

# September 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**.

Peter was seriously injured when he was struck by a vehicle driven by Dennis in the parking lot of Rowdy's, a bar located in Harris County, Texas. Peter and Dennis were patrons, not employees, of Rowdy's at the time of the incident. At all relevant times, Peter resided and worked in Galveston County and Dennis resided and worked in Montgomery County. Both Peter and Dennis had consumed excessive amounts of alcohol at Rowdy's and both were legally intoxicated at the time of the incident.

Peter intends to file suit against Dennis in state district court in Texas.

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

Assume Peter files the suit in Harris County state district court.

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

**Civil-3. What action must Dennis take if he wants to move the lawsuit to another county? Explain your answer.**

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

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

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

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

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

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

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

After the court-ordered deadline for joining new parties, Peter learns that Rowdy's continued to serve Dennis alcohol after Dennis was obviously intoxicated. Peter is considering adding Rowdy's as a party to the suit.

**Civil-8. What action must Peter take if he decides to add Rowdy's as a party to the suit? Explain your answer.**

Peter wants to take Dennis's oral deposition.

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

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

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

Peter wants to examine and photograph Dennis's vehicle, which is located on the premises of Tom's Towing, the wrecker service that towed the vehicle following the incident.

**Civil-11. What actions must Peter take to gain access to Dennis's vehicle for these purposes? Explain your answer.**

Dennis wants a jury trial.

**Civil-12. What actions must Dennis take to ensure he gets a jury trial, and when must he take those actions? Explain your answer.**

The case is called to trial. Before voir dire begins, Peter is concerned that Dennis may attempt to mention or introduce evidence during the trial that Peter has lost several other personal injury lawsuits in which he falsely claimed to have been injured. Peter believes that such evidence is highly prejudicial and not relevant to the matters in controversy.

**Civil-13.** What procedural step, if any, can Peter take before the trial commences to prevent Dennis from making reference to Peter's other lawsuits? Explain your answer.

During voir dire, Peter challenges a prospective juror for cause on the ground that the prospective juror is a former neighbor of Dennis. The Court denies the challenge for cause.

**Civil-14.** What procedural step, if any, can Peter take to remove this prospective juror from the panel? Explain your answer.

During her opening statement, Peter's attorney shows the jury a gruesome photograph depicting the severe injuries Peter sustained as a result of the incident. Dennis's attorney objects at the conclusion of the opening statement.

**Civil-15.** How should the Court rule on Dennis's objection to the photograph? Explain your answer.

Moments after the incident, Peter told Dennis: "I didn't see you coming. It was my fault." While Dennis is testifying at trial, Dennis's attorney asks Dennis to repeat what Peter told him after the incident. Peter's attorney objects that the testimony is hearsay.

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

During trial, Dennis calls a toxicology expert to render an opinion about Peter's blood alcohol level at the time of the incident. Peter does not believe the toxicologist is qualified to render this opinion.

**Civil-17.** What procedural steps should Peter take to challenge the expert's qualifications and when should these steps be taken? 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 Peter pled for such damages.

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

The jury renders a unanimous verdict for Dennis and finds that Peter was 100% responsible for the incident and his injuries. Before the jury is dismissed, Peter objects to the verdict and moves for a mistrial on the ground that Dennis did not plead the defense of comparative/contributory negligence before trial.

**Civil-19. How should the Court rule on Peter's objection and motion? Explain your answer.**

Before the jury is dismissed, Peter is convinced that all jurors did not actually agree with the verdict. He moves the Court to poll the jury.

**Civil-20. How should the Court rule on Peter's motion to poll the jury? 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.

If you are **handwriting**, write each answer in the **correct space in the answer booklet**.

On June 28, 2020, Gerry and Chris were enjoying dinner in their Bexar County, San Antonio, Texas home when they heard a noise in the backyard. As they turned on the light on the back porch, two people carrying Gerry and Chris's expensive guitars ran from their yard and jumped over their fence. They hid the guitars in Harris County, Houston, Texas. The two unidentified people committed theft, a felony offense.

**Criminal-1. Where is venue proper to charge the two people with the felony offense of theft? Explain your answer.**

Gerry and Chris's neighbor, Abasi, had a security camera that captured the two people after they jumped over the fence; they were John and Destinee. The police used the video from the camera as probable cause for the issuance of an arrest warrant by Judge.

**Criminal-2. What is the statute of limitations for theft?**

**Criminal-3. In addition to probable cause, what are at least three of the required components of an arrest warrant? Explain your answer.**

John and Destinee were taken to the police station, given their *Miranda* warnings, and Destinee was interviewed by the police. However, the recording equipment in the interview room malfunctioned. So, Destinee's oral interview was not recorded.

**Criminal-4. What are *Miranda* warnings? Explain your answer.**

**Criminal-5. Is Destinee's oral statement to the police admissible in evidence against her in a criminal trial? Explain your answer.**

Judge summons a grand jury to decide whether Destinee and John should be indicted. Prosecutor presents the video recording from the neighbors' security camera to the grand jury by asking his witness, Abasi, if the video camera was working properly, and if it fairly and accurately depicted Destinee and John jumping over Gerry and Chris's fence on June 28, 2020.

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

**Criminal-7. Did Prosecutor establish the proper predicate to admit the video in evidence? Explain your answer.**

During their deliberations, the grand jurors quarreled about whether they should indict Destinee and John. They asked Prosecutor to join them during the deliberations to decide whether they should vote in favor of the bill of indictment.

**Criminal-8. May Prosecutor legally join the grand jurors and assist them in their decision? Explain your answer.**

**Criminal-9. How many grand jurors must vote in favor of an indictment for it to issue? Explain your answer.**

John and Destinee are both indicted for theft of the expensive guitars. Prosecutor decides to try them together in the same trial. Lawyer, who represents Destinee, does not want John tried with Destinee. John is in a band, the "Number Two Dinners," that frequently plays guitars.

**Criminal-10. What must Lawyer do to attempt to obtain a separate trial for Destinee? Explain your answer.**

Lawyer requests discovery from Prosecutor.

**Criminal-11. What must Prosecutor provide to Lawyer? Explain your answer.**

Destinee and John are tried together. Lawyer does not want Destinee's oral interview admitted in evidence at trial.

**Criminal-12. What must Lawyer do to keep Destinee's oral statement out of evidence during the trial? Explain your answer.**

Judge excludes Destinee's statement. Prosecutor seeks to appeal the Judge's order excluding the evidence before the trial begins.

**Criminal-13. May Prosecutor appeal the order excluding the evidence? Explain your answer.**

**Criminal-14. Is John allowed to testify at his joint trial with Destinee? Explain your answer.**



**Criminal-15. What is the burden of proof in a criminal trial? Explain your answer.**

On cross-examination, Prosecutor asks John if Destinee contacted Lawyer after she was arrested. Lawyer objects.

**Criminal-16. How should Judge rule? Explain your answer.**

During closing arguments, Prosecutor says “Destinee associates with John so you know she must be guilty.” Lawyer objects that this argument is improper.

**Criminal-17. How should Judge rule? Explain your answer.**

Prosecutor next argues that “Destinee did not explain what she was doing with guitars on stage at the Number Two Dinner’s concert.” Lawyer objects that this argument is also improper.

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

The jurors return a guilty verdict against Destinee by flipping a coin to decide the case. Lawyer files a motion for new trial claiming that a jury verdict may not be decided by lot and calls a juror and the bailiff to testify that this is what happened during deliberations. Prosecutor objects that the juror’s testimony should not be received, it is inadmissible.

**Criminal-19. How should Judge rule on Prosecutor’s objection to the juror’s testimony? Explain your answer.**

**Criminal-20. How should Judge rule on the motion for new trial? Explain your answer.**

This concludes the Procedure and Evidence Questions.  
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