

**QUESTION 12 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK IV  
OR IN SOFTEST ANSWER SCREEN 12**

David Defendant was on trial before a jury on the charge of arson of other real property. When the prosecution rested its case, David's counsel moved for a directed verdict of acquittal. David's counsel argued that the People's evidence failed to prove that the structure that had been burned was not a dwelling. He maintained it was incumbent on the People to prove this element factually. The prosecution responded no such proof was required, but the trial court sided with David's counsel. The court found that this element was required, but not established by the People's evidence. The court granted the motion of David's counsel.

After the court granted the motion, the jury was discharged. At a subsequent proceeding occasioned by the People's request to set a new trial date, David's counsel argued that retrial was barred on double jeopardy grounds. The prosecution responded that David's double jeopardy rights were not involved because of the trial court's erroneous addition of a non-required element. The trial court agreed it had erred. David's counsel nevertheless argued the court's error did not impact David's right to not be retried, because the People failed to prove their case.

**Discuss the double jeopardy principles involved and, applying those principles, discuss whether David's retrial is barred. Fully explain your answers.**