

Examinee
Number

Exam
Date FEBRUARY 2011

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 © 2011 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

Dan ran a stop sign and collided with Ike's car in Webb County, Texas. Because of Ike's excessive speed, Ike's car spun around and collided with Joan's car. Joan was not injured, but her passenger Tracy was injured.

Dan resides in Cameron County, Texas. Ike resides in Webb County, Texas. Joan and Tracy reside in Starr County, Texas.

Tracy filed suit against Dan in Starr County, Texas.

- 1. Although Dan does not believe Starr County is a proper county for the suit, Dan files his answer in Starr County. One week later, Dan files a plea to the court's jurisdiction and a motion to transfer the case to Cameron County.**

How should the court rule on Dan's plea and motion? Explain fully.

- 2. If the court errs in its ruling on the motion to transfer venue, what effect, if any, will such erroneous ruling have on appeal with respect to any final judgment rendered in the case? Explain fully.**

3. What are the counties of proper venue under these facts? Explain fully.

4. Dan files a motion adding Ike as a Responsible Third Party. After a hearing on Dan's motion, the court enters an order adding Ike to the case as a Responsible Third Party. The next day Tracy sues Ike for damages as a party defendant. Ike asserts the defense of limitations against Tracy's claims. How can Tracy defeat Ike's claim? Explain fully.

5. Dan plans to assert a limitations defense later in the case. What pleading should Dan file to assert the defense of limitations and when must it be filed? Explain fully.

6. Name five types of discovery specifically authorized by the Texas Rules of Civil Procedure.

7. Which form of discovery authorized by the Texas Rules of Civil Procedure, if any, is not subject to any objection?

8. Tracy submits Requests for Admissions to Dan. Dan fails to respond within 30 days because Dan's attorney suffered a temporary but serious illness. What action or actions should Dan's attorney take to avoid having the unanswered Requests for Admissions used at trial? Explain fully.

9. **Dan submits Interrogatories to Tracy inquiring who her trial witnesses will be. Tracy responds with an objection that she is not required to disclose trial witnesses and directs Dan to her list of persons with knowledge of relevant facts. Dan moves to compel Tracy to respond to his request to disclose her trial witnesses. How should the court rule? Explain fully.**

10. **After some discovery is completed, Dan believes there is evidence that Tracy was actually driving Joan's car on the date of the collision and that Tracy caused the collision by being distracted by her cell phone. Can Dan wait until the present case is reduced to a final judgment and then file another suit for damages against Tracy? Explain fully.**

11. **The parties attended a mediation. Tracy presented witness statements and a video statement of her doctor regarding the extent and duration of her injuries, all of which are prepared for the mediation. The case did not settle at mediation. Dan then makes discovery requests for copies of the written statements and the video statement. Tracy objects on the basis that the written statements and video statement were prepared for the mediation only, are privileged, and not subject to discovery. Dan moves to compel production of the statements. How should the court rule? Explain fully.**

12. Dan discovers that Tracy has failed to plead the maximum amount of money damages being sought. How can Dan raise the issue of the maximum amount sought by Tracy, and how should the court rule?

13. Tracy lost custody of her daughter in a recent divorce. Tracy's lawyer fears that Dan's lawyer will try to discuss this divorce case in jury selection and in opening statement. What pleading should Tracy's lawyer file to bring this matter to the attention of the judge and prevent its discussion prior to the presentation of any evidence? Explain fully.

14. At trial, a police officer who investigated the collision is asked the following question by Tracy's attorney: "Isn't it true that you gave Dan a ticket because a pedestrian told you Dan ran the stop sign?" What objection, if any, should Dan's attorney make and how should the court rule? Explain fully.

15. While cross examining Tracy, Dan's lawyer asks Tracy: "At mediation, did you state that for the purposes of mediation, you were not going to claim future medical expenses as damages in this case?" What objection, if any, should Tracy's lawyer make and how should the court rule? Explain fully.

16. Prior to trial, Tracy amends her petition and adds Joan as a party defendant. At trial no party presents evidence that the conduct of Joan contributed to or caused the collision. At the conclusion of Tracy's case, what plea or motion should Joan's lawyer make and how should the court rule? Explain fully.

17. The court gives the lawyers its proposed charge. Dan has pleaded the defenses of unavoidable accident and sudden emergency, and offered evidence on each theory. The court has not included an instruction on unavoidable accident or sudden emergency. What objection, if any, should Dan make, and what should Dan do to preserve the error of omitting these defenses from the court's charge? Explain fully.

18. During deliberations, one of the jurors becomes very ill, is taken to the hospital, and is unable to return to court. Dan moves for a mistrial because there are only eleven jurors left and no alternates. How should the court rule? Explain fully.

19. The jury returns a verdict. The jury has not answered all of the questions as instructed. Tracy moves for a mistrial. How should the court rule? Explain fully.

20. The jury returns a complete verdict. The jury finds Joan to be 25% responsible for the collision. Joan believes there is no evidence that she was negligent and no support for the jury's finding of her fault. What pleading should Joan file to persuade the court to disregard the finding of fault against her? 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.