

## **July 2012 Civil Procedure & Evidence Comments**

1. Almost all examinees knew Travis and Dallas Counties (where defendants reside) and Travis County (county of accident) were counties of proper venue.
2. Almost all examinees knew Mercy and Prime had to file answers before 10:00am the Monday following the expiration of twenty days after service.
3. Most examinees knew Prime had to file a sworn denial to assert its corporate status and protect its shareholders. Few examinees knew Prime had to assert, in the sworn denial, that it had been sued in the wrong capacity.
4. Almost all examinees knew Mercy had to file a pleading asserting the affirmative defense of release. Most also knew this pleading should be filed within seven days before trial.
5. Almost all examinees knew Prime could file a motion to designate Big as a responsible third party. Few knew Prime could also file a motion to add Big as a third party defendant.
6. Almost all examinees knew the five categories of discovery authorized by TRCP 194 – 204.
7. Almost all examinees knew Wilda's lawyer could serve requests for disclosure to obtain the names of witnesses. Few examinees knew counsel could also serve interrogatories and requests for production of documents to obtain the same information.
8. Almost all examinees knew the trial court should sustain Prime's objection because its attorney's notes were privileged work product.
9. Almost all examinees knew the trial court should sustain Wilda's objection to the interrogatories, which are limited to twenty-five. Almost all examinees knew the trial court should overrule Wilda's objection to the request for admissions, which are unlimited.
10. Almost all examinees knew the trial court should overrule Prime's objection to production of the photographs because they are subject to discovery.
11. Almost all examinees knew the trial court should overrule Wilda's objection. Most also knew the trial court should overrule the objection because in a personal injury lawsuit a plaintiff's prior medical history is always relevant and subject to discovery.
12. Few examinees knew the defendants should file amended answers to allege Wilda's comparative responsibility as the proximate cause of the accident.

13. Almost all examinees knew the trial court should overrule the defendants' objection to Quick Clean's records because the records fall within the business records exception to hearsay. Many examinees knew the records were admissible against all defendants.

14. Almost all examinees knew Mercy should file a no evidence motion for summary judgment alleging Wilda has no evidence to support the elements of her cause of action against Mercy. Few examinees knew Mercy could also file a traditional motion for summary judgment.

15. Few examinees knew the objection to production of Jane's statement should be overruled because it is discoverable as a witness statement and as a statement of a person with knowledge, and is material as to notice of the dangerous condition.

16. Most examinees knew Mercy's objection to the trial setting should be sustained because parties are entitled to forty-five days' notice of the first setting

17. Almost all examinees knew Prime should file a motion in limine and request a hearing on the motion.

18. Most examinees knew the court was not authorized to limit peremptory challenges because, absent an agreement, all parties are entitled to six peremptory challenges in a civil case. Few examinees knew the circumstances under which the trial court could equalize jury strikes by increasing the number of strikes.

19. Most examinees knew the trial court could grant a JNOV regardless of its prior denial of a motion for directed verdict.

20. Few examinees knew the judgment is final after seventy-five days from the signing of the judgment. Many examinees knew the trial court had the power to reconsider the motion for new trial up to 105 days from the date of the judgment.