

## JULY 2015 CRIMINAL PROCEDURE AND EVIDENCE COMMENTS

1. This question required examinees to demonstrate knowledge of the time frame for taking an arrestee before a magistrate, which most examinees did.
2. This question called upon examinees to demonstrate knowledge of the types of bond available, and particularly of a personal bond. Most examinees demonstrated such knowledge. Some examinees mistakenly believed that a personal bond is available only for misdemeanor offenses, while others knew that release was possible but did not correctly identify the mechanism for such release.
3. This question called upon examinees to demonstrate knowledge of the rules governing venue, and particularly of the rules for determining where venue lies. Only some examinees demonstrated such knowledge. The most common mistake was responding that venue was equally proper in all of the listed counties while overlooking where the offense occurred.
4. This question required examinees to demonstrate knowledge of trial court jurisdiction, and particularly of the court that has jurisdiction over felony offenses. Many examinees recognized that only a district court has jurisdiction over felonies. The most common mistake was responding that county courts additionally have concurrent jurisdiction in felony cases.
5. This question called upon examinees to demonstrate knowledge of procedures governing grand jury proceedings, and particularly of the available procedural step to take when grand jurors are improperly summoned. Many examinees knew that a procedural step was available, and many of those examinees identified a challenge to the array as the procedural step. A common mistake was responding that there was no available procedural step other than waiting to file a motion to quash any resulting indictment.
6. This question required examinees to demonstrate knowledge of the procedure and deadline to challenge a defective indictment. Many examinees demonstrated knowledge of the procedural step to take and when to take it, although many others did not know either the former or the latter.
7. This question called upon examinees to demonstrate knowledge of deferred adjudication and probation, and particularly of how they differ. Many examinees correctly identified at least one difference.
8. This question required examinees to demonstrate knowledge of the procedures applicable to guilty pleas, and particularly of the time frame for a defendant to withdraw his guilty plea. Most examinees knew that the defendant could withdraw his guilty plea within the time specified. A common problem was incorrectly identifying 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 principles and procedures governing search and seizure, which many examinees did.
10. This question required examinees to demonstrate knowledge of suggestive identification procedures and the procedural step to take when such procedures taint an in-court identification. Many examinees correctly identified the procedural step to take and the ground for exclusion. Common mistakes were naming the wrong procedural step or stating that the in-court identification constituted impermissible hearsay.
11. This question called upon examinees to demonstrate knowledge of the procedures governing pretrial depositions in criminal cases. Many examinees did not correctly identify the procedural step to take, although some examinees identified what the defendant would be required to show. A common mistake was discussing procedures relating to subpoenas or continuances or discussing the State's duty under Brady or the Michael Morton Act to turn over witness statements in its possession.
12. This question required examinees to demonstrate knowledge of the procedures to obtain a witness subpoena. Many examinees did not correctly identify the procedural step to take, although many

examinees did identify at least one requirement for an application for subpoena. Common mistakes were discussing procedures relating to continuances or discussing the State's duty under Brady or the Michael Morton Act to turn over witness statements in its possession.

13. This question called upon examinees to demonstrate knowledge of jury selection, and particularly of the grounds to challenge a potential juror for cause, which many examinees did. A common mistake was relying on bias and prejudice generally as the ground for the challenge rather than knowing the specific ground, as provided by the Code of Criminal Procedure, of service on the indicting grand jury as a basis to challenge a potential juror for cause.

14. This question required examinees to demonstrate knowledge of jury selection, and particularly of the use of peremptory challenges in the selection of alternate jurors. Only some examinees demonstrated such knowledge. Common mistakes were responding that the defendant would be allowed to exercise his unused peremptory challenges and the additional challenge allowed by the trial court for the selection of alternative jurors or simply stating how many peremptory challenges are allowed for jury selection in general.

15. This question required examinees to demonstrate knowledge of the order of proceedings in trial, and particularly of the time frame for a defendant's opening statement. Many examinees did not demonstrate such knowledge. The most common mistake was the failure to understand the effect that the State's decision not to make an opening statement before it calls its first witness has on the defendant's right to make an opening statement at that time.

16. This question called upon examinees to demonstrate knowledge of the rules of evidence. In particular, it required examinees to demonstrate knowledge of the rules relating to the admissibility of a defendant's prior bad acts to show such things as motive, knowledge, identity, and intent and recognition of when such issues have been raised. Many examinees knew the correct ruling on the objection, although fewer identified the correct basis for that ruling. Common mistakes were responding that the testimony was inadmissible because the State did not give the defense notice that it would call the witnesses, the testimony was hearsay, or the testimony was cumulative.

17. This question required examinees to demonstrate knowledge of whether the State may introduce evidence at trial that a defendant contacted an attorney. Many examinees demonstrated such knowledge. A common mistake was responding that the evidence was admissible because it did not include the content of the discussion between the defendant and attorney.

18. This question required examinees to demonstrate knowledge of the rules of evidence, and particularly of the rules governing the impeachment of a witness with a prior felony conviction. Most examinees did not demonstrate such knowledge. The most common mistake was failing to recognize the effect that the witness's satisfactory completion of probation had on the use of the conviction for impeachment. Some examinees who knew the correct ruling on the objection gave an incorrect basis for the ruling, such as that the felony theft conviction had no relevance to the witness's credibility.

19. This question called upon examinees to demonstrate knowledge of the proper content of jury instructions, and particularly of whether the trial court's instructions may properly include a comment on the weight of the evidence. Many examinees knew how the trial court should rule, and many of those examinees also correctly identified the reason.

20. This question called upon examinees to demonstrate knowledge of claims of ineffective assistance of trial counsel and the available remedy. Some examinees recognized the availability of a claim for ineffective assistance, but only a few examinees identified the correct remedy.