

1. This question asks for the requisites of an arrest warrant. Most examinees that missed this question confused an arrest warrant with a search warrant or neglected to note the requirement for a magistrate's signature authorizing the arrest. **Answers:** 1)Individual's name, 2)the offense, 3)signature of the magistrate
2. This question called for a recitation of one's rights at an examining trial. The examinees who answered this question incorrectly appeared to equate an examining trial with the magistrate's warnings under Article 15.17 of the Code of Criminal Procedure or Miranda warnings. **Answers:** 1)Presence, to cross-examine or confront the witness, 2)right to counsel, subpoena witness or compulsory process, to make an unsworn statement, 3)to remain silent or assert the Fifth Amendment privilege
3. This question asked for the requisites of a search warrant. For the most part persons taking the exam knew what a search warrant required. Although, those who did not answer the question correctly neglected to list obvious requirements such as the place to be searched and the items to be seized. **Answers:** 1)Include a sworn affidavit, 2)set out the facts stating probable cause, 3)the place to be searched, 4)items to be seized, 5)establish the place to be searched where the items to be seized will be contained
4. This question called for the examinee to evaluate an illegal arrest. In this case the officer arrested an individual without a warrant who had not committed a felony offense in his presence. Most people that missed this question improperly focused on the scope of the search warrant in the problem instead of the fact that no arrest warrant was obtained to arrest Sally. Others who answered incorrectly believed that the photograph provided probable cause to arrest Sally without a warrant. **Answers:** 1)No offense had been committed, 2)the officer had no warrant, 3)the officer had no probable cause to believe she had committed a crime, 4)the officer did not observe her commit a felony in his presence
5. This question asked in what manner grand jurors are selected. The law recently changed in this regard, discarding the old key man system for selecting grand jurors. In keeping with BLE policy both the old law and new law were recognized as correct answers. Many examinees chose not to answer this question. Some knew the law had recently changed but did not answer the question. Others knew that the procedure was the same as for the selection of petit or civil juries, but did not state that the court on a random basis summons grand jurors. Some examinees incorrectly responded that the prosecutor and the accused's attorney select the grand jury through void dire. Others focused their answers on the qualifications and disqualifications for jurors provided in the Code of Criminal Procedure. **Answers:** 1)The court summons the grant jurors, 2)the grand jurors are summoned in the same manner as petit jurors
6. This called for examinees to recognize that offenses arising out of the same criminal episode could be charged in the same indictment. Persons who missed points on this question discussed the Blockburger test for charging offenses with different

elements to avoid violating double jeopardy, miscued that the same crime or same offense could be charged instead of all crimes from the same criminal episode or neglected to explain why the offenses could be indicted together in this case.

Answers: 1)Yes, the offenses can be indicted together, 2)the same indictment is proper for the offenses arising from the same criminal episode

7. This question called for the components of an indictment. Examinees who missed points here neglected to state the obvious; must state an offense, or the person charged. Or examinees confused the indictment with a search or arrest warrant by stating a magistrate must sign the indictment instead of indicating that the foreman of the grand jury is required to sign the indictment or requiring the recitation of facts leading one to believe that a crime had been committed as is required in a search warrant. Others simply did not list three components. Answers: 1)Must commence with "In the name and by the authority of the State of Texas", 2)presented in the District Court and in the County where the grand jury was in session, 3)must appear to be an act of the grand jury in the proper county, 4)state the name of the accused or that it is unknown with adequate identification, 5)that the offense presented was in the jurisdiction; 6)the time anterior to the date of the indictment but within the statute of limitations, 7)offense set forth in intelligible words, 8)must conclude "against the peace and dignity of the State", 9)must be signed by the Grand Jury Foreman, 10)upon the finding of probable cause
8. This required examinees to relate that the Code of Criminal Procedure requires the state to allow inspection and copying of police reports. Many examinees required more than the statute requires or mistook this for a question about Brady or favorable evidence that is material. This is a mistake. The Code of Criminal Procedure provision does not require the evidence to be favorable even in the sense of Brady. It is a relevance based provision only requiring that the evidence be material to the case and expressly requiring the production of police reports upon no showing. Some missed the point that police reports are not work product and began to discuss this concept. Answers: 1)Yes, 2)the Code of Criminal Procedure expressly provides that you can inspect and copy police reports
9. This required examinees to relay that the unrecorded statement could be suppressed or excluded unless independent evidence corroborated that statement. Many examinees mistook a motion in limine as something that will exclude or suppress evidence. Others missed the recording requirement. Many more missed the fact that independent corroboration could lead to admission of the statement. Many examinees focused on responding that the statement was illegally obtained by assuming or creating facts not stated in the question (e.g., arguing that the statement should be suppressed because Miranda warnings were not given). Answers: 1)file a motion to suppress or exclude evidence, 2)the statement was not recorded as is required, 3) unless it is corroborated by other evidence
10. This required examinees to note the pre-trial motion requirement to be eligible for probation noting that each individual must show they are qualified by virtue of having no prior felony convictions. Examinees typically failed to explain that the person must have no prior felony convictions or included non-existent pre-trial deadlines for the motion (e.g., 30 days before trial). Answers: 1)file a sworn motion

for probation asserting that there is no prior conviction or felony, 2) file the motion before trial

11. This required the examinees to explain the differences between a nolo contendere plea and guilty plea. Many missed the fact that a nolo plea cannot be used in subsequent civil proceedings. Others mistook a nolo plea as being less than the equivalent of a guilty plea. **Answers:** 1)it has the same legal effect as a plea of guilty, 2)it cannot be used in a civil case to attach as liability
12. This required examinees to agree that two or more persons can be tried jointly for the same offense or an offense arising out of the same transaction. Most examinees missed the reason that the two could be tried together. Many examinees focused on discussing the availability of a severance as a means to avoid a joint trial. Some examinees thought that two persons must be charged in the same indictment in order for a joint trial to occur. **Answers:** 1)Yes, 2)two or more individuals may be tried jointly for the same offense or offenses arising out of the same transaction
13. Examinees were required to answer that Sally could obtain a severance from Bill for trial because of Bill's prior felony conviction. Most examinees did not know that Bill's prior felony conviction entitled Sally to a severance. Instead, many examinees responded that Sally should file a motion to suppress or a motion in limine or should seek a limiting instruction stating that Bill's prior conviction should not be held against Sally. **Answers:** 1)you would move for severance, 2)severance should be granted because of Bill's prior felony
14. Examinees were required to note that fingerprints are not testimonial and so the challenge to having fingerprints taken would be unsuccessful. Most examinees who missed points did not know to say that fingerprints pertain to identity and are not testimonial. Others stated that the request should be denied because Sally's fingerprints could incriminate her or because Sally's fingerprints were already taken when she was arrested. **Answers:** 1)it is overruled, 2)fingerprints are not testimonial-they are physical attributes and identity
15. Examinees were required to know that an indictment cannot be amended to add a new offense that was not presented to the grand jury. Those who missed points but knew that the indictment could not be amended could not explain why or thought the question had to do with the timing of the amendment. **Answers:** 1)it is sustained, 2)it cannot amend an indictment with an additional offense or different offense than that presented to the grand jury
16. This question required examinees to relay how many jury strikes litigants get in a joint trial of two codefendants. Since the law changed here recently, we graded as correct, answers under the current and former provision. Most persons who got less than a perfect score did not realize that the prosecutor got twice the amount of strikes as each defendant or mistakenly believed that the defendants must share strikes. More people just did not know the number and many examinees skipped this question. Many examinees discussed a need to determine whether the defendants' interests were adverse or aligned as a factor in determining how many challenges each defendant would receive even though the Code of Criminal

Procedure makes no mention of such considerations. **Answers:** 1)each 8, 2)State 8 per defendant so 16 total [old law – about 6 each and 12 for State, ok for now]

17. This question required examinees to know that a person cannot be convicted upon the testimony of an accomplice witness unless that testimony is corroborated by independent evidence that the defendant committed the offense. This independent evidence cannot be evidence merely that the offense was committed. Many examinees missed the accomplice witness rule entirely. Others focused on the fact that Reggie made a plea deal instead of the fact that he is an accomplice witness. **Answers:** 1)No, 2) Sally cannot be convicted solely on the testimony of an accomplice witness unless it is corroborated by evidence that proves more than the commission of an offense
18. This question requires examinees to identify Sally's right to confront the witness and to explain that the statement is hearsay and could not be admitted at a joint trial because of its unreliability (a statement shifting blame to another upon arrest or interrogation). Admission of this statement also provides a reason for a possible severance. Examinees missed that a severance might be granted or the statement could be excluded on hearsay and confrontation grounds. The facts did not present the trial of a conspiracy. Many examinees focused on ways to suppress the statement as illegally obtained in violation of Bill's constitutional rights and in doing so assumed or created facts not stated in the question (e.g., failing to give Miranda warnings or ignoring a request for counsel). **Answers:** 1)the testimony violates Sally's right to confrontation, 2)it is hearsay, 3) the part of his confession implicating Sally is unreliable and should be excised, 4) or a severance granted
19. The video referenced in this question was properly authenticated under the rules of evidence and should be admitted. Personal knowledge is not required. Some examinees treated the video as a business record, which it is not. Some examinees treated the video as self-authenticating, while others believed that expert testimony was required to authenticate the recording. **Answers:** 1)overruled, 2)the video was properly authenticated under the rules of evidence
20. This required examinees to note that since Sally was not harmed she cannot make out a claim of ineffective assistance of counsel. To show ineffective assistance Sally must have been prejudiced by the deficient performance of counsel. Here, Sally was acquitted. Many examinees missed the fact that Sally was not prejudiced because she was acquitted. Others focused on whether counsel's statement during argument was appropriate or whether making the argument constituted deficient performance. **Answers:** 1) no, 2) Sally has not been harmed, she was acquitted, there is no claim to make because she cannot show prejudice