PROCEDURE III
FINAL EXAM

SPRING 1990

PROFESSOR RICHARD FLINT

This examination consists of ten questions of equal weight. This is a closed book examination. Good luck.

1. Greenbriar LTD and Fred Rizk ("Greenbriar") defaulted on a note held by Chase Manhattan Bank (the "Bank"). After foreclosure and sale of the property securing the note, the Bank brought a deficiency action against Greenbriar. Greenbriar filed a general denial and counterclaim alleging wrongful foreclosure, breach of contract, and breach of the duty of good faith and fair dealing seeking damages in excess of $1,000,000. Greenbriar moved for summary judgment on Chase's deficiency claim. The only evidence that Greenbriar submitted was its sworn denial under Rule 93 that it had not executed the note in question. Chase did not file a response to the Motion for Summary Judgment. On December 30, 1988, the trial court granted Greenbriar's motion and signed the Summary Judgment denying recovery on the Bank's deficiency claim. The Judgment did not mention or refer to Greenbriar's counterclaim.

   After the trial court denied the Bank's Motion to Sever Greenbriar's counterclaims, the Bank filed a notice of intent to take Fred Rizk's deposition concerning the facts supporting the Greenbriar counterclaim. Rizk failed to appear although proper notice had been complied with. The Bank filed a Motion to Compel appearance at the deposition and for sanctions. On June, 1989, the trial court entered an order denying the Bank's Motion to Compel stating that the December 30th order had become final and as such the Court had lost its plenary jurisdiction.

   The Bank now comes to you. What steps would you recommend for Chase and what should be the outcome?

2. Neary sued Check on promissory note. On February 26, 1987, the trial court entered a summary judgment in favor of Neary. On March 9, 1987, 11 days later the trial court rendered a new and reformed judgment which varied from the February 26 judgment only in that the judgment now stated that Neary could use all writs and processes to collect its judgment and that all relief not expressly granted was denied. Check filed a Motion for New Trial on March 18, 1987 and

deposited cash in lieu of an appeal bond on June 4, 1987 (87 days after the March 9th Judgment but 98 days after the February 26th Judgment). The Court of Appeals dismissed this appeal for want of jurisdiction. What should the Supreme Court of Texas do?

3. J. Manuel Banales failed to timely file a Motion for Rehearing in the Court of Appeals. Within fifteen days after the last date for filing the motion he filed a Motion for Extension of Time for Late Filing of the Motion for Rehearing supported by his Affidavit that he was unaware that the filing of Motion for Rehearing was a pre-requisite to appeal to the Supreme Court. What should the Court of Appeals do?

4. Broadway National Bank (the "Bank") initiated a lawsuit against Sharp and Ludlum for construction of a will containing a Testamentary Trust of which the Bank was Trustee. The trial court resolved by summary judgment all issues except what amount of attorneys' fees the Bank should recover. That single issue was to be tried before the Court without a jury. A little more than a year before the trial Sharp and Ludlum served interrogatories upon the Bank inquiring in part as to the identity of any expert witness whom the Bank might call at trial The Bank responded: "None designated at this time." The Bank never supplemented this answer. Twenty-six days before trial, counsel for Sharp and Ludlum received the Bank's notice of deposition of an attorney whom the Bank intended to call as an expert on attorneys' fees. That deposition was conducted within a week of trial and counsel for Sharp and Ludlum attended and questioned the witness. On the day of trial, counsel for the Bank announced that he intended to call himself, the attorney who had been deposed a few days earlier, and one other attorney to testify as experts on attorneys' fees. Counsel for Sharp and Ludlum objected to the admission of expert testimony from any of these witnesses. The Bank's position was that it had orally identified its attorney fee experts more than once in advance of trial, that opposing counsel knew the only trial issue was attorney fees, that opposing counsel waived any objection by appearing at the deposition a week before trial, that he was never reminded to supplement his answers, and that his failure to do so was inadvertent. Assuming that all of these explanations are true, should the trial court permit any expert testimony on attorneys' fees? Why or why not?

5. Billy Briscoe ("Briscoe") was injured on the job on July 2, 1984, when a rock struck his left leg. He was taken to the hospital, treated and released that same day. Briscoe returned to work a few days later but in September he sought

medical attention for a herniated disk in his back. Briscoe brought a workers' compensation suit alleging that the injured back was caused by the accident on July 2, 1984 and that the injury to his back has left him totally or partially incapacitated. Although the jury found that Briscoe had sustained an injury, it answered no to the question asking whether the injury was a producing cause of any incapacity; thus, the trial court rendered a take nothing judgment against Briscoe. The Court of Appeals reversed and remanded, holding that the jury finding on producing cause was against the great weight and preponderance of the evidence as follows: "There is no dispute he sustained some disability, albeit minor. All the medical evidence attributed some disability to the injury. We therefore sustain this point of error" (that is, that the jury answer of "No" was against the great weight and preponderance of the evidence). The insurance carrier's application for writ of error was granted and without hearing oral argument, the Supreme Court reversed the judgment of the Court of Appeals and remanded the cause to that Court for further consideration. Please discuss all of the legal reasoning to support this decision of reversl and remand to the Court of Appeals.

CCA

6. Best ("Best") purchased from Ryan Oldsmobile ("Ryan") an existing Harley-Davidson Motorcycle Dealership ("Harley-Davidson"). A lender had a lien onall the inventory of parts and motorcycles. Such debt was not assumed by Best nor was the lien released. Best alleged that Ryan had represented to him that the purchase of the dealership included the ability to purchase more inventory from Harley-Davidson. Much to his surprise that was not the case. In fact after the sale the lender sued Ryan and repossessed the motorcycles which was subject to a floor-planning lien. Best then sued Ryan under the DTPA. The jury found that Ryan misrepresented the contract conveying the dealership and the misrepresentation was knowingly made and the producing cause of damage to Best. The trial court granted a Judgment N.O.V. for Ryan on the basis that there was no evidence to tie his damages (lost profits and lost of bargain as his business closed) to a misrepresentation in the contract since his damages resulted in the lenders sequestration of the motorcycles only. This decision was affirmed by the Court of Appeals. The record on a panel contained the following evidence: Ryan misrepresented the status that Best would enjoy as a Harley-Davidson dealership including the ability to buy parts and vehicles as Mr. Ryan had been buying. Ryan had said he would "take care" of the debt and lien. What should the Supreme Court do with this case?

7. Stanley Pirtle brought suit for specific performance and for removal of cloud on 512 acres of land. Pirtle sued Layne Gregory, Grady Gregory, and Kathy Coker because they had a contract in writing but failed to execute an oil and gas lease to Pirtle as lessee. Layne and Grady Pirtle later executed an oil and gas lease on the property to Flanagan. Pirtle originally sued Flanagan as one of the defendants, but took a non-suit as to him. The trial court rendered Judgment for Pirtle commanding the Gregory's and Coker and to execute the oil and gas lease, but the Court of Appeals reversed that Judgment, believing that the absence of Flanagan from the suit constituted fundamental error as he was a necessary party. Is the decision correct? Why or why not?

8. In a wrongful death lawsuit the plaintiff, the surviving wife, sued three separate defendants for actual damages and the former employer of her husband for punitive damages. All of the defendants filed cross-actions against each other seek contribution and or indemnity. Prior to the voir dire examination all the defendants informed the Court that they were united in asserting that Garcia (the deceased) was 100% contributory negligent and requested six strikes apiece to the plaintiffs' six strikes. The plaintiff's lawyer prior to voir dire agreed that because of the comparative causation issue to be submitted the defendants as a group were probable entitled to more than six strikes. During the voir dire examination each of the defendants stated to the prospective jury that none of then were at fault it was all the plaintiffs' deceased husbands fault. The Court granted the defendants ten strikes to the plaintiffs' six. The plaintiff timely objected to this action. Eighteen witness were produced during the trial and the liability issues were hotly contested. A take-nothing judgment was rendered by the Court against the plaintiff. She appealed. What result should the appellate court render and why?

9. During closing argument before the jury the following statements are made by the plaintiff's attorney without objection. However, if each was raised as error in a timely filed Motion for New Trial under Rule 324, what should an appellate court do?

   a) I think that everybody that testified lied for them [the Defendants].
   b) You heard that goose (a witness for the defendants) from California.
   c) He did not tell you that they [Defendants] had hired a million dollar Watergate lawyer.

d) Defendants have attacked all the witnesses we brought forward...That was reprehensible and shows the arrogance and the complete condescending attitude that Defendants have toward you (jury).
e) Defendants sent these lawyers down here from Houston and fool you folks down there in the country.
f) If you pull musical strings, Carr [Defendants' expert witness] will dance to any tune that Defendants sing; he is completely their man.
g) You talk about David and Goliath; the plaintiff has no chance against Defendants. His resources, mental ability and everything else is just like a midget or a flea climbing up an elephant.

10. Mrs. Allen filed a workers' compensation suit Charter Oak ("Charter Oak") Fire Insurance Company, the insurer of Safeway Stores, Inc. and Safeway ("Safeway"). She alleges that her husband had died from lung cancer and that the cause of his death was his exposure during the course and scope of his employment in the meat department of a Safeway store to polyvinal chloride particles released into the air when meat wrapping film was cut with a hot wire. In order to facilitate proof of her case, she sought discovery by way of a Request for Production of numerous items from Safeway and Charter Oak including the following:

a) the net worth of Safeway and Charter Oak.
b) the information obtained by the Charter Oak's claims investigator after the filing of Mrs. Allen's claim.
c) all reports in the possession of either of the defendants prior to Mrs. Allen's claim dealing with the possibility or probability that fumes released in the hot wire cutting of plastic sheeting containing polyvinal chloride could or might cause cancer or other lung disease.
d) all complaints received by the defendants from persons have contracted cancer from work like Mr. Allen.
e) witness statements taken by the defendants.
f) the opinion of the president of Safeway who might be called by Safeway as an expert witness in the case.

Which items are discoverable? What should be the procedure to obtain the information if the defendants file a Motion for Protection claiming that all the material is privileged? What should the plaintiff do if the trial court denies the production of any of the information?

Question (1)

(1)

The Bank has lost the Deficiency Judgment for all practicle respects. When the Bank failed to appear or respond to the motion for Summary Judgment the Trial court properly rendered its decision on the only evidence offered. That Evid consisted of Greenbrians Sworn denial. In which Thus Greenbrian had met its burden of production, And the Trial court Rendered a final Judgment on the merits of the Summary Judgment motion.

~~The Bank Does not be on~~

~~Decision~~

The Bank failed to Appeal the motion for Summary Judgment within the required 30 days after the Judgment was signed. The Bank should have filed its appeal Bond 30 days from 12-30-88 in January or w/I the next 15 days with a good excuse. It is now past June 1989 and the times for appeal have expired.

~~Before the~~ The Bank should consider a Writ of Error or a Bill of Review for the Summary Judgment order.

As for the counterclaim, the Bank is being sued by the Greenbriars for several serious claims involving wrongful foreclosure, Breach of contract, good faith etc. The Judge's 1989 order seems to consider the December order conclusive as to all claims. That is the Judge feels his plenary jurisdiction to hear any motions for discovery relating to this case has expired.

Taking the idea that Judgments following a contested trial that

[redacted]

The Bank should consider the SJ motion as disposing of all issues including the counter claim. IF the greenbrians can pursue there cause of action then the Bank should like a mandamus with a high court to compel discovery. However, IF the Trial court does not have Jurisdiction over the discovery on the counterclaim, , I would Seem the greenbrian claim has been determined by the Summary Judgment. This could be So even ; F the Summary Judgment is Silent on the claim b/c of the presumption of finality.

are not intrinsically interlocutory in nature and enjoy a presumption of finality the Bank should consider doing nothing. 1st the motion for Summary Judgment is not an interlocutory Judgment it is a final Judgment. Because the Time to appeal has passed the Bank can not do much about its loss on the deficiency Judgment. However the Bank should argue that the Summary Judgment was a final Judgment on the greenbriars counter claim. Summary Judgments generally

do NOT exclusively cover counter claims, however a final Judgment like the one issued in Decorah is presumed to have disposed of all the parties and issues in the Bank v. GreenBriar Action. By doing nothing the Bank would be relying on the Trial courts order that it no longer has Jurisdiction in the counterclaim suit by the GreenBriars. IF the Green brians do not appeal the June decision the Bank can avoid any of the problems it might

(2) Assuming the Supreme Court's Jurisdiction was properly invoked.

The Time for Appeal runs from the date of the last version of the Judgment. R 329(b) H - States the Time to calculate appeals dates would run from the 3-9-87 reformed Judgment and not the 2-26-87 Signing of the Judgment. Also this situation Involves a motion for New Trial. When a motion for New Trial is involved the Times to perfect the Appeal are Extended. The Supreme Court should Rule that the Clerk's Appeal should have been permitted Because it was properly

filed within 90 days of the reformed Judgment. Filing the Appeal Bond, in this case, a cash Bond perfected the Appeal or in other words invoked the Appeals Court's Jurisdiction.

Therefore the Supreme Court should remand Check's case to the Appeal Court, to which because Jurisdiction was Timely and properly Invoked the court of Appeals Erred in Dismissing the Appeal for want of Jurisdiction.

(3)

As a rule, the Appeals court will accept a motion for filing Extension within 15 days of the Filing date. However, the Rules Require a reasonable Excuse. Reasonable Excuses include Being to busy, and other similar requests. NOT knowing is not a Reasonable Excuse. The Rules are there and Attorney's Should be able to read them. The Attorney might be praised for his honesty BUT his Request Should be denied by the Appeals court. the client might then consider a MAL/practice Action against

the Attorney for failing to perfect the appeal, or failing to find out how to perfect the appeal.

④.

A party must disclose his expert witness' 30 days before the Trial. The bank was proper in not designating its "experts" in the Interrogatories Served more than a years prior to the suit. However By answering "None designated at this Time" the Bank subjected itself to an Absolute Duty to Supplement Discovery when ever it determined that answer to the interrogatory to Be false, no longer True, or misleading.

[redacted]

This supplement to an interrogatory must be written, sworn to and signed by the party. (in the case of an interrogatory). It does not matter if the opponent had constructive, oral, or actual knowledge. See E.F. Hutton case. Failing to supplement an interrogatory to include the name of a person you intend to call as a witness means that witness will be barred from testifying. The standard to overcome this bar is whether good cause can be shown to include the witness as opposed to the easier standard of

good cause or why not to exclude. Rather, if the Bank cannot meet the almost impossible burden of showing good cause to include the witness testimony the trial court should bar the testimony. The remaining problem is whether the attorneys for S+L, should have called this error to the Bank attorney's attention. If they would not have to do anything that would jeopardize their clients case. However, if S+L's Lawyers did not have an absolute duty to call ~~the~~ attention to the Error ~~of~~ they should

[redacted]

not have participated in taking the depositions of witnesses they knew would be barred from court.

Thus while S&L's Attorney's had no duty to Request supplements to discovery they should NOT have run up the costs of discovery without good reason. Therefore the Trial court should Tax the costs that can be Attributed to the additional pointless discovery to S & L's Attorneys.

15

Plaintiff gets. The Defendants' want more strikes than the plaintiff so that they can in effect "pick" their own jury. The General Rule is that when there is no antagonism apparent between Defendants each side gets six preemptory challenges. That is Plaintiff gets six and the three defendants share six. IF Antagonism is present between the defendants and upon proper motion prior to voir dire, the Judge may make an exception and Equalize the strengths in favor of the defendants as a

group do not have preemptory challenges greater than 2/1 to the Plaintiff. When Appealing the Trial courts handling or decision on this equalization of strengths the Appellate court will Examine the Entire Record of the Trial. Here the defendants informed the Judge they were 100% united in blaming the Deceased for the Accident. As Such there was no apparent Antagonism between the Defendants on a material issue. Furthermore, during Voir dire the defendant's asserted no Antagonism and blamed the deceased. The Appellate court Should

reverse the Trial court and Remand for a new Trial because the Trial court erred in allowing the defendants four more strikes than the Plaintiff. Further, harm can be shown because despite a deceased husband and 18 witnesses, and a hotly contested trial, the Plaintiff got a Take nothing Verdict. The fact the Trial was hotly contested ~~made~~ made the issue of strikes all the more important if not determinitive of the outcome.

[redacted]

Factual Insufficiency?

⑤. This case involes An Insufficient evid point. On the surface, the Supreme Court is completely without Jurisdiction to consider Insufficient evidence points. This is an insufficient point rather than a no evidence point Because we are concerned with the Jury's Decision on the evidence and NOT the Trial courts Submission of the issue to the Jury. Even though the Supreme Court is without Jurisdiction to consider the factual Sufficiency of the evidence, it can and does Require the Appeals court to use the correct

[redacted]

Standard in determing Insufficient Evidence points. To determine An Insufficient Evidence point the Appeals Court must Examine All the Evidence, both pro & con, for And Against, Examine credibility, weight and merit. The Appeals court must then Taken as a whole decide whether OR NOT Sufficient Evidence Exists for which the Trial [redacted] Jury could establish or Rest its verdict. The Supreme Court Requires the appeals court to follow the Above standard and Actually write down a list of all "Evidence" it considered and

[redacted]

right about when it found there was sufficient evid to base the Jury verdict. Supreme Court did not have to hear / arguments b/c the appeals court's - of the wrong standard and ~~to~~ to write ~~down~~ evidence proved was in direct conflict with case law. Supreme Court was forced to remand case because it is without Jurisdiction authority deciding insufficient evidence points.

#C This is a No evidence question.

The Supreme court has Jurisdiction (when properly invoked) ~~to~~ HEAR and determine No evidence points. No evidence points are questions of Law as opposed ~~to~~ Insufficient evidence points which are questions of factual Sufficiency. The Supreme Court is concerned with Errors at the appeals court level. That is errors the appellate court made in determining the merit of the Trial courts action. The Appeals court should have determined the merit of the

Judgment N.O.V. for Ryan on the No evidence Standard. That is inorder for the Trial court to decide and Enter a Judgement NOT withstanding the Verdict (NOV) the Trial court would have to decide there was No evidence to fix damages to the misrepresentation. No evidence does not mean "No evidence". 4/23/93 (More than a scintilla) 1693RR No evidence means "No evidence upon which Reasonable minds could infer the Existence of a material fact." Ending a Judgment NOV is or requires the Same thought process as Entering a Directed Verdict. The

Trial court ~~entered~~ Entered the ~~verdict~~ Judgment NOV Because it felt that there was No evidence that Reasonable minds could use to infer that Best's damages were tied to a misrepresentation. To determine whether this decision was proper the Appeals Court would use the No evidence Standard of Review. The Supreme Court should apply this same Standard to the Appeals Court. The STANDARD is that "with Blinders ON" looking only at evidence in support of the issue

and ignoring all evidence to the contrary, ignoring weight, and ignoring credibility, was there more than a mere scintilla of evidence that Reasonable minds could use to infer that Best's damages were tied to RYAN's misrepresentation. The Supreme court need only find the existence of one piece of evidence. The one provided is enough. The evidence shows that BEST Relied on RYAN's Representations, whether Best did or did not and whether the evidence is true or not are not of concern. The evidence

is examined alone in its best light and as such would be enough for a Jury to base or infer a material ~~fact~~ fact.

The Supreme Court would then Reverse the ~~Appeals~~ Appeals court and the Trial court and Render a decision for Best.

This is the decision that the original Trial court Should have entered, because it is what the Jury decided after properly having been given the issues. There is no need to Remand because there is not a factual Sufficiency problem.

(7)

SP Sues ~~to~~ Remove Cloud — LG
SP Non Suit ~~to~~ F — GG } R in writing but
KC } failed ~~to~~ execute ~~to~~
P

Work Paper

LG & GP Lease ~~to~~ F

TC for SP commanding D ~~to~~ Execute Lease w SP

Was absence of F Fundamtal Error?

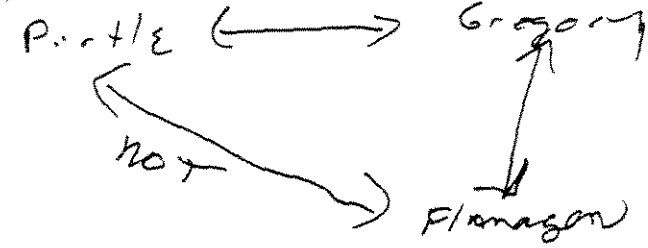
A: The General Rule in TEXAS Regarding the Joinder of failure ~~to~~ Join (non Joinder) is that there is no such thing as Necessary parties in TEXAS. Joinder is the process of deciding who should be involved in a lawsuit. The Question here is whether the court could enter a Judgment that would fairly determine

~~So the Dispute between Pickles and the Gregory's if the Judge or Jury should determine Title~~

of Appeals should have affirmed the Trial courts decision ~~Finding~~ Pickle as lessee. Flanagan would then have a cause of Action over quiet Title against the gregory's for leasing the property twice. Flanagan's Action is seperate and distinct from Pickle's cause of Action. To deny Pickle his ~~day~~ day in court because he could not find or now suited Flanagan

[redacted]

Here the conflict is between



NOT Between Pirtle and Flanagan.

[redacted]

the conflict or dispute btw ~~the~~ Pirtle and the Gregory's with out prejudice as ~~to~~ Flanagan. When a party is missing the P must inform the Judge. The Judge must determine whether a Trial can proceed /party without Flanagan. Here Pirtle and Flanagan are essentially Lessee's on the same property. To Enforce the Pirtle Lease would be in effect detrimental to the value of the Flanagan lease.

STill the failure to join Flanagan would not Be an absolute Bar or cause for dismissal. The court

[redacted]

[redacted]

Furthermore, Flanagans cause of Action Against the Gregory's would not be affected by a decision on the Gregory Pirlle Lease.

would be unfair to Pirtle. If Flannagan wanted, he could have probably joined the suit But he was not a necessary party that would prevent a just & Judication between Pirtle and the Gregorios.

(8.) The widow Plaintiff should have appealed the Trial Court's equalization of strengths. ~~on appeal~~. In a case with multiple defendants a decision must be made as to how many preemptory strikes each defendant gets and how many the

have avoiding or defending the counter claim. The other option for the Bank is to Appeal the June 1989 order in which the court stated its plenary power had expired. Winning on this issue would, however, only reinstate the counter claim against the Bank and allow the Bank to continue with discovery and defense of the action. The Summary Judgment on the deficiency claim would NOT Be affected. Therefore the Bank should do nothing.

[redacted]

(9) Appellate court should overrule the point of Error. Rule is that the opponent must object to any improper statement made by [redacted] counsel during closing Argument, if curable. That is, IF the improper statement could have been neutralized by [redacted] an instruction from the court to disregard then you must object during the closing Argument. If the statement made By [redacted] counsel during closing Argument was incurable that is, one that was so BAD, that a court instruction would not have removed the prejudical effect on the

[redacted]

Jury, no Objection at the time of the Argument is Necessary. Uncurable Argument Objections can be raised 1st on appeal (after being raised in a motion for new Trial)) The Third Type ~~in~~ of Objection is the Cummulative error Objection. This results from Repeated harmful Statements by Counsel during closing Argument each followed by ~~a~~ Timely Objection and an Instruction to disregard. The Net Sum Total of all "Cured" Objectionable Statements is Error that can be raised on Appeal.

The Appellate Court Should Examine

[redacted]

One case in Texas held incurable error By reference to being from Dallas. However this is old law and it is unlikely that (B) being from California would be near as Bad as being from Dallas.

Statements A through G. G. none of the statements appeal to Racial, Sexual, Sexual preference, or other severe prejudices. All of the statements are objectionable, however they are all of the curative type. Being of the curative type it was necessary for the complaining party to object during the argument. Furthermore, a proper objection, ~~[redacted]~~ followed by a curative instruction may have prevented counsel from continuing to make the improper Arguments. The appellate court should overrule this point of error objections should have

[redacted]

[redacted]

v made during the Argument to preserve Error.

FC. The purpose of discovery is to provide each party with facts sufficient to settle the dispute or at least narrow it down. The general rule is that any evidence Relevant to the Subject matter of the dispute is discoverable. This Information is discoverable whether or NOT it is admissible as long as it is Reasonably calculated to lead to the discovery of Admissible Evidence.

Given the general Rule and purpose of discovery all the listed items

[redacted]

The Question did not ask for the development of Safeway's Argument for privilege or exemption, But Allen's Responses to Safeways probable Arguments Are Included.

are discoverable unless the party Resisting discovery can show the Existance of a privilodge. Here, the Burden to prove the Existance of a privilodge rests with Safeway. Mrs. Allen should file like a motion to compel discovery. The Court will then hold a hearing to determine the Existance of privileges or whether to compel discovery.

During that hearing Mrs Allen should Claim a-F are discoverable. Specifically that a) is relevant to whether She should

Cause of Action

b) ~~that the report is not a party communication because it was not prepared in anticipation of litigation.~~

B) Even though the claims report is a party communication made after the occurrance of the event (death) and ~~d~~ in anticipation of litigation (made after suit filed) that she would suffer undue hardship without the Report and that she has a substantial need for the report because she wasn't able to investigate etc. C) These are

[redacted]

Ordinary records of A party and are not exempt from discovery. D) some, Mrs. Allen should claim Each of these are ordinary records of a party, E) witness statements are covered by a privilege/exemption. Mrs. Allen should attempt to get them from witnesses (who are entitled to a copy of their statement upon Request) and if for some Reason cannot get them from witnesses Mrs Allen should claim substantial need and undue hardship. These are exceptions to the witness statement ~~exemption~~. F) is more difficult ~~[redacted]~~ But Mrs. Allens should

request the president's presence at a deposition and get his opinion. Safeway may try to declare his opinion exempt under the consulting expert exemption, however Plaintiffs could call him as an expert witness (adverse) or at least depose him. It is ok to raid the company of its experts. unless ?

IF the Trial court denies production the P mrs Allen should seek a mandamus from the appeals court or Supreme Court ordering the Trial court to compel discovery.

d. Disagree. The only subject that can be at issue in a special appearance is jurisdiction of the court that rendered the judgment over the defendant. Method of service would have to be challenged in a general appearance. In fact, if the defendant pleaded the method of service, he would have made a general appearance by definition.

e. Disagree. If within six months of date signed the judge final judgment, the defendant can file a writ of error, if: 1. the defendant took no part in the first trial, and 2. the record does ~~not~~ affirmatively show that the court had jurisdiction. To win on a writ of error, record must affirmatively show the court had jurisdiction.

If ~~[illegible]~~ within four years of the date of final judgment, the defendant can file a bill of review.

II

Because facts do not indicate otherwise, it is presumed both of Nasty's suits were filed in Uvalde Co. District Court.

As attorney for Nasty:

I would file suit on behalf of Nasty naming both Southern and Robert as defendants in the Petition. ~~The~~ A Cause of action would be grossly negligence of each, that the negligence was the proximate cause of the collision, resulting in general and specific damages of $1 million.

I would plead that both Defendants are residents of Texas, living Uvalde Co, thereby

f. Disagree. If the defendant introduces testimony that only will avoid the legal consequences, it must be by an affirmative defense - Rule 94.

✓ The general denial can be used to introduce evidence which will both disprove the alleged facts and their legal consequences. However, certain denials must be specific verified denials - Rule 93.

answering venue.

Further, that the Uvalde Co District Court has jurisdiction, personal and subject matter, and over the amount in controversy. I would file separate suits with the county clerk giving the address at which each could be served and provide copies of the petition to be attached to the ~~citation~~.

In the prayer for relief I would ask that both defendants be cited, that they be ordered to appear and that the plaintiff be granted all relief to which justly due at law and in equity

~~pleading~~ ~~paper~~. The certification would state that the suit is neither groundless nor frivolous. The petition would be signed by either the party or attorney, with attorney's name, address, phone number, and bar card number.

As attorney for Southern:

I would file a special appearance and general denial subject to the special appearance. The only thing at issue in the special appearance is jurisdiction of the Texas court. The argument against personal jurisdiction is that a short visit to Uvalde does not give the requisite amount of contact with Texas, and there is no connection between the collision and any minimal contact with Texas such that maintenance of the suit would offend the traditional notions of fair play and substantial justice. If the motion for special were not sustained, Southern has several good arguments in her

favor. I would plead: improper service, incomplete return on service, no liability as a passenger only, file a counter claim against Nasty for injuries sustained, that second suit is frivolous, that if Nasty has another cause of action the first judgment should be amended without a count containing a second suit, a cross-claim against Robert the driver.

As attorney for Robert:

I would file special appearance for same reasons as for Southern, and general and specific denials subject to the special appearance. Robert had the same minimal contact with Texas as Southern
I would file special exception that Robert
and was not served at all. I would file a cross-claim against Southern for her gross negligence in distracting ~~this~~ his attention, and a counter-claim against Nasty.

The motion for new trial should be sustained under Craddock v. Sunshine Bus in that: 1. Failure to appear was not intentional, 2. There is

prima facie evidence of a meritorious defence, and

3. Delay on a new trial would not hurt the plaintiff.

III

District Judge - Harris Co.

Motion to quash - denied.

Evidence in plaintiff's pleadings indicate Bonhoffer was doing business in Texas by all three criteria for such: he contracted to perform in Texas, his alleged servant committed an alleged ~~tort~~ tort in Texas, and he recruited employees in Texas. Further, he met the minimum number of contacts requirement because the alleged tort was directly related to the contact (doing business in Texas). There is jurisdiction and evidence to try the case on its merits.

Mr Boerhoffer, by filing motion to quash submitted himself to the jurisdiction of the court, even though the facts do not show that Mr Boerhoffer returned the citation.

District Judge - Nueces Co.

Motion for special appearance - Denied

Harris Co has already found that Texas has jurisdiction over Herr Burhoffer for issues directly related to his contract for carrots in Texas. This suit should proceed regardless of any plea of abatement pending judgment in the Harris Co suit. The issues being tried are not the same, nor do the suits result from the same transaction or occurrence. There is an actual controversy to allow the case to be tried for declaratory judgment.

Lawyer for Boulhoffer -
Harris Co suit:

Re the answer I would plead: no contract, but if the court did find a contract, that alleged employee was an independent contractor and that there was no imputed (vicarious) liability. I would file general denial a motion to dismiss and make sure my malpractice insurance premiums were paid, because I never should have moved to quash, unless I needed the time for a ski ~~trip~~ trip.