

CHAPTER 1: Introduction

Test Bank

TRUE/FALSE

1. The term *evidence* refers to all physical objects admitted at trial, but not testimony.
ANS: F REF: What is Evidence LO: 1
2. Items recovered from the crime scene can be introduced as evidence, but exhibits prepared solely for use during trial are not considered evidence.
ANS: F REF: What is Evidence LO: 1
3. The prosecution has the burden of proving the defendant's guilt beyond a reasonable doubt.
ANS: T REF: Burden of Proof LO: 2
4. In a criminal trial, the defense has the burden of persuasion that the prosecution's evidence is not sufficient to convict the defendant.
ANS: T REF: Burden of Proof LO: 2
5. In a jury trial, the judge acts as the trier of the law and the jury acts as the trier of the facts.
ANS: T REF: Role of Judge and Jury LO: 3
6. Prosecutors are not ethically allowed to discuss a case with the police prior to the arrest of the suspect.
ANS: F REF: Role of the Prosecutor LO: 4
7. The prosecutor normally interviews all witnesses prior to deciding what charges to file.
ANS: F REF: Role of the Prosecutor LO: 4
8. A prosecutor is ethically required to refuse to file a case if he/she does not believe the charges are supported by probable cause.
ANS: T REF: Role of the Prosecutor LO: 4
9. A prosecutor is ethically required to give the defense all evidence that he/she has that tends to show that the accused may be not guilty.

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ANS: T REF: Role of the Prosecutor LO: 4

10. If a prosecutor learns of new, credible and material evidence clearly indicating that a convicted defendant did not commit an offense for which he/she was convicted, the prosecutor should promptly notify an appropriate court.

ANS: T REF: Role of the Prosecutor LO: 4

11. The defendant's right to assistance of counsel is guaranteed by the Sixth Amendment.

ANS: T REF: Role of the Defense Attorney LO: 4

12. *Gideon v. Wainwright* established the right of a person suspected of a crime to have an attorney present during interrogation.

ANS: F REF: Role of the Defense Attorney LO: 4

13. It is unethical for a defense attorney to represent a person charged with a crime if the attorney does not personally believe that the person is innocent.

ANS: F REF: Role of the Defense Attorney LO: 4

14. A criminal defense attorney must present every possible defense even though he/she believes a particular defense is frivolous.

ANS: F REF: Role of the Defense Attorney LO: 4

15. The attorney-client privilege prevents a defense attorney from notifying the court if the attorney knows that the client has committed perjury while testifying in the case.

ANS: F REF: Role of the Defense Attorney LO: 4

16. The rules we currently use for admitting evidence at trial are very similar to the ones used in England at the time the United States declared its independence.

ANS: F REF: History and Development of Rules of Evidence LO: 5

17. One reason the Star Chamber and Inquisition used in the Middle Ages are considered abusive is they refused to allow the defendant's confession to be admitted at trial.

ANS: F REF: History and Development of Rules of Evidence LO: 5

18. Hearsay was not admissible in criminal trials prior to the American Civil War.

ANS: F REF: History and Development of Rules of Evidence LO: 5

19. The Federal Rules of Evidence apply in all federal and state courts in the United States.

- ANS: F REF: Sources of Evidence Law LO: 6
20. Rulings in opinions from a state's highest court are automatically used to update state statutes so that the codes people purchase are up-to-date.

ANS: F REF: Sources of Evidence Law LO: 6

MULTIPLE CHOICE

1. Evidence is defined as:
- information the police discover during the investigation of a crime.
 - something (including testimony, documents, and tangible objects) that tends to prove or disprove the existence of an alleged fact.
 - facts the jury relies upon when reaching a verdict.
 - direct evidence that the defendant committed the charged offenses.

ANS: B REF: What Is Evidence LO: 1

2. The "burden of proof" required for a conviction in a criminal case in the United States is:
- probable cause.
 - preponderance of the evidence.
 - clear and convincing.
 - beyond a reasonable doubt.

ANS: D REF: Burden of Proof LO: 2

3. In a criminal trial in the United States, the defense has the "burden of persuasion." This means:
- defense can try to persuade the jury that the prosecution has not established the defendant's guilt.
 - defense must establish that the defendant did not commit the crime.
 - defense must prove that someone other than the defendant committed the crime.
 - defense must prove that the defendant is innocent.

ANS: A REF: Burden of Proof LO: 2

4. In a criminal trial in the United States, who has the burden of proof on "affirmative defenses"?
- prosecution
 - defense
 - judge
 - police

ANS: B REF: Burden of Proof LO: 2

Test Bank

5. When a judge decides whether a witness should answer numerous questions asked by the defense to challenge the prosecution witness's memory, the judge is:
- acting as the "trier of the facts".
 - exercising judicial discretion.
 - changing the burden of proof.
 - interfering with the defense's burden of persuasion.

ANS: B REF: Role of Judge and Jury LO: 3

6. In a jury trial, who is the "trier of the law"?
- prosecution
 - defense
 - judge
 - police

ANS: C REF: Role of Judge and Jury LO: 3

7. In a jury trial, the "trier of the facts":
- evaluates the evidence.
 - decides whether a witness is qualified to testify.
 - determines which laws should be applied to the evidence.
 - all of these

ANS: A REF: Role of Judge and Jury LO: 3

8. Who decides if evidence is admissible at trial?
- judge presiding over the trial
 - an expert witness
 - prosecution
 - defense

ANS: A REF: Role of Judge and Jury LO: 3

9. Based on *Apprendi v. New Jersey*, facts used by the judge when determining the defendant's sentence must be decided by the:
- trier of the facts.
 - trier of the laws.
 - prosecutor.
 - person writing the presentence investigation report.

ANS: A REF: Role of Judge and Jury LO: 3

10. Which of the following does the prosecutor do in the role of gatekeeper of the criminal courts?
- a. file charges
 - b. decide where the charges will be filed
 - c. decide which witnesses testify at trial
 - d. all of these

ANS: A REF: Role of the Prosecutor LO: 4

11. The prosecutor in the federal courts is the:
- a. District Attorney.
 - b. Solicitor General.
 - c. U. S. Attorney.
 - d. Victim of the crime.

ANS: C REF: Role of the Prosecutor LO: 4

12. The prosecutor has an ethical duty to:
- a. make reasonable efforts to assure that the accused has been advised of the right to have an attorney present in court.
 - b. offer plea bargains to the defendant in person.
 - c. keep all evidence confidential until it is presented in court.
 - d. all of these

ANS: A REF: Role of the Prosecutor LO: 4

13. Vertical prosecution means:
- a. similar crimes are handled by the same prosecutor.
 - b. cases are assigned to prosecutors based on the location where the crime occurred.
 - c. prosecutors are assigned based on the court proceeding involved.
 - d. a case is assigned to a prosecutor who handles it through all of the court proceedings.

ANS: D REF: Role of the Prosecutor LO: 4

14. The defense attorney in a criminal case has an ethical duty to:
- a. refuse to take a case to trial unless he/she believes the defendant is not guilty.
 - b. disclose to the court any controlling legal authorities on point even though they are adverse to the position of his/her client.
 - c. maintain the confidentiality of the attorney-client privilege under all circumstances.
 - d. all of these

ANS: B REF: Role of the Defense Attorney LO: 4

Test Bank

15. The most notable difference between early juries and the ones used today is that:
- modern juries are larger.
 - today jurors are excluded if they have any knowledge of the case.
 - the earliest form of juries used jurors who already had personal knowledge of the case.
 - the earliest juries in England were composed of people who spent their careers as professional jurors.

ANS: C REF: History and Development of Rules of Evidence LO: 5

16. When there is nothing explicitly stated in the United States Constitution and Bill of Rights regarding a specific rules of evidence, each state:
- must follow the rules enacted by Congress.
 - must use the rules of evidence that were in effect when it became a state.
 - must use the Federal Rules of Evidence.
 - may enact its own rule.

ANS: D REF: Sources of Evidence Law LO: 6

17. The United States Supreme Court's rulings apply to all levels of law enforcement (city, state and federal):
- when it decides a case based on the United States Constitution and Bill of Rights.
 - when it decides a case based on the Federal Rules of Evidence.
 - when it decides a case based on the United States Code.
 - All of these

ANS: A REF: Sources of Evidence Law LO: 6

18. The Federal Rules of Evidence were enacted by:
- Congress.
 - the U. S. Supreme Court.
 - the American Association of Law Schools.
 - the Presiding Justices of the U. S. Court of Appeals.

ANS: A REF: Sources of Evidence Law LO: 7

19. Evidence laws in each state:
- must conform to the Federal Rules of Evidence.
 - must be established at time statehood is granted.
 - may be enacted by the state legislature.
 - are established by the state's highest court.

ANS: C REF: Sources of Evidence Law LO: 7

20. The official citation for *Miranda v. Arizona* is 384 U.S. 436 (1966). The number 436 is:
- the volume of United States Reports in which the case can be found.
 - the page in volume 384 of United States Reports on which the case can be found.
 - the code section of the United States Code where the case can be found.
 - None of these is correct

ANS: B

REF: How Legal Research Is Conducted

LO: 8

CRITICAL THINKING

Adam snuck up on a man named Bill who appeared to be sleeping on a bench in the park. When Adam grabbed the wallet that was protruding from Bill's hip pocket, Bill woke up. Adam and Bill got into a scuffle that resulted in Bill having a bloody nose. Adam has been charged with robbery which is defined as taking something of value from the immediate presence of a person by force or threat of force.

1. Evidence indicating that Adam intended to steal Bill's wallet:
- The prosecution has the burden of proof on Adam's intent to take the wallet
 - The defense must establish that Adam had no intent to take the wallet as part of its burden of proof
 - The prosecution has the burden of persuasion on the issue of Adam's intent to take the wallet
 - Once the prosecution introduces evidence showing that Adam intended to take the wallet, the defense has the burden of disproving Adam's intent to take the wallet

ANS: A

REF: Burden of Proof

LO: 2

2. Bill was a police officer posing as a homeless person in the park. The defense claims this is entrapment, an affirmative defense in the state where the events occurred.
- The prosecution must establish beyond a reasonable doubt that entrapment did not occur.
 - The prosecution has the burden of proof on all issues raised by the defense.
 - The defense has the burden of proof on entrapment because it is an affirmative defense.
 - The defense has the burden of proof on all elements of a defense.

ANS: C

REF: Burden of Proof

LO: 2

3. Who will decide whether the facts establish that entrapment occurred if Adam presents this defense in a jury trial?
- The judge acting as the trier of the facts.
 - The jury acting as the trier of facts.
 - The judge decides the legal issues; therefore the jury will not consider the facts involving entrapment.
 - In a jury trial the jury decides all of the legal and factual issues.

Test Bank

ANS: B REF: Role of Judge and Jury LO: 3

4. Assume Adam was convicted of robbery and the judge wants to impose a longer sentence because of Bill's physical injuries.
- The judge has discretion to impose any sentence authorized by the state's laws.
 - The judge can impose a longer sentence as long as Adam was given notice before trial that the longer sentence was possible.
 - The judge can impose a longer sentence only if the trier of the facts decided that the injuries were caused by Adam during the robbery.
 - The judge does not have discretion to impose a longer sentence.

ANS: C REF: Role of Judge and Jury LO: 3

The police arrested Connie for writing a check without sufficient funds in her checking account to cover it.

5. The prosecution has learned that there was a computer error at the bank and Connie did in fact have enough money in her account to cover the check.
- The prosecutor should ask the court to dismiss the charges.
 - The prosecutor should proceed with the case as long as the police had objective facts to establish probable cause at the time of the arrest.
 - The prosecutor should offer the defense a plea bargain with a reduced sentence.
 - The prosecutor should proceed with the case if the bank insists on it.

ANS: A REF: Role of the Prosecutor LO: 4

6. The prosecutor told the defense attorney the overage was due to a bank error and asked the judge to drop the charges. The defense attorney contacted the bank and learned that the information given to the prosecutor was wrong. Connie told her attorney that she closed her account before she wrote the check. Writing a check on a closed account is a more serious offense in the state where this occurred than writing a check with insufficient funds.
- The defense attorney should tell the judge that he has discussed the case with the bank and agrees with the prosecutor's request to drop the charges.
 - The defense attorney should tell the judge that the prosecutor has inaccurate information but should not mention what Connie said about the closed account.
 - The defense attorney should tell the judge about the bank's error and that Connie admitted writing a check on a closed account.
 - The defense attorney should adamantly profess his client's innocence.

ANS: B REF: Role of the Defense Attorney LO: 4

Donnie robbed a bank in Manhattan (a borough of New York City). The FBI and the New York City Police Department were both involved in the investigation. Bank robbery can be charged under New York State Penal Law Section 160.15 (First degree robbery, a Class B felony with a maximum sentence of 25 years) or Bank Robbery under 18 U.S.C. 2113 (maximum sentence 20 years).

7. If the case is filed as a federal crime, who will prosecute the case?
- U. S. Attorney
 - District Attorney for Borough of Manhattan
 - Attorney General for State of New York
 - U. S. Attorney General

ANS: A REF: Role of the Prosecutor LO: 4

8. If the case is filed as a federal crime, what rules of evidence will apply?
- Rules of evidence in effect when U. S. Constitution was enacted
 - Federal Rules of Evidence
 - Title 18 of the United States Code
 - Rules of evidence enacted by New York's state legislature

ANS: B REF: Sources of Evidence Law LO: 6 | 7

9. If the decision was made to go for the longer sentence and file the case under New York state law, who will prosecute the case?
- U. S. Attorney
 - District Attorney for Borough of Manhattan
 - Attorney General for State of New York
 - U. S. Attorney General

ANS: B REF: Role of the Prosecutor LO: 4

10. Which of the following would be of the most help to an attorney assigned to prosecute the case who wants to read cases that apply to bank robbery:
- Legal newspapers
 - Treatises
 - Legal digests
 - Case reporters

ANS: D REF: How Legal Research Is Conducted LO: 8

ESSAY

1. Define *evidence*. Give an example of each of the following types of evidence: testimony; physical object; document.

ANS: Evidence is something (including testimony, documents, and tangible objects) that tends to prove or disprove the existence of an alleged fact. The term also refers to the collective mass of things, especially testimony and exhibits, presented before the court in a given dispute. Examples: testimony: what a witness says while on the witness stand; physical object: the murder weapon; document: the demand note in a kidnapping case.

REF: What Is Evidence

LO: 1

2. Define “proof beyond a reasonable doubt.” Who has the burden of proof on the issue of the defendant’s guilt at a criminal trial? When does the defense have a burden of proof in a criminal trial?

ANS: Proof beyond a reasonable doubt is sufficient proof to disprove any reasonable hypothesis that the defendant is not guilty. The prosecution has the burden of proof on all elements of the crime. The defense has the burden of proof on affirmative defenses such as self defense.

REF: Burden of Proof

LO: 2

3. Explain when the 50 states are required to have the same rules in court and when each state is allowed to develop separate rules.

ANS: Some rules, such as the Exclusionary Rule, are mandated by the Constitution and Bill of Rights and therefore apply to all 50 states. The states are free to establish their own rules on issues not covered by the Constitution and Bill of Rights.

REF: Sources of Evidence Law

LO: 7

4. Compare and contrast the roles of the prosecutor as part of the adversary system and as required by Due Process.

ANS: Adversary system: file charges; vigorously negotiate plea bargain; present evidence at trial; make objections during trial; seek to persuade judge at sentencing. Due Process: not file charges if there is no probable cause to support them; give defense exculpatory evidence; work to free defendant if prosecutor learns of evidence indicating that he/she was wrongly convicted

REF: Role of the Prosecutor

LO: 4

5. Explain how the U.S. Constitution and Bill of Rights restrict introduction of evidence at a criminal trial.

ANS: The Exclusionary Rule is the best known restriction imposed by the Constitution and Bill of Rights. Evidence seized in violation of the Fourth and Fifth Amendments are not admissible at trial.

REF: Sources of Evidence Law

LO: 6