

February 2013 Civil Procedure & Evidence Comments

1. Almost all examinees knew Dave's motion to transfer venue should be denied because Paula filed her suit in a county of proper venue (Travis) and a plaintiff's choice of proper venue trumps a defendant's motion to transfer.
2. Almost all examinees knew Dave's answer was due by 10:00 am the Monday next after 20 days from date of service.
3. Almost all examinees knew the trial court should deny Paula's motion for a default judgment. Most examinees explained that, although untimely, Dave filed his answer before a judgment was entered and the answer was sufficient to defeat a default judgment.
4. Almost all examinees knew Box should file a special exception requesting Dan plead more specific facts or, alternatively, that his pleading be stricken.
5. Almost all examinees knew the five types of discovery authorized by TRCP 192.1, 194.1.
6. Almost all examinees knew Paula could determine whether a defendant is covered by liability insurance via a request for disclosure, interrogatories, or a request for production.
7. Almost all examinees knew the trial court should grant Dave's motion to compel Paula to produce a medical authorization. Most examinees explained a plaintiff in a personal injury suit must provide the authorization if requested by a defendant; medical records and bills do not suffice.
8. Most examinees knew the trial court should grant Paula's motion to compel Box to produce the other two statements. Few examinees explained "statements" of whatever source are always subject to discovery and a request for production.
9. Most examinees knew Box should file an amended answer asserting the affirmative defense of release of all claims.
10. Almost all examinees knew the trial court should overrule Box's objection to 30 separate requests for production because there is no limit to the number of such requests. Most examinees also knew the limit of 25 applies only to interrogatories.
11. Most examinees knew the trial court should overrule Box's objection to Paula adding it as a party defendant.
12. Almost all examinees knew the trial court should overrule Paula's motion to strike Dave's jury demand. Most examinees explained the case was not within 30 days of the first trial setting; therefore, Dave's motion was not untimely.

13. Most examinees knew each party is entitled to 6 preemptory challenges; the trial court cannot prevent Dan and Box from collaborating; and the court could equalize the challenges amongst all parties.
14. Almost all examinees knew a plaintiff may call the defendant or any other witness at any time in a civil case.
15. Most examinees knew the court should overrule Dave's hearsay objection to the admission of his statement to Box's store manager. Few examinees explained Dave's statement was an admission against his interest.
16. Almost all examinees knew the trial court should sustain Dave's objection to Paula's proffer of his driving records that show six misdemeanor convictions for traffic violations. Most examinees explained his convictions were not felonies or crimes of moral turpitude; nor were they material or relevant.
17. Almost all examinees knew the trial court should sustain Box's objection to Paula calling the mediator as a witness at trial. Almost all examinees explained all matter and information exchanged in mediation is confidential and settlement negotiations/offers are not admissible.
18. Almost all examinees knew the trial court should sustain Paula's objection to the proffer of her personal group health insurance policy. Few examinees explained group medical coverage is a collateral source and inadmissible.
19. Almost examinees knew Box should file a motion for judgment notwithstanding the verdict.
20. Few examinees knew the trial court's judgment became final 75 days from the date the judgment was signed and the trial court retains jurisdiction for an additional 30 days thereafter.