

Examinee  
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# February 2016

## 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**.

**Civil-1.** Kate was jogging on the sidewalk in downtown Dallas, Dallas County, Texas, when a delivery truck driven by Ralph, a resident of McKinney, Collin County, Texas, jumped the curb and hit her. Kate was seriously injured. At the time of the accident, Ralph was making a delivery for his employer, Speedy Delivery Company (“Speedy”), a Texas corporation with its principal place of business in Houston, Harris County, Texas.

Kate wants to file suit against Ralph and Speedy in state District Court.

**In which counties can Kate’s suit be properly filed? Explain your answer.**

**Civil-2.** Assume Kate files suit in Dallas County.

**What pleading must Ralph and Speedy file if they want to challenge venue in Dallas County, and when must they file it? Explain your answer.**

**Civil-3.** After all parties have appeared in the case, the Judge orders them to a pretrial conference.

**List 5 matters that the Court can require the parties to consider at a pretrial conference.**

**Civil-4.** After the pretrial conference, the parties begin discovery in the case.

**List 5 forms of discovery permitted under the Texas Rules of Civil Procedure.**

**Civil-5.** Kate sends Speedy a request for production asking for Ralph’s personnel file and time sheets for the 2 months immediately preceding the accident. Speedy objects on the basis that the request is overly broad and unduly burdensome. Kate believes Speedy’s objection is unfounded.

**How can Kate properly bring Speedy’s objection to the attention of the Court, and how should the Court rule on that objection? Explain your answer.**

**Civil-6.** Speedy wants to obtain a copy of the medical records from health care providers who treated Kate for her injuries.

**How can Speedy obtain these records? Explain your answer.**

**Civil-7.** Speedy believes that Kate is partially responsible for the accident because she was listening to music while she was jogging, was distracted, and failed to keep a lookout for her own safety.

**Must Speedy raise the issue of Kate's conduct before trial and, if so, how must Speedy raise it? Explain your answer.**

**Civil-8.** Kate wants to take the oral deposition of Speedy's corporate representative, William.

**In which counties may Kate properly notice William's deposition? Explain your answer.**

**Civil-9.** During William's deposition, Kate's attorney questions him about conversations and meetings he has had with Speedy's attorney. Speedy's attorney objects to Kate's questions and instructs William not to answer. Kate's attorney files a motion requesting the Court to compel William to answer her questions.

**Is the Court likely to compel William to answer Kate's questions? Explain your answer.**

**Civil-10.** Kate wants a jury trial.

**What must Kate do to ensure she gets a jury trial and when must she do it? Explain your answer.**

**Civil-11.** Kate's primary liability expert suffers a massive heart attack 2 weeks before trial and dies. Speedy's attorney will not agree to pass the trial date.

**What must Kate do and show to avoid going to trial on the current trial setting? Explain your answer.**

**Civil-12.** Kate's treating physician has testified that her injuries are permanent and severe.

**What action can the defendants take to independently verify the extent of Kate's injuries, and when must they take it? Explain your answer.**

**Civil-13.** The case is called to trial, voir dire is conducted, and the parties make their peremptory strikes. Kate's attorney notices that all of the female venire persons have been stricken.

**What procedural step, if any, should Kate's attorney take to challenge the striking of all the female venire persons? Explain your answer.**

**Civil-14.** During her opening statement, Kate's attorney shows the jury a gruesome photograph depicting the severe injuries Kate sustained in the accident. Defendants think the photograph is prejudicial and their attorney objects at the conclusion of plaintiff's opening statement.

**How should the Court rule on Defendants' objection to the photograph? Explain your answer.**

**Civil-15.** After the first day of trial, Kate's attorney is contacted by John who said he witnessed the accident. Kate's attorney calls John to testify at trial the following day. Speedy's attorney objects on the basis that John's identity was not disclosed in response to written discovery served in the case.

**How should the Court rule on Speedy's objection? Explain your answer.**

**Civil-16.** Immediately after the accident, Ralph told Kate that he drove up onto the sidewalk because he was texting with his wife on his phone. While Kate is testifying at trial, her attorney asks her to repeat what Ralph said to her after the accident. The Defendants object on the basis that the testimony is hearsay.

**How should the court rule on the Defendants' hearsay objection? Explain your answer.**

**Civil-17.** During trial, Kate calls an accident reconstruction expert witness to give an opinion about the speed Ralph's truck was traveling at the time of the accident. Speedy believes that Kate's expert is not qualified to offer opinions about the truck's speed.

**What procedural steps should Speedy take to raise the issue of the expert's qualifications to testify about the truck's speed? Explain your answer.**

**Civil-18.** At the conclusion of the evidence, the Judge submits the final charge to the parties for review. Speedy believes that the proposed charge omits a necessary instruction.

**What procedural steps must Speedy take to properly preserve error regarding the omitted instruction? Explain your answer.**

**Civil-19.** The jury renders a verdict in favor of Kate, and the verdict is read in open court. The Judge dismisses the jury. Speedy believes that there is a conflict between two of the answers in the jury's verdict and objects.

**How should the Court rule on Speedy's objection? Explain your answer.**

**Civil-20.** After the trial, Speedy's attorney interviews some of the jurors and learns that, during deliberations, the jury foreman had a text conversation with his brother - a lawyer - about how certain answers on the charge would affect the verdict.

**What procedural steps should Speedy take to bring the foreman's conduct to the attention of the Court? 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**.

**Criminal-1.** Bill, Reggie, and Sally decided to steal an automatic teller machine (“ATM”) from Munchies, which was a local convenience store in Houston, Texas. At 2:00 a.m. on December 24, 2015, Bill gave Reggie and Sally a ride to Munchies in his black 2010 Ford pickup truck. Bill got out, and Sally backed the pickup truck through the front door and dislodged the ATM inside of Munchies from its base. Bill and Reggie loaded the ATM onto the pickup truck, and the three of them drove back to Reggie’s apartment in Houston.

At 6:00 p.m. on December 24, 2015, Houston Police Officer Jones (“Officer Jones”) found a dismantled ATM, but no money, in an alley in Houston. Officer Jones surmised that the ATM was the one stolen from Munchies, and he had an expert lift fingerprints from it. The fingerprints lifted from the inside of the ATM matched fingerprints on file for Reggie. A security videotape showed a 2010 black Ford pickup truck driving into and out of the parking lot at Munchies at around 2:00 a.m. on December 24, 2015.

Officer Jones obtained an arrest warrant for Reggie and arrested him in Houston on January 1, 2016. Reggie was detained in the county jail and was charged by a criminal complaint with the second degree felony of theft for stealing the ATM.

**List 3 requisites of an arrest warrant.**

**Criminal-2.** A magistrate has scheduled an examining trial on the accusation that Reggie committed the theft of the ATM.

**List 3 rights that Reggie has at his examining trial.**

**Criminal-3.** Officer Jones wants to search Reggie’s apartment for the cash that was in the ATM when it was stolen.

**What document must be filed in every instance in which a search warrant is requested, and what must it state?**

**Criminal-4.** Pursuant to a search warrant, Officer Jones searches Reggie's apartment and finds a stack of \$20 bills and a photograph showing Bill, Reggie, and Sally standing in front of Bill's 2010 black Ford pickup truck. Officer Jones immediately leaves Reggie's apartment and arrests Bill and Sally. Bill and Sally are each charged by a criminal complaint with the second degree felony of theft of the ATM. You are appointed to represent Sally.

**Was Officer Jones's arrest of Sally valid? Explain your answer.**

**Criminal-5.** A grand jury is convened in Houston to consider the theft of the ATM from Munchies.

**How is a grand jury chosen?**

**Criminal-6.** The grand jury returns an indictment of Reggie, charging him with the second degree felony of theft for stealing the ATM in one count and additionally charging him with the state jail felony of burglary for burglarizing Munchies in a second count.

**Is it legal for one indictment to charge Reggie with the two offenses of theft of the ATM and burglary of Munchies? Explain your answer.**

**Criminal-7.** The grand jury returns separate indictments against Bill and Sally charging each of them with the second degree felony of theft for stealing the ATM.

**List 3 requisites of an indictment.**

**Criminal-8.** You give the prosecutor ("Prosecutor") a timely written request for discovery, and Prosecutor allows you to review the discovery in her office. When you request to make a photocopy of the offense report authored by Officer Jones, Prosecutor refuses to allow you to do so.

**As Sally's attorney, do you have the right to make a photocopy of the offense report written by Officer Jones? Explain your answer.**

**Criminal-9.** Prosecutor tells you that Officer Jones will testify at trial as follows: "I recall that, after I arrested Sally, read her rights to her, and questioned her, she responded that she had helped Bill and Reggie commit the crime."

**What procedural step, if any, can you take to try to prevent Prosecutor from introducing this testimony by Officer Jones at trial? If there is such a step, on what basis can you take it?**

**Criminal-10.** Sally tells you that she is not guilty and that she wants a jury trial. She also tells you that she wants to be placed on probation if she is convicted.

**What procedural step should you take to allow the jury to recommend probation, and when should you take that step?**

**Criminal-11.** Reggie decides to cooperate with Prosecutor and to accept a plea agreement that provides for him to enter a plea of nolo contendere to his indictment.

**In what ways is a plea of nolo contendere the same as or different from a plea of guilty? Explain your answer.**

**Criminal-12.** Prosecutor tells you that she wants to have a joint jury trial of Bill and Sally for the theft of the ATM.

**May Bill and Sally be tried jointly given that they were charged in two separate indictments? Explain your answer.**

**Criminal-13.** Assume that a setting has been docketed for a joint jury trial of Bill and Sally. Bill has a prior felony conviction for theft that will be admissible at trial, but Sally has never been convicted of a crime.

**What procedural step can you take to try to protect Sally from the admission of this evidence at trial?**

**Criminal-14.** Prosecutor files a motion requesting that Sally have her fingerprints taken by a certified latent fingerprint examiner so that the fingerprints may be compared to the fingerprints lifted from inside of the ATM. You file a response to Prosecutor's motion, objecting that ordering Sally to submit to fingerprinting would violate her right against self-incrimination.

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

**Criminal-15.** Bill and Sally are tried together at a joint jury trial. On the morning of jury selection, Prosecutor asks the Court to amend Sally's indictment to add a count charging Sally with the state jail felony of burglary for burglarizing Munchies. You object to amendment of the indictment.

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



**Criminal-16.** Assume that Sally's indictment is not amended. Jury selection begins at the joint trial of Bill and Sally.

**How many peremptory challenges may Bill, Sally, and Prosecutor each make?**

**Criminal-17.** After jury selection and opening statements, Prosecutor calls Reggie as her first witness. Reggie testifies that he, Bill, and Sally went to Munchies, that Sally backed Bill's pickup truck through the front door and dislodged the ATM, and that the three of them stole the ATM from Munchies.

**May Sally be convicted on this evidence alone? Explain your answer.**

**Criminal-18.** Prosecutor calls Officer Jones as his next witness. Prosecutor intends to introduce into evidence the written and signed confession made by Bill in Officer Jones's presence. In Bill's confession, he admitted to stealing the ATM from Munchies and stated that Sally helped him do it by backing his pickup truck through the front door.

**What objections or requests, if any, should you make with regard to the admission of Bill's confession?**

**Criminal-19.** Prosecutor's next witness is Eddie Money, the loss-prevention manager at Munchies. He testifies about how the security video camera works at Munchies and how the videotapes are made and stored. He also testifies that: (a) he viewed the videotape of the black 2010 Ford pickup truck shortly after the ATM was stolen and again just before testifying at trial; (b) it has not been altered; (c) it fairly and accurately represents what it purports to show, namely, the events captured by the video camera and videotape at the time the ATM was stolen from Munchies; and (d) the security video camera was properly functioning at the time it recorded the events. Mr. Money admits, however, that he has no personal knowledge of the theft of the ATM from Munchies. You object to the admission of the videotape on the ground that it has not been properly authenticated.

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

**Criminal-20.** During your closing argument, you make the following statement to the jury: "We all know that Sally is not a very nice person, but that is no reason to convict her." The jury subsequently finds Sally not guilty. Because Sally is furious about your statement, she asks an attorney whether she should file a motion claiming ineffective assistance of counsel on your part.

**How should the attorney respond to Sally's question? Explain your answer.**

**This concludes the Procedure and Evidence Questions.  
Write the Pledge on the back cover of this question booklet.**

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