

GRADER COMMENTS
FEBRUARY 2020 CIVIL PROCEDURE & EVIDENCE

1. Almost all examinees knew Patrick properly filed his suit in Harris County. Most examinees knew Harris County was the proper venue because some or all the events giving rise to Patrick's claim occurred there.
2. Almost all examinees knew Dirk should file his written answer by 10am the first Monday after the expiration of 20 days from service of citation.
3. Almost all examinees knew Dirk must file a special appearance prior to or concurrently with his answer.
4. Almost all examinees knew Dirk did not have a valid basis to remove the case to federal court. Most examinees knew that, although Patrick and Dirk were each a citizen of a different state, the amount in controversy, exclusive of interest and costs, did not exceed \$75,000 because Dirk's petition stated an amount of "not more than \$75,000."
5. Few examinees knew Dirk was not entitled to an order compelling Patrick to state the exact amount of damages Patrick seeks to recover. Few examinees knew Dirk is only entitled to know the maximum amount of damages sought, which Patrick had already stated in his petition.
6. Almost all examinees knew 5 forms of discovery listed in Texas Rule of Civil Procedure Rule 192.1 that Dirk could use to obtain more information about Patrick's claims.
7. Almost all examinees knew Dirk did not timely object and respond to Patrick's interrogatories. Most knew the response/objection was untimely because the interrogatories were hand-served on Dirk; therefore, his responses/objections were due no later than 30 days after receipt (day 31).
8. Most examinees knew Dirk should serve a response describing the withheld documents and asserting the privilege under which each document was withheld. Almost all examinees stated this "privilege log" must be served within 15 days of the letter from Patrick.
9. Almost all examinees knew Dirk's objection to Patrick deposing Trina in Dallas County should be overruled. Few examinees knew the objection should be overruled because a non-resident witness can be deposed in any Texas county in which the witness is served with a subpoena.

10. Many examinees knew Patrick could add Trina to the suit by filing either an amended or supplemental petition. Few examinees knew Trina should be named as a defendant in the petition and served with the petition and citation.
11. Almost all examinees knew the only permissible forms of discovery regarding testifying experts are requests for disclosure, a written expert report, and/or depositions.
12. Almost all examinees knew Patrick must respond within 30 days to Dirk's requests for admissions. Almost all examinees knew Patrick's failure to do so would result in each request being deemed admitted. Few examinees knew the requests would be deemed admitted without the necessity of a court order.
13. Almost all examinees knew an objecting attorney must give a clear and concise explanation of the basis for a "form" objection upon request for the basis.
14. Most examinees knew Dirk had to request a jury trial not less than 30 days before trial. Many knew the request should be in writing and filed with the clerk along with the jury fee.
15. Almost all examinees knew Dirk had to file a response to Patrick's no-evidence motion for summary judgment. Few examinees knew the response should contain summary judgment evidence that raised a genuine issue of material fact as to each of Dirk's defenses. Few examinees knew the response was due no later than 7 days before the summary judgment hearing.
16. Almost all examinees knew Dirk should first challenge the juror for cause based on bias or prejudice. Almost all examinees knew that if the for-cause challenge was unsuccessful, Dirk could use a peremptory strike to remove the juror.
17. Almost all examinees knew the trial court should overrule Dirk's objection to the bank manager's testimony. Many examinees knew the objection should be overruled because it was not timely and should have been raised when the testimony was given.
18. Almost all examinees knew Dirk's objection should be overruled because the testimony regarding what Dirk said was an admission by a party opponent. Most examinees knew an admission by a party opponent is not hearsay.
19. Almost all examinees knew Patrick should approach the bench outside the jury's hearing to ask the court to reconsider its ruling on Dirk's motion in limine and allow

Patrick to introduce the evidence of Dirk's criminal history. Few examinees knew that if the court refused to admit the evidence, Patrick 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 Dirk should file a motion for new trial no later than 30 days after the trial court signed the judgment.