

Texas Board of Law Examiners

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July 2010 Criminal Procedure and Evidence Exam

1. This question called upon examinees to demonstrate knowledge of the time limit within which a magistrate must make a determination of probable cause when a person is arrested for a felony without a warrant, as well as the consequences if a magistrate does not make that determination within the required time period. Most examinees demonstrated such knowledge.
2. This question required examinees to demonstrate knowledge of the types of bond available and specifically of a personal bond, which many examinees did. The most common mistake was not correctly identifying the applicable conditions of release for a personal bond in light of the facts.
3. This question called upon examinees to demonstrate knowledge of the requirements for a warrantless arrest. Most examinees knew that the arrest was invalid, as well as the reason why it was.
4. This question required examinees to demonstrate knowledge of the availability of and the requirements for a waiver of indictment. Most examinees knew that an indictment can be waived, correctly identified at least two of the requirements for waiver, and knew the charging document that would be used instead.
5. This question called upon examinees to demonstrate knowledge of grand jury proceedings. Many examinees knew whether a defendant has the right to address the grand jury. A common mistake was a lack of knowledge about whether there is such a right or answering the question as if the grand jury had summoned Wilbur to testify as a witness at the grand jury proceedings.
6. This question required examinees to demonstrate knowledge about the joinder of offenses, which many examinees did. Common mistakes were not knowing whether joinder was permissible under the facts stated and incorrectly applying the rules governing whether crimes are part of the same

criminal episode.

7. This question called upon examinees to demonstrate knowledge of motions to sever, which many examinees did. Most examinees further recognized how a severance might adversely affect the sentence imposed.
8. This question required examinees to demonstrate knowledge about the time limit for the filing of pleadings after service of the indictment. Most examinees knew whether the time limit was sufficient, but did not know the minimum amount of time required.
9. This question called upon examinees to demonstrate knowledge of motions in limine and error preservation. Most examinees demonstrated knowledge about motions in limine. The most common mistake was not recognizing all of the steps defense counsel must take to preserve error.
10. This question called upon examinees to demonstrate knowledge of the exclusionary rule and motions to suppress evidence. Most examinees knew that defense counsel should file a motion to suppress because of the illegal arrest and/or search. The most common mistake was responding that the evidence should be suppressed because its probative value was substantially outweighed by the danger of unfair prejudice.
11. This question called upon examinees to demonstrate knowledge of suggestive identification procedures and the procedural steps to take when they have been used. Many examinees did not recognize the correct motion that should be filed in light of the impermissibly suggestive pretrial identification. A common mistake was responding that defense counsel should simply impeach the witness because she had physical impairments that prevented her from identifying the suspect. However, the facts did not include any such impairments.
12. This question required examinees to demonstrate knowledge of motions to change venue, which most examinees did. A common mistake was failing to recognize the parties who can file a motion to change venue.
13. This question called upon examinees to demonstrate knowledge about the questions to be asked to test the qualifications of a prospective juror. Many examinees were able to identify at least one such question. A common mistake was listing grounds for challenging a prospective juror unrelated to the question asked or not mentioning the questions for testing a prospective juror's qualifications.
14. This question required examinees to demonstrate knowledge of the procedures for challenging unconstitutional peremptory strikes, which many examinees did. Some examinees did not state all of the steps involved in such a challenge or the burden at each step, or did not know whether gender-based peremptory strikes are impermissible.
15. This question called upon examinees to demonstrate knowledge of the rule for proving handwriting by comparison. Many examinees knew that the handwriting expert's testimony alone could be sufficient. Almost no examinees, however, mentioned the circumstance in which it would be insufficient.

16. This question required examinees to demonstrate knowledge of impeachment of a witness with a prior conviction. Most examinees demonstrated such knowledge by discussing whether a conviction is for a felony or a crime of moral turpitude.
17. This question called upon examinees to demonstrate knowledge of evidentiary privileges. While most examinees correctly identified the applicable privilege, some did not discuss the waiver of that privilege. A common mistake was stating that the prosecutor should object based on matters not stated in or supported by the facts given.
18. This question required examinees to demonstrate knowledge that the Code of Criminal Procedure provides that a conviction may be had on the offense charged in the indictment and a lesser-included offense. Nearly all examinees demonstrated such knowledge.
19. This question called upon examinees to demonstrate knowledge of improper jury arguments concerning the burden of proof and the presumption of innocence. Most examinees demonstrated knowledge of improper argument on one ground or the other, and some examinees recognized both grounds for objection.
20. This question required examinees to demonstrate knowledge of claims of ineffective assistance of trial counsel. Although most examinees demonstrated knowledge that such a claim involves a prong concerning a likely effect on the outcome, many examinees either did not discuss or did not correctly articulate the prong involving counsel's performance.

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