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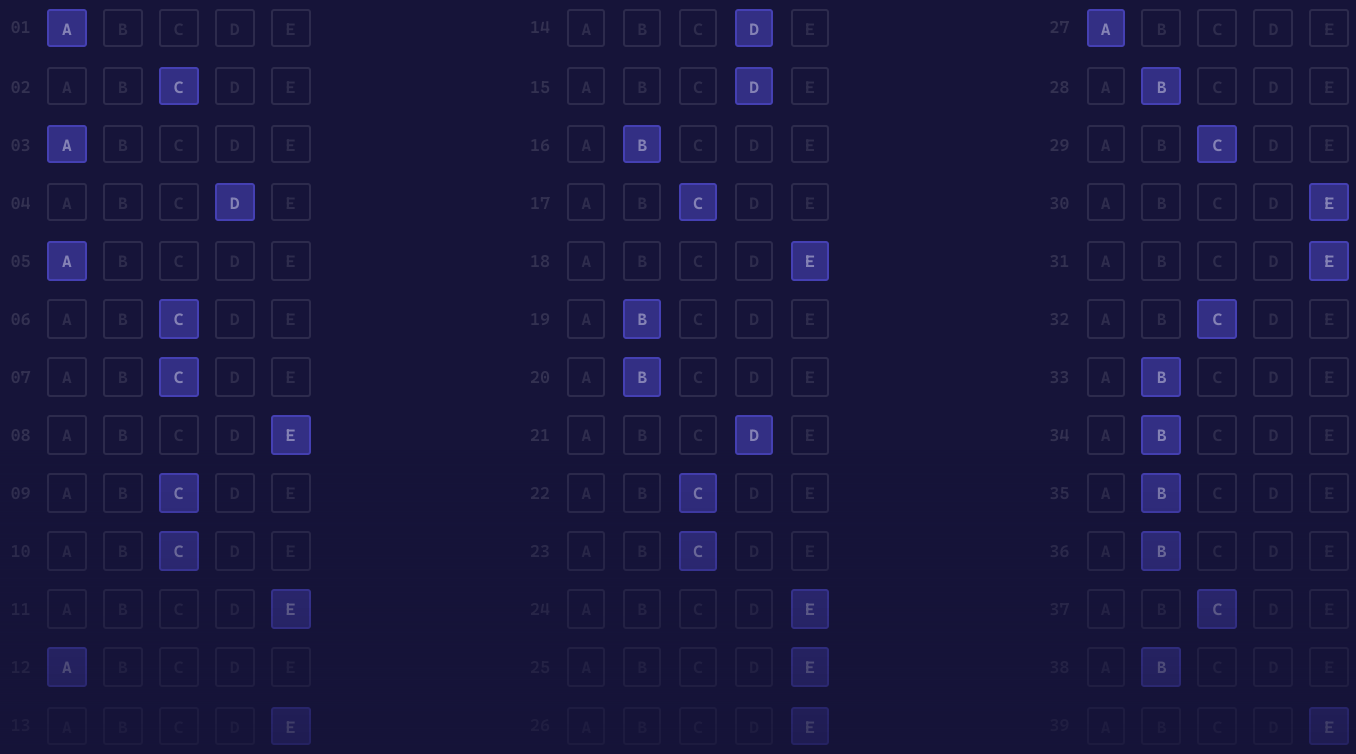

PRACTICE QUESTIONS

The State Bar of California (Legal Specialist Examination) - Test Center

ACR

Appellate Criminal Law

EDITION	QUESTIONS	FORMAT
Demo	9	Limited Edition PDF

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Before you begin

What this is

9 practice questions for The State Bar of California (Legal Specialist Examination) - Test Center `ACR`, each with its answer key and an explanation. Answer a question before you read its key — the explanation is worth more once you have committed.

If something looks wrong

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QUESTION 1 MULTIPLE CHOICE

In a felony case, which of the following orders are generally appealable by the defendant before final judgment? (Choose two.)

A An order denying a motion to suppress evidence under Penal Code § 1538.5

B An order granting a motion to set aside an information under Penal Code § 995

C An interlocutory order granting a motion for new trial filed by the prosecution

D An order denying a motion for pretrial diversion under Penal Code § 1001.36

ANSWER B · D

WHY Under Penal Code § 1238(a)(1) and (5), a defendant may appeal from an order granting the prosecution's motion to set aside an information (§ 995) and from certain pretrial diversion rulings (§ 1001.36(j)). Orders denying a § 1538.5 motion are reviewed via writ petition under § 1538.5(i), not by direct appeal, and the People's appeal from an order granting a new trial is governed by § 1238(a)(3) but not from the defendant; here the option wrongly labels it as 'by the prosecution' which is the proper party but the order granting a new trial is not in the defendant's favor in this context. The two correct, well-settled appealable orders listed are the § 995 dismissal reversal and the § 1001.36 ruling.

QUESTION 2 MULTIPLE CHOICE

Which of the following must an appellant's opening brief in the California Court of Appeal contain? (Choose two.)

A A summary of significant facts limited to matters in the record on appeal

B A prayer specifying the type of relief requested

C Copies of all trial exhibits for the convenience of the justices

D A separate memorandum of points and authorities addressing each issue

ANSWER A · B

WHY California Rules of Court, rule 8.204(a)(1)(C) requires a summary of the significant facts limited to matters in the record, and rule 8.204(a)(1)(B) requires a prayer specifying the relief requested. Trial exhibits are not required to be reproduced in the opening brief (they go in the appendix), and California appellate briefs do not use a separate memorandum of points and authorities as in some other practice contexts.

QUESTION 3 SINGLE CHOICE

A criminal defendant is sentenced in superior court and wishes to appeal. Under California Rules of Court, rule 8.308, what is the latest date by which the defendant ordinarily must file the notice of appeal in a felony case after sentencing?

A 10 days

B 30 days

C 60 days

D 90 days

ANSWER C

WHY Rule 8.308(a) generally requires a notice of appeal in a felony case to be filed within 60 days after the rendition of judgment or the making of the order being appealed. The 30-day period in rule 8.308(b) applies to misdemeanor cases.

QUESTION 4 SINGLE CHOICE

When the Court of Appeal reviews a claim of insufficient evidence to support a criminal conviction, which of the following is the correct standard of review?

A De novo review of the trial court's rulings on the admissibility of evidence

B Review of the entire record in the light most favorable to the judgment to determine whether any rational trier of fact could find the elements of the offense beyond a reasonable doubt

C Independent judgment on the weight of the evidence and the credibility of witnesses

D Harmless-error review applying the People v. Watson test as a matter of law

ANSWER B

WHY The familiar standard articulated in Jackson v. Virginia and adopted in California (People v. Johnson (1980) 26 Cal.3d 557) requires the appellate court to review the entire record in the light most favorable to the judgment and ask whether any rational trier of fact could find the elements of the offense beyond a reasonable doubt. The court does not reweigh evidence, and harmless-error tests apply to federal constitutional errors (Chapman) or state errors (Watson), not to sufficiency review.

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QUESTION 5 SINGLE CHOICE

A defendant fails to object in the trial court to the admission of certain hearsay testimony. On appeal, what is the most likely outcome regarding reviewability of this claim?

A The claim is automatically reviewed de novo by the Court of Appeal

B The claim is deemed waived or forfeited and may be reviewed only if the appellate court finds a due process exception such as a complete denial of the right to present a defense

C The claim is reviewed for substantial evidence because it concerns the reliability of evidence

D The claim is preserved as long as defense counsel mentioned the testimony in the closing argument

ANSWER B

WHY Under settled California law (People v. Saunders (1993) 5 Cal.4th 580; People v. Simon (2016) 1 Cal.5th 136), failure to object generally forfeits evidentiary claims. A narrow due-process 'complete denial of the right to present a defense' exception survives, but ordinary trial objections must be made to preserve the issue.

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QUESTION 6 SINGLE CHOICE

Under the California Supreme Court's decision in People v. Wende (1979) 25 Cal.3d 436 and its progeny, when appointed appellate counsel in a non-capital case finds no arguable issues, what is the proper procedure?

A Counsel must file an Anders brief detailing potential issues and may request permission to withdraw

B Counsel must file a brief that summarizes the procedural and factual history, refers the court to the record, and notifies the defendant of the right to file a supplemental brief

C Counsel must file a full merits brief on every conceivable issue

D Counsel must decline the appointment and notify the State Bar

ANSWER B

WHY In California, the analogous procedure to Anders v. California in non-capital cases is set out in Wende and People v. Kelly (2006) 40 Cal.4th 106. Appointed counsel files a brief summarizing the proceedings and counsel's review, refers the court to the record, and advises the defendant of the right to file a supplemental brief. Anders briefs and motions to withdraw are not the required procedure in California non-capital appeals.

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QUESTION 7 SINGLE CHOICE

To prevail on an ineffective assistance of counsel claim in California, the defendant must show what?

A That defense counsel made a tactical decision the defendant disagreed with

B **That counsel's representation fell below an objective standard of reasonableness under prevailing professional norms and that there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different**

C That counsel was not licensed to practice in California at the time of trial

D That the prosecution committed Brady violations

ANSWER **B**

WHY This is the two-part test articulated in Strickland v. Washington (1984) 466 U.S. 668 and adopted in California in People v. Pope (1987) 23 Cal.3d 412. Tactical decisions, without more, do not establish deficient performance, and licensure or Brady issues are independent grounds.

QUESTION 8 SINGLE CHOICE

If the Court of Appeal finds federal constitutional error at trial, which harmless-error standard applies?

A The Watson 'reasonably probable' outcome-determinative test

B **The Chapman 'harmless beyond a reasonable doubt' test**

C A de novo standard with automatic reversal for any error

D A substantial evidence standard

ANSWER **B**

WHY Under Chapman v. California (1967) 386 U.S. 18, federal constitutional error requires reversal unless the state proves the error was harmless beyond a reasonable doubt. Watson (People v. Watson (1956) 46 Cal.2d 818) applies to state-law evidentiary error.

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QUESTION 9 SINGLE CHOICE

Under Gideon v. Wainwright, the Sixth Amendment right to counsel attaches at which point in a felony prosecution?

A At the preliminary hearing

B At arraignment on the felony information

C At the start of jury deliberations

D At the first appearance before a magistrate

ANSWER B

WHY Under Gideon v. Wainwright (1963) 372 U.S. 335, and clarified by Rothgery v. Gillespie County (2008) 554 U.S. 191 and California decisions such as People v. Crayton (2002) 28 Cal.4th 346, the Sixth Amendment right to counsel attaches at the initiation of adversarial judicial proceedings, which in California ordinarily means at the arraignment on the felony information.

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