

JULY 2014 CIVIL PROCEDURE & EVIDENCE COMMENTS

1. Almost all examinees knew the plaintiff had to file an original petition to initiate suit against Dan and Mark. Few examinees knew the petition had to be accompanied by a civil case information sheet.
2. Almost no examinee knew the plaintiff had to serve Dan, the out-of-state defendant, by serving the Chairperson of the Texas Transportation Commission.
3. Almost all examinees knew Mark should file a motion to transfer venue before or concurrent with any other pleading.
4. Almost all examinees knew Dan should file a special appearance before any other pleading.
5. Most examinees knew the counties of proper venue were Tarrant County because the accident occurred in that county, or Dallas County, the county of residence of the only Texas natural defendant.
6. Almost all examinees knew statute of limitations is an affirmative defense that must be raised in defendants' answer. Most examinees knew the amended answer must be filed without leave of court 7 days before trial.
7. Almost all examinees knew Mark should file a plea in abatement to prevent the second suit from proceeding.
8. Almost all examinees correctly listed five of the discovery tools listed in Texas Rule of Civil Procedure 192.1
9. Most examinees knew the three discovery tools available to determine if Dan has insurance are requests for disclosures, interrogatories, and requests for production.
10. Most examinees knew witness statements are always discoverable and no privilege applies to prevent disclosure of Mark's recorded statement to his insurance carrier.
11. Almost all examinees knew Dan could not assert the work product privilege to the names and addresses of the witnesses, but he could successfully assert the privilege to the notes he took during his interview of the witnesses.
12. Most examinees knew Mark could not file an interlocutory appeal from the trial court's denial of his motion for summary judgment.
13. Almost all examinees knew the trial court should overrule Mary's objection to the late designation of Dan's expert because she was aware of the expert, had the expert's report, and deposed the expert; therefore, Mary was not prejudiced by the late designation.

14. Almost all examinees knew the trial court should overrule the defendants' objection to Mary's discovery request for the identity of their trial witnesses. Most examinees knew the defendants were required to disclose the names and addresses of their witnesses.
15. Few examinees knew, that to preserve error on the trial court's ruling on Dan's motion in limine, Mary's attorney was required to approach the bench, formally offer the evidence, and obtain a ruling before asking Dan about his indictment on cross-examination.
16. Most examinees knew the court should overrule Dan's objection to the testimony of Mary's expert because an expert's otherwise admissible opinion testimony may embrace an ultimate issue.
17. Almost all examinees knew Mary's objection to the photographs should be overruled. Most examinees explained that documents produced in response to written discovery are presumed authentic and may be used at trial against the producing party.
18. Almost all examinees knew Mary's objection to evidence of Pat's group health insurance should be sustained. Most examinees explained the collateral source rule prohibits the introduction of such evidence.
19. Most examinees knew the trial court could not accept a verdict of only nine jurors. Most explained a trial court may accept a verdict where ten or more jurors agree to the answers of all questions.
20. Almost all examinees knew Mark should file a motion for judgment notwithstanding the verdict or a motion for new trial.