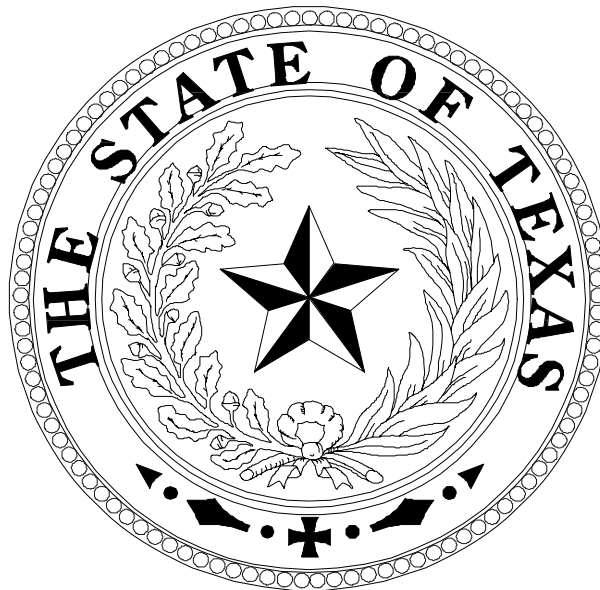


Examinee  
Number

Exam  
Date February 2009

# 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

COPYRIGHT © 2009 TEXAS BOARD OF LAW EXAMINERS  
THIS MATERIAL, OR ANY PORTION HEREOF, MAY NOT BE REPRINTED WITHOUT THE ADVANCE WRITTEN PERMISSION  
OF THE TEXAS BOARD OF LAW EXAMINERS

**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**

Paul, a resident of Nueces County, Texas, went to the local hardware store, Supplies, Inc., (“Supplies”), to purchase an electric saw. Supplies is a Texas corporation with its principal place of business in Nueces County, Texas. After purchasing the saw, Paul asked David, a salesman for Supplies, to demonstrate how the saw operated. When David turned on the saw, its blade came loose, resulting in serious injuries to Paul’s arm. David is a resident of San Patricio County, Texas. In addition to working for Supplies, David is also a representative for the manufacturer of the saw, Tools, Inc., (“Tools”), a Delaware corporation. Tools regularly advertises and sells its products in Texas through hardware stores like Supplies.

Paul sues David, Supplies, and Tools in a state district court in Nueces County, Texas. Paul’s lawsuit seeks damages resulting from the injuries he sustained in the incident in question. All of the defendants are properly served with citation and a copy of the original petition.

- 1. Tools wants to object to the jurisdiction of the Nueces County district court on the ground that it is not amenable to process issued by a Texas court. What pleading, if any, must Tools file to present such objection and when must it file such pleading? Explain fully.**

---

---

---

---

---

- 2. Assume that Tools properly presents its objection to the Court’s jurisdiction over it. What may the Court consider in ruling on the objection? How should the Court rule on the objection? Explain fully.**

---

---

---

---

---

**3. Assume that Tools is considering removing the case to federal court on the basis of diversity of citizenship, given that it is a Delaware corporation. Does Tools have a valid basis for removing the case on diversity grounds? Explain fully.**

---

---

---

---

---

**4. David does not want the case to proceed against him in Nueces County because he does not live in the county. What pleading must David file to present his objection to the case proceeding against him in Nueces County, and when must David file the pleading? Explain fully.**

---

---

---

---

---

**5. Assume David properly files his objection to the case proceeding against him in Nueces County. How should Paul respond, and how should the Court rule? Explain fully.**

---

---

---

---

---

**6. Assume that Paul’s original petition did not state the total amount of damages that he is seeking. Supplies wants to know the maximum amount of damages that Paul seeks. What pleading can Supplies file to require Paul to state the amount of damages that he seeks? Assume Supplies files the proper pleading. How should the Court rule? Explain fully.**

---

---

---

---

---

**7. When Paul filed his original petition, he also filed a Request for Production, which was served on each of the Defendants along with the citation and a copy of the original petition. When must each Defendant file an answer to the petition to avoid a default judgment and what is the deadline for each Defendant to file responses to the Requests for Production? Explain fully.**

---

---

---

---

---

**8. Assume the lawsuit proceeds in the Nueces County district court against all of the named Defendants. The parties want to proceed with written discovery before scheduling oral depositions. Identify five permissible forms of discovery under the Texas Rules of Civil Procedure.**

---

---

---

---

---

**9. Paul's attorney sends Tools attorney a request for admission asking Tools to admit within 31 days of service of the request, that Tools was the manufacturer of the electric saw in question. Forty (40) days after Tools attorney received the request for admission, he served Paul's attorney with a response denying the request for admission. What is the effect of that response and what must Tool's attorney do and show to change that result? Explain fully.**

---

---

---

---

---

**10. All of the Defendants want to independently verify the nature and extent of Paul's injuries. How can that be accomplished? Explain fully.**

---

---

---

---

---

**11. Assume that Paul receives a discovery request from a Defendant calling for the production of material that Paul's attorney considers to be privileged. How can Paul's attorney preserve the privilege? Explain fully.**

---

---

---

---

---

**12. In response to a request for production from Paul, Supplies' attorney inadvertently produces communications between Supplies and its attorneys. What must Supplies' attorney do to avoid a waiver of the attorney-client privilege with respect to the communications that were produced? Explain fully.**

---

---

---

---

---

**13. During Paul's deposition, his attorney wants to object to questions being asked by Supplies' attorney. What objections to questions can Paul's attorney make during the deposition? What objections to testimony can be made during the deposition?**

---

---

---

---

---

**14. In the course of discovery, Paul identifies an expert witness who states in his expert's report that the electric saw was defective. How and on what basis can Tools challenge the expert and his opinion? Explain fully.**

---

---

---

---

---

**15. Assume that the Court sustains Tools pretrial objection to Paul's expert and that Paul has no other evidence to support his claim that the electric saw was defective. What pretrial procedure is available to Tools to avoid the necessity of a trial on this claim? Assume that Tools follows the applicable procedure, how should the Court rule? Explain fully.**

---

---

---

---

---

**16. The case proceeds to trial. Prior to jury selection, Paul wants to keep the attorneys for the Defendants from disclosing to the jury panel certain information regarding his relationship with his ex-wife. How can Paul's attorney keep the information from the jury panel and what must he show? Explain fully.**

---

---

---

---

---

**17. During trial, Paul calls a witness who he had failed to identify in his discovery responses. The attorneys for all of the Defendants object to the witness. What must Paul show in order for the witness to be able to testify? Explain fully.**

---

---

---

---

---

**18. At the conclusion of his case in chief, Paul rests. David’s attorney believes that Paul failed to present any evidence to support the negligence claim that Paul had filed against David. What procedure is available to David’s attorney at this point in the trial to bring the matter to the attention of the Court? Explain fully.**

---

---

---

---

---

**19. The case proceeds to verdict. The jury returns a verdict in favor of Paul. The Defendants believe that the evidence does not support the jury’s verdict. What pleadings can the Defendants file to prevent the entry of a judgment in favor of Paul? Explain fully.**

---

---

---

---

---

**20. The Court enters judgment on the verdict. The Defendants want to file a motion for a new trial. When must such a motion be filed in order for it to be timely? Assume a motion for new trial is timely filed, what happens if the Court never rules on the motion? 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.**