

Scott Pearce's Master MBE Method

Criminal Law and Procedure

Criminal Law and Procedure - Official National Conference of Bar Examiners Outline of Testable Issues

- I. Homicide
 - A. Intended killings
 - 1. Premeditation - deliberation
 - 2. Provocation
 - B. Unintended killings
 - 1. Intent to injure
 - 2. Reckless and negligent killings
 - 3. Felony - murder
 - 4. Misdemeanor - manslaughter

- II. Other crimes
 - A. Theft
 - 1. Larceny
 - 2. Embezzlement
 - 3. False Pretenses
 - B. Receiving stolen goods
 - C. Robbery
 - D. Burglary
 - E. Assault and battery
 - F. Rape; statutory rape
 - G. Kidnaping
 - H. Arson

III. Inchoate crimes; parties

- A. Inchoate offenses
 - 1. Attempts
 - 2. Conspiracy
 - 3. Solicitation
- B. Parties to crime

IV. General principles

- A. State of mind
 - 1. Required mental state
 - 2. Strict liability
 - 3. Mistake of fact or law
- B. Responsibility
 - 1. Insanity
 - 2. Intoxication
- C. Causation
- D. Justification

V. Constitutional protection of accused persons (*Criminal Procedure* - 40%)

- A. Arrest, search and seizure
- B. Confessions and privilege against self-incrimination
- C. Lineups and other forms of identification
- D. Right to counsel
- E. Fair trial and guilty pleas
- F. Double jeopardy

Question 1

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 Defendant could prevent it. Defendant's driver's license had expired three months previously; 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, 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

Question 2

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

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

Questions 3-4 are based on the following fact situation.

Read the summaries of the decisions in the four cases (A-D) below. Then decide which is most applicable as a precedent to each of the cases in the questions that follow, and indicate each choice by marking the corresponding space on the answer sheet.

A. Defendant hit a fellow worker on the head with an iron crowbar, crushing his skull. Although Defendant testified he did not intend to kill, his conviction of murder was affirmed.

B. Defendant and Doaks held up a bank and tried to escape in their car. Shots from pursuing police disabled the car, and Defendant was captured. Doaks fled on foot, cornered a moving car, and at gun point forced the driver to drive off. A chase extending over 20 miles followed. In an exchange of shots, a policeman was killed and Doaks escaped. Defendant's conviction of murder was affirmed.

C. Smythe owed Defendant \$500. Impatient at Smythe's failure to pay, Defendant went to Smythe's home. He demanded payment, brandished a revolver, and threatened to shoot Smythe if he did not pay up. All this occurred in the presence of Smythe's aged aunt, who, as a result of the excitement, died of heart failure on the spot. Defendant's conviction of manslaughter was affirmed.

D. Defendant saw his wife and Ares go into the woods under circumstances that made him suspect adultery. While following them after they came out of the woods, Defendant was told by Brent that Brent had seen them commit adultery the day before. Defendant got a rifle and shot Ares dead. Defendant's conviction of murder was reversed as the evidence showed guilt only of manslaughter.

Question 3

Policeman undertook to arrest Fan for throwing a bottle, and hitting a baseball umpire. Fan was innocent and indignantly objected to being arrested. Since Policeman had no warrant, the arrest was illegal. Fan, forcibly resisting Policeman, finally succeeded in seizing Policeman's revolver and shot him dead.

Question 4

Policeman, having a warrant for Defendant's arrest for a felonious assault, went to his home to arrest him. Defendant resisted and during the ensuing struggle stabbed Policeman fatally with a butcher knife.

Question 5

Dent, 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. Dent 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, Dent choked the customer to death.

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

- A. granted, because the jury could find that Dent 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 Dent intended to kill or to cause serious bodily harm
- D. denied because the evidence shows that Dent provoked the assault on himself by his criminal misconduct

Question 6

Dann 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 Dann 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. Dann 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 Dann is charged with second degree murder, Dann'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

Question 7

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

Shortly thereafter, both went out to get more beer, leaving the door to James's room standing open. Making an excuse about having dropped his pen. Defendant went back into James'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 James was too drunk to notice that the cigarettes were missing.

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

Questions 8-9 are based on the following fact situation.

Johnson 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, Defendant could sell the ring. A week before expiration of the 60 days: Defendant had an opportunity to sell the ring to a customer for \$125. He did so, thinking it unlikely that Johnson would repay the loan and if he did, Defendant would be able to handle him somehow, even by paying him for the ring if necessary. Two days later, Johnson came in with the money to reclaim his ring. 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.

Question 8

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

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

Question 9

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

- A. Larceny
- B. Embezzlement
- C. False pretenses
- D. None of the above

Questions 10-11 are based on the four case summaries below. For each question, select the case that would be most applicable as a precedent.

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.

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 them. The car was wrecked on their way back. Conviction for larceny reversed.

C. *People v. Loblett*. Defendant, a tenant of a city apartment, advertised it for sublease. Will agreed to sublease for three months, and on March 12 paid Defendant \$550, the total agreed rental. Will 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, 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 Defendant had given a false address, and that he had stolen the horse the same day. Conviction of larceny affirmed.

Question 10

FACTS:

Jones, 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 Jones arrested and charged with larceny.

Question 11

FACTS:

Harris, 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." Harris was later charged with larceny of the cameras and watches.

Questions 12-13 are based on the following fact situation.

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

Question 12

On the evidence stated, Crowley 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 Crowley knew the stamps were stolen, he neither helped to plan nor participated or assisted in the theft
- D. not guilty, because Jackson and Brannick had not been convicted of or charged with conspiracy, and Crowley cannot be guilty of conspiracy by himself

Question 13

If Jackson and Brannick are charged with conspiracy to steal the stamps in the state court, they should, on the evidence stated, be found

- A. not guilty, because the charge of conspiracy is a lesser included offense in the charge of larceny
- B. not guilty, because to charge them with conspiracy after their conviction of larceny would constitute double jeopardy
- C. not guilty, because the state prosecution is barred by the prosecution in federal court
- D. guilty, because they planned and conspired to steal the stamps

Question 14

Adam and Bailey, brothers, operated an illicit still. They customarily sold to anyone unless they suspected the person of being a revenue agent or an informant. One day when Adam was at the still alone, he was approached by Mitchell, who asked to buy a gallon of liquor. Mitchell was in fact a revenue officer. After Adam had sold him the liquor, Mitchell revealed his identity. Adam grabbed one of the rifles that the brothers kept handy in case of trouble with the law, and shot and wounded Mitchell. Other officers, hiding nearby, overpowered and arrested Adam.

Shortly thereafter, Bailey came on the scene. The officers in hiding had been waiting for him. One of them approached him and asked to buy liquor. Bailey was suspicious and refused to sell. The officers nevertheless arrested him.

Adam and Bailey 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 Adam and Bailey is true?

- A. Neither is guilty.
- B. Both are guilty.
- C. Adam is guilty but Bailey is not, because the conspiracy had terminated with the arrest of Adam.
- D. Adam is guilty but Bailey is not, because Adam's act was outside the scope of the conspiracy.

Questions 15-16 are based on the following fact situation.

Bill and Chuck hated Vic and agreed to start a fight with Vic and, if the opportunity arose, to kill him.

Bill and Chuck met Vic in the street outside a bar and began to push him around. Ray, Sam, and Tom, who also hated Vic, stopped to watch. Ray threw Bill a knife. Sam told Bill, "Kill him." Tom, who made no move and said nothing, hoped that Bill would kill Vic with the knife. Chuck held Vic while Bill stabbed and killed him.

Question 15

On a charge of murdering Vic, Sam 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 had the requisite intent, will not make him guilty as an accomplice
- C. guilty, because, with the intent to have Bill kill Vic, he shouted encouragement to Bill
- D. guilty, because he aided and abetted the murder through his mere presence plus his intent to see Vic killed

Question 16

On a charge of murdering Vic, Tom is

- A. not guilty, because mere presence, coupled with silent approval and intent is not sufficient
- B. not guilty, because he did not tell Bill ahead of time that he hoped Bill would murder Vic
- 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

Question 17

“A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law.”

This quotation is basically a statement of the

- A. M'Naghten Rule
- B. Right and wrong plus irresistible impulse test
- C. Durham Rule
- D. Model Penal Code provision

Question 18

Dexter, a physician, and Caroline, his patient, had sexual intercourse in his office. Caroline is a married woman and if charged with the crime of adultery, her best defense would be which of the following?

- A. She promptly reported the incident to her husband, who condoned her conduct.

- B. Dexter induced her to believe that a natural cure through sexual intercourse was best for her condition.
- C. Dexter induced her to believe that she was pregnant, that childbirth would be dangerous to her life, and that he could abort the pregnancy by sexual intercourse.
- D. Dexter induced her to believe he was using a medical instrument.

Questions 19-20 are based on the following statute.

VEHICULAR MANSLAUGHTER. Whoever in the course of driving a motor vehicle as defined in the Vehicle Code is criminally negligent in driving such vehicle or omits to do anything that is his duty to do and shows a wanton and reckless disregard for the safety of other persons and as a result of such act or omission causes the death of a human being is guilty of vehicular manslaughter.

Vehicular manslaughter is punishable by a sentence of not more than 10 years in the state prison or not more than one year in the county jail.

Question 19

Defendant, driving along at a reasonable rate of speed, was disturbed by a child carrying a silver balloon. He went through a boulevard stop light and killed a pedestrian. He is charged with vehicular manslaughter. Of the following proposed definitions of criminal negligence, which is most favorable to the Defendant?

- A. Criminal negligence is something more than the slight negligence necessary to support a civil action for damages. It means disregard for the consequences of the act and indifference to rights of others.
- B. Any person who drives a motor vehicle should realize the danger to others. If he fails to respond to surrounding circumstances, he is criminally negligent. Criminal negligence involves reckless disregard for the lives or safety of others.
- C. To find the defendant guilty of criminal negligence, the jury must find as a fact that he intentionally did something he should not have done or intentionally failed to do something which he should have done under circumstances that demonstrate a conscious disregard of a known danger that his conduct would produce the result which it did produce.
- D. Criminal negligence is something more than the slight negligence usually required for tort liability. It is something less than the wanton misconduct required for civil liability under the guest statute. It is, of course, conduct that demonstrates something less than the abandoned and malignant heart required for murder.

Question 20

In a particular jurisdiction there are no statutory standards for the amount of alcohol required to be in the blood to create the presumption that a person is under the influence of alcohol, Defendant, an alcoholic, while driving his motor vehicle, collided with another vehicle. A passenger was killed. Defendant is charged with vehicular manslaughter. Experts will testify that a person with blood alcohol of 0.00 to 0.05 per cent is not under the influence. From 0.05 to 0.10 per cent he may be under the influence. Most of those with 0.10 to 0.15 per cent are under the influence. All of those with over 0.15 per cent are under the influence. Defendant consented to and was given a blood alcohol test 60 minutes after the accident. The test showed 0.11 per cent alcohol. Of the following, what is Defendant's most appropriate argument to the jury?

- A. Assuming the jury finds that the Defendant was driving under the influence of alcohol, they cannot convict him if he lacked the capacity to have the mental state of criminal negligence.
- B. The results of the blood test were improperly admitted in evidence because there are no statutory standards for the interpretation of such tests.
- C. The blood test should merely be one more factor in the jury's determination along with such things as the police officers' opinion as to sobriety.
- D. Any statute which makes it a crime to kill someone while under the influence of alcohol is unconstitutional; alcoholism is a disease and cannot be punished any more than narcotic addiction.

Question 21

Brown suffered from the delusion that he was a special agent of God. He frequently experienced hallucinations in the form of hearing divine commands. Brown 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." Brown, 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 Brown shot the bishop, who was taken to the hospital where he died two weeks later.

Brown 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. Psychiatrist Stevens examined Brown and found that Brown suffered from schizophrenic psychosis, that in the absence of this psychosis he would not have shot the bishop, and that because of the psychosis Brown 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." Brown was charged with murder.

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

Question 22

Detective received information from Informant, who had given reliable information many times in the past, that Harry was a narcotics dealer. Specifically, Informant said that, two months before, he had visited Harry's apartment with Bill and that on that occasion he saw Harry sell Bill some heroin. Detective knew that Informant, Harry, and Bill were friends. Thereafter, Detective put all this information into an affidavit form, appeared before a magistrate, and secured a search warrant for Harry's apartment. The search turned up a supply of heroin. Harry's motion to suppress introduction of the heroin into evidence will most probably be

- A. granted, because a search warrant cannot validly be issued solely on the basis of an informant's information.
- B. granted, because the information supplied to Detective concerned an occurrence too remote in time to justify a finding of probable cause at the time of the search.
- C. granted, because a search for "mere evidence" alone is improper and illegal.
- D. denied, because Informant had proven himself reliable in the past and the information he gave turned out to be correct.

Question 23

Defendant sold heroin to Morgan. Morgan was later stopped by police for speeding. The police searched Morgan's car and found the heroin concealed under the rear seat. Defendant is charged with illegally selling heroin.

Defendant's motion to prevent introduction of the heroin into evidence will most probably be

- A. granted, because the heroin was not in plain view
- B. granted, because the scope of the search was excessive
- C. denied, because Defendant has no standing to object to the search
- D. denied, because the search was proper as incident to a valid full custodial arrest

Questions 24-25 are based on the following fact situation.

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.

Question 24

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

Question 25

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

- A. grant the motions 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

Question 26

A grand jury was investigating a bank robbery. The only information known to the prosecutor was a rumor that Taylor might have been involved. The grand jury subpoenaed Taylor. He refused to answer questions about the robbery and was granted use immunity. He then testified that he and Simmons had robbed the bank. The grand jury indicted both Taylor and Simmons for the bank robbery. The prosecutor had no evidence as to the identity of the robbers except the testimony of Simmons and Taylor.

At Taylor's trial, his objections to Simmons being permitted to testify should be

- A. sustained, because the prosecutor may not bargain away the rights of one co-defendant in a deal with another
- B. sustained, because Simmons' testimony was acquired as a result of Taylor's grand jury testimony
- C. overruled, because the police suspected Taylor even before he testified in the grand jury hearing
- D. overruled, because a witness cannot be precluded from testifying if his testimony is given voluntarily

Question 27

Davison 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 the random stopping of automobiles in the area between midnight and 6:00 a.m., a police officer stopped Davison and asked him for identification. As Davison 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 Davison from the car, searched him, and discovered marijuana cigarettes and a shotgun.

At Davison'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 Davison's automobile
- B. sustained, because the use of the flashlight constituted a search of the interior of Davison'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 Davison

Questions 28-29 are based on the following fact situation.

In 1971 two police officers in a squad car received a radio message from headquarters to be on the lookout for a large green sedan occupied by two men who had just committed a bank robbery. An hour later they saw the car heading out of town. They had the car pull to the side of the road and walked over to the car. One of the officers told the occupants that they were under arrest for bank robbery. Thereupon Dean, the driver, suddenly put the car in gear and drove off. One officer clung to the car. The other officer pursued in the squad car. Unable to overtake the car and afraid he would lose sight of it in heavy traffic, the officer fired, first a warning shot and then at the car. He struck Evans, the passenger sitting next to Dean.

Dean was caught five minutes later. Evans died from loss of blood. Dean was taken to the police station.

The bank robbers had handed the teller a handwritten note, demanding the money. Dean was required over his protest, to write out the words of the note and have his fingerprints taken. He was then, for the first time, allowed to telephone a lawyer, who thereafter represented him. Dean was charged with the murder of Evans.

Question 28

The prosecution, after introducing the robbers' note to the teller, also offers in evidence Dean's writing of the words on the note at the request of the police. On appropriate action, the court should rule this

- A. admissible
- B. inadmissible, because he was not advised that his handwriting sample could be admitted into evidence against him
- C. inadmissible, because he was not advised of his right to refuse to give a handwriting sample
- D. inadmissible, because he had not been informed he had a right to have counsel present

Question 29

Suppose the jury finds Dean guilty of the murder of Evans. Before passing sentence, the judge hears argument by both parties. The prosecutor introduces the criminal record of Dean, showing two prior felony convictions. Defense counsel admits the correctness of the record. The court imposes the maximum sentence of life imprisonment. On appeal, the appellate court should hold that this sentence

- A. violated Dean's right to due process, in that it deprived him of a fair and unbiased tribunal
- B. was in error because the introduction of new evidence after the trial deprived Dean of a fair trial
- C. was not in error
- D. deprived Dean of the right to confront the witness against him

Question 30

Miller 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 Miller had been prejudiced by a 25-month delay in obtaining the indictment. Thereafter, Miller, with his counsel, appeared in court for arraignment and stated that he wished to plead guilty. The presiding judge asked Miller whether he understood the nature of the charges, possible defenses, and maximum allowable sentence. Miller replied that he did, and the judge reviewed all of those matters with him. He then asked Miller whether he understood that he did not have to plead guilty. When Miller responded that he knew that, the judge accepted the plea and sentenced Miller to 25 years. Six months later, Miller 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 Miller had robbed and killed the victim
- C. The judge did not determine whether Miller 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

Question 31

Dillon held up a gasoline station. During the robbery he shot and killed a customer who attempted to apprehend him. Dillon 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 Dillon's prior conviction

The motion to dismiss should be

- A. granted, because once Dillon was convicted on any of the charges arising out of the robbery the prosecution was constitutionally estopped from proceeding against Dillon 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 Dillon be brought in the same prosecution
- D. denied, because estoppel does not apply when the defendant is charged with violating two different statutes