

Examinee
Number

Exam
Date

July 2005

Civil Procedure & Evidence

[This booklet is only part of the Procedure & Evidence session. Both parts should be completed in one Procedure & Evidence testing session.]



TEXAS BAR EXAMINATION

COPYRIGHT © 2005 TEXAS BOARD OF LAW EXAMINERS

THIS MATERIAL, OR ANY PORTION HEREOF, MAY NOT BE REPRINTED WITHOUT THE ADVANCE WRITTEN PERMISSION OF THE TEXAS BOARD OF LAW EXAMINERS

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

Laura has been a life-long resident of Harris County, Texas. She was injured on January 15, 2002, when she slipped and fell in a grocery store in Dallas County, Texas. The owner and operator of the store was Food, Inc., a Texas corporation with its principal office in Bexar County, Texas. Laura returned home after the incident, but she never fully recovered from her injuries. Laura sought legal advice from a lawyer who practices in Travis County, Texas. The lawyer recommended that Laura file a lawsuit.

1. In what county or counties may Laura (“Plaintiff”) properly file the lawsuit? Explain fully.

2. Seeking to avoid travel expenses, her lawyer filed suit on behalf of Plaintiff against Food, Inc., (“Defendant”) in Travis County, Texas. What pleading must Defendant file to challenge venue? When must Defendant file it? What must the pleading allege regarding proper venue? Explain fully.

DO NOT CONTINUE YOUR ANSWER IN THIS SPACE.

3. Plaintiff's lawyer filed the lawsuit on January 14, 2004. He did not request the issuance of citation of service until June 15, 2004. Defendant was served with the petition and citation on October 30, 2004. What affirmative defense, if any, should Defendant assert in its answer to the suit? Explain fully.

4. Defendant serves Requests for Admission on Plaintiff. The Requests call for responses within 30 days of service. Plaintiff files responses to the Requests sixty (60) days after service. What is the effect of the late filed responses to Defendant's Requests? What must Plaintiff do to overcome that effect? Explain fully.

DO NOT CONTINUE YOUR ANSWER IN THIS SPACE.

5. Defendant served interrogatories on Plaintiff, seeking the names of the persons Plaintiff expects to call as witnesses at trial, including all rebuttal and impeachment witnesses. Plaintiff objected. How should the Court rule? Explain fully.

6. Plaintiff serves a notice to take the oral deposition of Defendant, a corporation, with a subpoena duces tecum to produce certain documents at the deposition. How much notice must be given for the deposition, as noticed? If Defendant wants to object to the notice, what must it do and when must it do it? Explain fully.

7. During the deposition of Defendant's corporate representative, Defendant's lawyer repeatedly interrupts the questioning with objections that suggest answers to the witness. What are the only objections permitted during an oral deposition? What remedies are available to Plaintiff's lawyer if Defendant's lawyer goes beyond what is permitted under the rules? Explain fully.

DO NOT CONTINUE YOUR ANSWER IN THIS SPACE.

8. Plaintiff was treated by a number of doctors for her injuries. Defendant wants to obtain the medical records from those doctors without taking their oral depositions. How can Defendant obtain the records in admissible form? Explain fully.

9. After obtaining Plaintiff's medical records, Defendant decides that it wants Plaintiff to be examined by another qualified doctor. What must Defendant do to obtain such an independent examination? Explain fully.

10. Plaintiff timely designates an expert who claims to have expertise in the field of body mechanics of slips and falls to prove that the incident in the store resulted in permanent injuries to Plaintiff. Defendant wants to exclude the expert's testimony. What pre-trial pleading should Defendant file? What must Defendant show to exclude the testimony? Explain fully.

DO NOT CONTINUE YOUR ANSWER IN THIS SPACE.

11. After the completion of discovery, what pleadings can Defendant file to have the merits of the case determined prior to trial? What must Defendant show to prevail? Explain fully.

12. One week before trial, Defendant seeks a continuance because there are several fact witnesses that it has not been able to depose. What showing must Defendant make in its application for continuance? Explain fully.

DO NOT CONTINUE YOUR ANSWER IN THIS SPACE.

13. During discovery, Plaintiff obtains evidence of several slip and fall incidents that occurred at the store five years before Plaintiff's fall. Defendant does not want Plaintiff to refer to the prior incidents during the trial, including jury voir dire. What pleading should Defendant file with the Court? What should be included in the pleading? If the Court grants Defendant's requested relief, what procedures must Plaintiff then follow before she can mention the prior incidents before the jury? Explain fully.

14. During the trial, Defendant calls to the stand a witness who claims to have seen Plaintiff just prior to the incident. Defendant had not previously disclosed the name of the witness to Plaintiff. What must Defendant establish before the Court will permit the testimony? Explain fully.

DO NOT CONTINUE YOUR ANSWER IN THIS SPACE.

15. At trial, Plaintiff testifies differently from what she testified to during her deposition regarding what she was doing just before she fell. What must Defendant’s lawyer do before he can read Plaintiff’s deposition testimony to the jury? Explain fully.

16. Twelve years before the slip and fall incident, Plaintiff completed her probation for a felony conviction. Defendant wants to cross-examine Plaintiff about the conviction while she is on the stand. Plaintiff objects. How should the Court rule? Explain fully.

17. During her deposition, Plaintiff testified that shortly after she fell, a store employee told her that he had been aware of standing water in the area, but that he had not gotten around to cleaning it up. During direct examination, Plaintiff is asked about the statement. Defendant objects on hearsay grounds. How should the Court rule? Explain fully.

DO NOT CONTINUE YOUR ANSWER IN THIS SPACE.

18. After Plaintiff rests her case, the lawyer for Defendant believes that the evidence is legally insufficient to support a verdict for Plaintiff. How can Defendant raise this issue with the Court? If the Court allows the case to proceed, can Defendant raise the issue again, and if so, when? Explain fully.

19. During final argument, Defendant’s counsel refers to matters that the Court had excluded from evidence. What objection should Plaintiff’s counsel make? What relief should he request? Explain fully.

DO NOT CONTINUE YOUR ANSWER IN THIS SPACE.

20. After the jury returns with a verdict adverse to Plaintiff, her lawyer interviews some of the jurors. He learns that one of the jurors had received a communication from a third party about the case during deliberations. How can Plaintiff’s lawyer bring this matter to the attention of the Court? Can the jurors who spoke with Plaintiff’s counsel after the verdict testify about this matter? 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.**