

Texas Board of Law Examiners

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February 2010 Civil Procedure and Evidence Comments

1. Almost all examinees knew a copy of plaintiff's original petition had to be served on defendants. Most examinees knew a citation prepared by the clerk of the court also had to be served on defendants.
2. Almost all examinees knew Home had to file a motion to transfer venue prior to or concurrently with any other pleading.
3. Most examinees knew Collin County was the proper county for the suit.
4. Almost all examinees knew Ice's motion or plea to the jurisdiction should be denied. Most also knew the motion should be denied because all parties were citizens of Texas and the incident made the basis of the suit occurred in Texas.
5. Almost all examinees knew the defendants should file special exceptions. Most knew the defendants should ask the court to order the plaintiff to replead his case more specifically or face dismissal of the case.
6. Few examinees knew Home should file a verified pleading advising the court and parties it had been sued in the wrong capacity.
7. Almost all examinees knew Ice had to raise its affirmative defense before trial. Few knew the pleading had to be filed at least seven days before trial.
8. Almost all examinees knew Trey should serve defendants with a request for disclosure.
9. Almost all examinees knew Trey's objection should be overruled. Most knew the objection should be overruled because in a personal injury case prior and subsequent injuries are relevant to causation.
10. Although almost all examinees knew the defendants should file a motion in limine.
11. Most examinees knew the substantive objection is that the evidence is inadmissible because it is a subsequent remedial change.
12. Most examinees knew Ice should file a no-evidence motion for summary judgment.
13. Almost all examinees knew the case should be retained on the jury docket. Most examinees knew that Texas has a strong preference for jury trials.

14. Almost all examinees knew the trial court should grant the mediator's motion to quash.
15. Most examinees knew the court should proceed with trial with only eleven jurors. Most knew ten jurors must agree to all answers.
16. Most examinees knew Home's objections should be overruled. Few knew this was because Home and Ice are co-defendants and the statement is admissible as a statement by a party opponent.
17. Almost all examinees knew Trey's objection should be overruled because a party may read or play any part of a deposition.
18. Almost all examinees knew the court should exclude the testimony because the husband/wife privilege applies.
19. Almost all examinees knew Home's objection should be sustained. Few knew this was because a party cannot use his own discovery response to offer or authenticate his evidence.
20. Almost all examinees knew the motion for new trial should be denied. Most examinees correctly stated why this behavior did not rise to the level of juror misconduct.

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