

# February 2017

# 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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# Procedure and Evidence Questions

## Civil-1 through Civil-20

If you are using your **laptop**, type each answer in the **correct screen** for each question.  
If you are **handwriting**, write each answer in the **correct space in the answer booklet**.

Art was driving in downtown Austin, Travis County, Texas, when a taxi cab driven by Zach, a resident of San Marcos, Hays County, Texas, collided with Art's vehicle. Art was seriously injured. At the time of the collision, Zach was employed by Discount Cab Company ("Discount"), a Texas corporation with its principal place of business in Waco, McLennan County, Texas. The taxi cab was owned by Discount. At the time of the collision, Zach was on duty and in the course and scope of his employment with Discount.

Art wants to file suit against Zach and Discount in state District Court.

**Civil-1. In which counties can Art's suit be properly filed? Explain your answer.**

Art files suit in Travis County against both Zach and Discount.

**Civil-2. What pleading must Zach and Discount file if they want to challenge venue in Travis County, and when must they file it? Explain your answer.**

After all parties have appeared in the case, the Judge issues a scheduling order and the parties begin discovery.

**Civil-3. List 5 forms of discovery permitted under the Texas Rules of Civil Procedure.**

Art sends Discount a written interrogatory asking Discount to identify and describe every collision its drivers have been involved in during Discount's 20-year history. Discount believes that the interrogatory is improper.

**Civil-4. What action must Discount take to bring this matter to the Court's attention and when must Discount take that action? Explain your answer.**

Discount wants to obtain a copy of the medical records from all health care providers who treated Art for his injuries.

**Civil-5. What discovery tools can Discount use to obtain these records?**

Art wants to discover the identity of purely consulting experts employed by Discount to assist in Discount's defense of the case.

**Civil-6. What discovery tools can Art use to obtain this information? Explain your answer.**

Zach believes that Art is partially responsible for the collision because he was texting on his phone at the time of the collision and failed to keep a proper lookout.

**Civil-7. Must Zach raise the issue of Art's conduct before trial and, if so, how must Zach raise it? Explain your answer.**

Art wants to take Zach's oral deposition.

**Civil-8. In which county or counties may Zach's deposition be taken? Explain your answer.**

During Zach's deposition, Art's attorney questions Zach about very personal, private matters related to his political and religious beliefs. Zach's attorney objects to the questions, explains to Art's attorney that the questions are abusive and harassing, and instructs Zach not to answer. Art's attorney files a motion to compel Zach to answer the questions, claiming that it was improper for Zach's attorney to instruct Zach not to answer the questions.

**Civil-9. Do the Texas Rules of Civil Procedure permit Zach's attorney to instruct Zach not to answer the questions? Explain your answer.**

During his deposition, Zach admits that he has suffered seizures while driving in the past, but never sought medical attention. He denies that he suffered a seizure during the collision with Art.

**Civil-10. What action can Art's attorney take to independently verify the nature and extent of Zach's medical condition, and when must she take it? Explain your answer.**

Art wants a jury trial.

**Civil-11. What must Art do to ensure he gets a jury trial and when must he do it? Explain your answer.**

After the end of the discovery period, Jeff, the only known eyewitness to the collision, notifies all parties that he has a conflict and cannot attend the trial. Art asks for an agreement to delay the trial date but Zach and Discount refuse.

**Civil-12. What must Art do and show to avoid going to trial on the current trial setting? Explain your answer.**

The case is called to trial. Before *voir dire* begins, Zach and Discount are concerned that Art's attorney may attempt to mention or introduce evidence during the trial that Zach has a history of illegal drug use. Zach and Discount believe that such evidence is highly prejudicial but not relevant to the matters in controversy given that he passed a drug test administered on the date of the collision.

**Civil-13. What procedural step, if any, can Zach and Discount take before the trial commences to prevent Art's attorney from making reference to Zach's drug use in front of the jury? Explain your answer.**

During her opening statement, Art's attorney shows the jury a gruesome photograph depicting the severe injuries Art sustained in the collision. Defendants' attorneys object after the conclusion of Art's attorney's opening statement.

**Civil-14. How should the Court rule on Defendants' objection to the photograph? Explain your answer.**

After the first day of trial, Mary contacted Art's attorney and said she was a passenger in a cab driven by Zach six months before the collision at issue. Mary said that Zach appeared to "black out" during the short trip. Neither Art nor his attorney knew of Mary's existence before trial. Art's attorney notifies the Defendants and the Court the next morning of his intent to call Mary to testify as his next witness because she is leaving the country the following day. Zach's and Discount's attorneys object on the basis that Mary's identity was not disclosed in response to written discovery served in the case.

**Civil-15. How should the Court rule on Zach and Discount's objection? Explain your answer.**

Immediately after the collision, Art told Zach: "I didn't see you because I was texting my wife." While Zach is testifying at trial, his attorney asks him to repeat what Art said to him after the collision. Art's attorney objects on the basis that the testimony is hearsay.

**Civil-16. How should the Court rule on Art's attorney's hearsay objection? Explain your answer.**

During trial, Discount calls an expert to testify about the distraction caused by texting while driving. Art believes that Discount's expert is not qualified to offer opinions about distracted driving.

**Civil-17. What procedural steps should Art's attorney take to raise the issue of the expert's qualifications to testify about distracted driving? Explain your answer.**

At the conclusion of the evidence, the Judge gives the final jury charge to the parties for review. The charge omits any reference to, or instruction on, the issue of Art's contributory negligence.

**Civil-18. What procedural steps must the Defendants take to properly preserve error regarding the omission of Art's contributory negligence from the charge? Explain your answer.**

The jury renders a unanimous verdict in favor of Art. Prior to the dismissal of the jury, Discount objects to the verdict and moves for a judgment notwithstanding the verdict on the ground that Art did not plead in his petition the maximum amount of damages he sought.

**Civil-19. How should the Court rule on Discount's objection and motion? Explain your answer.**

The Court signs a judgment in accordance with the jury's verdict. Discount and Zach do not believe the evidence supports the damages awarded by the jury.

**Civil-20. What procedural steps should Discount and Zach take to bring this issue to the Court's attention and preserve it for appeal? 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.  
If you are **handwriting**, write each answer in the **correct space in the answer booklet**.

Joe is a manager at Holler at the Sky (Holler), a restaurant in San Antonio, Bexar County, Texas. Joe and his buddy Lance agreed by an email exchange that if ever confronted, they would shoot first and ask questions later. Lance loaded a gun for Joe to accommodate this goal. Joe brought the gun with him from Dallas, Dallas County, Texas, when he took the job managing Holler in San Antonio. When Joe walked down an alley behind Holler to make Holler's evening bank deposit, he saw Micah approaching. Fearful that Micah would hurt him, Joe got out his concealed handgun. The gun discharged, striking Micah in the leg.

Joe was arrested for deadly conduct, a third degree felony.

**Criminal-1. In which Texas counties can Joe be prosecuted? Explain your answer.**

Prosecution and defense experts have concluded that Joe's gun was defective and accidentally discharged when he shot Micah.

**Criminal-2. What procedural steps, if any, can Joe's attorney take to have this evidence presented to the grand jury? Explain your answer.**

After the shooting, a Holler customer (Customer) conducted an unauthorized search of Joe's office in the restaurant. Customer saw the e-mail on Joe's computer from Joe to Lance stating, "I shoot first and ask questions later."

The police got a search warrant from a Judge (Judge) by filing an affidavit that said: "Customer thinks Joe planned to shoot Micah." The police then searched Joe's office and seized the computer.

Prosecutor plans to introduce the computer seized by the police from Joe's office before the grand jury.

**Criminal-3. What procedural step, if any, can Joe's attorney use to attempt to prevent Prosecutor from presenting the computer evidence to the grand jury? Explain your answer.**

The Court has set Joe's bail at \$10,000.

**Criminal-4. How can Joe satisfy his bail requirement?**

Prosecutor also plans to produce the computer as evidence at trial.

**Criminal-5. Is there a procedure Joe's attorney can use to attempt to prevent this and is Joe's attorney likely to be successful? Explain your answer.**

At trial, Prosecutor intends to call Customer to testify that he saw the e-mail on Joe's computer stating, "I shoot first and ask questions later."

**Criminal-6. What procedural steps, if any, can Joe's attorney use to attempt to prevent this evidence from being presented at trial? Explain your answer.**

Prosecutor tells Joe's attorney he intends to try Joe and Lance together for deadly conduct, a third degree felony. Prosecutor will try Joe as the shooter and Lance as an accomplice.

**Criminal-7. How many jury strikes does Joe's attorney get? How many does Lance's attorney get? How many does Prosecutor get?**

**Criminal-8. What procedural steps, if any, can Joe's attorney take to get Joe a separate trial?**

After the jury was sworn and trial began, the Court excluded Customer's testimony about the e-mail on Joe's computer and other evidence from the police search. The State wants to appeal this ruling.

**Criminal-9. Can the State appeal the Court's ruling to suppress the evidence? Explain your answer.**

Lance pleads guilty to being an accomplice. Prosecutor plans to call Lance to testify at Joe's trial.

**Criminal-10. What procedure can Joe's attorney use to try to prevent admission of Lance's testimony?**

At trial, Prosecutor introduces a photo taken of the crime scene. Prosecutor proves that the photo fairly and accurately represents the matters depicted in the photo when it was taken.

**Criminal-11. Should the Court admit the photo in evidence? Explain your answer.**

While Lance is testifying at Joe's trial, Prosecutor asks Lance where he got the gun. Lance refuses to answer questions by asserting his Fifth Amendment right not to incriminate himself.

**Criminal-12. What procedural steps, if any, can Prosecutor use to compel Lance to answer? Explain your answer.**

Joe testifies at his trial. Prosecutor asks Joe what legal advice his lawyer gave him. Joe's attorney objects on the ground of attorney-client privilege.

**Criminal-13. What procedural steps, if any, can Prosecutor use to compel Joe to answer? Explain your answer.**

Prosecutor wants to introduce evidence at Joe's trial that Joe unlawfully carried his concealed gun through the front door of a bar that had a sign on it saying "No loaded guns permitted."

**Criminal-14. Can Prosecutor introduce this evidence? Explain your answer.**

Prosecutor seeks to introduce the transcript of a witness's police interview from the scene of the shooting instead of the witness's live testimony. Joe's attorney objects that the interview is inadmissible.

**Criminal-15. How should the Court rule on the objection? Explain your answer.**

Tony, a 5-year old child, witnessed the shooting. Tony believes that cats and dogs can speak in English and that his light saber toy keeps the monsters out of his bedroom. He also cannot tell where he lives or who lives with him.

**Criminal-16. What procedural steps, if any, can Joe's attorney use to attempt to prevent Tony from testifying at Joe's trial?**

While deliberating, the jury wants to ask the Court a question.

**Criminal-17. Is this permissible and, if so, how must the communication occur?**

After the close of evidence, the Court refuses to give the jury an instruction requested by Prosecutor.

**Criminal-18. Can Prosecutor seek appellate review of this ruling before the trial has concluded? Explain your answer.**



The jury returns a guilty verdict against Joe. Before sentencing occurs, newly discovered evidence establishes Joe's innocence.

**Criminal-19. What procedure can Joe's attorney use to try to overturn the jury's verdict?**

Tony, the 5-year old witness, was allowed to testify at trial. On appeal, Joe's attorney wants to complain that the Court erred by admitting Tony's testimony at trial.

**Criminal-20. What requirements at trial must have been met before Joe's attorney can raise this issue on appeal?**

**This concludes the Procedure and Evidence Questions.  
Write the Honor Pledge on the back of this question book.**

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