

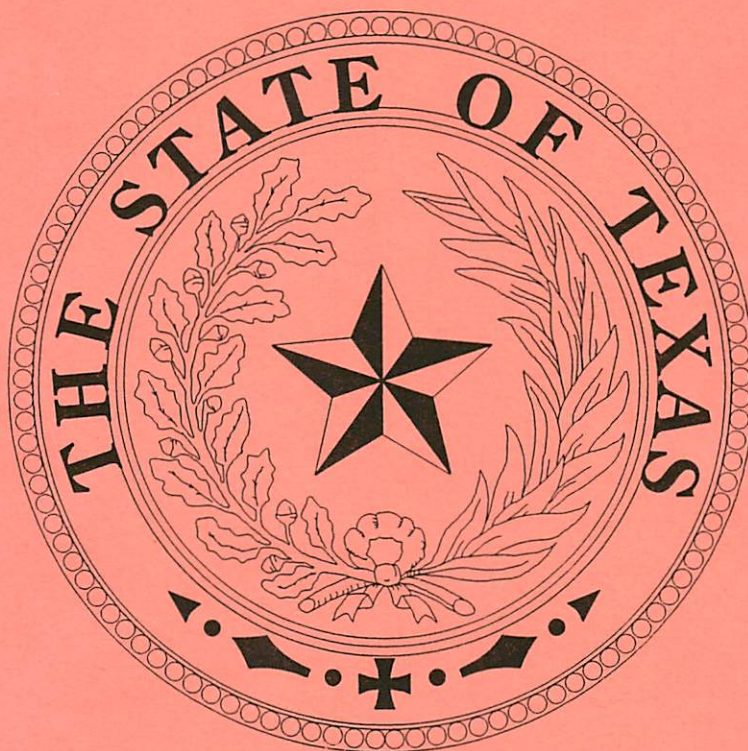
Examinee
Number

Exam
Date

JULY 2011

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

Pat bought a bottle of cleaning fluid named *Clean Engine* from Green Supply (“Green”), a yard and garden store in Bexar County, Texas. Employees of Green represented to Pat that *Clean Engine* was safe for cleaning lawn equipment with gasoline engines even if they were still hot from use.

Clean Engine was manufactured by Accessories Plus Company (“Plus”), an Oklahoma corporation which has no office, employees or agents in Texas.

Pat resides in Webb County, Texas. Green is a sole proprietorship with a principal place of business in Bexar County, Texas.

Pat used *Clean Engine* to clean his propane gas grill at his farm in Comal County, Texas. The grill caught fire, the propane tank exploded, and Pat was injured.

Pat filed suit in Webb County, Texas, alleging negligence and products liability theories against Green and Plus.

- 1. What must Pat allege in his lawsuit and who must Pat serve in order to acquire subject matter jurisdiction over Plus? Explain fully.**

Plus is served with the citation and suit but avers that it does not have employees, agents or any office in Texas.

- 2. What pleading must Plus file in order to object to being sued in Texas as a defendant, and when should the pleading be filed? Explain fully.**

3. What are the counties of proper venue for Pat's lawsuit? Explain fully.

Green files a motion to transfer venue. Pat demands a jury trial regarding the motion to transfer venue. Green objects to the demand for a jury trial on the venue issues.

4. How should the Court rule on Green's objection? Explain fully.

The trial court denies the motion to transfer venue.

5. Is Green entitled to an interlocutory appeal of the Court's order denying the motion to transfer venue? Explain fully.

Green submits 50 separate interrogatories and 50 requests for admission to Pat. Pat objects to the discovery requests as being in violation of the Texas Rules of Civil Procedure.

6. How should the Court rule on Pat's objections? Explain fully.

After the explosion, an attorney for Green interviewed several witnesses. Although the attorney made and kept notes, the attorney took no witness statements. Pat requests production of the attorney's written notes as well as the names and addresses of those persons interviewed.

7. What pleading, if any, should Green file in order to avoid production of the notes? How should the Court rule? Explain fully.

At the scheduling conference, an attorney for Green declines to advise the Court or Pat's attorney whether Green is covered in whole or in part by insurance.

8. What pleading or instrument should Pat file to determine whether Green has insurance coverage for Pat's claim and lawsuit? Explain fully.

The Parties agree on a date to depose the primary parties and party representatives, but do not agree on the location for the depositions. Green files a motion that the depositions be taken in Bexar County because Bexar County is its principal place of business. Pat objects.

9. How should the Court rule on the location of the depositions absent an agreement? Explain fully.

An investigation by Plus reveals that Pat and Green failed to heed its warning label regarding use of *Clean Engine* on hot surfaces.

10. What pleading, if any, must Plus file in order to raise this issue with the Court and to support a jury question on these issues, and when should such pleading be filed? Explain fully.

Pat filed a jury demand with his original petition. Pat files a motion to withdraw his jury demand. Green and Plus object to removal of the case from the jury docket.

11. How should the Court rule? Explain fully.

Five years before the explosion, Pat was indicted for the assault of his mistress, but the indictment was dismissed. Pat fears this indictment may be mentioned in jury selection or in opening statements.

12. What pleading should Pat file to preclude the mention or proffer of such evidence? Explain fully.

Green and Plus gathered evidence that Pat's neighbor, Tom, actually sprayed *Clean Engine* onto the gas grill.

13. What pleading should Green and Plus file to support its evidence of Tom's negligence and to support a jury question on the issue of Tom's negligence. Explain fully.

Green and Plus allege, generally, that Pat's contributory negligence was a cause of the accident in question.

14. What pleading must Pat file in order to determine what facts Green and Plus rely upon to support their defense of contributory negligence? Explain fully.

After discovery is complete, Plus believes that there is no evidence that its product was defective or that Plus was negligent in causing the occurrence in question.

15. What pleading(s) should Plus file in order to bring this issue of no liability before the Court? Explain fully.

Discovery reveals that Plus is not covered by liability insurance. Plus advises the Court that it intends to tell the jury panel that it has no insurance and that a large verdict will financially destroy Plus. Pat objects, files a motion to exclude this evidence and requests the Court to order Plus not to advise the jury panel that it has no insurance.

16. How should the Court rule? Explain fully.

At trial, Green calls Pat's neighbor, Tom, as a witness to testify that Pat told Tom, after his purchase of Clean Engine but before the occurrence, Pat thought that Clean Engine was very combustible and could cause a fire. Pat objects to this testimony as hearsay.

17. How should the Court rule? Explain fully.

At a court-ordered mediation, Green's store manager told the mediator that Green will not contest liability for the purposes of the mediation. Pat subpoenas the mediator to testify at trial. Green objects to any testimony from the mediator.

18. How should the Court rule on Green's objection? Explain fully.

After Pat has presented all of his evidence, he rests. Green and Plus believe that the evidence is legally insufficient to support jury findings and judgment against them as defendants.

19. What pleading should Green and Plus file to bring this legal issue to the attention of the Court?

The jury returns a verdict awarding Pat \$50,000 for past medical expenses. The parties stipulated before trial that Pat's group health carrier had paid \$30,000 for his past medical expenses and that these payments completely satisfied Pat's medical accounts. Pat files a motion for judgment for \$50,000 for his past medical expenses; Green and Plus move the Court for a judgment of \$30,000 for Pat's past medical expenses.

20. 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.