

Bar None Review Exam Writing Template – CRIMINAL PROCEDURE: 5TH AMENDMENT

Fifth Amendment

The 5th Amendment protects a defendant from being compelled to make incriminating statements.

Exclusionary Rule

For a defendant's statements to be admissible at trial, the defendant must have made the statement voluntarily and within the requirements of Miranda v. Arizona.

Voluntariness

Pursuant statement is voluntary when the statement is a product of rational intellect and freewill as determined by the totality of circumstances.

Here, _____. Thus,_____.

Miranda

Miranda requires police officers to advise the accused of his constitutional rights when that person is subject to custodial interrogation.

Custody

A person is in custody when the person is subjected to physical restraint or when the person's freedom is denied in a significant way (**standard**: Whether a reasonable person would believe he/she was not free to leave).

Here, _____. Thus,_____.

Interrogation

A person is subject to interrogation when police words or action are reasonably likely to elicit an incriminating response.

Here, _____. Thus,_____.

<p style="text-align: center;"><u>Impeachment</u></p> <p>A statement that is inadmissible for the aforementioned reasons, may be used for purposes of impeachment should (Defendant) chose to testify on (his/her) own behalf.</p>	<p style="text-align: center;"><u>Miranda Rights</u></p> <p>Since (defendant) was subject to custodial interrogation, the police should have warned (defendant) of (his/her) Miranda rights.</p> <p>Here, _____. Thus, _____.</p> <p style="text-align: center;"><u>Waiver</u></p> <p>A defendant may waive (his/her) Miranda rights by affirmatively asserting the waiver (silence or body gestures can not form the basis of a waiver) and the waiver must be knowing and voluntary.</p> <p>Here, _____. Thus, _____.</p>
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