

February 2020

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**.

Patrick, a resident of Harris County, Texas, entered into a written contract with Dirk, a resident of Arkansas, to sell Patrick's vintage motorcycle to Dirk for \$60,000. The contract was negotiated and signed in Harris County, Texas. Dirk paid for the motorcycle with a personal check from First Bank of Arkansas (First Bank), payable to Patrick.

After delivering the motorcycle to Dirk and depositing the check in his bank, Patrick was notified that Dirk's check had been dishonored by First Bank due to insufficient funds (i.e., the check bounced). Patrick immediately contacted Dirk and demanded that Dirk make a replacement payment in cash. Dirk refused, explaining that his account had more than \$60,000 in it at the time he gave the check to Patrick and that First Bank must have made an error. Dirk replied further that the matter was now between Patrick and First Bank and that he did not intend to take any further action.

Patrick files suit against Dirk in 2019 in Harris County district court, and properly serves the petition and citation on Dirk. The petition seeks actual damages of at least \$60,000 but not more than \$75,000, plus interest and costs.

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

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

Civil-3. What action must Dirk 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.

Civil-4. Does Dirk have a valid basis for removing the case to federal court? Explain your answer.

Dirk wants the Court to order Patrick to plead the exact amount of damages Patrick seeks to recover in the lawsuit.

Civil-5. Is Dirk entitled to such an order and, if so, what pleading must he file to obtain it? Explain your answer.

Patrick wants to obtain more detailed information regarding Dirk's defenses to the lawsuit.

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

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

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

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

Civil-8. In order to preserve the privilege, what action must Dirk take in response to the letter and when must he take it? Explain your answer.

During discovery, Patrick learns that the day after Dirk tendered the \$60,000 check to Patrick, Dirk transferred \$60,000 from his First Bank checking account to his girlfriend Trina's account at a different bank. Dirk and Trina then spent those funds.

Patrick later learns that Trina, also a resident of Arkansas, is physically present in Dallas County, Texas. He properly serves Trina in Dallas County with a subpoena to appear in Dallas County two weeks later for an oral deposition. Dirk objects, claiming that Patrick is not permitted to depose Trina in Dallas County.

Civil-9. How should the Court rule on Dirk's objection? Explain your answer.

Patrick wants to add Trina as a party to the case.

Civil-10. What action must Patrick take in order to add Trina to the case? Explain your answer.

Patrick designates an expert witness to testify to the market value of the motorcycle at the time of the sale.

Civil-11. What discovery tools can Dirk use to obtain information about the expert's qualifications and opinions? Explain your answer.

Dirk sends Patrick requests for admission asking Patrick to admit certain facts.

Civil-12. By when must Patrick respond to the requests, and what is the consequence if he fails to timely respond? Explain your answer.

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

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

Dirk wants a jury trial.

Civil-14. What action must Dirk take to ensure he gets a jury trial, and when must he take that action? Explain your answer.

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

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

The case proceeds to trial with Patrick and Dirk as the only parties. During voir dire a prospective juror says, "I lived next door to Dirk when he was a kid and did not get along with his father...In fact I hated him. But I could listen to the evidence and be fair."

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

During Patrick's case in chief, a First Bank branch manager testifies on direct examination about conversations he had with Trina about her transfer of the funds from Dirk's account. At the conclusion of the branch manager's direct examination, Dirk objects that the branch manager's testimony is hearsay and asks the Court to instruct the jury to disregard it.

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

During a break in the trial, Patrick overhears Dirk telling someone on the phone that he "was about to lose the case and needed some cash to skip town." Patrick immediately informs his attorney. During Dirk's cross examination, Patrick's attorney asks the following question: "Isn't it true that you just told someone that you were about to lose this case and needed money to skip town?" Dirk's attorney objects that the question calls for hearsay.

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

Prior to jury selection, the Court grants Dirk's motion in limine and instructs Patrick not to mention, or question witnesses about, Dirk's criminal history. Patrick now wants to introduce evidence of that criminal history.

Civil-19. What action must Patrick 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 Patrick and awards damages to Patrick. The Court immediately signs a judgment in accordance with the jury's findings. Dirk disagrees with the judgment and wants another trial.

Civil-20. What action, if any, can Dirk take to request another trial and when must he take it? 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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Yaz and Zane robbed a convenience store clerk in San Antonio, Bexar County, Texas. Robbery is a second-degree felony. A video at the store captured the robbery, and police were able to identify Yaz and Zane. They were arrested at the home they shared in San Antonio and taken to the police station for questioning. Zane gave an oral statement at the station, but the police did not record it.

Criminal-1. Should Zane's oral statement be admissible in evidence at his trial? Explain your answer.

Xavier, an elderly witness to the robbery, followed Zane and Yaz to their home. He searched their car and found a bank bag from the store. Xavier is a private citizen and is not a police officer.

Criminal-2. Is Xavier's search of the car lawful? Explain your answer.

Based on Zane's oral statement at the police station, the police obtained a search warrant establishing probable cause to search Yaz and Zane's home.

Criminal-3. How many days do the police have to execute the search warrant?

Criminal-4. How is a grand jury pool summoned by the district judge? Explain your answer.

The grand jury is selected and Prosecutor presents the evidence. During their deliberations, the grand jurors have a dispute about whether to bring charges.

Criminal-5. May the grand jury legally invite Prosecutor to participate in its deliberations to resolve the dispute about whether to indict Zane and Yaz with robbery?

Zane is indicted. He goes to see Lawyer about his case. Prosecutor notifies Lawyer that Zane's meeting with Lawyer will be used as evidence of Zane's guilt.

Criminal-6. May Prosecutor do so? Explain your answer.

Prosecutor requests the deposition of Xavier to preserve his testimony.

Criminal-7. Why is Prosecutor permitted to take Xavier's deposition to preserve his testimony? Explain your answer.

Criminal-8. What procedural rules control the conduct of the deposition? Explain your answer.

Prosecutor wants to try Yaz and Zane together. Lawyer wants a separate trial for Zane.

Criminal-9. What pleading must Lawyer file to get a separate trial?

Lawyer and Prosecutor have questioned the prospective jurors and are making challenges for cause and peremptory challenges.

Criminal-10. How many challenges for cause and how many peremptory challenges do Lawyer and Prosecutor each have? Explain your answer.

One of the prospective jurors, Mr. Smith, reveals that he served on the grand jury that issued Zane's indictment.

Criminal-11. Can Mr. Smith serve on Zane's jury at trial? Explain your answer.

The jury has been selected, empaneled, and sworn.

Criminal-12. What are the first two steps that one must take in a criminal trial?

The Court asks Prosecutor and Lawyer to make their opening arguments.

Criminal-13. Because this is a felony trial, what are the fewest arguments to which a judge can limit Lawyer and Prosecutor during the whole trial?

Lawyer invokes the rule of sequestration, also known as "The Rule."

Criminal-14. What is the rule of sequestration? Explain your answer.

Criminal-15. Are alleged victims subject to the rule of sequestration? Explain your answer.

Prosecutor offers into evidence the video of the robbery.

Criminal-16. What predicate must Prosecutor establish through a witness to admit the recording? Explain your answer.

On the video Yaz is heard saying to the store clerk “give me all the money in the register.” Lawyer objects that this is hearsay and that it should not be admitted.

Criminal-17. How should the Court rule? Explain your answer.

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

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

The Court instructs the jury that it thinks the testimony of Xavier was particularly important. 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 Lawyer do in addition to objecting to the Court’s comment about Xavier’s testimony to preserve the error?

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

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