

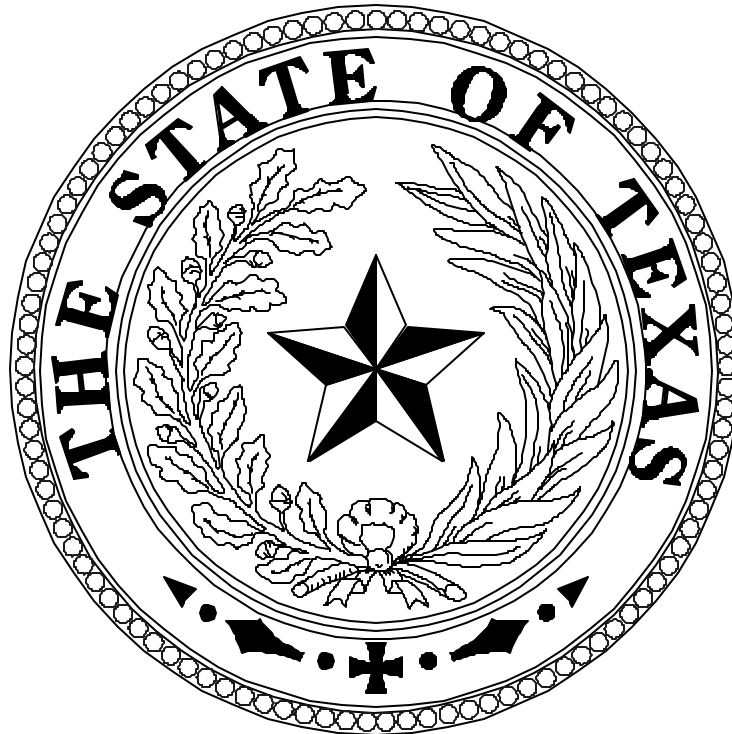
Examinee
Number

Exam
Date

July 2006

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

Properties, Inc. (“Properties”) owns Apartments, located in Nueces County, Texas. Properties’ principal office is in Dallas County, Texas. Sam is employed by Properties as manager of Apartments. Sam is a resident of San Patricio County, Texas. Betsy lives in Apartments. Betsy sustained serious injuries in a fire that consumed her unit in Apartments. The source of the fire was a broken electrical outlet. Betsy had asked Sam to replace the broken outlet weeks before the fire. The outlet had not been replaced prior to the fire.

Betsy filed a lawsuit in Nueces County seeking damages against Properties and Sam, both of whom were served with a copy of the petition and citation three days after the lawsuit was filed.

- 1. When must Properties and Sam file their answers to the lawsuit to ensure that the answers are timely filed? Explain fully.**

- 2. What remedy does Betsy have if either Properties and Sam do not timely file their answers? Explain fully.**

DO NOT CONTINUE YOUR ANSWER IN THIS SPACE.

- 3. If Sam objects to being sued in Nueces County, what pleading must he file and when must he file it? What must the pleading allege? Explain fully.**

- 4. If Sam properly files the appropriate pleading challenging the lawsuit against him in Nueces County, how should the Court rule on the challenge? Explain fully.**

Following the filing of the lawsuit, Properties and its attorney knew that Sam was at all times acting within the course and scope of his employment prior to and at the time of the fire. However, Properties' attorney later signs and files a pleading in court denying that Sam was acting within the course and scope of his employment.

- 5. What remedies, and against whom, does Betsy have when she discovers what Properties and its attorney knew at the time Properties' attorney filed the pleading denying course and scope? Explain fully.**

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Betsy's attorney wants to notice Properties' oral deposition to inquire about a variety of topics relevant to the issues in the lawsuit.

6. Other than the time and place for the deposition, what must the notice of deposition state? Explain fully.

7. Assuming Properties does not object to the notice of deposition, what must Properties do to comply with the notice? Explain fully.

8. If Properties wants to object to the time and place for the de position, what pleading must it file and when? Explain fully.

Betsy had vacated Apartments after the fire. Betsy subsequently retains an expert who now wants access to Apartments prior to completing his report.

9. What pleading must Betsy’s attorney file for her expert to have access to Apartments? What must the pleading state? Explain fully.

10. If Properties wants to respond to Betsy’s pleading seeking access to Apartments, when must Properties file its response? What must the response state? Explain fully.

After months of discovery, Properties decides that the manufacturer of the electrical outlet has some responsibility for the fire. Properties want to join the manufacturer as an additional party to the lawsuit.

11. What pleading should Properties’ attorney file to join the manufacturer of the outlet as an additional party? What must the pleading state? Explain fully.

The manufacturer of the outlet makes an appearance in the lawsuit. Betsy does not want the dispute between Properties and the manufacturer to be part of the lawsuit in which she has sued Properties and Sam.

12. What pleading should Betsy’s attorney file? How should the Court rule? Explain fully.

In the course of discovery, Betsy serves Requests for Admission on Sam, through his attorney, who forwards the Requests to Sam. The Requests state that responses are due within 31 days of service. Sam never responds to the Requests.

13. What is the effect of Sam’s failure to respond to the Requests for Admission? Explain fully.

14. What must Sam’s attorney do and show if he wants to avoid the effect of Sam’s failure to respond to the Requests for Admission? Explain fully.

In preparing for trial, Betsy tells her attorney that, shortly after the fire, Sam had told her that the fire was all his fault for not having replaced the outlet. During direct examination at trial, Betsy’s attorney asks her what Sam had told her after the fire. Sam’s attorney objects on hearsay grounds.

15. How should Betsy’s attorney respond? How should the court rule? Explain fully.

The state fire marshal conducted an investigation of the fire at Apartments and prepared a complete report that included factual findings and witness statements. Betsy’s attorney offers a properly authenticated copy of the report into evidence. Properties’ attorney does not want the report admitted into evidence.

16. What objection should Properties’ attorney make? How should Betsy’s attorney respond? How should the Court rule? Explain fully.

Prior to trial, Properties’ insurance carrier sent Betsy a letter offering to pay all of her medical and hospital expenses incurred in the treatment of her injuries from the fire. At trial, Betsy’s attorney wants to offer the letter into evidence.

17. What objection can Properties’ attorney make and how should the court rule? Explain fully.

DO NOT CONTINUE YOUR ANSWER IN THIS SPACE.

Prior to trial, Betsy wrote Properties' insurance carrier offering to settle for an amount significantly less than what she is seeking in the lawsuit. Properties' attorney wants to offer Betsy's letter into evidence.

18. What objection can Betsy's attorney make and how should the court rule? Explain fully.

During the trial, Properties calls Hank, Apartments' handyman to testify about the condition of the outlet prior to the fire. Properties had not previously identified Hank as a witness. Betsy's attorney objects.

19. What must Properties' attorney show before Hank can testify? Explain fully.

At the end of the trial, the jury returns a verdict finding all liability and damages issues in favor of Betsy. The attorneys for Properties and Sam believe that the amount of the damages found by the jury is excessive.

20. If Properties and Sam want to challenge the amount of the damages found by the jury as excessive, what pleading should they file and what should the pleading state? 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.