

## **FEBRUARY 2014 CIVIL PROCEDURE & EVIDENCE COMMENTS**

1. Almost all examinees knew the defendants had to file an answer by 10am the Monday next after twenty days from service in order to avoid a default judgment.
2. Almost all examinees knew the only two proper places of venue were Travis County (county of event and Big Mall's principle place of business) and Hays County (Doug's residence).
3. Almost all examinees knew an erroneous venue ruling amounts to reversible error. Most examinees also knew this meant the trial court's judgment would be reversed and the cause remanded.
4. Almost all examinees knew the defendants should file a special exception to Paula's petition.
5. Almost all examinees knew release is an affirmative defense. Most examinees stated this defense must be raised in Big Mall's answer.
6. Almost all examinees knew Paula's objection to discovery of statements should be overruled because statements are always discoverable and proper requests for disclosure are not subject to objections.
7. Almost all examinees knew the trial court should grant Doug'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 Paula should file a motion to withdraw the deemed admissions. Most also knew the motion must be based on a showing of good cause for the failure to timely respond and that the party relying on the admissions is not prejudiced.
9. In response to Paula's statement that she is seeking "over \$300,000 in lost earnings," almost all examinees knew Doug's attorney could file a special exception. Few examinees knew Doug could also serve interrogatories and/or a request for production.
10. Almost all examinees knew the trial court should overrule Paula's parent-child privilege objection because no such privilege exists in Texas.
11. Almost all examinees knew the trial court should overrule Paula's objection to discovery regarding her health insurance. Most examinees knew this information is discoverable although insurance is a collateral source and may not be admissible at trial.
12. Almost all examinees knew the trial court should deny Paula's motion to strike adding Jane as a responsible third party. Most examinees knew the motion should be denied because a

responsible third party is added for the purpose of allocating fault; therefore, insolvency and having no insurance is not a basis on which to object.

13. Almost examinees knew Paula's objection to producing a medical authorization should be overruled. Most knew a plaintiff is required to produce an authorization with or without production of medical bills/records.

14. Almost all examinees knew Big Mall could file a no-evidence summary judgment. Many examinees knew Big Mall could also file a traditional motion for summary judgment. Few examinees properly stated the basis on which such motions are granted.

15. Almost all examinees knew Doug should file a motion in limine. Few examinees stated the basis of the motion would be that the indictment was prejudicial and irrelevant to any fact issue in the case.

16. Almost all examinees knew the trial court should overrule Big Mall's objection to the deposition testimony of its former representative. Few examinees knew a deposition taken in the same lawsuit is admissible.

17. Almost all examinees knew Big Mall should strike the juror for cause. Few examinees knew that to preserve error, Big Mall would need to exercise a preemptory strike and make a record that but for the strike on this juror, it would have stricken another juror who is now on the panel.

18. Almost all examinees knew Paula's objection to Doug's wife testifying at trial should be overruled because Paula was aware of the wife's knowledge based on the deposition, and, therefore, Paula is not prejudiced.

19. Most examinees knew Paula, Doug, and Big Mall should each receive 6 strikes because Doug and Big Mall are antagonistic. Few examinees knew the trial court cannot prevent the defendants from collaborating. Most examinees knew the trial court could equalize the strikes and provide Paula with additional strikes.

20. Almost all examinees knew the trial court should overrule the motion for a mistrial and direct the jury to continue its deliberations to answer the remaining questions.