

February 2009 Criminal Procedure and Evidence Exam

1. This question called upon examinees to demonstrate knowledge of the rules for setting bail, which nearly all examinees did.
2. This question required examinees to demonstrate knowledge of the procedures for appointing counsel, which many examinees did by discussing the general rule barring consideration of a defendant's ability to post bail in determining whether he is indigent. A few examinees also mentioned the limited exception to the general rule.
3. This question called upon examinees to demonstrate knowledge of the procedures and grounds for reducing bail, which many examinees did by discussing an application for a writ of habeas corpus and contending that bail was excessive.
4. This question called upon examinees to demonstrate knowledge of the requirements for a search warrant for evidence of a crime. Many examinees knew that the police officer must allege facts in an affidavit establishing probable cause. A common problem for examinees was a lack of knowledge concerning the facts that must be alleged.
5. This question called upon examinees to demonstrate knowledge of the rules governing venue, which many examinees did by discussing where the offense was committed. A common problem was applying rules for jurisdiction in civil cases or relying on irrelevant factors.
6. This question required examinees to demonstrate knowledge of the requirements for a first motion for continuance when a witness is unavailable. Nearly all examinees knew that a defendant must file a motion for continuance, and many examinees correctly articulated two or three of the facts required to be established in the motion. A common problem was a lack of knowledge about the time frame in which to file the motion.
7. This question called upon examinees to demonstrate knowledge of the procedural steps and issues related to the illegal seizure of persons and evidence, which many examinees did by discussing the filing of a motion to suppress the shotgun as the fruit of an illegal stop. Some examinees further demonstrated knowledge of the minimum constitutional standard of reasonable suspicion. Common problems were discussing the wrong standard and discussing a motion in limine rather than a motion to suppress.
8. This question required examinees to demonstrate knowledge of the procedures applicable to guilty pleas. Most examinees knew that the defendant could withdraw his guilty plea. A common problem was a lack of knowledge of the time frame in which it is permissible for a defendant to do so.
9. This question called upon examinees to demonstrate knowledge of the inadmissibility of withdrawn guilty pleas, which most examinees did. The most common problem was the belief that a

withdrawn guilty plea is admissible in a criminal case as a statement by a party opponent or as a statement against interest.

10. This question called upon examinees to demonstrate knowledge of procedural steps that a defendant might take to avoid prejudice from a codefendant's prior conviction, which some examinees did by discussing a motion for severance. Many examinees also discussed a motion in limine, and some of those examinees recognized the need to object thereafter at trial. A common problem was discussing procedural steps irrelevant to a defendant in this situation.

11. This question called upon examinees to demonstrate knowledge of procuring the attendance of a witness at trial, which most examinees did by discussing a subpoena and a writ of attachment. A common problem for other examinees was not discussing both of these steps.

12. This question required examinees to demonstrate knowledge of the rule governing a defendant's presence at pretrial proceedings, which many examinees did. A common problem for other examinees was confusing what the rule requires and what constitutes reversible error.

13. This question called upon examinees to demonstrate knowledge of challenges for cause based on bias or prejudice, which nearly all examinees did.

14. This question required examinees to demonstrate knowledge of "the rule," which most examinees did. Many examinees also discussed exceptions to "the rule."

15. This question required examinees to demonstrate knowledge of the constitutional and evidentiary problems raised by a codefendant's confession, which many examinees did by discussing objections based on hearsay and/or the Confrontation Clause. A common problem was not further mentioning the remedies of severance and redaction. Other common problems included incorporating facts not given and discussing inapplicable objections and measures.

16. This question called upon examinees to demonstrate knowledge of the rule governing the production and use of a prior statement of a witness for purposes of cross-examination, which many examinees did. Common mistakes were applying the work product doctrine, misunderstanding the discovery rules, and discussing the prosecutor's obligation to produce exculpatory evidence, even though the facts did not pose this issue.

17. This question required examinees to demonstrate knowledge of prevailing precedent on whether to include a definition of "reasonable doubt" in the jury charge. While some examinees demonstrated such knowledge, many did not.

18. This question required examinees to demonstrate knowledge of a defendant's right to silence and improper comment on it during closing argument, as well as the procedure for preserving error. Most examinees demonstrated such knowledge. Common problems for other examinees were ignoring the call of the question, neglecting to discuss each step required for error preservation, or failing to recognize the ground for objection.

19. This question required examinees to demonstrate knowledge of the procedure for electing jury sentencing, which some examinees did by discussing the need to make the election before the commencement of voir dire. Many examinees, however, did not demonstrate such knowledge.

20. This question required examinees to demonstrate knowledge of the admissibility of certain evidence during the punishment phase of trial. Although some examinees knew that evidence of prior bad acts could be admitted during the punishment phase, fewer mentioned the standard of proof that had to be met for the admission of a prior bad act. A common problem for most examinees was stating that only convictions are admissible during the punishment phase.