

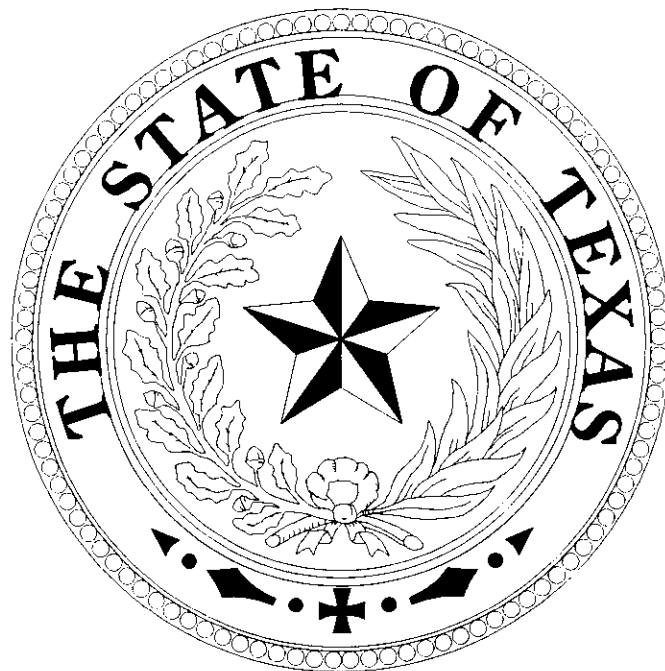
Examinee
Number

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July 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

Pat was driving in Wichita Falls, Wichita County, Texas. Doug, an employee of Oklahoma Well Servicing Company (OWSC), was unable to stop at a red light and collided with Pat, who had the green light. Doug was on his way to ABC Garage (ABC) to have ABC adjust his brakes because the brakes had not been working properly since ABC repaired them several days before. There were no personal injuries, but Pat's work trailer, containing his environmental testing equipment, was completely destroyed. The loss in market value of the equipment was \$300,000.00.

Pat resides in Cottle County, Texas. Doug resides in Lawton, Oklahoma. OWSC is an Oklahoma corporation with its principal place of business in Lawton, Oklahoma. OWSC has no place of business in Texas and has no agent for service of process in Texas. ABC is a sole proprietorship with its principal place of business in Wichita County, Texas.

Pat files an original petition in Cottle County, Texas, suing Doug, OWSC and ABC.

- 1. How can Pat obtain service of process on OWSC that will comply with the appropriate principles of due process? Explain your answer.**

OWSC objects to being sued in Texas.

- 2. What pleading should OWSC file to raise this objection in the trial court, and when should it be filed? Explain your answer.**

ABC objects to being sued in Cottle County, Texas.

- 3. What pleading should ABC file to raise this objection in the trial court, and when should it be filed? Explain your answer.**

- 4. Identify the county or counties of proper venue under the facts? Explain your answer.**

After a hearing on the motion to transfer the lawsuit to another county, ABC is very disappointed that the trial court did not transfer the case to another county. ABC wants to appeal the trial court's decision.

- 5. What, if any, appellate review is available to ABC concerning the trial court's decision? Explain your answer.**

6. What is the effect, if any, of an erroneous ruling by the trial court on the issue of transferring a lawsuit to another county?

In his original petition, Pat alleges in broad terms that the defendants breached a contract, breached their fiduciary duties to Pat, violated the DTPA, and committed fraud, proximately causing damages to Pat. The defendants are confounded by these allegations and file original answers denying generally all of the plaintiff's allegations and claims.

7. What pleading should the defendants file in order to require Pat to plead specifically those facts that support his alleged causes of action pleaded in his original petition? Explain your answer.

After the accident, Pat went to ABC and demanded it do repair work on another vehicle owned by Pat. ABC performed the requested repairs. ABC believes that its post-accident work for Pat constituted an accord and satisfaction.

8. What pleading should ABC file in order to bring this issue to the attention of the trial court and support a jury question on that issue? Explain your answer.

Pat's lawyer had earlier taken a statement from the investigating police officer and an independent witness. Doug serves Requests for Disclosure on Pat, specifically requesting any statements. Pat objects to the Requests for Disclosure regarding statements because they were taken by his lawyer. Pat claims the statements are protected by the investigatory privilege and the work product privilege. Doug requests a hearing on the objections.

9. How should the trial court rule on Pat's objections to the Requests for Disclosure? Explain your answer.

ABC's attorney writes a letter to all counsel stating that ABC is not covered by any policy of insurance and that if Pat wins, ABC will declare bankruptcy.

10. What discovery tools, authorized by the Texas Rules of Civil Procedure, can Pat use to determine if ABC has liability insurance?

In Interrogatories to Pat, OWSC asks Pat to identify his trial witnesses. Pat objects to the interrogatory on the basis of the attorney work product privilege.

11. How should the trial court rule on Pat's objection? Explain your answer.

Pat serves 35 Interrogatories and 30 Requests for Admissions on ABC. ABC objects to these discovery requests because the number of Interrogatories and Requests for Admissions served is in violation of the Texas Rules of Civil Procedure.

12. How should the trial court rule on ABC's objections? Explain your answer.

The lawsuit is transferred to Wichita County, Texas. The parties file notices and cross-notices for party depositions. Pat notices the depositions for Cottle County. Doug, OWSC and ABC notice the depositions for Wichita County. All parties timely file motions to quash the depositions and the notices of the other parties.

13. In what county should the trial court order the depositions to be taken? Explain your answer.

Doug and OWSC file a motion to add the Texas Department of Transportation as a Responsible Third Party. Pat objects to the motion because no personal injuries are claimed in the case, only property damage. Pat contends that Responsible Third Parties can only be added to cases involving personal injuries.

14. How should the trial court rule on Pat's objection? Explain your answer.

Pursuant to the trial court's scheduling order, the discovery deadline has passed. ABC believes there is no evidence to support a jury question on its negligence or proximate cause for the accident in question.

15. What pleading should ABC file to bring this matter to the attention of the trial court? Explain your answer.

The lawsuit proceeds to trial. In voir dire, a potential juror says, "I generally don't like anybody or any company from Oklahoma, but I could be fair to all parties."

16. What steps should the attorneys for Doug and OWSC take to challenge this potential juror?

As the trial begins, Pat offers the deposition testimony of the investigating police officer as his first witness. ABC objects because: (1) there is no showing that the officer is unavailable; and (2) Pat is required to testify as his first witness to lay the proper predicate for the other evidence he plans to offer.

17. How should the trial court rule on ABC's objections to this offer of evidence? Explain your answer.

In his deposition, the investigating police officer testified that he conducted a follow up investigation. He further explained that he interviewed the president of OWSC and that OWSC's president stated that he thought that ABC's employees were not adequately trained and that he had heard that this was not the first problem ABC had encountered. At trial, after this testimony is presented, ABC's lawyer objects to the question and the answer.

18. What is the proper objection and how should the trial court rule on the objection? Explain your answer.

After five days of trial, the trial court prepared the Court's Charge with instructions and several jury questions. The trial court made twelve copies of the Court's Charge and had the bailiff give one to each juror. The trial court decided not to read the Court's Charge to the jury since they all had copies of it. The Judge told the parties they had 25 minutes per side for their closing argument and called on Pat for his argument. Doug and OWSC objected that the trial court must read the Court's Charge aloud to the jury and that the jury could not have copies of the Court's Charge during final argument.

19. How should the trial court rule on the objections of Doug and OWSC? Explain your answer.

After the jury returns a verdict for all three defendants and against Pat, a take-nothing judgment is entered. Pat files a timely motion for new trial based on jury misconduct. At a hearing on the motion regarding jury misconduct, a juror testified that during deliberations another juror said, "I don't care what you think the evidence shows, this guy is suing because he is broke and wants these defendants to bail him out and I think he is entitled to zero."

20. Assuming this is the only evidence presented at the hearing on the motion for new trial based on jury misconduct, how should the trial court rule on the motion for new trial? Explain your answer.

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.