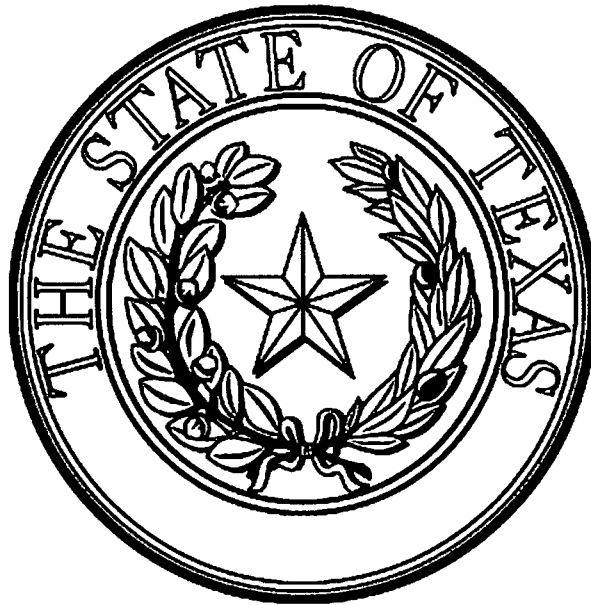


**Examinee  
Number**

July 2015

# 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

**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 and Linda were driving to New Mexico for a vacation, when an 18-wheeler truck crossed into their lane of traffic and collided head-on with their vehicle. The accident occurred in Muleshoe, Bailey County, Texas, just south of the Texas-New Mexico border. The truck was owned by Mega Mart, a Delaware corporation with stores in Texas, and was being driven by George, a resident of Dallas County, Texas. Paul suffered some cuts and bruises, but Linda was seriously injured and died.

Paul filed a wrongful death lawsuit in district court in Bailey County against Mega Mart and George and properly served each of them with the lawsuit.

**1. When must Mega Mart and George file their answers to avoid the entry of a default judgment against them?**

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Mega Mart wants to remove the case to federal court on the basis of diversity of citizenship, since it is a Delaware corporation.

**2. Does Mega Mart have a valid basis for removing the case to federal court based on diversity of citizenship? Explain your answer.**

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**Examinee Number:** \_\_\_\_\_

George does not want the case to proceed against him in Bailey County because he does not live there.

**3. What pleading must George file to present his objection to the case proceeding against him in Bailey County, and when must he file the pleading? Explain your answer.**

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Assume George properly files his objection to the case proceeding against him in Bailey County.

**4. How should Paul respond to George's pleading, and how should the Court rule? Explain your answer.**

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Paul's original petition is very broad and makes only general allegations of negligence against Mega Mart and George.

**5. What pleading should Mega Mart and George file to require Paul to replead his case with more definite and specific factual allegations, and what is the effect of failing to file such a pleading? Explain your answer.**

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Paul's original petition contained requests for disclosure to the defendants.

**6. Name 5 categories of information or documents that Paul may request from the defendants in requests for disclosure.**

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In response to Paul's requests for disclosure, Mega Mart objects to a request for its insurance coverage on the basis that it is a multi-billion dollar corporation with sufficient assets to cover any verdict, and its insurance coverage is irrelevant.

**7. What action should Paul take to bring Mega Mart's objection to the Court's attention, and how should the Court rule? Explain your answer.**

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Mega Mart serves Paul with a request for documents that Paul believes calls for the production of privileged material.

**8. How can Paul preserve the privilege? Explain your answer.**

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A few weeks after the accident, Mega Mart's attorneys took a recorded statement from George. Paul sends a request for production to Mega Mart to obtain a copy of the statement. Mega Mart objects on the basis of the attorney work-product privilege and argues that Paul can get the same information by taking George's deposition.

**9. How should the court rule on Mega Mart's objection? Explain your answer.**

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Paul notices the deposition of Mega Mart's president. Mega Mart does not want to produce its president for deposition because he does not know anything about the accident.

**10. What pleading should Mega Mart file to resist the deposition of its president? Explain your answer.**

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Paul retains and designates an expert witness to review the facts of the accident and to testify at trial. The expert does not prepare a written report. Mega Mart and George want to know the expert's opinions.

**11. How can the defendants obtain information about the opinions of Paul's expert? Explain your answer.**

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Paul sends George a request for admission asking George to admit that he fell asleep immediately before the collision with Paul and Linda. Thirty-five days after the request was served, George serves Paul with a response denying the request for admission.

**12. What is the effect of George's response and what must George do if he wants to change that effect? Explain your answer.**

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During Paul's deposition, his attorney wants to object to questions being asked by opposing counsel. Mega Mart and George's attorneys want to object to some of Paul's answers.

**13. What objections may be made to questions asked during Paul's deposition and what objections may be made to Paul's testimony during the deposition? Explain your answer.**

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During discovery, Paul learns that Mega Mart changed its policies and procedures after the accident to mandate more rest between shifts for their truck drivers to avoid excessive fatigue. Paul plans to offer this fact at trial as evidence that Mega Mart knew George was driving with insufficient rest at the time of the accident.

Mega Mart believes that the evidence is not admissible and is prejudicial.

**14. What pleading should Mega Mart file to bring this matter to the Court's attention and keep the evidence from being presented to the jury, and how should the Court rule? Explain your answer.**

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The case proceeds to trial. Prior to jury selection, George wants to keep Paul from disclosing to the jury panel that he was convicted of driving while intoxicated 10 years before the accident.

**15. How can George keep this information from the jury panel, and what must he show to accomplish that? Explain your answer.**

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During voir dire a prospective juror says, "Last year I was nearly run off the road by a Mega Mart truck. It made me very angry, but I think I can be fair."

**16. What procedural steps should Mega Mart take to challenge the potential juror? Explain your answer.**

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At trial, Paul calls George as his first witness. George and Mega Mart object, asserting that Paul should testify first and lay a foundation for his claims against them before any defendant is required to testify.

**17. How should the Court rule on George and Mega Mart's objection? Explain fully.**

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While on the witness stand, a state trooper who was called to the scene of the accident testifies that he spoke to George there. The trooper described George as appearing shaky and extremely upset. Paul asks the trooper to tell the jury what George said about the cause of the collision. George objects on the basis of hearsay.

**18. How should the court rule on George's objection? Explain your answer.**

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After jury deliberations are underway, a disagreement develops among the jurors about the specifics of some of George's trial testimony.

**19. What can the Court do to help resolve the jurors' disagreement about George's testimony? Explain your answer.**

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At the end of the trial, the jury returns a verdict for Paul and awards him damages. Mega Mart and George believe that the amount of damages awarded to Paul is not supported by the evidence.

**20. What pleading should Mega Mart and George file to challenge the jury's damage award?**

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**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.**