

JULY 2010 CIVIL PROCEDURE & EVIDENCE

1. Almost all examinees knew the defendants should file a motion to transfer venue before any other pleading.
2. Almost all examinees knew Brown County was not the proper venue, the Brown court could not transfer venue to Harris County, and the court must transfer to McLennan County. Most examinees could explain why McLennan County was the proper venue.
3. Almost all examinees knew the defendants should file a special exception asking the court to require Paul to amend his petition or face dismissal of the case.
4. Few examinees knew the defendants should file a motion to dismiss because Paul failed to replead his gross negligence claim.
5. Few examinees knew DAN should file a verified denial that it has been sued in the wrong capacity.
6. Most examinees knew DAN should raise the affirmative defense in its answer or amended answer. Few knew the amended answer should be filed at least seven days before trial.
7. Almost all examinees knew the five categories of discovery authorized by TRCP 194 – 204.
8. Almost all examinees knew the court should sustain Paul's objection to any interrogatories to the extent they call for responses in excess of 25. Few examinees also knew there is no limit to the number of requests for production and therefore no available remedy.
9. Almost all examinees knew Paul should file a motion to compel responses to his request for disclosures and that the court should grant the motion because "relevance" was not a proper objection to such a request.
10. Most examinees knew the court should require Paul to produce a properly executed medical authorization. Few examinees stated that Paul's own production of the records was not a proper substitute for the authorization.
11. Most examinees knew DAN and Paul could ask for sanctions including reimbursement of attorney's fees and expenses. Few examinees also stated that Paul could file a motion for default judgment or that ABC's pleadings be struck.
12. Almost all examinees knew ABC should file a motion to quash the notice of deposition. Most knew a timely filing resulted in the deposition being automatically quashed. Few examinees knew the motion should be filed within 3 days of service of the notice.
13. Few examinees knew DAN should file a motion to add a responsible third party.
14. Almost all examinees knew REYNA's objection should be overruled, but few stated that although REYNA could not be held liable for any money damages, its negligence and causation could be compared to the negligence and causation of other parties by way of a jury question on comparative negligence.

15. Almost all examinees knew Paul should respond with affidavits, and most knew Paul should attach the expert's affidavit or portions of the expert's deposition. Few examinees knew the response and summary judgment evidence should be filed seven days before the hearing on the motion for summary judgment.
16. Almost all examinees knew DAN should file a motion in limine to prevent the evidence from being presented to the jury.
17. Almost all examinees knew the court should overrule Paul's objection, but few stated the court could not prevent the defendants from cooperating with each other when exercising their strikes. Most examinees knew the court could equalize the strikes to make the process fair.
18. Many examinees knew the court could not award Paul \$100,000 in past medical expenses, but few knew that Paul could only recover the stipulated \$60,000 because that is the amount that was paid or incurred on his behalf.
19. Almost all examinees knew DAN should file a motion for judgment notwithstanding the verdict.
20. Most examinees knew the judgment became final 75 days from the date the judgment was signed.