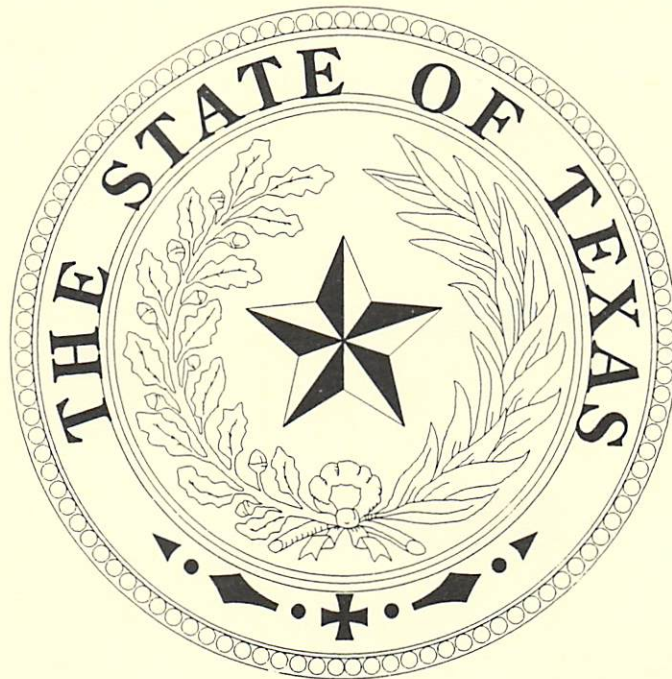


Examinee
Number

February 2012

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 © 2012 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 drove Fred to a bar in Paul's car. After Fred and Paul each drank several beers at the bar, they decided to return to their college dormitory. Feeling somewhat impaired, Paul asked Fred to drive. Fred turned left on Avenue L in Lubbock, Lubbock County, Texas, and proceeded south. Avenue L is a one-way street, and Fred was driving the wrong way. Dan was driving westbound on 15th Street, ran a stop sign, and collided with the car Fred was driving. Paul and Dan were both injured.

Paul resided in Harris County, Texas. Fred resided in Travis County, Texas. Dan resided in Hockley County, Texas. Paul filed suit against Dan.

- 1. What steps must Paul take to file a civil suit for damages and require other parties to respond to his suit?**

Paul filed suit against Dan as a single defendant in Harris County, Texas. Dan believes Harris County is not a county of proper venue.

- 2. What pleading must Dan file to contest venue in Harris County and when must the pleading be filed?**

(DO NOT CONTINUE YOUR ANSWER IN THIS SPACE)

3. What are the counties of proper venue authorized by the Texas Civil Practice and Remedies Code under these facts?

Anticipating that an objection to venue may be granted, Paul contemplates an appeal of an adverse venue ruling.

4. Is an interlocutory appeal authorized from an order granting a motion to transfer venue? Explain fully.

5. If the trial court rules incorrectly on the motion to transfer venue, what effect, if any, will such erroneous ruling have on appeal regarding any final judgment? Explain fully.

Paul's original petition simply alleges negligence without stating the facts upon which he relies to support the claim of negligence.

6. What pleading should Dan file in order to require Paul to specifically plead the facts upon which Paul relies to support his claims? Explain fully.

Evidence indicates that, even though Paul knew Fred was intoxicated, he allowed Fred to drive his car while he was a passenger.

7. What procedural steps should Dan take to allow him to submit a jury question on Paul's contributory negligence or comparative responsibility? Explain fully.

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

The police report indicates that Dan was unable to show proof of financial responsibility at the scene of the collision.

9. Name two types of written discovery available to Paul to determine if Dan has insurance and, if so, the extent of his policy limits? Explain fully.

In response to Dan's Requests for Disclosure as authorized by the Texas Rules of Civil Procedure, Paul produces copies of his medical bills and records. Dan requested a medical authorization. Paul objects to Dan's request for a medical authorization upon privacy concerns.

Dan sets a hearing on Paul's discovery objection regarding a medical authorization, asserting that Paul must produce a medical authorization and that the production of records and bills is not sufficient.

10. How should the court rule on Paul's objection? Explain fully.

Paul, Dan, and Fred were all deposed. Following the transcription and delivery of the depositions, Paul served a Request for Admissions on Dan. Dan objected to the Request for Admissions on the basis that the matters addressed in the Request for Admissions could have been raised and addressed in the deposition of Dan and therefore have been waived by Paul.

11. How should the court rule on Dan's objection? Explain fully.

Dan served a notice to take a deposition by written questions of the investigating police officer along with a subpoena duces tecum for his report and field notes. Paul objected to the notice on the basis that there has been no showing that the officer cannot be available for trial in person, and therefore the notice of deposition by written questions is not authorized by the Texas Rules of Civil Procedure.

12. How should the court rule on Paul’s objection? Explain fully.

Paul amends the lawsuit to add Fred as a party defendant and seeks money damages from Fred. Following the completion of all discovery, Fred believes there is no evidence to support a jury question on the issue of his negligence.

13. What pleading should Fred file to bring this issue to the attention of the trial court? Explain fully.

During the investigation of the accident by the police, Fred tells the police that the wreck was his fault because he was going the wrong way on a one way street and Dan could not have seen him coming. Dan offers this evidence at trial through the investigating police officer. Fred objects and asserts that his statement is privileged and not admissible, because he made the statement to the police during an official investigation.

14. How should the court rule on the objection? Explain fully.

Paul was previously indicted for felony forgery. The indictment was later dismissed with prejudice.

- 15. What pleading should Paul file to prevent this former indictment from being mentioned to the jury panel during opening statement? Explain fully.**

At the pre-trial conference three days before trial, Dan reminded the parties and the court that he has retained an accident reconstructionist and plans to call the expert at trial. Although the expert had presented a report (which had been served on all parties) and had been deposed (with notice to all parties), Dan's attorney had not listed the reconstructionist as a testifying expert in discovery responses.

- 16. Paul filed a motion to strike Dan's reconstruction expert. Dan objected to the motion to strike. How should the court rule? Explain fully.**

At trial, Paul proffered unauthenticated copies of his medical records and medical bills to support his claim for damages.

Fred and Dan objected to the proffer on the basis of hearsay. Paul responded that these copies were produced to all parties in his discovery responses and that all parties had notice of the proffered evidence. Further, Paul noted that no prior objection to the proffered evidence had been urged.

- 17. How should the court rule on the hearsay objections of Fred and Dan? Explain fully.**

At the conclusion of Paul's case, Dan believed that Paul failed to prove that Dan was negligent on the occasion in question or that his conduct was a cause of the collision.

18. What action should Dan take to bring this issue to the attention of the trial court? Explain fully.

After several hours of deliberations, the presiding juror reported to the court (by way of a written note) that nine of the twelve jurors agreed on their answers to all of the jury questions propounded to them. The presiding juror asked the court to accept the verdict.

19. Is the trial court authorized to accept a verdict of nine jurors, if all nine jurors agree on the answers to all questions propounded to them? Explain fully.

The jury awarded \$20,000 to Paul for his past medical expenses. The parties had previously stipulated that Paul's health insurance carrier paid \$12,000 to Paul's health care providers and that as a result all of Paul's remaining medical expenses were completely discharged.

20. Paul filed a motion for a judgment for \$20,000 for his past medical expenses. How should the court rule? Explain fully.

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