

February 2019

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**.

Developer, a Texas corporation with its principal office in Harris County, Texas, contracted with Builder, an Oklahoma corporation, to build a house on land owned by Developer in Fort Bend County, Texas. Builder's principal office, where all of Builder's officers are located, is in Norman, Oklahoma. The contract was negotiated and signed in Fort Bend County.

Builder constructed the house too close to the adjoining property line, which prevented Developer from obtaining a certificate of occupancy without first obtaining a waiver from the adjoining landowner. The adjoining landowner demanded \$200,000 for the waiver. Developer demanded that Builder pay this amount but Builder refused. Developer files suit against Builder in 2019 in Harris County District Court, and properly serves Builder with citation. The suit seeks actual damages of "at least \$200,000" and attorneys' fees.

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

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

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

Instead of seeking removal to federal court, Builder decides that it wants to move the case from Harris County to Fort Bend County district court.

Civil-3. What pleading must Builder file to seek to move the case to Fort Bend County, and when must it file the pleading? Explain your answer.

Assume Builder properly files the appropriate pleading to seek a transfer to Fort Bend County and that Developer properly responds to the pleading.

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

Builder wants to know how much money Developer seeks to recover in the lawsuit.

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

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

Civil-6. List five forms of discovery available to Builder to obtain such information.

Builder serves written interrogatories on Developer via hand delivery. Developer actually receives them on Day 1. On Day 31 (the 30th day after receiving the interrogatories), Developer 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 Builder until Day 33.

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

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

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

Builder wants to engage a land surveyor to examine the location of the house and the property line. Developer refuses to allow access to the property for this purpose.

Civil-9. What discovery tool can Builder use to accomplish this objective? Explain your answer.

Developer notices the deposition of Builder's president. Builder does not want to produce its president for deposition because he does not have personal knowledge of the construction of the house.

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

Builder designates an expert witness to testify regarding the proximity of the house to the property line. Developer promptly sends interrogatories and requests for production seeking information about the expert's opinions. Builder objects on the ground that the interrogatories and requests for production are impermissible discovery requests.

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

Developer sends Builder requests for admission asking Builder to admit certain facts. Builder fails to respond to the requests.

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

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

Civil-13. Is Developer's attorney correct? Explain fully.

In response to a request for production of certain documents in electronic form, Builder objects that it does not maintain the documents in electronic form in the ordinary course of its business and produces only paper copies of the requested documents.

Civil-14. Is Developer entitled to production of the documents in electronic form? Explain your answer.

After discovery is completed, Developer is convinced that Builder cannot produce any evidence in support of the defenses asserted by Builder. Developer properly files a no-evidence motion for summary judgment on each defense asserted by Builder and sets it for hearing 30 days later.

Civil-15. What action must Builder take in response to the motion and when must Builder take it? Explain your answer.

The case proceeds to trial. During voir dire a prospective juror says, "Builder built my house and I could not be happier with it. I would find it hard to believe that Builder made a mistake. But I could listen to the evidence and be fair."

Civil-16. What procedural steps can Developer take to strike this potential juror? Explain fully.

During trial, Builder calls a timely-designated land surveyor to render an opinion that the architectural plans and specifications supplied by Developer were defective. Developer does not believe the expert is qualified to render such opinion.

Civil-17. What procedural steps should Developer take to raise the issue of the expert's qualifications? Explain your answer.

While on the stand, an employee of Developer testifies that he talked to Builder's project manager about the reasons for the improper location of the house. Developer's attorney asks what the project manager said. Builder's attorney objects to the question and asserts hearsay as the basis of the objection.

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

Prior to jury selection, the Court granted Developer's motion in limine and instructed Builder's attorney not to mention, or question witnesses about, prior lawsuits Developer had filed against builders. Builder now wants to introduce evidence of those prior lawsuits.

Civil-19. What actions must Builder 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 Developer and awards damages to Developer. Only 10 of the 12 jurors sign the verdict. Builder 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 Builder's motion? Explain your answer.

Procedure and Evidence Questions
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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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Billy rode a stolen horse into San Antonio, Bexar County, Texas with a stolen pearl-handled gun on Billy's hip. He had come from Galveston, Galveston County, Texas where he had stolen the horse and the gun, which was valued at \$250. The theft of the horse and gun is a third degree felony.

Criminal-1. In which county or counties can Billy be indicted for stealing the horse and the gun? Explain your answer.

Wyatt, who had a prior conviction for theft, helped Billy steal the horse and gun. They took the gun to a pawnshop in San Antonio to sell it. The shop owner (Owner) recognized the items were stolen and called police who arrived and arrested them for possession of stolen goods, a felony.

Criminal-2. Can the police arrest Wyatt and Billy without an arrest warrant? Explain your answer.

Criminal-3. How soon must Wyatt and Billy be taken for magistration?

Criminal-4. List at least three matters regarding which the magistrate must advise Wyatt and Billy.

The magistrate set bail for Wyatt and Billy at \$5,000 each.

Criminal-5. Who, besides a court, may take the defendants' bail bond in the amount set by the magistrate?

Prosecutor plans to take the accusation that Wyatt and Billy committed theft before a grand jury to seek an indictment.

Criminal-6. How is a grand jury formed? Explain your answer.

Wyatt and Billy are indicted and set for trial together. Billy's lawyer (Lawyer) wants to see the evidence against Billy.

Criminal-7. What procedure must Lawyer follow to obtain discovery? Explain your answer.

Lawyer asks Prosecutor for offense reports, statements of Billy, witnesses, law enforcement officers' statements, and tangible things that contain evidence material to any matter involved in the action.

Criminal-8. Must Prosecutor provide this information? Explain your answer.

Prosecutor asks for the same discovery items from Lawyer.

Criminal-9. Must Lawyer provide the requested discovery items? Explain your answer.

Prosecutor files a motion requesting that Lawyer provide the names of his expert witnesses prior to trial.

Criminal-10. Must Lawyer provide the names? Explain your answer.

Lawyer does not want Billy to go to trial with Wyatt because Wyatt has a prior conviction.

Criminal-11. What procedure can Lawyer use to get a separate trial for Billy? Explain your answer.

Billy's separate trial begins.

Criminal-12. How many challenges for cause are Lawyer and Prosecutor each permitted? Explain your answer.

The jury for Billy's trial has been selected. At trial, the jury is sworn and the Judge asks Prosecutor to proceed.

Criminal-13. What are the first two steps in a criminal trial?

Prosecutor gives an opening statement. Judge asks Lawyer to make his opening statement.

Criminal-14. Must Lawyer give his opening statement at that time? Explain your answer.

The first witness is called to testify and Lawyer invokes "the rule."

Criminal-15. What does it mean to invoke "the rule"? Explain your answer.

Criminal-16. May a complainant be excluded from the courtroom during trial? Explain your answer.

Morgan, the owner of the gun, testifies that a photograph fairly and accurately depicts his pearl-handled gun and his horse. Lawyer objects to admission of the photograph into evidence.

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

Prosecutor plans to put Morgan on the stand to testify that, during the robbery, Billy said, "Stick 'em up! This is a robbery!" Lawyer seeks to exclude this evidence on the grounds of hearsay.

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

Billy does not testify at his trial. During closing argument Prosecutor states that if Billy was not guilty of the theft, he would have had an explanation for possessing the horse and gun. Lawyer objects that this is improper argument.

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

Lawyer gives his closing argument and Judge sends the jury to deliberate. As the jurors are walking to the jury room to deliberate, Wyatt asks them what they thought about the case. The jurors respond by conversing with Wyatt about the case. Lawyer observes the exchange and moves for a mistrial.

Criminal-20. How should Judge rule on Lawyer's motion? 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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