

July 2009 Civil Procedure and Evidence Comments

1. Almost all examinees knew the proper venue for Bill's lawsuit was Kleberg County (place of occurrence); Nueces County (principle place of business for Extra); and Brooks County (Ray, a natural person's residence).
2. Almost all examinees knew Extra needed to file a motion to transfer venue and almost all knew the motion had to be filed prior to or concurrently with any other pleading.
3. Few examinees knew Extra had to file a Third Party Petition and citation on Parts in order to add Parts to the case, and few knew leave of court was required if the pleading was filed outside 30 days after Extra filed its answer.
4. Many examinees knew that because Parts did not have a principle place of business in Texas and did not have an agent for service in Texas, that service of process could be accomplished by serving the Texas Secretary of State. Few examinees knew the Texas Secretary of State would then forward the citation and Third Party Petition to Parts's corporate headquarters.
5. Almost all examinees knew Parts had to file a special appearance to contest jurisdiction.
6. Almost all examinees knew the court should deny the special appearance, but few examinees knew the court could make this ruling because Parts's \$2 million in Texas sales constituted sufficient minimum contacts to confer jurisdiction.
7. Almost all examinees knew Bill could submit Requests for Disclosure to Extra's attorney.
8. Almost no examinee knew that if an expert report is not produced in response to Requests for Disclosure, Extra and Ray could file a motion to require the expert to reduce his findings and opinions to written form.
9. Almost all examinees knew Extra and Ray could file a motion to compel Bill to sign a medical authorization for the records. Few examinees fully explained that Extra and Ray needed to set forth, in the motion, their belief that many Gulf War veterans suffer from PTSD and that Extra and Ray do not otherwise have access to Bill's prior medical records and there is good cause for the court order.
10. Few examinees knew that if the parties cannot agree on where the depositions should take place, the court should order the party depositions to be taken in Brooks County, the county of the pending lawsuit.
11. Many examinees knew Bill's attorneys should serve a notice to depose a designated corporate representative. Most examinees did not know that the notice needed to describe with reasonable particularity the matters on which the deposition is requested.
12. Almost all examinees knew Parts should file a no-evidence motion for summary judgment and a traditional motion for summary judgment. Most examinees did not know the expert's

report and the Fire Marshall's report should be attached.

13. Almost all examinees knew the trial court should overrule the objections and move the case to the jury docket. Most examinees explained the court should do so because of the strong preference for jury trials in Texas and because Bill requested a jury in his Original Petition, putting the defendants on notice.
14. Almost all examinees knew Extra should move to challenge the juror for cause. Many examinees also knew that if the challenge for cause failed, Extra should use a preemptory strike. Few examinees knew Extra should also notify the court of the need to use the preemptory strike.
15. Almost all examinees knew the trial court should overrule the objection to Bill calling Ray as the first witness. Few examinees fully explained that, in a civil case, a plaintiff may call witnesses in any order.
16. Almost all examinees knew the court should allow the Fire Marshall to testify. Most examinees explained that the failure to list the witness was an oversight, good cause existed to allow the late designation, and no other party would be prejudiced because all parties had access to the Fire Marshall's report and his deposition.
17. Almost all examinees knew Ray's objection should be sustained. Most examinees explained that the objection should be sustained because the moving violations were irrelevant or were improper impeachment evidence because they were not misdemeanors involving moral turpitude.
18. Almost all examinees knew the objection should be overruled because offers of settlement are inadmissible. Many examinees fully explained that Texas favors settlement discussions and settlements without fear of a proposed settlement being used as an admission of responsibility in front of a jury.
19. Most examinees knew that, because Parts's responsibility should not be submitted, only that of Ray, Extra, and Bill should be submitted. Few examinees fully explained that Ray's responsibility was based on ordinary negligence; Extra's on vicarious liability and liability for negligent staffing; and Bill's responsibility was based on his comparative responsibility for his own negligence.
20. Almost all examinees knew Extra should file a motion for judgment notwithstanding the verdict.