

Information or instructions: Defendant's Answer & affirmative defenses in a personal injury lawsuit with affirmative defenses.

**PREVIEW**

1. The form that follows contains several possible affirmative defenses for use in personal injury actions. They may be inserted as appropriate after a general denial in a Defendant's Answer.

**Form: Affirmative defenses in personal injury actions**

[CAUSE NUMBER \_\_\_\_\_]

[Name],  
PLAINTIFF

IN THE [Type of Court] COURT

vs.  
[Name],  
DEFENDANT

[Court number]

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OF [NAME], COUNTY, TEXAS

**LIST OF POSSIBLE AFFIRMATIVE DEFENSES USED IN  
PERSONAL INJURY ACCIDENT ACTIONS**

1. Defendant [Name] would show that Plaintiff [Name] was negligent in entering and riding in a vehicle that was being operated by an individual, [Name], who was under the influence of intoxicants at the time of this accident. The act of negligence is a proximate cause of the injuries and damages alleged in Plaintiff's suit.

**THIS DOCUMENT**

2. Defendant [Name] would further show the Court that the negligence of [Name] was a proximate cause of the accident and resulting damages that are the subject of this action.

3. The incident complained of by Plaintiff was caused solely by the negligence or carelessness on the part of Plaintiff or [Name of driver].

4. Defendant would further show that the incident complained of in Plaintiff's Original Petition was an unavoidable accident or, in the alternative, it was beyond the reasonable control or foreseeability of Defendant to prevent.

**THANK YOU**

5. Defendant would show that the accident complained of was solely caused by the acts of third persons or instrumentalities in no way connected with this Defendant.

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6. Defendant pleads comparative negligence, and asks the Court and jury to consider the relative damages and conduct of the parties and of all tortfeasors, including the Plaintiff. The Defendant is entitled to an offset credit or percentage reduction based on a determination of the relative fault of all persons and tortfeasors or upon the amount of money paid by all persons and tortfeasors to Plaintiff.

7. Defendant invokes all rights under applicable law which imposes limits on the sums which may be awarded for emotional distress and punitive damages.

8. [If Exemplary damages have been requested, add: Defendant further states that to award Exemplary damages against them would violate the Constitution of the United States of America and the Constitution of the State of Texas.

#### PRAYER

Defendant [Name] having fully answered herein, prays that Plaintiff take nothing by reason of [his or her] suit and that this Defendant be discharged and recover costs of Court and such other and further relief, both general and special, at law and in equity, to which this Defendant may be justly entitled.

Respectfully Submitted,

\_\_\_\_\_  
[Law Firm Name]

By \_\_\_\_\_

**THANK YOU**

\_\_\_\_\_  
[Attorney's Name]

Attorney for Defendant

[Attorney's Address]

[Telephone Number]

[Facsimile Number]

[Bar Card Number]

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AFFIDAVIT  
**PREVIEW**

State of Texas  
County of \_\_\_\_\_

BEFORE ME, a notary public in and for County, Texas, on this day personally appeared [Name], to me well known to be a credible person of lawful age and qualified in all respects to make this affidavit, who being first sworn upon oath, says that [he or she] is [party designation] in the above-referenced case, and has the authority to make this affidavit. Affiant further states that [he or she] has read the foregoing and that the pleading is in every statement and allegation true and correct.

[Include any other facts to support the affidavit]

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Affiant

Subscribed and sworn to before me on \_\_\_\_\_ by

\_\_\_\_\_

\_\_\_\_\_  
Signature of officer

**THIS DOCUMENT**

\_\_\_\_\_  
Notary's typed or printed name

My commission expires:

\_\_\_\_\_  
[or Notary's Stamp]

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing pleading or document has been served upon all attorneys of record and any parties who are not represented by an attorney on \_\_\_\_\_.

Attorney for: [Other attorney's client's name]

Attorney's name: [Other attorney's name]

Attorney's address [Other attorney's address]

**THANK YOU**

Type of Service:

\_\_\_ U.S. Mail, Certified Return Receipt Request No. \_\_\_\_\_.

\_\_\_ U.S. Mail, First Class \_\_\_\_\_.

\_\_\_ Hand delivery by name of driver or service \_\_\_\_\_.

\_\_\_ Facsimile transmission to \_\_\_\_\_ [fax number] before 5 p.m.

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[Attorney's signature]

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