PUBLICATION UPDATE

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Dorsaneo, Texas Litigation Guide

Publication 719 Release 146 July 2022

HIGHLIGHTS

Garnishment

- For updates to Tex. R. Civ. P. 663a and 664a pertaining to procedural requirements in garnishment cases. See Ch. 42.

Texas Free Enterprise and Antitrust Act

- Texas Supreme Court has clarified what inferences can be drawn from circumstantial evidence of a conspiracy. See Ch. 200A.

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

Garnishment—Statutory Updates. This release includes updates to Tex. R. Civ. P. 663a and 664a pertaining to procedural requirements in garnishment cases. See Ch. 42, *Garnishment*.

Arbitration—Litigation Stay Lifted. This release includes *Vets Securing Am., Inc. v. Smith*, 632 S.W.3d 272, 281 (Tex. App.—Corpus Christi 2021, pet. denied), in which the court of appeals held that a trial court was not required to preserve a litigation stay pending arbitration when a party defaulted on paying its arbitration filing fee. See Ch. 44, *Arbitration*, § 44.07[3][b].

Declaratory Relief—Attorney's Fees Not Recoverable. In *King Op-*

erating Corp. v. Double Eagle Andrews, LLC, 634 S.W.3d 483, 495 (Tex. App.—Eastland 2021, no pet. h.), the court of appeal denied attorney's fees to a party in an action for declaratory relief, holding that a party may not transform a trespass-to-try-title dispute into a declaratory judgment action through artful pleading or by pleading alternatively. See Ch. 45, *Declaratory Relief*, § 45.06[1].

Depositions. In *In re Texan Millwork, Inc.*, 631 S.W.3d 706, 713–714 (Tex. 2021), the Texas Supreme Court discussed the circumstances in which a party is required to produce a witness for deposition without a subpoena because the witness is subject to the control of a party. See Ch. 94, *Depositions*, § 94.02[5].

Sealing Court Records. In *House-Canary, Inc. v. Title Source, Inc.*, 622 S.W.3d 254, 256, 261–262 (Tex. 2021), the Texas Supreme Court discussed the relationship between Civil Rule 76a, governing sealing of court records, and the standards for sealing court records contained in the Texas Uniform Trade Secrets Act. See Ch. 97, *Resisting Discovery*, § 97.25[1][a].

Summary Judgment. In *Li v. Pemberton Park Cmty. Ass'n*, 631 S.W.3d 701, 704 (Tex. 2021), the Texas Supreme Court made clear that Civil Rule 166a(c), which provides that a summary judgment cannot be reversed on appeal on the basis of an issue that was not expressly and timely presented to the trial court, should be construed liberally so that the right to appeal is not lost unnecessarily. See Ch. 101, *Summary Judgment*, § 101.10[2][a].

Jury Charge. In *Emerson Elec. Co. v. Johnson*, 627 S.W.3d 197, 208 (Tex. 2021), The Texas Supreme Court overruled earlier cases that had held that the jury should not be burdened with surplus instructions when balancing various factors in design defect cases; under current practice, the court considers whether definitions and instructions assist the jury, accurately state the law, and find support in the pleadings and evidence. See Ch. 122, *Jury Charge*, § 122.120[1][b].

Appellate Timetable. In *Phillips v. McNeill*, 635 S.W.3d 620, 625 (Tex. 2021), the Texas Supreme Court discussed the proper inquiry for determining when requests for findings and conclusions that are not required by the rules will extend the time for perfecting appeal from 30 to 90 days after judgment. See Ch. 147, *Perfecting and Docketing the Appeal*, § 147.03[1][c][iv].

Mootness. In *Elec. Reliability Council of Tex., Inc. v. Panda Power Generation Infrastructure Fund, LLC*, 619 S.W.3d 628, 635–637 (Tex. 2021), the Texas Supreme Court held that an entry of final judgment will usually moot an interlocutory appeal or mandamus petition, since the order will merge into the final judgment. See Ch. 150, *Appellate Proceedings in Court of Appeals,* § 150.01[2][b].

Judgment. In *In re Guardianship of Jones*, 629 S.W.3d 921, 924–925

(Tex. 2021), the Texas Supreme Court reaffirmed the rule that in probate and guardianship proceedings, an order disposing of all issues and parties in one phase of the proceeding may be final and appealable even when proceedings remain pending as to other issues. See Ch. 2, *Jurisdiction of Texas Courts*, § 2.01[5][f]; Ch. 153, *Accelerated Appeals*, § 153.02[2].

Business and Commercial Law

Right to Inspect Corporate Books of Foreign Corporation. Under the "internal affairs doctrine" the laws of a foreign entities jurisdiction of formation govern its internal affairs. The Houston Court of Appeals held that "internal affairs" includes a shareholder's right to inspection of books [Hartman Income Reit, Inc. v. Mackenzie Blue Ridge Fund III, L.P., 2022 Tex. App. LEXIS 604, **12–16 (Tex. App.—Houston [1st Dist.] 2022, no pet. h.)]. See Ch. 163, *Corporate Books*, §§ 163.01.

Right to Jury Trial for Inspection of Corporate Books and Records. A corporation has a right to a jury trial when, by its pleadings it identifies specific facts raising a fact issue over whether a shareholder has a proper purpose for wanting to examine its books and records [In re Elusive Holdings, 2021 Tex. App. LEXIS 10186, **5–8 (Tex. App.—Austin 2021, no pet. h.)]. See Ch. 163, *Corporate Books*, §§ 163.02, 163.04.

Evidence Required to Prove Conspiracy Under Texas Free Enterprise and Antitrust Act. In addressing the quantum of proof required to defeat a motion for summary judgment on a conspiracy claim, the Texas Supreme Court has extracted three principles that limit what inferences can reasonably be drawn from circumstantial evidence of a conspiracy from federal cases: "(1) parallel business conduct, alone, is insufficient to raise a fact issue on the existence of a conspiracy; (2) when the conspiracy alleged is implausible [meaning that if the claim is one that simply makes no economic sense], more persuasive evidence will be required to survive summary judgment; and (3) the plaintiff's evidence must tend to exclude the possibility that the defendants acted independently" [AMC Entm't Holdings Inc. v. iPic-Gold Class Entm't, LLC., 2022 Tex. LEXIS 43, *22 (Tex. 2022)]. See Ch. 200A, *Antitrust Laws*, § 200A.02[1][a].

Protection From Discovery Under Evidence Rule 507. In a misappropriation of trade secrets claim, the Houston Court of Appeals held that the trial court abused its discretion in ordering production of documents where the resisting party established that the requested documents were trade secrets, and the party seeking discovery, failed to meet its evidentiary burden under Evidence Rule 507 that the information was necessary for a fair adjudication of its claims [In re 4x Indus., 2021 Tex. App. LEXIS 10131, **13–32 (Tex. App.—Houston [14th Dist. 2021, no pet. h.]. See Ch. 200B, *Trade Secrets,* § 200B.25[3].

Not All Benefits Are Lost When At-Will Employment Contract Terminated. The Texarkana Court of Appeals has held that an employee had a viable breach of contract claim against his employer for failure to pay him a 1.5 equity stake in a newly formed company where the employment contract unambiguously provided the employee the equity stake unconditioned on continued employment, so summary judgment in favor of the employer was improper [Sloggett v. LaCore Enters., LLC, 2021 Tex. App. LEXIS 9568, **7–12 (Tex. App.—Texarkana 2021, no pet. h.) (memo. op.)]. See Ch. 203, *Employer-Employee Relations*, §§ 203.06[1][i], 203.10[1].

Employment At Will. A discharged employee who claimed that the employer had agreed to limit the employer's right to terminate him for at least two years failed to prove an express agreement to that effect [Justin v. Valley Grande Inst. For Academic Studies, 2021 Tex. App. LEXIS 10172, **9–13 (Tex. App.—Corpus Christi 2021, no pet. h.) (memo op.)]. See Ch. 203, *Employer-Employee Relations*, §§ 203.06[2][a], 203.12.

Terminable Contract for Indefinite Duration Do Not Support Future Damages. In an unusual set of facts, the Texas Supreme Court reversed an award of future damages because there was evidence that the contract would not continue after trial [Pura-Flo Corp. v. Clanton, 65 Tex. Sup. Ct. J. 104, 2021 Tex. LEXIS 1046, **6–9 (Tex. 2021) (per curiam)]. See Ch. 210A, *Contracts*, § 210A.42[2][c][i]; See Ch. 203, *Employer-Employee Relations*, § 203.06[1][j].

Offer May be Revoked by Information Received by Offeree From Source Other Than Offeror. The Texas Supreme Court reviewed and addressed the parameters of the doctrine of implied revocation in contract formation in *Angel v. Tauch*, [2022 Tex. LEXIS 31, *1 (Tex. 2022)]. The Court has held that a valid implied revocation had two essential components: (1) inconsistent action and (2) communication. An offer may be considered revoked if the offeree receives reliable information that the offeror has taken definite action inconsistent with an intention to enter the proposed contract [Angel v. Tauch, 2022 Tex. LEXIS 31, *13 (Tex. 2022)]. See Ch. 210A, *Contracts*, § 210A.02[2][b].

No Presumption of Agency. This was reiterated in *Tex. Private Sch. Found v. Bullin* [2021 Tex. App. LEXIS 10118 *24 (Tex. App.—Amarillo 2021, no pet. h.) (memo. op.)], where the court reversed a judgment based on a finding of breach of contract because the third contracting party failed to establish, and the record lacked sufficient evidence that the signatories were authorized to enter loan agreements on behalf of the school. The court rejected claims of waiver, estoppel and ratification. See Ch. 216, *Agency*, §§ 216.01[2], 216.04[2][d], 216.05[1].

Proving Consequential Contract

Damages. Absent special circumstances, a decline in a company's market value as an asset, cannot be the basis for consequential damages because it does not meet the *Hadley v. Baxendale* foreseeability requirement [Signature Indus. Servs., LLC v. Int'l Paper Co., 2022 Tex. LEXIS 44, **12–20 (Tex. 2022)]. See Ch. 210A *Contracts*, § 210A.42[2][c]; Ch. 217, *Damages in Contract*, § 217.11[2][a][iii].

Personal Injury Litigation

Medical Malpractice; Damages and Discovery. The reimbursement rates a medical provider agrees to accept from private and public insurers are relevant on the issue of whether the list rates charged to an uninsured patient for the same services are reasonable, so discovery of the reimbursement rates is available [In re K & L Auto Crushers, LLC, 627 S.W.3d 239, 244–245 (Tex. 2021); In re N. Cypress Med. Ctr. Operating Co., 559 S.W.3d 128, 129 (Tex. 2018)]; moreover, because discovery is available, a trial court error in completely barring discovery of reimbursement rates is a clear abuse of discretion subject to correction by mandamus [In re ExxonMobil Corp., 65 Tex. Sup. Ct. J. 101, 2021 Tex. LEXIS 1048 (2021) (per curiam)]. See Ch. 321, *Medical Malpractice*, § 321.13[1].

Settlements; Offer and Acceptance. The doctrine of implied revocation extends to all offers to contract, including settlement offers; an offer is revoked by implication when: (1) the offeror engages in definite action that is inconsistent with the offer; and (2) the offeree receives a communication from any reliable source of that inconsistent action [Angel v. Tauch, 65 Tex. Sup. Ct. J. 230, 2022 Tex. LEXIS 31 (Tex. 2022)]. See Ch. 102, *Settlement*, § 102.02[4].

Damages in Tort; Exemplary Damages; Discovery. The statute governing when discovery of net worth is available as to exemplary damages unambiguously requires both a written order and a finding that the claimant has demonstrated "a substantial likelihood of success on the merits," so a trial court that authorizes such discovery without a written order that includes the required finding necessarily abuses its discretion and mandamus is available to bar discovery [In re Boone, 629 S.W.3d 372, 374–376 (Tex. App.—San Antonio 2020, orig. proceeding)]. See Chapter 294, *Damages in Tort*, § 294.23[1].

Intentional Torts; Assault. The discovery rule has been applied to the statute of limitations for an assault claim when the nature of the injury incurred is inherently undiscoverable, and the evidence of injury is objectively verifiable [Caver v. Clayton, 618 S.W.3d 895, 899–903 (Tex. App.—Houston [14th Dist.] 2021, no pet.)]. See Chapter 330, *Assault*, § 330.03.

Medical Malpractice; Emergency Services. Because the need for emergency care can arise at any time, the patient need not present to the hospital with an "original" medical

emergency to trigger the application of the willful and wanton standard of Tex. Civ. Prac. & Rem. Code § 74.351 [Morris v. Piparia, 622 S.W.3d 922, 926–928 (Tex. App.—Austin 2021, no pet.)]. See Ch. 321, *Medical Malpractice*, § 321.18[1].

Medical Malpractice; Health Care Liability Claim. Claims arising from allegedly negligent cosmetic skin treatments performed solely by an aesthetician at a medical spa were not HCLCs because no medical device was used, and there was no doctor-patient relationship between the claimant and the physician who owned the facility [Lake Jackson Med. Spa, Ltd. v. Gaytan, 627 S.W.3d 346, 351–353 (Tex. App.—Houston [14th Dist.] 2020, pet. granted)]. See Ch. 321, *Medical Malpractice*, § 321.02[6].

Medical Malpractice; Health Care Liability Claim. A person arrested and held in custody for DUI was in "confinement" under Tex. Civ. Prac. & Rem. Code § 74.001(a)(19), so a claim that her requests for medical care or assistance were denied while in custody was an HCLC and the claimant was required to file an expert report [Boon-Chapman v. Patterson, 625 S.W.3d 526, 528–529 (Tex. App.—Houston [14th Dist.] 2021, no pet)]. See Ch. 321, *Medical Malpractice*, § 321.02[5].

Medical Malpractice; Health Care Liability Claim. Because the gravamen of a complaint about a resident's fall was inadequate sidewalk maintenance outside an assisted living facility, the claim was "untethered to health care" provided to the resident, so the *Ross* factors indicated that the claim was for premises liability only and was not an HCLC [Faber v. Collin Creek Assisted Living Ctr., Inc., 629 S.W.3d 630, 639–643 (Tex. App.—Dallas 2021, pet. filed)]. See Ch. 321, *Medical Malpractice*, § 321.02[2][f].

Defamation; Defamatory Meaning. A landlord's statutory lockout notice did not identify the tenant by name or state that he had committed any wrongful or unethical conduct, so the notice was not capable of any defamatory meaning as a matter of law and summary judgment was warranted [Chehab v. Edgewood Dev., Ltd., 619 S.W.3d 828, 836–837 (Tex. App.—Houston [14th Dist.] 2021, no pet.)]. See Ch. 333, *Libel and Slander,* § 333.02[1][b].

Defamation; Citizens Participation Act; Covered Legal Actions. If the pleadings in a pending action are amended on or after Sept. 1, 2019 to add a new party, the eight additional statutory exemptions of the TCPA that became effective on that date apply to the claims by or against that party [Straub v. Pesca Holding LLC, 621 S.W.3d 299, 303–305 (Tex. App.—San Antonio 2021, no pet.)]. See Ch. 333, *Libel and Slander,* § 333.42[2][b].

Defamation; Citizens Participation Act; Covered Legal Actions. A motion for sanctions is a covered "legal action" under the TCPA when it seeks the legal relief of a monetary award [KB Home Lone Star Inc. v.

Gordon, 629 S.W.3d 649, 655–657 (Tex. App.—San Antonio 2021, no pet.)]. See Ch. 333, *Libel and Slander,* § 333.42[3][a].

Defamation; Citizens Participation Act; Attorney's Fees. A jury trial is available by demand on the issue of the amount of reasonable attorney's fees under the TCPA [Pisharodi v. Columbia Valley Healthcare Sys., L.P., 622 S.W.3d 74, 87–90 (Tex. App.—Corpus Christi 2020, no pet.)]. See Ch. 333, *Libel and Slander,* § 333.42[7][a].

Negligence; Duty. To succeed on a negligent undertaking claim, the services the defendant undertakes to perform must be for the benefit of the plaintiff, whether that is the person being assisted or a specific third party, and there is no general duty to the public at large to perform those services without negligence [Murray v. Nabors Well Serv., 622 S.W.3d 43, 53–55 (Tex. App.—El Paso 2020, no pet.)]. See Chapter 290, *Negligence*, § 290.02[3][c].

Negligence; Farm Animal Act. All claims were precluded by statute because the plaintiff was injured immediately after petting a horse on a wedding venue property; statutory term "handling" includes petting, so the plaintiff was a participant in a farm animal activity and was injured by an inherent risk of that activity [Lobue v. Hanson, 625 S.W.3d 543, 549–550 (Tex. App.—Houston [14th Dist.] 2021, no pet.)]. See Chapter 290, *Negligence*, § 290.20[4][f].

Tort Claims Act; Election of Remedies. By moving to dismiss the claims against a joined police officer under Tex. Civ. Prac. & Rem. Code § 101.106(e), a city made a binding judicial admission that the officer was acting in the scope of employment at the time of the vehicle collision, so the trial court erred in allowing the city to later contest that issue and granting summary judgment based on scope of employment [Ledesma v. City of Hous., 623 S.W.3d 840, 847–850 (Tex. App.—Houston [1st Dist.] 2020, pet. denied)]. See Ch. 293, *Claims Against Governmental Entities,* § 293.16[3][a].

Tort Claims Act; Premises Liability. The purchase of a plane ticket does not constitute payment for the use of airport premises in walking from one gate to another to make a connecting flight, so the plaintiff was a mere licensee, not an invitee on a premises liability claim [City of Hous. v. Ayala, 628 S.W.3d 615, 620–622 (Tex. App.—Houston [14th Dist.] 2021, no pet.)]. See Ch. 293, *Claims Against Governmental Entities,* § 293.10[5][g].

Tort Claims Act; Emergency Exception. Though a claim that a vehicle was damaged by a loose fire hose on a passing fire truck stated a claim for a condition or use of tangible personal property, it was undisputed that the truck had been dispatched to respond to a house fire, so the emergency exception barred the claim [White v. City of Hous., 624 S.W.3d 28, 34–36 (Tex. App.—Houston [1st Dist.] 2021, no pet.)]. See Ch. 293, *Claims Against Governmental Entities,* § 293.12[4].

Tort Claims Act; Operation or Use of Vehicle. There was sufficient evidence of the required nexus between an officer's operation or use of a vehicle and the injuries suffered when the officer initiated and continued a high-speed chase without prior authorization and the fleeing suspect's vehicle collided with the plaintiff's car in attempting to ram the officer's cruiser [Maspero v. City of San Antonio, 628 S.W.3d 476, 482–483 (Tex. App.—San Antonio 2019, pet. granted)]. See Ch. 293, *Claims Against Governmental Entities,* § 293.10[4][c].

Tort Claims Act; Causation; Foreseeability. A city was not liable for the failure to properly use the seatbelt in a police car to restrain a handcuffed arrestee because the only danger that was foreseeable was injury to the arrestee in a collision or abrupt stop, not that the arrestee would commit suicide with a concealed handgun that the officer failed to find in making the arrest [City of Austin v. Anam, 623 S.W.3d 15, 19 (Tex. App.—Austin 2020, no pet.)]. See Ch. 293, *Claims Against Governmental Entities,* § 293.10[5][a].

Tort Claims Act; Waiver of City's Immunity. The only purpose of Section 101.0215 of the statute is to distinguish between proprietary and governmental functions, so it does not provide an independent waiver of a city's governmental immunity in performing any of those functions [Carrasco v. City of El Paso, 625 S.W.3d 189, 196–197 (Tex. App.—El Paso 2021, no pet.)]. See Ch. 293, *Claims Against Governmental Entities,* § 293.01[3][a].

Tort Claims Act; Waiver of City's Immunity. Because a city had discretion to enter into a contract, and did so on its own behalf primarily to benefit the city itself, not the public at large, and there was no established connection to any essential governmental function, entry into the contract was an exercise of a proprietary function and the city lacked immunity [City of League City v. Jimmy Changas Inc., 619 S.W.3d 819, 824–828 (Tex. App.—Houston [14th Dist] 2021, pet. filed)]. See Ch. 293, *Claims Against Governmental Entities,* § 293.01[3][a].

Real Estate Litigation

Real Property Taxes; Direct Judicial Relief. Provided state law provides an adequate legal remedy, a taxpayer may not bring an action in Texas state court under 42 U.S.C. § 1983 seeking damages for allegedly unconstitutional taxes assessed by a state entity, [Harris Cty. Appraisal Dist. v. Braun, 625 S.W.3d 622, 629 (Tex. App.—Houston [14th Dist.] 2021, no pet.)]. See Ch. 260, *Real Property Tax Suits*, § 260.04[4].

Real Property Taxes; Effect of Tax Sale. When the taxing units joined the record lienholder, but that party took no actions to foreclose or maintain its lien, the judgment for the taxing units extinguished the lien, so res judicata barred any later suit by an assignee purporting to foreclose the lien [Ovation Servs., LLC v. Richard, 624 S.W.3d 610, 618–619 (Tex. App.—Tyler 2021, no pet.)].

See Ch. 260, *Real Property Tax Suits*, § 260.03[3].

Condemnation; Governmental Immunity. When one governmental entity sought to condemn the property of another, governmental immunity existed because the proceeding was a quasi in rem proceeding that fixed the parties' competing property interests; therefore, the court deferred to the legislature to waive immunity [Hidalgo Cty. Water Improvement Dist. No. 3 v. Hidalgo Cty. Water Irrigation Dist. No. 1, 627 S.W.3d 529, 535–539 (Tex. App.—Corpus Christ 2021, pet. filed)]. See Ch. 261, *Condemnation*, § 261.04[2].

Condemnation; Jurisdiction. Because the landowner's counterclaims against the condemnor were in excess of the maximum amount in controversy, the county court at law lacked jurisdiction and was required to transfer the entire action to the district court under Tex. Prop. Code § 21.002; therefore, mandamus was available to compel transfer [In re H&S Hoke Ranch, LLC, 625 S.W.3d 220, 223–224 (Tex. App.—Waco 2021, orig. proceeding)]. See Ch. 261, *Condemnation*, § 261.43[3].

Condemnation; PRPRPA Jurisdiction. Because immunity is waived only to the extent that an action is authorized by PRPRPA, compliance with the statute's 180-day statute of limitations is a jurisdictional prerequisite to suit [San Jacinto River Auth. v. Lewis, 629 S.W.3d 768, 775–777 (Tex. App.—Houston [14th Dist.] 2021, no pet.)]. See Ch. 261, *Condemnation*, § 261.62[1].

Title Disputes; Deeds; Correction Instrument. If a correction deed recorded before September 1, 2011 does not substantially comply with the correction instrument statute, it is not void; instead, its effect is determined under prior common law without application of the statute [Lockhart v. Chisos Minerals, LLC, 621 S.W.3d 89, 110 (Tex. App.—El Paso 2021, pet. denied)]. See Ch. 254, *Deeds and Conveyances*, § 254.02[4][b].

Title Disputes; Deeds; Type of Deed. A deed containing a special warranty clause cannot be a quitclaim deed because it gives the grantee recourse against the grantor for any claim of title defect arising by, through or under such grantor [Lockhart v. Chisos Minerals, LLC, 621 S.W.3d 89, 107–109 (Tex. App.—El Paso 2021, pet. denied)]. See Ch. 254, *Deeds and Conveyances*, § 254.02[3].

Title Disputes; Trespass to Try Title. Any error in overruling special exceptions and permitting an action to proceed as one for a declaratory judgment is not reversible if the claim to attorney's fees is nonsuited, and the claims for declaratory relief can be alternatively characterized as claims for trespass to try title [MEI Camp Springs, LLC v. Clear Fork, Inc., 623 S.W.3d 83, 89–90 (Tex. App.—Eastland 2021, no pet.)]. See Ch. 251, *Trespass to Try Title*, § 251.01[2][a].

Title Disputes; Adverse Possession. Because a fence existed before the claimant took possession, it was a

casual fence, not a designed enclosure required to support adverse possession claim based on grazing of cattle or other stock [Benner v. Armstrong, 622 S.W.3d 562, 566 (Tex. App.—Waco 2021, no pet.)]. See Ch. 250, *Adverse Possession*, § 250.02[3][b].

Oil & Gas Leases; Termination. Lease did not automatically terminate when a retained acreage clause was triggered because the clause was not a special limitation, but merely a covenant made by the lessee to release certain acreage on the triggering event [PPC Acquisition Co. LLC v. Del. Basin Res., LLC, 619 S.W.3d 338, 347–352 (Tex. App.—El Paso 2021, no pet.)]. See Ch. 283, *Oil and Gas Leases*, § 283.03[7].

Oil & Gas Leases; Accommodation Doctrine. If an oil and gas lessee desires to invoke the accommodation doctrine to challenge a surface use by the lessor as inconsistent with its rights, it must be actively attempting to develop the minerals interests at the time of the challenge [Lyle v. Midway Solar, LLC, 618 S.W.3d 857, 872–875 (Tex. App.—El Paso 2020, pet. denied)]. See Ch. 283, *Oil and Gas Leases*, § 283.03[5][c].

Security Interests; Foreclosure. Unilateral abandonment of a prior acceleration is conclusively established when the lender later sends the borrower a mortgage statement that requests a lesser payment than the entire accelerated balance [Citibank N.A. v. Pechua, Inc., 624 S.W.3d 633, 640–641 (Tex. App.—Houston [14th Dist] 2021, pet. denied)]. See Ch. 255, *Real Property Security Interests*, § 255.06[2].

Estate Code Litigation

Probate. Texas case law confirmed and refined issues pertaining to the following issues: what classifies as a of probate proceeding, § 392.01[2]; undue influence, § 392.36[3][a]; the application of abatement to reimbursement claims of the surviving spouse, §§ 393.10[2] and 394.06[3][d]; and standing to file suit to recover estate property, § 400.01[5][d].

Administrative Agencies

Administrative Law—Motion for Rehearing. This release includes *Tex. Comm'n on Envtl. Quality v. Pulak Barua*, 632 S.W.3d 726, 732 (Tex. App.—El Paso 2021, pet. denied), in which the court of appeals held that a motion for rehearing must set forth: (1) the particular finding of fact, conclusion of law, ruling, or other action by the agency which the complaining party asserts was error; and (2) the legal basis upon which the claim of error rests. See Ch. 422, *Contested Cases*, § 422.07[2].

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Publication 719, Release 146, July 2022

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Publication 719 Release 146 July 2022

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