

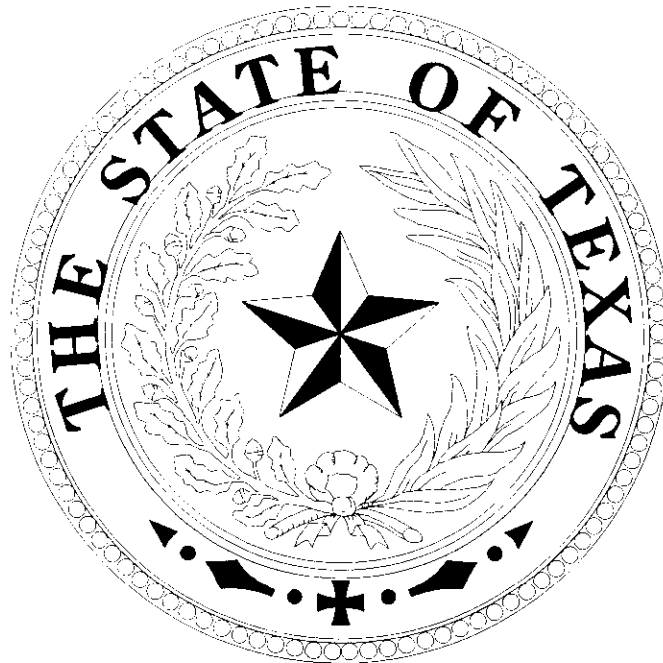
Examinee
Number

Attach Criminal P&E bar code sticker here

February 2014

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

Joe and Rich were inmates at the county jail in a small town in Texas. On January 13, 2013, Joe paid Officer Wally, who was a guard at the jail, \$100 to smuggle a cell phone into the jail for him. On January 26, 2013, Rich paid Officer Tommy, who was a guard at the jail, \$150 to smuggle into the jail two cartons of cigarettes for him. On January 31, 2013, Joe used his recently smuggled cell phone to call his wife, Thelma, from the jail. However, Joe mistakenly dialed the Mayor's Helpline and left a voice message asking Thelma to pay Officer Wally an additional fee for an extra cell phone battery for Joe.

Following an investigation, Joe was charged by complaint with the second degree felony of bribery for paying the \$100 fee to Officer Wally for a violation of a duty imposed by law on Officer Wally as a public servant. Rich was charged by complaint with the second degree felony of bribery for paying the \$150 fee to Officer Tommy for a violation of a duty imposed by law on Officer Tommy as a public servant. You have been appointed to represent Joe.

The prosecutor ("Prosecutor") informs you that Joe can be denied bail under the Texas Constitution.

1. What must Prosecutor show for Joe to be denied bail?

Joe is brought before a magistrate for an examining trial.

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2. What is a purpose of an examining trial?

Prosecutor tells you that he wants Joe to cooperate with him and testify to the grand jury

3. If Joe agrees to cooperate, what are three of the warnings that Joe must be given before he testifies to the grand jury?

4. If Joe agrees to cooperate, who may question Joe when he appears before the grand jury?

Prosecutor is considering foregoing a grand jury proceeding and instead drafting and signing an indictment charging Joe with the second degree felony of bribery.

5. Does Joe have a right to be charged by a grand jury indictment? Explain your answer.

6. What words should an indictment commence with and conclude with?

Joe and Rich are charged in separate indictments with the second degree felony of bribery. Joe's indictment is based on the bribe Joe paid to Officer Wally to get a cell phone. Rich's indictment is based on the bribe Rich paid to Officer Tommy to get two cartons of cigarettes.

You mention to Prosecutor that you plan to use an expert at trial to testify about the voice message left on the Mayor's Helpline. Prosecutor files a motion requesting the name and address of your expert.

7. May a court order you to disclose the name and address of your expert? Explain your answer.

Prosecutor intends to introduce at trial Joe's prior conviction for the Class A misdemeanor of evading arrest.

8. What procedural step should you take to try to stop Prosecutor from introducing this evidence at trial? If that step is unsuccessful, what additional steps should you take to preserve the issue for appeal?

You consult with Joe about whether he should enter a plea of guilty.

9. List three of the admonishments that the Court should give Joe before accepting his guilty plea.

Joe asks you if he will be eligible for probation if he has a jury trial and is convicted.

10. What are two of the requirements that must be met for Joe to be eligible for probation?

Joe decides he wants a jury trial and tells you that a guard at the jail would make a good witness for his defense. Unfortunately, the guard is on vacation in Thailand and will not return in time to attend Joe's trial.

11. What procedural step can you take to obtain more time before the trial? What are three of the necessary statements you must make when you take this step?

Prosecutor informs you that he wants to have Joe and Rich tried jointly.

12. What argument, if any, can you make that Joe and Rich should not be tried jointly?

At the beginning of jury selection, you do not request a jury shuffle, but Prosecutor does. After the jury shuffle is accomplished, you request another jury shuffle. The Court denies your request.

13. Did the Court violate the law? Explain your answer.

During jury selection, a prospective juror states that she read about this case in the local newspaper and is convinced that Joe is guilty of bribing Officer Wally.

14. What procedural step, if any, should you take to preclude this prospective juror from serving on the jury? Explain your answer.

As his first witness, Prosecutor calls Rich, who has decided to plead guilty and cooperate with Prosecutor. Rich testifies that Joe confessed to him that he had paid Officer Wally \$100 to get a cell phone.

15. Can Joe be convicted based on Rich's testimony alone? Explain your answer.

After Rich testifies on direct, you begin to question him about the fact that he was convicted two years ago of misdemeanor theft, but Prosecutor objects.

16. How should the Court rule on Prosecutor's objection? Explain your answer.

As his next witness, Prosecutor calls a voice identification expert to compare known recordings of Joe's voice to the voice recorded on the Mayor's Helpline. You request to conduct a voir dire examination of this witness before he testifies in front of the jury.

17. How should the Court rule on your request? Explain your answer.

Prosecutor calls Thelma as his next witness. You object that Prosecutor cannot call Thelma as a witness because she is Joe's wife. Thelma remarks that she wants to be a witness because she hates Joe.

18. How should the Court rule on your objection. Explain your answer.

Before the jury retires to deliberate, you notice a defect in the indictment and file a motion to quash.

19. Is your motion to quash the indictment timely? Explain your answer.

After Prosecutor presents all of his witnesses and rests his case, you realize that he has failed to introduce any evidence on one of the elements of the offense of bribery.

20. What procedural step, if any, should you take to bring this omission to the Court's attention?

**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.**