

Examinee Number _____

TEXAS BAR EXAMINATION
PART II - A
CRIMINAL PROCEDURE AND EVIDENCE

ATTACHED ARE 11 PAGES

CRIMINAL PROCEDURE AND EVIDENCE

Additional Instructions

1. Unless otherwise shown by the context, all questions relate to criminal proceedings in a Texas Court.

2. The number of blank lines provided for your answers bears no relationship to the length of your answers - you may require more or less lines - if more, use the reverse side of the facing page.

QUESTION 1. With respect to Appellant's notice of appeal under current appellate rules, state:

- a. The form and content of the notice (a) if after verdict and (b) if after plea-bargain.
- b. The time for giving notice (a) if no motion for new trial is filed and (b) if motion for new trial is timely filed.

QUESTION 2. The Court of Criminal Appeals may review a decision of a Court of Appeals on its own motion or upon petition of appellant or the State. What are some of the grounds or reasons (state at least 3) the Court will consider in deciding to review?

QUESTION 3. When properly presented on motion for new trial, there are at least nine instances of error which require that a new trial be granted. List 5 of such instances.

QUESTION 4. In presenting final argument to the jury, a prosecutor is limited to four areas or subjects of discussion. What are these areas or subjects?

QUESTION 5. As counsel for the defense, your objection to improper prosecution argument has been sustained. In order to preserve error for appellate review, what further relief, if any, do you seek from the trial court?

QUESTION 6. What is the standard of review employed by an appellate court to test the sufficiency of the evidence to sustain a criminal conviction?

QUESTION 7. Assume in question 6 that all of the evidence at trial was circumstantial rather than direct. What standard is employed?

QUESTION 8. Define or briefly discuss each of the following:

a. Use before the jury rule.

b. Transactional immunity.

c. Use immunity.

QUESTION 9. Under what circumstances must a severance be ordered where two defendants have been indicted for the same or related offenses and are to be tried jointly?

QUESTION 10. What is the rule in Texas with respect to accomplice testimony?

QUESTION 11. Where the issue of incompetency to stand trial has been raised in the trial court, what standard must be met to prove competency?

QUESTION 12. Generally, neither the husband nor wife shall testify as to communication made by one to the other while married. Who may claim this privilege? State the exceptions, if any, to the rule.

QUESTION 13. What facts or elements should the trial court consider in fixing the amount of bail?

QUESTION 14. When does jeopardy constitutionally attach in a Texas jury trial? In a non-jury trial?

QUESTION 15. In general, when does a criminal action commence for the purpose of determining time limitations under the Texas Speedy Trial Act?

QUESTION 16. Under what circumstances may it be said that a defendant has waived rights accorded by the Texas Speedy Trial Act?

QUESTION 17. What is the writ of habeas corpus and by whom may the writ be granted?

QUESTION 18. What is a lesser included offense?

QUESTION 19. What instructions and admonitions must the trial court give an accused in accepting a guilty plea arising from a plea-bargain agreement?

QUESTION 20. What facts must the State prove to authorize the trial court's denial of bail on a charge less than capital when the offense is committed while the defendant is on bail from another pending charge.

QUESTION 21. A defendant asserts on appeal that reversible error occurred at the trial court's denial of his motion for new trial based upon newly discovered evidence. What facts with respect to the newly discovered evidence must have been established in the trial court and reflected in the appellate record?

QUESTION 22. The prosecutor wishes to offer the "dying declaration" of the decedent with whose homicide your client is charged. Satisfactory proof has been presented that the deceased was conscious of approaching death with no hope of recovery, that the declaration was voluntarily made, and that the deceased was of sane mind. Do you object to the testimony? If so, what ground or grounds do you urge upon the court?

QUESTION 23. Before a written statement made by an accused as a result of custodial interrogation is admissible as evidence against him what must be shown on the face of the statement?

QUESTION 24. a. What is meant by the term "peremptory challenge?"

b. Assume the trial is of one defendant, in a district court, and no alternate jurors are to be impaneled. How many peremptory challenges is each side allowed in a capital case? In a non-capital felony case? In a Misdemeanor case?

QUESTION 25. A defendant is charged with an offense in violation of his terms of probation. At the probation revocation hearing the court finds there is no evidence to sustain the charge. The defendant is later brought to trial for the same offense charged. As counsel, what do you urge in his defense?
