

PUBLICATION UPDATE

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HIGHLIGHTS

Discovery Rules

- The Texas Supreme Court has approved amendments to Civil Procedure Rules 47, 169, 190, 192, 193, 194, and 195, effective January 1, 2021, and applicable to cases filed on or after that date. These rules govern pleading of claims for relief, the expedited actions process, and various matters concerning discovery.

Contract Claims Against Charter Schools

- The Texas Supreme Court has held that governmental immunity was not waived by a charter school district because the signed lease at issue was not “properly executed” on behalf of the government as required. See Ch. 210A.

Termination of Parental Rights

- The Texas Supreme Court has held that when the ground for termination of parental rights is a parent’s criminal conviction for indecency with a child, the conviction itself may constitute legally sufficient evidence that the parent was criminally responsible for the serious injury of a child. See Ch. 381.

This release updates Texas Litigation Guide with recent 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

Discovery Rules. The Texas Supreme Court has approved amend-

ments to Civil Procedure Rules 47, 169, 190, 192, 193, 194, and 195, effective January 1, 2021, and applicable to cases filed on or after that date. These rules govern pleading of claims for relief, the expedited actions process, and various matters concerning discovery. These rule changes were in response to legislation [see Act of May 27, 2019, 86th Leg., R.S., ch. 696 (SB 2342); Tex. Gov't Code § 22.004(h-1)] that directed the Supreme Court to adopt rules to promote the prompt, efficient, and cost-effective resolution of civil actions filed in county courts at law in which the amount in controversy does not exceed \$250,000, balancing the need for lowering discovery costs in these actions against the complexity of and discovery needs in these actions. The amended rules go beyond the county court at law context and amount to a significant revision of discovery practice, particularly with respect to requests for disclosure, which have become required disclosures that must be made without waiting for a discovery request. See the Special Alert preceding Ch. 90, *Discovery: Scope and Limitations*.

Service of Citation. Civil Procedure Rules 106, Method of Service, and 108a, Service of Process in Foreign Countries, have been amended to allow substituted service electronically by social media, email, and other technology in an appropriate case, and to make other clarifying and stylistic changes. These rules are discussed in Ch. 31, *Citation on Residents*, and Ch. 32, *Personal Jurisdiction*

and Service on Nonresidents.

Citation by Publication. The Supreme Court has amended Civil Procedure Rules 116, Service of Citation by Publication, and 117, Return of Citation by Publication, to provide for publication over the internet through the new Public Information Internet Website. See Ch. 31, *Service on Residents*, § 31.02[3] and § 31.05.

Appellate Procedure. An amendment to Appellate Rule 49.3, regarding the disposition of motions for rehearing, has been added to Ch. 150, *Appellate Proceedings in Court of Appeals*. See § 150.06[3].

Inherent Power. In *Brewer v. Lennox Hearth Prods., LLC*, 601 S.W.3d 704, 718–719 (Tex. 2020), the Texas Supreme Court discussed the inherent power of a court to sanction an attorney when the offensive conduct is not explicitly prohibited by statute, rule, or ethical standard, and concluded that such sanctions necessitate a finding of bad faith. See Ch. 2, *Jurisdiction of Texas Courts*, § 2.01[7].

Jurisdiction Based on Consent. In *Rieder v. Woods*, 603 S.W.3d 86, 100–101 (Tex. 2020), the Texas Supreme Court discussed the extent to which a forum selection clause may be enforced by or against nonsignatories. See Ch. 32, *Personal Jurisdiction and Service on Nonresidents*, § 32.07[3].

Arbitrator Decides Issues of Procedural Arbitrability. This release includes *APC Home Health Servs. v. Martinez*, 600 S.W.3d 381, 401 (Tex.

App.—El Paso 2019, no pet. h.), in which the court of appeals held that it was up to the arbitrator, rather than the court, to decide whether discovery limits in an arbitration agreement made the agreement unconscionable because it was an issue of procedural arbitrability. See Ch. 44, *Arbitration*, § 44.02[2].

Appellate Jurisdiction Regarding Motions to Compel Arbitration. In *SK Plymouth, LLC v. Simmons*, 605 S.W.3d 706, 713 (Tex. App.—Houston [1st Dist.] 2020, no pet. h.), the court of appeals held that it did not have jurisdiction to consider an appeal of the denial of a motion to reconsider the denial of a motion to compel arbitration. See Ch. 44, *Arbitration*, § 44.08[2].

Certificates of Service. The certificates of service in the forms throughout the publication have been updated to reflect mandatory electronic service on counsel and the procedural guides have been updated to reflect current e-filing requirements.

Business and Commercial Law

Avoiding Dismissal; Fiduciary Duties, Business Judgment Rule. In *Roels v. Valkenaar*, 2020 Tex. App. LEXIS 6684, **23–29 (Tex. App.—Austin 2020, no. pet. h.) (memo. op.), the court of appeals held that the business judgment rule protected the corporate defendants against shareholder claims because shareholders failed to allege specific conduct amounting to fraud and did not identify evidence of actual injury to the company. However, the shareholder

was able to prove a prima facie case with respect to a misappropriation claim against a director because intent to obtain personal benefit was alleged. See Ch. 160A, *Corporate Management*, § 160A.02[1][b].

Election of Remedies in Contracts. In *Wilkins v. Laguna Bay Condo. Ass’n*, 2020 Tex. App. LEXIS 7527, **14–16 (Tex. App.—Corpus Christi, 2020, no pet. h.) (memo. op.), the court of appeals held that a party who elects to treat a contract as continuing cannot recover damages for the entire breach and deprives itself of any excuse for ceasing performance. See Ch. 210A, *Contracts*, § 210A.42[2].

Duty to Limit Trade Secret Use; Jury Charge. In *Title Source, Inc. v. HouseCanary, Inc.*, 2020 App. Tex. LEXIS 6835, *21, **27–31 (Tex. App.—San Antonio, 2020 pet. filed) (memo. op.), the court of appeals held that remand for new trial was warranted because appellee’s single jury charge included several theories of liability (and a definition of “improper” means that tracked the language of the statute) when there was no evidence that the appellant had misappropriated the appellee’s trade secrets other than perhaps misappropriation in violation of a duty to limit trade secret use. See Ch. 200B, *Trade Secrets*, § 200B.20[1]; see also Ch. 122 *Jury Charge*.

Employment Agreement Must Not Hinder Legitimate Competition. This release includes *Am. Surgical Assistants, Inc. v. Villareal*, 2020 Tex. App. LEXIS 8087, *7

(Tex. App.—Dallas, 2020, no pet. h.) (memo. op.), in which the court of appeals reiterated the principle that a restraint of trade is not worthy of protection when it would hinder legitimate competition between businesses and the mobility of skilled workers. The court stated that this was especially true when an employment agreement involves personal services. See Ch. 201, *Covenants Not to Compete*, §§ 201.02[3], 201.04[3] [a], [d], 201.04[4][6].

Availability of Injunctive Relief in Buyout Offer. This release includes two cases involving buyout offers. In, *Am. Surgical Assistants, Inc. v. Villareal*, 2020 Tex. App. LEXIS 8087, **7 (Tex. App.—Dallas, no pet. h.) (memo. op.), the court of appeals held that trial court may refuse to issue a temporary injunction when there is evidence that the promisee/employer can adequately be compensated by damages caused by the promisor’s future competition. In this case, the former employer could adequately be compensated in damages as there was evidence that employer offered to release employee from non-compete clause for \$500,000; *see also* Equine Sports Med. & Surgery Weatherford Div., PLLC v. Tipton, 2020 Tex. App. LEXIS 8343, **13–15 (Tex. App.—Fort Worth, 2020, no pet. h.) (memo. op.). See Ch. 201, *Covenants Not to Compete*, § 201.02[3], 201.04[3] [a], [d], 201.04[4] 6,] § 201.06[3][a], [b].

Statutory Fees and Costs for Unreasonable Employment Covenant. An award of attorney’s fees and costs

may be awarded to an employee who satisfies certain evidentiary requirements in defending against the enforcement of an unreasonable covenant. In *Am. Surgical Assistants, Inc. v. Villareal*, 2020 Tex. App. LEXIS 8087, **16–22 (Tex. App.—Dallas, 2020, no pet. h.) (memo. op.), the court awarded attorney’s fees to the employee when it was shown that the employer was aware that the agreement was unenforceable as written, yet the employer did not change the covenant going forward and instead further sought to enforce it. See Ch. 201, *Covenants Not to Compete*, § 201.06[5][b], § 201.52.

Sex and Age Discrimination Using McDonnell Douglas Framework. In *Univ. of Tex. Southwestern Med. Ctr. v. Vitetta*, 2020 Tex. App. LEXIS 7790, **11–12 (Tex. App.—Dallas, 2020 no pet. h.) (memo. op.), the court of appeals explained the burden-shifting *McDonnell Douglas* framework and the standard of proof required in sex, age, disparate treatment and pretext discrimination claims. The court concludes that the employee established its prima facie discrimination claims against the university/employer. This case involved salary reduction, laboratory space and staff cut and is covered in several sections. See 203A, *Employment Litigation*, § 203A.53 [1]–[3], [5]–[7]; §§ 203A.55, 203A.56, 203A.61[2], § 203A.63[1].

Race and National Origin Discrimination Using McDonnell Douglas Framework. In *City of Dallas v. Siaw-Afriyie*, 2020 Tex. App.

LEXIS 7908, **21–31 (Tex. App.—Dallas Oct. 1, 2020, no pet. h.) (memo. op.), the former employee was able to establish his prima facie case by raising evidence of pretext concerning his non-selection for a senior IT manager position. See 203A, *Employment Litigation*, § 203A.57[2].

Governmental Immunity Waived in Retaliation Case. In *City of Dallas v. Siaw-Afryie*, 2020 Tex. App. LEXIS 7908, **18–19 (Tex. App.—Dallas, 2020 no pet. h.) (memo. op.), the employee was able to establish a prima facie case of pretext as the basis of his discrimination and retaliation claims by producing sufficient evidence to show a causal link between his race and national origin complaints and the elimination of his job position. See 203A, *Employment Litigation*, § 203A.63[3].

Equitable Remedy for Retaliatory Discharge. In *Webb City v. Romo*, 2020 Tex. App. LEXIS 6829, **5–7 (Tex. App.—San Antonio, 2020 no. pet. h.) (memo. op.), the court of appeals held that the chief investigator was entitled to seek the equitable remedy of reinstatement to his prior position and pay grade after he was terminated for running for office for county constable. See Ch. 203A, *Employment Litigation* § 203A.04[1].

Contract Claims Against Open-Enrollment Charter Schools. In *El Paso Educ. Initiative, Inc. v. Amex Props., LLC*, 602 S.W.3d 521, 530–534 (Tex. 2020), the Texas Su-

preme Court has held that governmental immunity was not waived by the charter district because the signed lease at issue was not “properly executed” on behalf of the government as required and in accordance with all statutory and regulatory requirements placed on open enrollment charter schools entering contractual relationships [enrollment charter schools entering contractual relationships. See Ch. 210A, *Contracts*. § 210A.42[4].

Sovereign Immunity for Claims Brought Under the FCRA. The FCRA requires consumer agencies to “follow reasonable procedures to assure maximum possible accuracy of” consumer reports [15 U.S.C. § 1681e(b)]. In *Thurston v. Equifax Info. Servs.*, 2020 U.S. Dist. LEXIS 203511, **12–18 (W.D. Tex. 2020), a case involving a question of first impression, the United States Court for the Western District of Texas has held that Congress did not waive sovereign immunity for the government and its agencies by including the word “governments” as “persons” subject to liability with respect to FCRA claims as this was only referenced in the definitional provision of the statute and therefore the FCRA did not waive sovereign immunity. See Ch. 234, *Federal Fair Credit Reporting Act* (FCRA), § 234.11[2][b].

Family Law

Child Support. Corporate retained earnings may be included in a child support calculation under some circumstances. See Ch. 371A, *Child Support*, § 371A.03[3][b].

Termination of Parental Rights.

The Texas Supreme Court has held that when the ground for termination is a parent's criminal conviction for indecency with a child, the conviction itself may constitute legally sufficient evidence that the parent was criminally responsible for the serious injury of a child [In Interest of Z.N., 602 S.W.3d 541 (Tex. 2020)]. See Ch. 381, *Termination of Parental Rights*, § 381.02[11].

Insurance Litigation

Workers' Compensation; Exclusive Remedy. If the employer erroneously raises the exclusive remedy provision by a plea to the jurisdiction or a motion to dismiss, but the claimant does not object, the trial court's dismissal can be affirmed if the record establishes that summary judgment was proper on the issue [*Robles v. Mount Franklin Food, L.L.C.*, 591 S.W.3d 158, 162–164 (Tex. App.—El Paso 2019, pet. denied)]. See Ch. 340, *Worker's Compensation*, § 340.01[2].

Workers' Compensation; Temporary Employment Agency. The client company of a temp agency need not demonstrate that it had a contractual right to control or actually exercised control over the worker in order to claim status as an employer that can invoke the exclusive remedy provision [*Robles v. Mount Franklin Food, L.L.C.*, 591 S.W.3d 158, 166–168 (Tex. App.—El Paso 2019, pet. denied)]. See Ch. 340, *Worker's Compensation*, § 340.02[2].

Workers' Compensation; State

Employee. If an employee of a state agency violates the statutory prohibition against working from home without authorization [see Tex. Gov't Code § 658.010], the employee's conduct is removed from the scope of employment, so the injury is not compensable [*Martinez v. State Office of Risk Mgmt.*, 582 S.W.3d 513, 524 (Tex. App.—San Antonio 2018, pet. denied)]. See Ch. 340, *Worker's Compensation*, § 340.04[3][a].

Insurer's Duty to Defend. When the plain language of a policy endorsement excluded coverage for claims arising out of the application of herbicides, pesticides, fertilizers or similar agricultural chemicals at issue in the underlying property damage lawsuit, the insurer had no duty to defend under the eight-corners rule [*StarNet Ins. Co. v. RiceTec, Inc.*, 586 S.W.3d 434, 447–451 (Tex. App.—Houston [1st Dist.] 2019, pet. denied)]. See Ch. 341, *Liability Insurance*, § 341.04[3][b].

Uninsured Motorist Coverage; Physical Contact Required. The indirect contact rule does not apply when the uninsured motorist caused the collision because one of the vehicles involved took evasive action to avoid the uninsured vehicle, but there was no contact between the uninsured vehicle and any other vehicle [*Franks v. Liberty Cty. Mut. Ins. Co.*, 582 S.W.3d 648, 651 (Tex. App.—Houston [14th Dist.] 2019, no pet.)]. See Ch. 342, *Uninsured Motorist Coverage*, § 342.02[4][e].

Uninsured Motorist Coverage; Claims Against Insurer. An insur-

er's liability on UIM coverage does not arise until a final judgment establishes liability and uninsured status, so a prompt payment claim is unavailable when it is undisputed that the insurer complied with the payment deadline after entry of judgment; however, this does not bar a statutory or common law claim that the refusal to pay before judgment was in bad faith [*State Farm Mut. Auto. Ass'n v. Cook*, 591 S.W.3d 677, 680–684 (Tex. App.—San Antonio 2019, no pet.)]. See Ch. 342, *Uninsured Motorist Coverage*, § 342.05.

Property Insurance; Appraisal.

An anti-waiver clause of a policy requiring a writing to waive the right of appraisal may itself be waived by conduct, but only if the party intentionally engaged in conduct inconsistent with claiming the right to enforce the clause) [*In re Am. Nat'l Prop. & Cas. Co.*, 582 S.W.3d 400, 405–406 (Tex. App.—San Antonio 2018, orig. proceeding)]. See Ch. 343, *Property Insurance*, § 343.07[1].

Personal Injury Litigation

Medical Malpractice; Effect of Federal Claim. When the plaintiff asserts a civil rights claim that arises from the provision of health care by a state actor, federal law preempts the expert report requirement of Chapter 74 of the Civil Practices and Remedies Code [*Rogers v. Bagley*, 581 S.W.3d 362, 372–374 (Tex. App.—Corpus Christi 2019, pet. filed)]. See Ch. 321, *Medical Malpractice*, § 321.02[2][a].

Medical Malpractice; Emergency Care. The elevated standard

of proof for claimant's receiving emergency care is not an affirmative defense that must be pleaded by the defendant; instead, it governs what the claimant is required to prove in order to establish liability [*Campbell v. Pompa*, 585 S.W.3d 561, 569–571 (Tex. App.—Fort Worth 2019, pet. denied)]. See Ch. 321, *Medical Malpractice*, § 321.18[1][b].

Medical Malpractice; Commencement of Action. An action is “commenced” as to each defendant only when that party is first named as a defendant, so the expert report requirements as to defendants added to a pending action are governed by the current version of Chapter 74, not prior law [*Morris v. Ponce*, 584 S.W.3d 922, 925–928 (Tex. App.—Houston [14th Dist.] 2019, pet. denied)]. See Ch. 321, *Medical Malpractice*, § 321.15[1][b].

Medical Malpractice; Health Care Liability Claim. When the claimant alleges an injury arising from an ambulance driver's failure to follow the rules of the road, the claim is for routine negligence and is not a health care liability claim, so no expert report is required [*Coci v. Dower*, 585 S.W.3d 652, 656–657 (Tex. App.—Eastland 2019, pet. denied)]. See Ch. 321, *Medical Malpractice*, § 321.02[2][f].

Medical Malpractice; Vicarious Liability. Any challenge to the claimant's allegations as to vicarious liability of a hospital must be raised by special exception to the petition or by a motion to dismiss, not by an objection to the expert report [*Seton*

Family of Hosps. v. White, 593 S.W.3d 787, 793–795 (Tex. App.—Austin 2019, pet. denied)]. See Ch. 321, *Medical Malpractice*, § 321.15[1A][b].

Citizen’s Participation Act; Covered Legal Actions. A motion simply seeking dismissal of the plaintiff’s claims is not a covered “legal action” regardless of whether it expressly invokes the TCPA or not, because it does not seek relief and is not a procedural vehicle for the vindication of a legal claim [*Caliber Oil & Gas, LLC v. Midland Visions 2000*, 591 S.W.3d 226, 237 (Tex. App.—Eastland 2019, no pet.)]. See Ch. 333, *Libel and Slander*, § 333.42[3][a].

Citizen’s Participation Act; Stay of Discovery. Whether to permit limited discovery despite the stay of the TCPA is within the trial court’s discretion, but the party seeking discovery bears the burden of showing how it could affect the court’s analysis in deciding the motion [*Baumgart v. Archer*, 581 S.W.3d 819, 830 (Tex. App.—Houston [1st Dist.] 2019, pet. denied)]. See Ch. 333, *Libel and Slander*, § 333.42[4][c].

Citizen’s Participation Act; Right to Petition. If a client refuses to pay attorney’s fees incurred in prior litigation, that refusal does not concern the right to petition under the TCPA [*Wendt v. Weinman & Assocs., P.C.*, 595 S.W.3d 926, 929–930 (Tex. App.—Austin 2020, no pet.)]. See Ch. 333, *Libel and Slander*, § 333.42[3][b].

Citizen’s Participation Act;

Communication; Conspiracy. Although the participants in a criminal conspiracy necessarily communicate with one another to further their goals, the TCPA does not apply to those communications [*Bandin v. Free & Sovereign Veracruz De Ignacio De La Llave*, 590 S.W.3d 647, 650–654 (Tex. App.—Houston [14th Dist.] 2019, pet. denied)]. See Ch. 333, *Libel and Slander*, § 333.42[3][e].

Citizen’s Participation Act; Communication; Failure to Make. The statutory definition of communication requires “making” or “submitting” it, so a petition alleging the mere failure to make a required communication is not covered by the TCPA [*Krasnicki v. Tactical Entm’t, LLC*, 583 S.W.3d 279, 283–284 (Tex. App.—Dallas 2019, pet. denied)]. See Ch. 333, *Libel and Slander*, § 333.42[3][e].

Citizen’s Participation Act; Commercial Speech Exemption. The “statement or conduct” element of the commercial speech exemption does not require that the communications implicate free speech rights; instead, it also applies to communications that implicate the right to petition or the right of association [*Lesley-Mcniel v. CP Restoration Inc.*, 584 S.W.3d 579, 582–584 (Tex. App.—Houston [1st Dist.] 2019, no pet.)]. See Ch. 333, *Libel and Slander*, § 333.42[2][a].

Citizen’s Participation Act; Commercial Speech Exemption. A completed sale, lease, or other transaction is not required for the com-

mercial speech exemption to apply because the defendant can be in the business of selling or leasing goods even if the transaction is only proposed [*Hieber v. Percheron Holdings, LLC*, 591 S.W.3d 208, 212 (Tex. App.—Houston [14th Dist.] 2019, pet. denied)]. See Ch. 333, *Libel and Slander*, § 333.42[2][a].

Governmental Immunity; Settlement. When a government unit settles a claim before suit is filed, and it would not have immunity in an action on that claim, it also lacks immunity on a breach of settlement claim [*City of Pharr v. Garcia*, 581 S.W.3d 930, 932–934 (Tex. App.—Corpus Christi 2019, no pet.)]. See Ch. 293, *Claims Against Governmental Entities*, § 293.01[2].

Governmental Immunity; Scope of Employment. The rule of *Garza v. Harrison*, 574 S.W.3d 389 (Tex. 2019) as to scope of employment for a police officer making an arrest outside territorial jurisdiction also applies to justified investigative conduct by an officer, even if no contemporaneous crime was observed and no arrest was made [*CKJ Trucking, L.P. v. City of Honey Grove*, 581 S.W.3d 870, 875–878 (Tex. App.—Dallas 2019, pet. denied)]. See Ch. 293, *Claims Against Governmental Entities*, §§ 293.10[3], 293.16[3][a].

Governmental Immunity; Notice to Government Unit. Any alleged inadequacy of formal notice prior to suit under the Tort Claims Act is irrelevant when the action itself is filed within six months of the inci-

dent, and the petition itself contains all the required elements for notice [*Tex. DOT v. Padron*, 591 S.W.3d 684, 695 (Tex. App.—Texarkana 2019, pet. denied)]. See Ch. 293, *Claims Against Governmental Entities*, § 293.16[1][c].

Governmental Immunity; Payment for Use of Property. The claimant’s status as an invitee because of payment of a fee to enter government property does not require that the public at large be excluded from the premises, so those who do not pay are mere licensees, while those who do pay are invitees, even as to simultaneous use [*City of Fort Worth v. Posey*, 593 S.W.3d 924, 929 (Tex. App.—Fort Worth 2020, no pet.)]. See Ch. 293, *Claims Against Governmental Entities*, § 293.10[5][g].

Governmental Immunity; Special Defect. An ordinary user of a road at night would not expect it to suddenly dead-end into a concrete barrier without any warning signs or lights, so the barrier was an obstruction that constituted a special defect as a matter of law [*City of El Paso v. Lopez*, 594 S.W.3d 715, 721–722 (Tex. App.—El Paso 2019, no pet.)]. See Ch. 293, *Claims Against Governmental Entities*, § 293.10[5][g].

Responsible Third Parties. When designation of a responsible third party is not expressly barred by statute, mandamus is unavailable to correct any alleged error in granting the motion to designate [*In re Maconori Enters.*, 582 S.W.3d 372, 375–377 (Tex. App.—San Antonio 2018, orig.

proceeding)]. See Ch. 291, *Proportionate Responsibility; Contribution and Indemnity*, § 291.03[2][b].

Legal Malpractice; Immunity. Attorney immunity from malpractice claims does not extend to a pure business transaction [*NFTD, LLC v. Haynes & Boone, LLP*, 591 S.W.3d 766, 776 (Tex. App.—Houston [14th Dist.] 2019, pet. filed)]. See Ch. 322, *Professional Malpractice*, § 322.02[1][f].

Legal Malpractice; Statute of Limitations. The preparation of commercial documents is transactional work, so a malpractice claim based on an alleged failure to perfect a security interest is not subject to the *Hughes* tolling rule [*Gator Frac Heating & Rentals, LLC v. Brooks*, 581 S.W.3d 460, 466 (Tex. App.—Amarillo 2019, pet. filed)]. See Ch. 322, *Professional Malpractice*, § 322.02[1][e].

Legal Malpractice; Separate Actions. When a former wife alleged malpractice in a divorce action only, the *Hughes* rule did not toll limitations while the former husband’s post-decree motion to enforce was pending because that motion is treated as a different case from the underlying divorce case [*Webb v. Crawley*, 590 S.W.3d 570, 586 (Tex. App.—Beaumont 2019, no pet.)]. See Ch. 322, *Professional Malpractice*, § 322.02[1][e].

Real Estate Litigation

Condemnation; Necessity Finding. A condemnor’s determination that a pipeline is necessary and serves a public purpose overall is sufficient,

and “granular determinations” of necessity as to each burdened tract are not required [*Morello v. Seaway Crude Pipeline Co., LLC*, 585 S.W.3d 1, 13–14 (Tex. App.—Houston [1st Dist.] 2018, pet. denied)]. See Ch. 261, *Eminent Domain*, §§ 261.12[1], 261.14[1].

Condemnation; Objections to Commissioner’s Award. A mere motion to withdraw a commissioners’ award from the court’s registry without any prior or accompanying objections does not convert the administrative proceeding into a civil action [*Oak Lawn Apartments, Ltd. v. State*, 584 S.W.3d 11, 16–17 (Tex. App.—Fort Worth 2018, pet. denied)]. See Ch. 261, *Eminent Domain*, §§ 261.45[9], 261.47[1].

Condemnation; Jurisdiction. County civil courts at law have exclusive jurisdiction over all inverse condemnation claims filed in Harris County [*San Jacinto River Auth. v. Ogletree*, 594 S.W.3d 833, 840 (Tex. App.—Houston [14th Dist.] 2020, no pet.)]. See Ch. 261, *Eminent Domain*, §§ 261.43[2], 261.100[1].

Condemnation; Inverse. When ordinance permitted variance, an inverse condemnation claim was not ripe for review until the owner was first denied a permit, and the city then reached a final determination to deny a variance [*City of Hous. v. Commons at Lake Hous., Ltd.*, 587 S.W.3d 494, 501–502 (Tex. App.—Houston [14th Dist.] 2019, no pet.)]. See Ch. 261, *Eminent Domain*, § 261.22[1].

Right to Lateral Support. The doctrine of lateral support: (1) does

not impose a duty on landowners to support their own land; and (2) is absolute only as to soil in its natural state, so improvements have no absolute protection [*Scott v. West*, 594 S.W.3d 397, 407–414 (Tex. App.—Fort Worth 2019, pet. denied)]. See Ch. 280, *Adjoining Landowners*, § 280.05.

Construction Contracts; Government Unit. A contract for the conveyance of an easement was made in exchange for the private party’s agreement to construct a parking lot on the premises of the community college, so the contract was for “services” and immunity was waived if the other prerequisites to a valid contract under the Local Government Code were met [*Hous. Cmty. Coll. Sys. v. HV BTW, LP*, 589 S.W.3d 204, 210–212 (Tex. App.—Houston [14th Dist.] 2019, no pet.)]. See Ch. 270, *Improvement Contracts*, § 270.01[5][b].

Real Property Taxes; Agreement With Chief Appraiser. When a person is the actual owner of real property, estoppel bars any contrary agreement with the chief appraiser under Tex. Tax Code § 1.111(e) to list someone else as the owner on the appraisal rolls [*Sebastian Cotton & Grain, Ltd. v. Willacy Cty. Appraisal Dist.*, 581 S.W.3d 804, 811–812 (Tex. App.—Corpus Christi 2019, pet. denied)]. See Ch. 260, *Real Property Tax Suits*, §§ 260.02[1][a], 260.04[1][b].

Real Property Taxes; Judicial Review. A trial court has subject matter jurisdiction over a timely ju-

dicial review action by a property owner even if the administrative protest was brought by the owner’s tenant [*Coll. Retail LLC v. Jefferson Cent. Appraisal Dist.*, 589 S.W.3d 856, 860–861 (Tex. App.—Corpus Christi 2019, no pet.)]. See Ch. 260, *Real Property Tax Suits*, §§ 260.04[2][a], 260.04[3][b].

Real Property Taxes; Exemption. Although an open-enrollment charter school serves a public purpose, when the property on which it was located was leased from a private owner, not owned by the state, the property was not exempt under Tex. Tax Code § 11.11(a) [*Odyssey 2020 Acad., Inc. v. Galveston Cent. Appraisal Dist.*, 585 S.W.3d 530, 534–536 (Tex. App.—Houston [14th Dist.] 2019, pet. filed)]. See Ch. 260, *Real Property Tax Suits*, § 260.01[3][a].

Mechanic’s Liens; Trust Funds. A factoring company that bought a contractor’s accounts receivable prior to bankruptcy is a “lender,” not a trustee under the Trust Fund Act [*Dakota Util. Contractors, Inc. v. Sterling Commer. Credit, LLC*, 583 S.W.3d 199, 206–209 (Tex. App.—Corpus Christi 2018, pet. denied)]. See Ch. 271, *Mechanic’s and Materialmen’s Liens*, § 271.02[7].

Easements. The party holding title to a tract does not need an easement to use its own property, so any easement requires that the estates be held by different owners [*Green v. Richard D. Davis, L.L.P.*, 593 S.W.3d 842, 849 (Tex. App.—Houston [14th Dist.] 2019, pet. filed)]. See Ch. 281,

Easements, § 281.01[1].

Estate Planning

Wills. Chapter 393 has also been updated to reflect that the Estates Code now authorizes a testator to give express authority in a will allowing personal representatives to designate administrators if no other per-

sonal representative named by the testator is willing or able to serve.

Probate Court. A new statute effective September 1, 2020, clarifies a statutory probate court is the only county court created by statute with probate jurisdiction.

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Publication 719 Release 140

March 2021

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<input type="checkbox"/>	1-7 thru 1-29	1-7 thru 1-27
<input type="checkbox"/>	1A-159	1A-159 thru 1A-160.1
<input type="checkbox"/>	2-56.1	2-56.1
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<input type="checkbox"/>	11-45 thru 11-62.1	11-45 thru 11-62.1
<input type="checkbox"/>	14-5 thru 14-6.1	14-5 thru 14-6.1

VOLUME 2

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	31-8.1 thru 31-29	31-9 thru 31-30.1
<input type="checkbox"/>	31-44.1 thru 31-49	31-45 thru 31-50.1
<input type="checkbox"/>	31-67 thru 31-70.1	31-67 thru 31-69
<input type="checkbox"/>	31-77 thru 31-85	31-77 thru 31-85
<input type="checkbox"/>	32-53 thru 32-54.3	32-53 thru 32-54.3
<input type="checkbox"/>	32-63 thru 32-75	32-63 thru 32-76.1
<input type="checkbox"/>	32-85 thru 32-89	32-85 thru 32-90.1
<input type="checkbox"/>	32-121 thru 32-123	32-121 thru 32-123

VOLUME 3

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	40-85.	40-85
<input type="checkbox"/>	41-71 thru 41-75	41-71 thru 41-75
<input type="checkbox"/>	42-101	42-101
<input type="checkbox"/>	43-71.	43-71
<input type="checkbox"/>	44-11 thru 44-31	44-11 thru 44-32.1
<input type="checkbox"/>	44-43 thru 44-44.5	44-43 thru 44-44.5
<input type="checkbox"/>	44-62.7 thru 44-62.11	44-62.7 thru 44-62.11
<input type="checkbox"/>	44-103	44-103
<input type="checkbox"/>	44-133 thru 44-137	44-133 thru 44-138.1
<input type="checkbox"/>	44-157 thru 44-159	44-157 thru 44-159
<input type="checkbox"/>	45-59.	45-59

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<input type="checkbox"/>	45-79 thru 45-81	45-79 thru 45-81
<input type="checkbox"/>	46-9	46-9
<input type="checkbox"/>	46-43 thru 46-45	46-43 thru 46-45
<input type="checkbox"/>	46-55 thru 46-57	46-55 thru 46-58.1

VOLUME 4

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	50-25 thru 50-27	50-25 thru 50-27
<input type="checkbox"/>	50-53 thru 50-55	50-53 thru 50-56.1
<input type="checkbox"/>	50-67 thru 50-68.1	50-67 thru 50-68.1
<input type="checkbox"/>	50-97.	50-97
<input type="checkbox"/>	51-51 thru 51-56.1	51-51 thru 51-56.1
<input type="checkbox"/>	52-59 thru 52-69	52-59 thru 52-69
<input type="checkbox"/>	53-29 thru 53-31	53-29 thru 53-31
<input type="checkbox"/>	54-23 thru 54-27	54-23 thru 54-27
<input type="checkbox"/>	55-33 thru 55-43	55-33 thru 55-41

VOLUME 5

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	61-1	61-1
<input type="checkbox"/>	61-26.1 thru 61-33	61-27 thru 61-33
<input type="checkbox"/>	71-17 thru 71-21	71-17 thru 71-21
<input type="checkbox"/>	71-31 thru 71-41	71-31 thru 71-41
<input type="checkbox"/>	80-29 thru 80-31	80-29 thru 80-31
<input type="checkbox"/>	81-23 thru 81-25	81-23 thru 81-25

VOLUME 6

Revision

<input type="checkbox"/>	Title page.	Title page
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Special Alert

<input type="checkbox"/>	No Material removed	Special Alert page vol06sa-1 (file preceding 90-1)
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<input type="checkbox"/>	90-9	90-9 thru 90-10.1
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<input type="checkbox"/>	90A-5	90A-5 thru 90A-6.1
<input type="checkbox"/>	91-5	91-5 thru 91-6.1
<input type="checkbox"/>	92-5	92-5 thru 92-6.1
<input type="checkbox"/>	93-7	93-7 thru 93-8.1
<input type="checkbox"/>	94-5	94-5 thru 94-6.1
<input type="checkbox"/>	95-3	95-3 thru 95-4.1
<input type="checkbox"/>	96-5 thru 96-6.1	96-5 thru 96-6.1
<input type="checkbox"/>	97-6.1 thru 97-7	97-7 thru 97-8.1
<input type="checkbox"/>	98-7	98-7 thru 98-8.1
<input type="checkbox"/>	99-9	99-9 thru 99-10.1

VOLUME 7

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	100-93 thru 100-97	100-93 thru 100-97
<input type="checkbox"/>	102-16.1 thru 102-17	102-17 thru 102-18.1
<input type="checkbox"/>	102-26.1	102-26.1
<input type="checkbox"/>	103-43 thru 103-44.5	103-43 thru 103-44.5
<input type="checkbox"/>	104-7.	104-7
<input type="checkbox"/>	110-6.1 thru 110-21	110-7 thru 110-19
<input type="checkbox"/>	111-11 thru 111-17	111-11 thru 111-17
<input type="checkbox"/>	111-24.1 thru 111-45	111-25 thru 111-45
<input type="checkbox"/>	111-57	111-57
<input type="checkbox"/>	113-9 thru 113-13	113-9 thru 113-13
<input type="checkbox"/>	114-24.1 thru 114-25	114-25 thru 114-26.3
<input type="checkbox"/>	114-55 thru 114-57	114-55 thru 114-57

VOLUME 8

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	120-7 thru 120-8.1	120-7 thru 120-8.1
<input type="checkbox"/>	120A-7 thru 120A-10.2(1)	120A-7 thru 120A-10.2(1)

VOLUME 9

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	131-46.1 thru 131-46.3	131-46.1 thru 131-46.3
<input type="checkbox"/>	131-131 thru 131-133	131-131 thru 131-133

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VOLUME 10

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	150-94.1 thru 150-95	150-95 thru 150-96.1
<input type="checkbox"/>	153-5 thru 153-6.1	153-5 thru 153-6.1
<input type="checkbox"/>	153-79 thru 153-81	153-79 thru 153-81

VOLUME 11

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	160-35 thru 160-36.5	160-35 thru 160-36.5
<input type="checkbox"/>	160A-9 thru 160A-25	160A-9 thru 160A-26.3
<input type="checkbox"/>	160A-44.3	160A-44.3 thru 160A-44.4(1)
<input type="checkbox"/>	162-25 thru 162-32.5	162-25 thru 162-32.5

VOLUME 12

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	183-8.1	183-8.1 thru 183-8.3
<input type="checkbox"/>	183-22.1	183-22.1

VOLUME 13

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	200B-28.1 thru 200B-28.3	200B-28.1 thru 200B-28.3
<input type="checkbox"/>	200B-45	200B-45 thru 200B-46.1
<input type="checkbox"/>	201-6.1 thru 201-29	201-7 thru 201-30.3
<input type="checkbox"/>	201-43	201-43
<input type="checkbox"/>	203-26.1 thru 203-26.3	203-26.1 thru 203-26.3
<input type="checkbox"/>	203A-104.1 thru 203A-104.7	203A-104.1 thru 203A-104.7
<input type="checkbox"/>	203A-145 thru 203A-164.1	203A-145 thru 203A-164.7
<input type="checkbox"/>	203A-173 thru 203A-184.5	203A-173 thru 203A-184.7
<input type="checkbox"/>	203A-252.1	203A-252.1

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VOLUME 14

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	210A-68.9 thru 210A-68.14(1)	210A-68.9 thru 210A-68.14(1)
<input type="checkbox"/>	210A-112.1 thru 210A-113.	210A-113 thru 210A-114.1
<input type="checkbox"/>	210A-136.1 thru 210A-140.2(1)	210A-137 thru 210A-140.2(5)
<input type="checkbox"/>	210A-195.	210A-195 thru 210A-197
<input type="checkbox"/>	No Material removed	217. Damages in Contract Tab (file pre- ceding 217-1)
<input type="checkbox"/>	No Material removed	218. Actions in Quasi Contract Tab (file preceding 218-1)
<input type="checkbox"/>	221-57	221-57 thru 221-58.1
<input type="checkbox"/>	221-139 thru 221-147	221-139 thru 221-147

VOLUME 15

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	234-46.1 thru 234-47	234-47 thru 234-48.1

VOLUME 17

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	255-27 thru 255-28.1	255-27 thru 255-28.1
<input type="checkbox"/>	260-7.	260-7 thru 260-8.1
<input type="checkbox"/>	260-29	260-29 thru 260-30.1
<input type="checkbox"/>	260-50.1 thru 260-50.7	260-50.1 thru 260-50.7
<input type="checkbox"/>	260-60.1 thru 260-61	260-61 thru 260-62.1
<input type="checkbox"/>	260-94.4(1) thru 260-94.7	260-94.5 thru 260-94.8(1)
<input type="checkbox"/>	260-94.27.	260-94.27 thru 260-94.28(1)
<input type="checkbox"/>	260-94.36(1)	260-94.36(1) thru 260-94.36(3)
<input type="checkbox"/>	261-30.1 thru 261-31	261-31 thru 261-32.1
<input type="checkbox"/>	261-43	261-43 thru 261-44.1
<input type="checkbox"/>	261-58.1 thru 261-60.1	261-59 thru 261-60.3
<input type="checkbox"/>	261-105 thru 261-107	261-105 thru 261-108.1
<input type="checkbox"/>	261-115 thru 261-122.1	261-115 thru 261-122.1
<input type="checkbox"/>	261-159 thru 261-160.1	261-159 thru 261-160.1

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VOLUME 18

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	270-23 thru 270-28.2(1)	270-23 thru 270-28.2(2)(a)
<input type="checkbox"/>	271-50.3 thru 271-50.7	271-50.3 thru 271-50.7
<input type="checkbox"/>	280-29	280-29 thru 280-30.1
<input type="checkbox"/>	281-9.	281-9 thru 281-10.1
<input type="checkbox"/>	281-32.1 thru 281-33	281-33 thru 281-34.1
<input type="checkbox"/>	282-61 thru 282-62.1	282-61 thru 282-62.1
<input type="checkbox"/>	285-46.14(1)	285-46.14(1)

VOLUME 19

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	290-71	290-71 thru 290-72.1
<input type="checkbox"/>	291-35 thru 291-36.1	291-35 thru 291-36.1
<input type="checkbox"/>	293-21 thru 293-22.1	293-21 thru 293-22.2(1)
<input type="checkbox"/>	293-22.9 thru 293-22.11	293-22.9 thru 293-22.12(1)
<input type="checkbox"/>	293-49	293-49 thru 293-50.1
<input type="checkbox"/>	293-74.7 thru 293-83	293-75 thru 293-84.1
<input type="checkbox"/>	293-136.7 thru 293-136.8(2)(b)(iii)	293-136.7 thru 293-136.8(2)(b)(iii)
<input type="checkbox"/>	293-136.10(1) thru 293-136.10(2)(c)	293-136.10(1) thru 293-136.10(2)(c)
<input type="checkbox"/>	No Material removed	294. Damages in Tort Tab (file preceding 294-1)
<input type="checkbox"/>	No Material removed	295. Attorney's Fees Tab (file preceding 295-1)
<input type="checkbox"/>	295-73	295-73
<input type="checkbox"/>	295-97	295-97
<input type="checkbox"/>	310-56.11 thru 310-56.17	310-56.11 thru 310-56.17

VOLUME 20

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	320-60.1 thru 320-60.5	320-60.1 thru 320-60.5
<input type="checkbox"/>	321-17 thru 321-18.1	321-17 thru 321-18.1
<input type="checkbox"/>	321-27 thru 321-30.2(1)	321-27 thru 321-30.2(1)
<input type="checkbox"/>	321-104.1 thru 321-104.2(1)	321-104.1 thru 321-104.2(1)
<input type="checkbox"/>	321-104.16(1) thru 321-104.18(3)	321-104.17 thru 321-104.18(5)

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<input type="checkbox"/>	321-111 thru 321-113	321-111 thru 321-114.1
<input type="checkbox"/>	322-38.1 thru 322-38.17	322-38.1 thru 322-38.17
<input type="checkbox"/>	333-88.9 thru 333-88.25	333-88.9 thru 333-88.26(1)
<input type="checkbox"/>	333-88.37 thru 333-88.43	333-88.37 thru 333-88.43

VOLUME 21

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	340-11 thru 340-12.1	340-11 thru 340-12.1
<input type="checkbox"/>	340-18.1	340-18.1
<input type="checkbox"/>	340-33 thru 340-34.3	340-33 thru 340-34.5
<input type="checkbox"/>	340-88.10(1)	340-88.10(1)
<input type="checkbox"/>	341-31	341-31 thru 341-32.1
<input type="checkbox"/>	341-69 thru 341-70.1	341-69 thru 341-70.1
<input type="checkbox"/>	342-21 thru 342-26.1	342-21 thru 342-26.1
<input type="checkbox"/>	343-29 thru 343-32.1	343-29 thru 343-32.2(1)

VOLUME 22

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	360-65 thru 360-73	360-65 thru 360-74.1
<input type="checkbox"/>	360A-62.7 thru 360A-62.9	360A-62.7
<input type="checkbox"/>	360A-71	360A-71
<input type="checkbox"/>	361-23 thru 361-34.1	361-23 thru 361-34.1
<input type="checkbox"/>	362-117 thru 362-131	362-117 thru 362-132.1
<input type="checkbox"/>	363-136.1 thru 363-155	363-137 thru 363-155
<input type="checkbox"/>	364-31 thru 364-40.1	364-31 thru 364-40.3
<input type="checkbox"/>	364-49	364-49
<input type="checkbox"/>	370-60.1 thru 370-65	370-61 thru 370-66.3
<input type="checkbox"/>	370-70.1 thru 370-75	370-71 thru 370-76.9
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<input type="checkbox"/>	371-123 thru 371-124.5	371-123 thru 371-124.5
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<input type="checkbox"/>	371-169 thru 371-177	371-169 thru 371-178.1
<input type="checkbox"/>	371A-27 thru 371A-31	371A-27 thru 371A-32.1

VOLUME 23

Revision

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<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	372-133 thru 372-141	372-133 thru 372-141
<input type="checkbox"/>	372-151 thru 372-193	372-151 thru 372-161
<input type="checkbox"/>	373-101 thru 373-103	373-101 thru 373-103
<input type="checkbox"/>	380-49 thru 380-61	380-49 thru 380-61
<input type="checkbox"/>	380-72.1 thru 380-73	380-73 thru 380-74.1
<input type="checkbox"/>	381-33 thru 381-37	381-33 thru 381-37
<input type="checkbox"/>	381-63	381-63 thru 381-64.1
<input type="checkbox"/>	381-145 thru 381-147	381-145 thru 381-148.1
<input type="checkbox"/>	382-87 thru 382-91	382-87 thru 382-91

VOLUME 24

Revision

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<input type="checkbox"/>	391-23 thru 391-24.1	391-23 thru 391-24.1
<input type="checkbox"/>	391-42.15.	391-42.15
<input type="checkbox"/>	391-59 thru 391-61	391-59 thru 391-61
<input type="checkbox"/>	392-14.1	392-14.1
<input type="checkbox"/>	392-89	392-89 thru 392-90.1
<input type="checkbox"/>	392-141 thru 392-145	392-141 thru 392-146.1
<input type="checkbox"/>	393-7 thru 393-9	393-7 thru 393-10.1
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<input type="checkbox"/>	393-61 thru 393-64.1	393-61 thru 393-64.1
<input type="checkbox"/>	393-85	393-85 thru 393-86.1
<input type="checkbox"/>	393-99	393-99 thru 393-101
<input type="checkbox"/>	394-83 thru 394-85	394-83 thru 394-85
<input type="checkbox"/>	400-27	400-27 thru 400-28.1
<input type="checkbox"/>	400-83 thru 400-86.1	400-83 thru 400-86.1
<input type="checkbox"/>	401-25	401-25 thru 401-26.1
<input type="checkbox"/>	402-27 thru 402-35	402-27 thru 402-35
<input type="checkbox"/>	410-17	410-17 thru 410-18.1
<input type="checkbox"/>	410-102.7 thru 410-102.11	410-102.7 thru 410-102.11
<input type="checkbox"/>	410-138.1 thru 410-141	410-139 thru 410-142.1
<input type="checkbox"/>	410-151 thru 410-155	410-151 thru 410-155

VOLUME 25

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	423-45 thru 423-51	423-45 thru 423-51
<input type="checkbox"/>	425-87 thru 425-91	425-87 thru 425-91

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VOLUME 26

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	I-27	I-27
<input type="checkbox"/>	I-73	I-73
<input type="checkbox"/>	I-243 thru I-259	I-243 thru I-259
<input type="checkbox"/>	I-451	I-451
<input type="checkbox"/>	I-743	I-743
<input type="checkbox"/>	I-809	I-809
<input type="checkbox"/>	I-1023	I-1023 thru I-1024.1

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