

# CPR for Civil Knowledge: Understanding the CPRC

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## RESOURCES

### [www.tjctc.org](http://www.tjctc.org)

Board Questions  
SRL packets  
Webinars  
The Docket (TJCTC blog)

### [statutes.capitol.texas.gov](http://statutes.capitol.texas.gov)

Download the CPRC

### TJCTC Deskbooks

Civil Deskbook  
Trial Notebook  
Both Updated May-June 2020

### O'Connor's CPRC plus

Additional information  
Case law  
Analysis

### TRCP

Cover some of the same  
topics as CPRC, be sure to  
review also

### Texas Causes of Action

A great companion piece to  
the CPRC+, to help you feel  
maximum comfort in civil  
cases

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## Today's Roadmap

- General Provisions
- Filing & Hearing Civil Cases
- Civil Judgments & Enforcement
- Laws Applicable to Specific Case Type

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## True or False?

- Justices of the Peace can decide whether or not to apply the provisions of the CPRC, based on fairness to all parties?

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# General Provisions

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## General Provisions: Section Menu



Purpose of Code – Ch. 1



Security for Costs – Ch. 6



Liability of Court Officers – Ch. 7



Age of Majority – Ch. 129



Unsworn Declarations – Ch. 132



Presumption of Death – Ch. 133



ADR – Ch. 152-154, 171

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- “restating the law in modern American English to the greatest extent possible”
  - Sec. 1.001(b)(4)

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## When Governments Sue – Court Costs

- Chapter 6 provides that state and federal agencies, as well as cities, are exempt from posting court costs, appeal bonds, or other security for costs.
  - This includes counties, Veteran’s Administration, the administrator of veterans affairs, and more.
  - This also includes bonds for writs of sequestrations, garnishment, or distress warrants
  - County or district attorneys must put up bonds for writs unless exemption approved by commissioners court or AG
- If the state wins, the defendant must pay any costs or fees that the state did not pay.
  - Sec. 8.02

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## Chapter 7 - Liability of Court Officers

- Clerk, sheriff, or other officer who neglects or refuses to perform duties required under TRCP or CPRC and either be sued for actual damages or held in contempt.
  - What are “actual damages”?
  - Contempt fine is \$10 to \$100 plus costs
  - 10 days’ notice of contempt motion is required
    - Sec. 7.001

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## Age of Majority

- For civil cases, the “age of majority” is 18. – Sec. 129.001
- Why is this important?
  - Being sued
  - Bringing suit
    - *Weiner vs. Wasson*, 1995 Texas Supreme Court case

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- Sec. 132.001 provides that, instead of an affidavit or other sworn statement in front of a notary, an unsworn declaration may be used.
- It must be sworn and subscribed as true “under penalty of perjury.”
- An example of the form is provided in Sec. 132.001(d), with special forms for inmates and state/county employees in (e) and (f).

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- As long as it is written and “under penalty of perjury”, the court should accept it.
- In *Bahm v. State*, the Court of Criminal Appeals held that leaving out language from the proposed form such as “according to my belief” does not negate the unsworn declaration.

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## Presumption of Death

- If a person has “absented themselves” for seven years, they are presumed dead unless it can be proven that they were alive in that seven year period.
  - What constitutes “absenting yourself”?
  - How might it be proven that they were alive?
- Sec. 133.001

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## Alternative Dispute Resolution – County System

Some chapters in this section don't impact justice court, but Chapters 152, 154, and 171 do.

Ch. 152 allows counties to set up an ADR system, including contracting with corporations or political subdivisions

- Online Dispute Resolution in Travis County

If the county sets up the system, JP can assign cases to this system on motion of the parties, or on the judge's own motion

- Participants may pay a fee authorized by commissioners court.

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## Alternative Dispute Resolution – Court Cost

A county that sets up an ADR system under this chapter can impose a court cost in justice court cases of up to \$5.

- Sec. 152.005



Assessed on “civil cases filed”, but **not including**:

- Suits for delinquent taxes
- “Eviction proceedings, including a forcible detainer, forcible entry and detainer, or a writ of re-entry.”

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- If a county does not implement a system, courts – including justice courts, see Sec. 154.001(1) – are expected to implement the state’s policy regarding ADR: encourage the peaceable resolution of disputes.

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## ADR Procedure

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Courts may refer any dispute on motion of a party or on the court's own motion for ADR – Sec. 154.021

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Must confer with the parties to determine what's appropriate – Sec. 154.021

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Must notify parties of the referral, and parties can object in writing within 10 days of the referral – Sec. 154.022

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If reasonable basis for objection, may not refer for ADR – Sec. 154.022

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## Types of ADR

Mediation – 154.023

Mini-Trial – 154.024

Moderated Settlement Conference – 154.025

Summary Jury Trial – 154.026

Arbitration – 154.027

- Nonbinding unless both parties agree ahead of time

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## Mediation: When Should I Order It?

Sometimes lawsuits, especially in justice court, are mainly about someone wanting to get their day in court to say what a bad person the other side is.

These lawsuits are less likely to settle, since the only way the party can get what they really want is to have a trial.

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The mediator is paid a fee, which the parties will generally split.

Some areas have low- or no-cost mediation services available. (For example, the Mediation Clinic at UT Law School)

If those options aren't available, the cost of mediation compared to the money being asked for in the lawsuit may keep mediation from being a reasonable option.

## Mediation: When Should I Order It?

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## Mediation: When Should I Order It?

- The cases where mediation is **most effective** are cases that are money-based instead of spite-based, with mediation available at a reasonable cost.

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### Rank the Cases – Mediation

Pause, think about each, and then rank the cases from best to worst to send to mediation, with 1 being the best, and 4 being the worst:

- Eviction case where the plaintiff alleges the defendant is 3 months behind in rent
- Debt claim case where the plaintiff is asking for \$7200 and the defendant's answer says they agree they had the credit card, but that \$7200 is way more than they should owe
- Small claims case where Randy paid Amber \$3700 to paint his house but he says she didn't paint it correctly. Amber has filed a counterclaim stating she was owed a \$1000 bonus on the contract if she completed work by April 1.
- Small claims case where a neighbor's tree fell on the plaintiff's car and caused \$975 in damage. The petition says "the tree that I told that idiot time and again was dead finally fell on my car that they were jealous of from the day I bought it."

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# Agreed Judgments

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## Written Settlement Agreement – Sec. 154.071

- A written settlement agreement through ADR serves as a binding contract on the parties.
  - This means to enforce it, a party would need a separate breach of contract claim
- Court may incorporate terms into a final judgment.
  - Must be terms you can legally order
  - Just because a party (or an attorney) sticks something in your face does not mean you have to sign it!

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## Examples

You should not sign an agreed judgment unless you are sure both parties actually agree.

You cannot issue a judgment that is over your jurisdictional limit (be aware of “mere passage of time” issues, see Civil Deskbook Chapter 2).

You cannot issue a judgment that contains **injunctive relief** (ordering a party to do or not do certain things, like “you must send a notice to Experian that the debt is resolved”)

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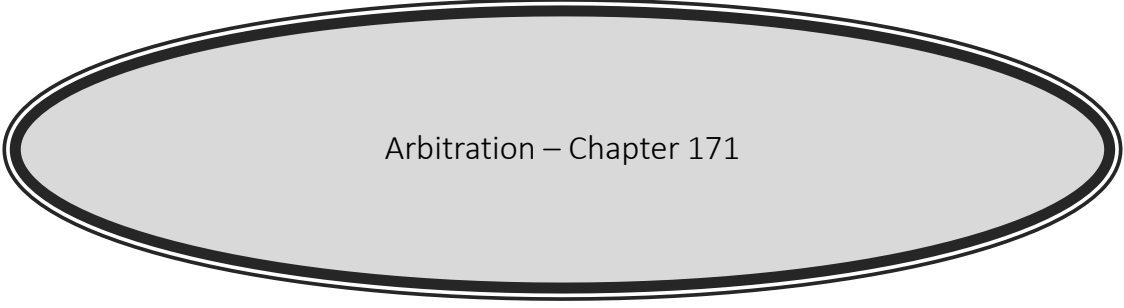
You cannot issue a judgment that mandates a certain payment schedule (“defendant agrees to pay \$1000 on April 25<sup>th</sup> and the remaining \$1500 by June 1<sup>st</sup>”).

## Examples

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Any judgment you issue **must** contain a post-judgment interest rate. This rate is the rate agreed upon in a contract, if any. If no agreement, then it is the rate published on the OCCC website (5.0% as of 5/11/20). *This can change monthly so be sure and check regularly!*

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Arbitration – Chapter 171

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## Arbitration

- **Arbitration** is a process, where a 3<sup>rd</sup> party (the **arbitrator**) hears the facts of the case and makes an order that is binding on the parties.
  - You would then create and sign a judgment reflecting this order.
- We don't recommend sending a case for arbitration unless it is a dispute over a contract that specifically allows for or requires arbitration.

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What if parties had an arbitration agreement?

- You should order them to arbitration, **but:**
- Under Sec. 171.002, this requirement doesn't apply to agreements for goods, services, money, or credit of less than \$50,000 unless the arbitration agreement is in writing **and** signed by both parties (or their attorneys).

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What if a party wants you to enforce an arbitration award?

- They can file an application for an order enforcing the arbitration award as a civil filing. They would pay the standard filing fee. The court would issue process to be served on the other party, with the application attached.
  - Sec. 171.081, 171.082
- The application can be filed before, during, or after the actual arbitration.
  - Sec. 171.083.

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What if a party wants you to enforce an arbitration award?

- The court can require that the application:
  - shows the jurisdiction of the court
  - has the arbitration agreement attached
  - define the issue in the dispute
  - specify the arbitration status, and
  - show the need for the order.
- If the application is insufficient, the court must give them 10 days to comply with the requirements.
  - Sec. 171.085

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- The application shall be filed in the county where the other party lives or does business (if they are out of state, then any county), except:
  - If the arbitration agreement specifies a county where the arbitration will be held, the application must be filed in that county.
  - If the arbitration hearing has been held, the application must be filed in the county where the hearing was held.
  - If a case is currently pending in a court regarding the same issue, the application must be filed in that court

Filing the Application –  
Sec. 171.096

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## Arbitration Award

The court should confirm the award unless grounds are offered to vacate, modify, or correct it.

- Grounds to vacate – Sec. 171.088
- Grounds to modify or correct – Sec. 171.091

Once the award is confirmed, modified, or corrected, the court shall enter a judgment on the order.

- Sec. 171.092

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## Arbitration Appeals – Sec. 171.098

A party may appeal a judgment described above, or an order:

- Denying application to compel arbitration
- Granting application to stay arbitration
- Confirming or denying an award
- Modifying or correcting an award
- Vacating an award without directing a rehearing

Appeal is same as other civil cases

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# Filing & Hearing Civil Cases

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## Section Menu – Filing & Hearing Civil Cases



Frivolous Pleadings & Sanctions – Ch. 10



Vexatious Litigants – Ch. 11



Inmate Litigation – Ch. 14



Venue – Ch. 15



Limitations – Ch. 16



Service and Long-Arm Jurisdiction – Ch. 17



Interpreters & Witnesses – Ch. 21 & 22

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## Frivolous Pleadings

- When a party signs a pleading or motion in a case, they are certifying that the pleading or motion is not:
  - Groundless and brought in bad faith;
  - Groundless and brought for harassment; or
  - Groundless and used for improper purposes such as delay or increase in cost of litigation.
    - Sec. 10.001
- “Groundless” means no basis in fact or not justified by existing law or a good faith argument of law.
  - Sec. 9.001

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## Frivolous Pleadings – Hearing & Sanction - Ch. 10

- Court may determine on own motion or shall determine on motion from party whether a pleading is frivolous.
- If so, must hold a hearing and provide an opportunity to respond
- If they fail to do so, may impose sanctions limited to those necessary, including
  - A directive to the violator
  - Order to pay reasonable expenses due to the pleading

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- Defendant may make a motion within 90 days of answer (or special appearance) to determine the plaintiff to be a vexatious litigant and require the posting of security.
  - What about an original plaintiff who now has a counterclaim filed against them?
  - Sec. 11.051

## Vexatious Litigant Procedure – Step 1

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## Vexatious Litigant Procedure – Step 2

- Court schedules a hearing to determine whether to grant the motion. May consider written or oral evidence, and any affidavits or witnesses.
  - Sec. 11.053

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## Vexatious Litigant Procedure – Step 3

- Court may find the plaintiff to be a vexatious litigant if there is not a reasonable probability plaintiff will win, and:
  1. The plaintiff has brought at least 5 suits in the last 7 years (not in a “small claims court”) that were determined against the plaintiff, stayed pending for over 2 years or were found frivolous;
  2. The plaintiff repeatedly has relitigated issues after being ruled against; **or**
  3. The plaintiff has previously been declared vexatious litigant in similar action or proceeding.
- Sec. 11.054

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## Vexatious Litigant Procedure – Step 4

- If the plaintiff is found to be a vexatious litigant, the court shall order them to post security to cover the reasonable expenses of the defendant if the defendant wins.
- This security is in the amount determined by the court and the court determines when it shall be posted.
- If they fail to post, the court shall dismiss the litigation.
  - Sec. 11.055, 11.056

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## Vexatious Litigants – Prefiling Order

- Any court may issue an order that someone who has been determined a vexatious litigant may not file any new suit without getting permission from the local administrative judge first.
  - District or county court-at-law judge order is statewide
  - Justice court order only applies to that specific court
  - Violation of the order is contempt
- Sec. 11.101

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## Vexatious Litigants – Prefiling Order

- A clerk must not accept a filing from someone subject to a prefiling order without an order from the local administrative judge under Sec. 11.012.
- If the clerk mistakenly files the case, the court must immediately stay the litigation, and shall dismiss if the plaintiff doesn't get an order allowing the litigation within 10 days of the notice.
  - A dismissal under this provision is not appealable.
- Sec. 11.103, 11.1035

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## Vexatious Litigants – Prefiling Order

- Any prefiling orders issued must be sent to OCA no later than 30 days after the order is issued.
- OCA must maintain an Internet site containing all of the prefiling orders.
  - <https://www.txcourts.gov/judicial-data/vexatious-litigants/>
- Sec. 11.104

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## Inmate Litigation – Statement of Inability

- An inmate filing a claim with a Statement of Inability must also file a separate affidavit outlining any previous cases brought by the individual, including the outcome, and a certified copy of their trust account statement.
  - Sec. 14.004

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## Inmate Litigation – Dismissal of the Claim

- The court may dismiss the claim if they find the Statement to be false, or the claim is frivolous or malicious.
- The court may notify TDCJ on dismissal if a mental health evaluation of the inmate may be appropriate.
  - Sec. 14.003

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## Inmate Litigation – Grievance System

- Claims subject to the inmate grievance system under Gov't Code 501.008 must include an affidavit detailing the grievance process.
- If the grievance process is not complete, the court shall stay the proceedings up to 180 days to allow completion.
  - Sec. 14.005

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## Inmate Litigation – Costs Assessed

- An inmate may be ordered to pay fees and costs, with a maximum of 20% of the preceding six months' trust account deposits due the first month, and 10% each subsequent month.
- Costs incurred can't be avoided by later nonsuiting.
- If a previous claim has been dismissed as frivolous, costs such as postage, transportation, etc., may be assessed.
  - Sec. 14.006, 14.007

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## Inmate Litigation – Hearing & Evidence

- Sections 14.008 and 14.009 outline the process for holding a hearing and submission of evidence in claims involving inmates.

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## Venue – Ch. 15

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### Venue – General Rule

- Case should be brought where the cause of action accrued;
  - Where the defendant resided at the time the cause of action accrued; or
  - Where the defendant's principal office if the defendant is not a "natural person"
- Sec. 15.002

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Venue –  
Landlord/Tenant  
Disputes

- Except as provided by another statute providing mandatory venue (what's an example?), suit between landlord and tenant must be brought in the county where the real property is located.
  - Sec. 15.0115

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Venue – Written  
Contracts

- A suit may be brought against a person in the county where they agreed to perform an obligation in a written contract.
- A suit based on a written contract for a consumer transaction may be brought where the defendant lives or where the contract was actually signed.
  - Sec. 15.035

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Venue – Counterclaims,  
Cross-Claims, 3<sup>rd</sup> Party  
Claims

- Venue of the main claim establishes proper venue of any counterclaim, cross-claim, or 3<sup>rd</sup> party claim.
  - Sec. 15.062

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Venue – Other  
Rules

- Ch. 15 contains several other provisions, including:
  - Multiple/Intervening Plaintiffs – 15.003
  - Multiple Defendants – 15.005
  - Damage to Real Property – 15.011
  - Inmate Litigation – 15.019
  - Suit Against Estate – 15.031
  - Suits Against Insurance Companies – 15.032
  - Breach of Warranty – 15.033

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## Limitations – ch. 16

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## Limitations Periods – Chapter 16

### Two Year Period – Sec. 16.003

- Injury to estate or property, conversion of personal property, personal injury, eviction cases

### Four Year Period – Sec. 16.004

- Debt, fraud, breach of fiduciary duty

### Carriers of Property – Sec. 16.006

- Three years from the date the cause accrues

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## Limitations Periods – Chapter 16

Two Year Period – Sec.  
16.003

- Injury to estate or property, conversion of personal property, personal injury, eviction cases

Four Year Period – Sec.  
16.004

- Debt, fraud, breach of fiduciary duty

Carriers of Property – Sec.  
16.006

- Three years from the date the cause accrues

Ten Year Period – Sec.  
16.009, 16.010

- Architects, construction/repair, interior designers, etc.

Product Liability – Sec.  
16.012

- 15 years from date of sale of the product

Residual Limitations – Sec.  
16.051

- Every action not specified has a 4 year statute of limitations

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## Effect of Disability on Limitations Period

- If a person is under 18 years old or of unsound mind when a cause of action accrues, the limitations period does not begin until the disability is removed.
- If a disability occurs after the cause of action accrues, it does **not** stop the period from running.

- Sec. 16.001

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## Effect of Death on Limitations Period

- The death of a person who could file a claim or have a claim filed against them extends the limitations period for 12 months.
  - Sec. 16.062

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## Effect of Contractual Agreement on Limitations Period

- Parties may contract for a limitations period in a dispute arising out of their transaction, but it may not be less than two years.
  - Sec. 16.070

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## 2019 Changes to Service

- Citation by Publication and Substitute Service were both modified to incorporate technological advances by the 86<sup>th</sup> Texas Legislature.
- These changes require adoption of rules by the Supreme Court and a creation of an Internet site for citation by publication.
  - Sec. 17.032, 17.033

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## Other Provisions Related to Service – Ch. 17

Service on Noncorporate Business Agents – Sec. 17.021

Service on Partnership – Sec. 17.022

Service on Political Subdivision – Sec. 17.024

Service on Secretary of State – Sec. 17.026

Service on Financial Institutions – Sec. 17.028

Service on Inmate of TDCJ – Sec. 17.029

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## Long-Arm Jurisdiction

- Parties can object to personal jurisdiction if they are sued in Texas but do not reside in Texas or do business in Texas.
  - They object by filing a “special appearance” which must be filed with or before an answer.

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## Long-Arm Jurisdiction

- A party is considered to “do business in Texas” if they:
  - Contract by mail or otherwise with a Texas resident and any part of the contract is to be performed in Texas;
  - Commit a tort in whole or in part in Texas; or
  - Recruit Texas residents for employment.
- Sec. 17.042

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# Civil Judgments & ENFORCEMENT

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Proportionate Responsibility – Ch. 33

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Attorney Fees – Ch. 38

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Damages – Ch. 41

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Appeals – Ch. 51

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Foreign Judgments – Ch. 35

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Payment of Unclaimed Judgment – Sec. 31.008

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Turnovers & Receivers – Sec. 31.002

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Enforcement – Ch. 34, 61-66

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Dormancy & Revival of Judgment – Sec. 31.006, 34.001

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## Proportionate Responsibility – Ch. 33

This chapter spells out how a plaintiff in a tort case contributing to their own damages affects recovery.

If the plaintiff is more than 50% responsible, they cannot recover at all.

Sec. 33.001

If they are less than 50% responsible, their recovery is reduced by their percentage of responsibility.

Sec. 33.012

So if the plaintiff suffered \$8,000 and was 25% responsible, how much would they recover?

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## Attorney's Fees – Ch. 38

- Sec. 38.001 lists the types of suits where a party can recover attorney's fees:
  - Rendered services or performed labor
  - Furnished material
  - Freight or express overcharge or loss/damage
  - Killed or injured stock
  - Sworn accounts
  - Oral or written contract
- What about torts, like a car accident case?

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## Attorney's Fees – Ch. 38

To recover attorney's fees, the claimant must be represented by an attorney, and must make the claim for fees to the opposing party and not have been paid within 30 days of the claim.

Usual and customary attorney's fees are presumed to be reasonable, but that presumption may be rebutted.

Sec. 38.002, 38.003

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## Punitive or Exemplary Damages

- These are damages that are awarded, not to compensate the plaintiff, but instead to **punish**, or make an **example** out of, the defendant.
- Goal is to punish the defendant for its bad action, as well as deter any future parties from engaging in the same bad behavior.
  - Notable examples include McDonald's being forced to pay punitive damages in the "hot coffee" case and Ford being forced to pay punitive damages when they knew of the Ford Pinto explosion danger.

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## Ch. 41 – Exemplary Damages

While very rare in justice court, exemplary (or punitive) damages may be awarded in cases where there is clear and convincing evidence that the damages result from fraud, malice, or gross negligence.

- Sec. 41.003

Although Ch. 41 establishes much higher caps for exemplary damages, Sec. 41.002(b) would limit their application in justice court to the jurisdictional limit.

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## Chapter 51 – Appeal & Certiorari

- Sec. 51.001 and 51.002 provide a minimum amount in controversy of \$250 for a case to be appealed to county court or removed via certiorari to county court.

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## Interlocutory Appeals

You may get attorneys who want to appeal an “interlocutory” decision in a case.

- This means something that isn’t a final judgment, like a ruling denying summary disposition or denying a motion to dismiss.

Sec. 51.014 allows this, but **NOT** in justice court!

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## Foreign Judgments

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## What is a Foreign Judgment?

- Despite the name, a foreign judgment is not a judgment from another country, it is a judgment from another state. Sometimes, a party that received a judgment in another state will want to file that judgment with a Texas court.
  - This process is called **domesticating** the judgment.

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## Why Would Someone Domesticate a Judgment?

Imagine that your court renders a judgment for the plaintiff for \$5,000. The defendant has no property in Texas, but has a fleet of pickups in Oklahoma City, worth \$7,500 each. Could a writ of execution order the sale of those trucks? No. The plaintiff would need relief from an Oklahoma court to order the seizure and sale of those trucks.

Now imagine that instead it is the opposite, where the \$5,000 judgment was in Oklahoma and the trucks are in Austin, TX. That is when the plaintiff in the Oklahoma case would attempt to domesticate their foreign judgment in a Texas court, in order to have the trucks seized and sold.

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## How Does it Work? - Ch. 35, CPRC

- The party seeking to file the judgment has to pay the standard civil filing fee (or a Statement of Inability)
  - Sec 35.007, CPRC
- They also must file an affidavit showing the name and last known address of the judgment debtor and the judgment creditor.
- They must mail notice of the filing of the foreign judgment to the judgment debtor and file proof of mailing of the notice with the clerk of the court. This notice must include the name and address of the judgment creditor and if the judgment creditor has an attorney in this state, the attorney's name and address.

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## Then What? - Ch. 35, CPRC

- On receipt of proof of the required mailing, the clerk of the court shall make a note of the mailing in the docket.
- The judgment creditor may now use the court to enforce the judgment in any of the ways we have described (execution, abstract, garnishment, turnover order), just as if the court had originally rendered the judgment.

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# Payment of Unclaimed Judgments

Civil Practice & Remedies  
Code Sec. 31.008

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## Payment of Unclaimed Judgments

- There is a process available for judgment debtors who either cannot locate the judgment creditor to pay the judgment, or for situations where the judgment creditor refuses to give a release of judgment.
  - Maybe they sued for \$10,000 and got \$2,000 and won't sign off unless they are paid \$10,000.

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## Unclaimed Judgments – Notification of the Judgment Creditor

The debtor must first attempt to notify the judgment creditor by sending a letter by registered or certified mail to all last known addresses.

If the judgment creditor does not respond by the 15th day after letter was sent, the debtor may file an affidavit with the court describing when and how the notice was sent.

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## Unclaimed Judgments – Judgment Creditor Doesn't Respond

- If the judgment creditor doesn't respond, the judgment debtor may pay the amount owed into the registry of the court that rendered the judgment. Funds deposited with the court must be held in the clerk's trust fund account.
- Payment **must** be in full.
- Debtor must prepare a recordable **release of judgment** to be executed by the judge or clerk.
  - A release of judgment is a document, usually issued by the judgment creditor upon payment, that says the judgment debtor is "released" from the judgment debt.

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## Unclaimed Judgments – Judgment Creditor Refuses to Issue Release

- If the judgment creditor refuses to issue a release of judgment, the court has to hold a hearing to determine if a release of judgment should be allowed.
- At the hearing, the court should have the debtor prepare a release for the court to sign if the court finds that the creditor accepted payment but refused to issue a release.
- The court should allow the judgment to be paid into the registry if the creditor refused payment. Once the judgment is paid into the registry, the court should sign a release of judgment prepared by the debtor.

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## Turnover Orders & Receivers

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## What is the Turnover Statute?

- CPRC 31.002: A court may “aid” a judgment creditor by:
  - Ordering a judgment debtor to “**turn over**” non-exempt property to a Constable or Sheriff to satisfy a judgment; or
  - **Appoint a receiver** with authority to take possession of non-exempt property, sell it, and pay the proceeds to the judgment creditor. – More on receivers coming up!

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1. The judgment debtor has non-exempt property that may be used to satisfy the judgment.

2. The court that the application was filed in is a court of jurisdiction, which means either:

- The court that issued the judgment, or
- A court where a foreign judgment has been domesticated (more on this soon!)

## What Needs to be Shown for a Turnover Order?

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Up to the court whether to hold a hearing or notify the judgment debtor of the application.

- Why might you notify them?
- Why might you not notify them?

Court can order the defendant to turnover any non-exempt assets to the judgment creditor.

- Can also **appoint a receiver** to pursue collection of the judgment.

## Turnover Order - What Happens Next?

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Up to the court what duties and obligations the receiver has

- Some proposed orders are VERY broad! Others just tell the receiver to take property and sell it to satisfy the judgment.

Cannot order receiver fees up front

- Could conditionally grant the fees, with a requirement to show they "earned" them afterward

## Appointing a Receiver - What Happens Next?

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## Civil Deskbook, Chapter 9

For More Info on Turnover Orders & Appointing Receivers

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### Enforcement Mechanisms

- In addition to rules in the TRCP, there are chapters in the CPRC on multiple judgment enforcement tools:
  - Ch. 34 – Executions
  - Ch. 61 – Attachments
  - Ch. 62 – Sequestration
  - Ch. 63 - Garnishment

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## How Long Can Judgments Be Enforced?

A judgment is good for 10 years after it is issued.

If the 10 year clock gets down to zero without a writ of execution being issued, the judgment cannot be enforced, and is called a “**dormant judgment.**”

Sec. 34.001

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## How Long Can Judgments Be Enforced?

- When a writ of execution is issued, it resets the clock, and the judgment is now good for 10 years from that date.
  - This can happen over and over again!
  - Only writs of execution reset the clock, not garnishments, abstracts, or anything else!

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## How Long Can Judgments Be Enforced?



A dormant judgment can be revived within 2 years of going dormant. The process to revive the dormant judgment is called a **scire facias**. – Sec. 31.006



If the judgment remains dormant for 2 years, it is now **dead** and may not be revived.

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## Writ of Scire Facias

- A **writ of scire facias**, sometimes called scary faces, is an order by the court for the judgment debtor to come in and show good cause why the judgment should not be revived.
- The court doesn't issue this on its own, only on request by the judgment creditor.

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## “Good Cause”

- After the hearing, the judgment will basically always be revived. “Good cause” to not revive it **would not** include things like “I can’t afford to pay” or “Wow, this is pretty old!”
- The only acceptable reasons to not revive the judgment would be if you determined the judgment was actually dead rather than dormant, if the court didn’t have jurisdiction over the judgment, or if the judgment debtor provided proof that they have already paid the judgment in full.

97

## Judgment Deadline Calculation Home Exercise

- A judgment is issued on October 29, 2015. If no writ of execution is ever issued, when would it go dormant? When would it die?
- Now, say instead the judgment creditor gets a writ of execution on September 1, 2019 and an abstract of judgment on January 15, 2020. Assuming nothing else happens, when would it go dormant? When would it die?

98

# Laws applicable to specific case types

99



Injunctions – Ch. 65



Limitations on Liability



Creation of Liability



Y2K Failure – Ch. 147

100

## No Jurisdiction for Injunction

- District and County Courts have sole jurisdiction over writs of injunction.
  - Sec. 65.021

101

## Limitation on Liability – Motor Vehicle Owner/Operator

- A person who is related to the owner or operator of a motor vehicle within the second degree, being transported in a vehicle without compensation, may only recover against the owner or operator if the accident was intentional or caused by reckless disregard of the rights of others.
  - Sec. 72.001

102

### Limitation on Liability – Landowner Liability

- Ch. 75 covers the liability of property owners, and Ch. 95 covers property owners' liability for acts of independent contractors.
- For more on landowner liability, stay tuned for the TJCTC webinar on Slip & Fall Cases and Other Premises Liability Issues

103

## Limitation on Liability – Removing Persons from Vehicle

- A person has no liability for entering a motor vehicle for the purpose of removing a vulnerable individual if the person:
  - determines the vehicle is locked or there is no reasonable method for exit from the vehicle
  - has a good faith and reasonable belief that entry is necessary to avoid imminent harm
  - notifies law enforcement or 911 if the person is not LEO or other first responder
  - uses no more force than is necessary, and
  - remains with the individual in a safe location nearby until first responders arrive
    - Sec. 92A.002

104

## Limitation on Liability – Personal Liability for Food Consumption

105

## Food Consumption Personal Liability

- No liability to food manufacturer, seller, etc., for any claim of weight gain or obesity, related health conditions.
- Doesn't prohibit bringing a claim for violation of a federal or state statute applicable to manufacturing, marketing, distribution, advertisement, labeling, or sale of food.
  - Ch. 138

106

## Limitation on Liability – Hiring Employees

- Cannot recover against an employer for hiring an employee solely because that employee then is convicted of an offense.
- Can recover if the employee had been convicted previously in reasonably similar circumstances, and the employer knew or should have known of the conviction.
- Ch. 142

107

## Limitations on Liability

- Additional chapters that cover limitations on liability include:
  - Food Donors – Ch. 76
  - Transplants & Transfusions – Ch. 77
  - Donors of Medical Devices – Ch. 89
  - Persons Assisting Animals – Ch. 92
  - Sports Officials/Organizations – Ch. 94
  - Failure to Post Handgun Restricted Sign – Ch. 95A
  - Persons Providing Services for a Governmental Unit – Ch. 97
  - Suits Against Sport Shooting Range or Firearms/Ammo Manufacturer, Trade Association, or Seller – Ch. 128

108

## Medical Liability Claim Procedures

- Medical liability claims are rare in justice court, but may increase after September 2020. Three statutes in Ch. 74 create procedures that are different than the standard in our court.

109

## Medical Liability Claim Procedures

- A person asserting a claim must give written notice of the claim by certified mail at least 60 days before filing suit. The notice must have the form required by Sec. 74.052 included.
  - Sec. 74.051
- The pleadings should not specify an amount of money damages.
  - Sec. 74.053
- The plaintiff must serve on each defendant an expert report within 120 days of the defendant's answer. If they fail to do so, the defendant can recover attorney's fees and costs, and the plaintiff's claim is dismissed against that defendant with prejudice.
  - Sec. 74.351

110

- Ch. 82 contains multiple product liability provisions
  - Duty of Manufacturer to Indemnify Seller & Liability of Non-Manufacturing Seller – 82.002, 82.003
  - Inherently Unsafe Product – 82.004
    - Includes sugar and oysters!
  - Firearms and Ammo – 82.006
  - Medicines – 82.007

## Product Liability

111

## Creation of Liability – Collegiate Athletics Violation

- Institution can sue a person if the person knew or should have known that a rule was violated, and that violation causes disciplinary action against the institution.

112



## Creation of Liability – Theft Liability

- Person who commits theft is liable for actual damages resulting from the theft plus additional damages of up to \$1,000
- Parent or other person who has duty of control and discipline of a child is liable for actual damages resulting from the theft, not to exceed \$5,000
- Costs and attorney's fees may also be awarded.
- Ch. 134

113

## Creation of Liability – Harmful Access to Computer

- A person who is injured or who suffers monetary damage as a result of an offense under Penal Code Ch. 33 (Computer Crimes) has a cause of action if the conduct was committed intentionally or knowingly.
- They may recover actual damages, plus costs and attorney's fees.

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## Creation of Liability – Additional Chapters

- Additional chapters that create causes of action or liability include:
  - Damages for Stalking – Ch. 85
  - False Disparagement of Perishable Food Products – Ch. 96
  - Governmental Tort Liability – Ch. 101
  - Other Gov't Liability Issues – Ch. 102-116
  - Negligent Hiring by In-Home Service Companies and Residential Delivery Companies – Ch. 145