

- a. The search of the accused's wall locker was a legal search.
- b. A commanding officer has the authority to order an inspection of his company area for the purpose of locating stolen personal property where based on probable cause.
- c. The search was illegal because the accused did not consent to the search.
- d. Both "a" and "b" above.

5. The accused who was stationed at a base in Germany lived in private housing in a nearby village because no quarters were available on post. Since the accused was assigned to the company supply room he was among the suspects when a loss of government property was discovered. For this reason, the company commander ordered a search of the accused's quarters where some of the missing property was discovered. At his trial the accused contended that the search was illegal because he did not consent to it.

- a. The search was legal because a commanding officer has absolute discretion to authorize a search of property situated in a foreign country, which is owned or occupied by personnel subject to military law.
- b. The search is illegal unless the accused consented to it.
- c. The search is illegal unless the company commander's suspicion of the accused was based on probable cause.
- d. None of the above.

6. The accused was stationed at the U. S. Embassy in London. He resided in housing nearby which was rented by the government. The Military Attache assigned to the Embassy, acting in his capacity as commanding officer of the accused, authorized a search of the accused's private quarters. This search was based on probable cause.

- a. The search was legal even though there is no evidence that the accused consented to same.
- b. The search was illegal.
- c. The search was legal as based on the power of a commanding officer having jurisdiction over personnel subject to military law to lawfully authorize a search of property situated in a foreign country which is used or occupied by such personnel.
- d. Both "a" and "c" above.

7. During the course of their investigation of a murder, CID agents obtained reliable information that the accused probably had been involved in it, and that the murder weapon could be found in his quarters. The accused occupied assigned government quarters on post. The agent investigating the case reported this fact to the Provost Marshal, who in turn attempted to get authority from the post commander to search the accused's quarters. The post commander was absent from the post at the time, but he had delegated to his Chief of Staff authority to authorize searches. After being advised of the reason for the search, the Chief of Staff authorized a search of the accused's quarters and the weapon was found.)

- a. The search was illegal because the Post Commander could not delegate his authority to authorize the search.
- b. The search was legal because authorized pursuant to a proper delegation of the commanding officer's authority.
- c. Even though this authority could be properly delegated, the search is nonetheless illegal because the Chief of Staff was not a proper party to receive such a delegation.
- d. None of the above.

8. The accused's company had been plagued with a number of "barracks larcenies." It appeared that the thief probably was a member of the company as there were no other units or personnel in the immediate area. The company commander ordered a "shakedown" inspection of the entire company area including all footlockers. During an inspection of the accused's footlocker the company commander found several undated pass forms bearing what purported to be his signature and which he knew were forgeries. At his trial for forgery, the accused objected to the admission of these forms as having been illegally seized. The law officer overruled his objection and admitted these exhibits into evidence.

- a. The objection should have been sustained because these exhibits were unrelated to the purpose for which the search was conducted.
- b. The objection should have been overruled because the search was legal.
- c. The pass forms were subject to lawful seizure as they were the means of committing an offense.
- d. Both "b" and "c" above.

9. During the course of an investigation of the accused's activity as a narcotics "pusher," CID agents received reliable information that a cache of heroin could be found in the accused's family quarters on post. This information was passed on to the Chief of Staff who authorized a search after having been advised that probable cause for the search existed. The Chief of Staff who had been stationed at this post for several years had been delegated authority to authorize searches about a year prior to this incident. However, a new commander had just assumed command of the post. At the accused's trial the prosecution attempted to offer into evidence the heroin seized during the search. The accused objected on the ground that the seizure was the product of an unlawful search. The law officer sustained the objection.

- a. The law officer's ruling was correct.
- b. The contraband, although lawfully seized, cannot be used as evidence if seized during an unlawful search.
- c. An officer duly delegated authority to authorize searches by a post commander may continue to exercise that authority under a new post commander without further delegation.
- d. Both "a" and "b" above.

10. The police of Port City, without a search warrant, raided the home of John Doe solely because he was a suspect in a state bank robbery. During the course of the search they found what appeared to be property of the United States. The property was turned over to the military authorities at Fort Dawn, a nearby arsenal. This property, a Thompson sub-machine gun, was identified as a weapon which had disappeared from the arsenal. The accused was tried for the theft of the gun. At his trial, the prosecution attempted to offer the machine gun into evidence as a prosecution exhibit. The accused objected to the admission of this exhibit and the law officer sustained the objection.

- a. The law officer erred in sustaining this objection.
- b. The law officer's ruling was correct.
- c. Evidence unlawfully seized by state officials may be used in Federal courts because the Constitution does not forbid unreasonable searches and seizures by state officials.
- d. Both "a" and "c" above.

11. The accused was suspected of the larceny of a watch from another EM in his company. During an investigation CID agents searched his quarters without finding the watch. The victim who was convinced of the accused's guilt was quite disappointed and shortly thereafter searched the accused's quarters on his own initiative and found the watch. At the accused's trial the prosecution attempted to offer the watch into evidence. The defense objected on the grounds that the search was unlawful. The law officer sustained the objection.

- a. The law officer erred in his ruling.
- b. The law officer properly sustained the defense's objection.
- c. All searches made by persons in the military service are under the authority of the United States.
- d. The search was legal because the victim was not assigned to law enforcement duties.

12. The accused, who was assigned to a unit in Japan, was suspected by the Japanese authorities of being involved in the "hit and run" injury of a Japanese national. The Japanese police wanted to inspect the accused's car, which was parked in a garage at his off-post quarters in a village near Camp Zama. In order to make this inspection they obtained what purported to be lawful authority from a Japanese court. (It was later discovered that there was no authority for the search under Japanese law.) While inspecting the car a civilian policeman found a .45 caliber automatic pistol which was later turned over to the American military authorities at Camp Zama. The pistol which bore the accused's fingerprints proved to be the weapon which had been used in the killing of an Army captain at Camp Zama. At the accused's trial for murder the prosecution attempted to introduce the weapon. The defense objected to this evidence, and the law officer overruled the objection.

- a. The law officer erred in his ruling because this evidence was the fruit of an unlawful search.
- b. The law officer's ruling was correct.

- c. This would have been a lawful search if an American investigator had been present to see that the accused's rights were protected.
- d. This evidence is admissible because the government may use evidence obtained through an illegal search effected by American state or foreign police if Federal agents do not participate in the search.

13. The accused, a contracting officer, was charged with wrongfully and unlawfully accepting a sum of money from a contracting company for the purpose of influencing his decision as to certain purchases. The bribe was offered and accepted during a telephone conversation between the accused and the contractor. This telephone call had been made from the contractor's office in a nearby city. A clerk in the accused's office listened to the conversation over an extension telephone and reported the incident to the military police. At the accused's trial, the law officer sustained a defense objection to testimony as to the conversation on the grounds that it had been obtained in violation of the provisions of the Communications Act.

- a. The law officer erred in his ruling because the Communications Act is not applicable to private eavesdroppers.
- b. The law officer properly sustained the defense objection.
- c. This evidence was inadmissible because the clerk who listened to the conversation did not have the expressed or implied consent of either communicant.
- d. Both "b" and "c" above.

14. The accused, a personnel clerk assigned to a unit in Korea, offered to effect the transfer of X to a more desirable assignment in return for a sum of money. The details of the transfer were worked out while the accused and X were on leave in Japan. After their return to Korea, X reported the matter to CID agents. At the request of an agent, X called the accused from the CID office and discussed the details of their arrangement. This telephone call was monitored by one of the agents with X's consent. At the accused's subsequent trial the law officer overruled a defense objection to testimony as to this conversation on the grounds that it had been obtained in violation of the Communications Act.

- a. The law officer properly overruled the defense's objection.
- b. The law officer erred in overruling the defense's objection.
- c. This evidence is admissible only because the agent monitored the call with X's consent.
- d. Both "a" and "c" above.

15. The accused, a married officer stationed in Germany without his family, was charged with having committed adultery with a waitress from one of the local bars. The Military Police, acting upon instructions from the Provost Marshal, conducted a search of the building in which the accused was assigned quarters. The search had not been ordered by the commanding officer of the post or by any higher authority and general authority to make searches of this kind had not been delegated to the

Provost Marshal. A military policeman knocked on the door of the accused's apartment, displayed his credentials to an officer who opened the door and informed him that they were checking for the presence of unauthorized persons in the quarters. The officer mumbled something and stepped aside. The policeman entered the apartment and knocked on one of the inner doors which was opened by the accused. In this room the military police found the woman in question. At the accused's subsequent trial the waitress testified that the accused had had intercourse with her on the night in question. At an out-of-court hearing the defense objected to the admissibility of the witness' testimony on the basis that "she was definitely the result of an illegal search." The law officer stated "as a matter of law there was an illegal search in this case," but ruled that her testimony was admissible.

- a. The law officer erred in admitting this testimony.
- b. The witness' testimony would be admissible if the prosecution could show that her testimony was obtained by knowledge existing wholly independently of the search.
- c. The law officer's ruling as to the legality of the search must be accepted as final by the members of the court.
- d. All of the above.

16. The accused, an Army engineer, was charged with wrongfully and unlawfully accepting a sum of money from a contractor engaged in constructing barracks, to influence his decision with respect to the inspection and acceptance of the barracks. The offer of this money and the accused's agreement to accept it were made in a telephone conversation between the accused and the contractor which originated in a nearby city. CID agents, having been informed of the proposed bribe, had placed a wire tap on the accused's telephone and overheard this conversation. Subsequently, the accused, after having been confronted by the agent with a playback of this conversation, made a complete confession. At the accused's trial, the government attempted to offer the accused's confession into evidence. The defense objected to the admission of the document on the grounds that it was the fruit-of-the-poisonous-tree, namely, the wire tap. The agent who took the confession then testified that the accused was a suspect prior to the wire tap and that he would have questioned the accused even though the government had not obtained the wire tap evidence. The law officer sustained the defense's objection.

- a. The law officer's ruling is correct and binding on the court if based on a finding that the confession was the product of the recorded telephone conversation.
- b. The wiretapping cannot have any legal effect upon the admissibility of the confession.
- c. The use of the recording would make the confession inadmissible under Article 31.
- d. None of the above.

17. During the course of an investigation of threats against the prosecution's key witness in a rape case, CID agents monitored all telephone calls from the dayroom of the unit to which the accused was assigned. One of the telephone calls monitored was a conversation between the accused and the witness in which the accused threatened the witness if he testified. Subsequently, the accused was interrogated by a CID agent and after being warned of his rights confessed. At his trial for extortion the prosecution offered the confession in evidence. The defense objected. The agent who took the confession then testified that the accused had not been confronted with the information obtained as a result of the wire tap and that the accused had been a suspect for sometime and would have been questioned eventually even without the information obtained by the wire tap which was unknown to the agent at the time. The law officer overruled the objection.

- a. The law officer erred in overruling the objection.
- b. The law officer properly overruled the objection.
- c. An issue of voluntariness is raised by this evidence.
- d. None of the above.

18. The accused was charged with aggravated assault on a CID agent. The agent, who was investigating a larceny in which the accused was involved, suspected that the missing property could be found in the accused's family quarters on post. The agent on his own initiative proceeded to search the accused's quarters after gaining entry with a key obtained from a friend in the billeting office. While he was in the process of search he was discovered by the accused who hit him on the head with a pistol. At his subsequent trial for aggravated assault, the accused objected to testimony regarding the assault on the grounds that such testimony was the product of an unlawful search. The law officer sustained this objection.

- a. The law officer's ruling was correct.
- b. This evidence was admissible even though the assault would not have been committed but for the illegal search.
- c. Not only evidence of the assault but evidence of the presence of stolen property is admissible, if such property was found in the accused's quarters.
- d. Both "b" and "c" above.

19. The accused was charged with wrongful possession of narcotics. When he was searched by a military policeman a small box of heroin was found. At his trial, the prosecution offered into evidence the box of heroin. The accused's counsel, an experienced military attorney, objected to the receipt of the substance in the box, because of lack of proof that it was in fact a narcotic, but failed to object to the introduction of the box itself even though he clearly understood the prosecution was offering both the box and its contents. The law officer overruled the objection.

- a. The law officer erred in his ruling.
- b. The law officer's ruling was correct.

- c. The accused's failure to raise the question of unlawful search at the trial probably would preclude consideration thereof on appeal.
- d. Both "b" and "c" above.

20. The accused was tried for rape and sodomy. During an investigation of these offenses, a CID agent had illegally searched the accused's footlocker and seized items of clothing of the alleged victim. At the trial, the clothing itself was not offered in evidence by the government, but the defense put it in for the purpose of impeaching the testimony of X, a prosecution witness, who had testified that he had seen bloodstains on the clothing of the victim at the time of the offense. The clothing itself did not show any such stains.

- a. The government by its failure to produce this evidence in court forced the accused to offer it in evidence.
- b. The accused has the right to raise the issue of an illegal seizure for the first time on appeal.
- c. The issue of the legality of a seizure is never waived by an accused.
- d. None of the above.

## LESSON ASSIGNMENT

SUBCOURSE JA 132 . . . . . Military Justice II (Evidence)

LESSON 8. . . . . Examination and Impeachment  
of Witnesses.

CREDIT HOURS. . . . . 3.

TEXT ASSIGNMENT . . . . . DA Pam 27-172, Chapters XXXV,  
XXXVII; MCM, 1951, para. 138f,  
138g, 149, 150.

MATERIALS REQUIRED. . . . . None.

LESSON OBJECTIVE. . . . . A study of the rules pertaining  
to examination and impeachment  
of witnesses.

SUGGESTIONS . . . . . Read and study the text assign-  
ment carefully. Complete the  
exercise after careful study of  
the assignment and then using  
the text, check your solutions.

## EXERCISES

**REQUIREMENT:** The following 20 questions are of the multiple choice type. Indicate the one correct answer by placing an "X" in the appropriate space provided on the ANSWER SHEET. A statement false in part is false. Each question is worth 5 points.

1. The accused was charged with housebreaking. At his trial he took the stand as a witness in his own behalf and testified that he was in another city at the time of the offense. In rebuttal the prosecution produced a witness whose testimony placed the accused near the scene of the crime at the time alleged in the specification. In addition, the prosecution offered into evidence a properly authenticated record of the accused's conviction six months previously by civilian authorities for larceny of a sum of money less than \$20.00.

- a. Both the testimony of the prosecution witness and the evidence of the accused's prior conviction are considered to be impeachment.
- b. Only the evidence of the accused's prior conviction is considered to be impeachment.
- c. The evidence of the accused's conviction of a crime is inadmissible because the offense described is not a felony under the law of the state where the offense was committed.



- d. The evidence of the accused's conviction of a crime is inadmissible because of the lapse of time between his conviction and the date of the court-martial.

2. The accused was charged with embezzlement from a unit fund. A defense witness gave testimony exonerating the accused, but admitted on cross examination that he (the witness) had recently confessed stealing \$5.00 from a fellow soldier. The defense objected to this question and moved that the answer be stricken from the record. The law officer overruled the objection.

- a. This evidence is inadmissible because the witness had not been convicted of the offense of larceny.
- b. This evidence is inadmissible because larceny of \$5.00 is not a felony.
- c. This evidence is inadmissible because there was no relationship between the offense for which the accused was on trial and the offense to which the witness had confessed.
- d. None of the above.

3. The accused was charged with sodomy. At the trial, a defense witness gave testimony exonerating the accused. During cross examination, the witness was asked by the trial counsel if he had been formally charged with sodomy with the accused about five years prior to the current allegation, and he replied "no." The trial counsel then offered into evidence a duly authenticated copy of a charge sheet indicating that the witness had been so charged. The defense objected to the admission of this exhibit and the law officer sustained the objection.

- a. In the absence of a conviction, evidence of misconduct can be adduced only through cross examination for impeachment purposes.
- b. The fact that a witness had been formally charged with an offense involving moral turpitude is not ordinarily a proper subject for cross examination.
- c. A trial counsel should refrain from cross examination when the inflammatory nature of the attempted impeachment far outweighs the legitimate impeachment value thereof.
- d. All of the above.

4. The accused, a fifty year old married master sergeant with over thirty years of honorable service, was charged with having committed indecent acts with a minor. At his trial, he testified in his own behalf and stubbornly denied guilt despite a gruelling cross-examination. The trial counsel, who realized his case was hopeless unless he could discredit the accused, offered in evidence a document purporting to show that the accused had been adjudged a juvenile offender at the age of twelve. The defense objected to the admission of this document and the law officer sustained the objection.

- a. This document was inadmissible only if the law of the state concerned provided that adjudication as a juvenile offender may not be used for any purposes as a "conviction."
- b. This document is inadmissible because of the remoteness of the adjudication.
- c. This document is made inadmissible by remoteness and policy.
- d. None of the above.

5. The accused was charged with rape. After the alleged victim had testified, the defense offered evidence that she was the mother of three illegitimate children, each with a different father. The evidence also showed that the youngest of these children was five years of age. The prosecution objected to this evidence and moved that it be stricken from the record. The law officer overruled the objection.

- a. The law officer erred in his ruling.
- b. This evidence was admissible only because the alleged victim testified.
- c. It is within the sound discretion of the law officer whether such evidence was so remote as to have no legitimate probative value.
- d. This evidence is admissible only because lack of consent is an element of the offense of rape.

6. The trial counsel attempted to impeach a defense witness by showing that he had made a prior inconsistent statement. After laying a proper foundation for the use of an inconsistent statement, the trial counsel asked the witness if he had made the particular prior statement. Although the witness' answer was in the affirmative the trial counsel nevertheless attempted to offer the statement into evidence as a prosecution exhibit. The defense objected and the law officer sustained the objection.

- a. The law officer's ruling was correct.
- b. A prior inconsistent statement made by any witness except the accused is admissible as evidence even after the witness admits that he made the prior statement.
- c. The law officer should have overruled the objection and admitted the statement.
- d. Both "b" and "c" above.

7. The accused was charged with murder. One of the defense witnesses testified on direct examination that the accused was "stupid" drunk at the time of the shooting. On cross examination, the trial counsel attempted to impeach the witness by showing that during an investigation he had made a statement that the accused had been drinking but was not drunk. The witness admitted making this inconsistent statement. The trial counsel offered the inconsistent statement in evidence and the defense objected. The law officer overruled the objection. On redirect examination, defense counsel attempted to rehabilitate the witness by having him explain the inconsistencies. The trial counsel's objection that this testimony was repetitious was sustained by the law officer.

- a. The law officer's ruling on the admission of the inconsistent statement was correct, but he was wrong in denying the witness the right to explain the inconsistency.
- b. A witness has a right to explain an inconsistency, if he so desires.
- c. Defense counsel on redirect examination has a right to secure an explanation of any inconsistencies elicited on cross examination of a defense witness.
- d. Both "b" and "c" above.

8. At the accused's trial for larceny, X testified for the prosecution. On cross examination, X was asked if he had ever been charged with having joined with the accused in a larceny. The trial counsel objected on the grounds that the question was necessarily irrelevant and immaterial, and that being under charges was not equivalent to a conviction. The law officer sustained the objection. Prior to this objection several prosecution witnesses other than X had testified as to X's participation in the larceny charged.

- a. The law officer erred in sustaining the objection.
- b. The law officer's ruling was correct if based on the defense contention.
- c. The law officer should have deferred ruling on the objection until additional evidence had been adduced showing X's participation in the larceny.
- d. Both "a" and "c" above.

9. The accused was convicted of the wrongful use of narcotics. At his trial he took the stand as a witness and denied that he had ever used narcotics at any time. Over defense objection, he admitted under cross examination that several days subsequent to the date of the alleged offense he voluntarily submitted a urine specimen. Despite further objection by the defense, the government was permitted to show that a chemical analysis of this specimen disclosed the clear presence of morphine. The court was instructed that this evidence could be considered by the court only on the question of the accused's credibility.

- a. The law officer's ruling admitting evidence of presence of morphine in the accused's urine several days after the alleged offense was inadmissible as evidence of misconduct subsequent to the offense charged.
- b. The evidence was admissible to impeach the accused's credibility.
- c. The law officer erred in admitting this evidence and his instruction failed to cure this error.
- d. Both "a" and "c" above.

10. The accused was charged with assaulting his wife and thereby inflicting grievous bodily harm. On direct examination the wife, who was the only witness to the assault, testified as to the assault. She further testified that she had never seen her husband act as he did, and that he must have been drunk or "off his rocker." (In fact the witness had not indicated to any one prior to trial that the accused might have been

mentally unbalanced at the time of the assault.) The prosecution then attempted to impeach the witness' testimony and offered into evidence a prior statement made by the witness to investigators which indicated that the accused was sober at the time of the assault even though he had consumed a few beers. The defense objected to the admission of this statement. The trial counsel stated that the witness was both indispensable and unexpectedly hostile and therefore subject to impeachment by him. The law officer sustained the defense objection.

- a. The objection was properly sustained.
- b. In order to support the theory of "surprise" the courts normally require that the party seeking to impeach must show not only surprise, but that the testimony was harmful to his case.
- c. As the only witness to the assault the accused's wife was an indispensable witness.
- d. Both "b" and "c" above.

11. On direct examination, X, the alleged victim of a rather brutal assault to which the accused had confessed, positively identified the accused as his assailant. During cross examination, he unexpectedly stated that he probably had been mistaken in his identification. On redirect examination, the government attempted to impeach the witness by offering into evidence a prior statement made by him which was consistent with his testimony on direct examination. They also offered witnesses who testified as to the witness' bad character for truth and veracity. The defense objected not only to the admission of the statement but the testimony of these witnesses.

- a. This witness could be impeached only by proof of a prior inconsistent statement.
- b. He could be impeached only by witnesses who can testify as to his bad character for truth and veracity.
- c. He could be impeached by showing his bad character for truth and veracity and also by proof of prior inconsistent statements.
- d. None of the above.

12. X, a witness for the accused, consistently gave unresponsive answers to questions asked by defense counsel. The trial counsel objected to each answer as not being responsive to the question, but his objections were overruled by the law officer.

- a. Normally only the party examining a witness has standing to object to answers on the ground that they are not responsive to the question.
- b. The trial counsel could have requested that the law officer instruct the witness to keep his answers within the scope of the questions asked.
- c. If the testimony were irrelevant and incompetent the trial counsel could have based his objections on these grounds.
- d. All of the above.

13. During the direct examination of one of the witnesses for the accused, the defense counsel asked several leading questions. In each instance an objection was raised only after the witness had answered the question. In addition to objecting to the questions as leading, trial counsel requested that the answers be stricken from the record. The law officer sustained all objections but denied the motion to strike.

- a. The law officer was correct in denying the motions to strike.
- b. An objection to a question as leading carries with it a motion to strike the answer and there was no necessity of counsel making a motion to strike.
- c. An objection to a question as leading goes to the form of the question and not to the answer.
- d. Both "a" and "c" above.

14. During the cross examination of a witness, defense counsel continually asked leading questions. The witness' answers were favorable to the defense to such an extent that it clearly appeared that the witness was shaping his testimony to meet the wishes of counsel.

- a. An objection by the trial counsel was appropriate.
- b. Upon objection the law officer should have instructed counsel to cease using leading questions.
- c. The law officer, on his own motion should have instructed counsel to cease using leading questions.
- d. All of the above.

15. A witness for the prosecution in a negligent homicide case testified as to the license number of the automobile involved in the collision. On cross examination, the defense counsel asked him the license number of his automobile. The trial counsel objected to this question as being immaterial and the law officer sustained the objection.

- a. The law officer erred in sustaining the objection.
- b. The extent of cross examination regarding a subject of inquiry is within the sound discretion of the law officer.
- c. This question was a test of the witness' memory and source of information and was admissible in attacking the witness' credibility.
- d. All of the above.

16. Defense counsel, on cross examination of the prosecution's chief witness, asked the question: "Have you ever committed a larceny?" The trial counsel objected to this question and the law officer sustained the objection without inquiring whether there was a reasonable basis for this question. The defense counsel had good reason to believe that the witness had recently committed larceny but he was unable to prove a conviction for such offense.

- a. The law officer, before sustaining the objection, should have inquired whether there was a reasonable basis for the specific question asked.

- b. Counsel need not have in his possession legally competent evidence of the matters involved before asking a question such as this.
- c. Evidence showing good faith on the part of the defense counsel would be sufficient to justify his asking this question.
- d. All of the above.

17. The accused was charged with wrongful appropriation of an automobile and an extended period of absence without leave terminated by surrender. At his trial he took the stand for the limited purpose of testifying as to the absence. During the course of his testimony he testified that he had borrowed a car to return to the post. On cross examination the trial counsel asked him where he borrowed the car, from whom did he borrow the car, and did he have permission to borrow the car. The defense counsel's objection to all three questions was overruled. The car borrowed by the accused was the car alleged to have been wrongfully appropriated.

- a. The law officer erred in overruling the defense objection.
- b. The law officer's rulings were correct.
- c. The cross examination exceeded the scope of direct examination.
- d. Both "a" and "c" above.

18. The accused, who was charged with negligent homicide, elected to take the stand as witness. His defense counsel, instead of examining him, stated that he was putting the accused on the stand to answer any question the court might have. After the witness had answered questions directed to him by the court, the trial counsel requested permission to cross examine him. The defense objected but the objection was overruled by the law officer.

- a. The law officer erred in permitting the trial counsel to cross examine the accused.
- b. Since the accused had not testified on direct examination upon the issue of his guilt or innocence it was improper to allow cross examination.
- c. If the accused waived his right against self-incrimination with respect to his guilt or innocence in this case, such a waiver was partial.
- d. None of the above.

19. The accused was charged with larceny of a field jacket. At his trial he attacked the voluntariness of his confession. During the course of his testimony he testified that after his apprehension the jacket he had been wearing was taken from him and he was forced to spend the night in a cubicle at MP headquarters in near zero weather with only a small pot-bellied stove to heat the cubicle. The jacket in question had earlier been placed in evidence as a prosecution exhibit. During

questioning of the accused by the court, one member pointed to the jacket and asked the accused, "Is that the jacket that was taken from you?" and the accused answered "Yes." The jacket had previously been identified as belonging to the named victim. The defense's objection to the question and answer was overruled.

- a. The law officer's ruling was correct.
- b. It is reasonable to assume that the jacket was not taken from the accused for harassment, but to preserve it as evidence or to return it to the rightful owner.
- c. The questions asked by the court member was improper.
- d. Both "a" and "b" above.

20. The accused was charged with larceny of an automobile tire and desertion. The two offenses were not related in any way. At his trial, the accused took the stand for the limited purpose of testifying as to the offense of desertion. His testimony was strictly limited to that offense and did not touch on the offense of larceny at all. The prosecution attempted to cross examine the accused as to whether the stolen tire had been found mounted on his car. The defense objected to the cross examination and the objection was sustained by the law officer.

- a. So long as the accused limited his testimony to the offense of desertion the prosecution is precluded from cross examining him as to the offense of larceny.
- b. Improper cross examination of an accused beyond the permissible scope of cross examination is treated as a violation of his privilege against self-incrimination.
- c. An accused's professed intention to testify only as to one offense may be considered in determining whether he has testified about more than one offense, but it is not conclusive on this issue.
- d. All of the above.