

Examinee  
Number

Exam  
Date 7/2004

# Criminal Procedure & Evidence Questions



## TEXAS BAR EXAMINATION

**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**

In March 2004, Parent places a 911 call to the Bexar County Sheriff's Office. She reports that her seven-year old daughter, Child, has not come home from school. When the deputies arrive at Parent's home, they talk with Witness, a seven-year old classmate of Child. Witness tells the investigators that she saw Child being forced into a car as she was walking home. Witness provides a partial description of the car and driver. Based on that description, an "Amber Alert" is issued.

At 3:30 a.m. the next day a patrol officer in Comal County, which is adjacent to Bexar County, sees a car that matches the description given in the Amber Alert. The driver's description also matches. Defendant, who is the driver and the only person in the car, appears nervous after the stop. Officer takes Defendant into custody. During a post-arrest search of the automobile at the scene of the arrest, Officer finds some children's school books in the trunk. Child's name is written in the books.

The next morning Child is found in Comal County, not far from where Defendant was arrested. Child is unharmed.

Defendant is charged with kidnapping. You are appointed to represent him.

- 1. Under the circumstances set out above, what is the proper venue in this case? Explain fully.**

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

2. **What procedure, if any, is available to you to seek a reduction in bail and what arguments would you make in support of any such procedure? Explain fully.**

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After conferring with you, Defendant decides that he wishes to waive his right to be accused by indictment.

3. **What requirements must be met in order for a person to waive indictment? What, if any, exception is there to a person's right to make such a waiver?**

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During a pre-trial conference with Prosecutor, you learn that the State believes that Defendant has no criminal record. However, Defendant reveals to you that in fact he does have a record, having been convicted of a felony in Arkansas under a different name. You decide not to reveal this information to either the State or the Court, reasoning that it is protected by the attorney-client privilege. Shortly thereafter, Defendant informs you that he wishes to file a sworn application for probation.

**4. Under the circumstances outlined above, should you file a probation application for Defendant? Why or why not? If an application for probation is not filed, must you disclose Defendant's criminal history to the State? Explain fully.**

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As you prepare for Defendant's trial, you attempt to speak with the Bexar County Deputy Sheriff who responded to Parent's 911 call. The deputy refuses to speak with you. In light of his unwillingness to cooperate, you decide to take his deposition.

**5. What procedures must you follow to take Deputy's deposition? Explain fully.**

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The State serves you with a motion seeking disclosure of the name and address of all fact and expert witnesses which you may use at trial. You object to the motion, citing attorney-client privilege.

**6. How should the Court rule on the State's motion? Explain fully.**

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After reviewing the facts of Defendant's case, you prepare and file a motion to suppress Defendant's warrantless arrest.

**7. Under the circumstances set out in this case, was the warrantless arrest of Defendant proper? Explain fully.**

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You decide to contest the post-arrest search of Defendant's car that led to discovery of the school books.

**8. What is the appropriate motion to file and what arguments could you make regarding the books? Explain fully.**

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

As the trial date looms, you apply for various subpoenas to be issued for witnesses. One of your subpoenaed witnesses lives in Amarillo, some 494 miles away from the trial location. Although properly served, the witness refuses to honor the subpoena, claiming that she is exempt by virtue of the fact that she resides more than 150 miles from the county of prosecution.

**9. Is the summoned witness obligated to honor the subpoena and appear as directed? Explain fully.**

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**10. What recourse, if any, do you have if the witness refuses to obey the subpoena? Explain fully.**

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

Several days prior to the beginning of jury selection you receive what is captioned “State’s Motion in Limine.”

**11. What is a motion in limine? Explain fully.**

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Defendant asks you to explain his rights regarding trial by jury versus trial to the court.

**12. Who elects whether to try the case to the court or to a jury? When must the election be made? Must the election be the same for both phases of a bifurcated trial? Explain fully.**

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A jury trial is elected. After the prospective jurors have been sworn and before the voir dire examination begins, the court tests the legal qualifications of the jurors by asking three questions.

**13. What three matters must the court determine regarding a prospective juror’s legal qualifications to serve? Explain fully.**

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After the jury is seated and the indictment is read, Prosecutor makes his opening statement to the jury. At the conclusion of the State’s opening statement, the following exchange occurs:

COURT: Ms. Defense Counsel, do you wish to make an opening statement?

DEFENSE LAWYER: I do, Your Honor. However, I wish to do so after the State rests its case-in-chief.

COURT: That request is denied. Either make it now or you waive it. We’re not going to drag this trial out.

**14. Is the Court’s ruling correct? Explain fully.**

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



After the State's first witness has testified on direct examination, the following exchange occurs:

COURT: Counsel, you may proceed.

DEFENSE LAWYER: Your Honor, the defense now moves for the production of the witness' statement for use during cross-examination.

PROSECUTOR: We object. First, the request is untimely. Counsel should have asked for the statement at pre-trial. Secondly, this is our work-product. We refuse to produce the statement.

**15. How should the Court rule on each ground stated in Prosecutor's objection, and what sanctions may the Court impose if Prosecutor refuses to produce the statement? Explain fully.**

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During the presentation of the State's case, Prosecutor offers into evidence part of a letter written by Defendant. You believe that the omitted portion of the letter is favorable to Defendant.

**16. Is the remainder of the letter admissible? Why or why not? Explain fully.**

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After the State rests its case, you call your first witness, Convict, who testifies in behalf of Defendant. On cross-examination the following exchange occurs:

PROSECUTOR: It is true, is it not sir, that you were convicted of robbery in Harris County, Texas, in June of 1998?

DEFENSE LAWYER: Your Honor, we object. That conviction is remote since it occurred some 6 years ago.

COURT: Overruled. The witness is directed to answer the question.

**17. Is the Court's ruling correct? Should the ruling be different if Convict's conviction is still on appeal? Explain fully.**

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After both sides rest and close their evidence at the guilt-innocence stage of the trial, the Court's charge is read to the jury and the attorneys are instructed to make their final arguments.

**18. How is the order of argument and number of arguments regulated in Texas criminal cases? Explain fully.**

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The jury finds Defendant guilty. At the punishment stage, you call a psychiatrist, Dr. Shrink, in an effort to show that Defendant does not pose a continuing threat to society. However, before your examination begins, the following exchange occurs:

PROSECUTOR: Your Honor, we move to conduct a voir dire examination of Dr. Shrink before the jury hears from him.

DEFENSE LAWYER: Your Honor, I...

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

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

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The State now wishes to offer punishment rebuttal evidence from the officer who arrested Defendant. The officer will testify that as he approached Defendant's car on the night of his arrest, the Defendant screamed "You've got me, I did it. Arrest me before I strike again!" Before the jury hears the testimony, the following exchange occurs:

DEFENSE LAWYER: Your Honor, we object. This oral statement does not meet the requirements of the Code of Criminal Procedure since it was not recorded and did not lead to the fruits of the crime. Besides, it's hearsay.

COURT: Overruled. Mr. Prosecutor, you may proceed with your witness.

**20. Is the Court's ruling correct? 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.**