

PUBLICATION UPDATE

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Dorsaneo, Texas Litigation Guide

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HIGHLIGHTS

Amended Texas Rules of Civil Procedure.

- This release includes amendments to Texas Rules of Civil Procedure effective May 1, 2022, set forth in Misc. Docket No. 22-9031. See Ch. 42, *Garnishment*; Ch. 46, *Justice Court Proceedings*.

Waiver of Right to Arbitrate Under Federal Arbitration Act.

- In *Morgan v. Sundance, Inc.*, 142 S.Ct. 1708, 1709, 212 L. Ed. 2d 753, 2022 U.S. LEXIS 2514 (2022), the U.S. Supreme Court held that a showing of prejudice to the opposing party is not required when determining whether a party has waived its right to arbitration under the Federal Arbitration Act. Rather, the Court decided, to

determine waiver, a court must determine whether the party knowingly relinquished the right to arbitrate by acting inconsistently with that right. See Ch. 44, *Arbitration*, § 44.02[3][b].

This release updates Texas Litigation Guide with recent legislation as well as Texas Supreme Court and court of appeals decisions and federal cases. Many of the significant developments in this release are summarized below.

Pretrial, Trial, and Appellate Practice

Service on Financial Institution.

The Texas Supreme Court, after examining the statutory scheme, concluded that the various statutes distinguish between a “registered agent” and the Secretary as agent. Thus, although the Secretary of State is a valid agent for service of process in

some contexts, it does not occupy the role of a foreign corporation’s “registered agent” for purposes of service as required under § 17.028 [U.S. Bank Nat’l Ass’n v. Moss, 644 S.W.3d 130, 133–136 (Tex. 2022)]. See Ch. 31, *Service on Residents*, § 31.02[2][b][iv].

Government Immunity in Declaratory Relief Actions. In *Abbott v. Mexican Am. Legis. Caucus*, 647 S.W.3d 681, 2022 Tex. LEXIS 613, *33 (Tex. June 24, 2022), the Texas Supreme Court held that government immunity from suit is not waived if the claims challenging the constitutionality of a statute are facially invalid. See Ch. 45, *Declaratory Relief*, § 45.04[1].

Discovery on Jurisdictional Question. A new discussion is added on conducting discovery on jurisdictional questions, including the scope of jurisdictional discovery is limited to matters directly relevant to the jurisdictional issue, and discovery is not available at the special appearance stage on any factor that is undisputed, as it is not essential to the plaintiff’s opposition [In re Christianson Air Conditioning & Plumbing, LLC, 639 S.W.3d 671, 676–678 (Tex. 2022)]. See Ch. 60, *Special Appearance*, § 60.04[6].

Summary Judgment; Oral Ruling. When the record shows the trial court heard argument and documented its express rulings on the pertinent objections in the reporter’s record, the rulings need not be reduced to writing to preserve error. A trial court’s on-the-record, unequivocal

oral ruling on an objection to summary judgment evidence qualifies as a ruling under Appellate Rule 33.1 [Fieldturf United States v. Pleasant Grove Indep. Sch. Dist., 642 S.W.3d 829, 838 (Tex. 2022)]. See Ch. 100, *Summary Judgment*, § 101.10[2][a].

Jury Charge; Broad-Form Charge. The Texas Supreme court considered a parental rights termination case and concluded that the broad-form charge used erroneously commingled a valid termination ground supported by sufficient evidence with an invalid termination ground supported by legally insufficient evidence [In the Int. of. J.W., 645 S.W.3d 726, 751 (Tex. 2022)]. See Ch. 122, *Jury Charge*, § 122.04[4].

Appeals; Brief Contents. This chapter is updated with the revised requirement of listing parties and counsel in the matter and their contact information. See Ch. 150, *Overview of the Appellate Process*, § 150.51.

Attorney’s Fees; Prevailing Party. Defendant who obtained take-nothing judgment on main issue in case was “prevailing party” and did not need to show it was adversely affected or obtain damages in order to be awarded attorney’s fees [Sunchase IV Homeowners Ass’n v. Atkinson, 643 S.W.3d 420, 424 (Tex. 2022)]. See Ch. 295, *Attorney’s Fees*, § 295.10[1].

Business and Commercial Law

Limited Liability Company; Indemnification. Courts construe in-

demnification and advancement provisions under the normal rules of contract construction [In re Demattia, 2022 Tex. App. LEXIS 2380 *9 (Tex. App.—Dallas 2022, orig. proceeding) (advancement provision in the company’s regulations covered the lawsuit alleging wrongful misconduct against former manager)]. See Ch. 183, *Limited Liability Company*, § 183.07[2].

Limited Liability Company; Judgment Creditor. Despite Section 101.112(f)’s limitations, a post-judgment injunction can coexist with the charging order to enjoin the judgment debtor from dissipating or transferring assets to avoid satisfaction of the judgment [Thomas v. Hughes, 2022 U.S. App. LEXIS 5708 **6–10 (5th Cir. 2022)]. See Ch. 183, *Limited Liability Company*, § 183.08.

Employment; Affordable Care Act. The United States Supreme Court held in, that individual and state plaintiffs had no standing to challenge the ACA’s minimum essential coverage provision because after Congress removed the penalty, the federal government had no enforcement mechanism [California v. Texas [___ U.S.], 141 S. Ct. 2104, 2120, 210 L. Ed. 230 (Tex. 2021)]. See Ch. 203, *Employer-Employee Relations*, § 203.29[1].

Employment; Arbitration. The Texas Supreme Court has explained that courts—and not arbitrators—must decide whether the parties in fact delegated the arbitrability question to the arbitrator, whether the parties are bound by a given arbitra-

tion clause, and whether the parties made a valid and presently enforceable agreement to arbitrate. Furthermore, courts should not assume that the parties agreed to arbitrate arbitrability unless there is clear and unmistakable evidence that they did so [Transcor Astra Grp. S.A. v. Petrobras Am. Inc., 2022 Tex. LEXIS 371 **35–36 (Tex. 2022)]. See Ch. 203, *Employer-Employee Relations*, § 203.29[1].

Employment; Hostile Working Environment. To establish a hostile-work-environment claim, the employee must demonstrate that he or she (1) belongs to a protected class; (2) has suffered unwelcomed sexual harassment; (3) the harassment was based on her sex; (4) the harassment affected a term, condition, or privilege of employment; and (5) the employer knew or should have known about the harassment and failed to take prompt remedial action [United States Court of Appeals for the Fifth Circuit Yolanda Landry v. Leesville Rehab. Hosp., 2022 U.S. App. LEXIS 3321, *7 (5th Cir. 2022)]. See Ch. 203A, *Employment Litigation*, § 203A.12[2][b].

Contracts; Settlement Interpretation. “[T]he circumstances leave no doubt that both parties intended to fully and finally resolve all their disputes “once and for all” and, to accomplish that objective, they knowingly agreed to disclaim any reliance on the other parties’ representations. Although they may not have ‘specifically discussed the issue which has become the topic of the subsequent

dispute,’ they expressly discussed the ‘material issues’” [Transcor Astra Group S.A. v. Petrobras Am, 2022 Tex. LEXIS 371 *23 (Tex. 2022). See Ch. 210A, *Contracts*, § 210A.04[3][c].

Contracts; Illegal Contract. Because parties to a contract are presumed to be knowledgeable of the law, the *in Pari Delicto* exception to unenforceability does not apply to a mistake of law. Invocation of the doctrine, requires a mistake of fact [see *Cooke v. Karlseng*, 2022 Tex. App. LEXIS 2375 *18-19 (Tex. App.—Dallas 2022, no pet.) (memo op.)]. See Ch. 210A, *Contracts*, § 210A.05[3][c].

Contracts; Enforceable Terms. The Texas Supreme Court has set out guiding principles for determining whether contract terms constitute an enforceable contract. First, courts cannot rewrite the parties’ contract but must construe it as a whole to determine the parties’ purposes when they signed it. Second, courts should construe contracts to avoid forfeitures, which are disfavored under Texas law, and instead find terms to be sufficiently definite whenever the language is reasonably susceptible to such an interpretation. And third, when courts construe agreements to avoid forfeiture, they may imply terms that can be reasonably implied [Baby Dolls Topless Saloons, Inc. v. Sotero, 642 S.W.3d 583, 2022 Tex. LEXIS 267 **5–6 (Tex. 2022) (per curiam)]. See Ch. 210A, *Contracts*, § 210A.20[1][a].

Contracts; Substantial Compli-

ance. This release includes a completely revised analysis of substantial compliance under contract law. See Ch. 210A, *Contracts*, § 210A.40[3][b].

Contracts; Attorney’s Fees. Attorney’s may testify that a percentage of their time would have been necessary even in the absence of the unrecoverable claim. However, generalities about tasks performed will not support a fee award [*Desio v. Bosque*, 2022 Tex. App. LEXIS 1202 *12 (Tex. App.—Dallas 2022, no pet. h.) (memo op.)]. See Ch. 217, *Damages in Contract*, § 217.20[1].

Personal Injury Litigation

Medical Malpractice; Damages. The statute as to periodic payments of future damages [Tex. Civ. Prac. & Rem. Code § 74.503] grants a court discretion to award both a lump sum payment and additional periodic payments, but any such division must be both consistent with the statutory requirements and based on evidence that there is some need for an immediate lump sum payment [*Colum. Valley Healthcare Sys., L.P. v. A.M.A.*, 2022 Tex. LEXIS 345 (Tex. 2022)]. See Ch. 321, *Medical Malpractice*, § 321.19[2][a].

Medical Malpractice; Causation. When the negligence of multiple providers allegedly cause a patient’s suicide, but the acts of each are so concurrent that they cannot be examined in isolation, the correct approach to causation is to consider whether each provider’s *individual* negligence was a substantial factor in the suicide, and whether their *combined*

negligence was a but-for cause of the suicide [Pediatrics Cool Care v. Thompson, 65 Tex. Sup. Ct. J. 1032, 2022 Tex. LEXIS 401 (Tex. 2022)]. See Ch. 321, *Medical Malpractice*, § 321.08.

Medical Malpractice; Expert Report. Any skepticism of the court about the validity of an expert report’s opinion on causation does not make it conclusory; instead, such skepticism is improper because it exceeds “the scope of the fair-summary standard by impermissibly weighing the credibility of the expert’s opinions” [E.D. v. Tex. Health Care, P.L.L.C., 644 S.W.3d 660 (Tex. 2022) (per curiam)]. See Ch. 321, *Medical Malpractice*, § 321.15[1A][a].

Defamation; Publication Requirement. When the jury was instructed to consider whether a specific statement set out in quotation marks was published by the defendant, but it was undisputed that the statement was made only to the defamation plaintiff, there was no evidence of publication as a matter of law and a contrary jury verdict had to be set aside [Mem’l Hermann Health Sys. v. Gomez, 65 Tex. Sup. Ct. J. 789, 2022 Tex. LEXIS 348 (Tex. 2022)]. See Ch. 333, *Libel and Slander*, § 333.04[3][a].

False Imprisonment; Tim Cole Act. A grant of habeas relief based on a finding that ineffective assistance of counsel caused the claimant to plead guilty is not a determination of actual innocence, so the comptroller properly denied compensation [In

re G.S., 644 S.W.3d 160 (Tex. 2022)].

Legal Malpractice; Attorney Immunity. Although both Texas and federal statutes criminalize wiretapping and create civil liability for use of intercepted communications, attorney immunity barred the claim based on Texas law, but was not a defense to the separate federal law claim [Taylor v. Tolbert, 644 S.W.3d 637 (Tex. 2022)]. See Ch. 322, *Professional Malpractice*, § 322.02[1][f].

Legal Malpractice; Tolling of Limitations. The *Hughes* tolling rule focuses on the last action of right taken by the potential malpractice plaintiff, not by any other parties to the underlying action, so the pendency or availability of an appeal by another party does not extend tolling as to the malpractice claims unless the plaintiff participates in those proceedings [Zive v. Jeffrey R. Sandberg & Palmer & Manuel, P.L.L.C., 644 S.W.3d 169 (Tex. 2022)]. See Ch. 322, *Professional Malpractice*, § 322.02[1][e].

Proportionate Responsibility; Expiration of Limitations. If a designated responsible third party is the plaintiff’s employer so that the worker’s compensation statutes barred any suit against the employer, no statute of limitations applies to that claim, so the defendant can designate the employer regardless of the length of time between the injury and the motion to designate [In re YRC Inc., 65 Tex. Sup. Ct. J. 1539, 2022 Tex. LEXIS 541 (Tex. 2022) (per curiam)]. See Ch. 291, *Proportionate*

Responsibility; Contribution and Indemnity, § 291.03[2][b].

Settlements; Scope of Release.

The language of a release barred any and all claims seeking to invalidate an underlying settlement agreement based on conduct that occurred before its effective date, because invalidation does not concern any “breach, enforcement, or interpretation” of the agreement. The disclaimer of reliance provision was enforceable because the parties intended a “once and for all” settlement of their preexisting disputes. [Transcor Astra Grp. S.A. v. Petrobras Am. Inc., 65 Tex. Sup. Ct. J. 891, 2022 Tex. LEXIS 371 (Tex. 2022)]. See Ch. 102, *Settlement*, §§ 102.07, 102.102[1][c]; Ch 336, *Fraud*, § 336.04[5][a].

Tort Claims Act; Emergency Exception. In an action arising from harm to innocent bystanders during a police chase, allegations that officer violated various city policies in initiating and continuing the pursuit did not negate the applicability of the emergency exception because internal police policies are not a “law” or “ordinance” under Tex. Civ. Prac. & Rem. Code § 101.055. That the officer took precautions to avoid harm to others showed that there was no conscious indifference or reckless disregard as required to remove the officer’s conduct from the exception [City of San Antonio v. Maspero, 640 S.W.3d 523 (Tex. 2022)]. See Ch. 293, *Claims Against Governmental Entities*, §§ 293.10[4][c], 293.12[4].

Tort Claims Act; Official Immunity. A lower court errs if it extends

the need-risk analysis to determine official immunity of an officer outside of the pursuit and emergency-response contexts; instead, the “risk” prong is disregarded, and the officer need only show that a reasonably prudent officer faced with the same circumstances could have believed that his conduct was justified [City of San Antonio v. Riojas, 640 S.W.3d 534 (Tex. 2022)]. See Ch. 293, *Claims Against Governmental Entities*, § 293.13[2][e].

Premises Liability; Scope of Protections of Chapter 95.

Even if there are two separate improvements under construction, if the petition alleges negligence at both sites created or contributed to a dangerous condition of one of the improvements, Chapter 95 applies to a loss suffered at that site. Though there must be negligence regarding the improvement’s condition or use, and that negligence must be a cause of the plaintiff’s damages, it need not be the *only* cause [Energen Res. Corp. v. Wallace, 642 S.W.3d 502 (Tex. 2022)]. See Ch. 310, *Premises Liability*, § 310.02[3][d].

Premises Liability; Scope of Protections of Chapter 95.

Because the employees of a subcontractor admitted knowledge that the power lines at a worksite were energized, the danger they presented was open and obvious, so the property owner had no duty to provide any additional warning [SandRidge Energy, Inc. v. Barfield, 642 S.W.3d 560 (Tex. 2022)]. See Ch. 310, *Premises Liability*, § 310.02[3][d].

Premises Liability; Invocation of Protections of Chapter 95. Because the owner must initially establish that Chapter 95 applies, a no-evidence motion for summary judgment is not available as to that preliminary issue; instead, only a traditional motion for summary judgment may be brought. But once that issue has been determined, the owner may file either a no-evidence motion or a traditional motion on the elements of control and actual knowledge [Weekley Homes v. Paniagua, 65 Tex. Sup. Ct. J. 1548, 2022 Tex. LEXIS 550 (Tex. 2022) (per curiam)]. See Ch. 310, Premises Liability, § 310.02[3][d].

Premises Liability; Ownership Requirement. The rule that a premises liability claim is not available against a former owner of the property applies regardless of whether it was the sole owner of the property, or was instead a tenant-in-common with other owners who retained their interests after the former owner sold all of its interest in the property. Because liability is barred, the former owner also cannot be designated as a responsible third party [In re Eagleridge Operating, LLC, 642 S.W.3d 518 (Tex. 2022)]. See Ch. 291, *Proportionate Responsibility; Contribution and Indemnity*, § 291.03[2][b]; Ch. 310, *Premises Liability*, § 310.02[6].

Premises Liability; Unreasonable Danger Requirement. A divot in the pavement of a grocery store parking lot that was approximately 3/4-inch deep did not pose an unreasonable danger as a matter of law,

and expert testimony to the contrary did not change the analysis because undisputed, material facts established that “divot was small, unremarkable, and had posed no previous safety concerns” [United Supermarkets, LLC v. McIntire, 65 Tex. Sup. Ct. J. 1552, 2022 Tex. LEXIS 543 (Tex. 2022) (per curiam)]. See Ch. 310, *Premises Liability*, § 310.05[2][a].

Insurance Litigation

Liability Insurance; Duty to Defend. When the underlying petition states a claim that could trigger the duty to defend, but the eight-corners rule is not determinative of whether coverage exists due to a gap in the petition’s allegations, extrinsic evidence may be considered, but only if the evidence: (1) goes solely to an issue of coverage and does not overlap with the merits of liability; (2) does not contradict facts alleged in the petition; and (3) conclusively establishes the coverage fact to be proved [Monroe Guar. Ins. Co. v. BITCO Gen. Ins. Corp., 640 S.W.3d 195 (Tex. 2022)]. See Ch. 341, *Liability Insurance*, § 341.04[3][b].

Liability Insurance; Duty to Defend. When the policy defined *auto* as a vehicle “designed for travel on public roads,” an underlying petition alleging injuries from the use of a golf cart could not and did not trigger the duty to defend because *golf cart* is defined by the Transportation Code as a vehicle designed for use on a golf course [Pharr-San Juan-Alamo Indep. Sch. Dist. v. Tex. Pol. Subdivisions Prop./Casualty Joint Self Ins. Fund, 642 S.W.3d 466 (Tex. 2022)].

See Ch. 341, *Liability Insurance*, § 341.04[3][b].

Automobile Insurance; Assessment of Damage to Vehicle. When an auto accident occurs and makes the vehicle inoperable, the insurer does not have any general negligence duty to warn or instruct the insured on how to safely take pictures of the damaged vehicle at the accident site in order to avoid being struck by traffic. These circumstances also do not fall within the insurer's duty of good faith and fair dealing [*Elephant Ins. Co., LLC v. Kenyon*, 644 S.W.3d 137, 149–151 (Tex. 2022)]. See Ch. 290, *Negligence*, § 290.02[2][b]; Ch. 345, *Unfair Insurance Practices*, § 345.15[1].

Family Law

Post-Dissolution Property Division. The Texas Supreme Court has held that when community property is left undivided by a divorce decree, the former spouses may seek either a partition of the property under the Property Code or a just-and-right division under Family Code Sections 9.201 et seq. If either former spouse invokes the just-and-right standard, that will be the rule of decision. The divorce court does not have exclusive jurisdiction over the action [*S.C. v. M.B.*, ___ S.W.3d ___, 2022 Tex. LEXIS 538 (Tex. 2022)]. See Ch. 364, *Post-Dissolution Property Suits*, §§ 364.20, 364.21.

SACPR Enforcement. Texas courts of appeals have taken different approaches to the question of what constitutes compliance with a possession order when the child refuses to

go with the noncustodial parent. See Ch. 372, *Enforcement of SAPCR Orders*, § 372.02[6][a][ii].

Termination of Parental Rights. The mandatory dismissal deadline for termination suits brought by the Texas Department of Family and Protective Services, set out in Family Code Section 263.401, is discussed in Ch. 381, *Termination of Parental Rights*, § 381.20[6].

Adoption. The Corpus Christi Court of Appeals has set out the factors that a court considers when deciding whether there is good cause to unseal adoption records. See Ch. 382, *Adoption*, § 382.07[2][a].

Real Estate Litigation

Real Property Taxes; Service of Process. When public property or tax records include contact information for a defendant that was served by publication, a court hearing a collateral attack on a judgment on due process grounds may consider those materials because they are an integral component of the record of the tax foreclosure case itself, not extrinsic evidence. Moreover, because service by publication is available only when an address for personal service is unknown, when the records include contact information for the defendant, both the absence of diligence to justify service by publication and the denial of due process are established as a matter of law. The taxpayer must nevertheless comply with the deposit or affidavit requirements of Tax Code Section 34.08(a) in order to bring a suit to recover the property [*Mitchell v. MAP Res., Inc.*, 65 Tex. Sup. Ct. J.

1019, 2022 Tex. LEXIS 402 (Tex. 2022)]. See Ch. 260, *Real Property Tax Suits*, §§ 260.03[3], [7].

Restrictive Covenants; Short Term Rentals. A statute authorizing a Harris County HOA to regulate the “use” of property [see Tex. Prop. Code § 204.010(a)(6)] requires that any such regulation be consistent with the deed restrictions, so a short-term rental bar on a preexisting townhome development was not authorized because it violated the covenant that there would be “no restriction” on the right of any owner to lease a townhome [JBrice Holdings, L.L.C. v. Wilcrest Walk Townhomes Ass’n, 644 S.W.3d 179 (Tex. 2022)]. See Ch. 285, *Restrictions*, §§ 285.03[2], 285.04[6].

Construction Contracts; Cancellation. If a construction contract expressly provides that any notice of cancellation must be in writing, that requirement is a condition precedent that is strictly enforced, so the failure to comply renders any purported cancellation ineffective and the contract remains in force. But because the requirement is a condition precedent, not a covenant, the failure to comply is not a breach of contract and does not relieve the other party of its obligations under the contract [James Constr. Grp., LLC v. Westlake Chem. Corp., 65 Tex. Sup. Ct. J. 1096, 2022 Tex. LEXIS 428 (Tex. 2022)]. See Ch. 270, *Improvement Contracts*, §§ 270.06, 270.21[1], [5].

Condemnation; Jurisdiction. Property Code Section 21.001 granting a county court at law concurrent

jurisdiction in eminent domain cases is a self-contained grant that is independent of the general Government Code provisions establishing the jurisdiction of county courts at law; therefore, the assertion of counterclaims or other additional claims that are part of the eminent domain proceeding do not affect a county court at law’s jurisdiction and do not require transfer to the district court, regardless of the amount in controversy [In re Breviloba, LLC, 2022 Tex. LEXIS 614 (Tex. 2022) (per curiam)]. See Ch. 261, *Condemnation*, §§ 261.43[1], [3], 261.100[1].

Condemnation; Regulatory Taking. A city ordinance permitting refusal of utility service to a property until outstanding utility bills are paid was a mere regulation of a service provided by the city, not a regulation of the property itself and therefore could not be basis of any claim for a regulatory taking [City of Baytown v. Schrock, 645 S.W.3d 174 (Tex. 2022)]. See Ch. 261, *Condemnation*, §§ 261.05[2], 261.22[1].

Condemnation; Power to Condemn. Chapter 131 of the Transportation Code, an early 20th Century statute that confers eminent domain authority on corporations chartered for the purpose of “constructing, acquiring, maintaining, or operating lines of electric railway between municipalities in this state for the transportation of freight, passengers, or both,” applies to a modern high-speed rail project between Texas cities. The corporations are not required to show a reasonable probability that

the project will be completed as a condition of invoking the power to condemn [Miles v. Tex. Cent. R.R. & Infrastructure, Inc., 2022 Tex. LEXIS 610 (Tex. 2022)]. See Ch. 261, *Condemnation*, §§ 261.11[2], [3], [5], 261.14[1].

Condemnation; Power to Condemn. A pipeline partnership had the power to condemn because polymer-grade propylene is an “oil product” under Tex. Bus. Orgs. Code § 2.105, and that statute is an independent grant of condemnation power that is not limited to carriers that transport the products listed in Tex. Nat. Res. Code § 111.002; partnership established the public use requirement by demonstrating that its pipeline served at least one unaffiliated customer [Hlavinka v. HSC Pipeline P’ship, LLC, 65 Tex. Sup. Ct. J. 1234, 2022 Tex. LEXIS 446 (Tex. 2022)]. See Ch. 261, *Condemnation*, § 261.11[4].

Oil and Gas; Division of Costs. A deed requiring delivery “free of cost in the pipe line, if any, otherwise free of cost at the mouth of the well or mine” means that postproduction costs begin to be incurred when gas is first delivered into any pipeline; “gathering pipeline” on wellsite constitutes a pipeline in both ordinary sense of that term and industry terminology, and nothing in the deed contradicted that construction, so the timing of the subsequent delivery into a transportation pipeline was not controlling [Nettye Engler Energy, LP v. BlueStone Nat. Res. II, LLC, 639 S.W.3d 682 (Tex. 2022)]. See

Ch. 283, *Oil and Gas Leases*, § 283.03[8][a].

Adjoining Landowners; Water Rights. The Texas Commission on Environmental Quality (TCEQ) has general jurisdiction over the initial allocation of water rights, but once those rights have been determined, its jurisdiction does not include the authority to adjudicate conflicting claims to ownership of surface water rights that are allegedly acquired with title to the land; instead, the adjudication of such claims is exclusively for the courts, not the agency [Pape Partners, Ltd. v. DRR Family Props. LP, 645 S.W.3d 267 (Tex. 2022)]. See Ch. 280, *Adjoining Landowners*, § 280.11[1].

Trespass to Try Title; Form of Action. The jury’s determination that an agreement existed between the parties and that the defendant breached it by failing to convey the property established that the plaintiff was vested with equitable title to the property sufficient to maintain a trespass to try title action; the plaintiff’s error in designating the action in the pleadings as one for breach of contract did not affect the relief available [Stelly v. Deloach, 644 S.W.3d 657 (Tex. 2022) (per curiam)]. See Ch. 250, *Adverse Possession*, §§ 250.01[1], 250.100[1], 250.101[1]; Ch. 251, *Trespass to Try Title*, §§ 251.01[1], 251.05[2], 251.101[1]; Ch. 257, *Suit to Quiet Title*, § 257.01[3][b].

Partition; Former Community Property. The Family Code provi-

sion authorizing an action by either former spouse to divide community property that went unaddressed by a final divorce decree is not an exclusive remedy, so a conventional partition action is available and trial courts other than the court of divorce have subject matter jurisdiction over such an action [S.C. v. M.B., 65 Tex. Sup. Ct. J. 1492, 2022 Tex. LEXIS 538 (Tex. 2022)]. See Ch. 284, *Partition*, § 284.02[2].

Estate Code Litigation

Heirship; Common-Law Spouse Standing. An alleged common-law spouse who fails to demonstrate her marital status has no standing to file further pleadings in an estate administration. [Estate of Pandozy, 634 S.W.3d 288 (Tex. App.—Texarkana 2021, no pet.)]. See Ch. 391, *Descent and Distribution*, § 391.07[9].

Executor; Removal. Mismanagement of a decedent’s non-probate assets by a personal representative is not a ground for removal [In re Estate of Collins, 638 S.W.3d 814 (Tex. App.—Tyler 2021, no pet.)] (the trial court abused its discretion for removing an independent executor when the executor’s withdrawals during the testator’s life were improper but the executor was entitled to them as the joint survivor)]. See Ch. 393, *Appointment of Personal Representatives*, § 393.09[4][b][ii].

Will Construction; Mandatory Terms. Certain terms that may seem

precatory in nature may be found by the fact-finder to be mandatory depending on the testator’s intent and the context of the entire will, especially if it clearly expresses the testator’s intention in making a distribution of property [In re Estate of Wharton, 632 S.W.3d 597 (Tex. App.—El Paso 2020, no pet.)] (holding that the term “desire” while normally precatory may be mandatory depending on the context of the entire will)]. See Ch. 394, *Will Construction*, § 394.05[2][b].

Creditors’ Claims; Waiver of Jurisdiction. A personal representative waived jurisdiction by participating in a lawsuit only naming the estate [Sullivan v. Pound, 634 S.W.3d 318 (Tex. App.—San Antonio 2021, no pet.)]. See Ch. 401, *Creditors’ Claims*, § 401.111[1][a].

Administrative Agencies

Contested Cases. In *Dyer v. Tex. Comm’n on Env’tl. Quality*, 646 S.W.3d 498, 2022 Tex. LEXIS 524, *23 (Tex. June 10, 2022), the Texas Supreme Court held that although Tex. Gov’t Code § 2001.058(e) curtailed a reviewing agency’s authority to revisit adjudicative facts, Tex. Gov’t Code § 2003.047(m) granted the Texas Commission on Environmental Quality the authority to change findings of fact. See Ch. 422, *Contested Cases*, § 422.01A.

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| <input type="checkbox"/> | Title page. | Title page |
| <input type="checkbox"/> | 42-65. | 42-65 thru 42-66.1 |
| <input type="checkbox"/> | 42-89 thru 42-91 | 42-89 thru 42-92.1 |
| <input type="checkbox"/> | 44-26.1 thru 44-38.1. | 44-27 thru 44-38.1 |
| <input type="checkbox"/> | 44-135 | 44-135 thru 44-136.1 |
| <input type="checkbox"/> | 44-145 thru 44-146.1 | 44-145 thru 44-146.1 |
| <input type="checkbox"/> | 45-13 thru 45-20.1 | 45-13 thru 45-20.1 |
| <input type="checkbox"/> | 45-39 thru 45-40.1 | 45-39 thru 45-40.1 |
| <input type="checkbox"/> | 45-83 thru 45-91 | 45-83 thru 45-91 |
| <input type="checkbox"/> | 46-3 | 46-3 thru 46-4.1 |
| <input type="checkbox"/> | 46-27 thru 46-41 | 46-27 thru 46-42.1 |

VOLUME 5

Revision

- | | | |
|--------------------------|------------------------------|--------------------|
| <input type="checkbox"/> | Title page. | Title page |
| <input type="checkbox"/> | 60-1 thru 60-3 | 60-1 thru 60-3 |
| <input type="checkbox"/> | 60-17 thru 60-24.1 | 60-17 thru 60-24.1 |
| <input type="checkbox"/> | 60-51 thru 60-53 | 60-51 thru 60-53 |
| <input type="checkbox"/> | 72-11. | 72-11 thru 72-12.1 |
| <input type="checkbox"/> | 72-52.1 thru 72-53 | 72-53 thru 72-54.1 |
| <input type="checkbox"/> | 72-91 thru 72-101 | 72-91 thru 72-101 |

**Check
As
Done**

*Remove Old
Pages Numbered*

*Insert New
Pages Numbered*

VOLUME 6

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	90-15.	90-15 thru 90-16.1
<input type="checkbox"/>	90-35.	90-35 thru 90-36.1
<input type="checkbox"/>	90-157 thru 90-163	90-157 thru 90-163
<input type="checkbox"/>	92-13.	92-13 thru 92-14.1

VOLUME 7

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	101-54.13 thru 101-54.17	101-54.13 thru 101-54.17
<input type="checkbox"/>	101-109 thru 101-111	101-109 thru 101-111
<input type="checkbox"/>	102-67 thru 102-68.1	102-67 thru 102-68.1
<input type="checkbox"/>	102-100.1 thru 102-102.1	102-101 thru 102-102.1

VOLUME 8

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	122-29 thru 122-36.1	122-29 thru 122-36.1

VOLUME 10

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	145-45 thru 145-47	145-45 thru 145-47
<input type="checkbox"/>	146-21	146-21 thru 146-22.1
<input type="checkbox"/>	146-41 thru 146-45	146-41 thru 146-45
<input type="checkbox"/>	147-30.1 thru 147-31	147-31 thru 147-32.3
<input type="checkbox"/>	150-55	150-55 thru 150-56.1
<input type="checkbox"/>	150-103	150-103
<input type="checkbox"/>	150-127 thru 150-133	150-127 thru 150-131
<input type="checkbox"/>	151-37	151-37 thru 151-38.1
<input type="checkbox"/>	151-75 thru 151-76.1	151-75 thru 151-76.1
<input type="checkbox"/>	151-89 thru 151-97	151-89 thru 151-97
<input type="checkbox"/>	152-69	152-69 thru 152-70.1
<input type="checkbox"/>	152-88.1	152-88.1

Check As Done	<i>Remove Old <u>Pages Numbered</u></i>	<i>Insert New <u>Pages Numbered</u></i>
<input type="checkbox"/>	152-98.1 thru 152-105.	152-99 thru 152-106.1

VOLUME 12

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	180-24.1 thru 180-29	180-25 thru 180-30.1
<input type="checkbox"/>	181-25 thru 181-27	181-25 thru 181-27
<input type="checkbox"/>	182-79 thru 182-81	182-79 thru 182-81
<input type="checkbox"/>	183-19	183-19 thru 183-20.1
<input type="checkbox"/>	183-28.1 thru 183-28.3	183-28.1 thru 183-28.3

VOLUME 13

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	201-19	201-19 thru 201-20.1
<input type="checkbox"/>	203-72.1 thru 203-72.9	203-72.1 thru 203-72.9
<input type="checkbox"/>	203-88.1 thru 203-94.1	203-89 thru 203-94.3
<input type="checkbox"/>	203-98.6(1) thru 203-98.8(3)	203-98.7 thru 203-98.8(5)
<input type="checkbox"/>	203-98.19.	203-98.19 thru 203-98.20(1)
<input type="checkbox"/>	203-98.29 thru 203-98.43	203-98.29 thru 203-98.43
<input type="checkbox"/>	203-144.1 thru 203-151	203-145 thru 203-151
<input type="checkbox"/>	203A-28.1 thru 203A-29.	203A-29 thru 203A-30.3
<input type="checkbox"/>	203A-111 thru 203A-116.3.	203A-111 thru 203A-116.3

VOLUME 14

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	210A-7 thru 210A-14.1	210A-7 thru 210A-14.1
<input type="checkbox"/>	210A-33 thru 210A-34.1.	210A-33 thru 210A-34.1
<input type="checkbox"/>	210A-54.1 thru 210A-60.1.	210A-55 thru 210A-60.1
<input type="checkbox"/>	210A-77	210A-77 thru 210A-78.1
<input type="checkbox"/>	210A-93 thru 210A-115	210A-93 thru 210A-116.5
<input type="checkbox"/>	210A-130.1 thru 210A-131	210A-131 thru 210A-132.3
<input type="checkbox"/>	210A-140.6(1) thru 210A-140.13.	210A-140.7 thru 210A-140.19
<input type="checkbox"/>	210A-163.	210A-163 thru 210A-164.1
<input type="checkbox"/>	210A-179 thru 210A-184.1	210A-179 thru 210A-184.1
<input type="checkbox"/>	210A-195 thru 210A-197	210A-195 thru 210A-197
<input type="checkbox"/>	216-9.	216-9

**Check
As
Done**

*Remove Old
Pages Numbered*

*Insert New
Pages Numbered*

217-59 thru 217-61 217-59 thru 217-62.1

VOLUME 16

Revision

Title page. Title page
 241-13 241-13 thru 241-14.1
 250-6.1. 250-6.1
 250-63 thru 250-70.1 250-63 thru 250-70.1
 251-7. 251-7 thru 251-8.1
 251-16.11. 251-16.11
 251-39 thru 251-40.1 251-39 thru 251-40.1
 252-13 thru 252-20.5 252-13 thru 252-20.5

VOLUME 17

Revision

Title page. Title page
 257-9. 257-9 thru 257-10.1
 260-50.3 thru 260-53 260-51 thru 260-54.5
 260-78.1 thru 260-80.1 260-79 thru 260-80.3
 261-25 thru 261-43 261-25 thru 261-44.3
 261-60.1 thru 261-60.3 261-60.1 thru 261-60.3
 261-74.1 thru 261-81 261-75 thru 261-82.1
 261-103 thru 261-108.1 261-103 thru 261-108.1
 261-159 261-159 thru 261-160.1

VOLUME 18

Revision

Title page. Title page
 270-28.5 thru 270-28.11 270-28.5 thru 270-28.11
 270-45 thru 270-51 270-45 thru 270-52.1
 280-34.1 thru 280-34.3 280-34.1 thru 280-34.3
 283-44.9 thru 283-44.10(1). 283-44.9 thru 283-44.10(1)
 283-61 thru 283-64.1 283-61 thru 283-64.1
 284-12.1 thru 284-14.1 284-13 thru 284-14.3
 285-26.8(1) thru 285-26.8(3). 285-26.8(1) thru 285-26.8(3)
 285-39 thru 285-40.1 285-39 thru 285-40.1

VOLUME 19

**Check
As
Done** *Remove Old
Pages Numbered*

*Insert New
Pages Numbered*

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	290-11 thru 290-13	290-11 thru 290-14.1
<input type="checkbox"/>	290-27	290-27 thru 290-28.1
<input type="checkbox"/>	291-33 thru 291-40.6(1)	291-33 thru 291-40.6(3)
<input type="checkbox"/>	291-61	291-61 thru 291-62.1
<input type="checkbox"/>	293-22.3	293-22.3 thru 293-22.4(1)
<input type="checkbox"/>	293-55 thru 293-56.1	293-55 thru 293-56.1
<input type="checkbox"/>	293-95 thru 293-104.3.	293-95 thru 293-104.7
<input type="checkbox"/>	293-106.11 thru 293-110.1	293-107 thru 293-110.1
<input type="checkbox"/>	293-118.9.	293-118.9 thru 293-118.11
<input type="checkbox"/>	295-17	295-17 thru 295-18.1
<input type="checkbox"/>	295-117	295-117 thru 295-118.1

VOLUME 19A

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	310-27 thru 310-30.2(3)	310-27 thru 310-30.2(15)
<input type="checkbox"/>	310-47	310-47 thru 310-48.1
<input type="checkbox"/>	321-52.1 thru 321-54.1	321-53 thru 321-54.1
<input type="checkbox"/>	321-104.13 thru 321-104.14(1)	321-104.13 thru 321-104.14(1)
<input type="checkbox"/>	321-116.3 thru 321-116.7	321-116.3 thru 321-116.7

VOLUME 20

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	322-38.1 thru 322-38.17	322-38.1 thru 322-38.19
<input type="checkbox"/>	331-29 thru 331-31	331-29 thru 331-32.1
<input type="checkbox"/>	333-27	333-27 thru 333-28.1
<input type="checkbox"/>	333-82.1 thru 333-83	333-83 thru 333-84.3
<input type="checkbox"/>	336-26.1 thru 336-26.5	336-26.1 thru 336-26.5

VOLUME 21

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	341-27 thru 341-34.7	341-27 thru 341-34.9
<input type="checkbox"/>	345-55	345-55 thru 345-56.1
<input type="checkbox"/>	350-11	350-11 thru 350-12.1

Check As Done	<i>Remove Old <u>Pages Numbered</u></i>	<i>Insert New <u>Pages Numbered</u></i>
<input type="checkbox"/>	351-13 thru 351-23	351-13 thru 351-24.1
<input type="checkbox"/>	351-46.1 thru 351-49	351-47 thru 351-50.5
<input type="checkbox"/>	351-87 thru 351-89	351-87 thru 351-89

VOLUME 22

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	362-102.3 thru 362-102.9	362-102.3 thru 362-102.9
<input type="checkbox"/>	363-9 thru 363-21	363-9 thru 363-22.1
<input type="checkbox"/>	364-1.	364-1
<input type="checkbox"/>	364-22.1 thru 364-28.1	364-23 thru 364-28.2(3)
<input type="checkbox"/>	364-37 thru 364-40.3	364-37 thru 364-40.3
<input type="checkbox"/>	364-49 thru 364-55	364-49 thru 364-56.1
<input type="checkbox"/>	364-71 thru 364-73	364-71 thru 364-73
<input type="checkbox"/>	371-50.5 thru 371-50.7	371-50.5 thru 371-50.7

VOLUME 23

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	372-49 thru 372-51	372-49 thru 372-52.1
<input type="checkbox"/>	381-5.	381-5 thru 381-6.1
<input type="checkbox"/>	381-105 thru 381-109	381-105 thru 381-110.3
<input type="checkbox"/>	382-37 thru 382-38.1	382-37 thru 382-38.1

VOLUME 24

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	391-35	391-35 thru 391-36.1
<input type="checkbox"/>	391-69	391-69 thru 391-71
<input type="checkbox"/>	392-93	392-93 thru 392-94.1
<input type="checkbox"/>	393-43	393-43 thru 393-44.1
<input type="checkbox"/>	394-34.1 thru 394-35	394-35 thru 394-36.1
<input type="checkbox"/>	401-37 thru 401-43	401-37 thru 401-43

VOLUME 25

Revision

<input type="checkbox"/>	Title page.	Title page
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Check As Done	<i><u>Remove Old Pages Numbered</u></i>	<i><u>Insert New Pages Numbered</u></i>
<input type="checkbox"/>	422-7 thru 422-8.1	422-7 thru 422-8.1
<input type="checkbox"/>	422-45 thru 422-47	422-45 thru 422-47
<input type="checkbox"/>	423-7 thru 423-9	423-7 thru 423-10.1
<input type="checkbox"/>	423-23 thru 423-30.3	423-23 thru 423-30.3
<input type="checkbox"/>	423-38.1 thru 423-38.3	423-38.1 thru 423-38.3
<input type="checkbox"/>	423-47 thru 423-53	423-47 thru 423-53
<input type="checkbox"/>	TS-1 thru TS-419	TS-1 thru TS-419

VOLUME 26

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	I-59	I-59 thru I-60.1
<input type="checkbox"/>	I-95	I-95
<input type="checkbox"/>	I-133	I-133
<input type="checkbox"/>	I-157	I-157
<input type="checkbox"/>	I-175 thru I-185	I-175 thru I-185
<input type="checkbox"/>	I-223 thru I-233	I-223 thru I-234.1
<input type="checkbox"/>	I-365 thru I-373	I-365 thru I-373
<input type="checkbox"/>	I-843	I-843 thru I-844.1
<input type="checkbox"/>	I-877	I-877 thru I-878.1
<input type="checkbox"/>	I-917	I-917 thru I-918.1
<input type="checkbox"/>	I-935 thru I-941	I-935 thru I-942.1
<input type="checkbox"/>	I-967	I-967 thru I-968.1

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