

## February 2013 Criminal Procedure & Evidence Comments

1. This question required examinees to demonstrate knowledge of the duties of an arresting officer and particularly of the time frame for taking an arrestee before a magistrate. Most examinees demonstrated such knowledge.
2. This question called upon examinees to demonstrate knowledge of the procedures governing bail and particularly of the procedure for challenging rulings concerning bail, and most examinees did so.
3. This question required examinees to demonstrate knowledge of the procedures governing appointment of counsel and particularly of the appropriate factors that may be considered in determining eligibility for appointment of counsel. Although many examinees knew that the magistrate's ruling was incorrect, fewer examinees correctly explained why. Some examinees focused on the right to appointed counsel generally rather than particularly discussing whether it was proper to use the ability to post bail as the basis for refusing to appoint counsel.
4. This question called upon examinees to demonstrate knowledge of the procedures governing grand jury proceedings and particularly of whether a defendant has a right to address the grand jury and to have counsel present at the proceedings. Some examinees correctly answered both parts of the question, while many others correctly answered only one part of the question. A common mistake was not knowing whether a defendant has a right to address the grand jury.
5. This question required examinees to demonstrate knowledge of the procedures governing grand jury proceedings and particularly of the persons allowed to be present during the grand jury's deliberations. Many examinees knew that the prosecutor did not follow proper procedure, but fewer examinees correctly explained why. Common mistakes were focusing on the prosecutor's request for an indictment and the prosecutor's role in seeking an indictment.
6. This question called upon examinees to demonstrate knowledge of the procedures governing the disclosure of grand jurors' personal information. Many examinees knew whether the prosecutor was obligated to turn over such information, but fewer examinees knew why. A common mistake was focusing only generally on the nature of grand jury proceedings, rather than specifically on whether a grand juror's personal information is confidential.
7. This question required examinees to demonstrate knowledge of the procedure to challenge an indictment that fails to state all elements of the charged offense. Many examinees knew the correct type of motion to file. A common mistake was not knowing the deadline for making the challenge.
8. This question called upon examinees to demonstrate knowledge of the procedures governing guilty pleas and particularly of the required admonitions that the court must give. Most examinees correctly identified at least two of the required admonitions.
9. This question called upon examinees to demonstrate knowledge of the procedures and principles governing searches and seizures and particularly of the required relationship between a person challenging a search or seizure and the property that was searched or seized. Only some examinees demonstrated such knowledge.

10. This question called upon examinees to demonstrate knowledge of the rules governing the admissibility of a defendant's oral statement that was made as a result of custodial interrogation and was not recorded. Some examinees demonstrated such knowledge. A common mistake was addressing the voluntariness of the statement based on facts that were not provided in the question.

11. This question required examinees to demonstrate knowledge of the procedures governing the assessment of punishment and particularly of the procedural step necessary to have a jury assess punishment. Most examinees knew the correct procedural step to take and when to take it.

12. This question called upon examinees to demonstrate knowledge of the principles governing the formation of the jury and particularly of the grounds for disqualifying a juror or challenging a juror for cause. Many examinees demonstrated such knowledge. Common mistakes were incorrectly responding that only a felony conviction would disqualify the potential juror, stating grounds for disqualification that do not exist, and failing to recognize the significance of the juror's theft conviction.

13. This question required examinees to demonstrate knowledge of the procedures for challenging unconstitutional peremptory strikes, which most examinees did.

14. This question called upon examinees to demonstrate knowledge of the rule governing the testimony of an accomplice. Some examinees demonstrated such knowledge. A common mistake was focusing on the plea agreement as the crux of the answer to the question.

15. This question required examinees to demonstrate knowledge of the rules of evidence as they apply to a statement by an accused that is offered against him. While many examinees demonstrated such knowledge, many others did not. Common mistakes were discussing matters that were irrelevant to rebutting the hearsay objection and relying on facts that were not stated in the question.

16. This question called upon examinees to demonstrate knowledge of a defendant's right to confrontation. While many examinees knew that the appropriate witness was the analyst who created the report, fewer examinees knew why. A common mistake was focusing on the admissibility of business records.

17. This question required examinees to demonstrate knowledge of the rules of evidence and particularly of the rule governing the admissibility of character evidence and other crimes, wrongs, or acts. Many examinees demonstrated such knowledge, but many others did not. The most common mistake was focusing on whether proper notice was requested or given.

18. This question called upon examinees to demonstrate knowledge of the rules of evidence and particularly of the rule governing notice of the State's intent to introduce evidence of other crimes, wrongs, or acts. Most examinees did demonstrate knowledge of the rule. The most common mistake was discussing the State's witness list.

19. This question required examinees to demonstrate knowledge of the procedures governing criminal verdicts and particularly of the procedure governing the verdicts at the guilt-innocence phase and the punishment phase of a trial. Most examinees demonstrated such knowledge.

20. This question called upon examinees to demonstrate knowledge of the procedures governing criminal verdicts and particularly of the procedure governing mistrials when the jury reaches a guilty

verdict but cannot agree on the punishment to be assessed. Most examinees demonstrated such knowledge. A common mistake was responding that a mistrial was inappropriate on the ground that the trial court should assess the punishment.