

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 – July 2009

Extra Good Plumbing (“Extra”) was a Texas sole proprietorship with a principal place of business in Nueces County, Texas. Bill resided in Kleberg County, Texas. Bill requested that Extra send an employee to his residence to check a possible gas leak. Extra dispatched an employee, Ray, to Bill’s residence. Ray resides in Brooks County, Texas. Ray had been a plumber for one month.

Ray discovered a gas valve leak inside Bill’s residence. Ray told Bill he could try to replace the valve, but that he was not certified to replace any type of leaking gas valve. Bill told Ray he did not care about any certification and that he wanted Ray to replace the valve. Ray turned the gas off at Bill’s gas meter. Ray installed a replacement valve manufactured by Plumber Parts, Inc. (“Parts”). Parts is not a Texas corporation, but it had over \$2,000,000 in sales in Texas in the year of the valve replacement.

In spite of a city ordinance to the contrary, Bill turned his gas back on at the gas meter without contacting the local gas utility. The next day, Bill’s house exploded and he sustained serious personal injuries. Bill hired a lawyer to sue Ray and Extra for his personal injuries sustained in the explosion and fire.

1. What county or counties would be proper venue for such a lawsuit? Explain fully.

2. Bill sues Extra and Ray in Brooks County. Extra wants to contest venue in Brooks County and move the case to Nueces County. What pleading must Extra file to challenge venue in Brooks County? When must the pleading be filed? Explain fully.

3. Extra wants to add Parts to the case as a party defendant, alleging negligence and product liability causes of action. What pleading must Extra file and when must it file the pleading to add this party to the case? Explain fully.

4. How must service of process be accomplished with respect to Parts, since it is a corporation and is not registered with the Texas Secretary of State? Explain fully.

5. Parts wishes to contest the jurisdiction of the Texas trial court. What pleading must Parts file to contest the jurisdiction of Texas over it in this case? Explain fully.

6. Parts contends that it is not a Texas corporation and does not conduct business in Texas. How should the court rule on Parts' plea to the Texas trial court's jurisdiction? Explain fully.

7. Bill's attorney wants to know if Extra has liability insurance for this case and if Extra, its lawyers or its insurance company have any statements concerning this case. How can he secure this information? Explain fully.

8. Bill's attorney retains and designates as an expert an engineer to investigate the explosion and fire. The engineer does not prepare a written report. Extra wants to know what facts Bill's expert's investigation revealed and what his expert opinions are. How can Extra obtain this information? Explain fully.

9. Bill claims the explosion and fire have caused him to acquire post traumatic stress disorder (PTSD). Bill is a veteran and has been treated by the Veterans Administration Medical Center. Bill refuses to produce any medical records for health care prior to the explosion. He refuses to sign a medical authorization for such records. What steps should Extra and Ray take to obtain these prior medical records or obtain an authorization for the records? Explain fully.

10. The parties file cross-notices for party depositions. Bill notices the depositions in Kleberg County, Texas and Extra notices the depositions in Nueces County, Texas. Both parties timely file motions to quash the other parties' notices. Upon a hearing on the motions to quash, in what county should the trial court order the depositions be taken? Explain fully.

11. Parts contends it has no person, employee, or agent who can or will testify as a witness because no one in the company has any personal knowledge about the explosion and fire. How can Bill's lawyer compel Parts to produce a witness for deposition in the case? Explain fully.

12. Parts' expert and the Fire Marshall believe that the valve in question was not defective, but rather that the valve was improperly installed by Ray and that the valve's design was not a cause in fact of the explosion and fire. Discovery is complete. What motion or motions should Parts file in order to be dismissed from the case? What documents should be attached to the motion or motions? Explain fully.

13. Bill requested a jury trial in his Original Petition but did not pay a jury fee. The case is on the non-jury docket and is set for trial. Forty-five days before trial, Bill pays the jury fee and requests a setting on the jury docket. Extra, Ray and Parts file objections to Bill's attempt to move the case to the jury docket. The motion is set for a hearing. How should the court rule? Explain fully.

14. In voir dire, a prospective juror says, "Extra did a lousy job at my home last year, but I think I could be fair." What steps should Extra's lawyer take to challenge that potential juror? Explain fully.

15. As the trial begins, Bill’s attorneys call Ray as Bill’s first witness. Ray and Extra object on the basis that Bill must testify first and lay a foundation for his claims against Ray and Extra. How should the court rule? Explain fully.

16. During discovery the parties obtain the report of the Fire Marshal. Later, the Fire Marshal is deposed. The Fire Marshal is listed as a trial witness by all parties, except Parts. Parts calls the Fire Marshal as a witness at trial. Extra objects to the Fire Marshal being called by Parts because Parts did not list him as a witness. How should the court rule? Explain fully.

17. In order to impeach Ray, Bill proffers evidence that Ray has five convictions for moving violations in the last twelve months. Ray objects to the admission of this evidence. How should the court rule? Explain fully.

18. After the first day of trial, Parts offers to pay Bill \$10,000 for a release of all claims and an agreement to indemnify Parts from the claims of Extra. The next morning, Extra seeks to offer into evidence the fact that Parts sought indemnity from the claims of Extra against Parts, as an admission that Parts was liable for the explosion. Parts objects to the offer of such evidence. How should the court rule? Explain fully.

19. After the parties rest and close, the defendants move for instructed verdicts. The court grants the motion of Parts and denies all other motions for instructed verdict. In the court's charge, which of the parties' proportionate responsibility should be submitted to the jury? Explain fully.

20. The jury finds Extra to be responsible for the explosion through negligent staffing. Extra believes there is no evidence to support a finding of negligent staffing against it. Before a judgment is entered, what motion should Extra file to bring this issue to the trial court's attention? 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.