

**Examinee
Number**

Attach Civil P&E bar code sticker here

February 2015

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

**COPYRIGHT © 2015 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 & EVIDENCE

Butch, a resident of Bexar County, Texas, was working on a construction site in Comal County, Texas, when an asphalt truck operated by Sam, an employee of Cactus Construction Company (“Cactus”), backed over Butch, severely injuring him. Cactus is a Texas corporation, with its principal place of business in Harris County, Texas. Giant Corp. (“Giant”), a Delaware corporation, manufactured the back-up alarm on the asphalt truck. Giant has customers throughout the United States, including many in Texas, and is headquartered in Little Rock, Arkansas.

Butch files suit against Giant and Cactus in Bexar County, Texas.

Giant wants to challenge the Bexar County court’s jurisdiction over it on the ground that it is not amenable to process issued by a Texas court.

- 1. What responsive pleading must Giant file to contest personal jurisdiction and when must it file such pleading?**

Cactus contends the suit should be moved to Comal County where the accident occurred.

- 2. What pleading must Cactus file to object to the case proceeding against it in Bexar County and when must the pleading be filed?**

Butch's Original Petition does not state the total amount of damages that he is seeking in the case. Cactus wants to know the maximum amount of damages Butch seeks.

- 3. What pleading should Cactus file to require Butch to state the amount of damages that he seeks and what should the pleading request? Explain your answer.**

The suit proceeds against Giant and Cactus in Bexar County, and Butch wants to serve requests for disclosure on each of them.

- 4. List five categories of information or materials Butch may request from Giant and Cactus in Requests for Disclosure.**

Two months after responding to Butch's requests for disclosure, Cactus discovers that it failed to disclose two of its employees who witnessed the accident.

5. Is Cactus under an obligation to disclose the additional witnesses and, if so, when must Cactus do it? Explain your answer.

Butch believes that the back-up alarm on the asphalt truck failed to sound at the time of the accident. He wants to inspect and test the alarm.

6. What type of discovery request can Butch serve on Cactus in order to obtain access to the back-up alarm for inspection and testing, and what details must the request set out? Explain your answer.

Butch sends Giant a request for admission asking Giant to admit that the back-up alarm was defective. Thirty-five days after the request for admission is served, Giant serves Butch with a response denying the back-up alarm is defective.

7. What is the effect of Giant's response, and what, if anything, must Giant do to amend its response? Explain your answer.

Butch failed to request a jury trial in his Original Petition and the case is set on the non-jury docket. Fifty days before trial, Butch requests a jury trial and pays a jury fee. Giant and Cactus file objections to Butch's attempt to move the case to the jury docket.

8. How should the Court rule on the objections of Giant and Cactus? Explain your answer.

During the deposition of Cactus's truck driver, Cactus makes repeated objections suggesting how the driver should respond and asserting that Butch's questions call for hearsay testimony.

9. What remedies may Butch request from the Court and how should the Court rule on those requests?

Giant's expert testifies in her deposition that the accident was caused by the failure of Cactus's employee to keep a proper lookout while operating the asphalt truck. Discovery in the case is complete.

10. What motion or motions should Giant file in order to be dismissed from the case and what must Giant assert? What documents should be attached to support said motion or motions?

When the case is called for trial, all of the witnesses who have been subpoenaed to testify are in the courtroom. Butch does not want the witnesses to be in the courtroom once testimony starts.

11. What must Butch do to exclude the witnesses from the courtroom, and what instructions, if any, must the Court give the witnesses?

Butch was arrested five years ago for driving while intoxicated. He wants to prevent the defendants from mentioning the arrest during jury selection.

12. How can Butch keep the defendants from discussing the arrest during jury selection, and what must he show?

During *voir dire*, one of the veniremen states that he used to work for Cactus and feels Cactus treated him unfairly. He also states he is not sure he can be fair to all parties if he is selected to serve as a juror.

13. What can Cactus do to try to keep this venireman from serving on the jury? Explain your answer.

During the trial, one of Cactus's witnesses testifies differently from what he said in his deposition.

14. What steps must Butch take before impeaching the witness with his previous testimony?

During the trial, Giant calls a witness to testify. Giant had not identified the witness in any of its discovery responses. Butch objects.

15. What must Giant show the Court before the witness will be permitted to testify?

During his testimony, Butch states that immediately after the accident, the driver of the asphalt truck ran to his side and stated, "I'm so sorry. I wasn't looking where I was going." Cactus objects to the testimony on the basis that it is hearsay.

Page 7 of 9

Examinee Number: _____

16. How should the Court rule on Cactus's objection? Explain your answer.

During trial, Giant moves to admit into evidence a certified copy of the report of a sheriff's deputy who inspected the asphalt truck immediately after the accident. The report states that the back-up alarm on the asphalt truck was not connected to the truck's battery. Cactus objects to the admission of the report on the basis that Giant has failed to properly authenticate it.

17. How should the Court rule on Cactus's objection? Explain your answer.

After Butch rests his case, Giant contends that the evidence is insufficient to support a verdict for Butch against Giant.

18. How can Giant raise this issue with the Court, at this state of the proceedings?

During jury deliberations a disagreement arises among the jurors about the substance of a statement made by one of the witnesses who testified at trial.

19. What can be done to resolve the jurors' disagreement? Explain your answer.

The jury returns a verdict in favor of Butch against both defendants. Giant contends that the jury's verdict against it is not supported by the evidence.

20. How can Giant raise this matter with the Court, and when must Giant raise it?

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.