

## February 2009 Civil Procedure and Evidence Comments

1. Almost all examinees knew Tools had to file a special appearance before any other pleading.
2. Although almost all examinees knew the court should deny the special appearance because Tools has sufficient contacts in Texas, few examinees knew the court could make this determination on the basis of the pleadings, any stipulations, other discovery, and any oral testimony.
3. Almost all examinees knew Tools did not have a valid basis for removal because there was not complete diversity; Supplies and David are Texas defendants.
4. Almost all examinees knew David had to file a motion to transfer venue prior to or concurrently with any other pleading.
5. Almost all examinees knew the court would deny the motion to transfer venue because venue was proper where all or a substantial part of the acts or omissions occurred (Nueces County) or venue was proper as to one defendant (Supplies) in Nueces County and, therefore, proper as to all defendants.
6. Most examinees knew Supplies should file a special exception, requiring Paul to amend his pleadings to specify the maximum amount of damages. Most examinees knew the court should grant the special exception.
7. Almost all examinees knew the answer must be filed by 10am on the first Monday after the expiration of 20 days from the date of service. Most examinees knew the responses to the requests for production were due 50 days after service of the request.
8. Almost all examinees correctly listed five of the permissible forms of discovery under Tex. R. Civ. Proc. 192.1.
9. Almost all examinees knew Tools's untimely response to the request for admission resulted in the admission being deemed admitted. Few also know the request was considered admitted without the necessity of a court order. Most examinees knew Tools should file a motion to withdraw the deemed admission by showing good cause for the late response and no undue prejudice.
10. Although almost all examinees knew the defendants could file a motion asking the court to order that Paul be examined by a qualified physician, few knew that such a request must be upon a showing of good cause.
11. Most examinees knew Paul had to state in his response that the information or material responsive to the request has been withheld; the request to which the information or material relates; and the privilege asserted.

12. Most examinees knew Supplies had to respond within 10 days. Most did not know Supplies had to amend its response, identifying the material produced and stating the privilege asserted. Most examinees knew the requesting party had to promptly return the specified material and any copies pending a court ruling.
13. Almost all examinees knew “leading,” “form,” and “ non-responsive” were the 3 objections allowed during a deposition.
14. Almost all examinees knew Tools could file a pre-trial Daubert motion challenging the expert’s qualifications or challenging the reliability/relevance of the expert’s opinions.
15. Almost all examinees knew Tools could file either a traditional motion for summary judgment or a no-evidence motion for summary judgment on the defect claim, and that the court should grant the motion.
16. Almost all examinees knew Paul should file a motion in limine. Most also knew the motion should state why the information was irrelevant and show that the probative value of the information was outweighed by its prejudicial value.
17. Almost all examinees knew the motion should state the failure to timely supplement the discovery response would not unfairly surprise or prejudice the other parties. Few also knew the motion could state there was good cause for the failure to timely supplement.
18. Almost all examinees knew David should file a motion for a directed/instructed verdict. Few also knew the motion should show that the evidence was insufficient to raise a fact issue with respect to David’s negligence.
19. Almost all examinees knew defendants could file a motion for judgment notwithstanding the verdict. Few knew the defendants could also file a motion to disregard a jury finding on a question that has no support in the evidence.
20. Almost all examinees knew the motion for new trial must be filed prior to or within 30 days after the judgment is signed. Most knew the motion is overruled by operation of law 75 days after the judgment is signed.