

JULY 2016 CIVIL – PROCEDURE & EVIDENCE

1. Almost all examinees knew defendant had to file its written answer by 10 am on the first Monday following the expiration of 20 days from date of service.
2. Almost all examinees knew defendant had a valid basis to remove the case to federal court based on diversity of citizenship. Most examinees explained removal was proper because plaintiff was a citizen of Texas and defendant a citizen of Oklahoma. Many examinees also explained removal was proper because the amount in controversy exceeded \$75,000.
3. Almost all examinees knew defendant was required to file a motion to transfer venue before or concurrently with any responsive pleading (except a special appearance) if it wanted to move the case to Zavala County.
4. Almost all examinees knew the court should grant defendant's motion to transfer because all or a substantial part of the events/omissions giving rise to the claim occurred in Zavala County. Few examinees stated that because venue was proper in Zavala County, the venue provision permitting suit in plaintiff's county of residence did not apply.
5. Almost all examinees knew defendant should file a special exception pointing out the defect in plaintiff's petition. Most examinees stated defendant was entitled to an order compelling plaintiff to amend its petition to state the maximum amount of damages sought.
6. Almost all examinees listed the 5 forms of discovery available to defendant pursuant to Texas Rule of Civil Procedure 192.1.
7. Few examinees knew plaintiff's response to defendant's interrogatories was timely because, when service of discovery is accomplished by mail, 3 days are added to the 30-day response period.
8. Many examinees knew plaintiff should respond to defendant's request that privileged documents be identified by serving a response that describes the information/material withheld and asserts a specific privilege to each. Few examinees knew such response should be served within 15 days of defendant's request.
9. Few examinees knew defendant should file a third party petition and citation on Supplier to add Supplier to the lawsuit. Few examinees explained that because more than 30 days had elapsed since defendant filed its answer, defendant also had to file a motion for leave to add Supplier.
10. Almost all examinees knew defendant had to file a motion for a protective order or a motion to quash the deposition of its president. Few examinees stated the motion had to be accompanied by the president's affidavit denying personal knowledge of relevant facts. Few examinees recognized this as an Apex deposition.
11. Few examinees knew the trial court should sustain defendant's objections to plaintiff's interrogatories and requests for production seeking information on defendant's expert. Almost no examinee stated the proper forms for such discovery are requests for disclosure, written reports, and depositions.

12. Almost all examinees knew defendant's untimely response to plaintiff's request for admissions resulted in deemed admissions. Most examinees knew defendant could change this result by filing a motion to withdraw admissions. Most examinees knew defendant had to show good cause and that the party relying on the admission would not be unduly prejudiced by the withdrawal.
13. Few examinees knew plaintiff's attorney was not correct in refusing to provide a basis for the objection to form. Few examinees knew that, upon request, the objecting attorney (here, plaintiff's) must give a clear and concise explanation for the basis of its objection.
14. Almost all examinees knew plaintiff was entitled to defendant's reports in electronic form. Almost no examinee knew plaintiff had to specifically request production in electronic form and specify the form in which it is to be produced. Few examinees knew defendant had to produce responsive information that is reasonably available in the ordinary course of its business.
15. Almost all examinees knew plaintiff should challenge the potential juror for cause based on bias or prejudice. Most examinees stated that, if the for-cause challenge was unsuccessful, plaintiff should use a peremptory challenge to remove the juror.
16. Almost all examinees knew the court should overrule defendant's objection to plaintiff calling defendant's drilling supervisor as its first witness. Most examinees stated a plaintiff need not testify first or lay a foundation before calling a witness, and may call its witnesses, including an adverse witness, in any order.
17. Almost all examinees knew the court should overrule defendant's hearsay objection to plaintiff's asking an employee of defendant what the defendant's supervisor said. Most examinees explained the employee's testimony regarding what the supervisor said is an admission by a party opponent, which is not hearsay.
18. Most examinees knew plaintiff should approach the bench, outside the jury's presence, and request a final ruling on defendant's pre-trial motion in limine. Many examinees knew that, if the judge refused to admit the evidence of prior blowouts, plaintiff had to make an offer of proof or bill of exception in order to put the evidence in the record for appellate review.
19. Almost all examinees knew defendant should file a motion for directed verdict. Almost no examinee knew plaintiff should respond that a directed verdict can only be based on "no evidence" supporting the claim or "conclusive evidence" against the claim, and not on factually insufficient evidence as argued by defendant. Almost no examinee knew the trial court should deny defendant's motion for that reason.
20. Almost all examinees knew defendant's motion for a mistrial should be denied. Most examinees knew a verdict can be rendered in district court by 10 of 12 jurors.