

July 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**.

Peter, a resident of Harris County, Texas, entered into a written contract with Doug, a Louisiana resident, to sell his motor home to Doug for \$100,000. Peter and Doug negotiated and signed the contract through an exchange of emails. The contract provided that delivery of and payment for the motor home would be made in Jefferson County, Texas. The delivery and sale were conducted in accordance with the contract, and Doug paid for the motor home with a personal check from First Bank, payable to Peter.

After delivering the motor home to Doug and depositing the check in his bank, Peter was notified that Doug's check had been dishonored by First Bank due to insufficient funds (i.e., the check bounced). Peter immediately contacted Doug and demanded that Doug make a replacement payment in cash. Doug refused, explaining that his account had more than \$100,000 in it when he gave the check to Peter and that First Bank must have made a mistake. Doug further asserted that the matter was now between Peter and First Bank and that he did not intend to take any further action.

In 2019, Peter files suit against Doug in Jefferson County District Court, drives to Doug's house in Louisiana, and tapes the petition and citation to Doug's front door. The petition seeks actual damages of "at least \$100,000" and attorneys' fees.

**Civil-1. Was Peter's suit filed in a county of proper venue? Explain your answer. Explain your answer.**

**Civil-2. What obligation, if any, does Doug have to respond to the lawsuit? Explain your answer.**

After receiving the petition and the citation, Doug drives to the Jefferson County courthouse and files a written answer to the lawsuit. On the drive back to Louisiana, he decides that he wants to remove the case to federal court because he is not a Texas resident.

**Civil-3. Does Doug have a valid basis for removing the case to federal court? Explain your answer.**

After returning home, Doug decides that, instead of removing the case to federal court, he wants to move the case from Jefferson County to Harris County District Court. He files a motion to transfer venue.

**Civil-4. How should the Court rule on Doug's motion to transfer venue? Explain your answer.**

Doug wants to know exactly how much money Peter seeks to recover in the lawsuit.

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

Peter wants to obtain more detailed information regarding Doug's defenses to the lawsuit.

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

Peter serves written interrogatories on Doug by hand delivery. Doug receives the interrogatories on Day 1. On Day 32 (the 31st day after receiving the interrogatories), Doug serves objections and responses to the interrogatories by hand delivery to Peter.

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

Doug states in a response to a request for production that he withheld certain documents under a claim of attorney-client privilege. Peter sends Doug a letter requesting that Doug immediately identify the documents withheld.

**Civil-8. To preserve the privilege, what action must Doug take in response to Peter's letter, and when must he take it? Explain your answer.**

Several months after filing his answer, Doug learns that a former First Bank employee embezzled funds from his account the day after he gave the \$100,000 check to Peter. Doug wants to add First Bank and the former employee as parties to the case.

**Civil-9. What action must Doug take to add these parties to the case? Explain your answer.**

Peter wants to take Doug's deposition in Jefferson County. Doug objects, claiming that he is entitled to be deposed in Louisiana where he resides.

**Civil-10. How should the Court rule on Doug's objection? Explain your answer.**

Peter designates an expert witness to testify to the market value of the motor home at the time of the sale. Doug promptly sends interrogatories and requests for production seeking information about the expert's opinions. Peter objects on the ground that the interrogatories and requests for production are impermissible discovery requests.

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

Doug sends Peter requests for admission asking Peter to admit certain facts. Peter inadvertently fails to timely respond to the requests.

**Civil-12. What is the result of Peter's failure to timely respond? What, if anything, can Peter do to try to avoid that result? Explain your answer.**

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

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

Doug wants a jury trial.

**Civil-14. What action must Doug take to ensure he gets a jury trial, and when must he take that action?**

After discovery is completed, Peter is convinced that Doug cannot produce any evidence to support his affirmative defenses. Peter properly files a no-evidence motion for summary judgment on each defense asserted by Doug and sets it for hearing 30 days later.

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

The case proceeds to trial with Peter and Doug as the only parties. During voir dire a prospective juror says, "I'm a die-hard Texan and don't trust people who ain't from Texas. But I could listen to the evidence and be fair."

**Civil-16. What procedural steps can Doug take to strike this potential juror?**

During trial, Doug testifies on direct examination about what the bank employee previously told him regarding the embezzlement from Doug's account. At the conclusion of his direct examination, Peter objects that Doug's testimony is hearsay and asks the Court to instruct the jury to disregard it.

**Civil-17. How should the Court rule on Peter's objection? Explain your answer.**

During a break in the trial, Peter overhears Doug telling someone on the phone that he "made up the story about the embezzlement." Peter immediately informs his attorney. During Doug's cross examination, Peter's attorney asks the following question: "Isn't it true that you just told someone you made up the story about the embezzlement?" Doug's attorney objects that the question calls for hearsay.

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

Before jury selection, the Court granted Doug's motion in limine and instructed Peter not to mention or question witnesses about prior lawsuits filed against Doug for passing bad checks. Peter now wants to introduce evidence of those prior lawsuits.

**Civil-19. What actions must Peter take in order to (i) introduce such evidence, and (ii) preserve error if the evidence is not allowed? Explain your answer.**

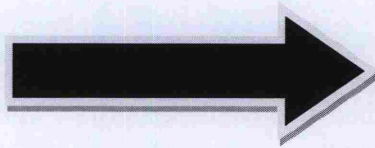
At the end of the trial, the jury returns a verdict for Peter and awards damages to Peter. Only 10 of the 12 jurors sign the verdict. Doug objects and timely files a motion for mistrial on the ground that the verdict was not unanimous.

**Civil-20. How should the Court rule on Doug's motion? Explain your answer.**

# Procedure and Evidence Questions



**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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Clarence and Mary robbed a convenience store in San Antonio, Bexar County, Texas. Witness, who knew Clarence and Mary could not afford groceries, saw them buying a car and jewelry and eating out at expensive restaurants. Witness told the police that he thought Clarence and Mary robbed the convenience store. Robbery is a felony offense.

The police prepared a search warrant affidavit stating, "We have information that Clarence and Mary robbed a convenience store." They asked for a warrant to search Clarence and Mary's home.

**Criminal-1. Does the search warrant affidavit state probable cause for the search of Clarence and Mary's home? Explain your answer.**

The police met Clarence and Mary outside their home as they arrived. They arrested Clarence and Mary. Without further conversation, the police immediately interviewed them about the robbery.

**Criminal-2. Are Clarence and Mary's interviews admissible in Court? Explain your answer.**

**Criminal-3. How soon after their arrest must Clarence and Mary be taken before a judge?**

Clarence and Mary are indigent. They ask the Court to appoint a lawyer for them.

**Criminal-4. Should the Court provide a lawyer for Clarence and Mary? Explain your answer.**

The Court advises Clarence and Mary that they need separate lawyers.

**Criminal-5. Why do Clarence and Mary require separate lawyers?**

Clarence and Mary are indicted for robbery.

**Criminal-6. What is the proceeding called in which Clarence and Mary are asked how they plead to the indictment: guilty or not guilty?**

In court neither Clarence nor Mary offers a plea of guilty or not guilty.

**Criminal-7. What plea will the Court enter for each of them? Explain your answer.**

Clarence meets with Lawyer. During the bail hearing, Clarence testifies that he is indigent to show that his bail should be set to a low amount. On cross-examination, Prosecutor asks Clarence what he and Lawyer discussed when they met about his case. Lawyer objects to the question.

**Criminal-8. Will the Court require Clarence to answer the question? Explain your answer.**

Lawyer asks Prosecutor for all of the witness statements with information about the robbery for which Clarence is indicted.

**Criminal-9. Must Prosecutor provide this information? Explain your answer.**

Forty-five days before trial is to begin, Prosecutor asks Lawyer to provide Clarence's witness statements.

**Criminal-10. Must Lawyer provide this information? Explain your answer.**

Prosecutor asks Lawyer to provide him the names of Lawyer's expert witnesses before trial.

**Criminal-11. Must Lawyer provide this information? Explain your answer.**

Lawyer does not want Clarence to go to trial with Mary because Mary has a prior conviction.

**Criminal-12. What procedure can Lawyer use to get a separate trial for Clarence? Explain your answer.**

Lawyer, Prosecutor, Judge, and the jury venire are in Court for jury selection at Clarence's trial.

**Criminal-13. How many challenges for cause are Lawyer and Prosecutor each permitted? Explain your answer.**

Prosecutor gives an opening statement. Judge asks Lawyer to make Clarence's opening statement.

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



The first witness is called to testify, and Lawyer invokes the Rule.

**Criminal-15. What does this mean? Explain your answer.**

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

Prosecutor calls the convenience store owner, Bucky, to testify about a video of the robbery.

**Criminal-17. What must Prosecutor establish to admit the video into evidence? Explain your answer.**

Prosecutor asks Bucky if Clarence said anything to him before he took the money from the convenience store. Bucky replies that Clarence said, "Stick 'em up, this is a robbery." Lawyer objects that this is hearsay.

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

Clarence does not testify at his trial. During closing argument, Prosecutor states that Clarence would have testified with an explanation if he was not guilty of the theft. Lawyer objects that this is improper argument.

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

Lawyer gives Clarence's closing argument, and Judge sends the jury to deliberate. As the jurors are walking to the jury room to deliberate, Mary asks them what they thought about the case. The jurors respond by conversing with Mary 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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