

Examinee  
Number

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July 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**

From 6:30 p.m. until 11:00 p.m. one evening, Waldo and Max were drinking at a bar in downtown Houston in Harris County, Texas. As Waldo was leaving the bar's parking lot in his navy blue 2009 Ford F-150 pickup truck, he hit a post and damaged his right front headlight. Waldo then drove to his home in Fort Bend County, Texas. He parked his truck in his garage at 11:40 p.m., closed the garage door, and went to bed.

At 11:55 p.m. that same evening, Jim was drunk and was driving a stolen navy blue 2009 Ford F-150 pickup truck on a street in downtown Houston. Jim failed to see an elderly man in a crosswalk and ran him over. Jim stopped momentarily, but then drove away when he saw the elderly man and pieces of the truck's right front headlight on the ground.

The next morning Max learned that an elderly man had been killed by a navy blue pickup truck at 11:55 p.m. on the previous evening. When Max went to breakfast with Waldo, Max saw the damage to Waldo's headlight, and he reported the damage to Harris County Deputy Sheriff P.B. Books ("Deputy Books").

Deputy Books went to Waldo's home, entered the garage, and inspected Waldo's headlight. After Deputy Books left the home, Waldo hired you as his lawyer. Waldo was charged by a criminal complaint in Harris County with intoxication manslaughter.

Deputy Books wants to arrest Waldo and search his truck for evidence.

1. **Must Deputy Books obtain one warrant authorizing Waldo's arrest and a separate warrant authorizing the search of Waldo's truck? Explain your answer.**

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An arrest warrant is issued in Harris County for the arrest of Waldo.

2. Is a peace officer authorized on the basis of that warrant to arrest Waldo in Fort Bend County? Explain your answer.

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3. Is venue proper in Harris County if Waldo is properly arrested in Fort Bend County? Explain your answer.

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4. Which party has the burden to prove whether venue is proper or improper, and what standard of proof must be satisfied to meet that burden?

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You seek to have Waldo released on bail.

5. What are three rules for fixing the amount of bail?

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At Waldo's examining trial, the prosecutor ("Prosecutor") has Deputy Books testify about the facts he learned during his investigation. You request to cross examine Deputy Books, but Prosecutor objects to any cross examination, stating: "This is just an examining trial, Your Honor, not a jury trial."

6. How should the magistrate rule on Prosecutor's objection? Explain your answer.

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A grand jury is selected and will consider whether Waldo should be indicted.

7. List three participants, other than the grand jurors, who may be present in the grand jury room while the grand jury is conducting proceedings.

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8. How many jurors is the grand jury composed of, and how many of them must concur for a person to be indicted?

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Waldo is indicted for the second-degree felony of intoxication manslaughter.

9. What is an indictment? Name one way in which it differs from an information.

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Prosecutor tells you that she intends to have Deputy Books testify at trial about the damage to Waldo's headlight that he saw when he entered Waldo's garage.

10. What procedural step can you take to try to prevent Prosecutor from eliciting this testimony from Deputy Books at trial? On what ground can you take it?

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The Court rules that Deputy Books can testify about his observations concerning the damage to Waldo's headlight. Waldo is considering whether to plead guilty.

11. Will Waldo's guilty plea waive his right to appeal the ruling on the admission of Deputy Books's testimony about the damage to Waldo's headlight? Explain your answer.

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Waldo asks you whether he can enter a guilty plea before a judge or before a jury.

12. What is your answer to Waldo's question?

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Waldo decides he wants to have a jury trial. Three weeks before trial is scheduled to begin, the Court's clerk phones you and tells you that jury selection will begin in one hour. Unfortunately, Waldo is on vacation in Hawaii. You appear in court as directed by the clerk and object to the commencement of jury selection in Waldo's absence. The Court overrules your objection, and a jury is selected. The Court states, however, that it will delay the rest of the trial for a week or two so that Waldo can attend.

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

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Before the voir dire began, you requested to ask the members of the venire panel a number of proper questions concerning the State's burden of proof. The Court denied your request and stated: "I will ask my own questions and do not need any assistance from counsel."

14. Was the Court's ruling correct? Explain your answer.

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After opening statements are given at trial, Deputy Books tells Prosecutor that the stolen truck Jim was driving was found abandoned in downtown Houston on the night the elderly man was killed and has a broken right front headlight and dried blood on the front bumper. You never asked Prosecutor for discovery or filed a motion for discovery prior to trial.

15. Does Prosecutor have to inform you of this information? Explain your answer.

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Prosecutor's first witness at trial is an ambulance driver who testifies that the elderly man suffered massive bodily injury and stated the following just before he died in the ambulance: "Blue Ford pickup ran over me. Don't think I'm going to make it." You object to the statement about the blue Ford pickup as hearsay and request that it be stricken.

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

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Prosecutor's second witness is Gina Davis, who has owned a Ford dealership for 28 years. When Prosecutor asks Ms. Davis whether the pieces of the headlight found at the accident site came from Waldo's Ford truck, you object that Ms. Davis is not qualified to give an opinion about this.

17. What inquiry should the Court make to determine whether Ms. Davis is qualified to testify as an expert witness?

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Prosecutor's next witness is Deputy Sheriff Greg Jones. Prosecutor moves the Court to admit the official police report of Deputy Jones, which contains his observations of the elderly man at the accident site as well as other conditions he observed there. You object to the admission of the report, but Prosecutor responds that it is admissible as a public record.

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

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You call Waldo as your first witness for the defense, and he denies running over the elderly man. You call a polygraph examiner as your next witness, intending to have him testify that Waldo passed a lie detector test and is telling the truth. Prosecutor objects to the introduction of this testimony.

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

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At a conference on the jury charge, you object that the charge does not contain a definition of "reasonable doubt." You also submit a written charge containing a definition of "reasonable doubt." The Court overrules your objection and refuses to include a definition of "reasonable doubt."

20. Was the Court required to include a definition of "reasonable doubt" in the jury charge? 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.**

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**MULTISTATE PERFORMANCE TEST and PROCEDURE & EVIDENCE**

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