

FEBRUARY 2017 – CRIMINAL PROCEDURE & EVIDENCE

1. This question asks for the proper venue for prosecution. Most examinees properly identified Bexar County but missed Dallas County, in which an act involved in commission of the offense was committed.
2. This question called for an explanation regarding whether the defense may make a presentation to the grand jury. The examinees who answered this question incorrectly were not aware that the defense may do so with the approval of the state's attorney.
3. This question called for the examinee to explain if there was any procedure that could be used to suppress evidence before a grand jury. Most people that missed this question improperly believed that a motion to suppress or a motion in limine could be used to prevent evidence from going before a grand jury.
4. This question asked for the methods that one could use to post bail. Most persons who answered this question incorrectly did not include posting bail using a surety.
5. This question called for the examinee to explain if there was any procedure that could be used to suppress evidence before a trial jury. Most people that missed this question improperly cited a motion in limine that does not call for suppression as a remedy.
6. This question whether a search by a private person could be excluded from evidence. Most persons who answered this question incorrectly by suggesting a motion in limine might provide such a remedy. Many incorrectly believed that a search by a state actor was necessary to lead to suppression.
7. This question called for the number of peremptory jury strikes allotted to the prosecution and defense in the trial of two defendants. Although this question is asked almost every exam, persons continue to miss it by missing the key point. When two defendants are tried together, they each get 6 challenges and the prosecution gets double that amount.
8. This question called for the procedure used by codefendants to get a separate trial. Examinees who missed points where they did not know that co-defendants could seek a severance.
9. This required examinees to relate when the Code of Criminal Procedure allows the state to appeal. Many persons missed the point that an appeal may not be taken after jeopardy attaches when the jury is sworn.
10. This required examinees to relay when an accomplice witness is permitted to testify and when they are not. Many examinees missed the fact that independent corroboration is required to admission of the testimony.

11. This required examinees to note whether the predicate was met for the admission of photographs. Even though the question noted that the prosecutor proved the proper predicate, many examinees felt that by offering such proof, the prosecutor became a witness. Prosecutors offer proof through witnesses.
12. Examinees were asked to explain how the prosecution can overcome a claim by a witness of one's privilege against self incrimination. Most examinees did not know that the prosecutor can force such testimony by giving the witness immunity.
13. Examinees were required to note that exceptions to the attorney-client privilege can overcome its successful assertion. Most examinees failed to note any of these exceptions such as crime fraud or waiver.
14. This question required examinees to relay how Rule of Evidence 404(b) might permit the admission of such testimony to show plan or absence of mistake. Most persons that missed this question discussed motions in limine.
15. This question called for examinees to explain whether a transcript of a police interview, instead of the witness' live testimony could be admitted in evidence. Most examinee's who missed this question discussed motions in limine or thought that police reports are admissible in evidence. The interview is hearsay to which no exception applies and violates the defendant's right to confrontation.
16. This question called for examinees to know that a child witness might be incompetent to testify. Most examinees knew this question.
17. This question required examinees to know that a jury is always permitted to communicate with the court through the bailiff. Examinees that missed this question were not aware that the jurors could communicate through the bailiff or attached requirements that do not exist. For example, that they could communicate only if all parties were present.
18. This question requires examinees to know that the prosecutor can get an appeal court to review the trial court's refusal to give a requested jury instruction before the trial is over. Examinees either knew this or did not.
19. The question called for examinees to know that one can raise newly discovered evidence in a motion for new trial. Examinees that missed this question resorted to the civil judgment notwithstanding the verdict.
20. This required examinees to note the steps necessary to preserve trial error. A contemporaneous objection with an adverse ruling was required at a bare minimum. Examinees who missed this question again resorted to a motion in limine that preserves nothing for appellate review.