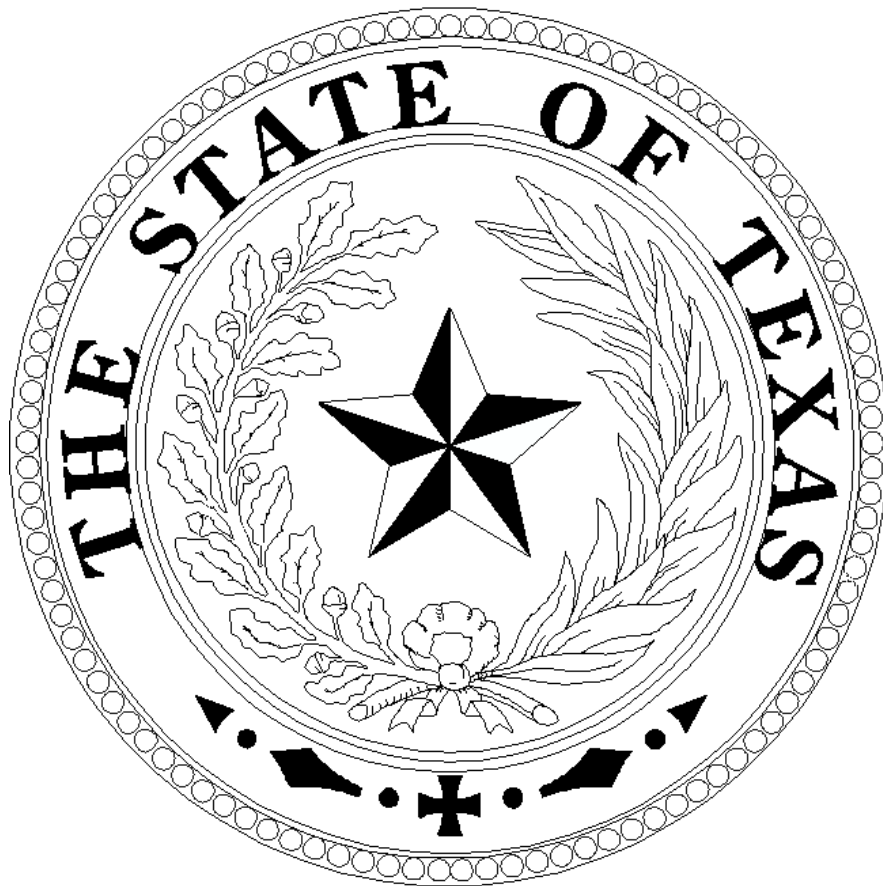


Examinee
Number

Exam
Date FEBRUARY 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

While vacationing in Nueces County, Texas, Bob saw a beach-front lot that he wanted to buy. Oliver was the owner (“Owner”) of the lot. Bob contacted Owner’s agent (“Agent”), who told Bob that Owner wanted \$100,000 for the lot. Agent gave Bob a proposed contract. The next day, while still in Nueces County, Bob signed the contract and delivered it to Agent, along with a cashier’s check for \$100,000. Agent accepted the check and signed the contract on Owner’s behalf. Agent presented the signed contract and the cashier’s check to Owner, who told Agent that the lot was no longer for sale. Agent attempted to return the check to Bob, who refused it. Bob sued Agent and Owner in Nueces County, Texas, seeking specific performance of the contract. Bob resides in Webb County, Texas. Agent resides in Nueces County and Owner resides in Travis County.

- 1. What pleading must Owner file, and when must he file it, if he wants the suit against him to proceed in Travis County, not Nueces County? What should the pleading allege? Explain fully.**

- 2. Assuming that Owner timely files the necessary pleading objecting to the suit proceeding in Nueces County, what should Bob state in his response? How should the Court rule? Explain fully.**

Several months after Bob filed the lawsuit in Nueces County, Owner sues Bob in Travis County, asking the Court to declare that the contract in question is not enforceable.

3. What pleading should Bob file in the Travis County action? What should the pleading allege and how should the Court rule? Explain fully.

4. List five (5) categories of information or materials that Bob may request from Agent or Owner in Requests for Disclosure.

Bob's lawyer serves a Request for Admission on Owner asking Owner to admit that Bob's contract for the lot was valid and binding. Owner's denial of the Request was served on Bob forty-five (45) days after the Request was served on Owner.

5. What is the effect of the fact that Owner's response to the Request was served forty-five (45) days after Owner was served with the Request? How can Owner seek to avoid that effect? Explain fully.

Bob believes that, after the lawsuit was filed, Owner's lawyer gave Owner an opinion letter advising that Bob's contract is valid and enforceable. Bob serves a Request for Production on Owner asking for a copy of the opinion letter. Owner objects to the request. Bob files a Motion to Compel.

6. How should the Court rule on Bob's Motion? Explain fully.

Bob serves Owner with a deposition notice, requiring Owner to produce numerous documents at the deposition. A few days after the deposition is concluded, Owner discovers that he had inadvertently included his lawyer's opinion letter in the documents he produced at his deposition.

7. Does Bob have to return the opinion letter if Owner asks Bob to do so? Can Bob use the letter as evidence in support of his claims? Explain fully.

Bob timely designated Edward, a young real estate agent with no previous testifying experience, as an expert witness to testify regarding the validity of the contract in question. Owner wants to depose Edward.

8. When must Bob make Edward available for deposition (a) if Edward's expert report was not produced at the time Edward was designated as an expert and; (b) if Edward's expert report was produced at the time of the designation? Explain fully.

Owner wants to exclude Edward's expert testimony at trial.

9. How does Owner bring the issue before the Court and what must he show the Court? Explain fully.

After the completion of discovery, Owner believes that the claims against him should be dismissed on the grounds that Agent was not authorized to sign the contract in question.

10. What pleading should Owner file to bring the issue before the Court and what must he show in order to prevail? Explain fully.

Assume that the case proceeds to jury selection and trial. Bob believes that Owner's lawyer is going to prejudice the jury by telling the jury that Bob was convicted for public intoxication fifteen (15) years ago.

11. How can Bob prevent Owner's lawyer from mentioning the conviction during jury selection? If Bob files the appropriate Motion and the Court grants it, what must Owner's lawyer do before mentioning the conviction to the jury? Explain fully.

DO NOT CONTINUE YOUR ANSWER IN THIS SPACE.

During voir dire, one of the prospective jurors says that, based on what the lawyers for both sides have said, she has a firm belief that Bob should not be able to prevail, because she believes that Owner did not want to sell the lot.

12. How can Bob’s lawyer keep the prospective juror from serving on the jury that will hear the case? Explain fully.

After the jury is empaneled, but before the first witness is called to testify, Bob’s lawyer notices that several persons who are going to be witnesses for Owner and Agent are in the courtroom.

13. What should Bob’s lawyer ask the Court to do if he does not want the witnesses in the courtroom after the trial testimony starts? Explain fully.

During his case in chief, Bob’s lawyer calls a witness that he had failed to list in any of his discovery responses. The lawyers for Owner and Agent object.

14. What must Bob’s lawyer show the Court before the witness will be permitted to testify? Explain fully.

During a court ordered mediation, Owner told his son that the contract was probably enforceable, but that he was going to fight the case all the way. Bob overheard the conversation. During the trial, Bob’s lawyer calls Owner’s son to testify about what Owner told the son at the mediation.

15. What objection should Owner’s lawyer make and how should the Court rule? Explain fully.

During his case in chief, Owner’s lawyer calls a fact witness to testify. While he is testifying, the witness provides testimony that is substantially different from his deposition testimony.

16. What steps must Owner’s lawyer take to show the jury the difference in testimony? Explain fully.

DO NOT CONTINUE YOUR ANSWER IN THIS SPACE.

After the close of all the evidence, during the charge conference with the Court, Owner's lawyer submits a proposed instruction and jury question regarding Agent's authority to sign the contract in question. Bob's lawyer objects on the grounds that Owner had not raised the issue in his pleadings, even though Owner had testified about the issue during the trial without objection.

17. How should Owner's lawyer respond to the objection? How should the Court rule? Explain fully.

After the jury started deliberations on their verdict, there was a disagreement among some jurors as to statements made by one of the witnesses.

18. What can the jury and the Court do to help resolve that disagreement? Explain fully.

The jury returned with a unanimous verdict in favor of Bob. Owner and his lawyer could not believe the verdict, because they thought several of the jurors had appeared to be sympathetic to the defense.

19. What should Owner’s lawyer ask the Court to do to resolve any doubts about the verdict before the jury is discharged? What must the Court do in response to the request? Explain fully.

Owner’s lawyer believes the jury’s verdict is not supported by the evidence.

20. What pleadings should Owner’s lawyer file and when should she file them to bring the matter to the attention of the trial Court? 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.