Test Bank for Criminal Evidence 8th Garland

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***Criminal Evidence, 8e* (Garland)**
Chapter 2 The Trial Process

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

Answer: FALSE
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2) A defendant can absolutely waive his right to counsel if the judge believes the defendant is knowingly waiving that right.

Answer: TRUE
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3) Six-member juries are permitted in serious crimes cases only if they reach unanimous verdicts.

Answer: TRUE
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4) In a criminal trial, the level of evidence the prosecution must present in order to get a conviction is a preponderance of the evidence.

Answer: FALSE
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5) Venire is a pool of available jurors sent to a courtroom.

Answer: TRUE
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6) A bench trial is the same as a court trial.

Answer: TRUE
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7) A potential juror may be excused from *voir dire* for no articulable reason.

Answer: TRUE
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8) Alternate jurors deliberate with the jurors on the panel but do not participate in rendering the final verdict.

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

Answer: FALSE
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10) Historically, a judge would notify the jury of its power to nullify.

Answer: FALSE
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11) The judge will ultimately decide whether a witness is credible or not.

Answer: FALSE
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12) A fine is the only punishment for being held in criminal contempt.

Answer: FALSE
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13) A judge will decide which criminal charges should be prosecuted and which should not.

Answer: FALSE
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14) A prosecutor does not have to present all available physical evidence.

Answer: TRUE
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15) A *prima facie* case rules out the possibility that anybody other than the defendant committed the crime.

Answer: FALSE
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16) The same steps that were used in presenting a prosecution's case-in-chief are followed in the defendant's case-in-chief, should the defendant choose to present a case.

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

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18) Leading questions usually occur during cross-examination.

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

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

Answer: FALSE
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21) In a criminal trial, only a preponderance of the evidence must be presented on the part of one side or the other to receive a favorable judgment.

Answer: FALSE
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22) A judge prepares jury instructions.

Answer: FALSE
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23) Juries are rarely sequestered for an entire trial.

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

Answer: TRUE
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25) During direct examination, an attorney usually tries to belittle or embarrass the witness, but upon cross-examination, just the opposite is true.

Answer: FALSE
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26) Rebuttal evidence is presented only by the defense.

Answer: FALSE
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27) A hung jury is formed in a case only when six jurors of a twelve-member jury find a defendant guilty, while six jurors do not find the defendant guilty.

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

Answer: FALSE
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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.

Answer: FALSE
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30) An attorney can make a groundless objection.

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

Answer: FALSE
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32) In most states, jurors are selected from lists of registered voters.

Answer: TRUE
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33) The Sixth Amendment to the United States Constitution prescribes:
A) a minimum of 12 jury members.
B) trial without a jury.
C) a jury of 6 for capital crimes.
D) no set number for a jury.

Answer: D
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34) The process of questioning a panel of prospective jurors to select the final panel is known as _____.
A) *voir dire*
B) *stare decisis*
C) *corpus delicti*
D) *habeas corpus*

Answer: A
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35) Proof beyond a reasonable doubt:
A) is the highest level of proof required that American law demands in a case.
B) means proof beyond all doubt.
C) means a preponderance of the evidence.
D) equals 50-plus percent of the evidence in one's favor.

Answer: A
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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

Answer: C
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37) Who can make a challenge for cause?
A) The judge
B) The prosecution
C) The defense
D) All of the answers are correct.

Answer: D
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38) The motion that excludes a prospective juror from the jury panel without specific reason or

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justification is called _____.
A) a peremptory challenge
B) jury nullification
C) jury deliberation
D) an affirmative defense

Answer: A
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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 is sworn.

Answer: D
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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

Answer: A
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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

Answer: C
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42) The power of a jury in a criminal case to acquit a defendant for any reason or no reason at all is known as _____.
A) jury sworn
B) jury selection
C) jury deliberation
D) jury nullification

Answer: D
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43) Any evidence that tends to prove the innocence of an accused is called _____.

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A) exculpatory evidence
B) inculpatory evidence
C) anecdotal evidence
D) contradictory evidence

Answer: A
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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

Answer: D
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45) A lawyer should not typically ask questions that may lead to which of the following types 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

Answer: B
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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

Answer: D
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47) Which of the following best describes *corpus delicti*?
A) The motion that a prospective juror should be excluded because he or she is incapable of being impartial
B) The power of a court to punish persons for failure to obey court orders or to coerce them into obeying court orders
C) The portion of a trial that comprises the main evidence for either the prosecution or the defense
D) The requirement that the prosecution present sufficient evidence to establish that a crime was committed by someone

Answer: D
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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

Answer: D
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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.

Answer: B
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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.

Answer: B
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51) What could a witness do that could lead to a mistrial?

Answer: If a witness inadvertently answers a question before the judge can make the ruling and the objection is sustained, or if the sustained objection is made after the witness has already answered, the judge will order the answer stricken from the record and admonish the jury to disregard the answer. The law expects the jury to do so. However, it is practically impossible to erase a thought completely once it has been planted in the minds of jurors. Thus, if the information that the jury heard is too damaging or too prejudicial to the defendant, the judge may declare a mistrial.
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52) Describe three reasons why a defense attorney may want to cross-examine a witness.

Answer: After direct examination is completed, the opposing attorney may, as desired, cross-examine the witness. In most instances, the attorney will cross-examine for several reasons. First, the cross-examiner may hope to shake the witness's story and thereby cause the jury to give the testimony less weight. Second, the cross-examiner may try to show that the witness is prejudiced and consequently may have testified incorrectly or untruthfully. Third, the cross-examiner may try to show that the witness has made prior inconsistent statements and thus should not be believed by the jury.
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53) What is the police officer's role in helping the prosecutor prepare for trial?

Answer: 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.
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54) State the basic purpose of a trial.

Answer: 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.
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55) Describe the qualifications for being a trial juror.

Answer: Although the qualifications of a trial juror may vary somewhat from state to state, the general qualifications are quite similar. The person must be an adult, meaning 18 years of age or over. He or she must be a citizen of the United States and a resident within the jurisdiction of the court involved. The prospective juror must have a sufficient knowledge of the English language to understand the testimony and to be able to communicate during the deliberation. In most states, the person must have use of his or her natural faculties, meaning the ability to see, hear, and talk, although in some jurisdictions in recent years persons with disabilities have been permitted to sit on juries with assistance. A person with a past felony conviction will be disqualified from jury duty in most states. And, in most states, jurors are selected from lists of registered voters.
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56) Briefly explain the process of *voir dire*.

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

Answer: 1. Collect physical evidence
2. Interview witnesses
3. Discuss the case in detail with the prosecuting attorney
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58) What amount of proof is necessary in a criminal trial and in a civil trial?

Answer: 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 percent plus a feather in one's favor.
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59) What is the role of an alternate juror?

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

Answer: An opening statement provides a road map of the case. The attorney and the prosecution in their respective opening statements will explain to the jury how they intend 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.
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61) Provide an example of jury nullification.

Answer: For example, if a person is on trial for drug possession involving possession of marijuana for personal use, a jury might acquit the person because its members do not believe that possession of such drugs should be illegal even if the prosecution has presented evidence to support all of the elements of the crime.
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62) In recent cases, the United States Supreme Court has adopted the principle that the Sixth Amendment right to trial by jury requires that certain facts, in addition to the finding of guilt, must be found by the jury, not the judge. Discuss the holding of at least one recent case.

Answer: 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*.
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63) What is the practical effect of the recent United States Supreme Court's decisions such as *Blakely v. Washington* and *United States v. Booker* regarding sentencing guidelines and procedure?

Answer: 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.
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