

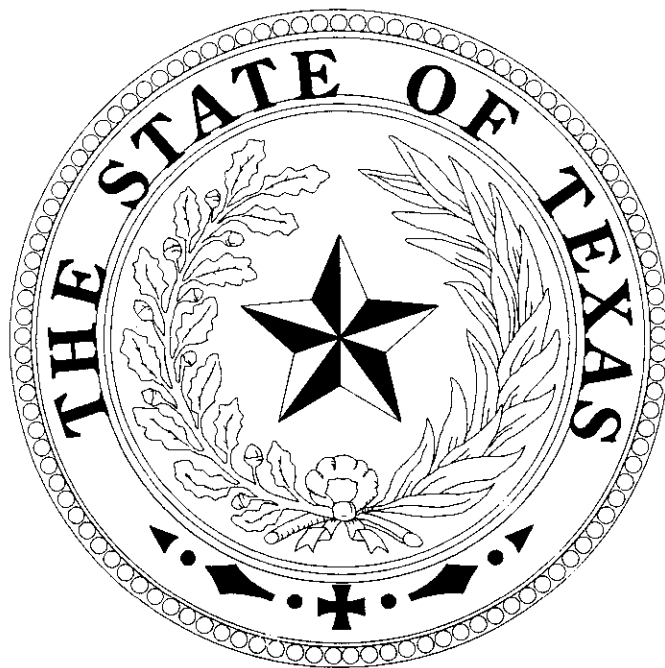
Examinee
Number

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February 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

Doug sold watches from a kiosk pursuant to a rental agreement with Big Mall. Under the agreement, Doug had an assigned location in the mall and Big Mall provided an electrical outlet for Doug's kiosk.

Paula and her son were leaving the mall after shopping at The Jeans Store. Paula tripped over an extension cord connecting Doug's kiosk to the electrical outlet, fell to the floor, and suffered a shoulder injury.

Paula resides in Blanco County, Texas. The mall itself is located in Travis County, Texas. Big Mall's principal place of business is also in Travis County, Texas. Doug is a sole proprietor and resides in Hays County, Texas. Paula filed a suit for damages against Big Mall and Doug in Blanco County, Texas.

- 1. In order to avoid a default judgment, what pleading must Big Mall and Doug file, and when must the pleading be filed?**

- 2. What are the counties of proper venue under the facts?**

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3. **If a change of venue motion is filed and the trial court conducts a hearing on the motion, what is the effect on a final judgment, if any, of an erroneous venue ruling by the trial court?**

Paula's Original Petition alleges that Big Mall and Doug were "negligent and that their acts or omissions" were a cause of Paula's injuries.

4. **What pleading should Big Mall and Doug file to require Paula to plead the specific facts she relies upon to support her negligence cause of action?**

Soon after her fall, Paula signed several documents for Big Mall and received \$1,000 from Big Mall. Big Mall contends that the documents signed by Paula constitute a release of all claims.

5. **What pleading, if any, should Big Mall file to bring this release issue to the attention of the trial court and jury?**

Big Mall serves a Request for Disclosures on Paula. Paula objects to the requests. She argues that the requests seek “statements” she and her attorney have in their possession that were taken after the accident and that these are protected by the investigatory and work product privileges.

6. How should the Court rule on Paula’s objection? Explain your answer.

Doug serves a Request for Admissions on Paula. Paula’s attorney contracts a serious but temporary illness which prevents him from responding to the Request for Admissions within 30 days. When the attorney returns to work, he discovers the Request for Admissions and tells Paula they are now deemed admitted.

7. What pleading, if any, should Paula’s attorney file in order to avoid the consequences of his failure to timely answer the Request for Admissions? Explain your answer.

Paula submits an Interrogatory and a Request for Production to Doug seeking the names and addresses of his trial witnesses. Doug objects to the Interrogatory and the Request for Production on the grounds that the identity of each trial witness is protected by the work product privilege and that he has already produced a list of persons with knowledge of relevant facts.

8. How should the Court rule on Doug’s objections to the Interrogatory and Request for Production?

Paula’s Original Petition fails to state an amount of economic damages for which she is suing. At a hearing before the Court, Paula’s attorney tells the Court that Paula will be seeking “over \$300,000 in lost earnings.” This amount is more than the amount of insurance Doug has available.

9. What pleadings or documents, if any, should Doug’s attorney file to require Paula and her attorney to specifically plead the maximum amount of economic damages she is seeking in her suit and the basis for such claim? Explain your answer.

Big Mall serves a notice to take the deposition of Paula’s son concerning the incident. Paula objects, asserting a parent-child privilege.

10. How should the Court rule on Paula’s objection to the taking of her son’s deposition? Explain your answer.

Doug serves an Interrogatory on Paula inquiring if she has health insurance and, if so, who the insurance carrier is. Paula objects on the grounds that her health insurance is protected from discovery by the collateral source rule.

11. How should the Court rule on Paula's objection? Explain your answer.

Evidence is developed that another Big Mall customer, Jane, accidentally pushed Paula down while talking on her cell phone. Big Mall files a motion to add Jane as a Responsible Third Party. Paula objects to the addition of Jane as a Responsible Third Party because Jane is insolvent and has no insurance.

12. How should the Court rule on Paula's motion to strike the adding of Jane to the case as a Responsible Third Party? Explain your answer.

Doug serves a Request for Disclosures on Paula and requests a medical authorization. Paula produces the medical bills and medical records related to her fall at the mall, but objects and declines to produce a medical authorization, citing privacy concerns and a lack of showing of relevance.

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

Discovery is complete. Big Mall contends that there is no evidence of any liability or causation on its part. Big Mall contends that all of the evidence shows that the incident was the fault of Paula, or Doug.

14. What pleading should Big Mall file to bring this issue to the attention of the Court? Explain your answer.

Five years ago, Doug was falsely accused of child abuse and indicted. The indictment was dismissed.

15. What pleading should Doug file to avoid this matter being disclosed at trial? Explain your answer.

A former representative of Big Mall testified by way of deposition with all parties present. He testified that Big Mall designated the location of Doug's kiosk and knew that Doug's electrical extension cord would cross a customer walkway. Paula plans to offer the deposition testimony at trial to show Big Mall's prior knowledge of an unreasonably dangerous condition. Big Mall objects because the witness is available to testify as a live witness, and is within subpoena range.

16. How should the Court rule on the objection to exclude the deposition testimony? Explain your answer.

A prospective juror states that he fell at the mall once, and Big Mall did nothing to help him with his resulting medical bills. He says he could be fair to all sides, but he thinks Paula is entitled to something for her injuries.

17. What actions may Big Mall take to keep this juror from serving on the jury and preserve error for appeal? Explain your answer.

Doug's wife is deposed with all parties present. Doug calls his wife as a witness at trial. Paula objects because Doug's wife has not been disclosed as a person with knowledge of relevant facts.

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

The pleadings reflect that: (1) Paula alleges Doug and Big Mall are jointly and severally liable; (2) Big Mall alleges that Doug was solely responsible for Paula's fall; and (3) Doug alleges Big Mall told him to use the extension cord. Nevertheless, Doug and Big Mall plan to collaborate in making their peremptory challenges.

19. (a) How many peremptory challenges should be granted to each of the parties? (b) In jury selection, can the Court prevent Doug and Big Mall from collaborating?

The jury returns its verdict. Two of the ten jury questions are not answered. Big Mall moves for a mistrial, asserting that the trial court has no option but to declare a mistrial.

20. How should the Court rule? 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.

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