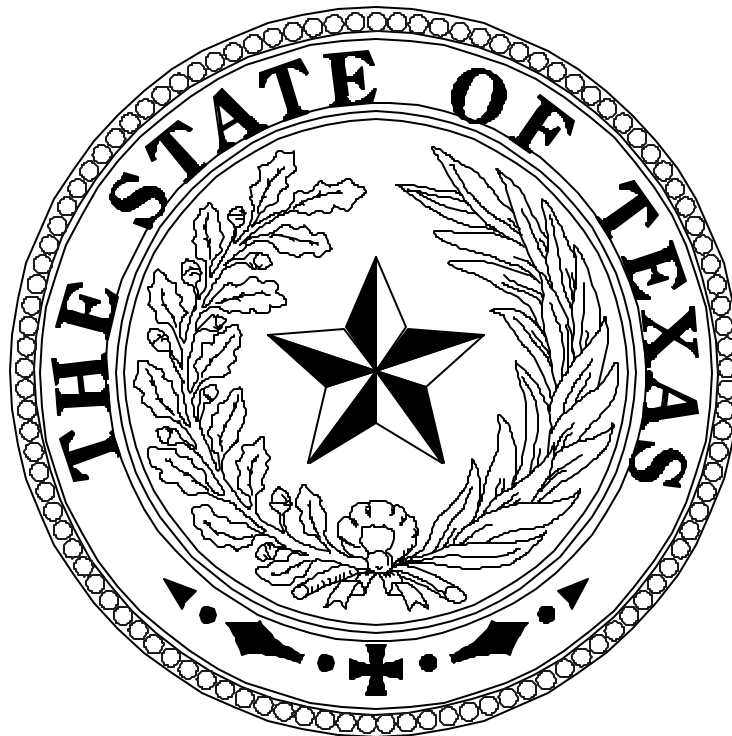


Examinee  
Number

Exam  
Date February 2005

## Criminal Procedure & Evidence

[This booklet is only part of the Procedure & Evidence session. Both parts should be completed in one 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 AND EVIDENCE**

You are appointed to represent Defendant, who has been charged with possession of a controlled substance. Defendant is in jail, with bail set at \$750,000. Defendant cannot post a bond in that amount, and asks you to get his bail reduced.

- 1. List three of the factors the court must consider in fixing the amount of Defendant’s bail.**

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The Harris County grand jury indicts Defendant. Following the return of the indictment, you request an examining trial.

- 2. What is the purpose of an examining trial? Is Defendant entitled to an examining trial? Explain fully.**

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You decide that you need the assistance of a forensic criminalist to help you evaluate the physical evidence in the case. However, neither you nor Defendant can afford to hire an expert.

**3. What pleading should you file to obtain the assistance of such an expert? Explain fully.**

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As you prepare this case for trial, you learn that Defendant has a lengthy history of chronic psychiatric problems. You become concerned about Defendant's competency to stand trial.

**4. What facts must you establish in order to rebut the legal presumption that Defendant is competent? Explain fully.**

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**5. Under Texas law, list three ways in which incompetency differs from insanity.**

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Defendant considers the possibility of pleading guilty to the offense for which he is indicted. He asks you to explain the mechanics of a guilty plea.

6. **List three admonishments that the court must give Defendant before it can accept his felony plea of guilty.**

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Defendant decides not to plead guilty, electing instead to go to trial. Although he has previously served time in the penitentiary, Defendant asks you to prepare and file an application for probation.

7. **Is Defendant entitled to file an application for probation under Texas law? Explain fully.**

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When the jury panel is assembled, you have a premonition that the first 20 veniremen are not sympathetic to Defendant.

8. **What action, if any, can you take to change the seating order of the veniremen? At what stage of the proceedings must you take such action? Explain fully.**

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

**9. How many peremptory challenges does Defendant have in a single-defendant felony trial? How many does the State have? How many challenges for cause does each side have? How many jurors are seated?**

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**10. Following the seating of the jury, what is the order of proceeding in a Texas felony trial? Explain fully.**

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After the jury is seated, Prosecutor delivers her opening statement. In that statement, she tells the jury as follows:

**PROSECUTOR:** I also expect the evidence to show that Defendant knows full well that he is guilty of this offense. He knows that because he wanted to plead guilty in exchange for our plea bargain...

**DEFENSE LAWYER:** Objection!

**COURT:** What is your objection counsel?

**11. What is the proper objection to Prosecutor’s statement? How should the Court rule? Explain fully.**

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Assume that you had filed a pre-trial motion in limine asking the court to disallow Prosecutor’s mention of any plea negotiations. The Court granted that motion.

**12. Would you still be obligated to object to Prosecutor’s opening statement? Explain fully.**

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The State’s first witness is Officer, who arrested Defendant. You know that Officer is going to testify that at the time of Defendant’s arrest, a search of his car revealed an unlicensed handgun. You do not want the jury to hear testimony about this extraneous offense.

**13. In sequential order, list the steps you should take to attempt to keep Officer’s testimony on this issue out of evidence. Explain fully.**

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

The State calls Priest as a witness. The following exchange occurs:

PROSECUTOR: Do you know Defendant?

PRIEST: Yes I do. He is a member of our parish. I regularly hear his confession in the county jail on Saturday afternoon.

PROSECUTOR: On any of those occasions has he ever discussed with you the circumstances that led to his arrest?

DEFENSE LAWYER: Objection, judge.

COURT: What do you mean "objection" counselor? State the basis for your objection.

**14. What is the proper objection, if any? How should the Court rule? Explain fully.**

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Prosecutor calls as its next witness Wife, who has been married to Defendant for 15 years. Prosecutor says it is her intention to inquire whether following his arrest Defendant admitted to Wife that he has a chemical dependency problem. Wife not only wants to testify against Defendant, she is anxious to do so.

**15. Can Defendant claim a privilege and prevent Wife from testifying about the communication? Explain fully.**

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

During the State's case-in-chief, the following exchange occurs:

COURT: Mr. Prosecutor, call your next witness.

PROSECUTOR: Your honor, the State of Texas calls Defendant.

DEFENSE LAWYER: Objection.

**16. What are the bases for your objection, and how should the Court rule on the objection? Explain fully.**

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After presenting all of its witnesses, the State rests. You note that Prosecutor has failed to prove that the offense occurred in Harris County.

**17. What steps should you take to advise the Court of this failure, and at what stage of the proceedings should you take them? Explain fully.**

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



Defendant calls as his first witness Expert, who has specialized knowledge about the drugs that Defendant is charged with possessing. Expert intends to offer his opinion that the State failed to analyze the drugs pursuant to reliable scientific technique.

PROSECUTOR:                    Your honor, we move to conduct a voir dire examination before the jury hears from this witness.

DEFENSE LAWYER:            Your honor, I ...

COURT:                            Sit down counsel. The State's request is granted.

**18. Is the Court's ruling correct? Explain fully.**

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As Defendant's last witness, you call the presiding judge to give testimony that Defendant has always been polite and well-behaved when in court.

**19. Can you call the judge as a witness? Explain fully.**

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Following the reading of the Court's charge and the argument of counsel, the jury begins its deliberations. After two days of deliberations, the jury announces that it is hopelessly deadlocked. You move for a mistrial, but the State opposes.

20. In order for the court to grant a mistrial, must the State join in your motion? Explain fully.

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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.**