conducted without a warrant. See *United States v. Jarrett*, 338 F.3d 339, 344-48 (4th Cir. 2003) (describing relevant considerations, and finding on facts less compelling than these that private hacker was not government agent). Thus, answer D is correct, and answers A, B, and C are incorrect.

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**Question 1271 - Criminal Law - General Principles**

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**The question was:**

A woman drove her car through the drive-through lane of a fast-food restaurant in the afternoon. When she reached the microphone used to place orders, she said, "There's a man across the street with a rifle. He can see everything you do. If you do not do exactly what I tell you, he will shoot you. Put all the money from the register into a sack and give it to me when I drive up." The clerk did not see anyone across the street and was unsure whether anyone was there. However, unwilling to risk harm to himself, he put \$500 in a paper bag and handed it to the woman when she drove up to the delivery window. The woman drove off with the money but was arrested a short time later. She had lied about the man with a rifle and had acted alone.

Of what crime or crimes can the woman be convicted?

- A:** Embezzlement.
- B:** Obtaining property by false pretenses.
- C:** Robbery and larceny.
- D:** Robbery or larceny.

**The explanation for the answer is:**

Answer D is correct. All the elements of larceny and robbery were present. Larceny is the trespassory taking and carrying away of the personal property of another with the intent to permanently deprive the person of his interest in the property. Robbery is the taking of personal property of another from the other's person by force or intimidation with the intent to permanently deprive him of it. The woman's threat of immediate harm to the clerk was sufficient to constitute the intimidation required for robbery.

Answer A is incorrect. Embezzlement is the fraudulent conversion of property of another by a person in lawful possession of that property. The woman never had lawful possession of the money and so cannot be convicted of embezzlement.

Answer B is incorrect. Theft by false pretenses occurs when a person obtains title to the property of another by an intentional or knowing false statement of past or existing fact with the intent to defraud the other. The crime was not false pretenses because, among other things, the woman never obtained title to the cash.

Answer C is incorrect. It is true that all the elements of larceny and robbery (which "may be thought of as aggravated larceny") were present, as explained above. However, because robbery and larceny are greater and lesser included offenses, a defendant cannot be convicted of both for a single offense.

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**Question 1277 - Criminal Law - General Principles**

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**The question was:**

A customer asked to see an expensive watch in a jewelry store. In conversation with the clerk, the customer falsely claimed to be the son of the mayor. When handed the watch, he asked if he could put it on, walk around a bit so he could see how it felt on his wrist, and then briefly step outside to observe it in natural light. The clerk agreed, saying, "I know I can trust someone like you with the merchandise." The customer walked out of the store wearing the watch and never returned. A week later, the clerk was at a gathering when she spotted the customer wearing the watch. She told him that he must either pay for the watch or give it back. He hissed, "I'll knock your block off if you mess with me." Intimidated, the clerk backed off. The following list of crimes is in descending order of seriousness.

What is the most serious crime the customer committed?

- A:** Robbery.
- B:** Larceny.
- C:** False pretenses.
- D:** Embezzlement.

**The explanation for the answer is:**

Answer B is correct. The most serious crime the defendant committed is larceny. The customer committed a trespassory taking and carrying away of another's property with the intent to steal it. He obtained possession of, but not title to, the watch by lying about a present fact.

Answer A is incorrect. There was no robbery because the customer did not take the watch by force or threat of force. Instead, he committed larceny—a trespassory taking and carrying away of another's property with the intent to steal it. He obtained possession of, but not title to, the watch by lying about a present fact.

Answer C is incorrect. Theft by false pretenses occurs when the defendant obtains title to the property of another by an intentional (or knowing) false statement of past or existing fact with the intent to defraud the other. The crime was larceny, not false pretenses, because the customer obtained possession of, but not title to, the watch.

Answer D is incorrect. Embezzlement occurs when the defendant fraudulently converts the property of another, and where the defendant is in lawful possession of that property. Here, the crime was larceny, not embezzlement, because there was a trespassory taking, so the customer never was in lawful possession of the watch.



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**Question 1291 - Criminal Law - Inchoate Crimes**

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**The question was:**

Four men are charged with conspiracy to commit a series of bank robberies. Nine successful bank robberies took place during the period of the charged conspiracy. Because the robbers wore masks and gloves and stole the bank surveillance tapes, no direct identification of the robbers by the witnesses has been made. Some circumstantial evidence ties each of the men to the overall conspiracy. During cross-examination, a prosecution witness testified that one defendant was in jail on other charges during six of the robberies. That defendant's lawyer has moved for a judgment of acquittal at the close of the government's case.

Should the motion be granted?

- A:** No, because a conspirator is not required to agree to all of the objects of the conspiracy.
- B:** No, because a conspirator need not be present at the commission of each crime conspired upon.
- C:** Yes, provided the defendant has complied with the rule requiring pretrial notice of alibi.
- D:** Yes, regardless of compliance with the alibi rule, because the government is bound by exculpatory evidence elicited during its case-in-chief.

**The explanation for the answer is:**

Answer B is correct. At common law, a conspiracy is defined as an agreement between two or more persons to accomplish some unlawful goal, or to accomplish some lawful goal by unlawful means. A co-conspirator need not be present at the commission of each crime, nor does the arrest of one co-conspirator automatically terminate the conspiracy where other co-conspirators continue to carry out the goals of the conspiracy. So long as there is an initial agreement among the conspirators to engage in a course of criminal conduct constituting all the crimes, there is only one conspiracy.

Answer A is incorrect. Conspirators must agree on the essential objectives of the conspiracy. In any event, the rationale offered here is inapposite because the problem raised by the question is not failure to agree to the robberies, but not being present during the latter robberies. The defendant's motion for acquittal in this case should be denied because a co-conspirator need not be present at the commission of each crime, nor does the arrest of one co-conspirator automatically terminate the conspiracy where other co-conspirators continue to carry out the goals of the conspiracy.

Answer C is incorrect. The defendant is not entitled to acquittal of conspiracy, even if there was compliance with an alibi notice rule. A co-conspirator need not be present at the commission of each crime, nor does the arrest of one co-conspirator automatically terminate the conspiracy where other co-conspirators continue to carry out the goals of the conspiracy. In this case, even if the defendant showed that he was in prison during several of the robberies, he could be convicted of the conspiracy.

Answer D is incorrect. The defendant is not entitled to acquittal of conspiracy because a co-conspirator need not be present at the commission of each crime, nor does the arrest of one co-conspirator automatically terminate the conspiracy where other co-conspirators continue to carry out the goals of the conspiracy. In this case, even if the evidence showed that the defendant was in prison during several of the robberies, he could be convicted of the conspiracy. Furthermore, the reasoning stated in this answer, that "the government is bound by exculpatory evidence elicited during its case-in-chief," is incorrect.

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**Question 1302 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

A defendant was lawfully arrested without a warrant for bank robbery. He was not given *Miranda* warnings, but was immediately taken to a police station where he and five other men were placed in a lineup to be viewed by the bank teller. Each man was required to say the words spoken by the bank robber: "Give me all your money. I've got a gun." After all the men in the lineup spoke those words, the teller identified the defendant as the robber.

The defendant subsequently moved to suppress the testimony of the teller, claiming the lineup violated his privilege against self-incrimination. At a suppression hearing, the teller testified that she had not gotten a good look at the robber's face, because the robber had been wearing a hat pulled down over most of his face, but that she was certain the defendant was the robber because she had recognized his voice at the lineup.

Should the defendant's motion be granted?

- A:** No, because being required to speak at the lineup, while compelled, was not testimonial or communicative.  
**B:** No, because testimony of a witness based on firsthand observation is not subject to exclusion as the fruit of the poisonous tree.  
**C:** Yes, because the defendant was compelled to speak at the lineup, and this compelled speech led to the witness's identification testimony.  
**D:** Yes, because the defendant was never informed that he could refuse to make a statement and that any statement could be used as evidence against him.

**The explanation for the answer is:**

Answer A is correct. The defendant properly could be required to utter the words spoken by the bank robber. The privilege against self-incrimination extends only to compelled "testimonial" communications; "[t]hus, even though the act may provide incriminating evidence, a criminal suspect may be compelled...to make a recording of his voice." *United States v. Hubbell*, 530 U.S. 27, 34-35 (2000) (citing *United States v. Wade*, 388 U.S. 218 (1967)). Thus, Answer A is correct because the defendant did not provide a testimonial statement at the lineup.

Answer B is incorrect. This explanation for why the defendant's suppression motion should be denied is overbroad and therefore incorrect because testimony based on firsthand observation may be suppressed in certain cases if the testimony derived from an unconstitutional identification procedure. See, e.g., *Manson v. Brathwaite*, 432 U.S. 98 (1977); *United States v. Wade*, 388 U.S. 218 (1967).

Answer C is incorrect. Requiring the defendant to utter the words spoken by the bank robber did not violate his constitutional rights. The privilege against self-incrimination extends only to compelled "testimonial" communications; "[t]hus, even though the act may provide incriminating evidence, a criminal suspect may be compelled...to make a recording of his voice." *United States v. Hubbell*, 530 U.S. 27, 34-35 (2000) (citing *United States v. Wade*, 388 U.S. 218 (1967)).

Answer D is incorrect. Requiring the defendant to utter the words spoken by the bank robber was not a compelled "testimonial" communication. *United States v. Hubbell*, 530 U.S. 27, 34-35 (2000) (citing *United States v. Wade*, 388 U.S. 218 (1967)). Accordingly, it was not necessary to provide *Miranda* warnings, which are designed to protect the privilege against self-incrimination. See generally *Pennsylvania v. Muniz*, 496 U.S. 582 (1990).

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**Question 1302 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

A defendant was lawfully arrested without a warrant for bank robbery. He was not given *Miranda* warnings, but was immediately taken to a police station where he and five other men were placed in a lineup to be viewed by the bank teller. Each man was required to say the words spoken by the bank robber: "Give me all your money. I've got a gun." After all the men in the lineup spoke those words, the teller identified the defendant as the robber.

The defendant subsequently moved to suppress the testimony of the teller, claiming the lineup violated his privilege against self-incrimination. At a suppression hearing, the teller testified that she had not gotten a good look at the robber's face, because the robber had been wearing a hat pulled down over most of his face, but that she was certain the defendant was the robber because she had recognized his voice at the lineup.

Should the defendant's motion be granted?

- A:** No, because being required to speak at the lineup, while compelled, was not testimonial or communicative.  
**B:** No, because testimony of a witness based on firsthand observation is not subject to exclusion as the fruit of the poisonous tree.  
**C:** Yes, because the defendant was compelled to speak at the lineup, and this compelled speech led to the witness's identification testimony.  
**D:** Yes, because the defendant was never informed that he could refuse to make a statement and that any statement could be used as evidence against him.

**The explanation for the answer is:**

Answer A is correct. The defendant properly could be required to utter the words spoken by the bank robber. The privilege against self-incrimination extends only to compelled "testimonial" communications; "[t]hus, even though the act may provide incriminating evidence, a criminal suspect may be compelled...to make a recording of his voice." *United States v. Hubbell*, 530 U.S. 27, 34-35 (2000) (citing *United States v. Wade*, 388 U.S. 218 (1967)). Thus, Answer A is correct because the defendant did not provide a testimonial statement at the lineup.

Answer B is incorrect. This explanation for why the defendant's suppression motion should be denied is overbroad and therefore incorrect because testimony based on firsthand observation may be suppressed in certain cases if the testimony derived from an unconstitutional identification procedure. See, e.g., *Manson v. Brathwaite*, 432 U.S. 98 (1977); *United States v. Wade*, 388 U.S. 218 (1967).

Answer C is incorrect. Requiring the defendant to utter the words spoken by the bank robber did not violate his constitutional rights. The privilege against self-incrimination extends only to compelled "testimonial" communications; "[t]hus, even though the act may provide incriminating evidence, a criminal suspect may be compelled...to make a recording of his voice." *United States v. Hubbell*, 530 U.S. 27, 34-35 (2000) (citing *United States v. Wade*, 388 U.S. 218 (1967)).

Answer D is incorrect. Requiring the defendant to utter the words spoken by the bank robber was not a compelled "testimonial" communication. *United States v. Hubbell*, 530 U.S. 27, 34-35 (2000) (citing *United States v. Wade*, 388 U.S. 218 (1967)). Accordingly, it was not necessary to provide *Miranda* warnings, which are designed to protect the privilege against self-incrimination. See generally *Pennsylvania v. Muniz*, 496 U.S. 582 (1990).

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**Question 1312 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

A state statute provides as follows: "In all criminal cases, whenever the Constitution permits, the burden of proof as to a defense claimed by the defendant shall rest on the defendant, and the magnitude of the burden shall be as great as the Constitution permits."

The same state defines the crime of forcible rape as follows: "Forcible rape consists of sexual penetration inflicted on an unconsenting person by means of force or violence. Consent of the victim is a complete defense to a charge of rape."

At a defendant's trial for forcible rape, he testified that the alleged victim had consented to having sexual intercourse with him.

How should the trial judge instruct the jury regarding the issue of consent?

- A:** The burden of proving that the victim consented, by a preponderance of the evidence, rests on the defendant.
- B:** The burden of proving that the victim consented, by clear and convincing evidence, rests on the defendant.
- C:** The burden of proving that the victim consented, by proof beyond a reasonable doubt, rests on the defendant.
- D:** The burden of proving that the victim did not consent, by proof beyond a reasonable doubt, rests on the prosecution.

**The explanation for the answer is:**

Answer D is correct. The state statute includes lack of consent as an element of the offense. Accordingly, the statute cannot shift the burden of proving this element to the defense, by a preponderance of the evidence or any other standard. Due process "protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to prove beyond a reasonable doubt all of the elements included in the definition of the offense of which the defendant is charged." *Patterson v. New York*, 432 U.S. 197 (1977); see also *Mullaney v. Wilbur*, 421 U.S. 684 (1975). The burden of proving that the victim did not consent must rest on the prosecution. Thus, Answer D is correct, and Answers A, B, and C are incorrect.

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**Question 1323 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

A federal grand jury was investigating drug trafficking in the jurisdiction. It subpoenaed a witness to testify, and the prosecutor advised the witness that he had a Fifth Amendment privilege not to testify if he so chose. The witness asked that his counsel be allowed to advise him inside the grand jury room, but the prosecutor refused to allow the attorney inside. The witness, after speaking with his attorney outside the grand jury room, decided to testify and ended up making self-incriminating statements.

The witness subsequently was indicted for drug crimes. The indictment was based on the witness's grand jury testimony and on evidence seized in an unconstitutional search of the witness's home.

The witness moved to dismiss the indictment.

Should the court dismiss the indictment?

- A:** Yes, because the witness was denied his constitutional right to advice of counsel.
- B:** Yes, because the indictment was based upon illegally seized evidence.
- C:** No, because the witness waived his constitutional rights by testifying.
- D:** No, because the witness had no right to counsel inside the grand jury room and the illegally seized evidence did not affect the validity of the indictment.

**The explanation for the answer is:**

Answer D is correct. A grand jury witness does not have a constitutional right to counsel inside a grand jury room. See *Connecticut v. Gabbert*, 526 U.S. 286, 292 (1999) (citing *United States v. Mandujano*, 425 U.S. 564 (1976)). Thus, Answer A is incorrect. Also, the Fourth Amendment exclusionary rule does not apply to federal grand juries and is not a basis upon which a federal indictment can be dismissed. *United States v. Calandra*, 414 U.S. 338 (1974). Thus, Answer B is incorrect, and Answer D is correct.

Answer C is incorrect. The issue here does not turn on waiver, nor does the fact pattern demonstrate a waiver of any constitutional rights. Rather, wholly apart from any waiver, none of defendant's constitutional rights were violated, as explained above.

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**Question 1325 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

United States customs officials received an anonymous tip that heroin would be found inside a distinctively marked red package mailed from a foreign country to the United States. Pursuant to this tip, United States customs officers opened the red package and found heroin inside. They then resealed the package and left the heroin inside it. The FBI was notified and, as agents watched, the package was delivered to the address.

The FBI then secured a warrant to search the house for the package. About two hours after the package was delivered, the warrant was executed at the house. The man who opened the door was arrested, and the agents found the package, unopened, in an upstairs bedroom closet. After seizing the package, the agents looked through the rest of the house. In a footlocker in the basement, they found a machine gun.

The man was charged with, among other crimes, unlawful possession of the machine gun. He moved to suppress its use as evidence.

Should the court grant the motion to suppress the machine gun?

**A:** Yes, because the search exceeded the authority granted by the warrant.

**B:** Yes, because the initial search by the customs officers was without probable cause.

**C:** No, because, having found the package, the agents had probable cause to believe more narcotics could be located in the house and the gun was found in a proper search for narcotics.

**D:** No, because narcotics dealers are often armed and the search was justified to protect the agents.

**The explanation for the answer is:**

Answer A is correct. The warrant was valid, but its validity was triggered by and limited to the delivered package. See *United States v. Grubbs*, 547 U.S. 90 (2006). Accordingly, once the only object of that search was discovered, the warrant did not authorize a further exploratory search of the house. See *Horton v. California*, 496 U.S. 128 (1990). Thus, Answer A is correct, and Answer C is incorrect.

Answer B is incorrect. Probable cause was not required for the customs officers' search of international mail. See *United States v. Ramsey*, 431 U.S. 606 (1977).

Answer D is incorrect. Officers may conduct a "protective sweep" of a home only if they have reason to believe others inside the home may pose a danger to them. *Maryland v. Buie*, 494 U.S. 325 (1990). The facts in this scenario would not seem to justify such a protective sweep, but even assuming a protective sweep was authorized, *Buie* limits such a sweep "to a cursory visual inspection of those places in which a person might be hiding." Thus, even an authorized sweep would not extend to the footlocker.

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**Question 1331 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

In a city, a number of armed bank robberies were committed near closing time by a masked man wearing a white hooded sweatshirt and blue sweatpants. Police saw a man wearing a white hooded sweatshirt and blue sweatpants pacing nervously outside one of the city's banks just before it closed. The police stopped the man and frisked the outer layers of his clothing for weapons, but found none. They asked the man what he was doing outside the bank and pointed out that he was wearing clothing similar to clothing worn by the perpetrator of recent robberies. After pausing for several moments, the man confessed. The police had not provided him with any *Miranda* warnings.

After being charged with the bank robberies, the man moved to suppress his confession. The parties agreed, and the court properly found, that the police had reasonable suspicion but not probable cause at all times before the man confessed.

Should the man's motion to suppress be granted?

**A:** Yes, because the confession was the fruit of a Fourth Amendment violation, even though there was no *Miranda* violation.

**B:** Yes, because the confession was the fruit of a *Miranda* violation, even though there was no Fourth Amendment violation.

**C:** Yes, because the confession was the fruit of both a Fourth Amendment violation and a *Miranda* violation.

**D:** No, because there was neither a Fourth Amendment violation nor a *Miranda* violation.

**The explanation for the answer is:**

Answer D is correct. There was neither a Fourth Amendment violation nor a *Miranda* violation. There was no Fourth Amendment violation because the stop, frisk, and questioning were permissible, under *Terry v. Ohio*, 392 U.S. 1 (1968), based on reasonable suspicion. There was no *Miranda* violation because warnings are not required for *Terry* stops. See *Berkemer v. McCarty*, 468 U.S. 420, 439-40 (1984). Therefore, Answer D is correct, and Answers A, B, and C are incorrect.

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**Question 1354 - Criminal Law - Inchoate Crimes**

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**The question was:**

A drug dealer agreed with another individual to purchase heroin from the individual in order to sell it on a city street corner. Unknown to the drug dealer, the other individual was an undercover police officer whose only purpose was to arrest distributors of drugs. The drug dealer made a down payment for the heroin and agreed to pay the remainder after he sold it on the street. As soon as the undercover officer handed over the heroin, other officers moved in and arrested the dealer.

The jurisdiction follows the common law approach to conspiracy.

Could the dealer properly be convicted of conspiring to distribute drugs?

**A:** No, because there was no overt act.

**B:** No, because there was no plurality of agreement.

**C:** Yes, because neither an overt act nor plurality of agreement is required at common law.

**D:** Yes, because the dealer believed all the elements of conspiracy were present and cannot take advantage of a mistake of fact or law.

**The explanation for the answer is:**

Answer B is correct. The dealer cannot be convicted of conspiring to distribute drugs. The common law definition of conspiracy requires a plurality of agreement to commit a crime, and does not criminalize "unilateral" conspiracy where only one person actually agreed to commit the crime and the other only feigned agreement. Here, the drug dealer agreed to buy and distribute the heroin, but the individual--an undercover police officer--merely feigned an intent to be a part of the crime as part of his undercover operation. Thus, Answer B is correct.

Answer A is incorrect. Mere preparation, such as payment for the drugs, would qualify as an overt act for purposes of conspiracy.

Answer C is incorrect. Plurality of agreement is required unless it is specifically stated that the jurisdiction follows the Modern Penal Code's unilateral approach to conspiracy. Because the undercover officer was feigning his agreement to purchase and sell the heroin, there was no plurality of agreement and thus no conspiracy.

Answer D is incorrect. The dealer cannot be convicted here because, as explained above, there was no plurality of agreement between the dealer and the undercover officer. Accordingly, the dealer could not properly be convicted for conspiring with an undercover officer.



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**Question 1358 - Criminal Law - Inchoate Crimes**

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**The question was:**

A foreign diplomat discovered that a small person could enter a jewelry store by crawling through an air vent. The diplomat became friendly with a woman in a bar who he believed was small enough to crawl through the air vent. Without telling her that he was a diplomat, he explained how she could get into the jewelry store. She agreed to help him burglarize the store. Someone overheard their conversation and reported it to the police. Shortly thereafter, the police arrested the diplomat and the woman. Both were charged with conspiracy to commit burglary.

Before trial, the diplomat moved to dismiss the charge against him on the ground that he was entitled to diplomatic immunity. The court granted his motion. The woman then moved to dismiss the conspiracy charge against her.

The jurisdiction has adopted the Model Penal Code version of conspiracy.

Should the woman's motion to dismiss the conspiracy charge against her be granted?

- A:** No, because the diplomat's defense does not negate any element of the crime.
- B:** No, because the woman was not aware of the diplomat's status.
- C:** Yes, because a conspiracy requires two guilty participants.
- D:** Yes, because but for the diplomat's conduct, no conspiracy would have occurred.

**The explanation for the answer is:**

Answer A is correct. Model Penal Code section 5.03(1), by defining conspiracy as requiring agreement by the defendant but not by two or more persons, adopts a unilateral interpretation of conspiracy. The defendant can be convicted of conspiracy regardless of whether the other parties have all been acquitted or were only feigning agreement. In addition, many jurisdictions that require a bilateral conspiracy still allow conviction if one of the co-conspirators agreed to the crime but cannot be convicted based on lack of capacity or some other defense personal to the co-conspirator. Thus, Answer A is correct because the diplomat's defense will not negate the fact that the woman agreed to commit burglary. Answer C is incorrect because, as stated above, under the Model Penal Code's unilateral approach to conspiracy, a defendant may be found guilty of conspiracy even if the other conspirators are all acquitted or assert valid personal defenses.

Answer B is incorrect. The woman would not be entitled to dismissal, even if she knew of the diplomat's status, because the diplomat's capacity to be convicted of the crime would be irrelevant under a jurisdiction that adopted a unilateral view of conspiracy.

Answer D is incorrect. The woman properly can be convicted because, regardless of the diplomat's immunity, she agreed to commit a crime. The fact that the diplomat's conduct was a but-for cause of the conspiracy is irrelevant because the diplomat was not a government agent, and in any event there is no basis for finding that he entrapped her.

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**Question 1360 - Criminal Law - Other Crimes**

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**The question was:**

A woman told a man to go into her friend's unlocked barn and retrieve an expensive black saddle that she said she had loaned to the friend. The man went to the friend's barn, opened the door, found a black saddle, and took it back to the woman's house. The friend had in fact not borrowed a saddle from the woman, and when the friend discovered her black saddle missing, she suspected that the woman was the thief. The friend used a screwdriver to break into the woman's house to find the saddle. Upon discovering the saddle on the woman's table, the friend took it back and called the police.

The jurisdiction follows the common law, except that burglary covers structures in addition to dwellings and the nighttime element has been eliminated.

Which, if any, of these individuals is guilty of burglary?

- A:** All of them.
- B:** Only the friend.
- C:** Only the man.
- D:** Only the woman.

**The explanation for the answer is:**

Answer D is correct. At common law, burglary is defined as the breaking and entering of a dwelling of another at nighttime with the intent to commit a felony therein. Here, the facts state that this jurisdiction has eliminated the nighttime element and has expanded its definition of burglary to cover structures in addition to dwellings. The felony in this case is larceny. Larceny is the taking and carrying away of tangible personal property of another by trespass with intent to permanently deprive that person of her interest in the property. Furthermore, larceny is a specific intent crime, meaning that the defendant had to engage in the specifically proscribed conduct in order to be guilty of the crime.

The man did not have the requisite criminal intent to commit larceny. Persons taking property in the honest but mistaken belief that the property belongs to someone who has authorized them to take it lack the intent to steal required for larceny. Therefore, he did not intend to commit a felony inside the barn and cannot be guilty of burglary. Thus, Answers A and C are incorrect. Furthermore, the friend did not have the requisite criminal intent. Persons taking back their own property lack the intent to steal required for larceny. Therefore, he did not intend to commit a felony inside the barn and cannot be guilty of burglary. Thus, Answer B is incorrect. Only the woman had the requisite criminal intent. She knew that the saddle did not belong to her, and specifically intended and caused the man to steal the saddle on her behalf. Thus, Answer D is correct.

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**Question 1363 - Criminal Law - Inchoate Crimes**

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**The question was:**

A woman promised to pay \$10,000 to a hit man if he would kill her neighbor in any manner that could not be traced to her. The hit man bought a gun and watched the neighbor's house for an opportunity to shoot him. One evening, unaware of the hit man's presence, the neighbor tripped as he was walking toward his house, falling and hitting his head against the front steps. Believing that the neighbor was unconscious, the hit man ran over to him and shot him twice in the chest.

When the woman learned of the neighbor's death, she paid the hit man \$10,000. A medical examiner determined that the neighbor was already dead when the hit man shot him.

The crimes below are listed in descending order of seriousness.

What is the most serious crime for which the woman properly could be convicted?

- A:** Murder.
- B:** Attempted murder.
- C:** Conspiracy.
- D:** Solicitation.

**The explanation for the answer is:**

Answer B is correct. Murder is the unlawful killing of a human being with malice aforethought. The victim must actually die as a result of the defendant's conduct, or else a murder did not occur. The woman cannot be guilty of murder, because the hit man did not in fact cause the neighbor's death. However, she can be convicted of attempted murder. An attempt is an act done with the intent to commit a crime where the act falls short of the full commission of the crime. Here, the woman hired a hit man to murder the neighbor, and all of the requisite acts for the commission of a murder occurred except that the hit man did not cause the neighbor's death. Thus, the woman is guilty of attempted murder. Accordingly, neither conspiracy nor solicitation is the most serious crime of which she could be convicted. Thus, Answer B is correct, and Answers A, C, and D are incorrect.

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**Question 1372 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

The police suspected a woman of growing marijuana in her private residence. Narcotics officers went to her neighborhood in the middle of the night. Nothing unlawful could be seen from the street, so the officers walked into the neighbors' yard and looked through the woman's kitchen window, which had neither drapes nor shades. The officers observed what appeared to be marijuana plants being cultivated under grow lights in the kitchen. Using this information, the officers obtained a search warrant. The execution of that warrant netted numerous marijuana plants.

The woman was charged with possession of marijuana. She moved to suppress the marijuana plants recovered when the warrant was executed, claiming that the evidence supporting the warrant was obtained through a search that violated the Fourth Amendment.

Should the marijuana plants be suppressed?

**A:** No, because regardless of the lawfulness of the police conduct beforehand, they did obtain a warrant to search the woman's home.

**B:** No, because the woman could have no reasonable expectation of privacy concerning activities that she exposed to the view of her neighbors.

**C:** Yes, because the officers' clandestine observation of the plants violated the woman's reasonable expectation of privacy concerning activities occurring in her home.

**D:** Yes, because no unlawful activities could be observed by the officers from any public vantage point.

**The explanation for the answer is:**

Answer B is correct. Evidence seized pursuant to a search warrant would have to be suppressed if the warrant was obtained based on information discovered pursuant to an illegal search, if the search was in fact illegal. *See Murray v. United States*, 487 U.S. 533 (1988). Thus, Answer A is incorrect.

Here, the marijuana plants were in plain view of the neighbors. The woman has no standing to complain of any police trespass on the neighbors' property. *See Horton v. California*, 496 U.S. 128 (1990). Thus, Answer B is correct, and Answers C and D are incorrect.

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**Question 1390 - Criminal Law - Homicide**

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**The question was:**

A woman offered to pay her friend one-third of the stolen proceeds if the friend would drive the getaway car to be used in a bank robbery. The friend agreed but made the woman promise not to hurt anyone during the robbery.

The woman then drove to a sporting goods store, where she explained to the store owner that she needed a small firearm for use in a bank robbery. The store owner responded that he would charge extra because the woman was so unwise as to confide her unlawful plans for using the weapon, and he sold her a handgun at four times the regular price.

During the robbery, the woman used the gun to threaten a bank teller into handing over the money. The gun discharged by accident and killed a bank customer.

At common law, who in addition to the woman could properly be convicted of murder in the death of the customer?

- A:** Both the friend and the store owner.
- B:** Neither the friend nor the store owner.
- C:** Only the friend.
- D:** Only the store owner.

**The explanation for the answer is:**

Answer A is correct. The friend is responsible for the unintended but reasonably foreseeable acts of her co-conspirator in furtherance of the conspiracy. When the friend agreed to drive the getaway vehicle after a bank robbery, it was foreseeable that the woman would use a weapon and end up killing someone during the robbery. The store owner's sale of the gun, combined with his knowledge of the woman's plan to use it in a crime and his financial benefit from that knowledge, should suffice to impose accomplice liability. Selling the gun at a higher price because of the woman's purpose is a high enough stake in the robbery to constitute intent to aid her. For those reasons, Answer B is incorrect. Answer C is incorrect because the store owner could also be convicted of the murder. Answer D is incorrect because the friend could also be convicted of the murder.

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**Question 1397 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

A state grand jury investigating a murder learned that the key suspect might have kept a diary. The grand jury issued a subpoena duces tecum requiring the suspect to produce any diary. The subpoena made clear that the grand jury was seeking only the diary and not any testimony from the suspect. The suspect refused to produce the diary, citing the privilege against self-incrimination.

Under what circumstances, if any, could the grand jury compel production of the diary over the suspect's Fifth Amendment privilege?

**A:** It may compel production without granting immunity because the suspect was not compelled to write a diary.

**B:** It may compel production only if the suspect is granted use and derivative use immunity from the act of production.

**C:** It may compel production only if the suspect is granted transactional immunity.

**D:** It may not compel production of a private diary under any circumstances.

**The explanation for the answer is:**

Answer B is correct. The Fifth Amendment privilege against self-incrimination protects only testimonial or communicative evidence, and not real or physical evidence. Therefore, it protects acts of production that would have testimonial significance by authenticating documents. Thus, Answer A is incorrect.

However, a criminal defendant may be compelled to produce documents that have testimonial significance if immunity is granted to the defendant. There are two kinds of immunity that may be granted. The broader form of immunity is "transactional immunity." Transactional immunity completely protects the witness from future prosecution for crimes related to his or her testimony. "Use and derivative use" immunity is narrower--it prevents the prosecution only from using the witness's own testimony or any evidence derived from the testimony against the witness. However, should the prosecutor acquire evidence substantiating the supposed crime--independently of the witness's testimony--the witness may then be prosecuted for the same.

Here, Answer B is correct because use and derivative use immunity sufficiently protects the constitutional privilege against self-incrimination in this situation. Thus, Answer C is incorrect because the prosecution does not need to grant the suspect transactional immunity--use and derivative use immunity sufficiently protects the constitutional privilege against self-incrimination. Answer D is incorrect because the suspect's privilege against self-incrimination may be overcome if the suspect is granted use and derivative use immunity.

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**Question 1399 - Criminal Law - Homicide**

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**The question was:**

A man was angered after he was unexpectedly laid off from his longtime job as a factory assembly worker. The next day, he returned to the factory floor and indiscriminately fired shotgun rounds in the air. The man later testified, without contradiction, that he had not intended to kill anyone but simply sought to exact revenge on the factory's owners by shutting down operations for the day. Unfortunately, one of the bullets ricocheted off the wall and killed the man's best friend.

The crimes below are listed in descending order of seriousness.

On these facts, what is the most serious offense for which the man properly could be convicted?

- A:** Murder.
- B:** Voluntary manslaughter.
- C:** Involuntary manslaughter.
- D:** Assault.

**The explanation for the answer is:**

Answer A is correct. The most serious offense for which the man could properly be convicted of is murder. At common law, murder is defined as the unlawful killing of another human being with malice aforethought. Malice aforethought exists where the defendant acted with one of the following mental states: (i) intent to kill, (ii) intent to inflict great bodily injury, (iii) reckless indifference to an unjustifiably high risk to human life (acting with a "depraved heart"), or (iv) intent to commit a felony (felony murder). Here, even though the man lacked specific intent to kill, the man's conduct created such a high risk of death and was so devoid of social utility that he could be found to have acted with a "depraved heart." The man's actions also caused the death of his friend. Thus, Answer A is correct.

Answer B is incorrect. Voluntary manslaughter is a killing that would otherwise be murder but for the existence of an adequate provocation. Here, the man could not properly be convicted of voluntary manslaughter because there was no adequate provocation for his conduct. Furthermore, this answer is incorrect because he could be convicted of the more serious offense of depraved heart murder. br />

Answer C is incorrect. It is true that the man could properly be convicted of involuntary manslaughter but this answer is incorrect because he could also be convicted of the more serious offense of depraved heart murder.

Answer D is incorrect. The man could properly be convicted of assault in some jurisdictions but this answer is incorrect because he could also be convicted of the more serious offense of depraved heart murder.

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**Question 1416 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

A store owner whose jewelry store had recently been robbed was shown by a police detective a photograph of the defendant, who previously had committed other similar crimes. The store owner examined the photograph and then asked the detective whether the police believed that the man pictured was the robber. After the detective said, "We're pretty sure," the store owner stated that the man in the photograph was the one who had robbed her.

The defendant was indicted for the robbery. His counsel moved to suppress any trial testimony by the store owner identifying the defendant as the robber.

Should the court grant the motion and suppress the store owner's trial testimony identifying the defendant as the robber?

**A:** No, because suppression of in-court testimony is not a proper remedy, even though the out-of-court identification was improper.

**B:** No, because the out-of-court identification was not improper.

**C:** Yes, because the improper out-of-court identification has necessarily tainted any in-court identification.

**D:** Yes, unless the prosecution demonstrates that the in-court identification is reliable.

**The explanation for the answer is:**

Answer D is correct. An out-of-court identification procedure is improper if it is unnecessarily suggestive, which this procedure (involving just one photograph and the detective's leading statement) plainly was. Thus, Answer B is incorrect because the out-of-court identification was improper. Answer A is incorrect because an improper out-of-court identification procedure may require suppression of in-court testimony if it produces a substantial likelihood of irreparable misidentification. However, even if an out-of-court identification procedure is unnecessarily suggestive, which this one plainly was, suppression of in-court testimony is not required if the eyewitness's identification is shown to be reliable under a multi-factor inquiry. Answer C is incorrect because it may be possible to establish the reliability of the eyewitness's testimony without regard to the tainted out-of-court identification. Thus, Answer D is correct.



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**Question 1426 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

A defendant was charged with attempted murder. At the preliminary hearing, the presiding judge heard the testimony of four prosecution witnesses and found that the prosecution had failed to establish probable cause that the defendant had committed any offense. Accordingly, he dismissed the charge.

The prosecutor then called the same four witnesses before a grand jury. The grand jury indicted the same defendant for attempted murder.

The defendant has moved to quash the indictment on the ground of double jeopardy.

How should the court proceed?

**A:** Grant the motion, because the dismissal of the first charge on the merits, whether correct or incorrect, bars any further prosecution.

**B:** Grant the motion, unless the prosecution has evidence that was not presented in the first case.

**C:** Deny the motion, because the defendant has not yet been in jeopardy of conviction on the attempted murder charge.

**D:** Deny the motion, because the protection of the double jeopardy clause does not come into play until there has been a conviction or an acquittal.

**The explanation for the answer is:**

Answer C is correct. For double jeopardy purposes, jeopardy does not attach until trial, when the jury is sworn in (or, in a bench trial, when the first witness is sworn in). Thus, Answer C is correct. The dismissal after a preliminary hearing had no double jeopardy consequences because, as stated above, jeopardy only attaches when the jury is sworn in, or in a bench trial, the first witness is sworn in. Thus, Answer A and Answer B are incorrect.

Answer D is incorrect. While jeopardy does not attach until trial, actions short of a conviction or acquittal (for example, a mistrial) may bar retrial on double jeopardy grounds.

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**Question 1435 - Criminal Law - Inchoate Crimes**

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**The question was:**

A man had spent the evening drinking at a local bar and was weaving down the street on his way home, singing. Suddenly, a person wearing a cartoon character mask jumped out from an alley, pointed his gun at the man, and snarled, "This is loaded, buddy, and I don't mind using it. Hand over your cash pronto." The man was so drunk that he failed to understand what was going on and started to howl with laughter at the sight of the cartoon mask. Surprised and rattled by the man's reaction, the masked gunman fled. The man soon recovered his composure and staggered home safely.

The crimes below are listed in descending order of seriousness.

What is the most serious crime of which the masked gunman may properly be charged and convicted?

- A:** Attempted robbery.
- B:** Attempted battery.
- C:** Attempted larceny.
- D:** No crime.

**The explanation for the answer is:**

Answer A is correct. The masked gunman could properly be convicted of attempted robbery because, though unsuccessful, he committed an act intended to take the man's property through force or fear. The confluence of the act and intent would suffice to constitute an attempt under any of the various approaches to attempt liability.

Even assuming that the masked gunman could also be convicted of attempted battery or attempted larceny, neither crime is the most serious crime of which he could properly be convicted. As stated above, the most serious crime the masked gunman could be convicted of is attempted robbery. Thus, Answer B and Answer C are incorrect. Furthermore, Answer D is incorrect because, as stated above, the masked gunman could be convicted of attempted robbery.

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**Question 1450 - Criminal Law - General Principles**

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**The question was:**

A defendant was charged with battery, defined as at common law. At trial, an expert witness testified for the defense that the defendant, an athlete, was under the influence of a performance-enhancing drug at the time he committed the battery and that he would not have done so had he not been so influenced. The defendant asked for an instruction to the effect that if the jury believed that he was influenced by the drug at the time of the crime and would not have committed it otherwise, it had to acquit him.

Which of the following circumstances would most aid the defendant's argument in favor of such an instruction?

- A:** Evidence that the defendant is addicted to this drug and has an overwhelming urge to consume it.
- B:** Evidence that the defendant's coach, who gave him the drug, told him it was only an aspirin.
- C:** Evidence that the victim of the assault taunted the defendant about his use of the drug immediately before the assault.
- D:** Expert testimony that a reasonable person, on consuming this drug, may experience uncontrollable rages.

**The explanation for the answer is:**

Answer B is correct. Battery is the unlawful application of force to the person of another resulting in either an offensive touching or bodily injury. Battery is also a general intent crime. "General intent" is an awareness of all the factors constituting the crime. Voluntary intoxication is not a valid defense to a general intent crime. Thus, the most helpful fact supporting an intoxication defense would be evidence that the intoxication was involuntary, which could be shown by evidence demonstrating that the defendant was tricked into taking a substance that he did not know was an intoxicant. Answer B is correct.

As stated above, voluntary intoxication would not be a defense to the crime of battery, and the fact that a defendant was addicted to a drug does not make intoxication with that drug involuntary for purposes of the criminal law. Thus, Answer A is incorrect.

Nor would the victim's taunting constitute a valid defense. The victim's taunting would not support an intoxication instruction, which would be proper only if there was evidence showing that the intoxication was involuntary. Thus, Answer C is incorrect.

Answer D is incorrect. The expert testimony would not support an instruction because voluntary intoxication, regardless of the intoxicant's effects, is not a defense to the crime of battery.

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**Question 1460 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

Federal agents had a hunch that a local man was engaged in illegal gambling activities. An agent decided to enter the man's house while he was not at home and see what he could find. The agent discovered an envelope containing \$5,000 in cash and an executive's business card. Returning the envelope to its place, the agent located and interviewed the executive, who admitted that he had paid the man \$5,000 to settle a gambling debt; the executive also disclosed that the man regularly took illegal bets from the executive and several of his acquaintances. The agent then interviewed the acquaintances, who confirmed what the executive had told him. The agent then arranged to be introduced to the man at a local bar. After a few drinks, the man, unaware of the agent's identity, boasted that he was one of the biggest bookmakers in the state.

The agent testified to all of his investigation's discoveries before a grand jury, which returned an indictment against the man for illegal gambling activities, based solely on the agent's testimony. The man's attorney then filed a motion to dismiss the indictment, claiming that it rested on violations of the man's constitutional rights.

Should the court grant the motion?

- A:** No, because dismissal of the indictment is not the appropriate remedy.
- B:** Yes, because much of the agent's testimony before the grand jury was inadmissible hearsay.
- C:** Yes, because of the agent's unlawful search of the man's home.
- D:** Yes, because of the agent's violation of the man's right to counsel.

**The explanation for the answer is:**

Answer A is correct. Dismissal of the indictment would not be warranted because a grand jury is entitled to consider hearsay and is not limited by the exclusionary rule. Furthermore, courts will not look behind a facially sufficient indictment to review the sufficiency of the grand jury's probable cause determination. Thus, Answer A is correct and Answer B is incorrect.

Answer C is incorrect. The Fourth Amendment exclusionary rule does not extend to grand juries or provide a basis for dismissing a facially valid indictment.

Answer D is incorrect. There was no violation of any right to counsel that could justify dismissal of the indictment. This was not a custodial interrogation, so Miranda does not attach. Moreover, the man's statements to the agent were voluntary.

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**Question 1481 - Criminal Law - General Principles**

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**The question was:**

A state statute provides: "Aggravated robbery of the elderly consists of robbery committed against a victim who is 65 years of age or older." Another state statute provides that when a criminal statute does not designate a necessary mental state, the mental state required is recklessness. A third state statute provides that a person acts recklessly if the person "consciously disregards a substantial and unjustified risk that the material element exists or will result from the person's conduct."

The evidence at a criminal trial showed that the defendant robbed a 66-year-old man outside a senior citizens' center. The defendant testified truthfully that the robbery had occurred on a dark night, that she had had no idea how old the victim was and had not cared how old the victim was, and that she had intended to rob whomever she encountered.

Could the defendant properly be convicted of aggravated robbery of the elderly?

**A:** No, because the only evidence on the issue showed that the defendant did not know, nor could she reasonably have known, the victim's age.

**B:** No, because there was no evidence of a substantial risk that the victim was age 65 or older.

**C:** Yes, because the evidence was clear that the victim was 66 years old, and the statute is designed to protect the elderly.

**D:** Yes, because the jury could find that there was no justification for the defendant's conduct and that she was willing to take the risk that the victim was age 65 or older.

**The explanation for the answer is:**

Answer D is correct. The mens rea or scienter standard for a conviction under the statute is recklessness, defined as disregard of a substantial and unjustified risk. Given the totality of the circumstances—including the crime's location, the victim's age, and the defendant's intent and unjustifiable actions—a jury could properly conclude that the defendant had acted with reckless disregard of the victim's age. Thus, Answer D is correct, and Answers A and B are incorrect.

Answer C is incorrect. The result in this response is correct, but the reasoning is wrong. While a jury could properly convict the defendant, it could do so only after finding that she acted with the requisite mens rea or scienter. Because the scienter standard for a conviction under the statute is recklessness as to the victim's age, it is not sufficient that the victim in fact was at least 65 years old or that the statute was intended to protect the elderly.

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**Question 1495 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

Police responded to a call that shots had been heard coming from a certain house. Upon arriving at the house, the police looked through a window and saw a man lying on the living room floor. The police opened the front door, which was not locked, and found that the man had recently been shot in the back and was unconscious. An ambulance was called. While waiting for the ambulance, one officer walked through the house to see if anyone else was present. No one else was found, but the officer did see on the kitchen table clear bags of what he believed to be cocaine. The officer seized the bags, and laboratory tests later confirmed that the contents were cocaine.

After the ambulance arrived a few minutes later and took the man to the hospital, the police went through the house and opened drawers trying to find the gun used in the shooting. No gun was found, but upon opening a drawer in an upstairs bedroom, the police found marijuana and seized it.

Later investigation led to charging a young woman, who lived in the house, with unlawful possession of the cocaine and the marijuana. The young woman has filed a motion to suppress the use of both as evidence on the ground that the entry into the house and the searches were made without a warrant.

How should the court decide the young woman's motion?

- A:** Grant it as to the cocaine, but deny it as to the marijuana.
- B:** Deny it as to the cocaine, but grant it as to the marijuana.
- C:** Grant it as to both the cocaine and the marijuana.
- D:** Deny it as to both the cocaine and the marijuana.

**The explanation for the answer is:**

Answer B is correct. The police entry of the home was reasonable to provide aid to a man in need of emergency assistance. Once they were inside the home, the police officers could properly seize contraband in plain view but could not conduct an exploratory search for contraband. Accordingly, the police properly seized the cocaine (which was in plain view) but not the marijuana (which was the fruit of an improper, warrantless search). The court should deny the woman's motion to suppress the cocaine because it was lawfully seized under the plain view exception to the warrant requirement. However, the court should grant the woman's motion to suppress the marijuana because it was unlawfully seized during an improper, warrantless search of her home. Thus, Answer B is correct, and Answers A, C, and D are incorrect.

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**Question 1503 - Criminal Law - General Principles**

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**The question was:**

A state statute provides: "The sale of an alcoholic beverage to any person under the age of 21 is a misdemeanor."

A woman who was 20 years old, but who looked older and who had a very convincing fake driver's license indicating that she was 24, entered a convenience store, picked up a six-pack of beer, and placed the beer on the counter. The store clerk, after examining the driver's license, rang up the purchase.

Both the clerk and the store owner have been charged with violating the state statute.

If the court finds both the clerk and the store owner guilty, what standard of liability must the court have interpreted the statute to impose?

- A:** Strict liability only.
- B:** Vicarious liability only.
- C:** Both strict and vicarious liability.
- D:** Either strict or vicarious liability.

**The explanation for the answer is:**

A is incorrect. The court must have applied strict liability to convict the clerk (who did not act knowingly, and arguably not even negligently), but must have applied vicarious liability to convict the store owner for the sale by the clerk.

B is incorrect. The court must have applied vicarious liability to convict the store owner for the sale by the clerk, but must have applied strict liability to convict the clerk (who did not act knowingly, and arguably not even negligently).

C is correct. The court must have applied strict liability to convict the clerk (who did not act knowingly, and arguably not even negligently) and vicarious liability to convict the store owner for the sale by the clerk.

D is incorrect. The court must have applied strict liability to convict the clerk (who did not act knowingly, and arguably not even negligently) and vicarious liability to convict the store owner for the sale by the clerk.

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**Question 1510 - Criminal Law - General Principles**

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**The question was:**

A woman charged with murder has entered a plea of not guilty by reason of insanity. At her trial, in which the questions of guilt and sanity are being tried together, the evidence shows that the woman stalked the victim for several hours before following him to an isolated hiking trail where she shot and killed him. Expert witnesses for the defense have testified that the woman knew that killing was illegal and wrong, but that she suffered from a serious mental illness that left her in the grip of a powerful and irresistible compulsion to kill the victim.

If the jury believes the testimony of the defense experts, under what circumstances could the jury properly acquit the woman of murder?

- A:** Only if the jurisdiction follows the M'Naghten test for insanity.
- B:** Only if the jurisdiction follows the ALI Model Penal Code test for insanity.
- C:** If the jurisdiction follows either the M'Naghten or the ALI Model Penal Code test for insanity.
- D:** Even if the jurisdiction has abolished the insanity defense.

**The explanation for the answer is:**

A is incorrect. The jury could not find the woman to be legally insane under the M'Naghten test, which requires either that she did not know the nature and quality of the act she was committing or that she did not know the difference between right and wrong.

B is correct. The jury could find the woman to be legally insane under the ALI Model Penal Code test, because she could not conform her conduct to the requirements of the law.

C is incorrect. The jury could not find the woman to be legally insane under the M'Naghten test, which requires either that she did not know the nature and quality of the act she was committing or that she did not know the difference between right and wrong. The jury could find the woman to be legally insane under the ALI Model Penal Code test, because she could not conform her conduct to the requirements of the law.

D is incorrect. The woman committed all the elements of murder and can be excused from responsibility only if she meets a recognized defense of insanity.

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**Question 1510 - Criminal Law - General Principles**

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**The question was:**

A woman charged with murder has entered a plea of not guilty by reason of insanity. At her trial, in which the questions of guilt and sanity are being tried together, the evidence shows that the woman stalked the victim for several hours before following him to an isolated hiking trail where she shot and killed him. Expert witnesses for the defense have testified that the woman knew that killing was illegal and wrong, but that she suffered from a serious mental illness that left her in the grip of a powerful and irresistible compulsion to kill the victim.

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- D:** Even if the jurisdiction has abolished the insanity defense.

**The explanation for the answer is:**

A is incorrect. The jury could not find the woman to be legally insane under the M'Naghten test, which requires either that she did not know the nature and quality of the act she was committing or that she did not know the difference between right and wrong.

B is correct. The jury could find the woman to be legally insane under the ALI Model Penal Code test, because she could not conform her conduct to the requirements of the law.

C is incorrect. The jury could not find the woman to be legally insane under the M'Naghten test, which requires either that she did not know the nature and quality of the act she was committing or that she did not know the difference between right and wrong. The jury could find the woman to be legally insane under the ALI Model Penal Code test, because she could not conform her conduct to the requirements of the law.

D is incorrect. The woman committed all the elements of murder and can be excused from responsibility only if she meets a recognized defense of insanity.



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**Question 1514 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

A valid warrant was issued for a woman's arrest. The police learned that a person with the woman's name and physical description lived at a particular address. When police officers went to that address, the house appeared to be unoccupied: the windows and doors were boarded up with plywood, and the lawn had not been mowed for a long time. A neighbor confirmed that the house belonged to the woman but said that the woman had not been there for several months.

The officers knocked repeatedly on the front door and shouted, "Police! Open up!" Receiving no response, they tore the plywood off the door, smashed through the door with a sledgehammer, and entered the house. They found no one inside, but they did find an illegal sawed-off shotgun. Upon her return to the house a few weeks later, the woman was charged with unlawful possession of the shotgun.

The woman has moved to suppress the use of the shotgun as evidence at her trial.

Should the court grant the motion?

**A:** No, because the officers acted in good faith under the authority of a valid warrant.

**B:** No, because the officers did not violate any legitimate expectation of privacy in the house since the woman had abandoned it.

**C:** Yes, because the officers entered the house by means of excessive force.

**D:** Yes, because the officers had no reason to believe that the woman was in the house.

**The explanation for the answer is:**

A is incorrect. Under the Fourth Amendment, the arrest warrant would have authorized forcible entry only if the officers had reason to believe that the woman was at home at the time of the entry. Here, the officers knew that the woman was not at home.

B is incorrect. The facts here are legally insufficient to suggest that the woman had abandoned any reasonable expectation of privacy in the house.

C is incorrect. Under the Fourth Amendment, the arrest warrant would have authorized forcible entry if the officers had reason to believe that the woman was at home at the time of the entry. Here, however, the officers knew that the woman was not at home.

D is correct. Under the Fourth Amendment, the arrest warrant would have authorized forcible entry only if the officers had reason to believe that the woman was at home at the time of the entry. Here, the officers knew that the woman was not at home.

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**Question 1514 - Criminal Law - Constitutional Protection of Accused Persons**

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The officers knocked repeatedly on the front door and shouted, "Police! Open up!" Receiving no response, they tore the plywood off the door, smashed through the door with a sledgehammer, and entered the house. They found no one inside, but they did find an illegal sawed-off shotgun. Upon her return to the house a few weeks later, the woman was charged with unlawful possession of the shotgun.

The woman has moved to suppress the use of the shotgun as evidence at her trial.

Should the court grant the motion?

**A:** No, because the officers acted in good faith under the authority of a valid warrant.

**B:** No, because the officers did not violate any legitimate expectation of privacy in the house since the woman had abandoned it.

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B is incorrect. The facts here are legally insufficient to suggest that the woman had abandoned any reasonable expectation of privacy in the house.

C is incorrect. Under the Fourth Amendment, the arrest warrant would have authorized forcible entry if the officers had reason to believe that the woman was at home at the time of the entry. Here, however, the officers knew that the woman was not at home.

D is correct. Under the Fourth Amendment, the arrest warrant would have authorized forcible entry only if the officers had reason to believe that the woman was at home at the time of the entry. Here, the officers knew that the woman was not at home.

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Should the court grant the motion?

**A:** No, because the officers acted in good faith under the authority of a valid warrant.

**B:** No, because the officers did not violate any legitimate expectation of privacy in the house since the woman had abandoned it.

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A is incorrect. Under the Fourth Amendment, the arrest warrant would have authorized forcible entry only if the officers had reason to believe that the woman was at home at the time of the entry. Here, the officers knew that the woman was not at home.

B is incorrect. The facts here are legally insufficient to suggest that the woman had abandoned any reasonable expectation of privacy in the house.

C is incorrect. Under the Fourth Amendment, the arrest warrant would have authorized forcible entry if the officers had reason to believe that the woman was at home at the time of the entry. Here, however, the officers knew that the woman was not at home.

D is correct. Under the Fourth Amendment, the arrest warrant would have authorized forcible entry only if the officers had reason to believe that the woman was at home at the time of the entry. Here, the officers knew that the woman was not at home.

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**Question 1514 - Criminal Law - Constitutional Protection of Accused Persons**

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The woman has moved to suppress the use of the shotgun as evidence at her trial.

Should the court grant the motion?

**A:** No, because the officers acted in good faith under the authority of a valid warrant.

**B:** No, because the officers did not violate any legitimate expectation of privacy in the house since the woman had abandoned it.

**C:** Yes, because the officers entered the house by means of excessive force.

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**The explanation for the answer is:**

A is incorrect. Under the Fourth Amendment, the arrest warrant would have authorized forcible entry only if the officers had reason to believe that the woman was at home at the time of the entry. Here, the officers knew that the woman was not at home.

B is incorrect. The facts here are legally insufficient to suggest that the woman had abandoned any reasonable expectation of privacy in the house.

C is incorrect. Under the Fourth Amendment, the arrest warrant would have authorized forcible entry if the officers had reason to believe that the woman was at home at the time of the entry. Here, however, the officers knew that the woman was not at home.

D is correct. Under the Fourth Amendment, the arrest warrant would have authorized forcible entry only if the officers had reason to believe that the woman was at home at the time of the entry. Here, the officers knew that the woman was not at home.

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**Question 1521 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

A woman was subpoenaed to appear before a grand jury. When she arrived, she was taken into the grand jury room to be questioned. She answered preliminary questions about her name and address. She was then asked where she had been at a certain time on a specified night when a murder had occurred. Before answering the question, the woman said that she wanted to consult her attorney, who was waiting outside the grand jury room, and she was allowed to do so. When she returned to the grand jury room, she stated that she refused to answer the question because the answer might incriminate her.

The prosecutor believes that the woman's nephew committed the murder. The nephew has said that he was with the woman at the time of the murder, and the prosecutor believes that this alibi is false. The prosecutor does not believe that the woman is guilty of the murder, either as a principal or as an accomplice, although he does believe that the woman may be guilty of other crimes. The prosecutor wants to compel the woman to answer the question by whatever means will result in the least harm to the prosecution's case.

Which of the following steps should the prosecutor take to get the woman to answer the question?

- A:** Request the grand jury to order the woman to answer the question.
- B:** Ask the woman's attorney to explain to the woman that the rules of evidence do not apply in grand jury proceedings, and to advise her that she cannot refuse to testify.
- C:** Prepare the documents necessary to grant the woman immunity from any future use against her of her grand jury testimony or any evidence derived from it.
- D:** Prepare the documents necessary to grant the woman immunity from any future prosecution for any crime she might disclose in the course of her testimony.

**The explanation for the answer is:**

A is incorrect. The woman cannot be compelled to provide potentially incriminating testimony unless she is granted use and derivative-use immunity.

B is incorrect. While the rules of evidence do not apply before grand juries, a witness cannot be compelled to provide potentially incriminating testimony unless the witness is granted use and derivative-use immunity.

C is correct. A witness cannot be compelled to provide potentially incriminating testimony unless the witness is granted use and derivative-use immunity.

D is incorrect. A witness cannot be compelled to provide potentially incriminating testimony unless the witness is granted use and derivative-use immunity, but the witness need not be granted transactional immunity.

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**Question 1521 - Criminal Law - Constitutional Protection of Accused Persons**

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D is incorrect. A witness cannot be compelled to provide potentially incriminating testimony unless the witness is granted use and derivative-use immunity, but the witness need not be granted transactional immunity.

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**Question 1528 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

A defendant was validly arrested for the murder of a store clerk and was taken to a police station where he was given Miranda warnings. When an interrogator asked the defendant, "Do you understand your Miranda rights, and are you willing to give up those rights and talk to us?" the defendant replied, "Yes." When asked, "Did you kill the clerk?" the defendant replied, "No." When asked, "Where were you on the day the clerk was killed?" the defendant replied, "Maybe I should talk to a lawyer." The interrogator asked, "Are you sure?" and the defendant replied, "I'm not sure." The interrogator then asked, "Why would you want to talk with a lawyer?" and the defendant replied, "Because I killed the clerk. It was an accident, and I think I need a lawyer to defend me." At that point all interrogation ceased. Later, the defendant was formally charged with murdering the clerk.

The defendant has moved to suppress evidence of his statement "I killed the clerk" on the ground that this statement was elicited in violation of his Miranda rights.

Should the defendant's motion be granted?

**A:** No, because although the defendant effectively asserted the right to counsel, the question "Why would you want to talk with a lawyer?" did not constitute custodial interrogation.

**B:** No, because the defendant did not effectively assert the right to counsel, and his conduct prior to making the statement constituted a valid waiver of his Miranda rights.

**C:** Yes, because although the defendant did not effectively assert the right to counsel, his conduct prior to making the statement did not constitute a valid waiver of his Miranda rights.

**D:** Yes, because the defendant effectively asserted the right to counsel, and the question "Why would you want to talk with a lawyer?" constituted custodial interrogation.

**The explanation for the answer is:**

A is incorrect. The defendant did not effectively assert his right to counsel, because such an assertion must be unambiguous. The defendant's statement "Maybe I should talk to a lawyer" is not an unambiguous request for counsel.

B is correct. The defendant did not effectively assert his right to counsel, because such an assertion must be unambiguous. The defendant's statement "Maybe I should talk to a lawyer" is not an unambiguous request for counsel. In addition, the defendant had unequivocally waived his Miranda rights prior to making this statement.

C is incorrect. The defendant unequivocally waived his Miranda rights, and his statement "Maybe I should talk to a lawyer" did not affect the validity of that waiver.

D is incorrect. The defendant did not effectively assert his right to counsel, because such an assertion must be unambiguous. The defendant's statement "Maybe I should talk to a lawyer" is not an unambiguous request for counsel.

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The defendant has moved to suppress evidence of his statement "I killed the clerk" on the ground that this statement was elicited in violation of his Miranda rights.

Should the defendant's motion be granted?

**A:** No, because although the defendant effectively asserted the right to counsel, the question "Why would you want to talk with a lawyer?" did not constitute custodial interrogation.

**B:** No, because the defendant did not effectively assert the right to counsel, and his conduct prior to making the statement constituted a valid waiver of his Miranda rights.

**C:** Yes, because although the defendant did not effectively assert the right to counsel, his conduct prior to making the statement did not constitute a valid waiver of his Miranda rights.

**D:** Yes, because the defendant effectively asserted the right to counsel, and the question "Why would you want to talk with a lawyer?" constituted custodial interrogation.

**The explanation for the answer is:**

A is incorrect. The defendant did not effectively assert his right to counsel, because such an assertion must be unambiguous. The defendant's statement "Maybe I should talk to a lawyer" is not an unambiguous request for counsel.

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Should the defendant's motion be granted?

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**B:** No, because the defendant did not effectively assert the right to counsel, and his conduct prior to making the statement constituted a valid waiver of his Miranda rights.

**C:** Yes, because although the defendant did not effectively assert the right to counsel, his conduct prior to making the statement did not constitute a valid waiver of his Miranda rights.

**D:** Yes, because the defendant effectively asserted the right to counsel, and the question "Why would you want to talk with a lawyer?" constituted custodial interrogation.

**The explanation for the answer is:**

A is incorrect. The defendant did not effectively assert his right to counsel, because such an assertion must be unambiguous. The defendant's statement "Maybe I should talk to a lawyer" is not an unambiguous request for counsel.

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**B:** No, because the defendant did not effectively assert the right to counsel, and his conduct prior to making the statement constituted a valid waiver of his Miranda rights.

**C:** Yes, because although the defendant did not effectively assert the right to counsel, his conduct prior to making the statement did not constitute a valid waiver of his Miranda rights.

**D:** Yes, because the defendant effectively asserted the right to counsel, and the question "Why would you want to talk with a lawyer?" constituted custodial interrogation.

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D is incorrect. The defendant did not effectively assert his right to counsel, because such an assertion must be unambiguous. The defendant's statement "Maybe I should talk to a lawyer" is not an unambiguous request for counsel.

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**Question 1531 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

Two defendants were being tried together in federal court for bank robbery. The prosecutor sought to introduce testimony from the first defendant's prison cellmate. The cellmate would testify that the first defendant had admitted to the cellmate that he and the second defendant had robbed the bank. The prosecutor asked the court to instruct the jury that the cellmate's testimony could be considered only against the first defendant.

Can the cellmate's testimony be admitted in a joint trial over the second defendant's objection?

- A:** No, because the first defendant made the statement without Miranda warnings.
- B:** No, because the limiting instruction cannot ensure that the jury will not consider the testimony in its deliberations regarding the second defendant.
- C:** Yes, because the first defendant's statement was a declaration against penal interest.
- D:** Yes, because the limiting instruction sufficiently protects the second defendant.

**The explanation for the answer is:**

A is incorrect. Miranda warnings were not required, because the first defendant was not compelled by a known law enforcement agent to make the statement, and in any event the second defendant could not assert Miranda rights belonging to the first defendant.

B is correct. The limiting instruction is constitutionally insufficient to avoid the risk that the jury will consider the incriminating statement against the second defendant, who has no opportunity at trial to confront the first defendant.

C is incorrect. The first defendant's statement incriminating the second defendant could not, under the Sixth Amendment confrontation clause, be considered against the second defendant on a theory that it constitutes a declaration against penal interest.

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**Question 1534 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

A prosecutor presented to a federal grand jury the testimony of a witness in order to secure a defendant's indictment for theft of government property. The prosecutor did not disclose to the grand jury that the witness had been convicted four years earlier of perjury. The grand jury returned an indictment, and the defendant pleaded not guilty.

Shortly thereafter, the prosecutor took the case to trial, calling the witness to testify before the jury. The prosecutor did not disclose the witness's prior perjury conviction until the defense was preparing to rest. Defense counsel immediately moved for a mistrial, which the court denied. Instead, the court allowed the defense to recall the witness for the purpose of impeaching him with this conviction, but the witness could not be located. The court then allowed the defense to introduce documentary evidence of the witness's criminal record to the jury before resting its case. The jury convicted the defendant.

The defendant has moved for a new trial, arguing that the prosecutor's failure to disclose the witness's prior conviction in a timely manner violated the defendant's right to due process of law.

If the court grants the defendant's motion, what will be the most likely reason?

- A:** The defendant was unable to cross-examine the witness about the conviction.
- B:** The prosecutor failed to inform the grand jury of the witness's conviction.
- C:** The court found it reasonably probable that the defendant would have been acquitted had the defense had timely access to the information about the witness's conviction.
- D:** The court found that the prosecutor had deliberately delayed disclosing the witness's conviction to obtain a strategic advantage.

**The explanation for the answer is:**

A is incorrect. The court did not limit the defendant's right to cross-examine the witness. Rather, the constitutional violation, if any, was the prosecutor's untimely disclosure of impeachment information that would have created a reasonable probability of a different outcome had it been disclosed earlier.

B is incorrect. The prosecutor is not required to present a grand jury with evidence favorable to a defendant. Rather, the constitutional violation, if any, was the prosecutor's untimely disclosure of impeachment information that would have created a reasonable probability of a different outcome had it been disclosed earlier.

C is correct. The untimely disclosure of evidence favorable to the defense (including impeachment information) violates the Constitution if the evidence would have created a reasonable probability of a different outcome had it been disclosed earlier.

D is incorrect. The prosecutor's motive is not an element of a constitutional claim involving untimely disclosure of evidence favorable to the defense (including impeachment information). Rather, such untimely disclosure would violate the Constitution only if the evidence would have created a reasonable probability of a different outcome had it been disclosed earlier.

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**Question 1549 - Criminal Law - Homicide**

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**The question was:**

A state statute divides murder into degrees and defines murder in the first degree as murder committed willfully with premeditation and deliberation. The statute defines murder in the second degree as all other murder at common law and defines voluntary manslaughter as at common law.

A man hated one of his coworkers. Upon learning that the coworker was at a neighbor's house, the man grabbed his gun and went to the neighbor's house hoping to provoke the coworker into attacking him so that he could then shoot the coworker. After arriving at the house, the man insulted the coworker and bragged that he had had sexual relations with the coworker's wife two weeks earlier. This statement was not true, but it enraged the coworker, who grabbed a knife from the kitchen table and ran toward the man. The man then shot and killed the coworker.

What is the most serious homicide offense of which the man could properly be convicted?

- A:** Murder in the first degree.
- B:** Murder in the second degree.
- C:** Voluntary manslaughter, because he provoked the coworker.
- D:** No form of criminal homicide, because he acted in self-defense.

**The explanation for the answer is:**

A is correct. The killing was committed willfully with premeditation and deliberation. The killing cannot be justified as having been in self-defense, because the man was the clear aggressor who intentionally provoked the coworker so that he could shoot and kill him.

B is incorrect. Murder in the second degree is not the most serious homicide offense of which the man could properly be convicted. The man is guilty of first-degree murder, because he committed the killing willfully with premeditation and deliberation. The killing cannot be justified as having been in self-defense, because the man intentionally provoked the coworker so that he could shoot and kill him.

C is incorrect. Voluntary manslaughter is not the most serious homicide offense of which the man could properly be convicted, because he was not acting in the heat of passion when he killed the coworker. The man is guilty of first-degree murder, because he committed the killing willfully with premeditation and deliberation, and the killing cannot be justified as having been in self-defense.

D is incorrect. The killing cannot be justified as having been in self-defense, because the man intentionally provoked the coworker so that he could shoot and kill him. The man is guilty of first-degree murder, because he committed the killing willfully with premeditation and deliberation.

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- A:** Murder in the first degree.
- B:** Murder in the second degree.
- C:** Voluntary manslaughter, because he provoked the coworker.
- D:** No form of criminal homicide, because he acted in self-defense.

**The explanation for the answer is:**

A is correct. The killing was committed willfully with premeditation and deliberation. The killing cannot be justified as having been in self-defense, because the man was the clear aggressor who intentionally provoked the coworker so that he could shoot and kill him.

B is incorrect. Murder in the second degree is not the most serious homicide offense of which the man could properly be convicted. The man is guilty of first-degree murder, because he committed the killing willfully with premeditation and deliberation. The killing cannot be justified as having been in self-defense, because the man intentionally provoked the coworker so that he could shoot and kill him.

C is incorrect. Voluntary manslaughter is not the most serious homicide offense of which the man could properly be convicted, because he was not acting in the heat of passion when he killed the coworker. The man is guilty of first-degree murder, because he committed the killing willfully with premeditation and deliberation, and the killing cannot be justified as having been in self-defense.

D is incorrect. The killing cannot be justified as having been in self-defense, because the man intentionally provoked the coworker so that he could shoot and kill him. The man is guilty of first-degree murder, because he committed the killing willfully with premeditation and deliberation.

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**Question 1556 - Criminal Law - Homicide**

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**The question was:**

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

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

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

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

**The explanation for the answer is:**

A is correct. As to the husband, the wife intended to murder him and took a substantial step to carry out that murder; the husband would have been killed had he drunk the wine. As to the maid, a trier of fact could view the wife's conduct as depraved-heart recklessness (which would make her guilty of murder) or at the very least as criminal negligence (which would make her guilty of manslaughter).

B is incorrect. The woman could be found guilty of attempted murder of the husband, because she intended to murder him and took a substantial step to carry out that murder; the husband would have been killed had he drunk the wine. However, the wife could also be found guilty of murder or manslaughter of the maid. As to the maid, a trier of fact could view the wife's conduct as depraved-heart recklessness (which would make her guilty of murder) or at the very least as criminal negligence (which would make her guilty of manslaughter).

C is incorrect. The wife could be found guilty of murder or manslaughter of the maid, because a trier of fact could view the wife's conduct as depraved-heart recklessness (which would make her guilty of murder) or at the very least as criminal negligence (which would make her guilty of manslaughter). However, the wife could also be found guilty of attempted murder of the husband. As to the husband, she intended to murder him and took a substantial step to carry out that murder; the husband would have been killed had he drunk the wine.

D is incorrect. The wife could be found guilty of attempted murder of the husband and murder or manslaughter of the maid. As to the husband, the wife intended to murder him and took a substantial step to carry out that murder; the husband would have been killed had he drunk the wine. As to the maid, a trier of fact could view the wife's conduct as depraved-heart recklessness (which would make her guilty of murder) or at the very least as criminal negligence (which would make her guilty of manslaughter).

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

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D is incorrect. The wife could be found guilty of attempted murder of the husband and murder or manslaughter of the maid. As to the husband, the wife intended to murder him and took a substantial step to carry out that murder; the husband would have been killed had he drunk the wine. As to the maid, a trier of fact could view the wife's conduct as depraved-heart recklessness (which would make her guilty of murder) or at the very least as criminal negligence (which would make her guilty of manslaughter).

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**Question 1562 - Criminal Law - Other Crimes**

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**The question was:**

In a crowded football stadium, a man saw a wallet fall out of a spectator's purse. The man picked up the wallet and found that it contained \$100 in cash. Thinking that he could use the money and seeing no one watching, the man put the wallet in the pocket of his coat. Just then, the spectator approached the man and asked if he had seen a missing wallet. The man said no and went home with the wallet.

Of what crime, if any, is the man guilty?

- A:** Embezzlement.
- B:** False pretenses.
- C:** Larceny.
- D:** No crime.

**The explanation for the answer is:**

A is incorrect. The initial taking of the wallet was a trespass, because the man knew that the wallet belonged to the spectator and he intended to convert the wallet to his own use in permanent deprivation of the spectator's right. Accordingly, and because the spectator never entrusted the man with the wallet, the man is guilty of larceny rather than embezzlement.

B is incorrect. The initial taking of the wallet was a trespass, because the man knew that the wallet belonged to the spectator and he intended to convert the wallet to his own use in permanent deprivation of the spectator's right. Accordingly, and because the man never obtained title to the wallet, he is guilty of larceny rather than false pretenses.

C is correct. The initial taking of the wallet was a trespass, because the man knew that the wallet belonged to the spectator and he intended to convert the wallet to his own use in permanent deprivation of the spectator's right. Accordingly, the man is guilty of larceny.

D is incorrect. The initial taking of the wallet was a trespass, because the man knew that the wallet belonged to the spectator and he intended to convert the wallet to his own use in permanent deprivation of the spectator's right. Accordingly, the man is guilty of larceny.

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- A:** Embezzlement.
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C is correct. The initial taking of the wallet was a trespass, because the man knew that the wallet belonged to the spectator and he intended to convert the wallet to his own use in permanent deprivation of the spectator's right. Accordingly, the man is guilty of larceny.

D is incorrect. The initial taking of the wallet was a trespass, because the man knew that the wallet belonged to the spectator and he intended to convert the wallet to his own use in permanent deprivation of the spectator's right. Accordingly, the man is guilty of larceny.

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C is correct. The initial taking of the wallet was a trespass, because the man knew that the wallet belonged to the spectator and he intended to convert the wallet to his own use in permanent deprivation of the spectator's right. Accordingly, the man is guilty of larceny.

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**Question 1569 - Criminal Law - Other Crimes**

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**The question was:**

A woman went to an art gallery and falsely represented that she was an agent for a museum and wanted to purchase a painting that was hanging in the gallery. The woman and the gallery owner then agreed on a price for the painting to be paid 10 days later, and the woman took the painting. When the gallery failed to receive the payment when due, the owner called the museum and discovered that the woman did not work there. The owner then notified the police.

When interviewed by the police, the woman admitted making the false representation and acquiring the painting, but she said she believed that the painting had been stolen from her by someone who worked in the gallery.

Is the woman guilty of obtaining property by false pretenses?

- A:** No, because she believed that the painting belonged to her.
- B:** No, because the gallery owner would have sold the painting to anyone who agreed to pay the price.
- C:** Yes, because even if her representation was not material, she never intended to pay for the painting.
- D:** Yes, because she knowingly made a false representation on which the gallery owner relied.

**The explanation for the answer is:**

A is correct. The crime of false pretenses, like other theft crimes, requires the intent to steal. The woman cannot properly be found guilty of obtaining property by false pretenses, because she made the false statements to obtain property that she subjectively believed belonged to her.

B is incorrect. This fact does not excuse the woman for knowingly making false statements to obtain property that she would not otherwise have been able to obtain. The reason the woman cannot properly be found guilty of obtaining property by false pretenses is that she lacked the requisite intent to steal; she made the false statements to obtain property that she subjectively believed belonged to her.

C is incorrect. In some jurisdictions, a false pretenses conviction can be based on a promise to make payment in the future if the promisor had no present intent to make the future payment. But the promisor must have the intent to steal the property. The woman cannot properly be found guilty of obtaining property by false pretenses, because she lacked the requisite intent to steal; she made the false statements to obtain property that she subjectively believed belonged to her.

D is incorrect. Even assuming that the woman otherwise could be convicted of false pretenses, false pretenses requires the intent to steal required for other theft crimes. Accordingly, the woman cannot properly be found guilty of obtaining property by false pretenses, because she made the false statements to obtain property that she subjectively believed belonged to her.



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**The explanation for the answer is:**

A is correct. The crime of false pretenses, like other theft crimes, requires the intent to steal. The woman cannot properly be found guilty of obtaining property by false pretenses, because she made the false statements to obtain property that she subjectively believed belonged to her.

B is incorrect. This fact does not excuse the woman for knowingly making false statements to obtain property that she would not otherwise have been able to obtain. The reason the woman cannot properly be found guilty of obtaining property by false pretenses is that she lacked the requisite intent to steal; she made the false statements to obtain property that she subjectively believed belonged to her.

C is incorrect. In some jurisdictions, a false pretenses conviction can be based on a promise to make payment in the future if the promisor had no present intent to make the future payment. But the promisor must have the intent to steal the property. The woman cannot properly be found guilty of obtaining property by false pretenses, because she lacked the requisite intent to steal; she made the false statements to obtain property that she subjectively believed belonged to her.

D is incorrect. Even assuming that the woman otherwise could be convicted of false pretenses, false pretenses requires the intent to steal required for other theft crimes. Accordingly, the woman cannot properly be found guilty of obtaining property by false pretenses, because she made the false statements to obtain property that she subjectively believed belonged to her.

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**Question 1569 - Criminal Law - Other Crimes**

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**The question was:**

A woman went to an art gallery and falsely represented that she was an agent for a museum and wanted to purchase a painting that was hanging in the gallery. The woman and the gallery owner then agreed on a price for the painting to be paid 10 days later, and the woman took the painting. When the gallery failed to receive the payment when due, the owner called the museum and discovered that the woman did not work there. The owner then notified the police.

When interviewed by the police, the woman admitted making the false representation and acquiring the painting, but she said she believed that the painting had been stolen from her by someone who worked in the gallery.

Is the woman guilty of obtaining property by false pretenses?

- A:** No, because she believed that the painting belonged to her.
- B:** No, because the gallery owner would have sold the painting to anyone who agreed to pay the price.
- C:** Yes, because even if her representation was not material, she never intended to pay for the painting.
- D:** Yes, because she knowingly made a false representation on which the gallery owner relied.

**The explanation for the answer is:**

A is correct. The crime of false pretenses, like other theft crimes, requires the intent to steal. The woman cannot properly be found guilty of obtaining property by false pretenses, because she made the false statements to obtain property that she subjectively believed belonged to her.

B is incorrect. This fact does not excuse the woman for knowingly making false statements to obtain property that she would not otherwise have been able to obtain. The reason the woman cannot properly be found guilty of obtaining property by false pretenses is that she lacked the requisite intent to steal; she made the false statements to obtain property that she subjectively believed belonged to her.

C is incorrect. In some jurisdictions, a false pretenses conviction can be based on a promise to make payment in the future if the promisor had no present intent to make the future payment. But the promisor must have the intent to steal the property. The woman cannot properly be found guilty of obtaining property by false pretenses, because she lacked the requisite intent to steal; she made the false statements to obtain property that she subjectively believed belonged to her.

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**Question 1577 - Criminal Law - Other Crimes**

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**The question was:**

A woman broke off her engagement to a man but refused to return the engagement ring the man had given her. One night, the man entered the woman's house after midnight to retrieve the ring. Although the woman was not at home, a neighbor saw the man enter the house and called the police. The man unsuccessfully searched for the ring for 10 minutes. As he was walking out the front door, the police arrived and immediately arrested him.

The man has been charged with burglary in a jurisdiction that follows the common law.

Which of the following, if proved, would serve as the man's best defense to the charge?

- A:** The man knew that the woman kept a key under the doormat and he used the key to enter the house.
- B:** The man incorrectly and unreasonably believed that he was legally entitled to the ring.
- C:** The man knew that no one was at home when he entered the house.
- D:** The man took nothing of value from the house.

**The explanation for the answer is:**

A is incorrect. This fact does not provide a defense to burglary, because the man still broke into and entered the house without the woman's consent. Instead, the man's subjective belief that he was entitled to the ring (even if that belief was incorrect and unreasonable) negates the intent required for the underlying felony of larceny.

B is correct. The crime of burglary requires that the breaking and entering of the dwelling have been done with the intent to commit an underlying felony (in most cases, larceny). The man's subjective belief that he was entitled to the ring (even if that belief was incorrect and unreasonable) negates the intent required for the underlying felony of larceny.

C is incorrect. This fact does not provide a defense, because the crime of burglary does not require that the dwelling be occupied at the time of the breaking and entering. Instead, the man's subjective belief that he was entitled to the ring (even if that belief was incorrect and unreasonable) negates the intent required for the underlying felony of larceny.

D is incorrect. This fact does not provide a defense, because burglary requires that the person breaking and entering intend to commit a felony, not that the person be successful in committing the felony. Instead, the man's subjective belief that he was entitled to the ring (even if that belief was incorrect and unreasonable) negates the intent required for the underlying felony of larceny.

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**Question 1584 - Criminal Law - Inchoate Crimes**

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**The question was:**

A woman wanted to kill a business competitor. She contacted a man who she believed was willing to commit murder for hire and offered him \$50,000 to kill the competitor. The man agreed to do so and accepted \$25,000 as a down payment. Unbeknownst to the woman, the man was an undercover police officer.

In a jurisdiction that has adopted the unilateral theory of conspiracy, is the woman guilty of conspiracy to murder the business competitor?

**A:** No, because the man did not intend to kill the competitor.

**B:** No, because it would have been impossible for the woman to kill the competitor by this method.

**C:** Yes, because the woman believed that she had an agreement with the man that would bring about the competitor's death.

**D:** Yes, because the woman took a substantial step toward bringing about the competitor's death by paying the man \$25,000.

**The explanation for the answer is:**

A is incorrect. In jurisdictions that recognize unilateral conspiracies, it is enough that one person agree with another person to commit a crime (and in some jurisdictions, that an overt act in furtherance of that agreement be committed). It is no defense to unilateral conspiracy that the other person was feigning agreement or acting in an undercover capacity. Therefore, the man's lack of intent does not make the woman any less guilty.

B is incorrect. In jurisdictions that recognize unilateral conspiracies, it is enough that one person agree with another person to commit a crime (and in some jurisdictions, that an overt act in furtherance of that agreement be committed). It is no defense to unilateral conspiracy that the other person was feigning agreement or acting in an undercover capacity. Therefore, the woman cannot prevail on any impossibility defense.

C is correct. In jurisdictions that recognize unilateral conspiracies, it is enough that one person agree with another person to commit a crime (and in some jurisdictions, that an overt act in furtherance of that agreement be committed). It is no defense to unilateral conspiracy that the other person was feigning agreement or acting in an undercover capacity. Here, the woman agreed to commit a crime and she committed an overt act in furtherance of that agreement when she paid the man \$25,000. She therefore is guilty of conspiracy in a jurisdiction that recognizes unilateral conspiracies.

D is incorrect. The woman is guilty, but not because she took a substantial step, which is a concept relevant under the Model Penal Code to attempt rather than conspiracy. The woman is guilty of conspiracy because in jurisdictions that recognize unilateral conspiracies, it is enough that one person agree with another person to commit a crime (and in some jurisdictions, that an overt act in furtherance of that agreement be committed). It is no defense to unilateral conspiracy that the other person was feigning agreement or acting in an undercover capacity.

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**Question 1589 - Criminal Law - Inchoate Crimes**

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**The question was:**

A state statute provides as follows: "The maintenance of any ongoing enterprise in the nature of a betting parlor or bookmaking organization is a felony."

A prosecutor has evidence that a woman has been renting an office to a man, that the man has been using the office as a betting parlor within the meaning of the statute, and that the woman is aware of this use.

Which of the following additional pieces of evidence would be most useful to the prosecutor's effort to convict the woman as an accomplice to the man's violation of the statute?

- A:** The woman was previously convicted of running a betting parlor herself on the same premises.
- B:** The woman charges the man considerably more in rent than she charged the preceding tenant, who used the office for legitimate activities.
- C:** The woman has personally placed bets with the man at the office location.
- D:** The man has paid the woman the rent in bills that are traceable as the proceeds of gambling activity.

**The explanation for the answer is:**

A is incorrect. The woman's prior conviction would not necessarily show that she has a personal stake in the continuing success of the man's criminal venture (and thus an intent to aid in that venture).

B is correct. Showing that the woman benefits from the gambling would indicate her personal stake in the continuing success of the man's criminal venture (and thus her intent to aid in that venture).

C is incorrect. Showing that the woman has placed bets would confirm that she knows that the premises are being used for gambling. However, it would not necessarily show that she has a personal stake in the continuing success of the man's criminal venture (and thus an intent to aid in that venture).

D is incorrect. The source of the rent payments, assuming that the rent is not above the market price for the premises, would not necessarily show that the woman has a personal stake in the continuing success of the man's criminal venture (and thus an intent to aid in that venture).

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**Question 1594 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

After a defendant was indicted on federal bank fraud charges and released on bail, his attorney filed notice of the defendant's intent to offer an insanity defense. The prosecutor then enlisted the help of a forensic psychologist who was willing to participate in an "undercover" mental examination of the defendant. The psychologist contacted the defendant and pretended to represent an executive personnel agency. She told the defendant about an attractive employment opportunity and invited him to a "preliminary screening interview" to determine his qualifications for the job. As part of the purported screening process, the psychologist gave the defendant psychological tests that enabled her to form a reliable opinion about his mental state at the time of the alleged offense.

What is the strongest basis for a defense objection to the psychologist's testimony regarding the defendant's mental state?

- A:** The Fourth Amendment prohibition against unreasonable searches and seizures.
- B:** The Fifth Amendment privilege against compelled self-incrimination.
- C:** The Sixth Amendment right to the assistance of counsel.
- D:** The federal common law privilege for confidential communications between psychotherapist and patient.

**The explanation for the answer is:**

A is incorrect. The Fourth Amendment does not prevent the government from using deception to obtain incriminating admissions.

B is incorrect. The Fifth Amendment privilege protects against compelled self-incrimination, not against the use of deception to obtain a suspect's voluntary admissions.

C is correct. After a defendant is indicted, the right to counsel attaches, and authorities may not use deception to deliberately elicit statements related to the crime from the defendant without the representation of counsel.

D is incorrect. While there is such a federal common law privilege for communications intended to be kept confidential for the purpose of obtaining psychiatric services, the facts in this case do not support the privilege.

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D is incorrect. While there is such a federal common law privilege for communications intended to be kept confidential for the purpose of obtaining psychiatric services, the facts in this case do not support the privilege.

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**Question 1594 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

After a defendant was indicted on federal bank fraud charges and released on bail, his attorney filed notice of the defendant's intent to offer an insanity defense. The prosecutor then enlisted the help of a forensic psychologist who was willing to participate in an "undercover" mental examination of the defendant. The psychologist contacted the defendant and pretended to represent an executive personnel agency. She told the defendant about an attractive employment opportunity and invited him to a "preliminary screening interview" to determine his qualifications for the job. As part of the purported screening process, the psychologist gave the defendant psychological tests that enabled her to form a reliable opinion about his mental state at the time of the alleged offense.

What is the strongest basis for a defense objection to the psychologist's testimony regarding the defendant's mental state?

- A:** The Fourth Amendment prohibition against unreasonable searches and seizures.
- B:** The Fifth Amendment privilege against compelled self-incrimination.
- C:** The Sixth Amendment right to the assistance of counsel.
- D:** The federal common law privilege for confidential communications between psychotherapist and patient.

**The explanation for the answer is:**

A is incorrect. The Fourth Amendment does not prevent the government from using deception to obtain incriminating admissions.

B is incorrect. The Fifth Amendment privilege protects against compelled self-incrimination, not against the use of deception to obtain a suspect's voluntary admissions.

C is correct. After a defendant is indicted, the right to counsel attaches, and authorities may not use deception to deliberately elicit statements related to the crime from the defendant without the representation of counsel.

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**Question 1598 - Criminal Law - General Principles**

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**The question was:**

A defendant is charged with an offense under a statute that provides as follows: "Any person who, while intoxicated, appears in any public place and manifests a drunken condition by obstreperous or indecent conduct is guilty of a misdemeanor."

At trial, the evidence shows that the defendant was intoxicated when police officers burst into his house and arrested him pursuant to a valid warrant. It was a cold night, and the officers hustled the defendant out of his house without giving him time to get his coat. The defendant became angry and obstreperous when the officers refused to let him go back into the house to retrieve his coat. The officers left him handcuffed outside in the street, waiting for a special squad car to arrive. The arrest warrant was later vacated.

Can the defendant properly be convicted of violating the statute?

- A:** No, because the defendant's claim of mistreatment is valid.
- B:** No, because the statute requires proof of a voluntary appearance in a public place.
- C:** Yes, because the defendant voluntarily became intoxicated.
- D:** Yes, because the defendant voluntarily behaved in an obstreperous manner.

**The explanation for the answer is:**

A is incorrect. The defendant cannot properly be convicted, regardless of whether his claim is valid, because of the general legal rule that a person is not guilty of a crime unless the act constituting the crime was committed voluntarily. This rule precludes the defendant's conviction, because he did not voluntarily appear in a public place.

B is correct. The general legal rule is that a person is not guilty of a crime unless the act constituting the crime was committed voluntarily. This rule precludes the defendant's conviction, because he did not voluntarily appear in a public place.

C is incorrect. The general legal rule is that a person is not guilty of a crime unless the act constituting the crime was committed voluntarily. This rule precludes the defendant's conviction because, while the defendant voluntarily became intoxicated, he did not voluntarily appear in a public place.

D is incorrect. The general legal rule is that a person is not guilty of a crime unless the act constituting the crime was committed voluntarily. This rule precludes the defendant's conviction because, while the defendant voluntarily behaved obstreperously, he did not voluntarily appear in a public place.

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**Question 1598 - Criminal Law - General Principles**

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- C:** Yes, because the defendant voluntarily became intoxicated.
- D:** Yes, because the defendant voluntarily behaved in an obstreperous manner.

**The explanation for the answer is:**

A is incorrect. The defendant cannot properly be convicted, regardless of whether his claim is valid, because of the general legal rule that a person is not guilty of a crime unless the act constituting the crime was committed voluntarily. This rule precludes the defendant's conviction, because he did not voluntarily appear in a public place.

B is correct. The general legal rule is that a person is not guilty of a crime unless the act constituting the crime was committed voluntarily. This rule precludes the defendant's conviction, because he did not voluntarily appear in a public place.

C is incorrect. The general legal rule is that a person is not guilty of a crime unless the act constituting the crime was committed voluntarily. This rule precludes the defendant's conviction because, while the defendant voluntarily became intoxicated, he did not voluntarily appear in a public place.

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**The explanation for the answer is:**

A is incorrect. The defendant cannot properly be convicted, regardless of whether his claim is valid, because of the general legal rule that a person is not guilty of a crime unless the act constituting the crime was committed voluntarily. This rule precludes the defendant's conviction, because he did not voluntarily appear in a public place.

B is correct. The general legal rule is that a person is not guilty of a crime unless the act constituting the crime was committed voluntarily. This rule precludes the defendant's conviction, because he did not voluntarily appear in a public place.

C is incorrect. The general legal rule is that a person is not guilty of a crime unless the act constituting the crime was committed voluntarily. This rule precludes the defendant's conviction because, while the defendant voluntarily became intoxicated, he did not voluntarily appear in a public place.

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A is incorrect. The defendant cannot properly be convicted, regardless of whether his claim is valid, because of the general legal rule that a person is not guilty of a crime unless the act constituting the crime was committed voluntarily. This rule precludes the defendant's conviction, because he did not voluntarily appear in a public place.

B is correct. The general legal rule is that a person is not guilty of a crime unless the act constituting the crime was committed voluntarily. This rule precludes the defendant's conviction, because he did not voluntarily appear in a public place.

C is incorrect. The general legal rule is that a person is not guilty of a crime unless the act constituting the crime was committed voluntarily. This rule precludes the defendant's conviction because, while the defendant voluntarily became intoxicated, he did not voluntarily appear in a public place.

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**Question 1600 - Criminal Law - Constitutional Protection of Accused Persons**

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**The question was:**

A police officer had a hunch, not amounting to probable cause or reasonable suspicion, that a man was a drug dealer. One day while the officer was on highway patrol, her radar gun clocked the man's car at 68 mph in an area where the maximum posted speed limit was 65 mph. The officer's usual practice was not to stop a car unless it was going at least 5 mph over the posted limit, but contrary to her usual practice, she decided to stop the man's car in the hope that she might discover evidence of drug dealing. After she stopped the car and announced that she would be writing a speeding ticket, the officer ordered the man and his passenger to step out of the car. When the passenger stepped out, the officer saw that the passenger had been sitting on a clear bag of what the officer immediately recognized as marijuana. The officer arrested both the man and the passenger for possession of marijuana.

At their joint trial, the man and the passenger claim that their Fourth Amendment rights were violated because the officer improperly (1) stopped the car for speeding as a pretext for investigating a hunch rather than for the stated purpose of issuing a traffic ticket and (2) ordered the passenger to step out of the car even though there was no reason to believe that the passenger was a criminal or dangerous.

Are the man and the passenger correct?

- A:** No, as to both the stop of the car and the officer's order that the passenger step out of the car.
- B:** No as to the stop of the car, but yes as to the officer's order that the passenger step out of the car.
- C:** Yes as to the stop of the car, but no as to the officer's order that the passenger step out of the car.
- D:** Yes, as to both the stop of the car and the officer's order that the passenger step out of the car.

**The explanation for the answer is:**

A is correct. The stop of the car was constitutional, because it was objectively justifiable (regardless of the officer's subjective motivation), and both the driver and any passengers may be ordered to step out of a car during a lawful traffic stop.

B is incorrect. It is correct that the stop of the car was constitutional, because it was objectively justifiable (regardless of the officer's subjective motivation). However, it is also correct that both the driver and any passengers may be ordered to step out of a car during a lawful traffic stop.

C is incorrect. It is correct that both the driver and any passengers may be ordered to step out of a car during a lawful traffic stop. However, it is also correct that the stop of the car here was constitutional, because it was objectively justifiable (regardless of the officer's subjective motivation).

D is incorrect. The stop of the car was constitutional, because it was objectively justifiable (regardless of the officer's subjective motivation), and both the driver and any passengers may be ordered to step out of the car during a lawful traffic stop.

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Are the man and the passenger correct?

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- B:** No as to the stop of the car, but yes as to the officer's order that the passenger step out of the car.
- C:** Yes as to the stop of the car, but no as to the officer's order that the passenger step out of the car.
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