

JULY 2017 – CIVIL PROCEDURE & EVIDENCE

1. Almost all examinees knew Driller should file a written answer by 10am on the first Monday after the expiration of 20 days from service of process.
2. Almost all examinees knew Driller had a valid basis to remove the case to federal court. Most examinees explained Driller has a proper basis because Driller was a citizen of Louisiana, Producer was a citizen of Texas, and the amount in controversy exceeded \$75,000.
3. Almost all examinees knew Driller should file a motion to transfer venue before or concurrently with any responsive plea, except a special appearance.
4. Almost all examinees knew the court should deny Driller's motion to transfer venue. Most examinees explained venue was not proper in Jefferson County because that county was neither Driller's principal place of business in Texas, nor where the events or omissions giving rise to the claim occurred.
5. Most examinees knew Driller should file a special exception. Most examinees knew Driller was entitled to an order compelling Producer to amend its petition. Few examinees explained that the amendment had to state the maximum amount of damages sought (rather than the exact amount sought).
6. Almost all examinees knew the forms of discovery available to Driller included request for disclosure, interrogatories, request for production, oral depositions, depositions on written questions, request for admissions, and request for entry upon and examination of real property.
7. Almost all examinees knew Producer timely responded to Driller's interrogatories. Most examinees knew the response was timely because service of the response was due 30 days after receipt or on Day 31. Few examinees stated Producer's response was timely because it deposited the responses in the mail on Day 31. Many examinees incorrectly stated that the "mailbox rule" applied here.
8. Almost all examinees knew Producer was required to serve a response describing the privileged information withheld and asserting a specific privilege for each withheld item. Most examinees stated the response was due within 15 days of service of the request.
9. Few examinees knew Producer had to file and serve an amended petition on Driller's affiliate to add affiliate as a defendant to the suit. Most examinees knew Producer had to file a motion for leave to do so because Producer sought to add a party after the court-ordered deadline.
10. Almost all examinees knew Driller had to file a motion for protective order or a motion to quash the deposition of its president. Few examinees knew the motion should be accompanied by an affidavit from its president denying personal knowledge of relevant facts.

11. Few examinees knew the court should sustain Driller's objections to Producer's interrogatories and requests for production seeking information about Driller's expert. Few examinees knew the only permissible discovery tools regarding experts are requests for disclosure, written reports, and depositions.
12. Almost all examinees knew Driller's failure to timely respond to Producer's requests for admissions resulted in deemed admissions. Most examinees knew Driller should file a motion to withdraw the deemed admissions, showing both good cause for the failure to timely respond and that Producer would not be unduly prejudiced by the withdrawal of the admissions.
13. Many examinees knew Producer's attorney was not correct in refusing to give a basis for a "form" objection in a deposition. Few examinees explained that, upon request for the basis of an objection, the objecting attorney must provide a clear and concise explanation of the basis for the objection.
14. Almost all examinees knew Producer was entitled to production of the documents in electronic form because it requested the documents in such form. Most examinees knew Producer should file a motion to compel productions of the documents in electronic form.
15. Almost all examinees knew Driller should file a response to Producer's no-evidence motion for summary judgment. Few examinees explained the response should contain summary judgment evidence raising a genuine issue of material fact with respect to each of Driller's defenses. Few examinees knew the response should be filed no later than 7 days before the summary judgment hearing.
16. Almost all examinees knew Driller should first challenge the juror for cause on the basis of bias or prejudice. Almost all examinees knew that if the for-cause challenge was not successful, Driller could use a peremptory strike to remove the juror.
17. Almost all examinees knew the trial court should overrule Driller's objection to Producer calling Driller's drilling supervisor as Producer's first witness. Almost all examinees knew a plaintiff may call a defendant adversely at any time during its case-in-chief, and no foundation need be laid.
18. Almost all examinees knew the trial court should overrule Driller's objection to the witness's testimony because the testimony was an admission by a party opponent, and not hearsay.
19. Almost all examinees knew Driller must approach the bench outside the jury's presence and request a final ruling on Producer's motion in limine. Many examinees knew that if the judge refused to admit the evidence, Driller must make an offer of proof or "bill of exceptions" to put the proposed evidence into the record for appellate review.
20. Almost all examinees knew the trial court should deny Driller's motion for mistrial because a verdict in district court may be rendered by 10 of 12 jurors.