

JULY 2017 – CRIMINAL PROCEDURE AND EVIDENCE

1. May anyone other than the judge set bail?

Most common incorrect answer:

Test taker would miss the answer altogether, failing to state that a sheriff, police officer or other jail or could set bail.

2. May Judge Smith preside over Arnold's case? Explain your answer.

Most common incorrect answer:

Failure to the complete question and explain their answer as to why Judge could not sit on the case. The Judge had a clear disqualifying interest in the case as a victim.

3. How is a grand jury convened?

Most common incorrect answer:

Judge has the option of selecting a grand jury commissioner, often referred to as the "pick a pal" or "key man" system, which is no longer applicable in Texas.

4. Was Arnold timely indicted? Explain your answer.

Most common incorrect answer:

Tester would either miss the question altogether or fail to explain their answer and reference the statute of limitations. The statute of limitations for most felonies in Texas is three years.

5. What grounds can Lawyer assert to suppress the evidence? Explain your answer.

Most common incorrect answer:

Lawyer could assert work product privilege. The key here was recognition that the attorney client privilege was at issue.

6. For Arnold to be eligible for community supervision, what action must Lawyer take and when? Explain your answer.

Most common incorrect answer:

Failure to complete the question. Tester would leave out when the motion needed to be filed, that the lawyer need to file a sworn motion, or that defendant has not previously been convicted of a felony.

7. Who may not be excluded from the trial under the rule of witness sequestration? Explain your answer.

Most common incorrect answer:

Tester missed the question altogether by failing to include all people who are excluded from trial under the rule. Examinees most commonly missed the fact that victims are excluded from the rule unless their testimony would be affected. Many examinees incorrectly thought that a spouse of a party was also excluded from the rule.

8. What is the burden of proof in a criminal trial?

Most common incorrect answer:
Preponderance of the evidence.

9. What are the first two things that must occur to begin a criminal trial?

Most common incorrect answer:
The filing of charges against a defendant by a grand jury and jury selection. The two things that happen first are reading of the charge and entry of a not guilty plea.

10. Must the lawyer make an opening statement at that time? Explain your answer.

Most common incorrect answer:
Tester would either answer yes, they must make their opening statement or they would have waived their opportunity, or fail to complete the question and explain the correct answer. Defense counsel can reserve the opening until the beginning of the defense case.

11. What procedures must Lawyer use to get the records admitted without a witness?

Most common incorrect answer:
Failure to include that notice must be given to the prosecutor and that the affidavit must be filed 14 days prior to trial.

12. May Lawyer ask the police officer leading questions on direct examination?

Most common incorrect answer:
No, leading questions are only for cross examination. However, when a witness is associated with the opposing party, leading questions are proper on direct.

13. How should the court rule? Explain your answer. (404b)

Most common incorrect answer:
Tester would miss the question altogether by saying that the objection should be sustained. Failing to correctly apply 404b.

14. Because Lawyer will not be able to call the economist, what procedure should Lawyer follow to preserve error? Explain your answer.

Most common incorrect answer:
Lawyer should object, or tester would only reference making an offer of proof.

15. How should the Court rule? Explain your answer. (608ba)

Most common incorrect answer:
Tester failed to correctly apply 608a and understand that the court overruled the objection because the state had first attacked defendant's character for truthfulness. Tester would instead reverse the roles of the defendant and prosecutor in applying 608a or believe that the criminal charges themselves were sufficient to be an attack on the defendant's character.

16. How should the Court rule? Explain your answer. (Grand Jury Foreman)

Most common incorrect answer:

Failing to correctly understand and explain the reasoning behind the objection being sustained. Tester instead would answer that grand juror foreman cannot be a witness in a case they indicted or that the grand jury proceedings are secret.

17. Should the Court grant or deny the motion? Explain your motion. (Acquittal)

Most common incorrect answer:

Overrule, case should go to the jury because some evidence has been presented. The Court can grant a directed verdict in favor of the defendant.

18. How should the Court rule? Explain your answer. (Reopen case)

Most common incorrect answer:

Missing the question altogether. Court should not allow the case to be reopened because the defendant was acquitted or that the prosecutor should file a motion for new trial.

19. How should the Court rule on the objection? Explain your answer. (Hearsay exception)

Most common incorrect answer:

Testimony is hearsay or admissible as a statement against interest.

20. What step can Lawyer take to overturn the conviction before he files an appeal, and when must he take it? Explain your answer.

Most common incorrect answer:

Incorrectly state that the Lawyer should file a judgment notwithstanding the verdict (JNOV). A Motion for new trial can be filed within thirty days of sentencing.