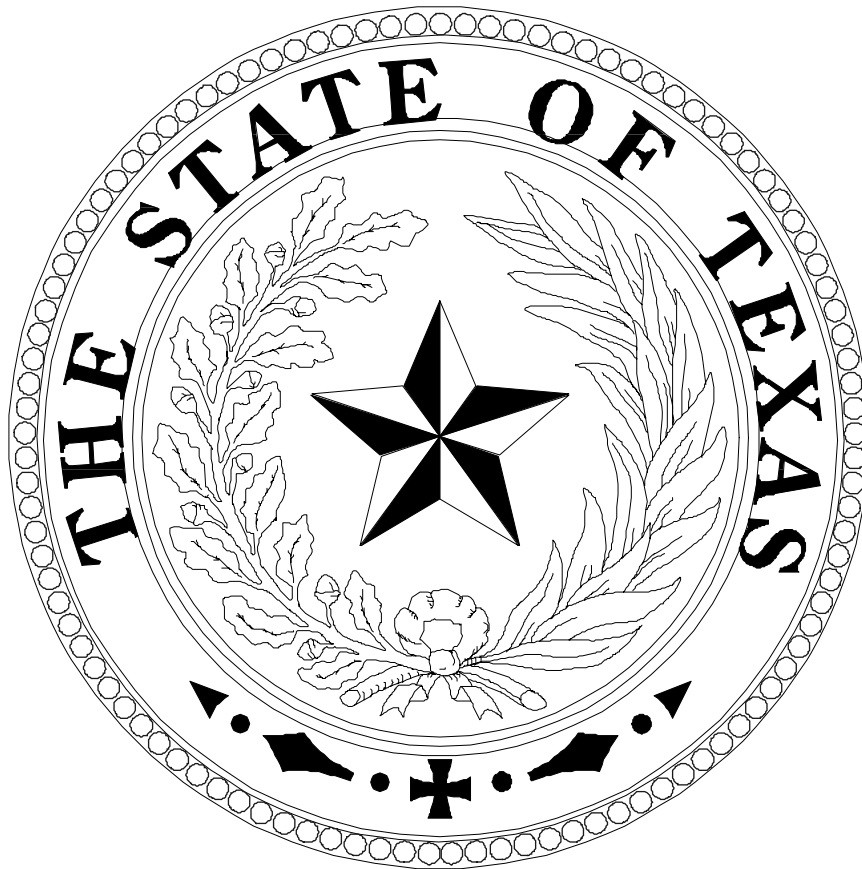


Examinee
Number

Exam
Date JULY 2007

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

Peter, a resident of Bexar County, Texas, stopped at a convenience store in Nueces County, Texas, on his way to the beach. The store was owned and operated by Supplies, Inc., (Supplies), a Texas corporation with its headquarters and principal office in Travis County, Texas. While shopping in the store, Peter sustained personal injuries after being hit by a cart loaded with boxes. Daniel, an employee of Supplies, had lost control of the cart while pushing it. Daniel resides in Nueces County, Texas. Peter was taken to a local hospital for treatment of his injuries.

Immediately after the incident, the store conducted an investigation and found that the cart had a defective part. Supplies had purchased the cart from the manufacturer of the cart, Equipment, Inc., (Equipment), a foreign corporation with its headquarters and principal office in Tulsa, Oklahoma. Equipment's salesman made regular sales calls on Supplies at its headquarters in Travis County, Texas. Peter wants to sue Supplies and Daniel for the damages resulting from the injuries he sustained in the incident.

- 1. What county or counties would be proper venue for such a lawsuit? Explain fully.**

- 2. Peter sues Supplies and Daniel in Bexar County, Texas, and asks for a jury trial. What pleading must Supplies and Daniel file if they want to challenge venue in Bexar County? When must they file the pleading? Explain fully.**

DO NOT CONTINUE YOUR ANSWER IN THIS SPACE.

3. Supplies believes that, due to the defective cart, Equipment is the party responsible for the incident and the injuries sustained by Peter. How and when can Supplies make Equipment a party to the lawsuit? Explain fully.

4. Equipment is made a party to the lawsuit, but it wants to challenge the jurisdiction of the Texas court on the grounds that Equipment does not conduct business in Texas. How and when must Equipment object to the jurisdiction of the Texas court? Explain fully.

5. How should the Court rule on Equipment's objection to the Court's jurisdiction? Explain fully.

DO NOT CONTINUE YOUR ANSWER IN THIS SPACE.

6. Supplies wants to obtain a copy of the medical records of the health care providers that treated Peter for his injuries. How can Supplies obtain these records? Explain fully.

7. Peter asks Supplies for a copy of all documents relating to the investigation that Supplies conducted after the incident. What objection can Supplies make and how should the Court rule on the objection? Explain fully.

8. Peter serves Supplies with a notice of oral deposition, along with a subpoena duces tecum. The subpoena directs Supplies to produce at the deposition copies of all communications it has received from Supplies' attorneys and consulting experts regarding the incident in question. Is Supplies required to comply with the subpoena? How and when must Supplies serve any objections? Explain fully.

DO NOT CONTINUE YOUR ANSWER IN THIS SPACE.

9. Supplies doubts whether Peter’s injuries are as serious as described in the records of Peter’s treating doctors. What pleading can Supplies file with the Court to obtain additional medical evidence regarding Peter’s injuries? Explain fully.

10. During the oral deposition of Supplies’ designated representative, Supplies’ lawyer repeatedly interrupts the questioning by Peter’s lawyer and makes objections that expressly suggest to the witness how the questions should be answered. What remedies should Peter seek and how should the Court rule on his request? Explain fully.

11. Peter deposed an expert witness retained by Supplies to testify as to the defect in the cart. After the deposition, the expert sends Peter a bill for his time in preparing for and giving the deposition. Peter refuses to pay it. Supplies seeks an order from the Court directing Peter to pay the bill. How should the Court rule? Explain fully.

DO NOT CONTINUE YOUR ANSWER IN THIS SPACE.

12. After the completion of discovery, Supplies files a Motion for Summary Judgment on the grounds that it did nothing to cause the incident. In support of its Motion, Supplies attaches its expert’s affidavit, which consists of the following sentence: “My name is Edward Expert. I am competent to execute this affidavit, which is based on my personal knowledge. In my opinion, the sole cause of the incident in which Peter alleges he was injured while shopping at Supplies was the defective cart manufactured by Equipment.” What must Peter’s response to the Motion contain in order for the Court to deny Supplies’ Motion? Explain fully.

13. Assume that the lawsuit proceeds to trial. On the day of trial, the parties announce ready for trial. Supplies asks the Court to remove the case from the jury docket, because the jury fee has not been paid. Peter immediately pays the jury fee and asks the Court to keep the case on the jury docket. How should the Court rule? Explain fully.

DO NOT CONTINUE YOUR ANSWER IN THIS SPACE.

14. During jury selection, one of the veniremen states that he believes that all personal injury lawsuits are frivolous, but he nevertheless can be fair to both sides if he is selected to serve on the jury. What can Peter do to keep the venireman from serving on the jury? Explain fully.

15. During opening statement, Peter’s lawyer prepares a chart in front of the jury listing all of Peter’s symptoms resulting from the injuries he sustained in the incident. Supplies’ lawyer objects. How should Peter’s lawyer respond? How should the Court rule? Explain fully.

16. During the trial, Peter calls to testify a witness whose identity he had not previously disclosed in response to discovery requests. The witness had contacted Peter’s lawyer the night before the trial, stating that he had seen the cart hit Peter. Supplies’ lawyer objects. How should the Court rule? Explain fully.

DO NOT CONTINUE YOUR ANSWER IN THIS SPACE.

17. While on the witness stand, Peter testifies that just before the cart hit him, he saw Daniel pushing the cart and heard Daniel say, “Watch out.” After the cart hit Peter, Daniel told him, “I tried to keep the cart from hitting you.” Supplies’ lawyer objects on hearsay grounds. How should the Court rule? Explain fully.

18. On cross-examination, Supplies’ lawyer asks Peter if he had been convicted of shoplifting 15 years ago when Peter was a juvenile. Peter’s lawyer objects. How should the Court rule? Explain fully.

19. While on the stand, Peter testifies that he knows that Supplies is responsible for his injuries, because Supplies offered to pay him \$10,000 to dismiss the case before trial. Supplies’ lawyer objects and moves to strike the testimony and, alternatively, for mistrial. How should the Court rule? Explain fully.

DO NOT CONTINUE YOUR ANSWER IN THIS SPACE.

20. The case was submitted to the jury, which returned a verdict for Supplies. A few days after the trial was over, Peter found out that one of the jurors had been seen talking to one of Supplies' employees outside the jury room during a break in the trial. What remedy, if any, does Peter have? What relief should the Court grant? 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.