

July 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**.

Producer, a Texas corporation with its principal office in Harris County, Texas, contracted with Driller, a Louisiana corporation, to drill an oil well on land owned by Producer in Webb County, Texas. Driller's principal office, where all of Driller's officers are located, is in Louisiana, but Driller maintains an equipment yard in Jefferson County, Texas. The contract to drill Producer's well was negotiated and signed in Driller's office in Louisiana.

Due to an error by its accounting clerk, Producer inadvertently paid Driller \$250,000 more than the contract provided for drilling the well. Driller refused Producer's demand to refund the overpayment. Producer files suit against Driller in 2017 in Harris County District Court, and properly serves Driller with the lawsuit. The suit seeks unspecified actual damages and attorneys' fees.

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

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 on the basis of diversity of citizenship? Explain your answer.**

Instead of seeking removal to federal court, Driller decides that it wants to move the case to Jefferson County.

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

Assume Driller properly files the appropriate pleading to move the case to Jefferson County and that Producer properly responds to that pleading.

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

Producer's original petition fails to state how much 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 five forms of discovery available to Driller to obtain such information.**

Driller serves written interrogatories on Producer via hand delivery. Producer actually receives them on Day 1. On Day 31 (the 30th day after receiving the interrogatories), Producer serves its objections and responses to the interrogatories by depositing them in the mail. The objections and responses were postmarked that day, but not actually received by Driller until Day 33.

**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?**

A week after the court-ordered deadline for joining new parties, Producer learns that Driller immediately transferred the \$250,000 overpayment to a bank account owned by an affiliate of Driller. Producer is considering adding the affiliate as a defendant to the lawsuit.

**Civil-9. What pleading(s) must Producer file if it decides to add the affiliate 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 alleged overpayment.

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

Driller contends that the \$250,000 "overpayment" was owed under a bonus provision in the contract. Driller retains and designates an expert witness to testify at trial on that issue. 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 tools for discovery of this information.

**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 her to say "Objection, form" only.

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

In response to a request for production of certain documents in electronic form, Driller produces only paper copies of the documents even though they are also maintained by Driller in electronic form.

**Civil-14. Is Producer entitled to production of the documents in electronic form? If so, what action must Producer take to obtain such production? Explain your answer.**

After discovery is complete, Producer is convinced that Driller cannot produce any evidence to support Driller's defenses. Producer properly files a no-evidence motion for summary judgment on each defense asserted by Driller and sets it for hearing 30 days later.

**Civil-15. What action must Driller's attorney take in response to the motion and when must he take it? Explain your answer.**

The case proceeds to trial. During voir dire, a prospective juror says, "I used to work for Driller, but they fired me. But I can still be fair."

**Civil-16. What procedural steps can Driller 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-17. 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 chief financial officer about the overpayment. Producer's attorney asks what the officer said. Driller's attorney objects to the question on the basis of hearsay.

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

Prior to jury selection, the Court granted Producer's motion in limine and instructed Driller's attorney not to mention, or question witnesses about, prior overpayment claims Producer had asserted against other customers. Driller now wants to introduce evidence of those prior claims.

**Civil-19. What action must Driller take in order to (i) introduce such evidence and (ii) preserve error if the evidence is not allowed? 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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Arnold, the Chief Executive Officer of publicly traded toy company Early & Fun (Company) in Edna, Texas, announced at the Saturday, February 16, 2013 board meeting that Company sales increased 50% with the release of the Moby pool toy. Arnold also reported the 50% sales increase to the press and in his required disclosure. Marissa, Company's Chief Financial Officer, was present at the board meeting and knew the information being provided was not true. Arnold's fraudulent reporting is a first degree felony under Texas law.

Marissa arrested Arnold immediately after everyone left the February 16, 2013 board meeting.

Arnold wants to post bail but the courts are not in session.

**Criminal-1. May anyone other than a judge set and take bail from Arnold?**

The district judge in Edna, Texas (Judge Smith) saw news about Company's reported success with Moby pool toy and bought stock in Company. After Judge Smith purchased the Company stock, the stock price went down with news of Arnold's arrest.

**Criminal-2. May Judge Smith preside over Arnold's case? Explain your answer.**

Arnold and Company were indicted on May 15, 2015 with a first degree felony.

**Criminal-3. How is a grand jury convened?**

**Criminal-4. Was Arnold timely indicted? Explain your answer.**

Police conduct a valid search of the office of Arnold's lawyer (Lawyer). Police seize Lawyer's files and notes about Arnold. Lawyer files a pretrial motion to suppress this evidence.

**Criminal-5. What grounds can Lawyer assert to suppress the evidence? Explain your answer.**



Lawyer wants to preserve Arnold's eligibility to receive community supervision if he is convicted.

**Criminal-6. For Arnold to be eligible for community supervision, what action must Lawyer take and when? Explain your answer.**

When the trial begins, Lawyer and Company's attorneys invoke the rule of witness sequestration.

**Criminal-7. Who may *not* be excluded from the trial under the rule of witness sequestration? Explain your answer.**

**Criminal-8. What is the burden of proof in a criminal trial?**

**Criminal-9. What are the first two things that must occur to begin a criminal trial?**

The State next makes its opening statement. The Visiting Judge then asks Lawyer to proceed.

**Criminal-10. Must the Lawyer make an opening statement at that time? Explain your answer.**

Lawyer wants to admit business records at trial without a live witness.

**Criminal-11. What procedures must Lawyer use to get the records admitted without a witness?**

Lawyer puts on the testimony of the police officer who conducted the search of Lawyer's office.

**Criminal-12. May Lawyer ask the police officer leading questions on direct examination?**

Prosecutor wants to introduce evidence that Arnold lied to his employees about having Super Bowl tickets as a bonus for reaching a high profit mark. Lawyer objects.

**Criminal-13. How should the Court rule? Explain your answer.**

Visiting Judge has allowed five days for trial. Lawyer wants to call an economist about toy prices who is not available to testify until after the trial will have concluded. The trial judge refuses to extend the trial.

**Criminal-14. Because Lawyer will not be able to call the economist, what procedure should Lawyer follow to preserve error? Explain your answer.**

Lawyer calls Arnold's mother to testify that, in her opinion, Arnold has a good character for truthfulness. Prosecutor objects.

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

Lawyer states in Court that Prosecutor's case is weak. In response Prosecutor calls the grand jury foreman to testify that the grand jury exercised due diligence in bringing the indictment in the case. Lawyer objects.

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

Neither Marissa (Company's Chief Financial Officer) nor Judge Smith is available to testify at trial. Prosecutor's only evidence is the testimony of a jail house informant who states that Arnold confessed to the crime. At the close of Prosecutor's case in chief, Lawyer makes a motion for the Court to enter a judgment of acquittal for Arnold

**Criminal-17. Should the Court grant or deny the motion? Explain your answer.**

Prosecutor asks the Court to re-open the case so Prosecutor can present evidence from a reporter who heard Arnold's false report. Lawyer objects.

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

Assume the court re-opens the case.

Prosecutor asks the reporter to recount what Arnold told her. Lawyer objects that the question calls for hearsay.

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

At the conclusion of the trial, Arnold is convicted.

**Criminal-20. What step can Lawyer take to overturn the conviction before he files an appeal, and when must he take it? Explain your answer.**

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

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