

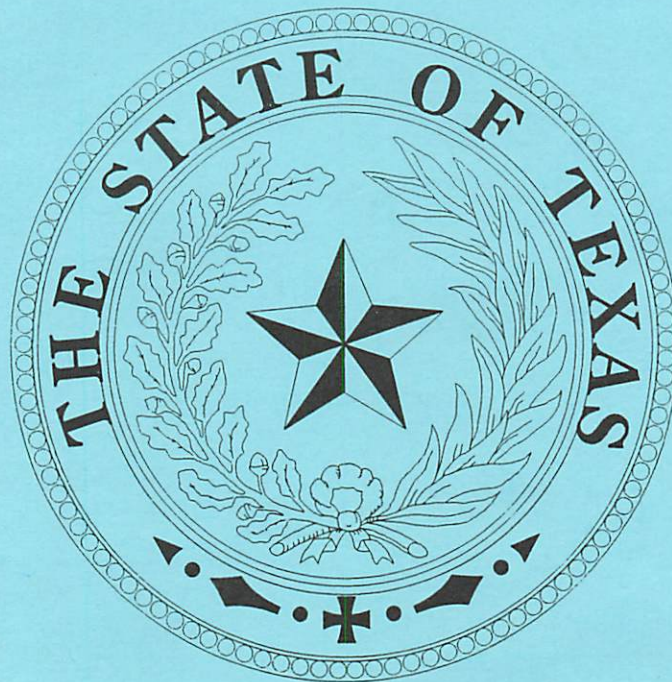
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February 2013

# Criminal Procedure & Evidence

[This Criminal booklet is one part of the Procedure & Evidence session. Both the Civil and the Criminal booklets must be completed during the 90 minute Procedure & Evidence testing session.]



## TEXAS BAR EXAMINATION

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**YOUR ANSWERS MUST BE LIMITED TO THE 5 LINES PROVIDED AFTER EACH QUESTION. ANYTHING MORE THAN 5 LINES WILL NOT BE GRADED.**

## **CRIMINAL PROCEDURE & EVIDENCE**

Amy, Connie, and Vicky went to a bar to have some drinks. After an hour of drinking tequila, Amy and Vicky began to argue about which of them loved their neighbor, James, the most. Amy became enraged, grabbed a steak knife off of the table, and stabbed Vicky in the stomach as Connie held Vicky by her hair. When Police Officer Otis arrived at the bar, he handcuffed and arrested Amy and Connie. After Vicky was rushed to the hospital, Officer Otis took Amy into the bar's kitchen to question her. Officer Otis properly read Amy all of her rights, and Amy waived her rights and admitted that she had stabbed Vicky. Officer Otis then conducted a warrantless search of Connie's pickup truck, which was in the bar's parking lot. Under the driver's seat, he found a steak knife with blood on it.

Amy and Connie were charged by complaint with the second degree felony of aggravated assault with a deadly weapon, which is defined as "intentionally, knowingly, or recklessly causing bodily injury to another by use of a deadly weapon."

1. **Within what amount of time must Amy and Connie be brought before a magistrate?**

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You are appointed to represent Amy. The magistrate denies Amy bail even though she has no prior criminal record.

2. **What procedural step, if any, can you take to challenge the denial of bail?**

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The magistrate sets bail for Connie, and she is released after she posts the required amount of bail. The magistrate denies Connie’s request for appointment of counsel on the ground that she was able to afford bail.

**3. Is the magistrate’s ruling correct? Explain your answer.**

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Amy tells you she stabbed Vicky in self-defense. She demands that you arrange for her to testify to the grand jury and also demands that you attend the grand jury proceedings to advise her.

**4. Does Amy have the right to testify to the grand jury, and does she have the right to have counsel present at the grand jury proceedings? Explain your answer.**

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The prosecutor (“Prosecutor”) goes to the grand jury room during the grand jury’s deliberations and presents a closing argument in which he asks the grand jurors to indict Amy and Connie. As soon as the grand jurors hear Prosecutor’s argument, they unanimously agree to indict Amy and Connie.

**5. Did Prosecutor follow proper procedure? Explain your answer.**

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Following the return of the indictment, you ask Prosecutor for the names and addresses of the grand jurors so that you can interview them to learn why they decided to indict Amy.

**6. Is Prosecutor obligated to give you the grand jurors' names and addresses as part of discovery? Explain your answer.**

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The indictment charges the offense of aggravated assault by "causing bodily injury to another by use of a sharp object," but nowhere mentions the term "deadly weapon" or the words "intentionally," "knowingly," or "recklessly."

**7. What procedural step, if any, can you take to challenge the indictment? If there is a procedural step that you can take, by when should you take it?**

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Amy asks you to explain what will happen if she decides to enter a plea of guilty.

- 8. List three admonitions that the Court must give Amy before accepting her plea of guilty.**

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You file a motion to exclude from evidence at Amy's trial the bloody steak knife that Officer Otis found during his warrantless search.

- 9. What argument should Prosecutor make in response to your motion?**

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During discovery, Prosecutor informs you that his first witness at trial will be Officer Otis and that he will testify about his recollection of Amy's oral confession to him.

- 10. What procedural step, if any, can you take to try to prevent Prosecutor from introducing this testimony by Officer Otis at trial? If there is such a step, on what basis can you take it?**

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Amy decides to have a jury trial so that she can try to show the jury that she acted in self-defense.

11. **What procedural step, if any, can you take to have the jury decide Amy's punishment? If there is such a step, by when should you take it?**

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During voir dire, one of the potential jurors states that she has a prior misdemeanor conviction for theft.

12. **Is this potential juror qualified to serve on the jury? Explain your answer.**

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Prosecutor uses his peremptory challenges to strike all of the women who are potential jurors.

13. **What objection, if any, can you make to Prosecutor's use of his peremptory challenges? If there is an objection, how may Prosecutor defend his use of his challenges?**

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Connie enters a plea agreement with Prosecutor. At Amy's trial, Connie testifies that she saw Amy become enraged and stab Vicky with a steak knife.

**14. Can Amy be convicted on the basis of Connie's testimony alone? Explain your answer.**

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Prosecutor tells you that he intends to call James as a witness at trial. Prosecutor also tells you that James will testify that he visited Amy in jail and that Amy told him she stabbed Vicky as an act of true love for him. You tell Prosecutor that you will object to this testimony as hearsay and that you will ask that the Court exclude it.

**15. What foundation must Prosecutor establish for this testimony to be admissible?**

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Prosecutor calls Steve Thompson, Chief of Records at the County Crime Lab, to introduce a County Crime Lab report written by Forensic Analyst William Jones. Mr. Jones's report concludes that Vicky's blood and Amy's DNA are on the knife that Officer Otis found.

**16. What objection, if any, should you make to the admission of this report? Explain your answer.**

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Prosecutor's next witness is Lola Spivey. Ms. Spivey testifies that Amy stabbed her in the stomach last year when they revealed to each other that they both were in love with Eric, who was a classmate of theirs. You are completely surprised by this testimony.

**17. What objection, if any, should you make to this testimony? What response, if any, can Prosecutor make to your objection?**

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**18. What procedural step, if any, could you have taken to have avoided being surprised by Lola's testimony?**

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Prosecutor has a non-refundable vacation that will begin in twenty-four hours. To save time, he requests that the Court allow the jury to hear all of the evidence on both guilt and punishment before it deliberates and returns any verdict. The Court denies Prosecutor's request.

**19. Is the Court's ruling correct? Explain your answer.**

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Although the jury returns a verdict of guilty, it cannot agree on the punishment to be assessed. You move for a mistrial and request a retrial of Amy as to her guilt and punishment. The Court grants your motion and your request.

**20. Is the Court's ruling correct? Explain your answer.**

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**DO NOT CONTINUE YOUR ANSWER IN THIS SPACE.**

**THIS CONCLUDES THE CRIMINAL PROCEDURE AND EVIDENCE QUESTIONS. CIVIL PROCEDURE AND EVIDENCE QUESTIONS ARE CONTAINED IN A SEPARATE BOOKLET.**

**MULTISTATE PERFORMANCE TEST and PROCEDURE & EVIDENCE**

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