

FEBRUARY 2015 CIVIL PROCEDURE & EVIDENCE COMMENTS

1. Almost all examinees knew Giant had to file a verified special appearance. Most examinees knew the special appearance had to be filed prior to any other pleading, plea, or motion.
2. Almost all examinees knew Cactus had to file a motion to transfer venue prior to or concurrent with any other motion.
3. Almost all examinees knew Cactus should file special exceptions asking that Butch be ordered to state the specific amount of damages he seeks.
4. Almost all examinees knew five categories of information or material a party may request in a request for disclosures.
5. Most examinees knew a party must amend or supplement a discovery response when it learns the response is no longer correct or complete. Few examinees knew such an amendment or supplement must be made reasonably promptly and no less than 30 days before trial.
6. Most examinees knew Butch should file a request for production and inspection of the back-up alarm. Few examinees knew that because he intended to test the alarm, Butch had to indicate the method to be used and the manner, means, and procedure for the testing.
7. Almost all examinees knew Giant's untimely response to the requests for admissions resulted in deemed admissions. Few examinees knew Giant must file a motion to withdraw the deemed admissions and show both good cause for the failure to timely respond and that Butch would not be unduly prejudiced by the withdrawal.
8. Almost all examinees knew the objections to Butch's request for a jury trial should be overruled. Most examinees knew Butch had only to file his jury request and pay the fee a reasonable time before trial but not less than 30 days before the trial date.
9. Almost all examinees knew Butch could suspend the deposition and request a protective order and sanctions. Most examinees knew the trial court should grant the request. Most examinees knew the only objections to questions during an oral deposition are limited to "objection, leading" and "objection, form."
10. Most examinees knew Giant should file a no-evidence and traditional motion for summary judgment. Few examinees stated what each motion should assert, and few examinees knew the expert's deposition or affidavit should be attached to the traditional motion for summary judgment.
11. Almost all examinees knew Butch should invoke "the rule" and request the judge order testifying witnesses be excluded from the courtroom. Few examinees knew the court should swear in the witnesses before excluding them from the courtroom. Few examinees knew the witnesses should be instructed not to speak to anyone except the lawyers about the case.

12. Almost all examinees knew Butch should file a motion in limine to prevent discussion of his drunk driving arrest. Almost all examinees knew Butch should establish why the probative value of the evidence was substantially outweighed by the danger of unfair prejudice. Few examinees knew Butch could also establish why the evidence was irrelevant.

13. Almost all examinees knew Cactus could move to strike the venireman for cause on the basis of prejudice. Few examinees knew that if Butch's motion to strike for cause was denied, he could use a preemptory strike.

14. Few examinees knew Butch must show the witness the contents of his previous testimony and the time, place, and to whom the testimony was made. Most examinees knew the witness should be given an opportunity to explain or deny the testimony.

15. Most examinees knew Giant must show either good cause for its failure to list the witness in its discovery responses or that its failure to do so would not unfairly prejudice Butch.

16. Almost all examinees knew the trial court should overrule Cactus' objection to the truck driver's testimony. Few examinees identified the 3 possible hearsay exceptions as an excited utterance, an admission by a party opponent, and/or a statement against interest.

17. Almost all examinees knew the trial court should overrule Cactus' objection to the sheriff deputy's report. Few examinees knew the objection should be overruled because a certified copy of an official record is self-authenticated.

18. Almost all examinees knew Giant should file a motion for a directed verdict after Butch rested his case. Few examinees knew Giant could renew the motion after it rested and again after close of evidence.

19. Almost all examinees knew the jury could have the testimony read to them from the court reporter's notes, or if the notes could not be read, the trial court could recall the witness to repeat the testimony in dispute.

20. Almost all examinees knew Giant could file a motion for judgment notwithstanding the verdict. Many examinees knew Giant could also file a motion for new trial. Few examinees knew either motion should be filed within 30 days of the date the judgment is signed.