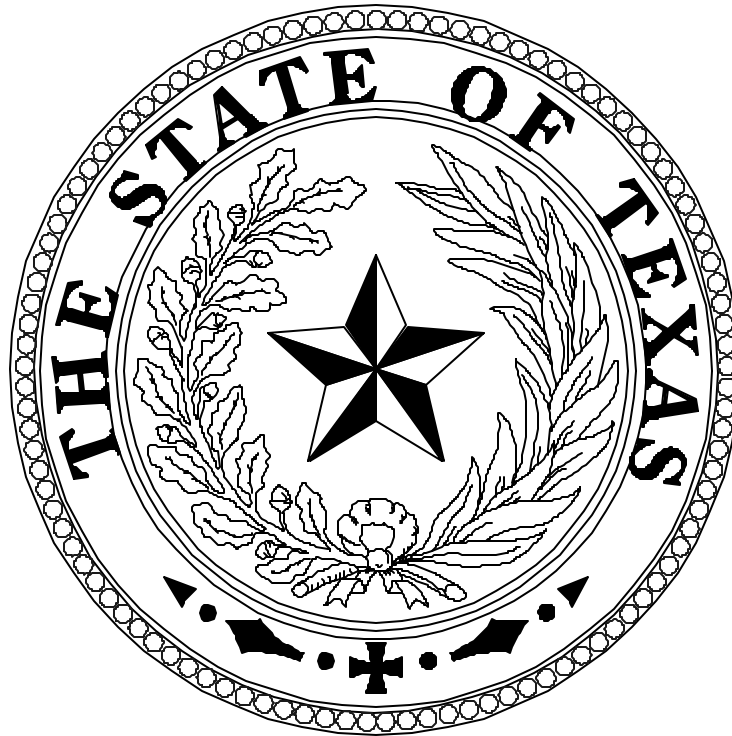


Examinee  
Number

Exam  
Date February 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**

Parker, a resident of Nueces County, purchased a used water heater from Supply Corp. (“Supply”) in Harris County. Jones, a resident of Harris County, installed the water heater in Parker’s home. Two weeks later, Parker suffered serious injuries when the heater exploded and started a fire. Appliance, Inc. (“Appliance”), a company with offices only in the State of Maine, was the manufacturer of the water heater. Appliance markets and sells its water heaters only in the State of Maine.

Parker files suit in Nueces County against Supply, Jones and Appliance to recover damages resulting from his injuries.

Appliance wants to keep the suit from proceeding against it in a Texas court.

**1. What responsive pleading should Appliance file? What must the pleading allege? When should the pleading be filed? Explain fully.**

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**2. What must Parker show in his response to Appliance’s pleading in order to prevail on the issue? Explain fully.**

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Supply wants to defend the claims against it in Harris County, not Nueces County.

**3. What motion should Supply file? What should the motion allege? When must the motion be filed? Explain fully.**

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**4. What must Parker allege in his response to the motion filed by Supply if Parker wants to keep the claims against Supply in Nueces County? Explain fully.**

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**5. What can the Court consider at the hearing on Supply's motion? How should the Court rule? Explain fully.**

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Parker decides to abandon his claims against Appliance, for now, and focus on Supply and Jones.

**6. What pleading should Parker file and what should the Court’s order recite if Parker wants to reserve the right to refile the claims against Appliance at a later date? Explain fully.**

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Parker wants to send written discovery to Supply and Jones.

**7. Identify five items that are within the scope of written discovery about which Parker can inquire.**

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Supply receives discovery requests from Parker which call for the production of internal memos between Supply and its employees made in anticipation of litigation.

**8. What steps must Supply take to protect from discovery the information and material contained in the memos? Explain fully.**

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**DO NOT CONTINUE YOUR ANSWER IN THIS SPACE.**

After receiving Supply's response to his request for production of the internal memos, Parker files a written request which asks Supply to identify the information and material in question.

**9. What must Supply include in its response to Parker's request? When must Supply serve its response? Explain fully.**

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Parker wants to take the oral deposition of Rubio, Supply's former employee who sold Parker the water heater. Rubio now lives and works in Dallas County. Parker is aware that Rubio travels to Nueces County on a regular basis to visit family.

**10. What choices does Parker have as to the place where Rubio's oral deposition may be taken? What must Parker do if he wants to take the deposition in Nueces County? Explain fully.**

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Rubio shows up at his deposition with his lawyer. During the deposition, Rubio and his lawyer repeatedly interrupt the deposition to confer and Rubio is repeatedly instructed by his lawyer not to answer certain questions.

**11. Under what circumstances may a deponent confer with his lawyer during a deposition? When may a lawyer instruct a witness not to answer a question during a deposition? Explain fully.**

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Assume the claims against both Supply and Jones remain in Nueces County. Jones objects to the claims against him being tried at the same time that the claims against Supply are tried, because he believes that the explosion was due to a malfunction of the water heater, not to his installation.

**12. What pleading must Jones file to bring his objection to the attention of the Court? How should the Court rule? Explain fully.**

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Parker designates Helper, a long-time handyman with no formal education, as an expert witness on the issue of causation. Supply wants to keep Helper's opinions from the jury.

**13. What pleading must Supply file and what must it contain to bring the issue to the attention of the Court? Explain fully.**

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**14. In response to Supply’s pleading, what must Parker show to argue that Helper should be allowed to testify? Explain fully.**

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Five (5) days before the scheduled trial date, Supply hires Carter, a Texas State Senator, as an additional lawyer on its trial team. The legislature is scheduled to be in session on the date that the trial is to commence.

**15. What must be contained in any pleading that Supply may file, which seeks to use the hiring of Carter as a reason to delay the trial? Is it mandatory that the Court grant the delay? Explain fully.**

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When the case is called for trial, all of the witnesses who had been subpoenaed to testify are in the courtroom. Parker does not want the witnesses to remain in the courtroom once testimony commences.

**16. What must Parker do to exclude the witnesses from the courtroom while others are testifying? What instructions must the Court give the witnesses? Explain fully.**

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Supply suspects that Parker’s counsel, during voir dire and during the trial, may try to suggest that Supply’s insurance company will pay any judgment that may be entered against Supply.

**17. What pleading may Supply file to keep Parker’s counsel from referring to the existence of insurance in the case? Assume the Court rules in favor of Supply on the pleading. What instructions will the Court give to Parker’s counsel? If Parker’s counsel refers to the existence of insurance during the trial, what, if anything, must Supply do to preserve error? Explain fully.**

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During the trial, one of Supply’s fact witnesses testifies differently from what she said in her deposition.



18. What steps must Parker’s lawyer take to show the jury the differences in testimony? Explain fully.

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At the close of Parker’s case in chief, Supply wants to challenge the legal sufficiency of the evidence Parker presented on the issue of causation.

19. What motion must Supply make and what must it allege? Explain fully.

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Assume that the court decides to submit the case to the jury. The parties do not agree with the form of the questions that the court wants to submit to the jury.

20. When and how should the parties present their objections to the proposed charge? Explain fully.

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**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.**