

July 2016

Procedure and Evidence Questions

This booklet contains the questions for both the Civil and Criminal sections of the Procedure & Evidence session. Both the Civil and Criminal sections must be completed during the 90-minute Procedure & Evidence testing session.



TEXAS BAR EXAMINATION

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If you are using your **laptop**, type each answer in the **correct screen** for each question.
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Producer, a Texas corporation with its principal office in Bexar County, Texas, contracted with Driller, an Oklahoma corporation, to drill an oil well on land owned by Producer in Zavala County, Texas. While Driller does not maintain an office in Texas, it routinely drills wells in Texas for Texas customers. The contract to drill Producer's well was negotiated and signed in Driller's offices in Oklahoma.

During the drilling of Producer's well, a blowout occurred and the well was irreparably damaged. Producer terminated the contract with Driller and paid another company \$1,000,000 to re-drill the well.

Producer files a breach of contract suit against Driller in 2016 in Bexar County District Court, and properly serves Driller with the lawsuit. The suit seeks "in excess of \$200,000" in actual damages and an unspecified amount of attorney's fees.

Civil-1. When must Driller file its answer to avoid the entry of a default judgment against it? Explain your answer.

Driller is considering removing the case to federal court on the basis of diversity of citizenship.

Civil-2. Does Driller have a valid basis for removing the case to federal court based on diversity of citizenship? Explain your answer.

Driller's attorney informs Driller that Zavala County is a favorable forum for drilling companies and wants the case to proceed in Zavala County instead of seeking removal to federal court. Driller agrees.

Civil-3. What pleading must Driller file to seek to move the case to Zavala County, and when must it file the pleading?

Assume Driller properly files the appropriate pleading requesting a transfer to Zavala County and that Producer properly responds to the pleading.

Civil-4. How should the Court rule on Driller's pleading? Explain your answer.

Producer's original petition fails to state the maximum amount of money Producer seeks to recover from Driller.

Civil-5. What pleading should Driller file to bring this issue to the Court's attention, and what relief, if any, is Driller entitled to obtain? Explain your answer.

Driller wants to obtain more detailed information regarding the facts and circumstances underlying Producer's claims.

Civil-6. List 5 forms of discovery available to Driller to obtain such information.

Driller serves written interrogatories on Producer via certified mail. Driller's attorney deposits the interrogatories in the mail on Day 1. On Day 32 (31 days later), Driller receives, via hand delivery, Producer's objections and responses to the interrogatories.

Civil-7. Did Producer timely object and respond to the interrogatories? Explain your answer.

Producer states in a response to a request for production served by Driller that Producer has withheld certain documents under a claim of attorney-client privilege. Driller's attorney sends Producer's attorney a letter demanding that Producer's attorney immediately identify the documents withheld.

Civil-8. In order to preserve the privilege, what action must Producer's attorney take in response to the letter and when must she take it? Explain your answer.

Several months after filing its answer, Driller learns that the blowout preventers on the well were defective and wants to add the supplier of the blowout preventers ("Supplier") to the lawsuit.

Civil-9. What action must Driller take in order to join Supplier as a party to the lawsuit? Explain your answer.

Producer notices the deposition of Driller's president. Driller does not want to produce its president for deposition because he does not know anything about the blowout incident.

Civil-10. What pleading should Driller file to resist producing its president for deposition? Explain your answer.

Driller retains and designates an expert witness to testify at trial regarding the cause of the blowout. Producer promptly sends interrogatories and requests for production seeking information about the expert's opinions. Driller objects on the ground that the interrogatories and requests for production are impermissible discovery requests.

Civil-11. How should the Court rule on Driller's objections? Explain your answer.

Producer sends Driller requests for admission asking Driller to admit certain facts. Driller fails to respond to the requests.

Civil-12. What is the effect of Driller's failure to respond and what, if anything, can Driller do to change it? Explain your answer.

During the deposition of one of Producer's employees, Producer's attorney objects to the form of a question asked by Driller's attorney. Driller's attorney asks for the basis of the objection but Producer's attorney refuses to give it, claiming that the rules permit him to say "Objection, form" only.

Civil-13. Is Producer's attorney correct? Explain your answer.

During discovery, Driller produces paper copies of drilling reports that are also maintained in electronic form. Producer believes that the reports were altered by Driller and wants the reports produced in the electronic form in which Driller regularly maintains them.

Civil-14. Is Producer entitled to production of the reports in electronic form? If so, what action must Producer take to obtain such production and how must Driller respond? Explain your answer.

The case proceeds to trial. During voir dire a prospective juror says, "Several years ago I interviewed for a job with Producer but they hired a less qualified person who was better looking than me. But I can be fair."

Civil-15. What procedural steps, if any, can Producer take to strike this potential juror? Explain your answer.

Producer calls Driller's drilling supervisor as its first witness. Driller objects on the ground that Producer should first call its own witness to lay a foundation for Producer's claims before any defendant is required to testify.

Civil-16. How should the court rule on Driller's objection? Explain your answer.

While on the stand, an employee of Producer testifies that he talked to Driller's supervisor immediately after the blowout incident. Producer's attorney asks what the supervisor said. Driller's attorney objects to the question and asserts hearsay as the basis of the objection.

Civil-17. How should the court rule on the objection? Explain your answer.

Prior to jury selection, the Court granted Driller's motion in limine and instructed Producer's attorney not to mention, or question witnesses about, prior blowouts experienced on other wells drilled by Driller. Producer now wants to introduce evidence of prior blowouts experienced on other wells drilled by Driller.

Civil-18. What action must Producer take to (i) introduce such evidence, and (ii) preserve error if the evidence is not allowed? Explain your answer.

After Producer rests its case, Driller's attorney believes that Producer introduced factually insufficient evidence on its breach of contract claim.

Civil-19. What action should Driller's attorney take to bring this matter to the Court's attention, how should Producer's attorney respond, and how should the Court rule on the issue? Explain your answer.

At the end of the trial, the jury returns a verdict for Producer and awards damages to Producer. Only 10 of the 12 jurors sign the verdict. Driller objects and timely files a motion for a mistrial on the ground that the verdict was not unanimous.

Civil-20. How should the Court rule on Driller's motion? Explain your answer.

**Procedure and Evidence Questions
continue on the next page.**



Procedure and Evidence Questions Criminal-1 through Criminal-20

If you are using your **laptop**, type each answer in the **correct screen** for each question.
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Sarah had always wanted a handbag made by the famous Italian designer, Victoria V. Valenti, with the famous VVV logo printed on it. However, Valenti handbags sell for \$5,000 each, and Sarah could not afford one. On March 1, 2014, Sarah entered a store in Houston, Texas, that was selling Valenti handbags with the famous VVV logo on them for \$150 each. When she asked Beck, who was one of the store's co-owners, if the bags were genuine Valenti handbags, he replied: "Of course they're real! Do you think I'm a cheat?" She asked C.J., the other co-owner of the store, the same question, and he said: "Absolutely! They're the real deal." Sarah bought three of the Valenti handbags and left the store.

Just as she exited, an undercover police officer (Officer) asked her where she had purchased the three handbags. Sarah pointed at the store and to Beck and C.J. and said: "In that store from those two guys." Without a warrant, Officer confiscated the three Valenti handbags from Sarah and went back to the police station. Officer's subsequent investigation revealed that the Valenti handbags he took from Sarah were fake and had counterfeit VVV logos on them.

On March 10, 2016, Beck and C.J. were each charged by a criminal complaint with the third degree felony of selling items bearing a counterfeit mark (*i.e.*, the handbags with the counterfeit VVV logo). Neither Beck nor C.J. has any prior criminal record. Officer arrested Beck and C.J. You have been appointed as Beck's lawyer.

Criminal-1. Was the prosecution of Beck and C.J. initiated within the statute of limitations? Explain your answer.

Beck was arrested by Officer pursuant to a valid arrest warrant that was properly issued by a magistrate.

Criminal-2. Could the magistrate have issued a summons instead of an arrest warrant? Explain your answer.

When you first appear in Court in Beck's case, the Prosecutor asks the Court to hold Beck in jail without bail.

Criminal-3. Can Beck be denied bail? Explain your answer.

You request that Beck be released on a personal bond, but the magistrate decides to release Beck on a bail bond.

Criminal-4. What is a personal bond, and what is one way in which it differs from a bail bond?

Prosecutor calls Officer as a witness at Beck's examining trial, and Officer testifies as follows: "Sarah told me that she paid \$150 for each of the three Valenti handbags and that she handed the money for them to Beck." You object to this testimony on the ground that it is hearsay.

Criminal-5. How should the magistrate rule on your objection, and would your answer be different if the proceeding were a jury trial instead of an examining trial?

A grand jury is convened to investigate the alleged sale of fake Valenti handbags by Beck and C.J. To prove he did not know that the VVV logo on the handbags was counterfeit, Beck wants to appear as a witness and testify to the grand jury.

Criminal-6. Does Beck have the right to address the grand jury? Explain your answer.

During its deliberations, the grand jury calls for Prosecutor to come to the grand jury room to mediate a dispute that they are having.

Criminal-7. Does the law authorize Prosecutor to comply with the request of the grand jurors? Explain your answer.

The grand jury returns an indictment that charges both Beck and C.J. with acting together to sell items bearing a counterfeit mark, a third degree felony, by selling the Valenti handbags with the counterfeit logos.

Criminal-8. Was it proper for the grand jury to charge Beck and C.J. in the same indictment? Explain your answer.

The indictment fails to allege that Beck acted intentionally or with knowledge that the VVV logo on the handbags was false or counterfeit. In fact, you believe that the indictment fails to charge any violation of the law.

Criminal-9. What procedural step should you take to challenge the indictment, and when should you take it?

Prosecutor informs you that she learned from one of her witnesses that Beck used to torture animals when he was a teenager, and you fear that Prosecutor might mention this fact during Beck's trial.

Criminal-10. What procedural step, if any, can you take to try to prevent Prosecutor from mentioning this fact at trial? If Prosecutor mentions this fact at trial, what should you do to preserve the issue for appeal? Explain your answer.

Prosecutor tells you that she plans to introduce into evidence at trial the three Valenti handbags that Officer confiscated from Sarah without a warrant in front of Beck and C.J.'s store.

- Criminal-11.** What procedural step, if any, can Beck take to attempt to prohibit Prosecutor from introducing at trial the three Valenti handbags that Officer took from Sarah? Explain your answer.

Prosecutor offers Beck a plea agreement that includes a term of probation rather than any time in custody, and Beck accepts the plea agreement.

- Criminal-12.** If Beck pleads guilty, but the Court rejects the plea agreement, will Beck be bound by his guilty plea and have given up his right to a trial? Explain your answer.

You appear for jury selection and notice that the first 7 prospective jurors have authentic designer handbags with them.

- Criminal-13.** What action, if any, can you take to change the seating of the prospective jurors?

Beck and C.J are being tried together.

- Criminal-14.** How many peremptory challenges may Beck, C.J., and Prosecutor each exercise?

- Criminal-15.** Under the Code of Criminal Procedure, what two procedural steps must occur after the jury is impaneled and before any evidence is introduced at trial? Explain your answer.

Prosecutor calls Sarah as her first witness at trial. Sarah testifies as follows: "When I asked Beck if the handbags were real Valenti handbags, he said 'of course they're real! Do you think I am a cheat?'" You object to this testimony on the ground that it is hearsay.

- Criminal-16.** How should the Court rule on your objection? Explain your answer.

Prosecutor's next witness is Wilma, who bought Beck's old car from him about two years ago. Prosecutor asks Wilma to describe what she knows about Beck, and Wilma responds: "When Beck sold me his old car, he lied to me and told me it was running great, but it really was junk." You object that Prosecutor never told you about this testimony before trial.

- Criminal-17.** Was Prosecutor required to tell you about this testimony prior to trial? Explain your answer.

Prosecutor calls Beck's cousin, Laura, as the next witness. Laura testifies that she had lunch with Beck two weeks ago, and he told her the following: "I love owning my own business because I can make lots of money telling people whatever I want about my merchandise, and they are so stupid they don't know what is real and what is fake." You object that this testimony is hearsay.

Criminal-18. How should the Court rule on your objection? Explain your answer.

Prosecutor's final witness is Luigi, who testifies that Beck and C.J. paid him \$7,500 to make the fake Valenti handbags. He further testifies: "C.J. said to me: 'Luigi, make sure you make the VVV logos exactly as they appear on the genuine handbags and use the finest leather you can find.'" You object to this testimony as hearsay.

Criminal-19. How should the Court rule on your objection? Explain your answer.

The jury finds both Beck and C.J. guilty. At the sentencing phase of the trial, Prosecutor starts to introduce evidence that Beck stole a neighbor's \$1,500 monthly Social Security check. Prosecutor previously gave you proper and timely notice that she would seek to introduce this evidence. However, Beck has never been charged with or convicted of stealing the check.

Criminal-20. Is this evidence admissible at sentencing? Explain your answer.

**This concludes the Procedure and Evidence Questions.
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