

Examinee
Number

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July 2014

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

Dan parked his tractor-trailer rig perpendicular to Highway 100 in Tarrant County, Texas, in order to open his back doors and unload the trailer. Ted and his co-worker Pat were in a car traveling north on the same road. As it came around a curve, Ted's vehicle collided with Dan's trailer. Ted was able to get out of his car, but Pat was severely injured and trapped inside.

Mark was also traveling on Highway 100 and his vehicle struck the back end of Ted's car minutes after the initial collision. Pat sustained additional injuries in the second collision and was taken to a nearby hospital. He died two days later.

Pat's widow, Mary, has retained an attorney to prosecute a civil suit for compensatory damages against all responsible parties.

Mary files suit against Dan and Mark.

1. What procedural steps must be taken to initiate a civil suit against Dan and Mark?

Dan is a citizen of Oklahoma and a resident of Lawton, Oklahoma.

2. What action must be taken to ensure that Dan is served properly, affording him appropriate due process notice of the Texas civil suit?

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Mary is a resident of Parker County, Texas, and her lawyer files the lawsuit there. Mark is a resident of Dallas County, Texas.

3. What pleading must Mark file to formally object to the lawsuit being prosecuted in Parker County, and when must it be filed?

Because he is a citizen of Oklahoma, Dan wants to challenge the filing of the suit in Texas.

4. What pleading must Dan file to object to being sued in Texas, and when must it be filed?

5. If venue is appropriately contested, what are the counties of proper venue for Mary's lawsuit?

Dan and Mark believe that the applicable statute of limitations has expired with regard to Mary's lawsuit.

6. What must Dan and Mark file to properly raise the statute of limitations issue, and when must it be filed?

Two months after the first lawsuit was filed, Mary files a second civil suit in Dallas County, Texas against Mark.

7. What pleading must Mark file to keep the second suit from proceeding?

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

Dan's attorney tells Mary's attorney that Dan may, or may not, have liability insurance that could provide coverage for the accident.

9. What types of discovery are available to Mary to determine whether Dan has insurance and the extent of his policy limits?

Mark's insurance carrier recorded Mark describing what he witnessed during the accident. Mary sends Mark a request for production seeking a copy of the recording. Mark refuses to produce the recording asserting the work-product privilege.

10. Can Mark successfully assert the work-product privilege? Explain your answer.

Following the filing of the lawsuit, Dan's attorney interviewed several people who saw the collision and its aftermath. Dan's attorney took notes during those interviews. Mary sent Dan discovery requests seeking: 1) the names and addresses of the witnesses interviewed; and 2) a copy of the notes created by Dan's attorney. Dan asserts the work-product privilege in response to both requests.

11. Can Dan successfully assert the work-product privilege as to each request? Explain your answer.

Mark files a motion for summary judgment asserting that the statute of limitations had expired before Mary filed suit. Mary fails to file a response to the motion for summary judgment. The Trial Court denies Mark's motion for summary judgment without conducting an oral hearing.

12. Can Mark file an interlocutory appeal of the Court's decision? Explain your answer.

Dan retains an expert witness ("Expert") who drafts a report. Expert's report is provided to all parties, and Expert is deposed by all parties. Shortly after the discovery deadline, Dan realizes he has not officially designated Expert and files a supplemental discovery response designating him as an expert witness. Mary objects to the late designation of Expert because Dan's supplemental response failed to state a reason for the delay.

13. How should the Court rule on Mary's objection? Explain your answer.

Mary serves discovery requests on Dan and Mark seeking the identity of their trial witnesses. Dan and Mark object to disclosing their trial witnesses.

14. How should the Court rule on defendants' objections? Explain your answer.

In 2010, Dan was indicted for domestic violence. The indictment was eventually dismissed, and no further action was taken by the district attorney. Dan files a motion in limine requesting that the Court order the other parties to refrain from discussing the dismissed indictment in front of the jury. The motion is granted. Mary's attorney believes the evidence is admissible and wants to question Dan about it during cross examination.

15. What must Mary's attorney do to preserve error regarding the Court's ruling on Dan's motion in limine?

Mary's attorney calls a witness who is an expert on accident reconstruction to testify that the accident was caused by Dan's negligence. Dan objects to the witness's testimony on the grounds that the expert's opinion is on an ultimate issue to be determined by the jury.

16. How should the Court rule on Dan's objection? Explain your answer.

Mark's attorney attempts to question one of his witnesses about several photographs of the accident scene taken by one of the investigating police officers. The photographs were produced by Mary in response to written discovery. Mary objects on the basis that the photographs have not been properly authenticated.

17. How should the Court rule on Mary's objection? Explain your answer.

Dan seeks to introduce into evidence Pat's group health insurance policy in effect at the time of the accident to establish that Pat's medical bills were actually paid by the insurance company, and not by Pat's estate. Mary objects to the introduction into evidence of Pat's group health insurance coverage.

18. How should the Court rule on Mary's objection? Explain your answer.

After several hours of deliberations, the presiding juror sent a note to the Court stating that the jury could not reach a unanimous verdict, but that nine of the twelve jurors agreed to all of the jury questions presented to them.

19. Is the Trial Court authorized to accept a verdict of nine jurors if all nine jurors agree on the answers to all the questions presented to them? Explain your answer.

The jury returns a verdict in Mary's favor. Mark believes there is no evidence to support the verdict.

20. What should Mark file in order to present this issue to the Trial Court for consideration?

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.