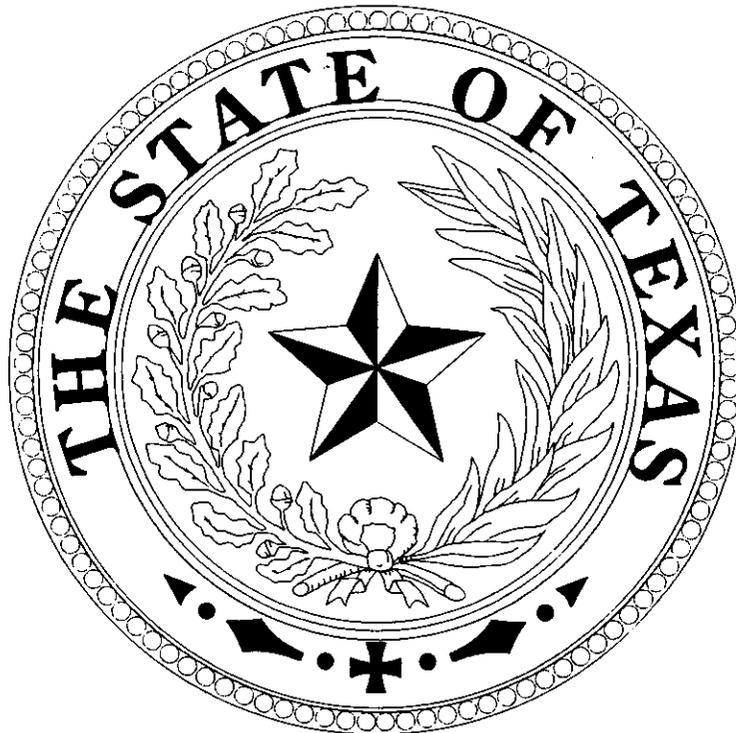


Examinee
Number

Exam
Date FEBRUARY 2008

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

Santiago resides in Jim Wells County, Texas, where he works as a door-to-door salesman for Appliances, Inc., ("Appliances"), a Texas corporation with its principal place of business in Bexar County, Texas. Appliances is in the business of selling vacuum cleaners. The written contract between Santiago and Appliances provides that Santiago would receive a fixed monthly salary, plus a 15% commission whenever gross sales exceeded a certain amount. The contract was negotiated and signed in Jim Wells County, Texas. Six months later, Appliances refused to pay Santiago the commissions that he claimed were due him under the contract. Santiago hires an attorney, who files a lawsuit ("Lawsuit") against Appliances in Jim Wells County, seeking damages for breach of contract.

- 1. What steps must Santiago's attorney take to provide Appliances with formal notice of the filing of the Lawsuit? Explain fully.**

- 2. Assume Appliances receives proper notice regarding the filing of the Lawsuit. What must Appliances do to avoid the entry of a default judgment against it? Explain fully.**

DO NOT CONTINUE YOUR ANSWER IN THIS SPACE.

3. Appliances believes that the Lawsuit filed by Santiago should proceed in Bexar County, not Jim Wells County. How and when must Appliances raise the issue with the Court? Explain fully.

4. Assume Appliances timely raises the issue as to where the Lawsuit should proceed. How should Santiago respond? How should the Court rule on the issue? Explain fully.

5. After reading Santiago's Lawsuit and reviewing its own records, Appliances believes that it overpaid Santiago under the contract in question and that it is entitled to be reimbursed for the overpayments. Should Appliances raise that issue in its response to the Lawsuit? If so, how and when does Appliances raise the issue? Explain fully.

DO NOT CONTINUE YOUR ANSWER IN THIS SPACE.

6. After receiving notice of the Lawsuit, but before filing its response to the Lawsuit, Appliances files its own action against Santiago in Bexar County regarding the dispute. If Santiago wants to avoid having to proceed with the dispute in Bexar County at the same time as the Jim Wells County Lawsuit, how does he raise the issue in the Bexar County action? How should the Bexar County judge rule on the issue? Explain fully.

7. Assume discovery proceeds in the Jim Wells County Lawsuit. Identify five forms of discovery permissible under the Texas Rules of Civil Procedure.

8. Santiago's attorney sends Appliances a request for production asking for "copies of all contracts between Appliances and other salesmen and of all documents showing how much each salesman has been paid in commissions." How and when should Appliances respond to the request? Explain fully.

DO NOT CONTINUE YOUR ANSWER IN THIS SPACE.

9. Santiago's attorney is not satisfied with Appliances' response to the request for production. How can she raise the issue with the Court? Explain fully.

10. As the deadline for amendment of pleadings approaches, Appliances' counsel realizes that Santiago's petition does not set out the amount of damages Santiago seeks in the Lawsuit. How can Appliances' attorney raise the issue with the Court and how should the Court rule? Explain fully.

11. After the completion of discovery, Santiago files a Motion for Summary Judgment. The Motion is supported only by his affidavit, which concludes with the statement that "the facts contained herein are true and correct, based on information and belief." How and when should Appliances respond to the Motion for Summary Judgment and to Santiago's affidavit attached to the Motion? Explain fully.

DO NOT CONTINUE YOUR ANSWER IN THIS SPACE.

12. Assume the case proceeds to trial. The jury panel included individuals from different racial and ethnic backgrounds. After the parties submitted their respective jury strikes, Santiago's attorney noticed that Appliances' attorney had stricken only Hispanics on the jury panel. Can Santiago's attorney challenge Appliances' jury strikes? If so, on what basis and when must she make the challenge? How should Appliances' attorney respond to the challenge? Explain fully.

13. While Santiago was working for Appliances, he went through a difficult divorce which included a child custody dispute with his former wife. Santiago's attorney suspects that Appliances' attorney intends to refer to the divorce during opening statement or during the trial. How and on what grounds can Santiago's attorney keep Appliances' attorney from referring to the divorce proceedings in front of the jury? Explain fully.

DO NOT CONTINUE YOUR ANSWER IN THIS SPACE.

14. While Santiago is on the stand testifying, his attorney asks him the following question on direct examination:

“Isn’t it true that your friend Alberto once told you that he had heard that Appliances is known for treating its salesmen unfairly?”

What objection(s) should Appliances’ attorney make and how should the Court rule on the objection(s)? Explain fully.

15. While Appliances’ corporate representative is on the stand testifying, Santiago’s attorney asks him the following question on cross-examination:

“Isn’t it true that Appliances routinely disputes the amount of commissions it pays its salesmen six months after a salesman is hired?”

Appliances’ attorney objects to the question on relevancy grounds. How should Santiago’s attorney respond and how should the Court rule? Explain fully.

DO NOT CONTINUE YOUR ANSWER IN THIS SPACE.

16. Prior to trial, Santiago's ex-wife told Appliances' investigator that Santiago had told her in a conversation while they were married that Appliances did not owe him any additional commissions, but that he was still going to demand payment of additional commissions. During the trial, Appliances calls the ex-wife as a witness, seeking to elicit testimony about her conversation with Santiago. What grounds, if any, does Santiago's attorney have to object to the testimony? How should Appliances' attorney respond? How should the Court rule? Explain fully.

17. Prior to trial, Santiago and Appliances, along with their attorneys, participated in a court-ordered mediation, during which the mediator told Santiago that, in his opinion, Santiago's claim for the commissions had no merit. During the trial, Appliances' attorney calls the mediator to testify about what the mediator said during the mediation. What basis, if any, does Santiago's attorney have to object to any testimony from the mediator? How should the Court rule? Explain fully.

DO NOT CONTINUE YOUR ANSWER IN THIS SPACE.

18. At the conclusion of the evidence, the judge gives the attorneys the instructions and questions that he intends to submit to the jury. Santiago's attorney believes that a number of the instructions and questions are objectionable. How and when should she present her objections to the Court? Explain fully.

19. After final arguments, the jury begins its deliberations. Two hours later, the jury sends a note to the Court stating that they are hopelessly deadlocked and want to go home. How should the Court respond to the note? Explain fully.

20. After resuming deliberations, the jury sends a note to the Court stating that it has reached a verdict. The jury comes back into the courtroom, at which time the Court reviews the verdict and notices that the jury has not answered all of the questions submitted to it by the Court. What should the Court do? 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.**