

Chapter 02

The Trial Process

True / False Questions

1. If the penalty for a crime is less than one year, an accused is not entitled to a jury.

FALSE

2. A defendant can absolutely waive his right to counsel if the judge believes he is knowingly waiving that right.

TRUE

3. The judge will accept a non-unanimous verdict reached by a jury of twelve.

TRUE

4. In a criminal trial, the amount of evidence the prosecution must present in order to get a conviction is a preponderance of the evidence.

FALSE

5. Venire is a pool of available jurors sent to a courtroom.

TRUE

6. A bench trial is the same as a court trial.

TRUE

7. A potential juror may be excused from voir dire for no articulable reason.

TRUE

8. Alternate jurors deliberate with the jurors on the panel, but do not participate in rendering the final verdict.

FALSE

9. The jury that finds a defendant is guilty will also determine his or her punishment.

FALSE

10. Historically, a judge would notify the jury of its power to nullify.

FALSE

11. The judge will ultimately decide whether a witness is credible or not.

FALSE

12. A fine is the only punishment for being held in criminal contempt.

FALSE

13. A judge will decide which criminal charges should be prosecuted and which should not.

FALSE

14. A prosecutor does not have to present all available physical evidence.

TRUE

15. The prima facie case rules out the possibility that anybody other than the defendant committed the crime.

FALSE

16. The defense attorney may ask for an acquittal following the prosecutor's opening statement, the prosecutor's case-in-chief, or after the defense attorney's case-in-chief.

FALSE

17. The prosecutor is not at all limited as to the order of witnesses called to testify.

TRUE

18. Leading questions usually occur during cross-examination.

TRUE

19. Any evidence that goes to prove the innocence of an accused is known as inculpatory evidence.

FALSE

20. The prosecutor must prove a majority of the elements of a charged offense beyond a reasonable doubt.

FALSE

21. The level of proof a prosecutor needs to show to formally charge a suspect is a preponderance of the evidence.

FALSE

22. The judge prepares jury instructions.

FALSE

23. Juries are rarely sequestered for an entire trial.

TRUE

24. During redirect examination, an attorney may not bring up an issue that has not already been discussed.

TRUE

25. A police officer should expect a rigorous direct examination and cross-examination.

FALSE

26. Rebuttal evidence is presented only by the defense.

FALSE

27. A hung jury only results when six jurors find the defendant guilty and six jurors find the defendant not guilty.

FALSE

28. The jury never imposes a sentence; that job belongs solely to the judge.

FALSE

29. A police officer usually helps gather evidence before any trial, but rarely testifies as a witness in cases not involving serious crimes, such as murder.

FALSE

30. An attorney can make a groundless objection.

TRUE

31. If a witness's answer is stricken from the record, the answer does not appear in the court reporter's record.

FALSE

32. Jurors must have the use of his or her natural faculties (sight, hearing, speech) and people with disabilities involving those faculties are not permitted in any state to sit on juries, even with assistance.

FALSE

Multiple Choice Questions

33. The Sixth Amendment to the United States specifies the minimum number of jurors as:

A. 12

B. 6-12

C. 12 or less

D. There is no set number.

34. Who can waive a jury trial in a criminal case?

A. The defendant alone.

B. The defendant and the prosecution.

C. The judge.

D. No one, because a jury trial cannot be waived.

35. Proof beyond a reasonable doubt:

- A. is the highest level of proof required by American law.
- B. means proof beyond all doubt.
- C. means a preponderance of the evidence.
- D. equals 50+% of the evidence in one's favor.

36. Which of the following is not a requirement to be a juror?

- A. being a citizen of the United States
- B. being a resident of the jurisdiction where the trial is taking place
- C. being a registered voter
- D. having the ability to speak and understand English

37. Who can make a challenge for cause?

- A. the judge
- B. the prosecution
- C. the defense
- D. any of the above

38. How many peremptory challenges can a prosecutor make in a non-capital case?

- A. usually 6-10
- B. usually 6-12
- C. no more than 12
- D. There is no limit.

39. Jeopardy attaches when:

- A. The defendant is arrested.
- B. The prosecution files a complaint against the defendant.
- C. The judge or magistrate finds that there is probable cause for a trial.
- D. The jury acquits the defendant.

40. Which of the following is the proper order of final arguments?

- A. prosecution, defense, prosecution.
- B. prosecution, defense.
- C. prosecution, defense, prosecution, defense.
- D. defense, prosecution, defense.

41. Which of the following is not a function of a judge?

- A. To interpret the law for the jury.
- B. To impose sentence upon the defendant if he or she is convicted.
- C. To assist in the presentation of the case for the prosecution.
- D. To ensure the defendant gets a fair trial.

42. Which of the following is not a duty of the defense attorney?

- A. Conduct pre-trial investigations.
- B. Verify probable cause existed to seize the defendant.
- C. Cross-examine witnesses.
- D. Discover physical evidence to prove his or her client's innocence.

43. Which of the following is the proper order of a trial?

- A. prosecutor's opening statements, defense attorney's opening statements, prosecutor's case-in-chief, defendant's case-in-chief
- B. prosecutor's opening statements, prosecutor's case-in-chief, prosecutor's closing argument, defense attorney's opening statements, defense attorney's case-in-chief, defense attorney's closing argument
- C. prosecutor's opening statements, defense attorney's opening statements, defense attorney's case-in-chief, prosecutor's case-in-chief
- D. defense attorney's opening statements, defense attorney's case-in-chief, defense attorney's closing argument, prosecutor's opening statements, prosecutor's case-in-chief, prosecutor's closing argument

44. Which of the following is not needed to qualify a witness to testify?
- A. Personal knowledge of a particular fact or set of facts.
 - B. Ability to effectively communicate the fact(s) known.
 - C. Comprehension of the oath given before taking the witness stand.
 - D.** Personal knowledge of the defendant's actions regarding the crime charged.
45. A lawyer should not typically ask questions that may lead to the following type of response from a witness:
- A. Yes-or-no type of an answer.
 - B.** Longer narratives, assuming the witness is particularly knowledgeable.
 - C. Brief answers in about one sentence.
 - D. Name of an individual.
46. Who is the least likely person to read a police officer's daily log?
- A. the judge
 - B. the jury
 - C. the prosecutor or the defense attorney
 - D.** a lay witness
47. Which of the following is not a proper order for questioning a government witness?
- A. prosecution, defense, prosecution, defense
 - B. prosecution, defense, prosecution
 - C. prosecution, defense, prosecution, defense, prosecution
 - D.** defense, prosecution, defense
48. When are jury instructions not given?
- A. At the beginning of the trial.
 - B. Before closing arguments.
 - C. After closing arguments.
 - D.** During jury deliberations.

49. When the defense introduces evidence to rebut properly introduced evidence by the prosecution as part of the prosecution's rebuttal of the defense, this is called:

- A. Rebuttal
- B. Surrebuttal**
- C. Affirmative defense
- D. Re-Cross

50. The phrase "stricken from the record" means:

- A. The offending question or answer is actually removed from the court reporter's record
- B. Merely that the offending question or answer is not acceptable by the court**
- C. The trial must be stopped and started anew with alternate jurors
- D. No cross-examination of the offending witness shall be allowed

Short Answer Questions

51. What could a witness do that could lead to a mistrial?

If a witness answers a question which is then objected to and sustained, or if a witness answers after the objection is sustained and the answer contains damaging or prejudicial information to the defendant, the judge in his or her discretion can declare a mistrial.

52. List 3 reasons why a defense attorney may want to cross-examine a witness.

- A. Shake the witness, making him or her appear less credible to the jury;
- B. Make the witness appear as though he or she is untruthful about his or her testimony on direct examination, or he or she is prejudiced against the defendant, making him or her less trustworthy to the jury; and
- C. Confuse the witness into giving conflicting statements, thereby showing the jury that his or her testimony cannot be believed.

53. What is the police officer's role in helping the prosecutor prepare for trial?

The officer is to gather and prepare evidence so that by the time of the trial the prosecutor has reached a level of proof beyond a reasonable doubt.

54. State the basic purpose of a trial.

A trial allows competing sides to tell their stories of the facts as they perceive them to be in a way that can be followed by a judge and/or jury so that one side is victorious.

55. List the six qualifications for being a juror.

1. United States citizen
2. resident of the state where the trial is taking place
3. 18 years or older
4. sound mind
5. possession of natural faculties
6. ability to read or speak English

56. Briefly explain the process of voir dire.

Voir dire is the process whereby judges and/or attorneys question potential jurors in order to determine which individuals may be able to act impartially and could serve as an unbiased juror.

57. List three activities a police officer will likely engage in prior to the trial.

1. Collect physical evidence.
2. Interview witnesses.
3. Discuss the case in detail with the prosecutor.

58. What amount of proof is necessary in a criminal trial? In a civil trial?

In a criminal trial, the prosecution must present enough evidence to convince the jury of the defendant's guilt beyond a reasonable doubt. Proof beyond a reasonable doubt is the highest level of proof demanded by American law. In a civil trial, the amount of proof necessary is only a preponderance of the evidence. A preponderance of the evidence is 50% plus a feather in one's favor.

59. What is the role of an alternate juror?

An alternate juror sits in the courtroom and hears all the evidence, but does not participate in the deliberation process unless a primary juror is excused.

60. What is the main function of an opening statement? Contrast with a closing argument.

An opening statement provides a road-map of the case. The attorney will explain to the jury how he or she intends to prove either the guilt or innocence of the defendant and what evidence will be presented to achieve that end. An opening statement is often most effective in the form of a story or narrative. In contrast, a closing argument is a summary of the case and a final opportunity for the lawyer to persuade the jury to his or her view.

61. Provide an example of jury nullification.

For example, if a person is on trial for drug possession involving possession of marijuana for personal use, a jury might acquit because its members do not believe such drug possession should be illegal even if the prosecution has offered proof beyond a reasonable doubt of all the elements of the crime.

62. In recent cases, the U.S. Supreme Court has adopted the principle that the Sixth Amendment right to a trial by jury requires certain facts, in addition to the finding of guilt, must be found by the jury, not the judge. Name the holding of at least one recent case.

In *Apprendi v. New Jersey*, the Court held that any fact that increases the penalty for a crime beyond the statutory maximum must be submitted to a jury and proved beyond a reasonable doubt. In *Ring v. Arizona*, the Court decided that if the defendant is subject to the death penalty, a jury must determine the presence or absence of aggravating factors required in order to impose the death penalty. In *Blakely v. Washington*, the Court declared that the sentencing guidelines allowing a judge to find the fact necessary to trigger a sentence about the statutory maximum violated the Sixth Amendment principle stated in *Apprendi*.

63. What is the practical effect of the recent U.S. Supreme Court's decisions such as *Blakely v. Washington* and *U.S. v Booker* regarding sentencing guidelines and procedure?

The Court's decisions indicate that mandatory sentencing systems contemplated by state and federal sentencing guidelines are now seriously impaired and it remains to be seen how much discretion in sentencing will be restored to trial judges.