

FEBRUARY 2012 CIVIL PROCEDURE & EVIDENCE

1. Almost all examinees knew Paul had to file an original petition and secure service of the petition and citation. Few examinees knew Paul had to request that a citation be prepared.
2. Almost all examinees knew Dan should file a motion to transfer venue and the motion had to be the first pleading filed.
3. Almost all examinees knew Hockley County (where defendant resides) and Lubbock County (county of accident) were counties of proper venue.
4. Most examinees knew an interlocutory appeal from a motion to transfer venue is not allowed under the circumstances here.
5. Most examinees knew an erroneous venue ruling is reversible error. Few explained this would result in a reversal of the judgment and a remand.
6. Almost all examinees knew Dan should file a special exception.
7. Most examinees knew Dan had to affirmatively plead comparative responsibility.
8. Almost all examinees knew the five categories of discovery authorized by TRCP 194 – 204.
9. Almost all examinees knew Paul could determine if Dan had insurance via a request for disclosure, interrogatories, or a request for production.
10. Most examinees knew Paul had to provide a medical authorization. Most also knew Paul had to provide the authorization even if he had already provided the medical records.
11. Most examinees knew the court should overrule Dan's objection to Paul's request for admissions. Few examinees explained there is no prohibition on a timely request for admissions.
12. Almost all examinees knew the objection to the deposition of the investigating officer should be overruled. Few examinees explained such a deposition is proper subject to a court scheduling order for the purpose of perpetuating testimony or for use as a discovery tool.
13. Almost all examinees knew Fred should file a no evidence and traditional motion for summary judgment.
14. Almost all examinees knew the objection to Fred's statement to the police should be overruled. Most examinees knew the statement was an admission against interest and there is no privilege for statements made to the police.
15. Almost all examinees knew Paul should file a motion in limine and request a hearing on the motion.

16. Most examinees knew the court should overrule the motion to strike Dan's expert. Most examinees knew Dan's omission did not prejudice or surprise the other parties who all had access to the expert's report and an opportunity to depose the expert.

17. Most examinees knew Fred's and Dan's hearsay objection should be sustained. Most also knew exchanging documents during discovery does not overcome the need to properly authenticate the documents.

18. Almost all examinees knew Dan should move for an instructed verdict. Most explained such a motion was proper because Paul did not prove an essential element of his case.

19. Most examinees knew the court could not accept a verdict of only nine jurors. Few explained the court could accept a verdict only where ten of the twelve jurors agreed on all answers.

20. Most examinees knew Paul's motion for judgment in the amount of \$20,000 should be denied. Few explained Paul was entitled to recover only for bills paid or incurred.