

SELECTED ANSWERS – JULY 2018 CRIMINAL PROCEDURE & EVIDENCE

1. Are misdemeanor offense heard in Count or District Courts? Explain your answer.

Question 1 – Selected Answer 1

Misdemeanor offenses are heard in County Court, specifically, any misdemeanor offense punishable by a fine of over \$500 dollars and less than one year of confinement. District Courts only hear felony cases and certain statutorily prescribed misdemeanors.

Question 1 – Selected Answer 2

Misdemeanor offense, including Class A and Class B misdemeanors, are heard in County Court. District Court have jurisdiction to hear felony offenses and misdemeanor offense committed by officials.

Question 1 – Selected Answer 3

Misdemeanor offenses are heard in the County Court, whereas the District Court has exclusive jurisdiction over all felony cases. The county court has jurisdiction over all misdemeanor cases.

Question 1 – Selected Answer 4

Misdemeanor offenses are heard in county courts. They are commenced by a filing of an information with the county court.

2. What county or counties are a proper venue for the misdemeanor offense? Explain your answer.

Question 2 – Selected Answer 1

Liberty County is a proper venue for the offense because it is where the crime occurred. In addition, if stolen property was transported back to her home in Harris County, then Harris county may be a proper county for venue as well since the stolen property was transported to Harris County and thus making the crime occur there too.

Question 2 – Selected Answer 2

Venue would be proper in either Harris or Liberty County. Venue is proper in al counties where an element of the crime occurred. Here, the theft was committed in Liberty County and stolen goods where taken to her home in Harris County. Thus, the crime in both counties and thus both a proper venues.

Question 2 – Selected Answer 3

Liberty county would be proper as the county in which the offense occurred. Harris county would be proper as the county in which the stolen property was presumably taken. Any other county the stolen property was taken will be proper as well.

Question 2 – Selected Answer 4

Venue is proper in liberty County and Harris County, because at least part of the crime occurred in these two counties (if June brought the stolen goods home). In general, venue is proper in a criminal case in the counties where the offense was committed.

3. What should Judge do regarding June's request for a lawyer at no cost to her? Explain your answer.

Question 3 – Selected Answer 1

An indigent defendant is entitled to appointed counsel pursuant to the fifth amendment adversarial criminal proceedings where punishment by confinement is a possibility. Here June is being charged with a class a misdemeanor punishable by up to 1 year in jail and she is indigent. She is entitled to appointed counsel, free of cost.

Question 3 – Selected Answer 2

A defendant is entitled to counsel at any adversarial proceeding that could result in incarceration. Because the crime is punishable by incarceration and June is indigent the court should appoint her a lawyer.

4. Is lawyer entitled to reimbursement for hiring a mental health expert? Explain your answer.

Question 4 – Selected Answer 1

Yes, when appointed to represent an indigent defendant, a lawyer has the right to be reimbursed for expenses incurred in that the defense necessary to ensure effective counsel. Because it appears that June is suffering from mental health issues, it appears that a mental health expert may be necessary for an effective defense.

Question 4 – Selected Answer 2

Yes, lawyer is entitled to reimbursement because when the defendant and the defense counsel are unable to afford an expert due process requires that the state provide one when the expert's area of expert's area of expertise is likely to be at issue in the case. here, the psychiatrists's expertise would be at issue with respect to Jane's possible insanity defense.

Question 4 – Selected Answer 3

Lawyer is entitled to a reimbursement from the court for hiring a mental health expert to determine if June is competent if such is deemed necessary for June's defense.

Question 4 – Selected Answer 4

Lawyer is entitled to reimbursement from the court for hiring mental health expert, because mental health of June is closely relevant to her defense, and a mental health expert is necessary for June's defense.

5. What is the formal charging document called in a misdemeanor case?

Question 5 – Selected Answer 1

The formal charging document in a misdemeanor case is called an information. It is written statement filed by the prosecutor with an attached affidavit, charging the accused with a criminal act. It is filed in a county court.

Question 5 – Selected Answer 2

The formal charging document in a misdemeanor case is called an information (similar to the felony indictment). It is a written charge offered to the court by the state attorney representing on the matter, whereas indictment is created by a grand jury.

Question 5 – Selected Answer 3

The formal charging document in a misdemeanor case is called an “information” which must be filed with a criminal complaint.

Question 5 – Selected Answer 4

In a misdemeanor case the formal charging document is either a complaint or an information. A complaint is used for offenses punishable by a fine of \$500; an information is used for class A and B misdemeanors. As she is charged with a Class A misdemeanor, the formal charging document here is an information.

6. What is the procedure called where Judge asks June how she pleads to the charge?

Question 6 – Selected Answer 1

The procedure where Judge asks June how she pleads to the charge is called an arraignment. At an arraignment, the court reads the charges against the accused and the accused enters a plea of guilty, not guilty, or nolo contendere on the record.

Question 6 – Selected Answer 2

The procedure where the judge asks June how she pleads to the charge is called an arraignment.

Question 6 – Selected Answer 3

The procedure when the judge asks an alleged offender how the plea is called an arraignment.

Question 6 – Selected Answer 4

The procedure where the judge asks June how she pleads to the charge is called the arraignment.

7. Since June did not answer Judge, what plea should be noted in the record? Explain your answer.

Question 7 – Selected Answer 1

Since June did not answer a “not guilty” plea should be entered in the record. This result flows from the presumption of innocence that attaches in all criminal cases until the accused has made a knowing, intelligent, and voluntary guilty plea or been convicted by a jury. See in re Winship.

Question 7 – Selected Answer 2

Since June did not answer the Judge, a plea of not guilty should be noted in the record. A criminal defendant must affirmatively plead guilty or nolo contendere. The judge may not make that determination for the defendant and thus, the judge should enter a plea of not guilty.

Question 7 – Selected Answer 3

Because June remained silent and did not answer Judge, the court will enter a plea of not guilty on the record. When a defendant fails to enter a plea at arraignment, the default plea will be not guilty.

Question 7 – Selected Answer 4

When an accused fails to answer a plea, a plea of not guilty should be entered. Accordingly, the judge should enter in a plea of not guilty for June.

8. What should Lawyer provide to Prosecutor? Explain your answer.

Question 8 – Selected Answer 1

Lawyer only needs to disclose the names of any testifying experts. The defense is not required to provide the prosecutor with any other pretrial discovery in a criminal case.

Question 8 – Selected Answer 2

In Texas, discovery may not be requested by the state from the defendant. However, the State is entitled to receive from the defendant a list of expert witnesses the defense intends to call at trial.

Question 8 – Selected Answer 3

Lawyer must only provide the names of expert witnesses intended be called on by Lawyers and whether lawyers intends to raise an insanity defense. If lawyer intends to raise insanity as a defense, he or she must inform prosecutors within 20 days prior to trial.

Question 8 – Selected Answer 4

Lawyer is not required to provide prosecutor with any discovery in the way that the prosecutor is required to provide all discovery to the defense.

Question 8 – Selected Answer 4

Unlike the prosecution, the defense has no duty or obligation to provide discovery. It may provide a list of its experts 30 days before trial, but only after receipt of a notice requesting such a list. If nothing has been provided, lawyer is not required to provide any discovery to prosecutor.

9. What should Lawyer provide to Prosecutor in response to Prosecutor's request? Explain your answer.

Question 9 – Selected Answer 1

For use of an expert witness to substantiate the defense of insanity, Defense must put Prosecutor on notice of the use of a testifying expert and provide the name and address of said expert. Defense need not supply Prosecutor with information regarding any consulting expert, however.

Question 9 – Selected Answer 2

A list of any potential experts they may call to testify, but that is all he information the defense has to respond with at that time.

Question 9 – Selected Answer 3

Lawyer should provide prosecutor with Doctor's name and address, but has no obligation to provide prosecutor with a summary of Doctor's expected testimony or any other material pre-trial.

Question 9 – Selected Answer 4

Lawyer should provide to prosecutor the name and address of the expert witness if he is meant to testify at trial. Defense counsel need not disclose the names of their witnesses to the prosecutor, except for expert witnesses under the Texas Rules of Evidence.

10. How many challenges for cause does Lawyer get during jury selection? Explain your answer.

Question 10 – Selected Answer 1

Lawyers get unlimited challenges for cause during jury selection. There is not a list on the number of causes during voice dire.

Question 10 – Selected Answer 2

Lawyer has as many challenges for cause as there are disqualified jurors. Unlike peremptory strikes, there is no limit to the number of challenges for cause a party can make, and so long as Lawyer has a basis for disqualifying a juror (because of , for example, bias against June) he may challenge that juror for cause.

Question 10 – Selected Answer 3

Lawyer will to be limited in the number of challenges for cause that they can bring. Under the Texas Rules of Criminal Procedure, only peremptory strikes are limited in number among the parties, 6 to each side unless there are multiple defendants at the same trial.

Question 10 – Selected Answer 4

There is no limitation to the cause challenges by either the defense of prosecution. Only preemptory challenges are limited.

11. How should Judge rule on Lawyer's challenge? Explain your answer.

Question 11 – Selected Answer 1

Judge should sustain the challenge and dismiss the potential juror because she is biased against the law which protects defendants from testifying to avoid self-incrimination.

Question 11 – Selected Answer 2

Challenge sustained. The juror prospective should be removed because they are unable to appropriately apply the law to the case. Defendant's may not be compelled to testify in their own defense and their refusal to testify may not be held against them. This right is protected by the fifth amendment.

Question 11 – Selected Answer 3

Judge should grant the challenge for cause because the witness has admitted they cannot follow law in deciding the case. June is entitled to refuse to testify at trial as part of her 5th amendment rights and the jury may not consider this when deciding the verdict.

Question 11 – Selected Answer 4

Judge should sustain Lawyer's objection and dismiss the juror due to the fact that the potential juror has noted that she cannot follow the law. When a juror notes that they will be unable to not consider the constitutional right of the defendant to not testify, that juror must be struck for cause.

12. What are the first two steps in a criminal trial? Explain your answer.

Question 12 – Selected Answer 1

In a criminal trial after the parties have announced ready, the jury has been selected and sworn, the first two steps are that the complaint will be read to the jury and the defendant's attorney will enter a plea on the record on the defendant's behalf.

Question 12 – Selected Answer 2

The first two steps of a criminal trial are the reading of the charge against the accused and entry please, which are then followed by opening statements from the respective lawyers. The charge must be read at the start of a trial to inform the jury, and the pleas made in the presence of the jury before the opening statements are made.

Question 12 – Selected Answer 3

The prosecutor must read the information and the defendant must enter a plea of not guilty.

Question 12 – Selected Answer 4

The first two steps of a criminal trial are to read the complaint and for the defendant to enter a not guilty plea.

Question 12 – Selected Answer 5

The first two steps in a criminal trial are the reading of the complaint, information, or indictment, and then the receipt of the defendant's plea. The defendant must plead "guilty" "nolo contendens" or "not guilty".

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

Question 13 – Selected Answer 1

The burden of proof in a criminal trial is beyond a reasonable doubt. The state must prove every element beyond a reasonable doubt in order to convict a defendant.

Question 13 – Selected Answer 2

The state has the burden of proof in a criminal trial to prove every element of the crime charged beyond a reasonable doubt.

Question 13 – Selected Answer 3

The burden of proof in a criminal trial is beyond a reasonable doubt. Jury must find the defendant guilty beyond a reasonable doubt.

Question 13 – Selected Answer 4

The burden of proof in a criminal trial is beyond a reasonable doubt.

14. Must Lawyer make her opening statement at that time? Explain your answer.

Question 14 – Selected Answer 1

No, lawyer can reserve her opening statement until after the state's case-in-chief. Lawyer can make her opening statement immediately after prosecutor makes his if lawyer wants to , however.

Question 14 – Selected Answer 2

Lawyer is entitled to make his opening statement either immediately after the prosecution makes their opening statement or after the prosecution presents its case in chief. Lawyer may also choose to waive his opening statement and begin his case in chief.

Question 14 – Selected Answer 3

Lawyer may, but is not required to make an opening statement immediately after the prosecutor. They may also make a statement after the close of prosecutor's case in chief, although they ordinarily make their statement immediately after prosecutor's opening.

Question 14 – Selected Answer 4

Lawyer is not required to make an opening statement immediately after the prosecution makes their opening statement. Defense can reserve their right to make an opening statement at the close of the prosecution's case in chief.

15. What must Owner's testimony include to properly admit the video in evidence? Explain your answer.

Question 15 – Selected Answer 1

To lay the proper foundation for the video, Owner must testify that the camera was in proper working order and was being operated correctly at the time of the offense, that the camera's recordings are reliable, and that the video in fact depicts the store.

Question 15 – Selected Answer 2

The prosecutor must lay the proper foundation to authenticate the video recording. He or she must ask the owner about whether the camera was in good / proper working condition, about whether the depiction is fair and accurate representation of the store on the day the alleged offense occurred, and whether it appears to be altered in any way.

Question 15 – Selected Answer 3

In order to properly admit the video into evidence owner's testimony must include that he saw the video and that it was not then altered; that the video fairly and accurately depicts what he saw; and that the video camera was functioning properly when the video was made.

Question 15 – Selected Answer 4

To authenticate a video recording, the proponent must establish that the recording equipment was functioning properly and that the contents of its recording fairly represented the events of the place allegedly recorded. Here, the owner must testify that his store video camera was functioning on the day in question and it fairly depicted occurrences at the store.

Question 15 – Selected Answer 5

Owners testimony must begin by properly identifying that the footage is in fact the footage from the owners store, that the footage has not been changed or altered in any way and that the footage is a fair and accurate representation as to what store owner is testifying.

16. What must Lawyer give to Prosecutor, if anything? Explain your answer.

Question 16 – Selected Answer 1

The lawyers must provide what was requested by Prosecutor. The prosecutor is entitled to the underlying information and records that formed the basis of the testifying expert's opinion.

Question 16 – Selected Answer 2

Lawyer must produce any records on which Doctor relied in forming his opinions, including documents, treatises, reports, and test results. Had Doctor been consulting expert, Lawyer would not need to disclose any information about Doctor to Prosecutor.

Question 16 – Selected Answer 3

The lawyer must provide information and reports used by the testifying doctor. In criminal court, the physician- patient privilege does not apply. Since the doctor is testifying, the information given to the doctor for diagnosis and treatment must be provided to the prosecutor when asked.

Question 16 – Selected Answer 4

Lawyer must provide all information that formed the basis of doctor's testimony, including the testing performed and the records.

Question 16 – Selected Answer 5

Since doctor is testifying expert, and not a pure consulting expert, the doctor will have to disclose the testing performed and the records used to prosecution any information that the lawyer provided the doctor could also be obtained if the doctor relied on it for his testimony.

17. How should Judge rule on Prosecutor's objection? Explain your answer.

Question 17 – Selected Answer 1

Overrule. Experts are permitted to testify to opinions about the ultimate issue so long as the testimony is within the scope of their expertise. Here, the doctor is qualified to form an opinion about June's ability to have the intent to commit theft or if her mental defect would prevent it.

Question 17 – Selected Answer 2

The court should overrule the objection as the Texas Rules of Evidence do not bar an expert from presenting an opinion on the ultimate mental state of the defendant contrary to the standard of the federal rules of evidence.

Question 17 – Selected Answer 3

Judge should overrule the objection. Expert witnesses are allowed to opine on ultimate issues. It is for the jury to consider how much weight to give it.

Question 17 – Selected Answer 4

The judge should overrule the prosecutor's objection. Experts are permitted to express an opinion on an ultimate issue in the case, where that opinion is deemed to be reliable, rooted in sound scientific techniques and theory and helpful to the trier of fact.

Question 17 – Selected Answer 5

Judge should overrule the objection, because the Texas Rules of Evidence permits an expert to testify regarding the mental state of a criminal defendant, even if it pertains to the ultimate issue of intent. This T.R.E. rule is distinct from the Federal Rule of Evidence, which does not permit such testimony.

18. How should Judge rule? Explain your answer.

Question 18 – Selected Answer 1

The court should sustain lawyer's objection. The evidence is inadmissible character evidence as it is being admitted for the purpose of showing that June had the propensity to steal food and as such she is likely acted that way here. Because the admission of this statement would unduly prejudice June, it should not be admitted despite its relevance.

Question 18 – Selected Answer 2

Objection sustained. In general, prior bad acts that merely show a D's propensity to commit a crime are inadmissible. This type of evidence is unduly prejudicial. This evidence shows propensity because prosecutor is essentially arguing "once a thief, always a thief".

Question 18 – Selected Answer 3

The judge should sustain the lawyer's objection. This is an impermissible use of character evidence (specific instances of conduct) to prove conformity with previous acts. This is not permitted, although the prosecutor may use it to show motive, knowledge, intent, or some other non-conformity purpose.

Question 18 – Selected Answer 4

The court should sustain lawyer's objection. The prosecutor is not allowed to use prior bad acts as propensity to show that the defendant acted in conformity with the previous offense to show she is guilty of the currently charged crime.

Question 18 – Selected Answer 5

Judge should sustain the objection because proper bad acts are not admissible to prove that the defendant acted in conformity with the prior bad act. Although prior bad acts are admissible to show common plan, preparation, identity, lack of mistake, etc., this is not the proposed purpose here.

19. How should Judge rule? Explain your answer.

Question 19 – Selected Answer 1

The judge should rule in favor of the defense. Prosecutor may not bring the theft of water charge under double jeopardy. The second theft charge contains all of the same elements as the first theft charge from the same criminal episode, and will therefore the prosecutor will be barred from charging June again in this instance.

Question 19 – Selected Answer 2

This should be sustained, as a violation of June's rights against double jeopardy. These two alleged crimes are part of the same criminal transaction and could have been prosecuted simultaneously. Based on the facts a trier of fact could not find June guilty of one of these charges without the other.

Question 19 – Selected Answer 3

Sustain the objection. Jeopardy has attached and theft of the water would be charging June for the same crime as all the elements are the same and it arose from the same transaction.

Question 19 – Selected Answer 4

The judge should sustain the objection on the grounds that prosecutor may not proceed with trying June for theft of water since it arose out of the same criminal transaction as the theft of bread.

Question 19 – Selected Answer 5

The judge should sustain lawyer's objection because double jeopardy has attached. Theft of the water has all of the same, but no different, elements as theft of the bread, and arises out of the same transactions. thus, double jeopardy would occur if the prosecutor could file a second lawsuit against June for essentially the same act.

20. How should the Court of Appeals rule on the motion? Explain your answer.

Question 20 – Selected Answer 1

The court should deny the appeal because June was acquitted. If a defendant is acquitted (found not guilty) then the state cannot appeal.

Question 20 – Selected Answer 2

The court should grant the motion. This is a violation of June's rights against double jeopardy. Once the defendant has been acquitted she may not be retried for the same crime.

Question 20 – Selected Answer 3

The court of appeals should grant lawyer's motion because jeopardy has attached to the acquittal and prosecutor may not appeal it.