

February 2018

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**.

Abner was driving in downtown Houston, Harris County, Texas, when a delivery truck driven by Zoe, a resident of Fort Bend County, Texas, collided with Abner's vehicle. Abner was seriously injured. At the time of the collision, Zoe was employed by Discount Deliveries (Discount), a Texas corporation with its principal place of business in McClellan County, Texas. The delivery truck was owned by Discount. At the time of the collision, Zoe was on duty and in the course and scope of her employment with Discount.

Abner wants to file suit against Zoe and Discount in state District Court.

Civil-1. In which county or counties can Abner's suit be properly filed? Explain your answer.

Assume Abner files suit in Harris County against both Zoe and Discount.

Civil-2. What pleading must Zoe and Discount file if they want to challenge venue in Harris 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 five forms of discovery permitted under the Texas Rules of Civil Procedure.

Abner sends Discount a request for production asking Discount to produce the driving records of all drivers it has employed during the five years preceding the collision. Discount believes that the request 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 Abner for his injuries.

Civil-5. What discovery tools can Discount use to obtain these records? Explain your answer.

Abner 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 Abner use to obtain this information? Explain your answer.

Zoe believes that Abner is partially responsible for the collision because he was texting at the time of the collision and failed to keep a proper lookout.

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

Abner wants to take Zoe's oral deposition.

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

During Zoe's deposition, Abner's attorney questions Zoe extensively about her educational background and work history. Zoe's attorney objects to the questions and instructs Zoe not to answer them. Abner's attorney files a motion to compel Zoe to answer the questions, claiming that it was improper for Zoe's attorney to instruct Zoe not to answer the questions.

Civil-9. Was it proper for Zoe's attorney to instruct her not to answer the questions? Explain your answer.

During her deposition, Zoe testifies that she takes medication for attention deficit disorder, but that such medical condition had nothing to do with the cause of the collision.

Civil-10. What action, if any, can Abner's attorney take to independently verify the nature and extent of Zoe's medical condition, and when must he take it? Explain your answer.

Abner wants a jury trial.

Civil-11. What must Abner 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. Abner asks for an agreement to move the trial date but Zoe and Discount refuse.

- Civil-12. What must Abner 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, Abner is concerned that the attorneys for Zoe and Discount may attempt to mention or introduce evidence during the trial that Abner was recently arrested during a political protest. Abner believes that such evidence is highly prejudicial and not relevant to any matter in controversy.

- Civil-13. What procedural step, if any, can Abner take before the trial commences to prevent Zoe's and Discount's attorneys from making reference to his arrest? Explain your answer.**

During his opening statement, Abner's attorney shows the jury a gruesome photograph depicting the severe injuries Abner sustained in the collision. At the conclusion of Abner's attorney's opening statement, Discount objects that the photograph is unfairly prejudicial.

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

After the first day of trial, Abner's attorney is contacted by a former Discount employee, Mary, who told him that Zoe was involved in numerous collisions while working for Discount and that Discount continued to employ her only because she is related to the chairperson of Discount's Board of Directors. Neither Abner nor his attorney knew of Mary's existence before trial. Abner's attorney notifies the Defendants and the Court the next morning of his intent to call Mary to testify as his next witness. Zoe'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 Zoe's and Discount's objection? Explain your answer.**

Immediately after the collision, Abner told Zoe, "I'm sorry, I was texting my boss." While Zoe is testifying at trial, her attorney asks her to repeat what Abner said to her after the collision. Abner's attorney objects on the ground that the testimony is hearsay.

Civil-16. How should the Court rule on the hearsay objection? Explain your answer.

During trial, Discount calls an accident reconstruction expert to testify about the speed of Abner's vehicle at the time of the collision. Abner believes that Discount's expert is not qualified to offer opinions about vehicle speed.

Civil-17. What procedural steps should Abner's attorney take to raise the issue of the expert's qualifications to testify about vehicle speed? Explain your answer.

At the conclusion of the evidence, the Judge gives the final charge to the parties for review. The charge does not include a question about exemplary damages, even though Abner pleaded for such damages and introduced evidence to support them.

Civil-18. What procedural steps must Abner's attorney take to properly preserve error regarding this omission from the charge? Explain your answer.

The jury renders a unanimous verdict in favor of Zoe and Discount, finding that Abner was 100% at fault because he was texting at the time of the collision. Prior to the dismissal of the jury, Abner's attorney objects to the verdict and moves for a judgment notwithstanding the verdict on the ground that neither Zoe nor Discount pleaded comparative or contributory negligence in their answers.

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

The Court dismisses the jury and signs and enters judgment in accordance with the jury's verdict. One of the jurors tells Abner's attorney in the hallway that he did not agree with the verdict, but signed it anyway because he wanted the case to be over and to go home. Abner's attorney now wants to poll the jury.

Civil-20. Is Abner's attorney entitled to poll the jury? 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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Marty gained access to June's computer over the internet and impersonated her online; a third-degree felony. He was arrested in Houston, Texas, and taken to the police station for questioning. Because the video recording equipment in the police interview room malfunctioned, no recording of Marty's oral statement was made.

Criminal-1. Is testimony about Marty's oral statement admissible in evidence at his trial? Explain your answer.

Based on Marty's oral statement the police obtained a search warrant establishing probable cause to search Marty's home and any computers found there.

Criminal-2. How many days do the police have to execute the search warrant? Explain your answer.

The prosecutor (Prosecutor) is going to indict Marty for his offense by presenting it to a grand jury.

Criminal-3. How is a grand jury formed? Explain your answer.

The grand jury is formed and Prosecutor presents the offense with which Marty may be charged. During their deliberations, the grand jurors have a dispute about whether to bring charges.

Criminal-4. May they legally invite Prosecutor into their deliberations to resolve the dispute? Explain your answer.

Marty is indicted. Marty goes to see a lawyer about his case and Prosecutor notifies Marty's lawyer that the State will use the meeting as evidence of Marty's guilt at trial.

Criminal-5. May Prosecutor do so? Explain your answer.

The State wants to preserve the testimony of the elderly complainant, June, by taking her deposition before trial.

Criminal-6. Can the State take June's deposition in this criminal case? Explain your answer.

Criminal-7. What procedural rules control the conduct of the deposition? Explain your answer.

Marty's lawyer and Prosecutor have questioned the jury and are going to present challenges for cause and peremptory challenges to the jurors.

Criminal-8. How many challenges for cause does each of them have? Explain your answer.

Criminal-9. How many peremptory challenges does each of them have?

One of the jurors reveals that he served on the grand jury that issued Marty's indictment.

Criminal-10. Can the juror serve on Marty's jury? Explain your answer.

The jury has been selected, empaneled, and sworn.

Criminal-11. What are the first two steps that must be taken in a criminal trial prior to the presentation of evidence?

The Court asks Prosecutor and Marty's lawyer to make their opening statements.

Criminal-12. Is Marty's lawyer required to make an opening statement at the beginning of trial? Explain your answer.

Marty's lawyer invokes the rule of sequestration.

Criminal-13. What is the rule of sequestration? Explain your answer.

Criminal-14. Are victims subject to the rule of sequestration? Explain your answer.

Prosecutor plans to call Jackie to testify that she engaged in a social media conversation with Marty, thinking she was speaking with June. Marty's lawyer objects that this testimony is hearsay.

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

Marty was previously convicted of felony possession of marijuana, but his conviction is on appeal. Prosecutor wants to introduce this prior conviction into evidence. Marty's lawyer objects that this is not proper under the Rules of Evidence.

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

The presentation of the evidence is completed and both sides have rested their cases.

Criminal-17. What procedural step should Marty's lawyer take to preserve a sufficiency of the evidence challenge for appeal? Explain your answer.

It is the end of the case and lawyers are ready to give their closing arguments.

Criminal-18. In Texas, is the closing jury charge given by the Court before or after the lawyers give their closing arguments?

The Court charges the jury that it thinks the testimony of June was particularly important for the jury to pay attention to in deciding the case. Marty's lawyer objects that this comment by the Court was not proper.

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

Criminal-20. What must Marty's lawyer do, in addition to objecting to the Court's comment about June's testimony, to preserve error, if any, for appeal?

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

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Examinee # _____