



Common Defenses in Civil Cases

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FROM THE COURT OF CRIMINAL APPEALS

“What I need is a good defense...”

- FIONA APPLE

Resources

- O'Connor's Causes of Action
- Chapter 16, Civil Practice & Remedies Code

What We Will Cover

- Role of the Judge in Civil Cases
- Debt Claim Case Defenses
- Other Contracts Case Defenses
- Tort Case Defenses
 - Intentional Torts
 - Negligence



The Role of the Judge

Breakout Room – 6 minutes

- Courts must remain neutral and not provide legal advice to parties. However, under Rule 500.6, a justice of the peace has the duty to develop the facts of the case and ensure justice. Discuss in your group how to reconcile these goals which may sometimes seem in conflict.

Keep in Mind



- Self-represented litigants may not know the legal term for their cause of action or defense. They don't have to know the "magic words." Your job is to determine what happened and award damages if appropriate.



Debt Claim Cases

Defenses to Debt Claim Cases Include:

Limitations

Mistaken or
Stolen Identity

Satisfaction

Standing
(wrong
plaintiff)

Statute of Limitations – Debt Claim Cases



- The statute of limitations in a case for debt is four years.
- Current caselaw says you start the clock on the four years when “dealings between the parties” stop.
- Usually, that will mean from the last charge made or payment sent by the defendant.
- If the case is outside the statute of limitations, the plaintiff cannot have a judgment, even if the defendant doesn’t bring that up, and even if the defendant never appears.

Poll

- 3 years and 9 months after the last charge or payment, Danny Debtor sends Chase a letter asking for current payoff amount, and Chase responds. No payment is made. Chase files suit 4 months later. Has the statute of limitations expired?
 - Yes
 - No

Mistaken or Stolen Identity Breakout Room – 5 minutes

- How would you attempt to determine if the defendant had been the victim of stolen identity, or was not the person who actually opened/owned the account that was the subject of the suit?

Satisfaction

- This would be a defense raised that the defendant had actually paid off the amount due. What would be some reasons why a suit would have been filed but the defendant would believe the debt was satisfied?

Standing

- The plaintiff must have a legal right to pursue the debt. This element is easy if the plaintiff is the original owner of the debt.
- Debt claim petitions must include any transfers of the debt.
 - This pleading requirement is different than the requirement to show proof of ownership at trial.



Contract Cases

Statute of Limitations – Contract Cases



- The statute of limitations in a contract case is four years.
- The parties can contract for a different statute of limitations, but it cannot be for less than two years.
- If the case is outside the statute of limitations, the plaintiff cannot have a judgment, even if the defendant doesn't bring that up, and even if the defendant never appears.

Other Defenses to Breach of Contract Include:

Standing
(wrong plaintiff)

No Legal
Contract

Statute of
Frauds

Impossibility
(contract
couldn't be
performed)

Force Majeure

Unconscionability
(contract was **legally**
unfair)

Modification

Unforeseeable
Damages

Standing

- The plaintiff must be a party intended to benefit from the contract. For example, imagine that a restaurant has a contract with a food supply company. The company breaches the contract, ruining Rebecca's party scheduled at the restaurant. Rebecca cannot recover against the food supply company.

No Legal Contract – Mistake

- Rebecca has a collection of Michael Kors purses. Jessica sees her carry them at work and is very jealous. Jessica offers Rebecca \$1000 for “that sparkly one with the bedazzled cross.”
- Jessica means one that she saw Rebecca carrying, but Rebecca can’t remember which Jessica has seen, and thinks she means a different one with silver bedazzles instead of pink.
- Rebecca responds “Sure, it’s a deal.” She gives her the one with silver bedazzles and Jessica sues her.

No Legal Contract – No Consideration

- Jeff paints Laura's house for \$1,000.00. Laura isn't satisfied, and complains to Jeff. Jeff says, "well, I'll paint your barn for free," but he never does. Laura has to hire Angie to paint her barn for \$500.00 instead. Laura then sues Jeff for the \$500.00.
- Was there consideration for Jeff's promise to paint the barn?

Consideration?



Amy is stressed out with wedding planning and is complaining to her mom about it. Her mom says “Let me send you \$1,000 to help ease your stress.”

Amy’s mom didn’t send the money.

Was there consideration?

No Legal Contract – No Consideration

Travon hires Bronson to mow his yard each week for six months for a total of \$1,500.00. After two weeks, Travon says: “you’re doing a great job; keep it up and I’ll pay you an extra \$500.00. At the end of six months, Travon doesn’t pay Bronson the \$500.00 “bonus.” Was there consideration for Travon’s promise?

Consideration?

No Legal Contract – Fraud or Duress

- Duress can include threats to person or property, economic duress, or “business compulsion.”
- Generally, a threat of a lawsuit (or an actual lawsuit) to enforce a legal right **does not** constitute duress.

When “No Valid Contract” Feels Unfair

- There are a few ways where a plaintiff can recover damages in a case that looks like a contract case, but the plaintiff is missing one or more of the elements of the cause of action.
- These include:
 - Promissory Estoppel
 - Quantum Meruit

Promissory Estoppel – The Elements

This is also caused “detrimental reliance.”

The plaintiff can recover if:

- The defendant made a **promise** to the plaintiff;
- The plaintiff **reasonably relied** on the promise which caused them **harm**;
- The reliance was **foreseeable** by the defendant; and
- Enforcing the promise **avoids an injustice**.

Promissory Estoppel – What's it Look Like?

Remember earlier when Amy's mom promised to send \$1,000 to help with her wedding?

Now imagine that Amy relied on that promise and paid for an open bar rather than a cash bar, and would not have done that if not for her mom's promise.

Should Amy be able to enforce the \$1,000 promise now?

Quantum Meruit – The Elements

This is also caused “unjust enrichment.”

The plaintiff can recover if:

- **Valuable services or materials** were provided to the defendant;
- The defendant **accepted** the service or materials; and
- The defendant had reasonable notice that the plaintiff **expected compensation**.

Quantum Meruit – What's it Look Like?

Jessica asks Randy to help her with some legal contract drafting. She says “Let me know afterwards how much time you spend on the work, and I’ll take care of you.”

After performing the work, Randy sends her an invoice saying he did 5 hours of work and billing her \$1,000. She refuses to pay, saying they never decided a price.

Was there mutual assent, and therefore a contract?

Can Randy recover under “unjust enrichment”?

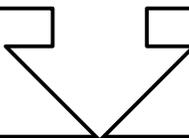
Do All Contracts Have to Be Written?

A common misconception is that a contract must always be in writing.

However, most contracts can be oral. Having an oral contract does make it much more difficult to prove terms of a contract at trial! What are some ways that a party might be able to prove the existence of an oral contract?

Statute of Frauds

Texas Law does require that some contracts be in writing in order to be enforceable.



The list, found at Section 26.01 of the Business & Commerce Code, includes leases longer than one year, sale of goods for more than \$500, and any contract which **cannot** be performed within one year of the date of making the agreement

Impossibility

- Creates a defense if it is impossible due to facts unknown to defendant or intervening circumstances that could not have been anticipated.
- No defense if impossible due to voluntary act by defendant.
- Economic impracticability not a defense.

Force Majeure

- A type of impossibility that arises due to an outside intervention. A “force majeure” clause protects against this, even if the impossibility could have been anticipated.
- TJCTC has learned a lot about this clause since March 2020!
- Event cancelled by hurricane on the coast.

Unconscionability

- One party can void a contract if the contract is “unconscionable”
- Contract is unconscionable if there is 1) no meaningful choice and 2) the terms are unreasonably unfavorable

Weighing of Factors Example

- Balancing test factors
 - Gross inequality of bargaining power
 - Unfair surprise by one of the parties
 - Lack of education of one of the parties
 - Hidden terms in the fine print
- Weigh these, not **all** required like elements

Weighing of Factors Example

- A retailer in an impoverished city neighborhood has a contract where residents can purchase furniture on the installment plan. Residents tend to buy all of their furniture at this store - sometimes buying a piece every three to six months.
- However, if the buyer misses a payment on a single piece of furniture, the contract allows the retailer to repossess every piece of furniture the buyer has ever bought regardless of whether they have paid off all of the previous purchases.

Unconscionability Poll

- For instance, over the course of five years, a customer buys a TV, sofa, bed and table. She pays off all of the purchases. She then buys a desk but misses three payments.
- Under the contract, the store can repossess the TV, sofa, bed, table and the desk to cover the depreciation of the desk.
- Is this contract unconscionable?
 - Yes
 - No

Unforeseeable Damages

- The defendant may claim the plaintiff is seeking to recover damages that were not reasonably foreseeable due to the breach, or that were not caused by the breach.

Modification

- The defendant may argue that the parties modified the contract, either verbally, in writing, or by their actions.
- For example, contract says “Rent is due by the 5th” but the landlord accepts rent six straight months on the 15th without objection.
- Watch out for clauses on modification!!



Tort Cases

Defenses to Intentional Torts Include:

Consent

Self-Defense
or Defense
of Others

Necessity/
Justification

Limitations

Statute of Limitations – Tort Cases



- The statute of limitations in a tort case (both intentional torts and negligence) is two years.
- The statute in some cases does not start running until a party is aware or should have been aware of the tort.
- If the case is outside the statute of limitations, the plaintiff cannot have a judgment, even if the defendant doesn't bring that up, and even if the defendant never appears.

Consent

- Could be effective consent or reasonable belief of consent.
- Bronson tells Amy “do whatever you want with the stuff in the garage.” Amy sells Bronson’s golf clubs which are in the garage, Bronson then sues for conversion.
- Fremont Street Experience entrepreneurs

Self-Defense/Defense of Others

- Does not apply if defendant initiates hostile conversation while carrying a weapon and not on defendant's property.
- Must be proportionate response.
- No duty to retreat if 1) legal right to be present; 2) did not provoke plaintiff; and 3) not engaged in criminal activity.

Necessity/Justification - Poll

- Brian is in the drive-thru at Whataburger, with a car in front of him and one behind. A person comes out, screaming and waving a gun. Brian rams Tracey's car in order to get out of the drive-thru and Tracey sues Brian. Valid defense?
 - Yes
 - No

Defenses to Negligence Include:

Contributory
Negligence
by Plaintiff

Release
Agreement

Assumption
of the Risk

Act of God

Unavoidable
Accident

Limitations

No
Causation

Duty Not
Breached

Contributory Negligence

- The finder of fact (judge or jury) must assign a percentage of responsibility to each party. If the plaintiff is more than 50% responsible, they recover \$0, due to what is called **contributory negligence**.
- If the plaintiff is less than 50% responsible, they recover against the defendant the percentage of their damages that the defendant is responsible for.
 - So if damages are \$5,000 and the jury finds the defendant 40% responsible and the plaintiff 60%, how much does the plaintiff get? What if they flip those percentages?

Contributory Negligence - Poll

- Adam runs a red light and hits a car driven by Joe. Joe isn't wearing his seat belt, and is ejected through the vehicle windshield, suffering severe lacerations. What % responsible for his injuries is Joe?
 - 0-20%
 - 20-49%
 - 50-75%
 - 76-100%

Release Agreement

- The defendant may make note that the plaintiff signed a release agreement. You will need to review the agreement to see if the actual conduct was included in the terms of the release agreement.
- Cannot sign a pre-injury release agreement against gross negligence, just general negligence.

Assumption of the Risk

- Bronson attends the U. S. Open golf tournament. Bryson DeChambeau smashes a drive that hooks and hits Bronson in the face, causing \$3500 in medical bills, plus pain and suffering.
- Can Bronson recover against DeChambeau? Against the USGA?

Act of God

- Amber's neighbor has a very tall and thick tree. During a vicious storm, it topples onto Amber's car. She wants to sue the neighbor. Can she recover? If not, could there be any facts that would allow her to recover?

Unavoidable Accident

- Situation where neither party was negligent, yet injury occurred.
- Also can include situations where there is an intervening cause that cannot be legally responsible, such as the conduct of a child.

No Causation

- **Causation** – This means the defendant’s action resulted in the injury. Cause can be “**actual cause**” where the action directly caused injury, or “**proximate cause**” meaning the action started a chain of events that resulted in the injury.
 - To be a “proximate cause,” the action has to be a “**but for**” cause, meaning “but for the action” the injury wouldn’t have occurred. Also, the injury must be a foreseeable outcome of the action.

Understanding “Proximate Cause”

- Bill runs a red light and his car strikes a car driven by Jan. Bill running the red light is the **actual cause** of Jan’s damage and injuries.
- After Bill strikes Jan’s car, it slides into Norah who is walking down the street, breaking her leg. Bill running the red light is the **proximate cause** of Norah’s broken leg.
- When the ambulance is taking Norah to the hospital, the ambulance driver crashes, breaking Norah’s arm. This injury was not a foreseeable result of Bill’s action of running the light, so Bill running the red light was **not a proximate cause** of Norah’s broken arm.

Negligence Scenario – Duty Breakout Room – 5 minutes

- The location: a local bar. Amanda is drunkenly juggling beer bottles. Bob is walking back from the bathroom into the path of the bottles. Chris sees this, but says nothing. A bottle lands on Bob's head, knocking him unconscious. Dan and Elizabeth see this and provide no medical assistance. Dan is a lawyer, and Elizabeth is a doctor.
- Bob sues Amanda, Chris, Dan, and Elizabeth. Who, if anyone, had a duty toward Bob in this scenario?





Questions?