

July 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**.

Paul was seriously injured when he was punched in the face by Dave at Liquor Lounge, a bar located in Harris County, Texas. Paul and Dave were both patrons, not employees, of Liquor Lounge. At all relevant times, Paul resided and worked in Galveston County, Texas. Dave is not a resident of Texas, but was visiting on the date of the incident. Dave was extremely intoxicated at the time of the incident.

Paul intends to file suit against Dave in state district court in Texas.

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

Assume Paul files the suit in Harris County state district court, and properly serves Dave with citation.

Civil-2. What action must Dave take to avoid the entry of a default judgment, and when must he take that action?

Civil-3. What action must Dave take if he wants to challenge the Texas court's exercise of personal jurisdiction over him, and when must he take that action? Explain your answer.

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

Civil-4. List five forms of discovery permitted under the Texas Rules of Civil Procedure.

Paul sends Dave an interrogatory asking Dave to identify every bar he has visited in the past five years. Dave believes that the interrogatory is improper.

Civil-5. What action must Dave take to bring this matter to the Court's attention, and when must he take that action? Explain your answer.

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

Civil-6. What discovery tools can Dave use to obtain these records? Explain your answer.

Paul wants to discover the identity and opinions of testifying experts employed by Dave to assist in Dave's defense of the case.

Civil-7. What discovery tools can Paul use to obtain this information?

After the Court-ordered deadline for joining new parties, Paul learns that Liquor Lounge continued to serve Dave alcohol after Dave was obviously intoxicated. Paul is considering adding Liquor Lounge as a party to the suit.

Civil-8. What action must Paul take if he decides to add Liquor Lounge as a party to the suit? Explain your answer.

Dave wants to take Paul's oral deposition.

Civil-9. In which county or counties may Paul's deposition be taken? Explain your answer.

During Paul's deposition, Paul's attorney states "Objection. Form" in response to one of Dave's attorney's questions. Dave's attorney asks for the basis of the objection, but Paul's attorney refuses to give it, claiming that the rules do not allow him to say anything more.

Civil-10. Is Paul's attorney correct? Explain your answer.

Dave disputes the extent of the injuries Paul claims to have suffered.

Civil-11. What action, if any, can Dave take to independently verify the nature and extent of Paul's claimed injuries, and when must he take that action? Explain your answer.

Dave wants a jury trial.

Civil-12. What action must Dave take to ensure that he gets a jury trial, and when must he take that action? Explain your answer.

The case is called to trial. Before voir dire begins, Dave is concerned that Paul may attempt to mention or introduce evidence during the trial that Dave has been arrested several times for assault. Dave believes that such evidence is highly prejudicial but not relevant to the matters in controversy.

Civil-13. What procedural step, if any, can Dave take before the trial commences to prevent Paul from making reference to Dave's history of arrests? Explain your answer.

During voir dire, a prospective juror says that he has seen Paul at Liquor Lounge on several occasions and that Paul was “causing trouble” on each occasion.

Civil-14. What procedural steps can Paul take to strike this potential juror? Explain your answer.

During her opening statement, Paul’s attorney shows the jury a gruesome photograph depicting the severe injuries Paul sustained as a result of the punch to the face. Dave’s attorney objects at the conclusion of the opening statement.

Civil-15. How should the Court rule on Dave’s objection to the photograph? Explain your answer.

Moments after the incident, Paul told Dave: “I had it coming. I shouldn’t have threatened you.” While Dave is testifying at trial, Dave’s attorney asks Dave to repeat what Paul told him after the incident. Paul’s attorney objects that the testimony is hearsay.

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

During trial, Paul calls a toxicology expert to render an opinion about Dave’s blood alcohol level at the time of the incident. Dave does not believe the toxicologist is qualified to render such opinion.

Civil-17. What procedural steps should Dave take to raise the issue of the expert’s qualifications? 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 on exemplary damages, even though Paul pled for such damages.

Civil-18. What procedural steps must Paul take to preserve error regarding the omission of the question on exemplary damages? Explain your answer.

The jury renders a unanimous verdict for Paul. Before the jury is dismissed, Dave objects to the verdict and moves for a judgment notwithstanding the verdict on the ground that Paul did not plead in his petition the maximum amount of damages he sought.

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

The Court signs a judgment in accordance with the jury’s verdict. Dave does not believe the evidence supports the damages awarded by the jury.

Civil-20. What procedural steps must Dave 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.**



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June lives in Houston, Harris County, Texas. Her neighborhood flooded in a large storm, and the city warned that looters would be prosecuted. Out of food and water, June entered a damaged and closed convenience store (Store) in Liberty County, Texas, and salvaged some bread and bottled water. Store cameras recorded her and the police soon visited her home, ticketing her for theft from Store. The theft was a Class A misdemeanor offense, punishable by up to one year in jail and a fine not to exceed \$4,000.

Criminal-1. Are misdemeanor offenses heard in County or District Courts? Explain your answer.

Criminal-2. What county or counties are a proper venue for the misdemeanor offense? Explain your answer.

June went to court on the date scheduled on her ticket. The judge (Judge) asked her if she had a lawyer. June is indigent and did not have a lawyer. She asked Judge to provide her a lawyer at no cost.

Criminal-3. What should Judge do regarding June's request for a lawyer at no cost to her? Explain your answer.

June now has a lawyer (Lawyer). June told Lawyer that she hears voices and that a voice told her that she must take bread and water from Store. Lawyer wants a mental health expert to help with June's defense.

Criminal-4. Is Lawyer entitled to reimbursement from the Court for hiring a mental health expert? Explain your answer.

At the first appearance, Judge asks June how she pleads to the charge that she took bread from Store, guilty or not guilty. June does not answer.

Criminal-5. What is the formal charging document called in a misdemeanor case?

Criminal-6. What is the procedure called where Judge asks June how she pleads to the charge?

Criminal-7. Since June did not answer Judge, what plea should be noted in the record? Explain your answer.

The prosecution (Prosecutor) provided discovery to Lawyer and asked Lawyer to provide the defense discovery to Prosecutor.

Criminal-8. What should Lawyer provide to Prosecutor? Explain your answer.

Lawyer hired a mental health expert (Doctor). Doctor determined June was schizophrenic and did not appreciate the nature of her actions when she took the bread from Store. Lawyer plans to call Doctor to testify at June's trial. Prosecutor filed a request for notice of intent to use expert witnesses.

Criminal-9. What should Lawyer provide to Prosecutor in response to Prosecutor's request? Explain your answer.

The trial date has arrived and June, Lawyer, Judge, and Prosecutor are in court with the prospective jurors.

Criminal-10. How many challenges for cause does Lawyer get during jury selection? Explain your answer.

A prospective juror says that she will believe June is guilty if June does not testify in her own defense. Lawyer challenges juror for cause.

Criminal-11. How should Judge rule on Lawyer's challenge? Explain your answer.

The jury has been selected and sworn, and Judge is about to begin the trial.

Criminal-12. What are the first two steps in a criminal trial? Explain your answer.

Criminal-13. What is the burden of proof in a criminal trial?

Prosecutor has made his opening statement, and Judge asks Lawyer if she desires to make an opening statement.

Criminal-14. Must Lawyer make her opening statement at that time? Explain your answer.

Prosecutor put on the testimony of Store owner (Owner) that Store video camera showed June entering the closed Store empty handed and leaving with bread.

Criminal-15. What must Owner's testimony include to properly admit the video in evidence? Explain your answer.

Doctor testifies. Prosecutor asks Lawyer to produce the information Lawyer provided Doctor and all testing performed and records used by Doctor to reach any opinions.

Criminal-16. What must Lawyer give to Prosecutor, if anything? Explain your answer.

Doctor testifies that June did not appreciate the nature of her actions in Store because she was schizophrenic. Doctor opines that June lacked the ability to form intent to commit theft. Prosecutor objects that the opinion reached the ultimate issue of intent.

Criminal-17. How should Judge rule on Prosecutor's objection? Explain your answer.

Prosecutor offers evidence that June has taken food without paying from a restaurant, to prove that she intentionally took food without paying this time. Lawyer objects that this is inadmissible.

Criminal-18. How should Judge rule? Explain your answer.

The jury finds June not guilty of theft of bread from Store. Prosecutor announces that he will proceed with trying June for theft of water from Store. Lawyer objects by written motion.

Criminal-19. How should Judge rule? Explain your answer.

Prosecutor also files a notice of appeal from June's acquittal for the theft of bread from Store. Lawyer files a motion to dismiss the appeal in the Court of Appeals.

Criminal-20. How should the Court of Appeals rule on the motion? Explain your answer.

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