

Ace the bar in half the time

**Essay Evaluation**  
Prepared for John Doe



## New York State Bar Examination Essay Evaluation

### *About this Evaluation*

The New York Board of Law Examiners (“BOLE”) does not release its essay grading tools. This evaluation, then, is our closest estimation of how your essay would have been graded had you submitted it on exam day. To reach this estimation, we applied New York law, generally accepted essay writing practices, and compared BOLE’s example essays for commonalities. To be on track for a passing score, we recommend you earn at least 6 out of 10 points. As you read your score below, please keep in mind that our grading is likely more stringent than what you will face on exam day.

### *July 2003 Question 2*

Points awarded when student states:

#### **Part 1. A.**

##### The Issue

- the issue (“the issue is” whether evidence recovered by the police officer who entered the apartment without the resident’s consent should be suppressed)

##### The Rule

- “the Fourth Amendment”
- the unreasonable search rule (warrant required for searches of homes)

##### The Consent Exception

- the consent exception (warrant not required when resident consents)
- facts applicable to consent exception (superintendent did not share premises)
- consent exception does not apply

The Evanescent Evidence Exception

- the evanescent evidence exception (warrant not required if evidence may be rapidly disappearing)
- facts applicable to the evanescent evidence exception (facts indicating decomposing evidence)
- the evanescent evidence exception may apply

The Emergency Exception

- the emergency exception (warrant not required to address a perceived emergency)
- facts applicable to the emergency exception (facts indicating possible danger to public)
- the emergency exception may apply

The Conclusion

- the court properly denied the motion to suppress

Points Available: 13

Points Earned: 5

**Part 1. B.**

The Issue

- “The issue is” (who bears the burden of proof concerning an insanity plea)

The Rule

- a motion to dismiss is properly granted when the prosecution failed to present evidence sufficient for any reasonable jury to find the defendant guilty
- this standard does not apply to affirmative defenses

The Insanity Defense Exception

- insanity is an affirmative defense

- the burden is on the defendant to raise this defense
- the burden is a “preponderance of the evidence”
- the elements of an insanity defense (lacked the required intent to know the nature, quality, or consequences of his actions)
- facts applicable to Insanity exception (Max presented no evidence of insanity)

### The Conclusion

- the court properly denied the motion

Points Available: 9

Points Earned: 7

## **Part 2**

### The Issue

- “The issue is” (whether the judge should have questioned the prosecutor's peremptory strikes)

### The Rule

- “the Fourteenth Amendment”
- that the constitution requires strict scrutiny of racially motivated peremptory strikes
- that strict scrutiny requires the state to prove its actions were narrowly tailored and for a compelling governmental interest
- the prosecutor bears the burden of proof if a *prima facie* case is made

### The Application

- facts applicable to legality of the preemptive strikes (mentions racial selection)
- the court should have questioned the prosecutor about her motivations

The Conclusion

the appellate court should overturn the ruling

Points Available: 8

Points Earned: 6

**Part 3**

The Issue

“the issue is” (whether the attorney's mistakes constitute ineffective assistance of counsel)

The Rule

defendant must prove that but for the ineffective assistance of counsel, the case may have come out differently

The Application

that professional responsibility rules forbid contingency fees in criminal cases

the attorney violated professional responsibility rules

facts applicable to the ineffective assistance of counsel rule (contingency actually encouraged better representation)

that changing the fee arrangement in this case, however, would not have necessarily changed the outcome

that the fee arrangement therefore was not ineffective assistance of counsel

The Conclusion

reversal should not be granted

Points Available: 8

Points Earned: 7

## *Comments Just for John*

### Score

Total Points Available: 38

Total Points Earned: 25

Total Percent Earned (points earned / points available): 0.632

**Estimated Score: 6 out of 10**

### Overview

Great essay, John! We took your answer and compared it to the points repeated in the model answers given by the New York Board of Bar Examiners, and found you scored 6 out of 10 possible points. This is on track to pass the test!

### Key Points

What you did very well:

- Your essay was very clearly written and well organized, making it easy to find all the points you earned.
- You described the black letter law simply and correctly
- You scored very highly for this point in the study process

What you could improve:

- Write each practice essay within the suggested 40 minute limit
- Begin each of your answers with “the issue is . . .”
- Conclude by answering the question asked (e.g. “the court properly denied the motion”)