

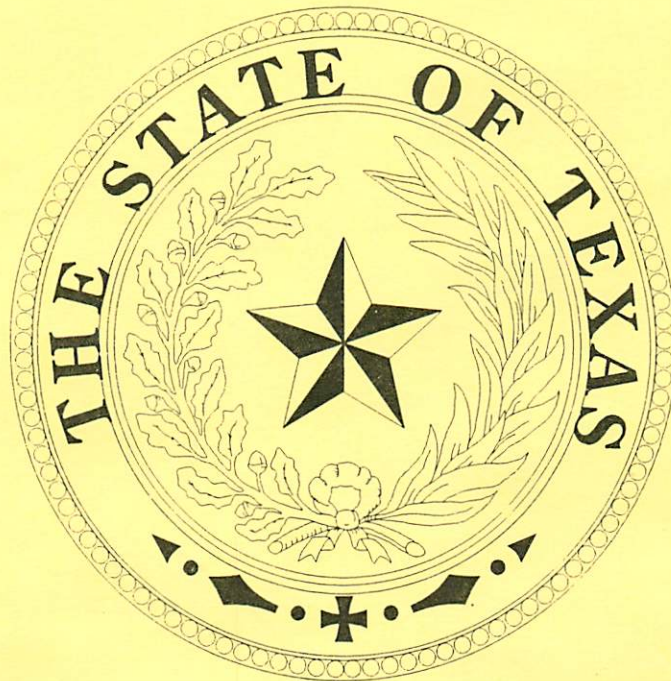
Examinee
Number

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February 2013

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

Dave was talking on his cell phone while shopping in Big Box (Box). He pushed his cart into an eight foot high merchandise rack. The collision with the rack caused a small heater to fall from the top shelf. The heater struck Paula who was also shopping at Box. Paula sustained a serious head injury.

Dave is a resident of Hays County, Texas. Paula resides in Bexar County, Texas. Box is located in Travis County, Texas.

Paula files a civil suit against Dave in Travis County, Texas. Dave files a motion to transfer venue to Hays County, Texas.

- 1. How should the court rule on Dave's motion to transfer venue? Explain your answer.**

Dave is properly served with citation.

- 2. When is Dave's answer due?**

Dave fails to timely file his answer. Paula files a motion for a default judgment and the motion is set for a hearing. The day before the hearing, Dave files his original answer to Paula's suit.

- 3. At the hearing, Paula urges the court to enter a default judgment against Dave. How should the court rule? Explain your answer.**

Dan sues Box as a third party defendant. Dave's pleading regarding the responsibility of Box simply alleges, "Box's negligence was a proximate cause of the occurrence in question and the injury to Paula."

- 4. What pleading should Box file in order to require Dave to state in detail the facts and circumstances upon which Dave relies to support his claim of negligence and causation against Box? Explain your answer.**

- 5. Name five types of discovery authorized by the Texas Rules of Civil Procedure.**

6. Name one type of discovery authorized by the Texas Rules of Civil Procedure that will allow Paula’s attorney to determine if any defendant is covered by liability insurance?

Through duly served discovery, Dave requests that Paula produce a properly executed medical authorization. Paula declines to produce the authorization relying on privacy concerns, but does agree to produce the medical records and bills that resulted from the occurrence in question.

7. Dave files a motion to compel Paula to produce a medical authorization. How should the court rule? Explain your answer.

At the time of the occurrence in question, Box’s store manager recorded and transcribed three statements about the incident, including a statement from Paula. Through authorized discovery, Paula requests a copy of all three statements. Box produces a copy of Paula’s statement, but refuses to produce a copy of the other two transcribed statements claiming the statements are part of its investigation.

8. Paula files a motion to compel production of the two other statements. How should the court rule?

Box contends that at the time Paula gave a statement, she executed a full and final release of all claims against Box regarding the occurrence in question. Paula disputes the “release” and its effectiveness.

9. What pleading should Box file to bring this defense to the attention of the court and jury, and to support the admission of evidence on the release issue? Explain your answer.

Paula serves thirty (30) separate Requests for Production of Documents on Box through its attorney.

Box objects to the Requests for Production for the reason that it is required to respond to only twenty-five separate Requests for Production of Documents.

10. How should the court rule on Box’s objection? Explain your answer.

Paula amends her petition and adds Box as a party defendant and seeks money damages from Box for her personal injuries received as a result of the occurrence in question. Discovery is ongoing and the case is not set for trial.

Box objects to Paula’s amended petition adding Box as a party defendant. Box avers that Paula was required to make Box a party defendant in her original petition and that she has to file a second lawsuit, making her claims for damages against Box in that suit.

11. How should the court rule on Box’s objection? Explain your answer.

One hundred and twenty (120) days before the court’s published “ready for trial” date, Dave requests a jury trial and pays a jury fee. Paula files a motion to strike the jury demand because the discovery and pleading deadlines have passed.

12. How should the court rule on Paula’s motion to strike Dave’s jury demand? Explain your answer.

The case proceeds to trial, and a jury panel is brought to the court for voir dire.

13. How many peremptory challenges are available to each party and can the court prevent Dave and Box from collaborating in making their challenges?

As the trial begins, Paula calls Dave as her first witness. Dave objects, stating that Paula cannot call him as her first witness since she has the burden of proof. Dave contends that Paula must present other evidence to establish a prima facie case, before she can call a defendant as a witness.

14. How should the court rule on Dave’s objection? Explain your answer.

Box's store manager testifies that Dave told him on the day of the occurrence, "I did not see the rack because I was on my cell phone talking to my Mother; that rack was not there last week."

15. Dave objects to the statements as hearsay. How should the court rule? Explain your answer.

Paula intends to prove that Dave is often distracted. She proffers as evidence a certified copy of Dave's driving record which shows that Dave has six class C misdemeanor convictions for traffic violations.

16. Dave objects to the proffer. How should the court rule? Explain your answer.

Prior to trial, the parties attended a mediation conference. At the mediation, Box's store manager tells the Mediator that the rack in question lacked the store's mandated shelf-protection device, which is designed to prevent the very accident that occurred. He also tells the Mediator that Box was responsible for the accident, but disputes the extent and duration of Paula's injuries.

Paula calls the Mediator as a witness at trial to elicit testimony about the manager's prior statement. Box objects to this evidence and line of questioning.

17. How should the court rule? Explain your answer.

At trial, Paula claims she will incur significant future medical expenses. Box proffers a copy of her personal group health insurance policy to show that Paula will not really incur the medical expenses because they will be covered by that policy.

18. Paula objects to the proffer of this evidence. How should the court rule? Explain your answer.

The jury returns a verdict favorable to Paula. Box and its attorney believe that the evidence presented at trial is insufficient to support a judgment against Box.

19. What pleading should Box file to bring this issue to the attention of the trial court? Explain your answer.

The trial court enters a judgment for Paula. Box files a motion for new trial.

20. **If no other action is taken by any party or the trial court, when will the judgment become final? Explain your answer.**

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