1. The defendant decided to kill his neighbor. He set out for the neighbor's house. Before he got there he saw a man who resembled the neighbor. Thinking the man was his neighbor, the defendant shot at the man. The shot missed the man but wounded a child, who was some distance away. The defendant had not seen the child. In a prosecution under a statute that proscribes attempt to commit murder, the district attorney should indicate that the intended victim(s) was (were)

A. the neighbor only.

B. the man only.

C. the child only.

D. the neighbor and the man.

1. A state statute requires any person licensed to sell prescription drugs to file with the State Board of Health a report listing the types and amounts of such drugs sold if his sales of such drugs exceed $50,000 during a calendar year. The statute makes it a misdemeanor to "knowingly fail to file" such a report. The defendant, who is licensed to sell prescription drugs, sold $63,000 worth of prescription drugs during 2006 but did not file the report. Charged with the misdemeanor, the defendant testifies that he did a very poor job of keeping records and did not realize that his sales of prescription drugs had exceeded $50,000. If the jury believes the defendant, he should be found

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

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

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

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

1. A father was fired from his job. Too proud to apply for unemployment benefits, he used his savings to feed his family. When one of his children became ill, he did not seek medical attention for the child at a state clinic because he did not want to accept what he regarded as charity. Eventually, weakened by malnutrition, the child died as a result of the illness. The father has committed

A. murder.

B. involuntary manslaughter.

C. voluntary manslaughter.

D. no form of criminal homicide.

1. A state statute divides murder into degrees. First degree murder is defined as murder with premeditation and deliberation or a homicide in the commission of arson, rape, robbery, burglary or kidnapping. Second degree murder is all other murder at common law. In which of the following situations is the defendant most likely to be guilty of first degree murder?

A. Immediately after being insulted by the victim, the defendant takes a knife and stabs and kills him.

B. Angered over having been struck by the victim, the defendant buys rat poison and puts it in the victim's coffee. The victim drinks the coffee and dies as a result.

C. Intending to injure the victim, the defendant lies in wait and, as the victim comes by, the defendant strikes him with a broom handle. As a result of the blow, the victim dies.

D. The defendant, highly intoxicated, discovers a revolver on a table. He picks it up, points it at the victim, and pulls the trigger. The gun discharges, and the victim is killed.

1. On a camping trip in a state park, a camper discovered metal signs near a rubbish heap stating, "Natural Wildlife Area - No Hunting." She took two of the signs and used them to decorate her room at home. She is charged with violation of a state statute which provides, "Any person who appropriates to his own use property owned by the state shall be guilty of a crime and shall be punished by a fine of not more than $1,000, or by imprisonment for not more than five years, or by both such fine and imprisonment." At trial, the camper admits taking the signs but says she believed they had been thrown away. In fact, the signs had not been abandoned. The camper should be found

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

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

C. not guilty if the jury finds she honestly believed the signs had been abandoned.

D. not guilty unless the jury finds that the state had taken adequate steps to inform the public that the signs had not been abandoned.

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

A. not guilty, because the neighbor had as much right as the husband to be in the house.

B. not guilty, because the husband attacked the neighbor with a deadly weapon.

C. guilty, because the neighbor's presence in the woman's bedroom prompted the husband's attack.

D. guilty, because the neighbor's failure to obey the husband's order to leave the house made him a trespasser.

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

A. A defendant forced his way into a woman's home, bound her, and compelled her to tell him that her jewelry was in an adjoining room. The defendant went to the room, took the jewelry and fled.

B. A confederate of the defendant pushed a man in order to cause him to lose his balance and drop his briefcase. The defendant picked up the briefcase and ran off with it.

C. Having induced a woman to enter his hotel room, the defendant forced her to telephone her maid to tell the maid to bring certain jewelry to the hotel. The defendant locked the woman in the bathroom while he accepted the jewelry from the maid when she arrived.

D. The defendant unbuttoned the vest of a man too drunk to notice and removed his wallet. A minute later, the victim missed his wallet and accused the defendant of taking it. The defendant pretended to be insulted, slapped the victim, and went off with the wallet.

1. X-- A homeowner met a man, who was known to him to be a burglar, in a bar. The homeowner told the man that he needed money. He promised to pay the man $500 if the man would go to the homeowner's house the following night and take some silverware. The homeowner explained to the man that, although the silverware was legally his, his wife would object to his selling it. The homeowner pointed out his home, one of a group of similar tract houses. He drew a floor plan of the house that showed the location of the silverware. The homeowner said that his wife usually took several sleeping pills before retiring, and that he would make sure that she took them the next night. He promised to leave a window unlocked. Everything went according to the plan except that the man, deceived by the similarity of the tract houses, went to the wrong house. He found a window unlocked, climbed in and found silver where the homeowner had indicated. He took the silver to the cocktail lounge where the payoff was to take place. At that point police arrested the two men.

If the homeowner was charged with burglary, his best argument for acquittal would be that

A. there was no breaking.

B. he consented to the entry.

C. no overt act was committed by him.

D. there was no intent to commit a felony.

1. X-- A homeowner met a man, who was known to him to be a burglar, in a bar. The homeowner told the man that he needed money. He promised to pay the man $500 if the man would go to the homeowner's house the following night and take some silverware. The homeowner explained to the man that, although the silverware was legally his, his wife would object to his selling it. The homeowner pointed out his home, one of a group of similar tract houses. He drew a floor plan of the house that showed the location of the silverware. The homeowner said that his wife usually took several sleeping pills before retiring, and that he would make sure that she took them the next night. He promised to leave a window unlocked. Everything went according to the plan except that the man, deceived by the similarity of the tract houses, went to the wrong house. He found a window unlocked, climbed in and found silver where the homeowner had indicated. He took the silver to the cocktail lounge where the payoff was to take place. At that point police arrested the two men. The man's best argument for acquittal of burglary is that he

A. acted under a mistake of law.

B. had the consent of the owner.

C. reasonably thought he was in the homeowner's house.

D. found the window unlocked.

1. A homeowner met a man, who was known to him to be a burglar, in a bar. The homeowner told the man that he needed money. He promised to pay the man $500 if the man would go to the homeowner's house the following night and take some silverware. The homeowner explained to the man that, although the silverware was legally his, his wife would object to his selling it.The homeowner pointed out his home, one of a group of similar tract houses. He drew a floor plan of the house that showed the location of the silverware. The homeowner said that his wife usually took several sleeping pills before retiring, and that he would make sure that she took them the next night. He promised to leave a window unlocked. Everything went according to the plan except that the man, deceived by the similarity of the tract houses, went to the wrong house. He found a window unlocked, climbed in and found silver where the homeowner had indicated. He took the silver to the cocktail lounge where the payoff was to take place. At that point police arrested the two men. If the homeowner and the man are charged with a conspiracy to commit burglary, their best argument for acquittal is that

A. the man was the alter ego of the homeowner.

B. they did not intend to commit burglary.

C. there was no overt act.

D. there was no agreement.

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

A. The defendant had been hypnotized at a party and ordered by the hypnotist to strike the person he disliked the most.

B. The defendant was suffering from an epileptic seizure and had no control over his motions.

C. The defendant was heavily intoxicated and was shadow boxing without realizing that the victim was near him.

D. The defendant, who had just awakened from a deep sleep, was not fully aware of what was happening and mistakenly thought the victim was attacking him.

1. The defendant was arrested and taken to police headquarters, where she was given her Miranda warnings. The defendant indicated that she wished to telephone her lawyer and was told that she could do so after her fingerprints had been taken. While being fingerprinted, however, the defendant blurted out, "Paying a lawyer is a waste of money because I know you have me." At trial, the defendant's motion to prevent the introduction of the statement she made while being fingerprinted will most probably be

A. granted, because the defendant's request to contact her attorney by telephone was reasonable and should have been granted immediately.

B. granted, because of the "fruit of the poisonous tree" doctrine.

C. denied, because the statements were volunteered and not the result of interrogation.

D. denied, because fingerprinting is not a critical stage of the proceeding requiring the assistance of counsel.

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

A. larceny, because he took the papers only to prevent identification and not for his own use.

B. larceny, because he did not take anything from a living victim.

C. robbery, because he did not take the papers by means of force or putting in fear.

D. robbery, because he did not take anything of monetary value.

1. Suspecting that students were using narcotics, the president of a private college arranged for local police to place concealed microphones in several suites of the dormitory. Using these microphones, the college security officers recorded a conversation in which the defendant, a student, offered to sell marijuana to another student. The tape was turned over to the local police, who played it for a local judge. The judge issued a warrant to search the defendant's room. The room was searched by police, and marijuana was discovered. The defendant is charged with unlawful possession of narcotics. At trial, the defendant's motion to prevent the introduction of the marijuana into evidence will most probably be

A. denied, because the college president, in loco parentis, had the responsibility of preventing unlawful activity by students under the president's supervision.

B. denied, because there was probable cause to make the search and police obtained a warrant before commencing the search.

C. granted, because the defendant's privacy was unreasonably invaded.

D. granted, because the electronic surveillance was "fundamentally unfair."

1. A man had a heart ailment so serious that his doctors had concluded that only a heart transplant could save his life. They therefore arranged to have him flown to a city to have the operation performed. The man's nephew, who stood to inherit from him, poisoned him. The poison produced a reaction which required postponing the journey. The plane on which the man was to have flown crashed, and all aboard were killed. By the following day, the man's heart was so weakened by the effects of the poison that he suffered a heart attack and died. If charged with criminal homicide, the nephew should be found

A. guilty.

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

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

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

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

A. Police arrested a thief and recovered goods he had stolen. At the direction of the police, the thief took the goods to the defendant. The defendant, believing the goods to be stolen, purchased them. The defendant is charged with attempting to receive stolen property.

B. The defendant misrepresented his identity to secure a loan from a bank. The banker was not deceived and refused to grant the loan. The defendant is charged with attempting to obtain property by false pretenses.

C. Believing that state law made it a crime to purchase codeine without a prescription, the defendant purchased, without a prescription, cough syrup containing codeine. Unknown to the defendant, the state law had been repealed and codeine could be legally purchased without a prescription. The defendant is charged with attempting to purchase codeine without a prescription.

D. The defendant, intending to kill his neighbor, shot at his neighbor. Unknown to the defendant, the neighbor had died of a heart attack minutes before he shot at her. The defendant is charged with attempted murder.

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

A. Angered because his neighbor is having a noisy party, the defendant fires a rifle into the neighbor's house. The bullet strikes and kills a guest at the party.

B. During an argument, a man slaps the defendant. Angered, the defendant responds by shooting and killing the man.

C. The defendant drives his car through a red light and strikes and kills a pedestrian who is crossing the street.

D. Using his fist, the defendant punches a man in the face. As a result of the blow, the man falls and hits his head on a concrete curb, suffers a concussion, and dies.

1. X--The defendant became intoxicated at a bar. He got into his car and drove away. Within a few blocks, craving another drink, he stopped his car in the middle of the street, picked up a brick, and broke the display window of a liquor store. As he was reaching for a bottle, the night watchman arrived. Startled, the defendant turned and struck the watchman on the head with the bottle, killing him. Only vaguely aware of what was happening, the defendant returned to his car, consumed more liquor, and then drove off at a high speed. He ran a red light and struck and killed a pedestrian who was crossing the street. Relevant statutes define burglary to include "breaking and entering a building not used as a dwelling with the intent to commit a crime therein." Manslaughter is defined as the "killing of a human being in a criminally reckless manner." Criminal recklessness is "consciously disregarding a substantial and unjustifiable risk resulting from the actor's conduct." Murder is defined as the "the premeditated and intentional killing of another or the killing of another during the commission of a rape, robbery, burglary, or arson." Another statute provides that intoxication is not a defense to crime unless it negates an element of the offense. The defendant was charged with the murder of the watchman and manslaughter in the death of the pedestrian. Assume that he is tried separately on each charge. At the defendant's trial for the murder of the watchman, the court should in substance charge the jury on the issue of the defense of intoxication that

A. intoxication is a defense to the underlying crime of burglary if the defendant, due to drunkenness, did not form an intent to commit a crime within the building, in which case there can be no conviction for murder unless the defendant intentionally and with premeditation killed the watchman.

B. voluntary intoxication is not a defense to the crime of murder.

C. The defendant is guilty of murder despite his intoxication only if the state proves beyond a reasonable doubt that the killing of the watchman was premeditated and intentional.

D. voluntary intoxication is a defense to the crime of murder if the defendant would not have killed the watchman but for his intoxication.

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

A. he was too intoxicated to realize he was creating a substantial and unjustifiable risk in the manner in which he was operating his car.

B. when he got in the car his acts were not voluntary because he was too intoxicated to know where he was or what he was doing.

C. the pedestrian was contributory negligent in failing to see the defendant's car approaching.

D. he was too intoxicated to form any intent to voluntarily operate the automobile.

1. X-- The defendant became intoxicated at a bar. He got into his car and drove away. Within a few blocks, craving another drink, he stopped his car in the middle of the street, picked up a brick, and broke the display window of a liquor store. As he was reaching for a bottle, the night watchman arrived. Startled, the defendant turned and struck the watchman on the head with the bottle, killing him. Only vaguely aware of what was happening, the defendant returned to his car, consumed more liquor, and then drove off at a high speed. He ran a red light and struck and killed a pedestrian who was crossing the street. Relevant statutes define burglary to include "breaking and entering a building not used as a dwelling with the intent to commit a crime therein." Manslaughter is defined as the "killing of a human being in a criminally reckless manner." Criminal recklessness is defined as "consciously disregarding a substantial and unjustifiable risk resulting from the actor's conduct." Murder is defined as the "the premeditated and intentional killing of another or the killing of another during the commission of a rape, robbery, burglary, or arson." Another statute provides that intoxication is not a defense to a crime unless it negates an element of the offense. The defendant was charged with the murder of the watchman and manslaughter of the pedestrian. Assume that he is tried separately on each charge. The state's best argument to counter the defendant's argument that he was too intoxicated to realize he was creating a substantial risk in the way that he drove car is that

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

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

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

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

1. Statutes in a jurisdiction define criminal assault as "an attempt to commit a criminal battery" and criminal battery as "causing an offensive touching." As a man was walking down the street, a gust of wind blew his hat off. The man reached out, trying to grab his hat, and narrowly missed striking a woman in the face with his hand. The woman, fearful of being struck by the man, pushed the man away. If charged with criminal assault, the man should be found

A. guilty, because he caused the woman to be in apprehension of an offensive touching.

B. guilty, because he should have realized he might strike someone by reaching out.

C. not guilty, because he did not intend to hit the woman.

D. not guilty, because he did not hit the woman.

1. X--Statutes in a jurisdiction define criminal assault as "an attempt to commit a criminal battery" and criminal battery as "causing an offensive touching. “As a man was walking down the street, a gust of wind blew his hat off. The man reached out, trying to grab his hat, and narrowly missed striking a woman in the face with his hand. The woman, fearful of being struck by the man, pushed the man away. If charged with criminal battery, the woman should be found

A. guilty, because she intentionally pushed the man.

B. guilty, because she caused the touching of the man whether she meant to do so or not.

C. not guilty, because a push is not an offensive touching.

D. not guilty, because she was justified in pushing the man.

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

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

B. denied, because the defendant permitted the police officers to enter his house.

C. granted, because under the circumstances the police activity violated the defendant's reasonable expectations of privacy.

D. granted, because this kind of detection by trained dogs has not been scientifically verified and cannot be the basis for probable cause.

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

A. not guilty, because his encouragement and assistance was not the legal cause of the crime.

B. not guilty, because he did not have the mental state required for aiding and abetting.

C. guilty, because he encouraged the man, and his mistake as to the existence of a prior marriage is not a defense to a charge of bigamy.

D. guilty, because he was present when the crime occurred and is thus a principal in the second degree.

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D. guilty, because he was present when the crime occurred and is thus a principal in the second degree.

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

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

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

C. reversed, because.

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

1. X--In which of the following situations is the defendant most likely to be guilty of larceny?

A. The defendant took a woman's television set, with the intention of returning it the next day.

B. The defendant went into a man's house and took $100 in the belief that the man had damaged the defendant's car to that amount.

C. Mistakenly believing that larceny does not include the taking of a dog, the defendant took his neighbor's dog and sold it.

D. Unreasonably mistaking a man's car for his own, the defendant got into the man's car in a parking lot and drove it home.

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

A. The defendant is entitled to know the identity of his accuser, and the state cannot supply this information.

B. The police should have given the defendant Miranda warnings prior to entry into the apartment, and the warnings were ineffectual once the defendant offered to give the police information.

C. The defendant was intimidated by the forced entry into the apartment, and since the statements were involuntary and coerced, their use against him would violate due process of law.

D. The statements were fruits of an unlawful arrest, and though the Miranda warnings may have been sufficient to protect his right against self incrimination, they were not sufficient to purge the taint of the illegal arrest.

1. A man watched a liquor store furtively for some time, planning to hold it up. He bought a realistic-looking toy gun for the job. One night, just before the store's closing time, he drove to the store, opened the front door and entered. He reached in his pocket for the toy gun, but he became frightened and began to move back toward the front door. However, the shopkeeper had seen the butt of the gun. Fearing a hold up, the shopkeeper produced a gun from under the counter, pointed it at the man, and yelled, "Stop!" The man ran to the door and the toy gun fell from his pocket. The shopkeeper fired. The shot missed the man, but struck and killed a passerby outside the store. A statute in the jurisdiction defines burglary as "breaking and entering any building or structure with the intent to commit a felony or steal therein." On a charge of burglary, the man's best defense would be that

A. the intent required was not present.

B. the liquor store was open to the public.

C. he had a change of heart and withdrew before committing any crime inside the store.

D. he was unsuccessful, and so at most could be guilty of attempted burglary.

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

A. guilty, because, when a new confederate enters a conspiracy already in progress, he becomes a party to it.

B. guilty, because he knowingly and willingly aided and abetted the conspiracy and is chargeable as a principal.

C. not guilty, because, although the associate knew the stamps were stolen, he neither helped to plan nor participated or assisted in the theft.

D. not guilty, because the man and woman had not been convicted of or charged with conspiracy, and the associate cannot be guilty of conspiracy by himself.

1. A man and a woman planned to hold up a bank. They drove to the bank in the man's car. The man entered while the woman remained as lookout in the car. After a few moments, the woman panicked and drove off. The man looked over the various tellers, approached one and whispered nervously, "Just hand over the cash. Don't look around, don't make a false move--or it's your life." The teller looked at the fidgeting man, laughed, flipped him a dollar bill and said, "Go on, beat it." Flustered, the man grabbed the dollar and left. Soon after leaving the scene, the woman was stopped by the police for speeding. Noting her nervous condition, the police asked the woman if they might search the car. She agreed. The search turned up heroin concealed in the lid of the trunk. The woman's best defense to a charge of robbery would be that

A. the man alone entered the bank.

B. the woman withdrew before commission of the crime when she fled the scene.

C. the woman had no knowledge of what the man whispered to the teller.

D. the teller was not placed in fear by the man.

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A. the search was reasonable under the circumstances, given the woman's nervous condition.

B. the search was incident to a valid arrest.

C. The woman had, under the circumstances, sufficient standing and authority to consent to the search.

D. exigent circumstances, including the inherent mobility of a car, justified the search.

1. Two brothers operated an illicit distillery. They customarily sold to anyone unless they suspected the person of being a revenue agent or an informant. One day when one of the brothers was at the distillery alone, he was approached by a buyer who asked to buy a gallon of liquor. The buyer was in fact a revenue officer. After the brother had sold him the liquor, the buyer revealed his identity. The brother grabbed one of the rifles that the brothers kept handy in case of trouble with the law, and shot and wounded the buyer. Other officers, hiding nearby, overpowered and arrested the brother who had shot the buyer. Shortly thereafter, the second brother came on the scene. The officers in hiding had been waiting for him. One of them approached him and asked to buy liquor. The second brother was suspicious and refused to sell. The officers nevertheless arrested him. Both brothers were charged with conspiracy to violate revenue laws, illegal selling of liquor, and battery of the officer. On the charge of battery, which statement concerning the brothers is true?

A. Neither is guilty.

B. Both are guilty.

C. The brother who shot the buyer is guilty but the second brother is not, because the conspiracy had terminated with the arrest of the brother who shot the buyer.

D. The brother who shot the buyer is guilty but the second brother is not, because the act of the brother who shot the buyer was outside the scope of the conspiracy.

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

A. guilty under the misdemeanor-manslaughter rule.

B. guilty, because the licensing requirements are to protect life, and failure to obey is negligence.

C. not guilty, because the offense was not the proximate cause of the death.

D. not guilty, because there was no criminal intent.

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

A. The defendant is charged with manslaughter for a death resulting from an automobile accident. The defendant, the driver, claims he was so drunk he was unable to see the other car involved in the accident.

B. The defendant is charged with assault with intent to kill the victim as a result of his wounding the victim by shooting him. The defendant claims he was so drunk he did not realize anyone else was around when he fired the gun.

C. The defendant is charged with armed robbery. He claims he was so drunk he did not know if the gun was loaded.

D. The defendant is charged with statutory rape after he has sexual intercourse with a girl aged 15 in a jurisdiction where the age of consent is 16. The defendant claims he was so drunk he did not realize the girl was a minor.

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

A. robbery only.

B. larceny only.

C. either robbery or larceny.

D. both robbery and larceny.

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

Shortly thereafter, both went out to get more beer, leaving the door to the student's room standing open. Making an excuse about having dropped his pen, the defendant went back into the student's room. Still apprehensive about their being caught with the marijuana cigarettes; he took the cigarettes and flushed them down the toilet. He was sure the student was too drunk to notice that the cigarettes were missing. The defendant is charged with larceny and burglary (defined in the jurisdiction as breaking and entering the dwelling of another with intent to commit any felony or theft). He should be found guilty of

A. burglary only.

B. larceny only.

C. both burglary and larceny

D. neither burglary nor larceny.

1. While the defendant was in jail on a pending charge, his landlord called the police because rent had not been paid and because he detected a disagreeable odor coming from the defendant's apartment into the hallways. The police officer who responded to the call knew that the defendant was in jail. He recognized the stench coming from the defendant's apartment as that of decomposing flesh and, without waiting to obtain a warrant and using the landlord's passkey, entered the apartment with the landlord's consent. The lease to these premises gave the landlord a right of entry, at any reasonable hour, for the purpose of making repairs. The police officer found a large trunk in the bedroom which seemed to be the source of the odor. Upon breaking it open, he found the remains of the defendant's former mistress. The landlord's consent to the police officer's search of the defendant's apartment is

A. a waiver of the defendant's Fourth Amendment rights, because a landlord has implied consent to enter a tenant's apartment.

B. a waiver of the defendant's Fourth Amendment rights, because the lease gave the landlord express authority to enter the premises.

C. not a waiver of the defendant's Fourth Amendment rights, because the landlord lacked probable cause to believe a crime was then in the process of commission.

D. not a waiver of the defendant's fourth Amendment rights, because the landlord had neither actual nor apparent authority to permit the entry.

1. Two bullies hated a bartender and agreed to start a fight with the bartender and, if the opportunity arose, to kill him. The two bullies met the bartender in the street outside his bar and began to push him around. Three men who also hated the bartender stopped to watch. One of the men threw one of the bullies a knife. A second man told the bully, "Kill him." The third man, who made no move and said nothing, hoped that the bully would kill the bartender with the knife. One bully held the bartender while the other bully stabbed and killed him. On a charge of murdering the bartender, the man who said "Kill him" to one of the bullies is

A. not guilty, because his words did not create a "clear and present danger" not already existing.

B. not guilty, because mere presence and oral encouragement, whether or not he has the requisite intent, will not make him guilty as an accomplice.

C. guilty, because with intent to have the bully kill the bartender, he shouted encouragement to the bully.

D. guilty, because he aided and abetted the murder through his mere presence plus his intent to see the bartender killed.

1. Two bullies hated a bartender and agreed to start a fight with the bartender and, if the opportunity arose, to kill him. The two bullies met the bartender in the street outside a bar and began to push him around. Three men who also hated the bartender stopped to watch. One of the men threw one of the bullies a knife. A second man told the bully, "Kill him." The third man, who made no move and said nothing, hoped that the bully would kill the bartender with the knife. One bully held the bartender while the other bully stabbed and killed him. On a charge of murdering the bartender, the third man who made no move and said nothing is

A. not guilty, because mere presence, coupled with silent approval and intent, is not sufficient.

B. not guilty, because he did not tell the bully ahead of time that he hoped the bully would murder the bartender.

C. guilty, because he had a duty to stop the killing and made no attempt to do so.

D. guilty, because he was present and approved of what occurred.

1. This question describes an offense. Select from the choices (A-D) the most serious offense of which the defendant could be properly convicted. The defendant, an avid fan of his home town football team, shot at the leg of a star player for a rival team, intending to injure his leg enough to hospitalize him for a few weeks, but not to kill him. The victim died of loss of blood.

A. Involuntary manslaughter

B. Voluntary manslaughter

C. Murder

D. None of the above

1. This question describes an offense. Select from the choices (A-D) the most serious offense of which the defendant could be properly convicted. The defendant, a worker in a metal working shop, had long been teasing a young colleague by calling him insulting names and ridiculing him. One day the colleague responded to the teasing by picking up a metal bar and attacking the defendant. The defendant could have escaped from the shop. He parried the blow with his left arm, and with his right hand struck the colleague on his jaw from which the young man died.

A. Involuntary manslaughter

B. Voluntary manslaughter

C. Murder

D. None of the above

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

A. Larceny

B. Embezzlement

C. Larceny by trick

D. Obtaining by false pretenses

1. The plaintiff took a diamond ring to a pawnshop and borrowed $20 on it. It was agreed that the loan was to be repaid within 60 days and if it was not, the pawnshop owner, the defendant, could sell the ring. A week before expiration of the 60 days, the defendant had an opportunity to sell the ring to a customer for $125. He did so, thinking it unlikely that the plaintiff would repay the loan and if he did, the defendant would be able to handle him somehow, even by paying him for the ring if necessary. Two days later, the plaintiff came in with the money to reclaim his ring. The defendant told him that it had been stolen when his shop was burglarized one night and that therefore he was not responsible for its loss. Larceny, embezzlement, and false pretenses are separate crimes in the jurisdiction. Suppose that instead of denying liability, the defendant told the plaintiff the truth--that he sold the ring because he thought the plaintiff would not reclaim it--and offered to give the plaintiff $125. The plaintiff demanded his ring. The defendant said, "Look buddy, that's what I got for it and it's more than it's worth." The plaintiff reluctantly took the money. The defendant could most appropriately be found guilty of

A. Larceny

B. Embezzlement

C. False Pretenses

D. None of the above

1. X-- This question is based on the four case summaries A - D. Select the case that would be most applicable as a precedent. A man, angry at a neighbor with whom he had quarreled, for revenge surreptitiously removed a piece of stone statuary from the neighbor's garden and concealed it in his garage. He intended to return it a day or two later, after giving the neighbor a chance to feel bad over its being stolen. Suspecting who was guilty, the neighbor had the man arrested and charged with larceny.

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

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

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

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

1. This question is based on the four case summaries A - D. Select the case that would be most applicable as a precedent. A man, a heroin addict, broke into a house and took several cameras and watches, which he promptly pawned to obtain cash with which to obtain a "fix." The man was later charged with larceny of the cameras and watches.

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

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1. X--A man suffered from the delusion that he was a special agent of God. He frequently experienced hallucinations in the form of hearing divine commands. The man believed God told him several times that the local Roman Catholic bishop was corrupting the diocese into heresy, and that the bishop should be "done away with." The man, a devout Catholic, conceived of himself as a religious martyr. He knew that shooting bishops for heresy is against the criminal law. He nevertheless carefully planned how he might kill the bishop. One evening the man shot the bishop, who was taken to the hospital where he died two weeks later. The man told the police he assumed the institutions of society would support the ecclesiastical hierarchy, and he expected to be persecuted for his God-inspired actions. A psychiatrist examined the man and found that the man suffered from schizophrenic psychosis, that in the absence of this psychosis he would not have shot the bishop, and that because of the psychosis the man found it extremely difficult to determine whether he should obey the specific command that he do away with the bishop or the general commandment "Thou shalt not kill." The man was charged with murder. If the man interposes an insanity defense, and the jurisdiction in which he is tried has adopted only the M'Naghten test of insanity, then the strongest argument for the defense under that test is that

A. The man did not know the nature of the act he was performing.

B. The man did not know that his act was morally wrong.

C. The man did not know the quality of the act he was performing.

D. The man's acts were the product of a mental disease.

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

A. a principal and an accessory cannot be tried together, since the principal must be convicted first.

B. he cannot be an accessory, since he is the victim of the crime.

C. the legislature did not intend to punish the person giving the thing of value.

D. he did not assist the teacher in violating the statute.

1. In which of the following situations is the defendant most likely to be guilty of the crime charged?

A. Without the permission of the owner, the defendant takes the owner's car with the intention of driving it three miles to a grocery store and back. The defendant is charged with larceny.

B. The defendant gets permission to borrow the owner's car for the evening by falsely promising to return it, although he does not intend to do so. Two days later, he changes his mind and returns the car. The defendant is charged with larceny by trick.

C. The defendant gets permission to borrow the owner's car for the evening by misrepresenting his identity and falsely claiming he has a valid driver's license. He returns the car the next day. The defendant is charged with obtaining property by false pretenses.

D. With permission, the defendant, promising to return it by 9:00 p.m., borrows the owner's car. Later in the evening, the defendant decides to keep the car until the next morning and does so. The defendant is charged with embezzlement.

1. While testifying in a civil trial, a witness was asked on cross-examination if he had been convicted in the circuit court of stealing $200 from his employer on August 16, 2007. The witness said, "No, I have never been convicted of any crime." In fact, the witness had pleaded guilty to such a charge and had been placed on probation. The witness was then charged with perjury on the ground that his statement denying the conviction was false. A statute in the jurisdiction defines perjury as knowingly making a false statement while under oath. At trial, the state proved the witness's statement and the prior conviction. The witness testified that the attorney who represented him in the theft case had told him that, because he had been placed on probation, he had not been convicted of a crime. The witness had served his probationary period satisfactorily and been discharged from probation. The alleged advice of the attorney was incorrect.

If the jury believes the witness, it should find him

A. guilty, because his mistake was one of law.

B. guilty, because reliance on the advice of an attorney is not a defense.

C. not guilty if the jury also finds that his reliance on the attorney's advice was reasonable.

D. not guilty, because he lacked the necessary mental state.

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

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

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

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

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

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

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

A. During an argument in a bar, a man punches the defendant. The defendant, mistakenly believing that the man is about to stab him, shoots and kills the man.

B. While committing a robbery of a liquor store, the defendant accidentally drops his revolver, which goes off. The bullet strikes and kills the victim, a customer in the store.

C. While hunting deer, the defendant notices something moving in the bushes. Believing it to be a deer, the defendant fires into the bushes. The bullet strikes and kills the victim, another hunter.

D. In celebration of the Fourth of July, the defendant discharges a pistol within the city limits in violation of a city ordinance. The bullet ricochets off the street and strikes and kills the victim.

1. A father, disappointed by his 8-year-old son's failure to do well in school, began systematically depriving the child of food during summer vacation. Although his son became seriously ill from malnutrition, the father failed to call a doctor. He believed that as a parent he had the sole right to determine whether the child was fed or received medical treatment. Eventually the child died. An autopsy disclosed that the child had suffered agonizingly as a result of the starvation, that a physician's aid would have alleviated the suffering, and that although the child would have died in a few months from malnutrition, the actual cause of death was an untreatable form of cancer.

The father was prosecuted for murder, defined in the jurisdiction as an "unlawful killing of a human being with malice aforethought." The father should be

A. acquitted, because of the defendant's good faith belief concerning parental rights in supervising children.

B. acquitted, because summoning the physician or feeding the child would not have prevented the child's death from cancer.

C. convicted, because the father's treatment of his son showed reckless indifference to the value of life.

D. convicted, because the child would have died from malnutrition had he not been afflicted with cancer.

1. A professional poker player had cheated a man in a card game. Angered, the man set out for the poker player's house with the intention of shooting him. Just as he was about to set foot on the poker player's property, the man was arrested by a police officer who noticed that the man was carrying a revolver. A statute in the jurisdiction makes it a crime to "enter the property of another with the intent to commit any crime of violence thereon."

If charged with attempting to violate the statute, the man should be found

A. not guilty, because the statute defines an attempted crime and there cannot be an attempt to attempt.

B. not guilty, because to convict him would be to punish him simply for having a guilty mind.

C. guilty, because he was close enough to entering the property and he had the necessary state of mind.

D. guilty, because this is a statute designed to protect the public from violence, and the man was dangerous.

1. X-- A defendant held up a gasoline station. During the robbery he shot and killed a customer who attempted to apprehend him. The defendant was prosecuted for premeditated murder and convicted. Thereafter, he was indicted for armed robbery of the station. Before the trial, his attorney moved to dismiss the indictment on the ground that further proceedings were unconstitutional because of the defendant's prior conviction.

The motion to dismiss should be

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

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

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

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

1. X-- Adams, Bennett, and Curtis are charged in a common law jurisdiction with conspiracy to commit larceny. The state introduced evidence that they agreed to go to a neighbor's house to take stock certificates from a safe in the neighbor's bedroom, that they went to the house, and that they were arrested as they entered the neighbor's bedroom.

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

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

Curtis did not testify.

If the jury believes Adams, it should find him

A. guilty, because there was an agreement, and the entry into the bedroom is sufficient for the overt act.

B. guilty, because good motives are not a defense to criminal liability.

C. not guilty, because he did not have a corrupt motive.

D. not guilty, because he did not intend to steal.

1. Adams, Bennett, and Curtis are charged in a common law jurisdiction with conspiracy to commit larceny. The state introduced evidence that they agreed to go to a neighbor's house to take stock certificates from a safe in the neighbor's bedroom, that they went to the house, and that they were arrested as they entered the neighbor's bedroom. Adams testified that he thought the stock certificates belonged to Curtis, that the neighbor was improperly keeping them from Curtis, and that he went along to aid in retrieving Curtis's property. Bennett testified that he suspected Adams and Curtis of being thieves and joined up with them in order to catch them. He also testified that he made an anonymous telephone call to the police alerting them to the crime and that the call caused the police to be waiting for them when they walked into the neighbor's bedroom.

Curtis did not testify.

If the jury believes Bennett, it should find him

A. guilty, because there was an agreement, and the entry into the bedroom is sufficient for the overt act.

B. guilty, because he is not a police officer and thus cannot claim any privilege of apprehending criminals.

C. not guilty, because he did not intend to steal.

D. not guilty, because he prevented the theft from occurring.

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Curtis did not testify.

If the jury believes both Adams and Bennett, it should find Curtis

A. guilty, because there was an agreement, and the entry into the bedroom is sufficient for the overt act.

B. guilty, because he intended to steal.

C. not guilty, because a conviction would penalize him for exercising his right not to be a witness.

D. not guilty, because Adams and Bennett did not intend to steal.

1. A driver, while intoxicated, drove his car through a playground crowded with children just to watch the children run to get out of his way. His car struck one of the children, killing her instantly.

Which of the following is the best theory for finding the driver guilty of murder?

A. Transferred intent.

B. Felony murder, with assault with a deadly weapon as the underlying felony

C. Intentional killing, since he knew that the children were there, and he deliberately drove his car at them

D. Commission of an act highly dangerous to life, without an intent to kill but with disregard of the consequences

1. X-- Which of the following is most likely to be found to be a strict liability offense?

A. A city ordinance providing for a fine of not more than $200 for shoplifting.

B. A federal statute making it a felony to possess heroin.

C. A state statute making it a felony to fail to register a firearm.

D. A state statute making the sale of adulterated milk a misdemeanor.

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

A. acquitted, because he did not complete the crime, and he has not been charged with attempt.

B. acquitted, because what he intended to do when he broke in was not a crime.

C. convicted, because he had the necessary mental state and committed the act of breaking and entering.

D. convicted, because factual impossibility is not a defense.

1. X-- The defendant, while eating in a restaurant, noticed that a departing customer at the next table had left a five-dollar bill as a tip for the waitress. The defendant reached over, picked up the five dollar bill, and put it in his pocket. As he stood up to leave, another customer who had seen him take the money ran over to him and hit him in the face with her umbrella. Enraged, the defendant choked the customer to death.

The defendant is charged with murder. He requests the court to charge the jury that they can find him guilty of voluntary manslaughter rather than murder. The defendant's request should be

A. granted, because the jury could find that the defendant acted recklessly and not with the intent to cause death or serious bodily harm.

B. granted, because the jury could find that being hit in the face with an umbrella constitutes adequate provocation.

C. denied, because the evidence shows that the defendant intended to kill or to cause serious bodily harm.

D. denied, because the evidence shows that the defendant provoked the assault on himself by his criminal misconduct.

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

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

A. The inventor honestly believed that the device would cure arthritis, but his belief was unreasonable.

B. The woman honestly believed that the device would cure arthritis, but her belief was unreasonable.

C. The inventor was playing a practical joke on the woman and intended to return the money.

D. The woman was an undercover police officer and did not believe that the device would cure arthritis.

1. The defendant was an alcoholic who frequently experienced auditory hallucinations that commanded him to engage in bizarre and sometimes violent behavior. He generally obeyed their commands. The hallucinations appeared more frequently when he was intoxicated, but he sometimes experienced them when he had not been drinking. After the defendant had been drinking continuously for a three-day period, an elderly woman began to reproach him about his drunken condition, slapping him on the face and shoulders as she did so. The defendant believed that he was being unmercifully attacked and heard the hallucinatory voice telling him to strangle his assailant. He did so, and she died. If the defendant is charged with second degree murder, the defendant's best chance of acquittal would be to rely on a defense of

A. intoxication.

B. lack of malice aforethought.

C. self-defense.

D. insanity.

1. A husband and wife were walking to their car one evening after having seen a movie. As they were passing a dark alleyway, the defendant leaped out brandishing a gun. He pushed the wife against the wall of a nearby building, held the gun to her head, and demanded money from the husband. The husband handed over his cash. The defendant grabbed the cash and ran away. Which of the following, listed in descending order of seriousness, is the most serious crime for which the defendant may be convicted?

A. Robbery of the husband

B. Larceny from the husband

C. Assault on the husband and wife

D. Assault on the wife

1. The defendant and her friend went into a drugstore where the defendant reached into the cash register and took out $200. The store owner came out of a back room, saw what had happened, and told the defendant to put the money back. The friend then took a revolver from under his coat and shot and killed the store owner.The defendant claims that the store owner owed her $200 and that she went to the drugstore to try to collect the debt. She said that she asked her friend to come along just in case the store owner made trouble but that she did not plan on using any force and did not know that her friend was armed.

If the defendant is prosecuted for murder on the basis of felony murder and the jury believes her claim, she should be found

A. guilty, because her friend committed a homicide in the course of a felony.

B. guilty, because her taking her friend with her to the store created the risk of death that occurred during the commission of a felony.

C. not guilty, because she did not know that her friend was armed and thus did not have the required mental state for felony murder.

D. not guilty, because she believed she was entitled to the money and thus did not intend to steal.

1. The defendant and her friend went into a drugstore, where the defendant reached into the cash register and took out $200. The store owner came out of a back room, saw what had happened, and told the defendant to put the money back. The friend then took a revolver from under his coat and shot and killed the store owner. The defendant claims that the store owner owed her $200 and that she went to the drugstore to try to collect the debt. She said that she asked her friend to come along just in case the store owner made trouble but that she did not plan on using any force and did not know that her friend was armed. If the defendant is prosecuted for murder on the basis of being an accessory to her friend in committing a murder and the jury believes her claim, she should be found

A. guilty, because in firing the shot her friend was trying to help her.

B. guilty, because she and her friend were acting in concert in a dangerous undertaking.

C. not guilty, because she had no idea that her friend was armed and she did not plan to use force.

D. not guilty, because she was exercising self-help and did not intend to steal.

1. X--Damson was short of money. He decided to go into Walters' house to take Walters' silverware and then to sell it. That night, while Walters' was away, Damson entered by picking the lock on the front door. He picked up a chest of silverware from the dining room and went out the front door of the house to his car. As he was putting the chest of silverware into the trunk, he had second thoughts and decided that he did not wish to become a thief. He reentered the house and replaced the chest of silverware where he had found it. As he came out of the house the second time, he was arrested by the police, who had been called by a neighbor.

Damson is

A. guilty of burglary and larceny.

B. guilty of burglary and attempted larceny.

C. guilty of burglary but not guilty of any larceny offense.

D. not guilty of burglary or any larceny offense.

1. The question was:

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

A. Arson

B. Manslaughter

C. Attempted rape

D. Burglary

1. A man was a suspect in a homicide committed during a robbery of a liquor store. A barber was a friend of the suspect. The police telephoned the barber and asked if he would help locate the suspect. The barber agreed and met the police officers at headquarters later that night. After a discussion during which police asked questions about the suspect and the homicide, the barber said he wanted to get something "off his chest" and advised the officers that he was in on the robbery but that the suspect had shot the owner of the store without his permission or prior knowledge. The officers then for the first time gave the barber his Miranda warnings. The barber was indicted for felony murder. He moved to prevent the introduction of his statement into evidence. His motion should be

A. granted, because the barber was effectively in custody and entitled to receive Miranda warnings at the beginning of the discussion.

B. granted, because the barber's rights to counsel and to due process were violated by the interrogation at police headquarters.

C. denied, because his statement was freely and voluntarily given, and he was not entitled to Miranda warnings.

D. denied, because by visiting headquarters voluntarily, the barber waived his right to have Miranda warnings at the beginning of the discussion.

1. A defendant is indicted in state court for bribing a public official. During the course of the investigation, police had demanded and received from the defendant's bank the records of the defendant's checking account for the preceding two years. The records contained incriminating evidence. On the basis of a claim of violation of his constitutional rights, the defendant moves to prevent the introduction of records in evidence. His motion should be

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

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

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

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

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

A. it was impossible for the sale to have occurred.

B. she had strictly instructed her employees not to sell ammunition to minors.

C. the minor lied about his age.

D. the clerk did not have the mental state needed for attempt.

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

The pharmacist is an accomplice to

A. murder.

B. manslaughter.

C. criminally negligent homicide.

D. no degree of criminal homicide.

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

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

A. murder only.

B. murder and conspiracy.

C. attempted murder only.

D. attempted murder and conspiracy.

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

A. burglary only.

B. arson only.

C. burglary and attempted arson.

**D**. burglary and arson.

1. A defendant broke into a victim's house one night. As he started to stuff silverware into a sack, he was surprised by the victim, who had arrived home earlier than usual. The defendant struck the victim on the head with a candlestick and tied her up. He finished filling his sack and left. The police discovered the victim several hours later and rushed her to the hospital. The defendant was apprehended by the police early the following morning with the loot still in his possession. He was taken to police headquarters, given Miranda warnings, and asked if he wished to make a statement about the prior evening's events. The police did not mention that the victim had been seriously injured and was in the hospital. The defendant said he understood his rights and was willing to talk. He then admitted that he committed the burglary of the victim's house. The following day, the victim died from injuries caused by the blow to her head. If, at the defendant's trial for murder, the defendant moves to prevent introduction of the confession into evidence, his motion should most probably be

A. denied, because failure of the police to advise the defendant of the victim's condition was harmless error since felony murder does not require intent to kill or injure.

B. denied, because the defendant's waiver of his rights did not depend upon the nature of the charges that were later filed against him.

C. granted, because the defendant could not make a knowing and intelligent waiver unless he had information concerning the victim's condition.

D. granted, because the use of a confession to burglary in a prosecution for murder violates due process where the police withheld information about the potential seriousness of the offense.

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

The best defense raised by the defendant's testimony is

A. lack of the requisite mental element.

B. lack of the requisite act element.

C. insanity.

D. belief that the situation justified his actions.

1. The defendant and his friend were fooling around with a pistol in the friend's den. The defendant aimed the pistol in the friend's direction and fired three shots slightly to the friend's right. One shot ricocheted off the wall and struck his friend in the back, killing him instantly. The most serious crime of which the defendant can be convicted is

A. murder.

B. voluntary manslaughter.

C. involuntary manslaughter.

D. assault with a dangerous weapon.

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

A. arson.

B. fraud.

C. conspiracy.

D. burglary.

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

Their best defense to the charge is that

A. they did not intend to kill or to harm their child.

B. they were pursuing a constitutionally protected religious belief.

C. their child's death was not proximately caused by their conduct.

D. they neither premeditated nor deliberated.

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

The defendant is guilty of

A. kidnapping.

B. attempted kidnapping.

C. kidnapping or attempted kidnapping but not both.

D. neither kidnapping nor attempted kidnapping.

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

A. guilty, because he should have inquired as to the ages of the children.

B. guilty, because he hired the children.

C. not guilty, because the knitting mill, not the supervising manager, is the employer of the children.

D. not guilty, because he believed he was following company policy and was not aware of the violation.

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

A. even if he misled the store owner, he intended to pay for the items.

B. he did not misrepresent any material fact.

C. the store owner got his property back and so suffered no harm.

D. the store owner could have asked for payment in full at the time of the purchase.

1. While walking home one evening, an off-duty police officer was accosted by a stranger. The stranger had been drinking and mistakenly thought the police officer was a man who was having an affair with his wife. Intending to frighten the police officer but not to harm him, the stranger pulled out a knife, screamed obscenities, and told the police officer he was going to kill him. Frightened and reasonably believing the stranger was going to kill him and that using deadly force was his only salvation, the police officer took out his service revolver and shot and killed the stranger. The police officer is charged with murder.

The police officer's claim of self-defense should be

A. sustained, because the police officer reasonably believed the stranger was planning to kill him and that deadly force was required.

B. sustained, because the killing was in hot blood upon sufficient provocation.

C. denied, because the stranger did not in fact intend to harm the police officer and the police officer was incorrect in believing that he did.

D. denied, because the police officer was not defending his home and had an obligation to retreat or to repel with less than deadly force.

1. X-- A jurisdiction has the following decisional law on questions of principal and accomplice liability:

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

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

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

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

A college student purchased narcotics from a dealer whom he believed to be a "street person" but who was in fact an undercover police agent. The student has been charged as an accomplice to the sale of narcotics.

He should be

A. convicted on the authority of Case A.

B. convicted on the authority of Case B.

C. acquitted on the authority of Case C.

D. acquitted on the authority of Case D.

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

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

He should be

A. convicted on the authority of Case A.

B. convicted on the authority of Case B.

C. acquitted on the authority of Case C.

D. acquitted on the authority of Case D.

1. X-- A jurisdiction has the following decisional law on questions of principal and accomplice liability:

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

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A plastic surgeon agreed to remove the fingerprints from the hands of "Fingers" Malloy, whom the surgeon knew to be a safecracker. The surgeon charged his usual hourly rate for the operation. Afterward, Malloy burglarized a bank safe and was convicted on burglary.

Charged with burglary, the surgeon should be

A. convicted on the authority of Case A.

B. convicted on the authority of Case B.

C. acquitted on the authority of Case C.

D. acquitted on the authority of Case D.

1. After waiting until all the customers had left, a man entered a small grocery store just before closing time. He went up to the lone clerk in the store and said, "Hand over all the money in the cash register or you will get hurt." The clerk fainted and struck his head on the edge of the counter. As the man went behind the counter to open the cash register, two customers entered the store. The man ran out before he was able to open the register drawer. On this evidence the man could be convicted of

A. robbery.

B. assault and robbery.

C. attempted robbery.

D. assault and attempted robbery.

1. Police received information from an undercover police officer that she had just seen two men (whom she described) in a red pickup truck selling marijuana to schoolchildren near the city's largest high school. A few minutes later, two police officers saw a pickup truck fitting the description a half block from the high school. The driver of the truck matched the description of one of the men described by the undercover officer. The only passenger was a young woman who was in the back of the truck. The police saw her get out and stand at a nearby bus stop. They stopped the truck and searched the driver. In the pocket of the driver's jacket, the police found a small bottle of pills that they recognized as narcotics. They then broke open a locked toolbox attached to the flatbed of the truck and found a small sealed envelope inside. They opened it and found marijuana. They also found a quantity of cocaine in the glove compartment. After completing their search of the driver and the truck, the police went over to the young woman and searched her purse. In her purse, they found a small quantity of heroin. Both the driver and the young woman were arrested and charged with unlawful possession of narcotics.

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

A. grant the motion as to both the marijuana and the cocaine.

B. grant the motion as to the marijuana but deny it as to the cocaine.

C. deny the motion as to the marijuana but grant it as to the cocaine.

D. deny the motion as to both the marijuana and the cocaine.

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If the young woman moves to suppress the use as evidence of the heroin, the court should

A. grant the motion, because she did not fit the description given by the informant and her mere presence does not justify the search.

B. grant the motion, because the police should have seized her purse and then obtained a warrant to search it.

C. deny the motion, because she had been a passenger in the truck and the police had probable cause to search the truck.

D. deny the motion, because she was planning to leave the scene by bus and so exigent circumstances existed.

1. X--A young woman joined a neighborhood gang. At a gang meeting, as part of the initiation process, the leader ordered the young woman to kill a member of a rival gang. The young woman refused, saying she no longer wanted to be part of the group. The leader, with the approval of the other members, told the young woman that she had become too involved with the gang to quit and that they would kill her if she did not accomplish the murder. The next day the young woman shot a member of a rival gang to death while the rival gang member was sitting on his motorcycle outside a restaurant. The young woman is charged with first-degree murder. First-degree murder is defined in the jurisdiction as the intentional premeditated killing of another. Second-degree murder is any other murder at common law. If the young woman killed the rival gang member because of the threat to her own life, the young woman should be found

A. not guilty, because of the defense of duress.

B. not guilty, because of the defense of necessity.

C. guilty of first-degree murder.

D. guilty of second-degree murder.

1. The owner of an old warehouse decided to destroy the warehouse because the taxes on the structure exceeded the income that he could receive from it. He crept into the building in the middle of the night with a can of gasoline and a fuse and set the fuse timer for 30 minutes. He then left the building. The fuse failed to ignite and the building was not harmed.Arson is defined in this jurisdiction as "the intentional burning of any building or structure of another, without the consent of the owner." The warehouse owner believed, however, that burning one's own building was arson, having been so advised by his lawyer. Has the warehouse owner committed attempted arson?

A. Yes, because factual impossibility is no defense.

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

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

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

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

The motion should be

A. granted, because, if there were no probable cause, the grand jury should not consider the evidence.

B. granted, because the employee was acting as a police agent and his seizure of the glass without a warrant was unconstitutional.

C. denied, because motions based on the exclusionary rule are premature in grand jury proceedings.

D. denied, because the glass was removed from the defendant's possession by a private citizen and not a police officer.

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

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

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

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

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

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

The man's confession is

A. admissible, because there was no coercive police conduct in obtaining the man's statement.

B. admissible, because the man was not in custody.

C. inadmissible, because the man's confession was a product of his mental illness and was therefore involuntary.

D. inadmissible, because under these circumstances, there was no valid waiver of Miranda warnings.

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

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

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

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

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

1. At a party for coworkers at a defendant's home, the victim accused the defendant of making advances toward his wife. The victim and his wife left the party. The next day at work, the defendant saw the victim and struck him on the head with a soft-drink bottle. The victim fell into a coma and died two weeks after the incident. This jurisdiction defines aggravated assault as an assault with any weapon or dangerous implement and punishes it as a felony. It defines murder as the unlawful killing of a person with malice aforethought or in the course of an independent felony.

The defendant may be found guilty of murder

A. only if the jury finds that the defendant intended to kill the victim.

B. only if the jury finds that the defendant did not act in a rage provoked by the victim's accusations.

C. if the jury finds that the defendant intended either to kill or to inflict serious bodily harm.

D. if the jury finds that the killing occurred in the course of an aggravated assault.

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

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

The defendant is guilty of

A. burglary and larceny.

B. burglary and attempted larceny.

C. larceny.

D. attempted larceny.

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

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

A. guilty, based upon extreme recklessness.

B. guilty, based upon transferred intent.

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

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

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A. guilty, because he intended to kill the president and used the man to carry out his plan.

B. guilty, because he was extremely reckless as to the president.

C. not guilty, because the president was never in imminent danger of being killed.

D. not guilty, because the man, if successful, would be guilty of no more than manslaughter and an accessory cannot be guilty of a higher crime than the principal.

1. The defendant was indicted in a state court in January 1985 for a robbery and murder that occurred in December 1982. He retained counsel who filed a motion to dismiss on the ground that the defendant had been prejudiced by a 25-month delay in obtaining the indictment. Thereafter, the defendant, with his counsel, appeared in court for arraignment and stated that he wished to plead guilty.

The presiding judge asked the defendant whether he understood the nature of the charges, possible defenses, and maximum allowable sentences. The defendant replied that he did, and the judge reviewed all of those matters with him. He then asked the defendant whether he understood that he did not have to plead guilty. When the defendant responded that he knew that, the judge accepted the plea and sentenced the defendant to 25 years.

Six months later, the defendant filed a motion to set aside his guilty plea on each of the following grounds.

Which of these grounds provides a constitutional basis for relief?

A. The judge did not rule on his motion to dismiss before accepting the guilty plea.

B. The judge did not determine that the defendant had robbed and killed the victim.

C. The judge did not determine whether the defendant understood that he had a right to jury trial.

D. The judge did not determine whether the prosecutor's file contained any undisclosed exculpatory material.

1. A girl told a man she would like to have sexual intercourse with him and that he should come to her apartment that night at 7 p.m. After the man arrived, he and the girl went into the bedroom. As the man started to remove the girl's blouse, the girl said she had changed her mind. The man tried to convince her to have intercourse with him but after ten minutes of her sustained refusals, the man left the apartment. Unknown to the man, the girl was 15 years old. Because she appeared to be older, the man believed her to be about 18 years old. A statute in the jurisdiction provides: "A person commits rape in the second degree if he has sexual intercourse with a girl, not his wife, who is under the age of 16 years."

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

A. guilty, because no mental state is required as to the element of rape.

B. guilty, because he persisted after she told him she had changed her mind.

C. not guilty, because he reasonably believed she had consented and voluntarily withdrew after she told him she had changed her mind.

D. not guilty, because he did not intend to have intercourse with a girl under the age of 16.

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

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

A. the other driver was contributory negligent.

B. the collision would have occurred even if the bar patron had not been intoxicated.

C. because of his intoxication he lacked the mens rea needed for manslaughter.

D. driving while intoxicated requires no mens rea and so cannot be the basis for misdemeanor manslaughter.

1. A grand jury indicted the defendant on a charge of arson, and a valid warrant was issued for her arrest. A police officer arrested the defendant and informed her of what the warrant stated. However, hoping that the defendant might say something incriminating, he did not give her Miranda warnings. He placed her in the back seat of his patrol car and was driving her to the police station when she said, "Look, I didn't mean to burn the building; it was an accident. I was just burning some papers in a wastebasket." At the station, after being given Miranda warnings, the defendant stated that she wished to remain silent and made no other statements. The defendant moved to suppress the use of her statement to the police officer as evidence on two grounds: first, that the statement was acquired without giving Miranda warnings, and second, that the police officer had deliberately elicited her incriminating statement after she was in custody.

As to the defendant's motion to suppress, the court should

A. deny the motion.

B. grant the motion only on the basis of the first ground stated.

C. grant the motion only on the basis of the second ground stated.

D. grant the motion on either ground.

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

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

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

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

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

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

1. X-- A statute provides: A person commits the crime of rape if he has sexual intercourse with a female, not his wife, without her consent. A man is charged with the rape of a woman. At trial, the woman testifies to facts sufficient for a jury to find that the man had sexual intercourse with her, that she did not consent, and that the two were not married. The man testifies in his own defense that he believed she consented to sexual intercourse and that she was his common-law wife. At the conclusion of the case, the court instructed the jury that in order to find the man guilty of rape, it must find beyond a reasonable doubt that he had sexual intercourse with the woman without her consent. The court also instructed the jury that it should find the defendant not guilty if it found either that the woman was the man's wife or that the man reasonably believed that the woman had consented to the sexual intercourse, but that the burden of persuasion as to these issues was on the defendant. The jury found the man guilty, and the man appealed, contending that the court's instructions on the issues of whether the woman was his wife and whether he reasonably believed she had consented violated his constitutional rights.

The man's constitutional rights were

A. violated by the instructions as to both issues.

B. violated by the instruction as to whether the woman was his wife, but not violated by the instruction on belief as to consent.

C. violated by the instruction on belief as to consent, but not violated by the instruction as to whether the woman was his wife.

D. not violated by either part of the instructions.

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

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

A. correct, because it is a violation of due procees to punish without a voluntary act.

B. correct, because criminal liability is personal and the knitting mill is the employer of the children, not the general manager.

C. incorrect, because regulatory offenses are not subject to due process limitations.

D. incorrect, because he was in a position to exercise control over the hiring employees for the knitting mill.

1. A statute in the jurisdiction defines murder in the first degree as knowingly killing another person after deliberation. Deliberation is defined as "cool reflection for any length of time no matter how brief." Murder in the second degree is defined as "all other murder at common law except felony-murder." Felony-murder is murder in the third degree. Manslaughter is defined by the common law. At 2 a.m., the defendant held up an all-night liquor store using an assault rifle. During the holdup, two police cars with flashing lights drove up in front of the store. In order to create a situation where the police would hesitate to come into the store (and thus give the defendant a chance to escape out the back), the defendant fired several rounds through the front window of the store. The defendant then ran out the back, but upon discovering another police car there, surrendered quietly. One of the shots he fired while in the store struck and killed a burglar who was stealing items from a closed store across the street.

The most serious degree of criminal homicide the defendant is guilty of is

A. murder in first degree.

B. murder in the second degree.

C. murder in the third degree.

D. manslaughter.

1. A defendant was charged with the murder of a man who had been strangled and whose body was found in some woods near his home. The defendant suffers from a neurological problem that makes it impossible for him to remember an occurrence for longer than 48 hours. After the defendant was charged, the police visited him and asked if they might search his home. The defendant consented. The police found a diary written by the defendant. An entry dated the same day as the victim's disappearance read, "Indescribable excitement. Why did no one ever tell me that killing gave such pleasure to the master?" The defendant was charged with murder. His attorney has moved to exclude the diary from evidence on the ground that its admission would violate the defendant's privilege against self-incrimination. Counsel has also argued that the defendant could not give informed consent to the search because more than 48 hours had passed since the making of the entry and hence he could not remember the existence of the incriminating entry at the time he gave his consent. There is no evidence that the police officers who secured the defendant's consent to the search were aware of his memory impairment.

With regard to the diary, the court should

A. admit it, because the defendant's consent was not obtained by intentional police misconduct and the defendant was not compelled to make the diary entry.

B. admit it, pursuant to the good-faith exception to the exclusionary rule.

C. exclude it, because the defendant was not competent to consent to a search.

D. exclude it, because use of the diary as evidence would violate the defendant's privilege against self-incrimination.

1. X--A defendant was charged with felony murder because of his involvement in a bank robbery. The evidence at trial disclosed that a friend invited the defendant to go for a ride in his new car, and after a while asked the defendant to drive. As the friend and the defendant drove around town, the friend explained to the defendant that he planned to rob the bank and that he needed the defendant to drive the getaway car. The defendant agreed to drive to the bank and to wait outside while the friend went in to rob it. As they approached the bank, the defendant began to regret his agreement to help with the robbery. Once there, the friend got out of the car. As the friend went out of sight inside the bank, the defendant drove away and went home. Inside the bank, the friend killed a bank guard who tried to prevent him from leaving with the money. The friend ran outside and, finding that his car and the defendant were gone, ran down an alley. He was apprehended a few blocks away. The defendant later turned himself in after hearing on the radio that the friend had killed the guard.

The jurisdiction has a death penalty that applies to felony murder. Consistent with the law and the Constitution, the jury may convict the defendant of

A. felony murder and impose the death penalty.

B. felony murder but not impose the death penalty.

C. bank robbery only.

D. no crime.

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

The defendant is

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

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

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

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

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

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

The court should

A. grant the motion for acquittal.

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

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

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

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

A. not guilty, because the child was trespassing and he was using what he believed was nondeadly force.

B. not guilty, because he did not intend to kill or to cause serious physical injury.

C. guilty, because he recklessly caused serious physical injury.

D. guilty, because there is no privilege to use force against a person who is too young to be criminally responsible.

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

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

A. affirm the conviction, because the evidence is sufficient to support a conviction of murder.

B. reverse the conviction and remand for a new trial, because the evidence is not sufficient for murder but will support a conviction of voluntary manslaughter.

C. reverse the conviction and remand for a new trial, because the evidence is not sufficient for murder but will support a conviction of involuntary manslaughter.

D. reverse the conviction and order the case dismissed, because the evidence is sufficient only for a finding of negligence and negligence alone cannot support a criminal conviction.

1. Suffering from painful and terminal cancer, a wife persuaded her husband to kill her to end her misery. As they reminisced about their life together and reaffirmed their love for each other, the husband tried to discourage the wife from giving up. The wife insisted, however, and finally her husband held a gun to her head and killed her. The most serious degree of criminal homicide of which the husband can be legally convicted is

A. no degree of criminal homicide.

B. involuntary manslaughter.

C. voluntary manslaughter.

D. murder.

1. A bartender is charged with the statutory offense of "knowingly violating a regulation of the State Alcoholic Beverage Control Board" and that he knowingly violated regulation number 345-90 issued by the State Alcoholic Beverage Control Board. That regulation prohibits the sale of alcoholic beverages to any person under the age of 18 and also prohibits the sale of any alcoholic beverage to a person over the age of 17 and under the age of 22 without the presentation of such person's driver's license or other identification showing the age of the purchaser to be 18 or older. The evidence showed that the bartender worked in a tavern and sold a bottle of beer to a person who was 17 years old and that the bartender did not ask for or see the purchaser's driver's license or any other identification. Which of the following, if found by the jury, would be of the most help to the bartender?

A. The purchaser had a driver's license that falsely showed his age to be 21.

B. The bartender had never been told he was supposed to check identification of persons over 17 and under 22 before selling them alcohol.

C. The bartender did not know that the regulations classified beer as an alcoholic beverage.

D. The bartender mistakenly believed the purchaser to be 24 years old.

1. A woman and man were charged with murder. Each gave a confession to the police that implicated both of them. The woman later retracted her confession claiming that it was coerced. The woman and man were tried together. The prosecutor offered both confessions into evidence. The woman and man objected. After a hearing, the trial judge found that both confessions were voluntary and admitted both into evidence. The woman testified at trial. She claimed that her confession was false and the result of coercion. Both defendants were convicted.

On appeal, the woman contends her conviction should be reversed because of the admission into evidence of the man's confession.

The woman's contention is

A. correct, unless the man testified at trial.

B. correct, whether or not the man testified at trial.

C. incorrect, because the woman testified on her own behalf.

D. incorrect, because the woman's own confession was properly admitted into evidence.

1. A man was engaged to marry a woman. One evening, the man became enraged at the comments of the woman's eight-year-old daughter who was complaining in her usual fashion that she did not want her mother to marry the man. The man, who had too much to drink, began beating her. The daughter suffered some bruises and a broken arm. The woman took her daughter to the hospital. The police were notified by the hospital staff. The man was indicted for felony child abuse. The man pleaded with the woman to forgive him and to run away with him. She agreed. They moved out of state and took the daughter with them. Without the testimony of the child, the prosecution was forced to dismiss the case.

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

At her trial, the court should

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

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

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

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

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

A. robbery.

B. attempted robbery.

C. theft by false pretenses.

D. larceny by trick.

1. A kidnapping statute in State A makes it a crime for a person, including a parent, to "take a child from the custody of his custodial parent, knowing he has no privilege to do so." After a bitter court battle a couple was divorced and the woman was given custody of their daughter. The man later moved to State B where he brought an action to obtain custody of the daughter. A local judge awarded him custody. His attorney incorrectly advised him that, under this award, he was entitled to take the daughter away from the woman. The man drove to State A, picked the daughter up at her preschool, and took her back to State B with him. He was indicted for kidnapping in State A, extradited from State B, and tried. At trial, he testified that he had relied on his attorney's advice in taking the daughter, and that at the time he believed his conduct was not illegal.

If jury believes his testimony, the man should be

A. acquitted, because he acted on the advice of an attorney.

B. acquitted, because he lacked a necessary mental element of the crime.

C. convicted, because reliance on an attorney's advice is not a defense.

D. convicted, provided a reasonable person would have known that the attorney's advice was erroneous.

1. A defendant was arrested in the victim's apartment after her neighbors had reported sounds of a struggle, and the police arrived to find the defendant bent over the victim's prostrate body. The victim was rushed to the hospital where she lapsed into a coma. Despite the explanation that he was trying to revive the victim after she suddenly collapsed, the defendant was charged with attempted rape and assault after a neighbor informed the police that she had heard the victim sobbing, "No, please no, let me alone." At trial, the forensic evidence was inconclusive. The jury acquitted the defendant of attempted rape but convicted him of assault. While he was serving his sentence for assault, the victim, who had never recovered from the coma, died. The defendant was then indicted and tried on a charge of felony murder. In this common-law jurisdiction, there is no statute that prevents a prosecutor from proceeding in this manner, but the defendant argued that a second trial for attempted rape and assault would violate the double jeopardy clause.

His claim is

A. correct, because he was acquitted of the attempted rape charge.

B. correct, because he was convicted of the assault charge.

C. incorrect, because the victim had not died at the time of the first trial and he was not placed in jeopardy for murder.

D. incorrect, because he was convicted of the assault charge.

1. A defendant was charged with murder. Several witnesses testified that the crime was committed by a person of the defendant's general description who walked with a severe limp. The defendant in fact walks with a severe limp. He objected to a prosecution request that the court order him to walk across the courtroom in order to display his limp to the jury to assist it in determining whether the defendant was the person that the witnesses had seen.

The defendant's objection will most likely be

A. sustained, because the order sought by the prosecution would violate the defendant's privilege against self-incrimination.

B. sustained, because the order sought by the prosecution would constitute an illegal search and seizure.

C. denied, because the order sought by the prosecution is a legitimate part of a proper courtroom identification process.

D. denied, because a criminal defendant has no legitimate expectation of privacy.

1. X-- A man asked his friend if he would loan him $500, promising to repay the amount within two weeks. The friend loaned him the $500. The next day the man took the money to the race track and lost all of it betting on horse races. He then left town for six months. He has not repaid his friend.

The man has committed

A. both larceny by trick and obtaining money by false pretenses (although he can only be convicted on one offense).

B. larceny by trick only.

C. obtaining money by false pretenses only.

D. neither larceny by trick nor obtaining money by false pretenses.

1. X-- The owner of a house told his neighbor that he was going away for two weeks and asked the neighbor to keep an eye on his house. The neighbor agreed. The owner gave the neighbor a key to use to check on the house. The neighbor decided to have a party in the owner's house. He invited a number of friends. One friend, a pickpocket, went into the owner's bedroom, took some of the owner's rings, and put them in his pocket.

Which of the following is true?

A. The neighbor and the pickpocket are guilty of burglary.

B. The neighbor is guilty of burglary and the pickpocket is guilty of larceny.

C. The neighbor is guilty of trespass and the pickpocket is guilty of larceny.

D. The pickpocket is guilty of larceny and the neighbor is not guilty of any crime.

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

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

The court should

A. grant the motion, because the only purpose of the officer's flight was to observe the yard.

B. grant the motion, because the defendant had a reasonable expectation of privacy in the curtilage around her house and the police did not have a warrant.

C. deny the motion, because a warrant is not required for a search of a residential yard.

D. deny the motion, because the defendant had no reasonable expectation of privacy from aerial observation.

1. On October 22, a police officer submitted an application for a warrant to search a particular address for cocaine. In the application, the officer stated under oath that he believed there was cocaine at that location because of information supplied to him on the morning of October 22 by an informant. He described the informant as a cocaine user who had previously supplied accurate information concerning the use of cocaine in the community and summarized what the informant had told him as follows: the previous night, October 21, the informant was in the defendant's house at the particular address. The defendant gave her cocaine. She also saw three cellophane bags containing cocaine in his bedroom. The warrant was issued and a search of the address was conducted on October 22. The search turned up a quantity of marijuana but no cocaine. The defendant was arrested and charged with possession of marijuana. The defendant moved to suppress the use of the marijuana as evidence contending that the informant was not in the particular address on October 21 or at any other time.

If, after hearing evidence, the judge concludes that the statement in the application attributed to the informant is incorrect, the judge should grant the motion to suppress

A. because the application contains a material statement that is false.

B. because of the false statement and because no cocaine was found in the house.

C. only if he also finds that the informant's statement was a deliberate lie.

D. only if he also finds that the police officer knew the statement was false.

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

The defendant was charged with felony murder.

His best argument for being found NOT guilty is that he

A. did not intend to kill.

B. did not commit the robbery because he never acquired any money from the clerk.

C. did not intend to create any risk of harm.

D. is not responsible for the acts of the customer.

1. A state employs the Model Penal Code or American Law Institute test for insanity, and requires the state to prove sanity, when it is in issue, beyond a reasonable doubt. At the defendant's trial for murder, he pleaded insanity. The state put on an expert psychiatrist who had examined the defendant. He testified that, in his opinion, the defendant was sane at the time of the murder. The defendant's attorney did not introduce expert testimony on the question of sanity. Rather, he presented lay witnesses who testified that, in their opinion, the defendant was insane at the time of the murder. At the end of the trial, each side moves for a directed verdict on the question of sanity.

Which of the following correctly describes the judge's situation?

A. She may grant a directed verdict for the defense if she believes that the jury could not find the prosecution to have proved sanity beyond a reasonable doubt.

B. She may grant a directed verdict for the prosecution if she believes that the defendant's witnesses on the insanity question are not believable.

C. She may not grant a directed verdict for the defense, because the state had expert testimony and the defense only lay witnesses.

D. She may grant a directed verdict for the prosecution if she is convinced by their experts that the defendant was sane beyond a reasonable doubt.

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

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

A. he was not aware of the duty-to-report statute.

B. he lacked the mental state necessary to the commission of the crime.

C. his omission was not the proximate cause of death.

D. the day-care corporation, rather than the employee, was guilty of the omission, which was sanctioned by its supervisory-level agent.

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

The businessman is prosecuted for manslaughter. He should be

A. acquitted, because he honestly believed he faced an imminent threat of death or severe bodily injury.

B. acquitted, because his intoxication prevented him from appreciating the risk he created.

C. convicted, because he acted recklessly and in fact was in no danger.

D. convicted, because he acted recklessly and his apprehension of danger was not reasonable.

1. The police suspected that a 16-year-old high school student had committed a series of burglaries. Two officers went to the student's high school and asked the principal to call the student out of class and to search his backpack. While the officers waited, the principal took the student into the hall where she asked to look in his backpack. When the student refused, the principal grabbed it from him, injuring the student's shoulder in the process. In the backpack, she found jewelry that she turned over to the officers. The officers believed that the jewelry had been taken in one of the burglaries. They arrested the student, took him to the station, and gave him Miranda warnings. The student asked to see a lawyer. The police called the student's parents to the station. When the student's parents arrived, the police asked them to speak with the student. They put him in a room and secretly recorded their conversation with a concealed electronic device. The student broke down and confessed to his parents that he had committed the burglaries.

The student was charged with the burglaries.

The student moves to suppress the use of the jewelry.

The court should

A. deny the motion on the ground that the search was incident to a lawful arrest.

B. deny the motion on the ground that school searches are reasonable if conducted by school personnel on school grounds on the basis of reasonable suspicion.

C. grant the motion on the ground that the search was conducted with excessive force.

D. grant the motion on the ground that the search was conducted without probable cause or a warrant.

1. X-- The police suspected that a 16-year-old high school student had committed a series of burglaries. Two officers went to the student's high school and asked the principal to call the student out of class and to search his backpack. While the officers waited, the principal took the student into the hall where she asked to look in his backpack. When the student refused, the principal grabbed it from him, injuring the student's shoulder in the process. In the backpack, she found jewelry that she turned over to the officers. The officers believed that the jewelry had been taken in one of the burglaries. They arrested the student, took him to the station, and gave him Miranda warnings. The student asked to see a lawyer. The police called the student's parents to the station. When the student's parents arrived, the police asked them to speak with the student. They put him in a room and secretly recorded their conversation with a concealed electronic device. The student broke down and confessed to his parents that he had committed the burglaries.

The student was charged with the burglaries.

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

The best argument for excluding it would be that

A. the student was in custody at the time the statement was recorded.

B. the police did not comply with the student's request for a lawyer.

C. once the student had invoked his right to counsel, it was improper for the police to listen to any of his private conversations.

D. the meeting between the student and his parents was arranged by the police to obtain an incriminating statement.

1. A defendant was upset because he was going to have to close his liquor store due to competition from a discount store in a new shopping mall nearby. In desperation, he decided to set fire to his store to collect the insurance. While looking through the basement for flammable material, he lit a match to read the label on a can. The match burned his finger and, in a reflex action, he dropped the match. It fell into a barrel and ignited some paper. The defendant made no effort to put out the fire but instead left the building. The fire spread and the store was destroyed by fire. The defendant was eventually arrested and indicted for arson.

The defendant is

A. guilty, if he could have put out the fire before it spread and did not do so because he wanted the building destroyed.

B. guilty, if he was negligent in starting the fire.

C. not guilty, because even if he wanted to burn the building there was no concurrence between his mens rea and the act of starting the fire.

D. not guilty, because his starting the fire was the result of a reflex action and not a voluntary act.

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

They are

A. guilty of both crimes.

B. guilty of battery but not guilty of conspiracy.

C. not guilty of battery but guilty of conspiracy.

D. not guilty of either crime.

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

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

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

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

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

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

The employee is guilty of

A. larceny.

B. embezzlement.

C. either larceny or embezzlement but not both.

D. neither larceny nor embezzlement.

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

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

The motion should be

A. granted, because the defendant's privilege against self-incrimination was violated.

B. granted, because the defendant's right to counsel was violated.

C. denied, because the defendant had received Miranda warnings.

D. denied, because the defendant was not interrogated by the informant.

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

On appeal, the defendant's conviction should be

A. reversed, because it was an error for the court to admit the evidence of his prior convictions as substantive evidence.

B. reversed, because it was a violation of due process to impose on the defense a burden of persuasion concerning entrapment.

C. reversed, for both of the above reasons.

D. affirmed, because neither of the above reasons constitutes a ground for reversal.

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

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

A. Both the neighbor and the defendant are guilty of attempting to sell cocaine.

B. Neither the neighbor nor the defendant is guilty of attempting to sell cocaine.

C. The neighbor is guilty of attempting to sell cocaine, but the defendant is not.

D. The neighbor is not guilty of attempting to sell cocaine, but the defendant is.

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

The defendant should be

A. acquitted, because he used no threats and was intoxicated.

B. acquitted, because his mistake negated the required specific intent.

C. convicted, because his intoxication was voluntary.

D. convicted, because mistake is no defense to robbery.

1. An employee admired his supervisor's wristwatch and frequently talked about how much he wished he had one like it. The supervisor decided to give the employee the watch for his birthday the following week.

On the weekend before the employee's birthday, the employee and supervisor attended a company picnic. The supervisor took his watch off and left it on a blanket when he went off to join in a touch football game. The employee strolled by, saw the watch on the blanket, and decided to steal it. He bent over and picked up the watch. Before he could pocket it, however, his supervisor returned. When he saw the employee holding the watch, he said, "I know how much you like that watch. I was planning to give it to you for your birthday. Go ahead and take it now." The employee kept the watch.

The employee has committed

A. larceny.

B. attempted larceny.

C. embezzlement.

D. no crime.

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

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

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

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

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

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

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

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

The woman's motion should be

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

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

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

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

1. X-- An antique dealer and a skilled calligrapher crafted a letter on very old paper. She included details that would lead knowledgeable readers to believe that the letter had been written by Thomas Jefferson to a friend. The calligrapher, who had a facsimile of Jefferson's autograph, made the signature and other writing on the letter resemble Jefferson's. She knew that the letter would attract the attention of local collectors. When it did and she was contacted about selling it, she said that it had come into her hands from a foreign collector who wished anonymity, and that she could make no promises about its authenticity. As she had hoped, a collector paid her $5,000 for the letter. Later the collector discovered the letter was not authentic, and handwriting analysis established that the calligrapher had written the letter.

In a jurisdiction that follows the common-law definition of forgery, the calligrapher has

A. committed both forgery and false pretenses.

B. committed forgery, because she created a false document with the intent to defraud, but has not committed false pretenses, since she made no representation as to the authenticity of the document.

C. not committed forgery, because the document had no apparent legal significance, but has committed false pretenses, since she misrepresented the source of the document.

D. not committed forgery, because the document had no apparent legal significance, and has not committed false pretenses, since she has made no representation as to authenticity of the document.

1. An executive director of an equal housing opportunity organization was the leader of a sit-in at the offices of a real estate management company. The protest was designed to call attention to the company's racially discriminatory rental practices. When police demanded that the executive director desist from trespassing on the company's property, she refused and was arrested. In the executive director's trial for trespass, the prosecution peremptorily excused all non-whites from the jury, arguing to the court that even though the executive director was white, minority groups would automatically support her because of her fight against racism in housing accommodations. If the executive director is convicted of trespass by an all-white jury and appeals, claiming a violation of her constitutional rights, the court should

A. affirm the conviction, because the executive director was not a member of the class discriminated against.

B. affirm the conviction, because peremptory challenge of the non-whites did not deny the executive director the right to an impartial jury.

C. reverse the conviction, because racially based peremptory challenges violate equal protection of the law.

D. reverse the conviction, because the executive director was denied the right to have her case heard by a fair cross section of the community.

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

A. Both proposals.

B. Neither proposal.

C. Proposal A only.

D. Proposal B only.

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

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

A. convicted of both offenses.

B. convicted of involuntary manslaughter and acquitted of arson.

C. convicted of arson and involuntary manslaughter.

D. acquitted of both offenses.

1. At a party, the defendant and the victim agreed to play a game they called "spin the barrel." The victim took an unloaded revolver, placed one bullet in the barrel, and spun the barrel. The victim then pointed the gun at the defendant's head and pulled the trigger once. The gun did not fire. The defendant then took the gun, pointed it at the victim, spun the barrel, and pulled the trigger once. The gun fired, and the victim fell over dead. A statute in the jurisdiction defines murder in the first degree as an intentional and premeditated killing or one occurring during the commission of a common-law felony, and murder in the second degree as all other murder at common law. Manslaughter is defined as a killing in the heat of passion upon an adequate legal provocation or a killing caused by gross negligence.

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

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

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

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

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

1. The police had, over time, accumulated reliable information that a suspect operated a large cocaine-distribution network, that he and his accomplices often resorted to violence, and that they kept a small arsenal of weapons in his home. One day, the police received reliable information that a large brown suitcase with leather straps containing a supply of cocaine had been delivered to the suspect's home and that it would be moved to a distribution point the next morning. The police obtained a valid search warrant to search for and seize the brown suitcase and the cocaine and went to the suspect's house. The police knocked on the suspect's door and called out, "Police. Open up. We have a search warrant." After a few seconds with no response, the police forced the door open and entered. Hearing noises in the basement, the police ran down there and found the suspect with a large brown suitcase and put handcuffs on the suspect. A search of his person revealed a switchblade knife and a .45-caliber pistol. The suspect cursed the police and said, "You never would have caught me with the stuff if it hadn't been for that lousy snitch Harvey!" The police then fanned out through the house, looking in every room and closet. They found no one else, but one officer found an Uzi automatic weapon in a box on a closet shelf in the suspect's bedroom. In addition to charges relating to the cocaine in the suitcase, the suspect is charged with unlawful possession of weapons.

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

As to the switchblade knife and the .45-caliber pistol, the suspect's motion to suppress should be

A. granted, because the search and seizure were the result of illegal police conduct in executing the search warrant.

B. granted, because the police did not inform the suspect that he was under arrest and did not read him his Miranda rights.

C. denied, because the search and seizure were incident to a lawful arrest.

D. denied, because the police had reasonable grounds to believe that there were weapons in the house.

1. The police had, over time, accumulated reliable information that a suspect operated a large cocaine-distribution network, that he and his accomplices often resorted to violence, and that they kept a small arsenal of weapons in his home. One day, the police received reliable information that a large brown suitcase with leather straps containing a supply of cocaine had been delivered to the suspect's home and that it would be moved to a distribution point the next morning. The police obtained a valid search warrant to search for and seize the brown suitcase and the cocaine and went to the suspect's house. The police knocked on the suspect's door and called out, "Police. Open up. We have a search warrant." After a few seconds with no response, the police forced the door open and entered. Hearing noises in the basement, the police ran down there and found the suspect with a large brown suitcase and put handcuffs on the suspect. A search of his person revealed a switchblade knife and a .45-caliber pistol. The suspect cursed the police and said, "You never would have caught me with the stuff if it hadn't been for that lousy snitch Harvey!" The police then fanned out through the house, looking in every room and closet. They found no one else, but one officer found an Uzi automatic weapon in a box on a closet shelf in the suspect's bedroom. In addition to charges relating to the cocaine in the suitcase, the suspect is charged with unlawful possession of weapons.

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

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

A. granted, because entry by forcing open the door was not reasonable.

B. granted, because the police failed to read the suspect his Miranda rights.

C. denied, because the statement was volunteered.

D. denied, because the statement was the product of a lawful public safety search.

1. X-- The police had, over time, accumulated reliable information that a suspect operated a large cocaine-distribution network, that he and his accomplices often resorted to violence, and that they kept a small arsenal of weapons in his home. One day, the police received reliable information that a large brown suitcase with leather straps containing a supply of cocaine had been delivered to the suspect's home and that it would be moved to a distribution point the next morning. The police obtained a valid search warrant to search for and seize the brown suitcase and the cocaine and went to the suspect's house. The police knocked on the suspect's door and called out, "Police. Open up. We have a search warrant." After a few seconds with no response, the police forced the door open and entered. Hearing noises in the basement, the police ran down there and found the suspect with a large brown suitcase and put handcuffs on the suspect. A search of his person revealed a switchblade knife and a .45-caliber pistol. The suspect cursed the police and said, "You never would have caught me with the stuff if it hadn't been for that lousy snitch Harvey!" The police then fanned out through the house, looking in every room and closet. They found no one else, but one officer found an Uzi automatic weapon in a box on a closet shelf in the suspect's bedroom.

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

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

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

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

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

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

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

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

A. acquitted, because the teenager was not convicted of the offense.

B. acquitted, because they did not assist or encourage the teenager to commit the crime.

C. convicted, because they urged him to flee.

D. convicted, because they made no effort to intervene.

1. During an altercation between a boss and her employee at a company picnic, the boss suffered a knife wound in her abdomen and the employee was charged with assault and attempted murder. At his trial, the employee seeks to offer evidence that he had been drinking at the picnic and was highly intoxicated at the time of the altercation. In a jurisdiction that follows the common-law rules concerning admissibility of evidence of intoxication, the evidence of the employee's intoxication should be

A. admitted without limitation.

B. admitted subject to an instruction that it pertains only to the attempted murder charge.

C. admitted subject to an instruction that it pertains only to the assault charge.

D. excluded altogether.

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

A. The woman can be convicted of murder, because she did the act of killing, but the man cannot be convicted of either murder or manslaughter.

B. Neither can be guilty of murder, but both can be convicted of manslaughter based upon an unintentional homicide.

C. The woman can be convicted only of manslaughter, but the man cannot be convicted of murder or manslaughter.

D. Both can be convicted of murder.

1. While browsing in a clothing store, a defendant decided to take a purse without paying for it. She placed the purse under her coat and took a couple of steps toward the exit. She then realized that a sensor tag on the purse would set off an alarm. She placed the purse near the counter from which she had removed it.

The defendant has committed

A. no crime, because the purse was never removed from the store.

B. no crime, because she withdrew from her criminal enterprise.

C. only attempted larceny, because she intended to take the purse out of the store.

D. larceny, because she took the purse from its original location and concealed it with the intent to steal.

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

A. burglary, robbery, and murder.

B. robbery and murder only.

C. burglary and robbery only.

D. robbery only.

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

The babysitter is

A. not guilty of larceny or attempted larceny, because the 11-year-old boy did not commit any crime.

B. not guilty of larceny but guilty of attempted larceny, because she never acquired possession of the television.

C. guilty of larceny as an accessory to the 11-year-old boy.

D. guilty of larceny by the use of an innocent agent.

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

Charged with murder, the student should be

A. convicted, because the use of deadly force was unreasonable under the circumstances.

B. convicted, because he had a clear opportunity and duty to retreat.

C. acquitted, because he did not intend to kill the friend.

D. acquitted, because he was acting in self-defense and had no duty to retreat.

1. A homeless woman broke into the basement of a hotel and fell asleep. She was awakened by a security guard, who demanded that she leave. As the homeless woman was leaving, she cursed the security guard. Angered, the guard began to beat the homeless woman on her head with his flashlight. After the second blow, the homeless woman grabbed a fire extinguisher and sprayed the guard in his face, causing him to lose his sight in one eye.

The jurisdiction defines aggravated assault as assault with intent to cause serious bodily injury.

The most serious crime for which the homeless woman could properly be convicted is

A. aggravated assault.

B. burglary.

C. assault.

D. trespass.

1. A defendant held up a drugstore at 10:30 at night and drove away. His car broke down in an isolated area just outside the small city in which the crime occurred. The defendant walked to the nearest house and asked the homeowner if he could stay until the next morning, explaining that he had been searching for his sister's home and had run out of gas. The homeowner agreed to let him sleep on a couch in the basement. During the course of the night, the homeowner began to doubt the story the defendant had told him. Early the next morning, the homeowner called the police and said he was suspicious and frightened of a stranger whom he had allowed to stay the night. The police went immediately to the house to assist the homeowner and walked through the open front door. They found the defendant and the homeowner drinking coffee in the kitchen. When they saw the defendant, they realized he matched the description of the drugstore robber. They arrested the defendant and in his jacket they found drugs taken during the robbery. The defendant moves to suppress the evidence of the drugs. If the court finds that the police did not have probable cause to believe the defendant was the robber until they saw him inside the homeowner's house and realized he matched the description, the court should

A. grant the motion, because, as a guest, the defendant has sufficient standing to contest the entry of the house without a warrant.

B. grant the motion, because, as a guest, the defendant has sufficient standing to contest the lack of probable cause at the time of the entry.

C. deny the motion, because the defendant had no ownership or other possessory interest in the premises.

D. deny the motion, because the police had the permission of the owner to enter the house.

1. X--A defendant entered a guilty plea to a charge of embezzlement. Her attorney hired a retired probation officer as a consultant to gather information for the preparation of a sentencing plan for the defendant that would avoid jail. For that purpose, the consultant interviewed the defendant for three hours. Thereafter, the prosecution undertook an investigation of the defendant's possible involvement in other acts of embezzlement. The consultant was subpoenaed to testify before a grand jury. The consultant refused to answer any questions concerning her conversation with the defendant. The prosecution has moved for an order requiring her to answer those questions. The motion should be

A. denied, on the basis of the attorney-client privilege.

B. denied, in the absence of probable cause to believe the interview developed evidence relevant to the grand jury's inquiry.

C. granted, because the consultant is not an attorney.

D. granted, because exclusionary evidentiary rules do not apply in grand jury proceedings.

1. An eighteen-year-old boyfriend and his 14-year-old girlfriend made plans to meet in the boyfriend's apartment to have sexual intercourse, and they did so. The girlfriend later told her mother about the incident. The boyfriend was charged with statutory rape and conspiracy to commit statutory rape. In the jurisdiction, the age of consent is 15, and the law of conspiracy is the same as at common law. The boyfriend was convicted of both charges and given consecutive sentences. On appeal, he contends that his conspiracy conviction should be reversed.

That conviction should be

A. affirmed, because he agreed with the girlfriend to commit the crime.

B. reversed, because the girlfriend could not be a conspirator to this crime.

C. reversed, because the crime is one that can only be committed by agreement and thus Wharton's Rule bars conspiracy liability.

D. reversed, because one cannot conspire with a person too young to consent.

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

The employee is guilty of

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

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

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

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

1. A marijuana farmer had been missing for several months. The sheriff's department received an anonymous tip that a rival marijuana farmer had buried the marijuana farmer in a hillside about 200 yards from the rival's farmhouse. The sheriff's deputies went to the rival's farm. They cut the barbed wire that surrounded the hillside and entered, looking for the grave. They also searched the adjacent fields on the rival's farm that were within the area enclosed by the barbed wire and discovered clothing that belonged to the marijuana farmer hanging on a scarecrow. The rival observed their discovery and began shooting. The deputies returned fire. The rival dashed to his pickup truck to escape. Unable to start the truck, he fled across a field toward the barn. A deputy tackled him just as he entered the barn. As the rival attempted to get up, the deputy pinned his arms behind his back. Another deputy threatened, "Tell us what you did with the marijuana farmer or we will shut you down and see your family on relief." The rival responded that he had killed the marijuana farmer in a fight but did not report the incident because he did not want authorities to enter his land and discover his marijuana crop. Instead, he buried him behind the barn. The rival was thereafter charged with murder.

If the rival moves to suppress his admission about killing his neighbor, the court should

A. grant the motion, because the rival did not voluntarily waive his right to silence.

B. grant the motion, because the statement was the product of the warrantless entry and search of the rival's farm.

C. deny the motion, because the deputy was in hot pursuit when he questioned the rival.

D. deny the motion, because the rival was questioned during a police emergency search.

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

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

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

A. grant the motion, because the deputies had not obtained a warrant.

B. grant the motion, because the deputies' conduct in its entirety violated the rival's right to due process of law.

C. deny the motion, because the rival had no expectation of privacy in the fields around his farmhouse.

D. deny the motion, because the clothing was not the rival's property.

1. A teenager's high school teacher told her that she was going to receive a failing grade in history, which would prevent her from graduating. Furious, she reported to the principal that the teacher had fondled her, and the teacher was fired. A year later, still unable to get work because of the scandal, the teacher committed suicide. The teenager, remorseful, confessed that her accusation had been false.

If the teenager is charged with manslaughter, her best defense would be that she

A. committed no act that proximately caused the teacher's death.

B. did not intend to cause the teacher's death.

C. did not act with malice.

D. acted under extreme emotional distress.

1. Two police officers in uniform were on foot patrol in a neighborhood frequented by drug sellers. They saw the defendant, who, when she saw them, turned around and started to walk quickly away. The police ran after her and shouted, "Stop and don't take another step, lady!" The defendant turned, looked at the police, and stopped. She put her arms up in the air. As the police approached, she threw a small object into the nearby bushes. The police retrieved the object, which turned out to be a small bag of cocaine, and then arrested the defendant. The defendant is charged with possession of the cocaine. She moves pretrial to suppress its use as evidence on the ground that it was obtained as a result of an illegal search and seizure.

Her motion should be

A. granted, because the police did not know the item was cocaine until after they had seized it.

B. granted, because the police acquired the cocaine as the result of an unlawful seizure.

C. denied, because the police had probable cause to seize the package.

D. denied, because the defendant voluntarily discarded the contraband.

1. On May 1, 1987, a car driven by the defendant struck a pedestrian. On July 1, 1987, with regard to this incident, the defendant pleaded guilty to reckless driving (a misdemeanor) and was sentenced to 30 days in jail and a fine of $1,000. She served the sentence and paid the fine. On April 1, 1988, the pedestrian died as a result of the injuries she suffered in the accident. On March 1, 1991, a grand jury indicted the defendant on a charge of manslaughter of the pedestrian. On May 15, 1991, trial had not begun and the defendant filed a motion to dismiss the indictment on the ground of double jeopardy in that her conviction of reckless driving arose out of the same incident, and on the ground that the three-year statute of limitations for manslaughter had run.

The defendant's motion should be

A. granted only on double jeopardy grounds.

B. granted only on statute of limitations grounds.

C. granted on either double jeopardy grounds or statute of limitations grounds.

D. denied on both grounds.

1. FBI agents, without a warrant and without permission of Mexican law enforcement or judicial officers, entered Mexico, kidnapped an American citizen wanted in the United States for drug smuggling violations, and forcibly drove him back to Texas. Thereafter, the agents, again without a warrant, broke into the Texas home of a woman wanted as a confederate of the kidnapped person, and arrested her.The kidnapped person and the woman were both indicted for narcotics violations. Both moved to dismiss the indictment on the ground that their arrests violated the Fourth Amendment,

The court should

A. grant the motions of both the kidnapped person and the woman.

B. grant the motion of the kidnapped person and deny the motion of the woman.

C. grant the motion of the woman and deny the motion of the kidnapped person.

D. deny the motions of both the kidnapped person and the woman.

1. A man approached an undercover officer and inquired about hiring someone to kill his girlfriend's parents. The man did not realize he was speaking to an undercover officer. The undercover officer pretended to agree to handle the job and secretly taped subsequent conversations with the man concerning plans and payment. A few days before the payment was due, the man changed his mind and called the plan off. Nevertheless, the man was charged with solicitation to commit murder.

The man should be

A. acquitted, because he withdrew before payment and commission of the act.

B. acquitted, because no substantial acts were performed.

C. convicted, because the offense was completed before his attempt to withdraw.

D. convicted, because the undercover officer agreed to commit the offense.

1. A defendant is charged with murder. The evidence shows that she pointed a gun at the victim and pulled the trigger. The gun discharged, killing the victim. The gun belonged to the victim. The defendant testifies that the victim told her, and she believed, that the "gun" was a stage prop that could fire only blanks, and that she fired the gun as part of rehearsing a play with the victim at his house. If the jury believes the defendant's testimony and finds that her mistaken belief that the gun was a prop was reasonable, they should find her

A. guilty of murder.

B. guilty of manslaughter.

C. guilty of either murder or manslaughter.

D. not guilty of murder or manslaughter.

1. Nine gang members were indicted for the murder of a tenth gang member who had become an informant. The gang leader plead guilty. At the trial of the other eight, the state's evidence showed the following: The gang leader announced a party to celebrate the recent release of a gang member from jail. But the party was not what it seemed. The gang leader had learned that the recently released gang member had earned his freedom by informing the authorities about the gang's criminal activities. The gang leader decided to use the party to let the other gang members see what happens to a snitch. He told no one about his plan. At the party, after all present had consumed large amounts of liquor, the gang leader announced that the released gang member was an informant and stabbed him with a knife in front of the others. The eight other gang members watched and did nothing while the informant slowly bled to death. The jury found the eight gang members guilty of murder and they appealed.

Should the appellate court uphold the convictions?

A. No, because mere presence at the scene of a crime is insufficient to make one an accomplice.

B. No, because murder is a specific intent crime, and there is insufficient evidence to show that they intended to kill.

C. Yes, because the gang members made no effort to save the informant after he had been stabbed.

D. Yes, because voluntary intoxication does not negate criminal responsibility.

1. An undercover police detective told a local drug dealer that she wanted to buy cocaine, but that she needed time to raise the necessary funds. The drug dealer said that he needed time to get the cocaine. They agreed to meet again in 10 days. An hour later, without a warrant, other officers forcibly entered the drug dealer's apartment and arrested him for attempted possession of a controlled substance.

If the drug dealer is prosecuted in a common-law jurisdiction for attempted possession of cocaine, should he be convicted?

A. No, because he had not taken sufficient acts toward commission of the crime.

B. No, because he was illegally arrested.

C. Yes, because by objective standards an agreement between them had occurred.

D. Yes, because his intention to obtain the cocaine was unequivocally expressed.

1. A state legislature passed a statute providing that juries in criminal trials were to consist of 6 rather than 12 jurors, and providing that jury verdicts did not have to be unanimous but could be based on 5 votes out of 6 jurors. A defendant was tried for murder. Over his objection, he was tried by a jury composed of 6 jurors. The jurors found him guilty by a vote of 5 to 1 and, over the defendant's objection, the court entered a judgment of conviction, which was affirmed on appeal by the state supreme court. The defendant seeks to overturn his conviction in a habeas corpus action in federal court, claiming his constitutional rights were violated by allowing a jury verdict that was not unanimous and by allowing a jury composed of fewer than 12 members.

How is the federal court likely to rule in this action?

A. It will set aside the conviction, because the jury was composed of fewer than 12 members.

B. It will set aside the conviction, because the 6-person jury verdict was not unanimous.

C. It will set aside the conviction for both reasons.

D. It will uphold the conviction.

1. Police officers received a tip that drug dealing was occurring at a certain ground-floor duplex apartment. They decided to stake out the apartment. The stakeout revealed that a significant number of people visited the apartment for short periods of time and then left. A man exited the apartment and started to walk briskly away. The officers grabbed the man and, when he struggled, wrestled him to the ground. They searched him and found a bag of heroin in one of his pockets. After discovering the heroin on the man, the police decided to enter the apartment. They knocked on the door, which was opened by the woman who lived there. The police asked if they could come inside, and the woman gave them permission to do so. Once inside, the officers observed several bags of heroin on the living room table. The woman is charged with possession of the heroin found on the living room table. She moves pretrial to suppress the heroin on the ground that it was obtained by virtue of an illegal search and seizure.

Should the woman's motion be granted?

A. No, because the tip together with the heroin found in the man's pocket provided probable cause for the search.

B. No, because the woman consented to the officers' entry.

C. Yes, because the officers' decision to enter the house was the fruit of an illegal search of the man.

D. Yes, because the officers did not inform the woman that she could refuse consent.

1. A husband and wife took their 12-year-old son to a political rally to hear a controversial United States senator speak. The speaker was late, and the wife stepped outside to smoke a cigarette. While there, she saw a man placing what she believed to be a bomb against a wall at the back of the building. She went back inside and told her husband what she had seen. Without alerting anyone, they took their son and left. Some 20 minutes later, the bomb exploded, killing eight persons and injuring 50. In the jurisdiction, murder in the first degree is defined as an intentional homicide committed with premeditation and deliberation; murder in the second degree is defined as all other murder at common law; and manslaughter is defined as either a homicide in the heat of passion arising from adequate provocation or a homicide caused by gross negligence or reckless indifference to consequence.

As to the deaths of the eight persons, what crime, if any, did the wife commit?

A. Manslaughter.

B. Murder in the first degree.

C. Murder in the second degree.

D. No crime.

1. A woman decided to steal a necklace that belonged to her neighbor. She knew where the neighbor kept the necklace because she had been in the neighbor's house on many occasions when the neighbor had taken off the necklace and put it away in a jewelry box in the bathroom. One night, the woman went to the neighbor's house. The neighbor was away, and the house was dark. The woman opened the bathroom window, saw the jewelry box on the counter, and started to climb inside. As her leg cleared the window sill, the neighbor's cat let out a loud screech. Terrified, the woman bolted back outside and fled.

The crimes below are listed in descending order of seriousness. What is the most serious crime committed by the woman?

A. Burglary.

B. Attempted burglary.

C. Attempted larceny.

D. No crime.

1. A defendant was charged with manslaughter. At the preliminary hearing, the magistrate dismissed the charge on the grounds that the evidence was insufficient. The prosecutor then brought the case before a grand jury. After hearing the evidence presented by the prosecutor, the grand jury refused to return an indictment. The prosecutor waited a few months until a new grand jury had been impaneled and brought the case before that grand jury, which returned an indictment charging the defendant with manslaughter. The defendant moves to dismiss the indictment on double jeopardy grounds.

Should the motion be granted?

A. No, because jeopardy had not attached.

B. No, because there has been no conviction or acquittal.

C. Yes, because any proceeding after the preliminary hearing would violate double jeopardy.

D. Yes, because bringing the case before the second grand jury was a violation of double jeopardy.

1. X-- State troopers lawfully stopped a driver on the turnpike for exceeding the speed limit by four miles per hour. One trooper approached the car to warn the driver to drive within the speed limit. The other trooper remained in the patrol car and ran a computer check of the license number of the driver's car. The computer check indicated that there was an outstanding warrant for the driver's arrest for unpaid traffic tickets. The troopers then arrested the driver. After handcuffing her, the troopers searched her and the car, and discovered 10 glassine bags of heroin in a paper bag on the back seat of the car. Later it was learned that the driver had paid the outstanding traffic tickets 10 days earlier and the warrant had been quashed, but the clerk of the court had failed to update the computer, which continued to list the warrant as outstanding. The driver was charged with unlawful possession of heroin. Her attorney filed a motion to suppress the use as evidence of the heroin found in the car.

Should the motion be granted?

A. No, because the troopers could reasonably rely on the computer report and the search was incident to arrest.

B. No, because troopers may lawfully search the passenger compartment of a car incident to a valid traffic stop.

C. Yes, because there was no arrest for the traffic violation and no lawful arrest could be made on the basis of the warrant.

D. Yes, because there was no probable cause or reasonable suspicion to believe drugs were in the car.

1. A woman who is a computer whiz decided to dedicate herself to exposing persons who traffic in child pornography. She posted a number of sexually oriented photographs on her web site. The file for each photograph contained an embedded Trojan horse program. The defendant downloaded one of those photographs onto his personal computer. Using the embedded program, the woman entered the defendant's computer and found a file containing a pornographic photograph of a child. She copied the file and turned it over to a federal law enforcement agency. A federal agent told her that a successful prosecution would require more than one photograph and offered her a monetary reward for additional photos leading to a conviction of the defendant. The woman entered the defendant's computer again, and this time she found hundreds of child pornography photos, which she turned over to the federal agency. The defendant is charged with multiple counts of violating federal statutes regarding child pornography. He moves to suppress the photographs that the woman discovered on his computer. The motion is based on both the Fourth Amendment and a federal statute forbidding interception of electronic communication without permission. The parties have stipulated that the woman's conduct in downloading photos from the defendant's computer violated the interception statute.

How should the court rule on the defendant's motion to suppress?

A. Deny it as to all photographs.

B. Grant it as to all photographs, because the woman acted without probable cause.

C. Grant it as to all photographs, because the woman violated the federal interception statute.

D. Grant it only as to the second set of photographs.

1. A state statute defines murder in the first degree as "knowingly causing the death of another person after deliberation upon the matter." Second-degree murder is defined as "knowingly causing the death of another person." Manslaughter is defined as at common law. Deliberation is defined as "cool reflection for any length of time, no matter how brief." The defendant, despondent and angry over losing his job, was contemplating suicide. He took his revolver, went to a bar, and drank until he was very intoxicated. A customer on the next stool was telling the bartender how it was necessary for companies to downsize and become more efficient in order to keep the economy strong. The defendant turned to him and said, "Why don't you shut the hell up." The customer responded, "This is a free country and I can say what I want," all the while shaking his finger at the defendant. The finger-shaking, combined with his already bad disposition and the alcohol, enraged the defendant. Trembling with fury, he snatched his revolver from his pocket and shot and killed the customer.

What crime did the defendant commit?

A. Manslaughter, because there was a reasonable explanation for his becoming enraged.

B. Murder in the first degree, because deliberation can take place in an instant.

C. Murder in the first degree, because he contemplated taking a human life before becoming intoxicated.

D. Murder in the second degree, because he knowingly caused the customer's death without deliberation.

1. In a criminal trial, the evidence showed that the defendant's neighbor tried to kill the defendant by stabbing him. The defendant ran to his room, picked up a gun, and told his neighbor to back off. The neighbor did not, but continued her attack and stabbed him in the arm. The defendant then shot the neighbor twice. The neighbor fell to the floor and lay quietly moaning. After a few seconds, the defendant fired a third shot into the neighbor. The jury found that the neighbor died instantly from the third shot and that the defendant was no longer in fear of being attacked by her.

The defendant could properly be convicted of which of the following degrees of criminal homicide, if any?

A. Attempted murder only.

B. Manslaughter only.

C. Murder or manslaughter.

D. No degree of criminal homicide.

1. A woman drove her car through the drive-through lane of a fast-food restaurant in the afternoon. When she reached the microphone used to place orders, she said, "There's a man across the street with a rifle. He can see everything you do. If you do not do exactly what I tell you, he will shoot you. Put all the money from the register into a sack and give it to me when I drive up." The clerk did not see anyone across the street and was unsure whether anyone was there. However, unwilling to risk harm to himself, he put $500 in a paper bag and handed it to the woman when she drove up to the delivery window. The woman drove off with the money but was arrested a short time later. She had lied about the man with a rifle and had acted alone.

Of what crime or crimes can the woman be convicted?

A. Embezzlement.

B. Obtaining property by false pretenses.

C. Robbery and larceny.

D. Robbery or larceny.

1. A customer asked to see an expensive watch in a jewelry store. In conversation with the clerk, the customer falsely claimed to be the son of the mayor. When handed the watch, he asked if he could put it on, walk around a bit so he could see how it felt on his wrist, and then briefly step outside to observe it in natural light. The clerk agreed, saying, "I know I can trust someone like you with the merchandise." The customer walked out of the store wearing the watch and never returned. A week later, the clerk was at a gathering when she spotted the customer wearing the watch. She told him that he must either pay for the watch or give it back. He hissed, "I'll knock your block off if you mess with me." Intimidated, the clerk backed off. The following list of crimes is in descending order of seriousness.

What is the most serious crime the customer committed?

A. Robbery.

B. Larceny.

C. False pretenses.

D. Embezzlement.

1. After a liquor store was robbed, the police received an anonymous telephone call naming a store employee as the perpetrator of the robbery. Honestly believing that their actions were permitted by the U.S. Constitution, the police talked one of the employee's neighbors into going to the employee's home with a hidden tape recorder to engage him in a conversation about the crime. During the conversation, the employee admitted committing the robbery. The employee was charged in state court with the robbery. He moved to suppress the recording on the grounds that the method of obtaining it violated his constitutional rights under both the state and federal constitutions. Assume that a clear precedent from the state supreme court holds that the conduct of the police in making the recording violated the employee's rights under the state constitution, and that the exclusionary rule is the proper remedy for this violation.

Should the court grant the employee's motion?

A. No, because the employee's federal constitutional rights were not violated, and this circumstance overrides any state constitutional provisions.

B. No, because the police were acting in the good-faith belief that their actions were permitted by the federal Constitution.

C. Yes, because the making of the recording violated the state constitution.

D. Yes, because use of the recording would violate the neighbor's federal constitutional rights.

1. Four men are charged with conspiracy to commit a series of bank robberies. Nine successful bank robberies took place during the period of the charged conspiracy. Because the robbers wore masks and gloves and stole the bank surveillance tapes, no direct identification of the robbers by the witnesses has been made. Some circumstantial evidence ties each of the men to the overall conspiracy. During cross-examination, a prosecution witness testified that one defendant was in jail on other charges during six of the robberies. That defendant's lawyer has moved for a judgment of acquittal at the close of the government's case.

Should the motion be granted?

A. No, because a conspirator is not required to agree to all of the objects of the conspiracy.

B. No, because a conspirator need not be present at the commission of each crime conspired upon.

C. Yes, provided the defendant has complied with the rule requiring pretrial notice of alibi.

D. Yes, regardless of compliance with the alibi rule, because the government is bound by exculpatory evidence elicited during its case-in-chief.

1. A defendant was charged with assault and battery in a jurisdiction that followed the "retreat" doctrine, and he pleaded self-defense. At his trial, the evidence established the following: A man and his wife were enjoying a drink at a tavern when the defendant entered and stood near the door. The wife whispered to her husband that the defendant was the man who had insulted her on the street the day before. The husband approached the defendant and said, "Get out of here, or I'll break your nose." The defendant said, "Don't come any closer, or I'll hurt you." When the husband raised his fists menacingly, the defendant pulled a can of pepper spray from his pocket, aimed it at the husband's face, and sprayed. The husband fell to the floor, writhing in pain.

Should the defendant be convicted?

A. No, because he had no obligation to retreat before resorting to nondeadly force.

B. No, because there is no obligation to retreat when one is in an occupied structure.

C. Yes, because he failed to retreat even though there was an opportunity available.

D. Yes, because the husband did not threaten to use deadly force against him.

1. A defendant was lawfully arrested without a warrant for bank robbery. He was not given Miranda warnings, but was immediately taken to a police station where he and five other men were placed in a lineup to be viewed by the bank teller. Each man was required to say the words spoken by the bank robber: "Give me all your money. I've got a gun." After all the men in the lineup spoke those words, the teller identified the defendant as the robber. The defendant subsequently moved to suppress the testimony of the teller, claiming the lineup violated his privilege against self-incrimination. At a suppression hearing, the teller testified that she had not gotten a good look at the robber's face, because the robber had been wearing a hat pulled down over most of his face, but that she was certain the defendant was the robber because she had recognized his voice at the lineup.

Should the defendant's motion be granted?

A. No, because being required to speak at the lineup, while compelled, was not testimonial or communicative.

B. No, because testimony of a witness based on firsthand observation is not subject to exclusion as the fruit of the poisonous tree.

C. Yes, because the defendant was compelled to speak at the lineup, and this compelled speech led to the witnesss identification testimony.

D. Yes, because the defendant was never informed that he could refuse to make a statement and that any statement could be used as evidence against him.

1. A federal officer had probable cause to believe a woman had participated in a bank robbery. Two days after the robbery, the woman checked into a local hotel room. When the woman left for the evening, the hotel manager opened the hotel room door so the officer could enter the room and look inside. The officer did not find any of the stolen money but did see, lying open on the bed, the woman's diary. The diary contained an entry describing the woman's involvement in robbing the bank. The woman was charged in federal court with bank robbery. She moved to suppress the diary. Should the court suppress the diary?

A. Yes, because the officer had no warrant.

B. Yes, because admitting the diary would violate the woman's privilege against self-incrimination.

C. No, because the hotel manager had actual authority to allow the officer into the hotel room.

D. No, because the officer reasonably relied on the hotel manager's apparent authority to allow the officer into the hotel room.

1. A state statute provides as follows: "In all criminal cases, whenever the Constitution permits, the burden of proof as to a defense claimed by the defendant shall rest on the defendant, and the magnitude of the burden shall be as great as the Constitution permits." The same state defines the crime of forcible rape as follows: "Forcible rape consists of sexual penetration inflicted on an unconsenting person by means of force or violence. Consent of the victim is a complete defense to a charge of rape."

At a defendant's trial for forcible rape, he testified that the alleged victim had consented to having sexual intercourse with him.

How should the trial judge instruct the jury regarding the issue of consent?

A. The burden of proving that the victim consented, by a preponderance of the evidence, rests on the defendant.

B. The burden of proving that the victim consented, by clear and convincing evidence, rests on the defendant.

C. The burden of proving that the victim consented, by proof beyond a reasonable doubt, rests on the defendant.

D. The burden of proving that the victim did not consent, by proof beyond a reasonable doubt, rests on the prosecution.

1. X-- A federal grand jury was investigating drug trafficking in the jurisdiction. It subpoenaed a witness to testify, and the prosecutor advised the witness that he had a Fifth Amendment privilege not to testify if he so chose. The witness asked that his counsel be allowed to advise him inside the grand jury room, but the prosecutor refused to allow the attorney inside. The witness, after speaking with his attorney outside the grand jury room, decided to testify and ended up making self-incriminating statements. The witness subsequently was indicted for drug crimes. The indictment was based on the witness's grand jury testimony and on evidence seized in an unconstitutional search of the witness's home.

The witness moved to dismiss the indictment.

Should the court dismiss the indictment?

A. Yes, because the witness was denied his constitutional right to advice of counsel.

B. Yes, because the indictment was based upon illegally seized evidence.

C. No, because the witness waived his constitutional rights by testifying.

D. No, because the witness had no right to counsel inside the grand jury room and the illegally seized evidence did not affect the validity of the indictment.

1. United States customs officials received an anonymous tip that heroin would be found inside a distinctively marked red package mailed from a foreign country to the United States. Pursuant to this tip, United States customs officers opened the red package and found heroin inside. They then resealed the package and left the heroin inside it. The FBI was notified and, as agents watched, the package was delivered to the address. The FBI then secured a warrant to search the house for the package. About two hours after the package was delivered, the warrant was executed at the house. The man who opened the door was arrested, and the agents found the package, unopened, in an upstairs bedroom closet. After seizing the package, the agents looked through the rest of the house. In a footlocker in the basement, they found a machine gun. The man was charged with, among other crimes, unlawful possession of the machine gun. He moved to suppress its use as evidence.

Should the court grant the motion to suppress the machine gun?

A. Yes, because the search exceeded the authority granted by the warrant.

B. Yes, because the initial search by the customs officers was without probable cause.

C. No, because, having found the package, the agents had probable cause to believe more narcotics could be located in the house and the gun was found in a proper search for narcotics.

D. No, because narcotics dealers are often armed and the search was justified to protect the agents.

1. In a city, a number of armed bank robberies were committed near closing time by a masked man wearing a white hooded sweatshirt and blue sweatpants. Police saw a man wearing a white hooded sweatshirt and blue sweatpants pacing nervously outside one of the city's banks just before it closed. The police stopped the man and frisked the outer layers of his clothing for weapons, but found none. They asked the man what he was doing outside the bank and pointed out that he was wearing clothing similar to clothing worn by the perpetrator of recent robberies. After pausing for several moments, the man confessed. The police had not provided him with any Miranda warnings. After being charged with the bank robberies, the man moved to suppress his confession. The parties agreed, and the court properly found, that the police had reasonable suspicion but not probable cause at all times before the man confessed.

Should the man's motion to suppress be granted?

A. Yes, because the confession was the fruit of a Fourth Amendment violation, even though there was no Miranda violation.

B. Yes, because the confession was the fruit of a Miranda violation, even though there was no Fourth Amendment violation.

C. Yes, because the confession was the fruit of both a Fourth Amendment violation and a Miranda violation.

D. No, because there was neither a Fourth Amendment violation nor a Miranda violation.

1. A driver stopped at a red light in his home state. A stranger opened the passenger door, got in, and pointed a gun at the driver. The stranger then directed the driver to keep driving. They drove several miles, crossed into a neighboring state, and drove several more miles. When they reached a remote location, the stranger ordered the driver to pull over. The stranger then robbed the driver of his wallet and cash, and ordered him out of the car. The stranger drove off in the driver's car. The stranger is charged with kidnapping in the neighboring state, which has adopted the Model Penal Code.

Could the stranger properly be convicted of kidnapping in the neighboring state?

A. Yes, because the driver was transported under threat of force in the neighboring state.

B. Yes, because the driver in effect paid ransom for his release.

C. No, because any kidnapping took place in the driver's home state.

D. No, because the restraint was incidental to the robbery.

1. A man who had become very drunk left a bar and started to walk home. Another patron of the bar, who had observed the man's condition, followed him. The patron saw the man stumble and fall to the ground near an alley. The patron then began to pull out a gun but saw that the man had passed out asleep in the gutter. The patron reached into the man's pocket, grabbed his wallet, and started to walk away. When the patron heard police officers approaching, he dropped the wallet and ran off. The crimes below are listed in descending order of seriousness.

What is the most serious crime for which the patron properly could be convicted?

A. Robbery.

B. Larceny.

C. Attempted robbery.

D. Attempted larceny.

1. A drug dealer agreed with another individual to purchase heroin from the individual in order to sell it on a city street corner. Unknown to the drug dealer, the other individual was an undercover police officer whose only purpose was to arrest distributors of drugs. The drug dealer made a down payment for the heroin and agreed to pay the remainder after he sold it on the street. As soon as the undercover officer handed over the heroin, other officers moved in and arrested the dealer.

The jurisdiction follows the common law approach to conspiracy.

Could the dealer properly be convicted of conspiring to distribute drugs?

A. No, because there was no overt act.

B. No, because there was no plurality of agreement.

C. Yes, because neither an overt act nor plurality of agreement is required at common law.

D. Yes, because the dealer believed all the elements of conspiracy were present and cannot take advantage of a mistake of fact or law.

1. A foreign diplomat discovered that a small person could enter a jewelry store by crawling through an air vent. The diplomat became friendly with a woman in a bar who he believed was small enough to crawl through the air vent. Without telling her that he was a diplomat, he explained how she could get into the jewelry store. She agreed to help him burglarize the store. Someone overheard their conversation and reported it to the police. Shortly thereafter, the police arrested the diplomat and the woman. Both were charged with conspiracy to commit burglary. Before trial, the diplomat moved to dismiss the charge against him on the ground that he was entitled to diplomatic immunity. The court granted his motion. The woman then moved to dismiss the conspiracy charge against her.

The jurisdiction has adopted the Model Penal Code version of conspiracy. Should the woman's motion to dismiss the conspiracy charge against her be granted?

A. No, because the diplomat's defense does not negate any element of the crime.

B. No, because the woman was not aware of the diplomat's status.

C. Yes, because a conspiracy requires two guilty participants.

D. Yes, because but for the diplomat's conduct, no conspiracy would have occurred.

1. A woman told a man to go into her friend's unlocked barn and retrieve an expensive black saddle that she said she had loaned to the friend. The man went to the friend's barn, opened the door, found a black saddle, and took it back to the woman's house. The friend had in fact not borrowed a saddle from the woman, and when the friend discovered her black saddle missing, she suspected that the woman was the thief. The friend used a screwdriver to break into the woman's house to find the saddle. Upon discovering the saddle on the woman's table, the friend took it back and called the police. The jurisdiction follows the common law, except that burglary covers structures in addition to dwellings and the nighttime element has been eliminated.

Which, if any, of these individuals is guilty of burglary?

A. All of them.

B. Only the friend.

C. Only the man.

D. Only the woman.

1. A woman promised to pay $10,000 to a hit man if he would kill her neighbor in any manner that could not be traced to her. The hit man bought a gun and watched the neighbor's house for an opportunity to shoot him. One evening, unaware of the hit man's presence, the neighbor tripped as he was walking toward his house, falling and hitting his head against the front steps. Believing that the neighbor was unconscious, the hit man ran over to him and shot him twice in the chest. When the woman learned of the neighbor's death, she paid the hit man $10,000. A medical examiner determined that the neighbor was already dead when the hit man shot him.

The crimes below are listed in descending order of seriousness. What is the most serious crime for which the woman properly could be convicted?

A. Murder.

B. Attempted murder.

C. Conspiracy.

D. Solicitation.

1. The police suspected a woman of growing marijuana in her private residence. Narcotics officers went to her neighborhood in the middle of the night. Nothing unlawful could be seen from the street, so the officers walked into the neighbors' yard and looked through the woman's kitchen window, which had neither drapes nor shades. The officers observed what appeared to be marijuana plants being cultivated under grow lights in the kitchen. Using this information, the officers obtained a search warrant. The execution of that warrant netted numerous marijuana plants. The woman was charged with possession of marijuana. She moved to suppress the marijuana plants recovered when the warrant was executed, claiming that the evidence supporting the warrant was obtained through a search that violated the Fourth Amendment.

Should the marijuana plants be suppressed?

A. No, because regardless of the lawfulness of the police conduct beforehand, they did obtain a warrant to search the woman's home.

B. No, because the woman could have no reasonable expectation of privacy concerning activities that she exposed to the view of her neighbors.

C. Yes, because the officers' clandestine observation of the plants violated the woman's reasonable expectation of privacy concerning activities occurring in her home.

D. Yes, because no unlawful activities could be observed by the officers from any public vantage point.

1. X-- A woman offered to pay her friend one-third of the stolen proceeds if the friend would drive the getaway car to be used in a bank robbery. The friend agreed but made the woman promise not to hurt anyone during the robbery. The woman then drove to a sporting goods store, where she explained to the store owner that she needed a small firearm for use in a bank robbery. The store owner responded that he would charge extra because the woman was so unwise as to confide her unlawful plans for using the weapon, and he sold her a handgun at four times the regular price. During the robbery, the woman used the gun to threaten a bank teller into handing over the money. The gun discharged by accident and killed a bank customer.

At common law, who in addition to the woman could properly be convicted of murder in the death of the customer?

A. Both the friend and the store owner.

B. Neither the friend nor the store owner.

C. Only the friend.

D. Only the store owner.

1. A man decided to steal a car he saw parked on a hill. When he got in and started the engine, the car began rolling down the hill. The man quickly discovered that the car's brakes did not work. He crashed through the window of a store at the bottom of the hill. The man was charged with larceny of the car and with the crime of knowingly damaging the store's property. At trial, the judge instructed the jury that if the jury found both that the man was guilty of larceny of the car and that the damage to the store was the result of that larceny, then it should also find him guilty of malicious damage of property. The man was convicted on both counts. On appeal, he argued that the conviction for malicious damage of property should be reversed because the instruction was not a correct statement of the law.

Should the man's conviction be affirmed?

A. Yes, because his intent to steal the car provides the necessary mental element.

B. Yes, because he was committing a felony.

C. No, because the instruction wrongly described the necessary mental state.

D. No, because it would violate double jeopardy to convict the man of two crimes for a single act.

1. X-- A state grand jury investigating a murder learned that the key suspect might have kept a diary. The grand jury issued a subpoena duces tecum requiring the suspect to produce any diary. The subpoena made clear that the grand jury was seeking only the diary and not any testimony from the suspect. The suspect refused to produce the diary, citing the privilege against self-incrimination.

Under what circumstances, if any, could the grand jury compel production of the diary over the suspect's Fifth Amendment privilege?

A. It may compel production without granting immunity because the suspect was not compelled to write a diary.

B. It may compel production only if the suspect is granted use and derivative use immunity from the act of production.

C. It may compel production only if the suspect is granted transactional immunity.

D. It may not compel production of a private diary under any circumstances.

1. A man was angered after he was unexpectedly laid off from his longtime job as a factory assembly worker. The next day, he returned to the factory floor and indiscriminately fired shotgun rounds in the air. The man later testified, without contradiction, that he had not intended to kill anyone but simply sought to exact revenge on the factory's owners by shutting down operations for the day. Unfortunately, one of the bullets ricocheted off the wall and killed the man's best friend.

The crimes below are listed in descending order of seriousness.

On these facts, what is the most serious offense for which the man properly could be convicted?

A. Murder.

B. Voluntary manslaughter.

C. Involuntary manslaughter.

D. Assault.

1. An executive of an accounting firm was fired and told to immediately leave the building where she worked. The executive went home, but she returned that night to retrieve personal items from her office. When she discovered that her key no longer opened a door to the building, she forced the door open and went to her former office. To avoid attracting attention, she did not turn on any lights. In the dark, she knew that she was taking some items that were not hers; she planned to sort these out later and return them. Upon arriving home, she found that she had taken a record book and some financial papers that belonged to the firm. After thinking it over and becoming angrier over being fired, she burned the book and papers in her fireplace. The jurisdiction has expanded the crime of burglary to include all buildings.

What crime(s) has the executive committed?

A. Burglary and larceny.

B. Burglary, but not larceny.

C. Larceny, but not burglary.

D. Neither larceny nor burglary.

1. X-- A woman and her sister took a trip to the Caribbean. When they passed through U.S. Customs inspection upon their return, the customs officials found liquid cocaine in several bottles each of them was carrying. They were arrested. Upon separate questioning by customs officers, the woman broke down and cried, "I told my sister there were too many officers at this airport." The sister did not give a statement. The woman and her sister were indicted for conspiracy to import cocaine. They were tried separately. At the woman's trial, after the government introduced the above evidence and rested its case, her lawyer moved for a judgment of acquittal on grounds of insufficient evidence.

Should the court grant the motion?

A. No, because the evidence shows that both the woman and her sister agreed to import cocaine.

B. No, because the evidence shows that both the woman and her sister possessed cocaine.

C. Yes, because the evidence shows only that the woman and her sister committed separate crimes of cocaine possession.

D. Yes, because the evidence shows that the woman effectively withdrew from the conspiracy when she cooperated by giving a statement.

1. X-- A store owner whose jewelry store had recently been robbed was shown by a police detective a photograph of the defendant, who previously had committed other similar crimes. The store owner examined the photograph and then asked the detective whether the police believed that the man pictured was the robber. After the detective said, "We're pretty sure," the store owner stated that the man in the photograph was the one who had robbed her. The defendant was indicted for the robbery. His counsel moved to suppress any trial testimony by the store owner identifying the defendant as the robber. Should the court grant the motion and suppress the store owner's trial testimony identifying the defendant as the robber?

A. No, because suppression of in-court testimony is not a proper remedy, even though the out-of-court identification was improper.

B. No, because the out-of-court identification was not improper.

C. Yes, because the improper out-of-court identification has necessarily tainted any in-court identification.

D. Yes, unless the prosecution demonstrates that the in-court identification is reliable.

1. A man and his friend were watching a televised football game at the man's home. Upset by a penalty called by the referee, the friend threw a bottle of beer at the man's television, breaking the screen. Enraged, the man picked up a nearby hammer and hit the friend on the head with it. The friend died from the blow. The crimes below are listed in descending order of seriousness.

In a jurisdiction that follows common law principles, what is the most serious crime of which the man could properly be convicted?

A. Murder.

B. Voluntary manslaughter.

C. Involuntary manslaughter.

D. Assault.

1. X--A defendant was charged with attempted murder. At the preliminary hearing, the presiding judge heard the testimony of four prosecution witnesses and found that the prosecution had failed to establish probable cause that the defendant had committed any offense. Accordingly, he dismissed the charge. The prosecutor then called the same four witnesses before a grand jury. The grand jury indicted the same defendant for attempted murder.

The defendant has moved to quash the indictment on the ground of double jeopardy.

How should the court proceed?

A. Grant the motion, because the dismissal of the first charge on the merits, whether correct or incorrect, bars any further prosecution.

B. Grant the motion, unless the prosecution has evidence that was not presented in the first case.

C. Deny the motion, because the defendant has not yet been in jeopardy of conviction on the attempted murder charge.

D. Deny the motion, because the protection of the double jeopardy clause does not come into play until there has been a conviction or an acquittal.

1. A man had spent the evening drinking at a local bar and was weaving down the street on his way home, singing. Suddenly, a person wearing a cartoon character mask jumped out from an alley, pointed his gun at the man, and snarled, "This is loaded, buddy, and I don't mind using it. Hand over your cash pronto." The man was so drunk that he failed to understand what was going on and started to howl with laughter at the sight of the cartoon mask. Surprised and rattled by the man's reaction, the masked gunman fled. The man soon recovered his composure and staggered home safely.

The crimes below are listed in descending order of seriousness.

What is the most serious crime of which the masked gunman may properly be charged and convicted?

A. Attempted robbery.

B. Attempted battery.

C. Attempted larceny.

D. No crime.

1. X-- Police, who had probable cause to arrest a man for a series of armed robberies, obtained a warrant to arrest him. At 6 a.m. they surreptitiously entered the man's house and, with guns drawn, went to the man's bedroom, where they awakened him. Startled, the man asked, "What's going on?" and an officer replied, "We've got you now." Another officer immediately asked the man if he had committed a particular robbery, and the man said that he had. The police then informed him that he was under arrest and ordered him to get dressed.

Charged with robbery, the man has moved to suppress the use of his statement as evidence.

What is the man's best argument for granting his motion?

A. The police did not give him the required Miranda warnings.

B. The statement was not voluntary.

C. He was not informed that he was under arrest until after he made the statement.

D. The police did not have a search warrant authorizing entry into the house.

1. A defendant was charged with battery, defined as at common law. At trial, an expert witness testified for the defense that the defendant, an athlete, was under the influence of a performance-enhancing drug at the time he committed the battery and that he would not have done so had he not been so influenced. The defendant asked for an instruction to the effect that if the jury believed that he was influenced by the drug at the time of the crime and would not have committed it otherwise, it had to acquit him.

Which of the following circumstances would most aid the defendant's argument in favor of such an instruction?

A. Evidence that the defendant is addicted to this drug and has an overwhelming urge to consume it.

B. Evidence that the defendant's coach, who gave him the drug, told him it was only an aspirin.

C. Evidence that the victim of the assault taunted the defendant about his use of the drug immediately before the assault.

D. Expert testimony that a reasonable person, on consuming this drug, may experience uncontrollable rages.

1. A common law jurisdiction defines first-degree murder as any murder that is (1) committed by means of poison or (2) premeditated. All other murder is second-degree murder, and manslaughter is defined as at common law. An employee was angry with her boss for denying her a raise. Intending to cause her boss discomfort, the employee secretly dropped into his coffee three over-the-counter laxative pills. The boss drank the coffee containing the pills. Although the pills would not have been dangerous to an ordinary person, because the boss was already taking other medication, he suffered a seizure and died.

If the employee is charged with murder in the first degree, should she be convicted?

A. Yes, only because she used poison.

B. Yes, only because she acted with premeditation.

C. Yes, both because she used poison and because she acted with premeditation.

D. No.

1. Federal agents had a hunch that a local man was engaged in illegal gambling activities. An agent decided to enter the man's house while he was not at home and see what he could find. The agent discovered an envelope containing $5,000 in cash and an executive's business card. Returning the envelope to its place, the agent located and interviewed the executive, who admitted that he had paid the man $5,000 to settle a gambling debt; the executive also disclosed that the man regularly took illegal bets from the executive and several of his acquaintances. The agent then interviewed the acquaintances, who confirmed what the executive had told him. The agent then arranged to be introduced to the man at a local bar. After a few drinks, the man, unaware of the agent's identity, boasted that he was one of the biggest bookmakers in the state. The agent testified to all of his investigation's discoveries before a grand jury, which returned an indictment against the man for illegal gambling activities, based solely on the agent's testimony. The man's attorney then filed a motion to dismiss the indictment, claiming that it rested on violations of the man's constitutional rights.

Should the court grant the motion?

A. No, because dismissal of the indictment is not the appropriate remedy.

B. Yes, because much of the agent's testimony before the grand jury was inadmissible hearsay.

C. Yes, because of the agent's unlawful search of the man's home.

D. Yes, because of the agent's violation of the man's right to counsel.

1. A man asked his girlfriend to lend him something he could use to break into his neighbor's padlocked storage shed in order to steal a lawn mower. She handed him a crowbar. He took the crowbar but then found a bolt cutter that the neighbor had left outside the shed. Using the bolt cutter, he cut the padlock on the shed and took the mower, which he then used to mow his girlfriend's lawn. She was surprised and pleased by this gesture. Burglary in the jurisdiction applies to any structure or building, and there is no nighttime element. The girlfriend has been charged as an accomplice to burglary and larceny.

Of which crimes, if any, is she guilty?

A. Burglary and larceny.

B. Burglary, but not larceny, because she intended to assist only in the breaking.

C. Larceny, but not burglary, because she provided no actual assistance to the breaking but received a benefit from the larceny.

D. Neither burglary nor larceny, because she provided no actual assistance.

1. A defendant was charged with the capital offense of first-degree murder, for which the only available penalties were death or life in prison without parole. During jury selection, the trial court, over the defendant's objection, granted the prosecution's for-cause challenge of five prospective jurors who indicated upon questioning by both parties that they personally were opposed to the death penalty and were unsure if they could ever vote to impose it. The jury convicted the defendant and, following a separate sentencing hearing, sentenced him to death. On appeal, the defendant's only argument was that excusing the prospective jurors violated his federal constitutional right to be tried by a jury chosen from a fair cross section of the community.

How should the court of appeals rule on the conviction and the death sentence?

A. Affirm both.

B. Affirm the conviction, but reverse the death sentence and remand for a new sentencing hearing before a different jury.

C. Affirm the conviction, but reverse the death sentence and remand for resentencing to life in prison.

D. Reverse both.

1. X-- A defendant was tried for armed robbery. The state introduced evidence that a man, identified by witnesses as the defendant, entered a convenience store at 11 p.m. on March 5, threatened the clerk with a gun, and took $75 from the cash register. The defendant did not testify, but his sister did. She testified that on March 5, at the time of the robbery, the defendant was with her in a city 300 miles away. On cross-examination, the sister admitted having given a statement to the police in which she had said that the defendant was not with her on March 5, but she claimed that the earlier statement was mistaken. The court instructed the jury that in order to convict the defendant, they had to find all of the elements of the crime beyond a reasonable doubt.

As to the defendant's claim of alibi, which of the following additional instructions would be proper?

A. Alibi is a matter of defense and so must be established by the defendant; however, the burden of persuasion is by a preponderance of the evidence, not beyond a reasonable doubt.

B. Before you may consider the defendant's claim of alibi, you must decide whether he has produced sufficient evidence to raise the issue.

C. If you have a reasonable doubt as to whether the defendant was present at the convenience store at about 11 p.m. on March 5, you must find him not guilty.

D. If the defendant's evidence has caused you to have a reasonable doubt as to whether he was the robber, you must find him not guilty.

1. A state statute provides: "Aggravated robbery of the elderly consists of robbery committed against a victim who is 65 years of age or older." Another state statute provides that when a criminal statute does not designate a necessary mental state, the mental state required is recklessness. A third state statute provides that a person acts recklessly if the person "consciously disregards a substantial and unjustified risk that the material element exists or will result from the person's conduct." The evidence at a criminal trial showed that the defendant robbed a 66-year-old man outside a senior citizens' center. The defendant testified truthfully that the robbery had occurred on a dark night, that she had had no idea how old the victim was and had not cared how old the victim was, and that she had intended to rob whomever she encountered. Could the defendant properly be convicted of aggravated robbery of the elderly?

A. No, because the only evidence on the issue showed that the defendant did not know, nor could she reasonably have known, the victim's age.

B. No, because there was no evidence of a substantial risk that the victim was age 65 or older.

C. Yes, because the evidence was clear that the victim was 66 years old, and the statute is designed to protect the elderly.

D. Yes, because the jury could find that there was no justification for the defendant's conduct and that she was willing to take the risk that the victim was age 65 or older.

1. While on their way home from a ball game, a driver and his passenger stopped at an all-night gas station. The passenger offered to pay for the gas. While the passenger pumped gas, he was surprised to see the driver enter the station, take money from the unattended cash drawer, and get back in the car. The passenger paid the attendant for the gas, and the driver drove off. The driver offered to reimburse the passenger for the gas, but the passenger declined. After discovering the missing cash, the gas station attendant called the police, and the driver was later stopped. The driver escaped with the stolen money, however, and was never prosecuted.

If the passenger is prosecuted for theft as an accomplice, should he be convicted?

A. No, because he had no intent to promote the commission of the offense.

B. No, because the driver, the principal, was never prosecuted.

C. Yes, because he facilitated commission of the offense by failing to make any effort to stop it.

D. Yes, because he paid the attendant while he knew the driver was holding the stolen money.

1. Police responded to a call that shots had been heard coming from a certain house. Upon arriving at the house, the police looked through a window and saw a man lying on the living room floor. The police opened the front door, which was not locked, and found that the man had recently been shot in the back and was unconscious. An ambulance was called. While waiting for the ambulance, one officer walked through the house to see if anyone else was present. No one else was found, but the officer did see on the kitchen table clear bags of what he believed to be cocaine. The officer seized the bags, and laboratory tests later confirmed that the contents were cocaine. After the ambulance arrived a few minutes later and took the man to the hospital, the police went through the house and opened drawers trying to find the gun used in the shooting. No gun was found, but upon opening a drawer in an upstairs bedroom, the police found marijuana and seized it. Later investigation led to charging a young woman, who lived in the house, with unlawful possession of the cocaine and the marijuana. The young woman has filed a motion to suppress the use of both as evidence on the ground that the entry into the house and the searches were made without a warrant.

How should the court decide the young woman's motion?

A. Grant it as to the cocaine, but deny it as to the marijuana.

B. Deny it as to the cocaine, but grant it as to the marijuana.

C. Grant it as to both the cocaine and the marijuana.

D. Deny it as to both the cocaine and the marijuana.

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

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

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

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

A. acted under a mistake of law.

B. had the consent of the owner.

C. reasonably thought he was in the homeowner's house.

D. found the window unlocked.

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

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

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

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

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

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

He should be

A. convicted on the authority of Case A.

B. convicted on the authority of Case B.

C. acquitted on the authority of Case C.

D. acquitted on the authority of Case D.

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

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

A. he was not aware of the duty-to-report statute.

B. he lacked the mental state necessary to the commission of the crime.

C. his omission was not the proximate cause of death.

D. the day-care corporation, rather than the employee, was guilty of the omission, which was sanctioned by its supervisory-level agent.

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

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

The police knocked on the suspect's door and called out, "Police. Open up. We have a search warrant." After a few seconds with no response, the police forced the door open and entered. Hearing noises in the basement, the police ran down there and found the suspect with a large brown suitcase and put handcuffs on the suspect. A search of his person revealed a switchblade knife and a .45-caliber pistol. The suspect cursed the police and said, "You never would have caught me with the stuff if it hadn't been for that lousy snitch Harvey!"

The police then fanned out through the house, looking in every room and closet. They found no one else, but one officer found an Uzi automatic weapon in a box on a closet shelf in the suspect's bedroom.

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

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

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

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

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

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

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

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

The babysitter is

A. not guilty of larceny or attempted larceny, because the 11-year-old boy did not commit any crime.

B. not guilty of larceny but guilty of attempted larceny, because she never acquired possession of the television.

C. guilty of larceny as an accessory to the 11-year-old boy.

D. guilty of larceny by the use of an innocent agent.

226. A woman decided to steal a necklace that belonged to her neighbor. She knew where the neighbor kept the necklace because she had been in the neighbor's house on many occasions when the neighbor had taken off the necklace and put it away in a jewelry box in the bathroom. One night, the woman went to the neighbor's house. The neighbor was away, and the house was dark. The woman opened the bathroom window, saw the jewelry box on the counter, and started to climb inside. As her leg cleared the window sill, the neighbor's cat let out a loud screech. Terrified, the woman bolted back outside and fled.

The crimes below are listed in descending order of seriousness. What is the most serious crime committed by the woman?

A. Burglary.

B. Attempted burglary.

C. Attempted larceny.

D. No crime.

227. A woman who is a computer whiz decided to dedicate herself to exposing persons who traffic in child pornography. She posted a number of sexually oriented photographs on her web site. The file for each photograph contained an embedded Trojan horse program. The defendant downloaded one of those photographs onto his personal computer. Using the embedded program, the woman entered the defendant's computer and found a file containing a pornographic photograph of a child. She copied the file and turned it over to a federal law enforcement agency. A federal agent told her that a successful prosecution would require more than one photograph and offered her a monetary reward for additional photos leading to a conviction of the defendant. The woman entered the defendant's computer again, and this time she found hundreds of child pornography photos, which she turned over to the federal agency. The defendant is charged with multiple counts of violating federal statutes regarding child pornography. He moves to suppress the photographs that the woman discovered on his computer. The motion is based on both the Fourth Amendment and a federal statute forbidding interception of electronic communication without permission. The parties have stipulated that the woman's conduct in downloading photos from the defendant's computer violated the interception statute.

How should the court rule on the defendant's motion to suppress?

A. Deny it as to all photographs.

B. Grant it as to all photographs, because the woman acted without probable cause.

C. Grant it as to all photographs, because the woman violated the federal interception statute.

D. Grant it only as to the second set of photographs.

228. A state statute defines murder in the first degree as "knowingly causing the death of another person after deliberation upon the matter." Second-degree murder is defined as "knowingly causing the death of another person." Manslaughter is defined as at common law. Deliberation is defined as "cool reflection for any length of time, no matter how brief." The defendant, despondent and angry over losing his job, was contemplating suicide. He took his revolver, went to a bar, and drank until he was very intoxicated. A customer on the next stool was telling the bartender how it was necessary for companies to downsize and become more efficient in order to keep the economy strong. The defendant turned to him and said, "Why don't you shut the hell up." The customer responded, "This is a free country and I can say what I want," all the while shaking his finger at the defendant. The finger-shaking, combined with his already bad disposition and the alcohol, enraged the defendant. Trembling with fury, he snatched his revolver from his pocket and shot and killed the customer.

What crime did the defendant commit?

A. Manslaughter, because there was a reasonable explanation for his becoming enraged.

B. Murder in the first degree, because deliberation can take place in an instant.

C. Murder in the first degree, because he contemplated taking a human life before becoming intoxicated.

D. Murder in the second degree, because he knowingly caused the customer's death without deliberation.

229. X-- After a liquor store was robbed, the police received an anonymous telephone call naming a store employee as the perpetrator of the robbery. Honestly believing that their actions were permitted by the U.S. Constitution, the police talked one of the employee's neighbors into going to the employee's home with a hidden tape recorder to engage him in a conversation about the crime. During the conversation, the employee admitted committing the robbery. The employee was charged in state court with the robbery. He moved to suppress the recording on the grounds that the method of obtaining it violated his constitutional rights under both the state and federal constitutions. Assume that a clear precedent from the state supreme court holds that the conduct of the police in making the recording violated the employee's rights under the state constitution, and that the exclusionary rule is the proper remedy for this violation.

Should the court grant the employee's motion?

A. No, because the employee's federal constitutional rights were not violated, and this circumstance overrides any state constitutional provisions.

B. No, because the police were acting in the good-faith belief that their actions were permitted by the federal Constitution.

C. Yes, because the making of the recording violated the state constitution.

D. Yes, because use of the recording would violate the neighbor's federal constitutional rights.

230. A man decided to steal a car he saw parked on a hill. When he got in and started the engine, the car began rolling down the hill. The man quickly discovered that the car's brakes did not work. He crashed through the window of a store at the bottom of the hill. The man was charged with larceny of the car and with the crime of knowingly damaging the store's property. At trial, the judge instructed the jury that if the jury found both that the man was guilty of larceny of the car and that the damage to the store was the result of that larceny, then it should also find him guilty of malicious damage of property. The man was convicted on both counts. On appeal, he argued that the conviction for malicious damage of property should be reversed because the instruction was not a correct statement of the law.

Should the man's conviction be affirmed?

A. Yes, because his intent to steal the car provides the necessary mental element.

B. Yes, because he was committing a felony.

C. No, because the instruction wrongly described the necessary mental state.

D. No, because it would violate double jeopardy to convict the man of two crimes for a single act.

231. A defendant was charged with attempted murder. At the preliminary hearing, the presiding judge heard the testimony of four prosecution witnesses and found that the prosecution had failed to establish probable cause that the defendant had committed any offense. Accordingly, he dismissed the charge. The prosecutor then called the same four witnesses before a grand jury. The grand jury indicted the same defendant for attempted murder. The defendant has moved to quash the indictment on the ground of double jeopardy. How should the court proceed?

A. Grant the motion, because the dismissal of the first charge on the merits, whether correct or incorrect, bars any further prosecution.

B. Grant the motion, unless the prosecution has evidence that was not presented in the first case.

C. Deny the motion, because the defendant has not yet been in jeopardy of conviction on the attempted murder charge.

D. Deny the motion, because the protection of the double jeopardy clause does not come into play until there has been a conviction or an acquittal.