1. B is the correct answer. The defendant's intention to kill his neighbor does not amount to an attempt to commit murder without a voluntary action; thus, A and D are wrong. The mistake of fact that the man was not his neighbor is crucial in this fact pattern. Because of the doctrine of transferred intent, the defendant's intent to kill his neighbor transfers to the man when the defendant mistakes the man for the neighbor. Thus, the defendant had the intent to kill the man AND took affirmative steps to carry out the crime by shooting at him (mens rea AND actus reus). Therefore, the man was an intended victim. With regard to the child, the defendant can likely be prosecuted for shooting the child but not for attempted murder because the defendant did not have the requisite intent. Unlike with the man, where he intended to shoot him, the defendant shot the child purely because of distance and bad aim. Thus, C is incorrect.
2. 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.
3. The correct answer is B. The child's death was the result, not of malice aforethought, but of criminal negligence on the part of the father. Failure to seek medical attention for an illness is generally insufficient for the finding of malice aforethought, so the father, in his criminal negligence, has committed involuntary manslaughter.
4. 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.
5. 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. If the jury finds 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.
6. B is the correct answer because the husband, clearly the aggressor, was attacking the neighbor with a deadly weapon, a knife. That, combined with the neighbor's consistent refusal to engage in violence with the husband and that the neighbor used a nearby, available lamp, all are clear indications that the neighbor was acting in self-defense, and thus not guilty of murder. A claim of self-defense will be successful against a murder charge if the action is reasonably necessary to prevent imminent death or great bodily harm as a result of unlawful force. The husband's lunging at the neighbor with a knife was an unlawful use of deadly force, which led the neighbor to reasonably believe that his own use of force was necessary to protect himself. The husband was clearly the initiator of the violence and use of deadly force here.
7. 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 victims 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.
8. The correct answer is D. Burglary is defined at common law as the breaking and entering of a dwelling of another with the intent to commit a felony therein. Neither the homeowner nor the man had the intent to commit a felony, which should lead to an acquittal for the homeowner. The man's mistake regarding which house belonged to the homeowner negates the intent required for burglary. Therefore, this is also the homeowner's best argument for acquittal.
9. 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.
10. 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.
11. The correct answer is B. Assault and battery charges have both a mens rea and an actus reus requirement. The theory behind having a mens rea requirement is that a person should not be held criminally liable for actions that he or she had no control over. A defendant will have a defense to a charge of assault and battery if the action resulting in the offensive touching was completely inadvertent. An epileptic seizure would be a complete defense to the mens rea requirement, and thus be a defense to the charge of assault and battery. Answer B is correct. While hypnotism, intoxication, and an inaccurate self-defense claim are all possible defenses to the charge, the best defense is the one in which the actor had absolutely no control over his actions. Thus, A, C, and D are not the best choices.
12. 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.
13. 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.
14. C is the correct answer. The police placed the microphones in the suites of the dormitories without any sort of warrant to conduct electronic surveillance. This unreasonably invaded the defendant's privacy, and thus, the motion will probably be granted.
15. 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.
16. 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, it was not illegal to take the actions the defendant did, so, regardless of his intent to commit a crime, it was legally impossible for him to commit the crime. Codeine could be legally purchased, so attempting to purchase it would not be a crime, even if the defendant believed it was.
17. 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 almost a textbook definition of gross recklessness toward human life. The defendant in answer A acted with the malice necessary for a conviction of murder.
18. 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.
19. 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.
20. 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.
21. 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.
22. 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.
23. 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 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.
24. 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.
25. The correct answer is B.
26. 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
27. 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. Ignorance of the law, the precise definition of larceny, or its application to canines is not a defense to a charge of larceny. The defendant in answer C is most likely to be found guilty of larceny.
28. 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, thereby violating the defendant's constitutional rights. 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 tainted by the illegal arrest, and the Miranda warnings were insufficient to purge that taint.
29. The correct answer is B. The statutory definition of burglary requires that the man break and enter the building with the intent to commit a felony or steal therein. Since the store was open to the public, there was no breaking committed, which would be the man's best defense to a charge of burglary.
30. The correct answer is C. Conspiracy is an agreement between two or more people to commit a crime. A charge of conspiracy requires that there exist an agreement that a crime be committed and that at least 2 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. The associate, although he may be guilty of conspiracy to receive stolen property, did not agree to steal food stamps, and he should be found not guilty that.
31. 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.
32. 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.
33. The correct answer is B. Conspirators are liable for all foreseeable crimes committed in furtherance of the conspiracy. The brothers conspired to operate a distillery, and the battery of a revenue officer was a foreseeable act in furtherance of the conspiracy. The fact that the brothers kept rifles handy in case of trouble with the law shows that the possibility of battery was foreseeable, and therefore the second brother will bear criminal responsibility for the battery. The second brother is criminally responsible for the actions of his brother in committing the battery. Both are guilty.
34. 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.
35. 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. Assault with intent to kill is a specific intent crime that requires the defendant have the intent to kill. Since the defendant's intoxication did not allow him to form the intent to kill the victim and even made him unable to realize anyone was around, the defendant should not be found guilty.
36. 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.
37. The correct answer is B. The defendant took 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 because to commit larceny, the person from whom the property is taken only needs to have ownership, which does not have to be legal. The defendant should be found guilty of larceny. Burglary is defined as the crime of breaking and entering into a structure for the purpose of committing a crime therein. Because the door was open, and the defendant had the owner's permission to be there, he did not break into the dormitory room, and should be found not guilty of burglary. Thus, A, C and D are incorrect.
38. D is the correct answer. The landlord had no actual or apparent authority to permit the entry because landlords generally do not have such authority over the premises of their lessees, and the provision in the lease only allowed limited rights of entry to make repairs, not a general authority to control the premises. In fact, that the lease had to contain a provision to allow the landlord such a limited right of entry is an indication that the premises was controlled by the lessee alone. Without authority, the landlord could not waive the defendant's Fourth Amendment rights.
39. The correct answer is C. To be criminally liable for the actions of another, a person must have the intent that the actions be committed and aid or abet in the commission of the offense. The man had the intent that the bully murder the bartender, and words of encouragement are sufficient aiding to make the man accountable for the murder of the bartender. The man should be found guilty of murder for his role of aiding and abetting the bully. Answer C is correct.
40. The correct answer is A. Mere presence, even if accompanied by silent approval and intent, is insufficient actus reus to make a person criminally responsible for the actions of another. The man's mere presence, even if he had the requisite intent, will not make him accountable, and he should be found not guilty. Answer A is correct.
41. The correct answer is C. Murder is defined at common law as the unlawful killing of another with malice aforethought. Malice does not require specific intent. Malice can be shown by intent to kill or intent to inflict great bodily harm, or it can be implied in actions that show gross recklessness toward human life. In this question, the defendant had the intent to commit great bodily harm, shown by his intent to hospitalize the player for a few weeks, even if he did not intend to kill him. Since the killing was done with malice aforethought, the most serious offense that the defendant can be properly convicted of is murder.
42. The correct answer is D. When the defendant parried the colleague's blow and struck the colleague on the jaw, he was acting in self-defense and should not be convicted of any offense. A person can properly claim self-defense if the action taken is reasonably necessary to prevent imminent harm to himself from the use of unlawful force. In this case, the force the defendant used, a blow to the head, was reasonable in light of the colleague's attacking him with a metal bar. Although he could have escaped, the defendant was not required to do so before using this reasonable force, in part because it wasn't traditionally deadly force. Finally, although the aggressor is not allowed to claim self-defense, in this question the defendant was using words and not a physical attack, so he can properly claim self-defense. The defendant had a proper claim to self-defense and should not be convicted of any crime.
43. 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.
44. 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.
45. The correct answer is B. Using a prior judicial decision as binding authority requires that the two cases be factually analogous and involve the same legal issues. The factual situation in the question indicates that the man took the property of his neighbor but did not intend to permanently deprive the owner of it, even though he was unable to return the property in the end. The legal issue is whether this lack of intent to permanently deprive the owner is sufficient for a charge of larceny. The case in answer B is the most factually analogous and deals with the same legal issue as those raised in the man's case. The young men in answer B took the property of another, a car, but were lacking in the intent to permanently deprive the owner of the property. Answer B is correct
46. . 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.
47. 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.
48. 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.
49. Answer B is correct. 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. Larceny by trick is obtaining possession, with the owner's consent, of the property of another by fraud or misrepresentation, with the intednt to permanently deprive the owner of said property. False pretenses is obtaining the possession and title of property of another through fraud or misrepresentation. Embezzlement is the fraudulent conversion of another person's property by someone who had lawful possession of said property.
50. 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.
51. The correct answer is A. Random stopping of automobiles, even if done in a high crime area, is a violation of the Fourth Amendment protections against unreasonable searches and seizures. Since the initial stop of the defendant's vehicle was improper, evidence found as a result of that police misconduct will be suppressed, including the marijuana found on his person. Answer D is incorrect because it ignores the illegality of the initial seizure of the defendant's vehicle. Although the discovery of the gun in plain view may well have justified the search and arrest of the defendant, the marijuana should still be suppressed because of the illegality of the initial stop.
52. The correct answer is B. At common law, murder is defined as the unlawful killing of another human being with malice aforethought. Murder, at common law, 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. The defendant in answer B is the most likely to be found guilty of common-law murder. The defendant brought a loaded weapon into a liquor store in order to rob it, and because the defendant created a violent situation in which death is foreseeable, the defendant bears criminal responsibility for murder if somebody gets shot, even if the defendant did not intend to kill the person. Even though it was accidental, the death was foreseeable, and occurred during the commission of a violent felony.
53. The correct answer is B. The father should be acquitted of murder because, simply put, he did not cause the death of the child. His actions, as reprehensible as they may be, were not an actual, nor a proximate cause of his child's death. His child died of cancer, and, even if the child had been taken to the physician and fed properly, the defendant cannot be criminally liable for the child's death.
54. The correct answer is C. To be found guilty of attempt to commit a crime, one must have the intent that the crime be committed and take a substantial step towards its commission. In this question, the statutory crime is to enter the property of another with the intent to commit any crime of violence thereon. The question indicates that the man clearly had the intent to shoot the poker player, and the man clearly had the intent to enter the poker player's property to do so. Obtaining the weapon and going over to the poker player's house are substantial steps towards the commission of the statutory offense. The man intended to enter the poker player's property in order to cause violence and took substantial steps toward the commission of that offense; thus, he should be convicted of attempt to commit the offense.
55. C is the correct answer. There is no constitutional requirement that all known charges against a person be brought in the same prosecution. 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 as well. B is incorrect because armed robbery is an offense separate from premeditated murder; it is not a lesser included offense. D is incorrect because there is no estoppel at all.
56. The correct answer is D. A charge of conspiracy requires that there exist an agreement that a crime be committed and that the co-conspirators intend that the crime be committed. If a defendant does not have the intent to commit a crime, he should be found not guilty of conspiracy to commit the offense. In this case, if the jury believes that Adams had agreed to get Curtis' property back, and thus did not have the intent that a larceny be committed, then he should be found not guilty. Answer C is incorrect because it also confuses motive and intent. Conspiracy requires proof of intent to commit a crime, and does not require proof of a corrupt motive. Adams cannot bear criminal responsibility for conspiracy to commit larceny, because, if the jury believes him, he never intended to commit larceny.
57. The correct answer is C. As stated above, a charge of conspiracy requires that there exist an agreement that a crime be committed and that the co-conspirators intend that the crime be committed. If the jury believes that Bennett was attempting to catch two thieves, then Bennett did not have the requisite intent that the larceny be committed. He should be found not guilty of conspiracy to commit larceny.
58. The correct answer is D. A charge of conspiracy requires that there exist an agreement that a crime be committed and that the co-conspirators intend that the crime be committed. If the jury believes both Adams and Bennett, then it should find Curtis not guilty of conspiracy to commit larceny. For a valid conspiracy charge, at least two of the co-conspirators must have the intent to commit the crime. If not, there is no true agreement to commit the crime, and thus no conspiracy.
59. The correct answer is D. The driver, while he did not have the intent to kill, should be found guilty of murder because his actions showed gross recklessness for human life and for the consequences of his actions. At common law, murder is defined as the unlawful killing of another human being with malice aforethought. Malice is not a specific intent. However, 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 show gross recklessness toward human life. Committing an act that was highly dangerous to life, even if done without an intent to kill, will be sufficient evidence to prove malice aforethought.
60. 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.
61. 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.
62. The correct answer is B. To instruct a jury as to voluntary manslaughter, there must be some evidence presented that there is a "heat of passion" defense that would mitigate the malice aforethought necessary for a murder charge. "Heat of passion" means there must be legally adequate provocation that caused a sudden and passionate response, which would mitigate the malice aforethought and allow for a finding of voluntary manslaughter. In this case, it is possible for the jury to find that being struck in the face with an umbrella constituted adequate provocation and that the defendant's response was done in the heat of passion. Because there was some evidence presented as to "heat of passion," the jury must be instructed as to voluntary manslaughter.
63. 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.
64. The correct answer is D. At common law, second degree murder is the killing of a human being with malice aforethought but without premeditation and deliberation. The defendant's best defense to a charge of second degree murder is that he was not criminally responsible for his actions because he was insane at the time of the killing. Auditory hallucinations and the belief that he was being unmercifully attacked may show that he was acting under a mental illness which caused a defect in reasoning such that the defendant did not know that his actions were wrong. The defendant believed, because of the hallucinations, that he was properly acting in self-defense and that he should kill his assailant. He could properly raise an insanity defense, and it is his best chance of acquittal.
65. 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.
66. The correct answer is D. The defendant cannot be found guilty of murder on the basis of felony murder, unless the murder was committed during the commission or attempted commission of a dangerous felony. If the jury believes the defendant's claim that she was collecting a debt properly owed, then she was not committing a dangerous felony and thus cannot be convicted under felony murder. Without the underlying offense actually being committed, the defendant cannot be convicted of felony murder.
67. The correct answer is C. The defendant was not an accessory to her friend and does not bear criminal responsibility for hers 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.
68. The correct answer is A. Damson broke and entered Walter's dwelling at night with the intent to commit a felony and larceny, so he is guilty of burglary. Damson also took the property of another, Walter's silverware, and carried it away with the intent to permanently deprive the owner of it, so he is guilty of larceny. The fact that Damson changed his mind about crime after he had committed them does not negate any of the offenses of either charge, because when Damson broke and entered, and took and carried away the property, he had the intent to permanently deprive the owner. Withdrawal may be a defense to a part of a conspiracy charge, but not to a substantive charge, such as larceny and burglary, where the crime had already been committed. Answer B is incorrect because when Damson committed the larceny, the charge of attempted larceny merged into the larceny charge. Answer C is incorrect because Damson did commit both burglary, for breaking and entering with the intent to commit the larceny, and the larceny itself, by taking the property with the intent to permanently deprive the owner. Whereas the attempted larceny and larceny will merge, the burglary and larceny will not merge, because they are separate offenses, with different elements in each one. Answer D is incorrect because the crimes were committed, and later reconsideration of the crimes is not a proper defense. Damson is guilty of both burglary and larceny.
69. The correct answer is B.
70. The correct answer is C. The barber's statements were made voluntarily and without police coercion. The officers were questioning the barber in an attempt to locate information and the whereabouts of the suspect, not in an attempt to obtain a confession from the barber. The barber was not the suspect, never placed under arrest, and not subject to custodial interrogation, so the police officers were not constitutionally required to give him his Miranda warnings. The barber's motion to suppress his statement should be denied.
71. The correct answer is D. The records sought were the records of the bank, not the defendant, and the Supreme Court of the United States, in U.S. v. Miller, has held that a person has no reasonable expectation of privacy in the bank records of their account.
72. 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.
73. The correct answer is D. The pharmacist, because she lacked any intent that the crime be committed, cannot be an accomplice to any charge of criminal homicide. To be an accessory to a crime, the defendant must intend that the crime be committed, and aid and abet in the commission of the offense. Although the pharmacist may have aided in the commission of the offense, she did not have the requisite intent that would make her an accomplice and she is not criminally liable for the husband's actions. Answers A, B, and C are all incorrect because they ignore the mens rea requirement for accomplice liability.
74. 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.
75. 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.
76. 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.
77. 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.
78. The correct answer is A. By firing multiple shots from a pistol, in a residence, dramatically close to his friend, the defendant was acting with implied malice aforethought sufficient for a murder conviction. At common law, murder is defined as the unlawful killing of another human 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 gross recklessness toward human life. The defendant's actions, which caused the death of his friend, show an extreme reckless disregard for human life, and therefore, he can be properly convicted of murder.
79. The correct answer is A. The death of the vagrant was the result of the commission of the offense of arson, and arson is an inherently dangerous felony. It was the action of having the friend set fire to the building, and not the conspiracy or the fraud, which resulted in the vagrant's death. Although common law required the burning to be of a dwelling of another, most states extend arson to structures other than a dwelling, even if the defendant owns it. Thus, since this is the only dangerous felony that caused the vagrant's death, it should be assumed that the jurisdiction's law applies to non-dwelling structures.
80. 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.
81. 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.
82. 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.
83. 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.
84. The correct answer is A. In order to succeed in a claim of self-defense to a murder charge, the defendant must show that the defendant believed that the action taken was necessary to prevent imminent death or great bodily harm to himself from unlawful force, and that the belief was reasonable. The question itself indicated that, not only did the police officer believe that the stranger was going to kill him, but also that that belief was reasonable. Therefore, the police officer's self-defense claim should be sustained.
85. The correct answer is C. Using a prior judicial decision as binding authority requires that the two cases be factually analogous and involve the same legal issues. Each of the four decisional law cases listed in the question have different relationships between the parties and emphasize a different aspect of accomplice liability. Case A involves a provider/customer relationship and illustrates that the defendant is guilty as an accomplice if he provides a customer direct means to avoid detection in the commission of an offense. Case B involves a case where the defendant aids an unwitting person, who lacks the requisite mental state, but takes actions that would have been a crime had the defendant done it himself. Case B illustrates that a defendant can be found guilty as an accomplice even though the person taking the actions would be not guilty of the offense. Case C involves a co-conspirator relationship and illustrates that a defendant cannot be found guilty as an accomplice to a crime that the co-conspirator would be found guilty of committing. Case D involves a provider/customer relationship, and illustrates that the defendant would not be guilty as an accomplice for providing a place for an offense to occur.
86. The correct answer is B. Using a prior judicial decision as binding authority, requires that the two cases be factually analogous and involve the same legal issues. Each of the four decisional law cases listed in the question have different relationships between the parties and emphasize a different aspect of accomplice liability.
87. The correct answer is A. Using a prior judicial decision as binding authority requires that the two cases be factually analogous and involve the same legal issues. Each of the four decisional law cases listed in the question have different relationships between the parties and emphasize a different aspect of accomplice liability.
88. The correct answer is C. Robbery is the taking, by force or threat of force, the personal property of another with the intent to permanently deprive the owner of the property. In the question, the man was unable to take possession of any personal property of another and thus, did not commit the crime of robbery. To be convicted of attempted robbery, a person must have the intent to commit a robbery, and take a substantial step toward the commission of the offense. The man did, by threatening the clerk and going behind the counter, take substantial steps toward the commission of the offense of robbery, and did have the intent to commit the robbery, so he should be convicted of attempted robbery.
89. 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. The motion to suppress the evidence of the marijuana and the cocaine should be denied as to both.
90. The correct answer is A.
91. 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.
92. 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.
93. 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.
94. The correct answer is B. The defendant purchased the car from the man, knowing the car to be stolen, and with the intent to deprive the owner of the vehicle. The defendant in answer B also could not avail himself of an entrapment defense because there was no state actor who persuaded the defendant to commit the offense. The man was not acting at the behest of or as an agent of the police when he sold the vehicle to the defendant.
95. 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.
96. 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.
97. The correct answer is C. If the jury finds that the defendant intended to either kill or to inflict serious bodily harm, this means that the defendant killed the victim with malice aforethought, and he should be found guilty of murder. Answer A is incorrect because it misstates the requirements of malice aforethought.
98. The correct answer is C. The charge of burglary in the question's jurisdiction requires that the defendant entered the building unlawfully and with the intent to commit a crime. The facts in the question clearly show that the defendant entered the building at a time it was open to the public. Because the defendant's entry was not "unlawful," he cannot be guilty of the charge of burglary. Larceny, at common law, requires the taking of personal property with the intent to deprive the owner of it, against the owner's wishes. The defendant, with the intent to steal, took the photocopy of the etching from its display case, and concealed it. His actions fit the definition of larceny, and therefore he is guilty of that crime.
99. 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.
100. The correct answer is A. Attempted murder requires that a defendant have the specific intent that a murder occur and that the defendant take a substantial step toward the commission of the murder. The teller intended that the president be murdered by the man, and by lying to the man, whom he knew to be violent and jealous, and encouraging him to kill the president, the teller took substantial steps toward the commission of murder.
101. The correct answer is C. A guilty plea must be knowingly and voluntarily entered, or else it will be subject to a motion to set it aside. Before a guilty plea will be found to be knowingly and voluntarily entered, a defendant must be fully advised as to each of his constitutional rights and knowingly and voluntarily waive each of those rights. A motion to set aside a guilty plea will be granted if the defendant was not fully apprised of his constitutional rights and did not waive them at the time of the guilty plea. If the judge did not determine whether or not the defendant understood that he had the constitutional right to a jury trial, the defendant could not voluntarily waive that right, and the motion to set aside the guilty plea should be granted.
102. 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.
103. 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.
104. The correct answer is A. Miranda warnings need to be given only if the person is subject to custodial interrogation. The defendant was in custody pursuant to the warrant; however, she was never subject to interrogation. Her voluntary statement in the vehicle to the officer should not be suppressed on the ground that the officer failed to give her the Miranda warnings. Merely hoping for incriminating statements is insufficient action by the officer to be considered an interrogation for Miranda purposes. The officer did not ask any questions, he did not deliberately elicit any statement, and the statement was knowingly and voluntarily made.
105. 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.
106. The correct answer is B. The instruction that shifted the burden to the man to prove that the woman was his wife violated the due process clause and the man's constitutional rights. However, the instruction that shifted the burden of persuasion to the man to prove his belief that the woman had consented was reasonable and did not violate the man's constitutional rights. The state must prove all of the elements of rape beyond a reasonable doubt. Any jury instruction that shifts the burden at all to the defendant on any of those elements violates the man's right to a fair trial. The three elements in the rape charge are: 1) has sexual intercourse 2) with a female who is not his wife 3) without her consent. All three must be proven by the state beyond a reasonable doubt. The instruction that stated the burden of persuasion shifts to the defense to prove the woman was not his wife was an improper shifting of the burden and is unconstitutional.
107. 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.
108. The correct answer is B. The defendant's actions of firing an assault rifle through the front window of the store to aid his escape and knowing there were people out there clearly were grossly negligent enough to provide malice aforethought for a murder charge. The defendant killed a human being, the burglar, with malice aforethought and is therefore guilty of second degree murder.
109. 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.
110. The correct answer is B. Felony murder applies where there is a killing during the course of a violent felony. If the killing is foreseeable from the actions, then an accomplice can be convicted of felony murder. However, the death penalty will be considered a disproportional sentence if the defendant is a minor participant and was completely lacking in the intent to kill or cause great bodily harm. In this case, the defendant's aiding and abetting the friend by agreeing to drive the getaway car, driving the friend to the bank, and knowing that the friend intended to rob it, makes him guilty of the felony murder charge. However, the defendant's lack of intent to kill, his driving off after dropping the friend off, and his turning himself in after the fact, indicate that a sentence of death would be disproportional and unconstitutional.
111. 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. If the defendant was unaware of the limited range of his pistol, however, he can be convicted of attempted murder.
112. 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.
113. 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, firing a shotgun into bushes would give rise to a showing of malice, and the shooting caused the child to lose his sight, which is a serious injury. The homeowner is guilty of second-degree assault.
114. 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.
115. 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.
116. The correct answer is D. The regulation stating that bartenders must require people between the ages of 18 and 21 to show identification of their age carries with it the implication that people above the age of 21 are not required to show identification. The bartender's best argument is that, since he mistakenly believed the purchaser to be 24 years old, he was allowed to sell them beer and was not required to obtain identification; in relying on that statute, he did not ascertain the minor's age. This may allow him to argue that the regulation contains a mens rea element requiring that he knowingly violate the law. Because the bartender did not knowingly sell alcohol to the minor, he should be acquitted.
117. The correct answer is A. The man's confession is inadmissible against the woman unless the man testified at trial and the woman is given the opportunity to confront the man with the substance of his confession. The Confrontation Clause of the Constitution, in co-defendant confession cases, requires that an original defendant be given the opportunity to cross examine a co-defendant whose confession is being used against the original defendant.
118. 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.
119. 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.
120. The correct answer is B. The kidnapping statute requires that the man have taken the daughter from the custody of the woman, knowing he has no privilege to do so. The man, because he obtained the judicial order in State B, thought he had the privilege to take the daughter, and thus the man did not know he had no privilege to take the daughter. Therefore, the man did not have the requisite mens rea to sustain a charge of kidnapping.
121. Answer A is correct. The attempted rape charge cannot be the basis for the felony-murder charge because the defendant has been acquitted of the charge and to use it would violate the double jeopardy clause. The double jeopardy clause forbids the state from prosecuting, or punishing, a defendant twice for the same action. In this case, the defendant was placed in jeopardy during the original trial for attempted rape, and to use that charge again as the underlying felony in a felony murder charge would put him in jeopardy again. Assault, at common law, is not a felony and cannot be used as the basis for a felony-murder charge.
122. The correct answer is C. The prosecution is allowed to have a defendant give demonstrative evidence if it is relevant and material to a proper in-court identification. In this case, the mode of walking of the defendant is relevant to aid in the in-court identification of the defendant, and the court can properly order that the defendant give a demonstration of how he walks.
123. The correct answer is D. There is no evidence that the man, when he obtained the money from his friend, had the intent to permanently deprive his friend of it, and there is no evidence that the man made any misrepresentations or fraudulent statements that induced his friend into lending the man the money. A simple promise to pay, even if the debt is not paid, is insufficient evidence to prove the intent to permanently deprive. In addition, a simple promise to pay is insufficient to be considered a false or misleading statement.
124. 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.
125. 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.
126. 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, unless the police officer knew that the warrant contained false information, the evidence will be admissible and the motion to suppress will be denied.
127. 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. In modern common law, a defendant will be found not guilty of felony murder if the killing is committed by a third party for which the defendant is not responsible. While the defendant would be responsible for the killing if it were done by a co-conspirator, he will not bear criminal responsibility under felony murder for the actions of a third party.
128. The correct answer is A. The judge can order a directed verdict for the defense if she believes that the jury could not possibly find that the state met its burden of proof as to the guilt of the defendant. Because the state bears the burden of proving, beyond a reasonable doubt, that the defendant was sane, if the judge believes there is insufficient evidence of the defendant's sanity, she may direct a verdict for the defense.
129. 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.
130. 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.
131. 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.
132. 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.
133. The correct answer is A. Arson is the malicious burning of the dwelling of another. Although the defendant's actions do not appear to conform to the common law definition of arson, there are two important qualifications to remember. The first is that the element of "dwelling" is often disregarded and the definition extends to any structure. Second, under the crime of arson is the subset crime of houseburning. Houseburning is the malicious burning of one's own dwelling if the dwelling is situated so near to other dwellings as to create danger to them. As with the general definition of arson, the term "dwelling" is liberally construed to include all structures. In this way, the defendant can be found guilty of arson for burning his own store. Further, arson is not a specific intent crime. Malicious burning does not require proof of intent; malice can be implied in the presence extreme recklessness. The burning need not be intentional, as long as it is foreseeable from the defendant's actions. The defendant in this case, by looking for flammable material with a match, and eventually setting papers in a barrel on fire, was acting with malice. The burning that occurred, although initially done by reflex, was foreseeable from the defendant's actions. The defendant's refusal to put out the fire, combined with his intent that the building be destroyed, makes him guilty of arson.
134. 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.
135. The correct answer is B. Although the defendant intended only to commit serious injury, he should be convicted of murder. At common law, murder is a crime defined as the unlawful killing of another human 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 show gross recklessness toward human life.

The defendant had the stated intent to commit serious injury, which is sufficient to show the defendant unlawfully killed the victim with malice aforethought. The defendant should be convicted of murder. Answer A is incorrect because a charge of attempt requires the defendant have the intent that the underlying crime be committed, and take a substantial step in the commission of the offense. 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, although malice is not a specific intent crime, it means that the burning must be intentional or foreseeable. In answer C, the burning was not intentionally done, and the smoldering wires causing a fire will be found unforeseeable. 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. Because malice aforethought is specifically defined to include the intent to cause serious bodily injury, the defendant in answer B is most likely to be convicted.

1. 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.
2. 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.
3. 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.
4. 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.
5. 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.
6. The correct answer is A. The employee took possession of the watch without the owner's consent and with the intent to permanently deprive the owner of it, and is thus guilty of larceny. The fact that the supervisor later gave the employee permission to take the watch does not change the fact that the employee, when he took the watch, did not have the supervisor's permission to take it and had the intent to steal it. Although he only picked the watch up, that was enough asportation because it was part of the carrying away process.
7. 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.
8. 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.
9. The correct answer is C. 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, forgery is the false making or material alteration of a writing where the writing has the apparent ability to defraud and is of apparent legal efficacy with the intent to defraud. The calligrapher did not commit forgery, because the document, by itself, has no legal efficacy or significance, it was merely purporting to be a letter. However, the calligrapher did commit false pretense because she obtained the property and title to property, the $5,000, by fraud and misrepresentation, and she had the intent to permanently deprive the owner of that property. Even though she did not specifically promise anything about the letter's authenticity, the calligrapher misrepresented the nature of the letter by saying it was from a collector rather than created by herself; she misrepresented who owned the letter, and how she obtained the letter. Those misrepresentations induced the buyer into giving her the money.
10. The correct answer is C. The Supreme Court in Batson v. Kentucky held that striking jurors simply on the basis of their race violates equal protection
11. 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.
12. 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.
13. 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, because they posed such a serious threat of death or serious bodily injury, were done with gross recklessness toward human life sufficient for a finding of malice aforethought.
14. The correct answer is C. The suspect was under arrest at the time, and the search of his person was a proper search incident to arrest. Once a person is placed under arrest, police officers have the right to search the person and the immediate surroundings of the person for any weapons and evidence of the crime without first having to obtain a warrant
15. 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.
16. 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.
17. 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.
18. The correct answer is A or B; either choice would be counted as correct. At common law, 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 is an attempt to commit criminal battery, which requires that the employee intended to commit a criminal battery against his boss and took substantial steps toward the commission of the offense. Attempted murder requires proof that the employee had the intent to kill his boss and took substantial steps toward the commission of the offense. Both assault and attempted murder require that the employee have the intent to commit a further 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.
19. The correct answer is D. At common law, murder is defined as the unlawful killing of another human being with malice aforethought. Murder is not a specific intent crime. However, 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 show gross recklessness toward human life. In this case, the woman, by arming herself with an automatic weapon and firing 15 rounds in a populated bank after the man ordered them to lie down, was acting with malice aforethought, and 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.
20. The correct answer is D. 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 the property. The defendant took the purse, concealed it under her coat, and had the intent to permanently deprive the owner of the purse. Therefore, the defendant committed larceny.
21. 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.
22. 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.
23. 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.
24. The correct answer is D. The homeless woman's actions in spraying the guard in the face were done in self-defense, and she cannot properly be convicted of any form of assault. The homeless woman, however, entered the property of another without the owner's permission and is guilty of trespass.
25. 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.
26. The correct answer is A. The attorney-client privilege extends not only to discussions between the attorney and the client, but also to any who are advised of confidential information at the direction of the attorney, including consultants and investigators. The information the consultant obtained was confidential information gathered at the direction of the defendant's attorney and in the preparation for a criminal case, and is thus privileged. The consultant cannot be ordered to divulge privileged information.
27. 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.
28. 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.
29. The correct answer is A. Because the rival was subject to a custodial interrogation without voluntarily waiving his rights under Miranda, his statements to the deputy about the murder should be suppressed. The rival, because he was tackled and had his arms pinned beneath his back, was in custody for the purposes of Miranda. In addition, the rival was subject to interrogation. Although the deputy's wording was not exactly a question, it was a statement that was meant to elicit a response from the rival, and it will be considered an "interrogation" for constitutional purposes. Because it was a custodial interrogation, the rival must have been informed of his Miranda rights, and have voluntarily waived them, before those statements could properly be used against him.
30. The correct answer is C. The fields around the rival's farmhouse were visible to the public at large, 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 rival had no reasonable expectation of privacy, the police officers viewing of the clothes did not violate his constitutional rights. The rival's motion to suppress should be denied.
31. 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.
32. The correct answer is D. There is reasonable suspicion justifying a stop when a suspect in a high crime area flees after noticing the presence of the police. Further, during an investigative stop, the police may seize objects if they have a reasonable suspicion that they might be contraband, and when a suspect disposes of property, the suspect no longer has an expectation of privacy in them. When the defendant began walking quickly away after spotting the police officers in a high crime area, the police had reasonable suspicion to detain her. And, by disposing of her bag of cocaine, she no longer had an expectation of privacy in it. Thus, it is admissible evidence.
33. 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.
34. 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.
35. The correct answer is C. A charge of solicitation is completed once the person invites, requests, commands, hires, or encourages another to commit a particular offense with the intent that the offense be committed. In this case, the man is guilty of the solicitation when he requested that the undercover officer kill his girlfriend's parents.
36. The correct answer is D. If the jury believes that the defendant honestly thought the gun was a stage prop that could only fire blanks, the defendant should be found not guilty of murder and manslaughter. A defendant will be criminally responsible for the killing of another human being if the death occurred intentionally, recklessly or, possibly, negligently. In this case, the defendant, believing the gun was a prop and helping the victim rehearse a play, did not act with malice aforethought, did not act with recklessness, and did not act with gross negligence. If the jury believes her, the defendant should be found not guilty of murder or manslaughter.
37. 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.
38. Answer A is correct. The common law of attempt required that the defendant commit some act (beyond mere "preparation") toward bringing about the intended crime. Here, the drug dealer took no act, much less any act that would qualify at common law, toward obtaining the cocaine. Indeed, the drug dealer likely would not be guilty of attempt even under the Model Penal Code's broadened standards because there was no "substantial step" toward commission of the crime. See MPC § 5.01(1)(c).
39. 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.
40. Answer B is correct. In the absense 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 indiciate 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.
41. 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.
42. 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.
43. Answer A is correct. Jeopardy does not attach at a preliminary hearing (Collins v. Loisell, 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.
44. Answer A is correct. Evidence generally will not be suppressed where police reasonably held a good faith belief that their actions leading to its discovery were authorized by a valid warrant. See Arizona v. Evans, 514 U.S. 1 (1995) (good faith exception to exclusionary rule applied where arrest and resulting incidental search were based on warrant that was quashed 17 days earlier but, due to court employees' clerical error, still showed up in computer database). In this case, the computer check on the license number of the driver's car revealed that there was an outstanding warrant for the driver's arrest based on unpaid parking tickets. The police had no reason to believe that the warrant was invalid, so the search of the car was proper.
45. 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.
46. Answer D is correct. The defendant's intoxication did not preclude the mens rea required for second-degree murder. It is generally held that intoxication cannot further reduce the homicide from second degree murder down to manslaughter. The defendant committed second degree murder because he knowingly caused the customer's death.
47. C is correct. Because the defendant killed the neighbor, the crime would not be attempted murder but would be either murder or manslaughter. Thus, answer A is incorrect. Whether the defendant is guilty of murder, or guilty only of manslaughter, depends upon whether he fired the third shot in the heat of passion provoked by the neighbor's earlier attack. Murder is the unlawful killing of another human being with malice aforethought, whereas manslaughter is a killing that would otherwise be murder but-for the existence of an adequate provocation for the killing. Thus, answer C is correct, and answer B is incorrect--it is possible to convict the defendant of murder depending on his mental state at the time of the killing.
48. 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.
49. 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.
50. C is correct. A state may grant broader rights under its own constitution than are granted by the federal Constitution. Here, the state has a clear precedent that the recording violated the employee's state constitutional rights and that the recording should be excluded as a remedy. The court should apply this precedent to grant the employee's motion. Thus, answer C is correct, and answer A is incorrect. Answer B is incorrect because it is irrelevant what the police thought about the propriety of their actions under the federal Constitution where the state has granted broader rights under its own constitution, as permitted by Michigan v. Long, 463 U.S. 1032 (1983). Answer D is incorrect because the secret recording of a conversation with a defendant by a government informant, like the recording in this case, does not violate the Fourth Amendment. See United States v. White, 401 U.S. 745 (1971).
51. 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.
52. Answer A is correct. The majority rule is that there is no duty to retreat prior to using deadly force. The non-aggressor may use deadly force in self-defense even if the use of deadly force could be avoided by retreating. However, the question states that the jurisdiction follows the "retreat" rule. In such a jurisdiction, a non-aggressor may use deadly force only after making a proper retreat. No retreat is necessary if it cannot be made in complete safety. Additionally, there is no obligation to retreat unless the defender intends to use deadly force. Here, the accused used pepper spray on the victim--a nondeadly force--and therefore there was no need to retreat.
53. 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, 3435 (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).
54. Answer A is correct. The Fourth Amendment protects the woman's expectation of privacy in her dwelling, including her temporary hotel room dwelling. Absent exigent circumstances, which were not present in this fact pattern, the Fourth Amendment would require the officer to have obtained a warrant before entering the hotel room. See Minnesota v. Olson, 495 U.S. 91 (1990). Because the officer did not have a warrant to do so, the woman's motion to suppress the diary should be granted.
55. 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.
56. 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.
57. 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.
58. 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.
59. Answer A is correct. Modern statutes tend to define kidnapping as the unlawful confinement of a person that involves either (i) some movement (asportation) of the victim, or (ii) concealment of the victim in a "secret" place. The movement in the neighboring state would constitute sufficient "asportation" for a kidnapping conviction, and was more than incidental to the robbery. Model Penal Code § 212.1. Thus, Answer A is correct.
60. Answer B is correct. Larceny requires a trespassory taking and carrying away of the personal property of another with intent to steal it. All the elements were satisfied here. The asportation (carrying away) element requires movement of only a slight distance, so it was satisfied here even though the patron ultimately discarded the wallet.
61. 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.
62. 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.
63. 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.
64. 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 hitman 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 hitman to murder the neighbor, and all of the requisite acts for the commission of a murder occured except that the hitman 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.
65. 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.
66. 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.
67. Answer C is correct. The instruction was wrong. Intent to steal the car would not prove the man knowingly damaged the store. Nor would the fact that the man was in the process of committing another felony prove that the man knowingly damaged the store. To have acted knowingly, the man must have been practically certain that his conduct would damage the store. Thus, Answer C is correct, and Answers A and B are incorrect.
68. 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.
69. 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 there are no facts which would mitigate the killing to voluntary manslaughter or would excuse the killing by way of a valid defense. Additionally, 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). Additionally, the defendant's actions must cause the victim's death.
70. Answer C is correct. The executive committed larceny, but not burglary. Here, the common law definition of burglary has been changed by statute to expand burglary to include all buildings. Thus, in this case, a burglary is the breaking and entering of a building of another at nighttime with the intent to commit a felony therein. Under this definition, the executive did not commit burglary because she did not break and enter the building with the intent to commit a felony therein. The executive merely sought to recover her own personal possessions. Furthermore, the executive did not commit a burglary when she took the papers which did not belong to her because larceny is not a felony at common law.
71. Answer A is correct. A conviction of conspiracy requires proof of an agreement to commit a crime and, in some jurisdictions or under some statutes, proof of an overt act in furtherance of the agreement. The conspiratorial agreement need not be proven through direct evidence, as long as the circumstantial evidence taken in the light most favorable to the prosecution is sufficient to allow a rational jury to find that there was a conspiratorial agreement beyond a reasonable doubt. Here, because a jury rationally could conclude beyond a reasonable doubt from all the circumstances (including the woman's statement about her discussion with her sister) that the woman and her sister had agreed to import cocaine, the issue is for the jury, and the woman is not entitled to a court-ordered acquittal. Thus, Answer A is correct, and Answer C is incorrect.
72. 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. An improper out-of-court identification procedure may require suppression of in-court testimony if it produces a substantial likelihood of irreparable misidentification. Thus, Answer A is incorrect because suppression of the out-of-court identification may be a proper remedy. 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.
73. Answer A is correct. At common law, a defendant could be convicted of murder not only for an intentional killing but also for causing another's death by actions intended to cause serious bodily injury short of death. Under the facts of this case, a jury could properly convict the man of murder under that common law theory. While a jury could certainly convict the man of lesser manslaughter or assault crimes, murder is the most serious crime of which the man could properly be convicted. Answer B is incorrect. It is debatable whether the friend breaking the man's television could constitute adequate provocation to mitigate murder to voluntary manslaughter. Even assuming that it could, however, a jury could reject that mitigation here and instead convict the man of murder. Accordingly, voluntary manslaughter is not the most serious crime of which the man could properly be convicted.
74. 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.
75. 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.
76. Answer A is correct. Prior to interrogation by the police, anyone in the custody of the government and accused of a crime must be given Miranda warnings. Whether a person is in custody is to be a fact-based inquiry. Relevant factors include whether the person's freedom of action is restricted in a significant way based on objective circumstances. An "interrogation" occurs when the policy use any words or engage in any conduct that they should know would likely elicit a response from the defendant. Here, the man was very likely in custody, even though he was in his home, given the time and manner of the police entry. Accordingly, the police could not properly interrogate the man without first providing him with Miranda warnings. Thus, Answer A is correct.
77. 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.
78. Answer D is correct. In this jurisdiction, the use of poison or acting with premeditation may elevate murder from second to first degree. However, murder requires that a killer have acted with malice aforethought, express or implied. Malice exists when a person intends to kill, intends to inflict great bodily harm, intends to commit an inherently dangerous felony, or acts with a reckless indifference to an unjustifiably high risk to human life. The employee here did not intend to kill or cause serious injury to her boss when the employee dropped laxatives into her boss's coffee; the facts state that the employee only intended to cause her boss discomfort. Moreover, giving her boss laxatives that could be purchased over the counter does not rise to the level of reckless indifference to an unjustifiably high risk to human life. Therefore, because the employee did not intend to kill, did not intend to cause serious bodily injury, did not act with reckless indifference, and was not in the course of committing a felony, she would not be guilty of any degree of murder. Thus, Answer D is correct, and Answers A, B, and C are incorrect.
79. 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.
80. Answer A is correct. To be guilty as an accomplice, the alleged accomplice must give aid, counsel, or encouragement to the principal with the intent to encourage the crime. Here, the girlfriend is guilty as an accomplice to both burglary and larceny because she provided aid to the man with the intent of helping him not only to break into the shed but also to steal the mower (the object of the breaking); the fact that the man ultimately used an alternative means to accomplish his crimes does not eliminate the girlfriend's accomplice liability. Thus, Answer A is correct, and Answers B, C, and D are incorrect.
81. Answer A is correct. A trial court properly may excuse a juror for cause from serving in both the guilt and penalty phases of a capital case if a juror's views regarding the death penalty would prevent or substantially impair the juror from impartially deciding whether the death penalty is warranted in that particular case. Exclusion of such jurors does not violate the fair cross-section right of the Sixth Amendment. To establish such a violation, the defendant must show the underrepresentation of a distinct and numerically significant group in the venire to show his jury trial right was violated. Thus, Answer A is correct, and Answers B, C, and D are incorrect.
82. Answer C is correct. Due process requires the prosecution to prove all elements of a crime beyond a reasonable doubt. Because an alibi is not a traditional defense but rather negates an essential element of the crime (the defendant's actual commission thereof), due process precludes imposing upon a defendant the burden of proving an alibi. Thus, Answer C is correct. Answers A and B are incorrect because they treat the alibi like a defense and put the burden of proof on the defendant. Answer D is incorrect because it refers to a resonable doubt arising from the defendant's evidence, rather than a reasonable doubt arising from the prosecution's lack of evidence to support a conviction.
83. 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.
84. Answer A is correct. A conviction for accomplice liability requires not only proof that an accomplice aided a principal's crime but also proof that the accomplice acted with a culpable mental state. Because the passenger had no prior knowledge of the driver's crime and no intent to help the driver commit that crime, the passenger may not properly be convicted. Thus, Answer A is correct. Answers C and D are incorrect because they fail to establish the required mental state necessary for accomplice liability.
85. 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.
86. 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.
87. The correct answer is B. Using a prior judicial decision as binding authority, requires that the two cases be factually analogous and involve the same legal issues. Each of the four decisional law cases listed in the question have different relationships between the parties and emphasize a different aspect of accomplice liability.
88. 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.
89. 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.
90. 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.
91. 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.
92. 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.
93. Answer D is correct. The defendant's intoxication did not preclude the mens rea required for second-degree murder. It is generally held that intoxication cannot further reduce the homicide from second degree murder down to manslaughter. The defendant committed second degree murder because he knowingly caused the customer's death.
94. C is correct. A state may grant broader rights under its own constitution than are granted by the federal Constitution. Here, the state has a clear precedent that the recording violated the employee's state constitutional rights and that the recording should be excluded as a remedy. The court should apply this precedent to grant the employee's motion. Thus, answer C is correct, and answer A is incorrect. Answer B is incorrect because it is irrelevant what the police thought about the propriety of their actions under the federal Constitution where the state has granted broader rights under its own constitution, as permitted by Michigan v. Long, 463 U.S. 1032 (1983). Answer D is incorrect because the secret recording of a conversation with a defendant by a government informant, like the recording in this case, does not violate the Fourth Amendment. See United States v. White, 401 U.S. 745 (1971).
95. Answer C is correct. The instruction was wrong. Intent to steal the car would not prove the man knowingly damaged the store. Nor would the fact that the man was in the process of committing another felony prove that the man knowingly damaged the store. To have acted knowingly, the man must have been practically certain that his conduct would damage the store. Thus, Answer C is correct, and Answers A and B are incorrect.
96. 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.