

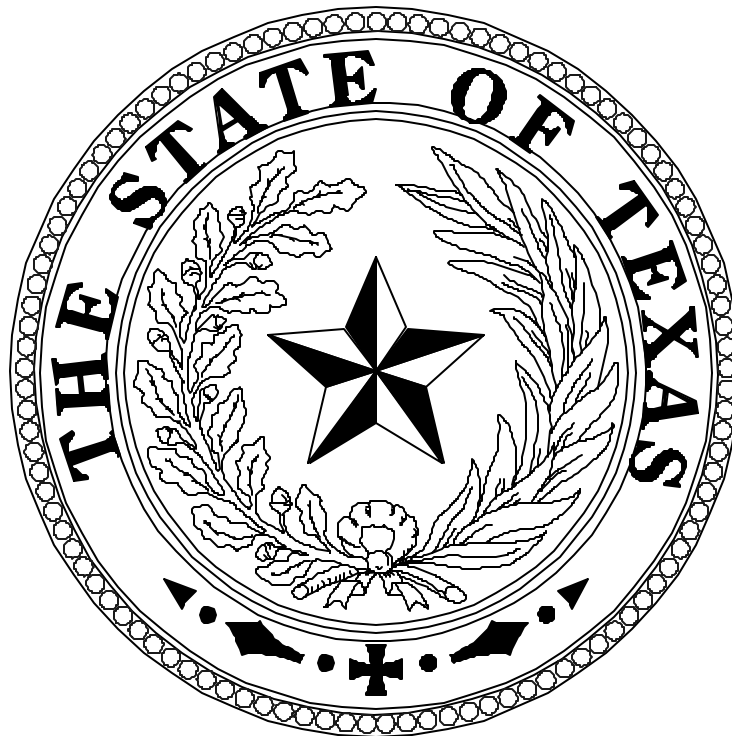
Examinee
Number

Exam
Date

February 2006

Criminal Procedure & Evidence

[This Civil 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

Defendant is arrested after a valid law enforcement search of his apartment resulted in the seizure of a firearm equipped with a silencer.

Following his arrest, Defendant remained in custody for one week with no charges filed and no bail set. At the conclusion of the week, Defendant hires you to represent him in this action.

You decide to file an application for a writ of habeas corpus.

- 1. What is a writ of habeas corpus? To whom is a writ directed? What remedy does a writ seek? Explain fully.**

Defendant is eventually charged with, and indicted for, possession of a prohibited weapon, a third-degree felony. He posts a \$10,000 bond. You learn that while Defendant was in jail, as a result of custodial interrogation, Defendant signed a written statement regarding this matter.

You ask Prosecutor to give you a copy of Defendant's statement. Prosecutor refuses, citing the "investigator's work product" exception.

2. What action, if any, should you take in response to Prosecutor’s refusal? How should the Court rule? Explain fully.

After investigating the circumstances, you conclude that Defendant’s written statement was not voluntary.

3. What warnings must this statement show on its face in order to be admissible?

4. In addition to the warnings referred to in the preceding question, what must the face of the statement further show?

After the court sets the case for trial, you learn that a witness crucial to the defense is unavailable. You decide to file a first motion for continuance based on that circumstance.

5. Under these circumstances, list three things that your motion for continuance must state.

At a pre-trial hearing, Prosecutor requests that you provide a list of all defense witnesses, including experts, whom you intend to call at trial. You respond that such information is protected by the attorney-client privilege and refuse to comply.

6. How should the Court rule on Prosecutor's request? Explain your answer.

After reviewing all of the evidence, you decide that it is in Defendant's best interest to accept the States plea bargain offer and plead guilty to the prohibited weapon charge. Defendant disagrees and tells you that he wishes to persist in his plea of not guilty.

7. Who decides what plea will be entered? If Defendant changes his mind and agrees to enter a guilty plea, list three admonishments that the Court must give before accepting a felony plea of guilty.

You decide that certain business records from a gun dealer are relevant to your defense. However, the custodian of those records will be unavailable at trial.

8. How can you introduce those records without live testimony? What must you show?

The jury panel is assembled and voir dire examination begins. As the questioning progresses, it becomes obvious that you should exercise challenges for cause and peremptory challenges.

9. What is a challenge for cause? How many such challenges is each side allotted? Explain fully.

DO NOT CONTINUE YOUR ANSWER IN THIS SPACE.

10. What is a peremptory challenge? How many such challenges is each side allotted in a non-capital, single defendant felony case? Explain fully.

Defendant is African-American. Prosecutor exercises peremptory challenges to strike every African-American on the panel.

11. Can you challenge Prosecutor's action? If so, what should you do, how must Prosecutor respond, and how should the Court rule? Explain fully.

During the State's case-in-chief, the following testimonial exchange occurs between Prosecutor and Officer witness:

PROSECUTOR: Did you speak with any of Defendant's neighbors about any problems that they were having with Defendant?

OFFICER: I sure did. They told me that they often heard Defendant talking about his love of guns. One time they claim they heard Defendant say...

DEFENSE LAWYER: Objection, your honor.

COURT: State the basis for your objection, Counselor.

12. What is the evidentiary basis for your objection and how should the Court rule? Explain fully.

Prosecutor next calls Doctor as a witness in its case-in-chief. The following exchange occurs:

PROSECUTOR: Doctor, have you treated Defendant as a patient?

DOCTOR: Yes, for a few months in the year 2005.

PROSECUTOR: During that time, did Defendant discuss with you his desire to obtain various types of exotic firearms and related equipment, including a silencer?

DEFENSE LAWYER: Objection. Physician-patient privilege. Those communications are confidential.

13. How should the Court rule on your objection? Explain fully.

After the State rests, you put on Expert, who is a firearms expert. Expert is of the opinion that the silencer in question is not a prohibited weapon under the Texas statute. Prosecutor objects to the testimony and the Court sustains the objection. You believe that the Court's ruling is erroneous.

14. What must you do in order to preserve that issue for appeal? Explain fully.

Your next witness is Friend, a long time associate of Defendant. Much to your surprise, Friend’s testimony differs significantly from what he had told you in an earlier interview.

15. Can you impeach the credibility of your own witness? If you can do so, describe the means of impeachment? Explain fully.

Defendant elects not to testify and you rest. The State calls Detective as its first rebuttal witness. The following exchange occurs:

PROSECUTOR: Detective, is this the first time you have dealt with Defendant?

DETECTIVE: Oh, no, ma’am.

PROSECUTOR: In fact, you have arrested Defendant for everything under the sun, from driving while intoxicated to indecency with a child, right?

DEFENSE LAWYER: Objection.

COURT: What do you mean “objection,” Counselor? What is your basis?

16. What is the basis of your objection? How should the Court rule on the objection? Explain fully.

17. Assume that the Court sustains the foregoing objection. What steps must you then take to preserve the issue for appeal? Explain fully.

The State's next rebuttal witness is Clerk. Prosecutor seeks to elicit testimony from Clerk that court records reveal that Defendant was convicted of a felony in 1980. You object to the testimony.

18. What objection should you make? How should the Court rule? Explain fully.

As you review the Court's proposed guilt/innocence charge, you notice that the Court does not instruct the jury regarding Defendant's failure to testify.

19. Are you entitled to such an instruction? If so, what instruction should be given? Explain fully.

The jury finds Defendant guilty and assesses his punishment at 8 years in the penitentiary. You decide to have your investigator interview the jurors regarding possible juror misconduct as a ground in a motion for new trial. However, the district clerk refuses to give you the jurors' home addresses and home telephone numbers.

20. Is there any procedure available to you to obtain the information? Explain fully.

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.