



October 2020 Procedure and Evidence Questions

Procedure and Evidence Questions Civil-1 through Civil-20

Paul, a resident of Dallas County, Texas, entered into a written contract with Dave, a resident of Louisiana, to sell his farm tractor to Dave for \$55,000. The contract was negotiated and signed through an exchange of emails. The contract provided that delivery of, and payment for, the tractor was to be made in Jefferson County, Texas. The delivery and sale were conducted in accordance with the contract, and Dave paid for the tractor with a fake cashier's check from First Bank, payable to Paul.

After delivering the tractor to Dave and depositing the check in his bank account, Paul was notified that the cashier's check had been identified as fake and thus dishonored by First Bank. Paul immediately contacted Dave and demanded that Dave make a replacement payment in cash. Dave refused, explaining that the cashier's check was genuine and that First Bank should have honored it. Dave replied further that the matter was now between Paul and First Bank and that he did not intend to take any further action.

Paul files suit against Dave in 2020 in Jefferson County district court, and personally mails the petition and citation to Dave's residence in Louisiana. The petition seeks actual damages of "no more than \$55,000" plus attorneys' fees of "no more than \$15,000".

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

2. What obligation, if any, does Dave have to respond to the lawsuit? Explain your answer.

Assume Dave files a written answer to the lawsuit but wants to remove the case to federal court because he is not a resident of Texas.

3. Does Dave have a valid basis for removing the case to federal court? Explain your answer.

Instead of seeking removal to federal court, Dave decides after filing his answer that he wants to move the case from Jefferson County to Dallas County district court and files a motion to transfer venue.

4. How should the Court rule on Dave's motion to transfer venue? Explain your answer.

Dave wants to know exactly how much money Paul seeks to recover in the lawsuit and files a special exception to Paul's pleading on that basis.

5. How should the Court rule on Dave's special exception? Explain your answer.

Paul wants to obtain more detailed information regarding Dave's defenses to the lawsuit.

6. List five forms of discovery available to Paul to obtain such information.

Paul serves written interrogatories on Dave via hand delivery. Dave actually receives them on Day 1. On Day 31 (the 30th day after receiving the interrogatories), Dave serves objections and responses to the interrogatories by hand delivery to Paul.

7. Did Dave timely object and respond to the interrogatories? Explain your answer.

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

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

Several months after filing his answer, Paul is contemplating adding First Bank as a defendant to the lawsuit.

9. What action must Paul take in order to add First Bank as a defendant to the lawsuit? Explain your answer.

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

10. How should the Court rule on Dave's objection? Explain your answer.

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

11. How should the Court rule on Paul's objection? Explain your answer.

Dave sends Paul requests for admission asking Paul to admit certain facts. Paul inadvertently fails to timely respond to the requests.

12. What is the effect of Paul's failure to timely respond and what action, if any, can Paul take to avoid that effect? Explain your answer.

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

13. Is Dave's attorney correct? Explain fully.

Paul wants a jury trial.

14. What actions must Paul take to ensure he gets a jury trial, and when must he take those actions? Explain your answer.

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

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

The case proceeds to trial with Paul and Dave as the only parties. During voir dire a prospective juror says "I generally don't trust folks from Louisiana. But I could listen to the evidence and be fair."

16. What procedural steps can Dave take to strike this potential juror? Explain your answer.

During trial, Paul testifies on direct examination about statements he overheard at a cocktail party about Dave's character. At the conclusion of his direct examination, Dave objects that Paul's testimony is hearsay and asks the Court to instruct the jury to disregard it.

17. How should the Court rule on Paul's objection? Explain your answer.

During a break in the trial, Paul overheard Dave telling someone on the phone that the cashier's check was a fake, and that he (Dave) knew that when he gave the check to Paul. Paul immediately informed his attorney. During Dave's cross examination, Paul's attorney asked the following question: "Isn't it true that you just told someone that you knew the cashier's check was fake?" Dave's attorney objects that the question calls for hearsay.

18. How should the court rule on the objection? Explain your answer.

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

19. What actions must Paul 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 Paul and awards damages to Paul. Only 11 of the 12 jurors sign the verdict. Dave objects and timely files a motion for a mistrial on the ground that the verdict was not unanimous.

20. How should the Court rule on Dave's motion? Explain your answer.

Procedure and Evidence Questions Criminal-1 through Criminal-20

Claire and Aaron, friends from Bexar County, Texas obtained a protest permit from their college (University) for a student protest. They were protesting a recent increase in campus traffic stops by police where there were no traffic infractions. They entered University's administration building in Travis County, Texas, blocked the entrance and exit doors, and shouted "We won't stop until bad stops, stop!"

They were issued citations charging them with trespass, a misdemeanor punishable by up to 180 days in jail. The citation notified them to appear in court.

1. The above misdemeanor is heard in which court: Municipal Court, County Court, or District Court?

2. In what county or counties is venue proper? Explain your answer.

When Aaron and Claire went to court together, they were provided the charging document against each of them.

3. What is the charging document called for a misdemeanor that carries 180 days of possible jail time?

Claire and Aaron ask the judge (Judge) to appoint them a lawyer because they do not have the funds to hire one.

4. Will Judge appoint a lawyer to represent them? Explain your answer.

5. Will Judge appoint the same lawyer to represent both of them? Explain your answer.

Claire made up the slogan that the students were shouting during the protest. The prosecutor (Prosecutor) told Judge, "I am going to use the slogan as evidence in Claire and Aaron's trial." The lawyer for Aaron (Dante) objects that the slogan is hearsay.

6. How should Judge rule on the objection? Explain your answer.

Prosecutor tells Judge he plans to try Claire and Aaron together. But Aaron wants a separate trial.

7. What should Dante do to get Aaron a separate trial? Explain your answer.

Claire has an exam at University on the date for which the trial is set to begin. Her lawyer, Juan, will take action to delay the trial for a later date.

8. What must Juan do to delay the trial? Explain your answer.

The trial is now ready to begin and the jury panel, the parties, and Judge are present.

9. During jury selection how many challenges for cause may Dante, Juan, and Prosecutor exercise? Explain your answer.

The jury has been selected and trial is beginning.

10. What are the first two steps in a criminal trial?

Prosecutor makes the opening statement.

11. Must Dante and Juan make their opening statements next? Explain your answer.

Prosecutor calls police officer, David, to testify that he is very professional, stands up straight, and wears a well-pressed uniform during traffic stops. Dante objects.

12. How should Judge rule? Explain your answer.

Juan calls a five-year-old, Casey, to testify that Claire moved out of the way to let him enter University administration building. Casey said that she then flew away using her wings and magic wand. Prosecutor objects that Casey's testimony is not admissible.

13. How should Judge rule? Explain your answer.

Claire testified next. She said that her protest permit stated that student protestors were allowed to protest in campus buildings as long as they wore masks or maintained social distance of at least 6 feet from other persons.

Prosecutor objected that the permit was hearsay.

14. How should Judge rule? Explain your answer.

Prosecutor asked Claire, "What did your lawyer, Juan, tell you about your permit defense?" Juan objected that Claire should not answer that question.

15. How should Judge rule? Explain your answer.

Prosecutor then complained in front of the jury, "You don't hear Aaron saying that, do you?" Dante objected to Prosecutor's comment.

16. How should Judge rule? Explain your answer.

Judge tells the jury, "The permit is very important evidence that you should all read carefully." Prosecutor objects to Judge's comment.

17. How should Judge rule? Explain your answer.

Closing arguments were heard and the jury filed out of the courtroom to deliberate. David told them as he passed them in the hall that he hoped they would do the right thing and convict Aaron and Claire.

18. What should Dante and Juan do to complain about this? Explain your answer.

The jury sent a note asking Judge to repeat what Claire said about her permit. Judge writes a note back to the jury stating: "You should rely on what you recall that the evidence was. Continue your deliberations." Juan objects that he must be permitted to participate in objecting to what answer Judge plans to send back to the jury.

19. How should Judge rule? Explain your answer.

Before the jury reaches any verdict, Judge grants another trial to Aaron and Claire.

20. Can they be tried a second time? Explain your answer.