

FEBRUARY 2017 – CIVIL PROCEDURE & EVIDENCE

1. Almost all examinees knew Art could file his lawsuit in Travis County (where accident occurred), Hays County (where Zach resides), or McClennan County (where Discount maintains its principal place of business).
2. Almost all examinees knew the defendants should file a motion to transfer venue prior to or concurrently with their answers, and if they failed to do so, they waived their right to challenge venue.
3. Almost all examinees knew 5 forms of discovery listed in Texas Rule of Civil Procedure Rule 192.1.
4. Almost all examinees knew Discount could make a written objection to Art's discovery request. Many examinees also knew Discount could file a motion for protective order. Most examinees knew Discount had to respond within 30 days of being served with the discovery request, and allege the request was irrelevant, overly broad, or imposed an unreasonable burden.
5. Most examinees knew Discount could obtain a copy of Art's medical records via requests for disclosure or requests for production served on Art. Many examinees also knew Discount could obtain the records via a written deposition with a subpoena duces tecum to the health care providers.
6. Almost all examinees knew Art was not entitled to discovery information about Discount's purely consulting experts.
7. Almost all examinees knew Zach was required to raise, in his answer or amended answer, the affirmative defense of contributory/comparative negligence at least 7 days before trial.
8. Almost all examinees knew Zach's deposition could be taken in his county of residence, Hayes County. Many examinees also knew that because Zach is a party to the lawsuit, his deposition could be taken in the county of suit, Travis County.
9. Many examinees knew Zach's attorney could instruct him not to answer harassing or abusive questions during his deposition.
10. Almost all examinees knew Art could move for an order compelling Zach to submit to a physical examination. Few examinees knew the order must be requested no later than 30 days before the end of the discovery period, or that Art's motion had to show good cause and that Zach's physical condition was in controversy.
11. Almost all examinees knew Art had to request a jury trial and pay the jury fee. Few knew Art should make his request by filing a written demand with the clerk a reasonable time before the date set for trial, not less than 30 days before trial.

12. Almost all examinees knew Art had to file a motion for continuance. Few examinees stated Art had to (1) identify the missing witness and the substance of his testimony, (2) explain why his testimony is material and not available from another source, (3) show diligence was used in attempting to secure the testimony, and (4) state the continuance is sought for justice and not solely for delay.

13. Almost all examinees knew Zach and Discount had to file a motion in limine to prevent reference to Zach's drug use. Most examinees stated if the motion was granted, Art was prohibited from referencing the drug use during voir dire or opening statement and would require Art's attorney to approach the bench prior to attempting to introduce the evidence during trial.

14. Many examinees knew the defendants' objection to the photo during Art's opening statement should be overruled. Few stated the objection should be overruled on the ground that it was untimely because the objection should have been raised as soon as the photo was displayed.

15. Most examinees knew the defendants' objection to Mary's testimony should be overruled. Few examinees explained the objection should be overruled if Art's attorney showed either good cause for not disclosing Mary's existence earlier or that the defendants would not be unfairly surprised or unfairly prejudiced by the late disclosure.

16. Almost all examinees knew the trial court should overrule Art's objection to his own statement that he had been texting. Most examinees explained Art's statement was either not hearsay because it was an admission by a party opponent, or it was a hearsay exception because Art's statement was a statement against interest.

17. Almost all examinees knew Art had to object to the expert's testimony. Few examinees stated the objection had to be raised before the expert testified. Many examinees knew Art's attorney could take the expert on voir dire outside the jury's presence if the objection was overruled.

18. Few examinees knew that to preserve error on the omission of contributory negligence from the jury charge, the defendants had to tender, in writing, the omitted question/instruction in substantially correct form and obtain a ruling before the charge was read to the jury.

19. Almost all examinees knew the trial court should deny Discount's objection to the verdict and motion for judgment notwithstanding the verdict. Most examinees explained the objection/motion should be denied because Discount waived any complaint by not filing special exceptions to Art's petition prior to submission of the case to the jury.

20. Most examinees knew the defendants should file a motion for new trial alleging insufficient evidence to support the damages finding. Few examinees knew the motion had to be filed within 30 days of the date the trial court signed the judgment.