

February 2011 Civil Procedure & Evidence

1. Almost all examinees knew Dan waived his challenge to venue because he filed his answer in Starr County before filing his plea to the court's jurisdiction and motion to change venue.
2. Few examinees knew there is no interlocutory appeal from the court's erroneous venue ruling. Few examinees knew such an erroneous ruling constitutes reversible error and the case may have to be retried.
3. Almost all examinees knew Cameron County (where defendant resides) and Webb County (county of accident) were counties of proper venue.
4. Few examinees knew that adding a responsible third party tolls the statute of limitations for 60 days from the date of the order adding the responsible third party.
5. Most examinees knew limitations is an affirmative defense. Few knew Dan should specifically plead this defense in an amended petition seven days before trial.
6. Almost all examinees knew the five categories of discovery authorized by TRCP 194 – 204.
7. Many examinees knew that Requests for Disclosures are not subject to any objection.
8. Almost all examinees knew Dan should file a motion to withdraw the deemed admissions and assert his failure to respond was not intentional and undeeming the admissions would not prejudice Tracy.
9. Most examinees knew a party is required to disclose their trial witnesses in response to interrogatories.
10. Almost all examinees knew Dan must file his claim against Tracy in this action. Most examinees knew such a claim would be a compulsory counterclaim.
11. Many examinees knew Tracy was required to produce the witness statements and video statement of her doctor. Most correctly explained such documents are not privileged and are discoverable.
12. Almost all examinees knew Dan should file a special exception asking the court to require Tracy to amend her petition or face dismissal of the case and that the trial court should grant the exception and require Tracy to re-plead her damages.
13. Almost all examinees knew Tracy should file a motion in limine to prevent the evidence from being presented to the jury without opposing counsel first approaching the bench.
14. Most examinees knew the Dan should object on the basis of hearsay. Few examinees knew Dan could also object on the basis that who received a traffic ticket was irrelevant. Almost all examinees knew the objections should be sustained.
15. Almost all examinees knew Tracy should object on the grounds that mediation/settlement negotiations are not admissible for any purpose, and that the court should sustain the objection.

16. Almost all examinees knew Joan should file a motion for a directed verdict. Most examinees knew the court should grant the motion if there is no evidence Joan's conduct caused the accident.
17. Most examinees knew Dan should object on the record to the omission of his defenses from the jury charge. Most also knew he should submit a substantially correct instruction on his defenses.
18. Almost all examinees knew the court should deny the motion for a mistrial because eleven jurors are sufficient.
19. Most examinees knew the court should deny the motion for mistrial, instruct the jury that they must answer all questions, and send the jury back for further deliberations.
20. Almost all examinees knew Joan should file a motion for judgment notwithstanding the verdict. Many knew Joan should allege that no evidence supported the verdict against her.