

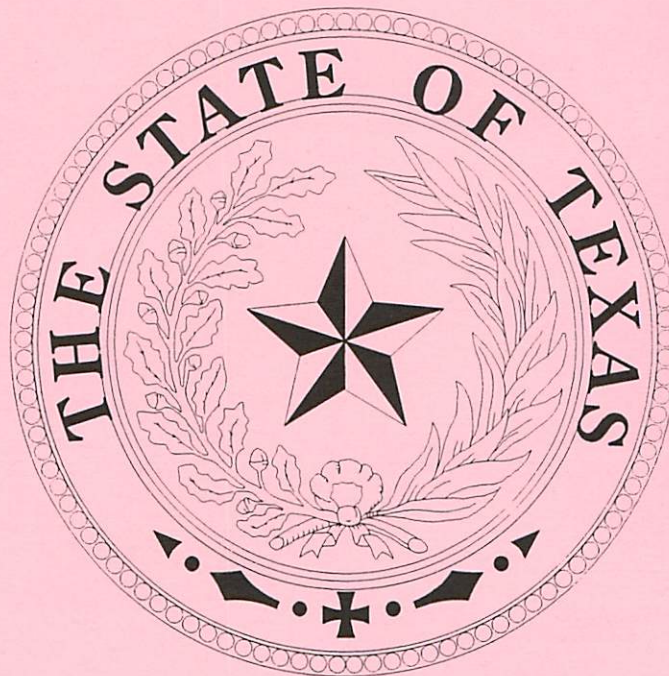
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July 2012

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

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CIVIL PROCEDURE AND EVIDENCE

Mercy Hospital (“Mercy”) is a for-profit, private institution. While her husband was a patient at Mercy, Wilda walked to the hospital cafeteria for lunch. As Wilda passed through the food line, she encountered an advertising sign that had fallen to the floor and was lying face down. The sign was the property of Prime Pizza, Inc. (“Prime”). The sign had fallen some time before Wilda arrived and had been pushed forward in the line by other customers. The sign was lying in front of the Big Burger (“Big”) serving counter when Wilda tripped over the sign and fell to the floor.

As a result of her fall, Wilda sustained personal injuries, which required surgery, and lost time from her job.

Wilda resides in Hays County, Texas. Mercy is located in Travis County, Texas. Prime is a Texas corporation with a principal place of business in Dallas County, Texas. Big is a sole proprietorship with a principal place of business in Travis County, Texas.

Wilda desires to file suit against Mercy and Prime.

- 1. Assuming Mercy and Prime contest venue, what are the counties of proper venue for Wilda’s lawsuit? Explain fully.**

Wilda files suit against Mercy and Prime, and each defendant is served pursuant to the Civil Practice and Remedies Code.

- 2. What pleading must Mercy and Prime file in order to avoid the entry of a default judgment against them, and when must that pleading be filed? Explain fully.**

Wilda sues “Prime Pizza” as a named defendant. The shareholders of Prime Pizza, Inc. want to seek the protection of their corporate entity and avoid individual liability, if any.

3. **What pleading must Prime file in order to assert its corporate status and protect its shareholders from individual liability? Explain fully.**

Following the accident, Wilda accepted free medical care in the emergency room of Mercy. She signed several documents while she was in the emergency room. Mercy believes that one of these documents releases all of Wilda's claims.

4. **What pleading must Mercy file to bring this alleged defense to the attention of the court, and when should it be filed?**

Prime believes that Big is responsible for the accident because Big's employees had a chance to pick up the sign or warn Wilda of the sign. Big is now in bankruptcy.

5. **What pleading must Prime file in order to secure a jury question on Big's liability, if any, for the accident? Explain fully.**

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

Mercy's lawyer tells Wilda's lawyer that he knows what caused the accident because he has the names and addresses of five or six witnesses to the accident.

7. What documents can Wilda serve upon Mercy to secure the names of potential witnesses to the accident? Explain fully.

Prime's attorney conducted an investigation of the accident and interviewed several potential witnesses to the accident. Although no statements were taken, the attorney for Prime made and kept copious notes about these interviews. Wilda serves a request for production upon Prime seeking production of the attorney's notes.

8. Prime objects to the request for production of its attorney's notes as being protected from discovery. How should the court rule? Explain fully.

Mercy serves 30 requests for admissions and 30 interrogatories upon Wilda. Wilda objects to the requests for admissions and interrogatories because the number of admissions and interrogatories served is in violation of the Rules of Civil Procedure.

9. How should the court rule on Wilda's objections to the requests for admissions and interrogatories? Explain fully.

Prime's store manager took several photographs immediately after Wilda fell. Wilda serves a request for production on Prime seeking production of the photographs. Prime asserts that the photographs are privileged and not subject to production under the investigatory privilege.

10. How should the court rule on the assertion of privilege? Explain fully.

Mercy serves interrogatories on Wilda seeking the names and addresses of any and all medical providers from whom she sought treatment for the ten years immediately preceding the accident.

11. Wilda objects to the interrogatories on the basis of an invasion of her privacy, immateriality, and relevancy. How should the court rule? Explain fully.

Wilda's deposition reveals that she was talking on her cell phone when the accident occurred.

12. **What pleading should Mercy and Prime file in order to support a jury question on Wilda's responsibility, if any, for causing the accident? Explain fully.**

Quick Clean was an independent contractor whose job was to clean the hospital cafeteria twice a day. In the ordinary course of its business, Quick Clean kept records of all of its activities. Wilda obtains copies of the business records of Quick Clean and a business records affidavit. Wilda advises the parties that she plans to use them as pre-trial and trial evidence.

13. **Mercy and Prime object on the basis that the "records" are hearsay as to them, although they could be used against Quick Clean. How should the court rule? Explain fully.**

After discovery is complete, Mercy believes that there is no evidence that it is factually or legally liable for the accident and injury to Wilda.

14. **What pleading should Mercy file to bring to the court's attention the issue of no factual or legal basis for Wilda's claims against Mercy? Explain fully.**

During Mercy's investigation of the accident, it discovers a written statement given by Jane (a Prime manager) to the hospital, that she had also slipped on the sign and told the Prime maintenance department that the sign was a problem.

15. Wilda seeks production of Jane’s statement. Prime objects to the production of the statement because: (1) Jane was not authorized to give a statement and therefore it cannot be admissible against Prime; and (2) the statement is privileged because it was given during an internal investigation by Prime. How should the court rule? Explain fully.

The trial court sets the case for trial for the first time with thirty days (30) notice to all counsel.

16. Mercy objects to the trial setting. How should the court rule? Explain fully.

Prime was recently cited by the USDA for food safety violations. The citations, however, were subsequently dismissed.

17. What pleading should Prime file to prevent these matters from being discussed during voir dire or opening statement? Explain fully.

On the first day of trial the weather is terrible, and very few potential jurors show up for jury duty. The trial court tells the lawyers that each side will receive four peremptory strikes in addition to their challenges for cause. Wilda objects to the court’s decision to limit her to four peremptory strikes even though all parties are given the same number of peremptory strikes.

18. Is the trial court authorized to limit the parties to an equal number of peremptory strikes under these circumstances? Explain fully.

At the conclusion of Wilda's case, Mercy files a motion for directed verdict, which the trial court denies. Following the return of the jury verdict, Mercy still believes that there is legally insufficient evidence to support the jury verdict and moves the trial court for a judgment notwithstanding the verdict.

19. Is the trial court authorized to grant the motion for judgment notwithstanding the verdict in spite of the fact that it overruled the motion for directed verdict? Explain fully.

20. Following the entry of a judgment by the trial court finding Mercy liable, Mercy files a motion for new trial. Assuming no other action is taken by any party, and the trial court does not rule on the motion for new trial, when will the judgment become final? 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.