

July 2014 Criminal Procedure & Evidence Comments

1. This question required examinees to demonstrate knowledge of warrants and, in particular, of whether a search warrant and an arrest warrant must be issued in separate documents. While many examinees knew whether separate warrants were required, many examinees did not offer a correct explanation of their answer or mention a combined warrant. A common mistake was discussing whether officers could conduct a warrantless search or a warrantless arrest under the facts stated.
2. This question called upon examinees to demonstrate knowledge of arrest warrants and their execution and, in particular, of the geographic scope of an arrest warrant. Most examinees demonstrated such knowledge.
3. This question called upon examinees to demonstrate knowledge of the rules governing venue and, in particular, of the rules for determining the county where venue lies. Most examinees demonstrated such knowledge.
4. This question required examinees to demonstrate knowledge of the rules governing venue and, in particular, of the party who bears the burden to prove venue and the applicable standard of proof. While many examinees did not correctly identify the party who bears the burden to prove venue, many examinees correctly articulated the applicable burden of proof. A common mistake was discussing the procedures and burdens relating to a motion to transfer venue.
5. This question called upon examinees to demonstrate knowledge of bail and, in particular, of the factors to be considered in fixing the amount of bail. Most examinees correctly identified at least two of the considerations in fixing bail. Some examinees incorrectly discussed factors relating to the denial of bail.
6. This question required examinees to demonstrate knowledge of the procedures governing examining trials and, in particular, of whether defense counsel is permitted to cross-examine the State's witnesses at an examining trial. Many examinees demonstrated such knowledge.
7. This question called upon examinees to demonstrate knowledge of grand jury proceedings and, in particular, of the participants allowed to be present during the proceedings. Most examinees correctly identified one or two of the persons allowed to be present.
8. This question required examinees to demonstrate knowledge of grand jury proceedings and, in particular, of the number of jurors who serve on a grand jury and the number of grand jurors required to concur for an indictment to issue. Many examinees demonstrated such knowledge. A common mistake was not knowing how many grand jurors must concur for an indictment to issue.
9. This question called upon examinees to demonstrate knowledge of charging instruments and, in particular, of an indictment and an information. Many examinees identified how an indictment differs from an information, but fewer examinees were able to correctly define what an indictment is.
10. This question required examinees to demonstrate knowledge of the principles and procedures governing search and seizure. Many examinees knew what ground to argue for exclusion of the evidence, but fewer examinees correctly identified the procedural step to take.

11. This question called upon examinees to demonstrate knowledge of guilty pleas and, in particular, of the appellate consequences of a guilty plea. Some examinees demonstrated such knowledge. Common mistakes were responding that a guilty plea completely extinguishes all appellate rights or that an appeal is available only after a plea of not guilty and a trial or when the admission of evidence is harmful.

12. This question required examinees to demonstrate knowledge of guilty plea proceedings and, in particular, of whether a guilty plea may be entered before a judge or a jury. Most examinees did not demonstrate such knowledge. A common problem was a lack of knowledge of Texas law regarding guilty pleas before a jury.

13. This question called upon examinees to demonstrate knowledge of the procedures governing jury selection and, in particular, of whether jury selection can proceed in a defendant's absence. Many examinees demonstrated such knowledge.

14. This question required examinees to demonstrate knowledge of voir dire proceedings and, in particular, of whether the trial court can deny defense counsel an opportunity to pose proper questions to prospective jurors during voir dire. Most examinees did not demonstrate such knowledge.

15. This question called for examinees to demonstrate knowledge of a prosecutor's duty concerning evidence favorable to the defense. Most examinees demonstrated such knowledge.

16. This question called upon examinees to demonstrate knowledge of the rules of evidence and, in particular, of the hearsay exception for dying declarations. Many examinees demonstrated such knowledge. A common mistake was discussing limitations on this exception that do not apply to the Texas rule.

17. This question required examinees to demonstrate knowledge of the procedures for determining the admissibility of expert testimony, and, in particular, of the rules governing the qualification of expert witnesses. Nearly all examinees demonstrated at least partial knowledge of the inquiry to be made by the trial court.

18. This question required examinees to demonstrate knowledge of the rules of evidence and, in particular, of the admissibility of police reports in criminal trials. Many examinees did not demonstrate such knowledge. Common mistakes were discussing hearsay exceptions or confrontation rather than the rule governing the admissibility of police reports.

19. This question called upon examinees to demonstrate knowledge of whether polygraph results are admissible in criminal trials. Most examinees demonstrated such knowledge.

20. This question called upon examinees to demonstrate knowledge of the proper content of jury instructions and, in particular, of whether the trial court must define "reasonable doubt" in the charge. Many examinees demonstrated such knowledge, but many others were unaware of the governing Texas law.