

February 2015 Criminal Procedure & Evidence Comments

1. This question required 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 and the consequence of not timely making the determination. Most examinees demonstrated such knowledge.
2. This question called upon examinees to demonstrate knowledge of bail and in particular of the procedural step to take and the grounds to allege when seeking a reduction of bail. Some examinees demonstrated such knowledge, but many did not. Common mistakes were incorrectly identifying the procedural step and overlooking that the question asked about challenging bail that had already been set at an amount that was too high.
3. This question called upon examinees to demonstrate knowledge of the right to indictment and in particular of the procedure for waiving that right. Many examinees demonstrated such knowledge. A common mistake was discussing the stage of the proceeding for the procedure rather than the procedure itself.
4. This question required examinees to demonstrate knowledge of grand jury proceedings and particularly of whether a court can compel a non-suspect witness to testify and the available means to do so. Many examinees knew that the court could compel the witness to testify, but many others did not. Fewer examinees correctly identified the means available to the court to compel the testimony. A common mistake was overlooking that the facts specifically provided that the witness was refusing to testify based on friendship and failing to address the means of compulsion available to the court.
5. This question called upon examinees to demonstrate knowledge of indictments and particularly of the circumstances under which the Texas Code of Criminal Procedure permits charging two or more offenses in one indictment. Many examinees knew that the Code permits multiple offenses to be charged in the same indictment, and some also knew when this is permitted.
6. This question required examinees to demonstrate knowledge of examining trials and particularly of whether an examining trial is available after issuance of an indictment. Some examinees demonstrated such knowledge. The most common mistakes were globally responding that all persons accused of a felony are entitled to an examining trial or overlooking the stated fact that the grand jury had already issued an indictment.
7. This question called upon examinees to demonstrate knowledge of pretrial motions and in particular of the time in which a pretrial motion must be filed and the consequences of failing to timely do so. Many examinees demonstrated at least partial knowledge. Common mistakes were responding that failing to file the motion would result in sanctions by the court or dismissal of the case, focusing on whether the evidence would be discoverable without a request, and not knowing the time for filing the motion.
8. This question required examinees to demonstrate knowledge of discovery and in particular of the production of witness statements in the State's possession upon request by the defense. Many examinees recognized the prosecutor's duty under the discovery rule in the Texas Code of Criminal Procedure. Common mistakes were responding that the witness statement was protected or was discoverable only after the witness testified. Many examinees focused on a prosecutor's duty to disclose *Brady* materials even though neither the facts nor the question raised this issue.

9. This question called upon 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 correct procedural step to take.

10. This question required examinees to demonstrate knowledge of the trial court's role in assessing punishment when the State recommends community supervision as part of a plea agreement. Most examinees demonstrated such knowledge.

11. This question called upon examinees to demonstrate knowledge of the procedures for waiving the right to a jury trial at the guilt-innocence phase. Most examinees knew that the defendant could waive the right to a jury trial, but fewer knew the procedural step to take. Common mistakes were discussing the punishment phase of the trial although the question refers to the guilt-innocence phase, discussing a deadline for taking a procedural step rather than the procedural step itself, or stating that a procedural step was not necessary.

12. This question required examinees to demonstrate knowledge of motions to sever, which many examinees did.

13. This question called upon examinees to demonstrate knowledge of the rules governing community supervision and particularly of the procedure to have the jury consider community supervision. Many examinees recognized one or two of the procedural requirements. A common mistake was responding that the sole procedure required was a request for a jury instruction at the punishment stage of the trial.

14. This question required examinees to demonstrate knowledge of challenges for cause, which many examinees did. The most common mistake was incorrectly stating the number of challenges for cause available.

15. This question called for examinees to demonstrate knowledge of peremptory challenges. Many examinees knew what a peremptory challenge was, but fewer knew the number of peremptory challenges available.

16. This question required examinees to demonstrate knowledge of the Texas Rules of Evidence and in particular of the rule governing witness competency. Some examinees demonstrated such knowledge. The most common mistakes involved a lack of knowledge about the Texas rule on the competency of witnesses as it bears on child witnesses and failing to recognize the categorical nature of the objection.

17. This question called upon examinees to demonstrate knowledge of the Texas Rules of Evidence and in particular of the rules governing impeachment of a witness with a prior conviction. Many examinees demonstrated such knowledge. Common mistakes were responding that the objection should be sustained because the conviction had no bearing on credibility and engaging in a balancing analysis alone without mentioning any other aspect of the evidentiary rule.

18. This question required examinees to demonstrate knowledge of the Texas Rules of Evidence and in particular of the predicate required for the admissibility of a business record. Most examinees identified one or two components of the predicate.

19. This question called upon examinees to demonstrate knowledge of the Texas Rules of Evidence and in particular of the rules governing the admissibility of prior bad acts. Many examinees did not demonstrate such knowledge. Common mistakes involved a lack of knowledge concerning the admissibility of prior bad acts in the absence of a prior conviction and failing to address the particular objection lodged while instead engaging in a balancing analysis alone.

20. This question called upon examinees to demonstrate knowledge of whether the State can appeal an acquittal based on sufficiency of the evidence to convict. Many examinees did not demonstrate such knowledge. The most common mistake was stating that the appellate court should reverse and remand the case for a new trial.