

## July 2013 Civil Procedure & Evidence Comments

1. Almost all examinees knew Pat could obtain service on OWSC, an out-of-state defendant, by serving the Texas Secretary of State via the long arm statute.
2. Almost all examinees knew OWSC should file a special appearance to challenge personal jurisdiction before or subject to any other pleading.
3. Almost all examinees knew ABC should file a motion to transfer venue before or subject to any other pleading.
4. Most examinees knew the only proper venue was in Wichita County because the accident occurred in that county and ABC, the only Texas defendant, has its principle place of business in that county.
5. Most examinees knew no interlocutory appellate review is available to ABC.
6. Most examinees knew an erroneous ruling on a motion to transfer venue is reversible error. Few examinees stated this resulted in a reversal of the trial court's judgment and remand of the cause.
7. Almost all examinees knew the defendants should file a special exception. Most examinees correctly explained Pat would have an opportunity to amend his petition or risk having his claims dismissed.
8. Almost all examinees knew ABC should raise the affirmative defense of accord and satisfaction. Few examinees stated this should be raised in ABC's amended answer.
9. Almost all examinees knew "statements" are always discoverable and no privilege applies. Most examinees knew statements may be requested via requests for disclosures and such requests are not objectionable.
10. Most examinees knew the three discovery tools available to determine if ABC has insurance are requests for disclosures, interrogatories, and requests for production.
11. Almost all examinees knew the discovery of trial witnesses is specifically authorized.
12. Almost all examinees knew there is no limit on the number of requests for admissions that may be served, and there is a limit of 25 on the number of interrogatories that may be served. Few examinees knew the correct discovery level under the facts.
13. Almost all examinees knew Wichita County was the proper county to conduct party depositions. Few examinees knew that under the facts, Wichita County was proper because, when parties cannot agree, the court should order depositions in the county of suit.

14. Almost all examinees knew responsible third party practice is not limited to personal injury suits. Many examinees explained the purpose of adding a responsible third party to a suit.

15. Few examinees knew ABC should file both a traditional motion for summary judgment and a no-evidence motion for summary judgment. Few examinees explained the difference between the two motions.

16. Almost all examinees knew OWSC should move to strike the juror for cause. Most examinees knew that if this challenge was denied, OWSC should use a preemptory strike. Few examinees knew OWSC should notify the court of the need to use a preemptory strike and that otherwise it would not have to use the strike.

17. Almost all examinees knew there is no requirement that a plaintiff testify first as part of his/her case-in-chief. Most examinees explained this is so because a party has broad latitude in how to present its case to the jury. Most examinees knew a showing of unavailability is not required to present a duly noticed and taken deposition in the case.

18. Almost all examinees knew the question calls for hearsay. Few examinees knew the court should sustain the hearsay objection, strike the answer, and instruct the jury to disregard.

19. Almost all examinees knew the trial court should read the jury charge aloud to the jury. Many examinees knew the jury was allowed to have copies of the charge during closing arguments.

20. Almost all examinees knew the new trial motion should be denied because there was no evidence of outside influence on the jury or its decision-making process.