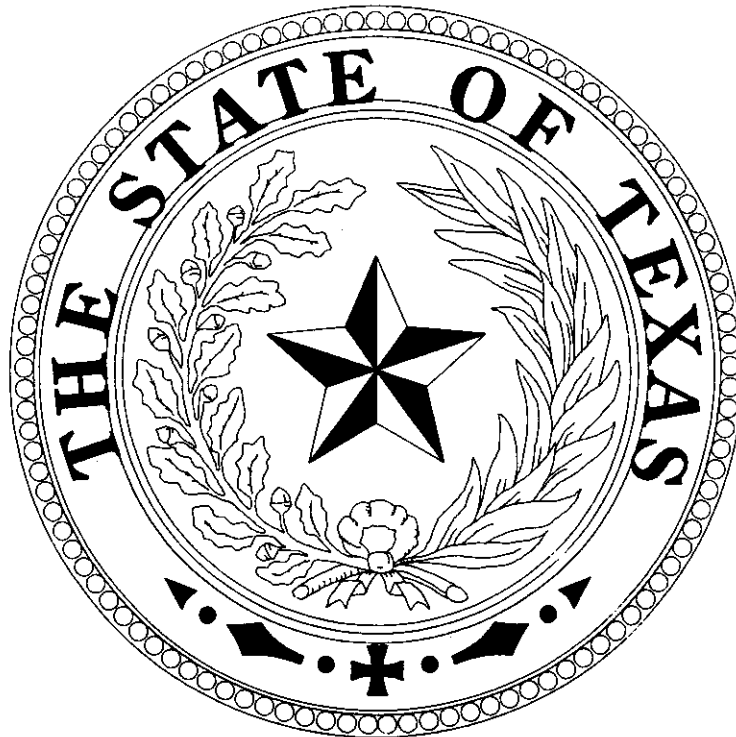


Examinee
Number

Exam
Date JULY 2008

Civil Procedure & Evidence

[This Civil booklet is one part of the Procedure & Evidence session. Both the Civil and the Criminal booklets must be completed during the 90 minute Procedure & Evidence testing session.]



TEXAS BAR EXAMINATION

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YOUR ANSWERS MUST BE LIMITED TO THE 5 LINES PROVIDED AFTER EACH QUESTION. ANYTHING MORE THAN 5 LINES WILL NOT BE GRADED.

CIVIL PROCEDURE AND EVIDENCE

Peter, a resident of Nueces County, Texas, was attempting to cross a public street in Jim Wells County, Texas, when he was struck by a car driven by David, a resident of Brooks County, Texas. Peter sustained serious injuries in the collision. The owner of the car was David’s employer, Express Co., (“Express”), a Texas corporation, whose principal place of business is in Bexar County, Texas.

- 1. Peter sued David and Express in state district court in Nueces County, Texas. David and Express were properly served with citations and a copy of Plaintiff’s Original Petition. When must David and Express file answers to avoid the entry of a default judgment against them? Explain fully.**

- 2. Does Peter have a proper basis for filing suit in Nueces County, Texas? Explain fully.**

DO NOT CONTINUE YOUR ANSWER IN THIS SPACE

3. David and Express want to object to being sued in Nueces County. How and when must they make this objection? Explain fully.

4. Assume that David and Express timely respond to Peter's Original Petition. The parties proceed with written discovery. List five (5) items that the parties may request from each other in Requests for Disclosure.

5. Peter sent the following Request for Admission to David: "Admit that your negligence in failing to keep a proper lookout was the cause of the collision and of the injuries sustained by Peter in the accident." Forty-five (45) days after he received the request, David's attorney filed a response denying the request. What is the effect of the response filed by David's attorney? Explain fully.

6. What pleading must David's attorney file to avoid the effect of the response to the request for admission? Explain fully.

7. Express served Peter with a request for production asking for copies of all medical records relating to the treatment of the injuries Peter sustained in the collision. Peter objected to the request, claiming that the records contain personal and confidential information. How can Express bring the matter to the attention of the Court and how should the Court rule? Explain fully.

8. Express knows the identity of the doctors who treated Peter for his injuries. How can Express obtain the pertinent medical records directly from the treating doctors? Explain fully.

9. Peter's attorney served a notice to take David's deposition without first conferring with David's attorney. The notice provides that the deposition will be taken in the offices of Peter's attorney. David's attorney will be out of town on the date the deposition is to occur. Assuming that Peter's attorney is not willing to reschedule the deposition, what can David's attorney do to prevent the deposition from going forward as noticed? Explain fully.

10. The parties scheduled Peter's deposition by agreement. During the deposition, Peter's attorney repeatedly objected to questions on the grounds that "the question assumes facts not in evidence," or that "the question seeks irrelevant information." He also made statements that suggested the answers to various questions. What basis, if any, does David's attorney have for complaining about the conduct of Peter's attorney? What steps should David's attorney take to bring the matter to the Court's attention? Explain fully.

DO NOT CONTINUE YOUR ANSWER IN THIS SPACE

11. After the completion of discovery, Express wants to be dismissed from the case, because it believes that, at the time of the collision, David was not acting within the course and scope of his employment with Express. How can Express raise the issue with the Court and what must Express show to obtain a dismissal? Explain fully.

12. Assume David testified in his deposition that at the time of the collision he was still carrying out his daily duties for Express. How can Peter rely on and present this testimony to prevent Express from being dismissed from the case? Explain fully.

13. One week before the scheduled trial of the case, Express' attorney learns that the police officer who had investigated the collision would not be available to testify at the trial. Express' attorney had not deposed the officer, because the officer had said that he would testify at the trial if necessary. What must Express do and show to avoid going to trial? Explain fully.

- 14. Assume the case proceeds to a jury trial and that David and Express are still defendants in the case. Assume that Express plans to contend during the trial that David was not acting within the course and scope of his employment at the time of the collision. How should the Court allocate peremptory strikes between Peter and the two Defendants? Explain fully.**

- 15. Assume that weeks after the collision, a person who claimed to have witnessed the accident told Peter that David was at fault, because David had failed to yield the right of way. While Peter is testifying, his attorney asks him to repeat the statement that was made by the purported witness. What objection, if any, should David's attorney make? How should the Court rule on such objection? Explain fully.**

- 16. Express' insurance carrier had paid Peter's medical and hospital expenses related to the injuries sustained by Peter in the collision. During the trial, Peter's attorney offers into evidence a document showing those payments. What objection, if any, should Express' attorney make? How should the Court rule? Explain fully.**

17. David's driving record showed that two years before the collision, he had received two misdemeanor convictions for speeding. Peter offers into evidence the record of these convictions to impeach David's credibility. What objection, if any, should David's attorney make? How should the Court rule? Explain fully.

18. After the first day of trial, the Judge recesses the trial and orders the parties to mediation. The mediation is unsuccessful. The trial resumes. Peter's attorney calls the mediator as a witness, because he wants the mediator to tell the jury that Express did not act in good faith during the mediation. What objection, if any, should Express' attorney make to prevent the mediator from testifying? Explain fully.

Assume the case was tried on the theory that Peter, David and Express were each independently responsible for the collision. Further assume that the Court wants to submit the following question to the jury:

Did the negligence, if any, of those named below proximately cause the occurrence in question?

Answer "yes" or "no" for each of the following:

- a. Peter _____
b. David _____

19. What objections, if any, should the attorneys make to the proposed question and when and how should the objections be made? Explain fully.

20. After deliberating, the jury returns a verdict in favor of Peter. However, David and Express believe that the amount the jury awarded for future medical expenses has no support in the evidence. What motion, if any, can David and Express file to raise the issue with the Court? Explain fully.

DO NOT CONTINUE YOUR ANSWER IN THIS SPACE.

THIS CONCLUDES THE CIVIL PROCEDURE AND EVIDENCE QUESTIONS. CRIMINAL PROCEDURE AND EVIDENCE QUESTIONS ARE CONTAINED IN A SEPARATE BOOKLET.