

GRADER COMMENTS – JULY 2018 CIVIL PROCEDURE & EVIDENCE

1. Almost all examinees knew Paul could properly file suit in Harris County where the accident happened. Few examinees knew or explained why Harris County was the only county of proper venue.
2. Most examinees knew Dave had to file a written answer by 10am on the Monday following the expiration of twenty days from service of citation.
3. Almost all examinees knew Dave must file a special appearance prior to or concurrently with his answer to the lawsuit. Most examinees knew that if Dave did not do so he waived the right to challenge the court's personal jurisdiction over him.
4. Almost all examinees knew the forms of discovery available included request for disclosure, interrogatories, request for production, oral depositions, depositions on written questions, request for admissions, and request for physical or mental examinations.
5. Almost all examinees knew Dave should file a written objection to the interrogatories within thirty days of being served with the interrogatories. Many examinees knew Dave could also file a motion for protective order within the same period.
6. Most examinees knew Dave could obtain a copy of Paul's medical records by serving a request for disclosure or request for production, but many did not indicate that these requests should be served on Paul. Many examinees knew Dave also could obtain copies of Paul's medical records by serving Paul's health care providers with a deposition on written questions with subpoena duces tecum.
7. Almost all examinees knew Paul could discover the identity and opinions of Dave's testifying experts by serving Dave with a request for disclosure. Many examinees knew Paul could discover the experts' opinions via written expert reports or depositions.
8. Few examinees knew Paul must file an amended petition naming Liquor Lounge as a defendant to add Liquor Lounge as a party to the lawsuit. Many examinees knew Paul had to file a motion for leave to file and serve the amended petition because Paul wanted to add a party after the court-ordered deadline. Many examinees incorrectly stated that Paul needed to file a third party petition.
9. Almost all examinees knew Paul's deposition could be taken in the county of his residence or employment, both in Galveston County. Few examinees knew that because Paul is a party to the lawsuit, his deposition also could be taken in the county of suit, Harris County.
10. Most examinees knew Paul's attorney was wrong by stating the rules did not allow him to provide the basis for his "form" objection. Few examinees knew that, if requested, the objecting attorney must provide a clear and concise explanation for the basis of the objection.

11. Almost all examinees knew Dave could move for an order compelling Paul to submit to a physical examination. Most examinees knew Dave had to show good cause, but few knew Dave also had to show Paul's physical condition was in controversy. Few examinees knew Dave had to request such order thirty days before the end of the discovery period.

12. Almost all examinees knew Dave must file a written request for a jury trial and pay the fee. Most examinees knew Dave had to file his request not less than thirty days before trial.

13. Almost all examinees knew Dave had to file a motion in limine to prevent Paul from referring to Dave's history of arrests. Few examinees explained that, if granted, Paul's attorney would be prohibited from making such a reference during voir dire or opening statements. Many examinees knew that, if granted, Paul's attorney would need to approach the bench during trial for a ruling prior to attempting to introduce the evidence.

14. Almost all examinees knew Paul should first challenge the juror for cause based on bias or prejudice. Many examinees knew that if the for-cause challenge was not successful, Paul should exercise a peremptory challenge to remove the juror.

15. Almost all examinees knew Dave's objection to the photograph should be overruled. Most examinees knew the objection was not timely, but few explained that the objection should have been raised as soon as the photograph was displayed to the jury, as opposed to at the end of the opening statement.

16. Almost all examinees knew the trial court should overrule the objection to Dave's testimony about Paul's statement. Many examinees knew the court should overrule the objection because Paul's statement was an admission of a party opponent, which is not hearsay. Few examinees also knew Paul's statement was either an excited utterance or a present sense impression, which are exceptions to the hearsay rule.

17. Few examinees knew Dave should object to the expert's testimony before the expert testified. Few examinees knew that, if the objection was overruled, Dave should ask to take the expert on voir dire outside the jury's presence for the limited purpose of questioning the expert about his qualifications. Many examinees stated that he should "file" a Daubert motion, which is not technically correct given that trial had already commenced and the expert had been called to the stand.

18. Many examinees knew Paul must tender, in writing, the omitted question on exemplary damages. Few examinees knew the written question should be in substantially correct form. Even fewer explained that Paul had to obtain a ruling before the charge was read to the jury.

19. Almost all examinees knew the trial court should overrule Dave's objection to the verdict and deny his motion for judgment notwithstanding the verdict. Few explained that Dave should have filed special exceptions to Paul's petition before the case was submitted to the jury and that he waived his objection by failing to do so.

20. Most examinees knew Dave should file a motion for new trial. Few explained that the motion must be filed within thirty days after the judgment was signed.