

Examinee
Number

Exam
Date FEBRUARY 2010

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

Trey slipped, fell and injured himself while he was shopping at the Home Grocery Store (“Home”) at its only location in Collin County. Trey’s fall was caused by water on the floor which came from the ice machine. The machine was owned and maintained by Ice Products (“Ice”), whose principal place of business is in Parker County. Trey filed a suit for damages in district court in Dallas County, his county of residence, alleging that Home and Ice were jointly and severally negligent and that their negligence proximately caused his injuries.

- 1. After Trey files his lawsuit, what documents must be served upon the defendants in order to compel them to file an answer? Explain fully.**

- 2. What pleading should Home file to contest the filing of the suit in Dallas County and when should the pleading be filed? Explain fully.**

3. **If the court decides to grant relief to Home regarding the county of suit, what county or counties constitute a proper location for the suit and why? Explain fully.**

Ice alleges that the district court has no jurisdiction over the parties and subject matter of the suit. Ice moves the court to dismiss the case for lack of jurisdiction.

4. **How should the court rule? Explain fully.**

Trey's original petition is very broad and makes general allegations of negligence against both defendants.

5. **What pleading should the defendants file to require the plaintiff to re-plead his case with more definite and specific factual allegations? Explain fully.**

Home is actually a Texas corporation and not a sole proprietorship as pleaded by Trey.

6. **How should Home give notice to the parties and the court that it is a corporation and intends to seek the protection of that status for its shareholders? Explain fully.**

Ice believes that Trey's suit against Ice is barred by the statute of limitations. Ice does not want to disclose this defense for strategic reasons.

7. **Must Ice raise this issue before the case goes to trial and if so, how should Ice assert the defense of limitations? Explain fully.**

Trey and his attorney want to know if Home and Ice have liability insurance to cover any of the claims brought in this suit. Ice's attorney informally tells Trey's attorney that Ice has no insurance. Home's attorney makes no reply about insurance coverage.

8. **What document can Trey serve to determine whether either defendant is covered by insurance? Explain fully.**

By way of interrogatories, Home inquires of Trey whether he has sustained other accidental personal injuries, before or after the incident made the basis of the lawsuit. Trey objects to the interrogatory as being irrelevant. Home sets the objection for hearing.

9. How should the court rule? Explain fully.

Following Trey's fall, Home requests that Ice move the ice machine to an area of the store where there is less customer traffic. Trey plans to offer this fact into evidence to prove knowledge of a dangerous condition. Home and Ice believe that the evidence is not admissible and is prejudicial.

10. What document should Home and Ice file to bring this matter to the attention of the court and to keep this matter from being presented to the jury? Explain fully.

11. Should Trey's counsel attempt to offer the fact of the post-accident re-location of the ice machine into evidence, what substantive objection should Home and Ice make regarding this evidence? Explain fully.

In his first amended original petition, Trey alleges direct acts of negligence and alleges claims of negligent hiring, staffing, and supervision against Ice due to its high employee turnover rate. Discovery is complete and Trey has produced no evidence to support the negligent hiring, staffing, or supervision claims. Ice fears this pleading will be prejudicial to its defense.

12. What pleading should Ice file to attack these allegations of negligent hiring, staffing, and supervision, so as to remove them from the court's and jury's consideration? Explain fully.

Trey requested a jury trial and paid a jury fee. Home and Ice requested a jury trial. Trey filed a motion to remove the case from the jury docket and place it on the non-jury docket. Home and Ice object to the motion.

13. How should the court rule? Explain fully.

The parties attended a mediation conference. The mediation failed. During the mediation, an Ice representative disclosed that the machine in question was old and needed repair. Trey subpoenas the mediator to testify about the disclosure at trial. The mediator files a motion to quash the subpoena.

14. How should the court rule? Explain fully.

On the second day of trial, one of the jurors is seriously injured and can no longer serve as a juror. There are no alternate jurors. Home asks the court for a mistrial. Trey opposes the motion for mistrial.

15. How should the court rule? Explain fully.

Trey discovers that prior to his fall, Ice had been to Home's store on four occasions to repair leaks in the machine in question. Prior to Trey's fall, an Ice employee told Home to obtain rubber mats to protect customers. Trey offers these facts into evidence. Home objects on the basis that the witness is not its employee, that Home denies the conversation, and that the alleged statements are not binding on Home.

16. How should the court rule? Explain fully.

In a video deposition, a Home employee testifies that he saw Trey spill a soda, step in the soda he spilled, and fall. At trial, Home offers video clips of this deposition testimony. Trey's attorney objects to the video clips because Home has not shown that the witness is dead or is otherwise unavailable to testify in person.

17. How should the court rule? Explain fully.

Ice calls Trey's wife as an adverse witness. Out of the presence of the jury, Ice's lawyer tells the court that he intends to ask the witness if Trey told her that he fell because he slipped in the soda. Trey objects to this line of questioning.

18. How should the court rule? Explain fully.

During trial, the court refuses to admit into evidence Trey's unauthenticated medical bills and wage statements. Trey then offers his own sworn answers to interrogatories to authenticate and prove his medical expenses and lost wages. Home objects to this evidence.

19. How should the court rule? Explain fully.

After the trial court signs a judgment in favor of Trey, Home and Ice file a motion for new trial based upon jury misconduct. They attach an affidavit of one of the jurors. In that affidavit that juror swears: "The presiding juror was rude and hateful to the other jurors. The presiding juror told the other jurors that all the defendants' witnesses were liars, and the presiding juror said the jury needed to award the plaintiff a substantial sum of money because he was badly injured." The affiant testifies to these facts at the jury misconduct hearing. No other evidence is offered to support the motion.

20. How should the court rule? Explain fully.

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.