

GRADER COMMENTS
JULY 2019 CIVIL PROCEDURE & EVIDENCE

1. Almost all examinees knew Peter properly filed suit in Jefferson County. Few examinees knew Jefferson County was proper because the contract designated that county as the place of performance.
2. Few examinees knew Doug did not have any obligation to respond to the lawsuit. Many examinees knew Doug was not properly served. Few examinees knew service was improper because Peter, as a party to the suit, was not authorized to serve process in the case.
3. Almost all examinees knew Doug had a valid basis to remove the case to federal court because Peter was a citizen of Texas, Doug was a citizen of Louisiana, and the amount in controversy exceeded \$75,000.
4. Almost all examinees knew Doug's motion to transfer venue to Harris County should be denied. Most examinees knew the motion should be denied because such motions must be filed before or concurrent with any responsive plea (except a special appearance), and because Doug already filed his answer, he waived any venue challenge.
5. Almost all examinees knew Doug should file a special exception. Most examinees knew Doug was entitled to an order compelling Peter to state the maximum amount of damages he seeks.
6. Almost all examinees knew the forms of discovery available included requests 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 Doug did not timely respond and object because his responses/objections were due 30 days after receipt. Few examinees knew this due date was because Peter hand delivered the interrogatories to Doug.
8. Many examinees knew Doug had to serve a response describing the withheld information and asserting a specific privilege. Most examinees knew the response had to be filed within 15 days.
9. Few examinees knew that because more than 30 days had passed since filing his answer, Doug had to obtain leave of court to file and serve a third party petition and citation on the new parties.

10. Almost all examinees knew Doug's objection to having his deposition taken in Jefferson County should be denied. Many examinees knew the objection should be denied because Doug is a party to the suit; therefore, Peter is entitled to depose him in the county of suit.

11. Many examinees knew Peter's objection to Doug's interrogatories and requests for production should be denied. Many examinees knew Peter's objection should be denied because the only permissible discovery tools regarding experts are requests for disclosure, written reports, and depositions.

12. Almost all examinees knew Peter's failure to timely respond to Doug's requests for admissions resulted in deemed admissions. Few examinees knew the admissions are deemed admitted without the necessity of a court order. Almost all examinees knew Peter should file a motion to withdraw the deemed admissions.

13. Almost all examinees knew Doug's attorney was not correct and that, upon request, an objecting attorney must provide a clear and concise basis for a "form" objection at a deposition.

14. Most examinees knew Doug needed to file a written demand for a jury trial and pay the fee not less than 30 days before trial. Few examinees knew the request and fee should be filed with the clerk.

15. Almost all examinees knew Doug should file a response to Peter's no-evidence motion for summary judgment. Many examinees knew the response should contain summary judgment evidence raising a genuine issue of material fact with respect to each defense asserted. Many examinees knew the response should be filed no later than 7 days before the summary judgment hearing.

16. Most examinees knew Doug should first challenge the juror for cause and, if that challenge was not successful, then raise a peremptory challenge to remove the juror.

17. Almost all examinees knew Peter's hearsay objection to Doug's testimony should be overruled. Many examinees knew the objection should be overruled because it was untimely and should have been raised when Doug made the objectionable statement.

18. Almost all examinees knew Doug's hearsay objection should be overruled. Most examinees knew the objection should be overruled because the testimony about what Doug said was an admission by a party opponent, which is not hearsay.

19. Almost all examinees knew Peter must approach the bench, outside the jury's presence, and ask the judge for a final ruling on Doug's motion in limine. Most examinees knew that if the judge refused to admit the evidence, Peter must make an offer of proof or "bill of exceptions" to put the evidence in the record for appellate review.

20. Almost all examinees knew the trial court should deny Doug's motion for new trial because a verdict can be rendered by 10 of 12 jurors in district court.