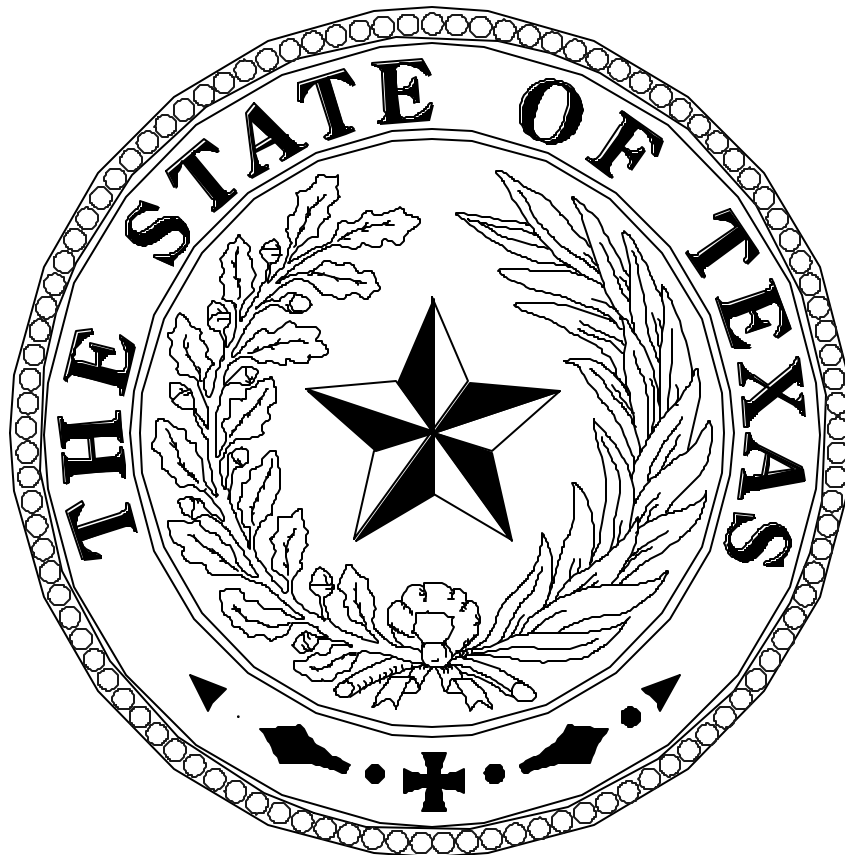


Examinee
Number

Exam
Date

7/2004

Civil Procedure & Evidence Questions



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

On March 30, 2004, Paul was injured in a collision with an 18-wheeler truck in Bell County, Texas. We-Haul, Inc., (“We-Haul”), a Delaware corporation, owned the truck and employed the driver, Daniel. We-Haul has its headquarters in Oklahoma. At the time of the accident, Paul was a resident of Grayson County, Texas and Daniel was a citizen of France and admitted as a permanent resident of Dallas County, Texas.

- 1. Paul wants to file suit in Texas state district court to recover damages for his injuries. He wants to stay out of federal court. Who should Paul sue, and for what minimum amount of damages, to prevent removal to federal court based on diversity of citizenship jurisdiction? Explain fully.**

- 2. Paul files suit against We-Haul and Daniel in state district court in Denton County, Texas, where he is living temporarily with his parents while recuperating from his injuries. Can Paul maintain venue in Denton County if a defendant timely objects to that venue? Explain fully.**

DO NOT CONTINUE YOUR ANSWER IN THIS SPACE.

3. Daniel files a motion to transfer venue to Dallas County or Bell County. Under the general venue rule, is venue proper in Dallas County? in Bell County? Explain fully.

4. In his original petition, Paul alleged negligence, but did not plead specific acts or omissions. He also alleged damages in excess of the minimum jurisdictional limits of the court. Defendants filed special exceptions, which the judge orally sustained at a hearing. The judge noted her ruling in the margin of the defendants' special exceptions. Have defendants preserved for appeal their objections to the defect in Paul's petition? Explain fully.

5. The case is assigned Discovery Level 2. When does the discovery period begin and end? Explain fully.

DO NOT CONTINUE YOUR ANSWER IN THIS SPACE.

6. Paul sends interrogatories to We-Haul asking for the names of all impeachment and rebuttal witnesses it expected to call at trial. We-Haul objects, claiming violation of work product privilege and trial strategy. Paul files a motion to compel. How should the court rule? Explain fully.

7. Paul sends a request for production to We-Haul. What must We-Haul do to properly preserve work product and attorney client privileges to the information requested and withhold the documents from production? Explain fully.

8. Assume that We-Haul properly preserves its privilege claims and does not produce the documents. How can Paul obtain more information from We-Haul about the withheld documents to assess the privilege claims? Explain fully.

DO NOT CONTINUE YOUR ANSWER IN THIS SPACE.

9. Helga, a crystal healer, treated Paul’s injuries. She has no medical or chiropractic license, or other official credentials. Paul designates her as an expert witness. We-Haul wants to exclude Helga’s opinions. What motion should We-Haul file? Identify three factors that the court should evaluate to determine the admissibility of Helga’s opinions. Explain fully.

10. Paul was also treated by his physician, Dr. Smith, who found that Paul was permanently disabled as a result of the collision. What motion should We-Haul file to obtain a second medical evaluation of Paul? What showing must We-Haul make to prevail on the motion? Explain fully.

11. We-Haul retained Dr. Critic as a consulting expert to review Dr. Smith’s records and opinions. Dr. Critic provided We-Haul’s counsel with his report. Paul moves to compel production of the report. How should the court rule? Explain fully.

DO NOT CONTINUE YOUR ANSWER IN THIS SPACE.

12. We-Haul wants to take the deposition of Paul’s designated testifying expert, Dr. Smith. We-Haul has not designated any expert witnesses. Paul refuses to tender Dr. Smith for deposition. We-Haul files a motion to compel. How should the court rule? Explain fully.

13. We-Haul makes a timely written offer of settlement to Paul pursuant to Section 42.003 of the Texas Civil Practice and Remedies Code. Paul rejects the offer. If Paul obtains a judgment against We-Haul, can We-Haul still shift its litigation costs and attorney’s fees to Paul? Explain fully.

14. If We-Haul is entitled to recover its attorney’s fees and costs from Paul, are there any limitations on the amounts and kinds of such fees and costs that We-Haul can recover? Explain fully.

DO NOT CONTINUE YOUR ANSWER IN THIS SPACE.

15. We-Haul has long known the identity, but not the whereabouts, of Motorist, who witnessed the accident. We-Haul locates Motorist one week before trial. We-Haul never identified Motorist in response to Paul's Requests for Disclosure. At trial, We-Haul calls Motorist to the stand. Paul objects. How should the court rule? Explain fully.

16. When the case is called for trial, Paul announces ready. After jury selection, Paul learns that his key eyewitness is ill and unable to testify in court. What must Paul include in his motion for continuance, which We-Haul opposes? What must Paul do to preserve error if the court overrules the motion? Explain fully.

DO NOT CONTINUE YOUR ANSWER IN THIS SPACE.

17. Paul timely amended his petition against We-Haul to allege negligent hiring, negligent entrustment and negligent maintenance. We-Haul has a policy against hiring or retaining any driver who has received three or more citations for traffic violations over a two-year period. In the year before Daniel became We-Haul's employee, he had received four such citations. At trial, Paul's attorney offers evidence of the citations. We-Haul and Daniel object on materiality and relevance grounds. How should Paul respond to the objections? Explain fully.

18. At trial, Daniel testified that the brakes inexplicably failed, that the brakes had been properly maintained and that he was not aware of any problems with the brakes prior to the accident. Paul calls Daniel's passenger as a witness to testify that, days before the accident, he heard a mechanic ask Daniel at a truck stop, "Did you ever get those lousy brakes fixed on that old rig you're driving?" and that he heard Daniel respond, "I'll get around to it when I have the money." We-Haul objects to the testimony as hearsay. How should Paul respond to the objection? Explain fully.

DO NOT CONTINUE YOUR ANSWER IN THIS SPACE.

19. The parties and their attorneys participated in a court-ordered mediation before trial. At the mediation, We-Haul's Vice President told Paul, "We admit that Daniel was negligent. We only disagree about the amount of damages." At trial, We-Haul denies Daniel was negligent. During direct examination, Paul's attorney asks Paul about the statements made at the mediation by We-Haul's Vice-President. We-Haul objects. How should the court rule? Explain fully.

20. When asked on cross-examination whether he had consumed any illegal drugs shortly before the accident, Daniel invoked his Fifth Amendment privilege against self-incrimination and refused to answer. During jury argument, Paul's attorney comments on Daniel's refusal to answer and invocation of the privilege. Daniel's attorney objects, claiming improper jury argument. How should the court rule? 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.