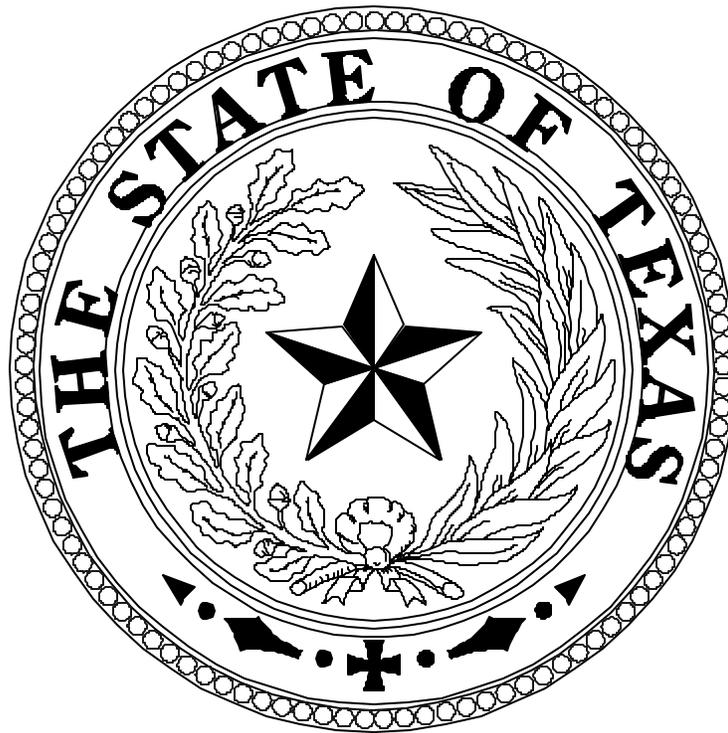


Examinee
Number

Exam
Date February 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

Sam, his wife, and their minor daughter, Jane, were on a family vacation in Harris County, Texas when a truck rear-ended their car. Sam was driving the car. Sam’s wife, Martha, and Jane were passengers. All three sustained serious injuries in the collision. The owner of the truck was PipeCorp, a Texas corporation whose principal place of business has always been in Tarrant County, Texas. Bob, PipeCorp’s employee, was driving the truck at the time of the collision. Sam, Martha, Jane and Bob resided in Nueces County, Texas at the time of the collision. Sam and Martha want to file a lawsuit to recover for the injuries and damages sustained by them and by Jane.

- 1. Sam and Martha decide to sue PipeCorp and Bob. What must they allege in their Original Petition to state a cause of action? Can they assert Jane’s claims in the lawsuit? If so, how? Explain fully.**

- 2. Sam and Martha (“Plaintiffs”) file a lawsuit against PipeCorp and Bob (“Defendants”) in District Court in Nueces County, Texas. PipeCorp wants to object to venue in Nueces County, seeking to transfer the claims against it to Tarrant County. How does PipeCorp make and preserve its venue objection? Explain fully.**

DO NOT CONTINUE YOUR ANSWER IN THIS SPACE.

3. Assume PipeCorp files the necessary pleading objecting to venue in Nueces County. When should the hearing be scheduled and what may the court consider in ruling on the objection to venue? Explain fully.

4. How should the court rule on PipeCorp’s venue objection? Explain fully.

5. Plaintiffs allege in the Original Petition that discovery should be conducted under Level 2 of the Texas Rules of Civil Procedure. Under a Level 2 discovery plan, what are the limitations on the discovery period, the total time for oral depositions and the total number of interrogatories? Explain fully.

DO NOT CONTINUE YOUR ANSWER IN THIS SPACE.

6. The Original Petition generally alleges that the negligence of the defendants proximately caused damages to the plaintiffs. The Petition, however, does not allege any specific acts of negligence nor a dollar amount of damages being sought. If the defendants wish to object to the generality of these allegations, what pleading should they file? If the court sustains the objection, what relief, if any, should the court grant? Explain fully.

7. After Defendants filed their responsive pleadings, Plaintiffs served Defendants with a request for production asking for all correspondence between Defendants and any third party which relates to the occurrence in question. Defense counsel wants to withhold from production documents constituting work product. What must defense counsel do to preserve the work product privilege? Explain fully.

8. Plaintiffs propound Requests for Disclosures on Defendants. List five categories of information that can be obtained under such Requests. Explain fully.

9. During Bob’s deposition, his attorney repeatedly makes suggestive objections and instructs Bob not to answer certain questions. What are the only objections by Bob’s attorney that are permitted during this oral deposition? What remedies are available if the objections go beyond those permitted under the Rules? Explain fully.

10. In its responsive pleadings, PipeCorp claims that Bob was not within the course and scope of his employment at the time of the collision. Plaintiffs’ counsel believes that the evidence conclusively establishes otherwise. Plaintiffs want the court to rule on this issue before trial. What pleading can Plaintiffs file to seek a ruling on this issue and when can they file it? Explain fully.

DO NOT CONTINUE YPUR ANSWER IN THIS SPACE.

11. In preparing the case for trial, Plaintiffs' counsel wants to file copies of medical records to prove the amount of the medical expenses incurred in treating Plaintiffs. What facts must be stated in the affidavit which is filed with the records? Explain fully.

12. On the morning of trial, Plaintiffs' counsel realizes that he had never requested a jury nor paid the jury fee. Plaintiffs' counsel files the jury request and pays the jury fee one hour before the case is called for trial. When the judge asks for announcements, defense counsel objects to the jury request as untimely. What must be shown to permit a jury trial under these circumstances? Explain fully.

13. Assume the court allows a jury trial. Plaintiffs want to challenge several veniremen for cause, based on their responses during voir dire. What steps must Plaintiffs take to preserve error if the court denies their challenges for cause? Explain fully.

DO NOT CONTINUE YOUR ANSWER IN THIS SPACE.

14. Assume the court had previously ruled that Bob was within the course and scope of his employment at the time of the accident. Defendants each want to exercise six (6) peremptory strikes. What pleading should Plaintiffs file to ensure that Defendants do not have an unfair advantage in the allocation of peremptory strikes? What factors should the court consider in ruling on that pleading? Explain fully.

15. Immediately after the collision, Bob got out of his truck and told Sam, “I hit you because I was not paying attention.” On direct examination, Plaintiffs’ counsel asks Sam if Bob said anything after the collision. What objection should Bob’s counsel make and how should the court rule? Explain fully.

DO NOT CONTINUE YOUR ANSWER IN THIS SPACE.

16. At trial, Defendants call a fact witness who they had never identified in discovery. Plaintiffs' counsel objects on the grounds that Defendants had not properly supplemented their discovery responses. For the court to permit the testimony, what evidence must be presented and who has the burden to present such evidence? Explain fully.

17. During a mediation before trial, Plaintiffs told the mediator that they would accept significantly less in settlement than the amount they would seek at trial. The case did not settle. At trial, defense counsel calls the mediator to testify about what Plaintiffs said at mediation. What objection should Plaintiffs' counsel make and how should the court rule? Explain fully.

18. On cross-examination, Plaintiffs' counsel asks Bob whether he was covered by liability insurance at the time of the collision. What objection should defense counsel make and how should the court rule? Explain fully.

DO NOT CONTINUE YOUR ANSWER IN THIS SPACE.

19. While the case was pending, Sam and Martha had many personal conversations about the accident. Sam told her it had been his fault. On cross-examination, defense counsel asks Martha what Sam told her about the accident. What objection should Plaintiffs' counsel make and how should the court rule? Explain fully.

20. Before the jury reaches a verdict, the parties agree to a settlement. They announce to the court that Plaintiffs have agreed to accept \$750,000 to settle all of the claims asserted by Sam, Martha and their minor daughter, Jane. Does the settlement require court approval? If so, what must occur before the court can approve the settlement? 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.**