

Fundamentals of Civil Cases: Judgment and Beyond

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Resources

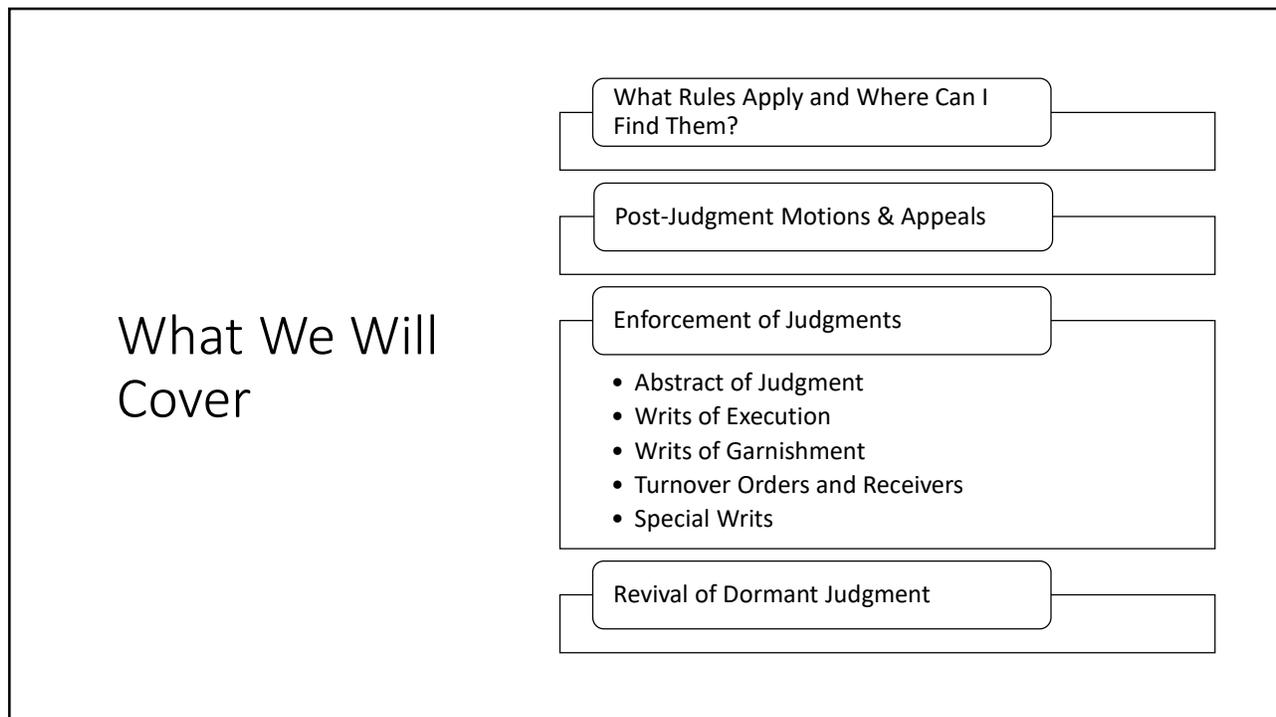
www.tjctc.org

- Civil Deskbook
- Self-Represented Litigant Info Packets (tjctc.org/SRL)
- Legal Question Board

Civil Practice & Remedies Code

Texas Rules of Civil Procedure

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What are the Rules and Where can I Find Them?

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Texas Supreme Court

Create the Texas
Rules of Civil
Procedure

The rules are found on their
website:

www.txcourts.gov/rules-forms/rules-standards/

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Texas Rules of Civil Procedure

Within the TRCP are “special”
Justice Court Rules (500-510)

- Rule 506 is the rule for appeals from civil cases in justice court.

Other rules apply to
enforcement of judgments.

- Execution of Judgments: Rules 621 – 656
- Garnishment: Rules 657 – 679

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Civil Practice & Remedies Code

This code contains the statutes (*the laws passed by the legislature*) governing civil cases

- Turnover Orders and Appointment of a Receiver: Section 31.002
- Revival of Dormant Judgment: Section 31.006

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Civil Deskbook

- TJCTC reference book
 - Includes the law, rules and helpful practice tips
 - Also links to additional resources
 - Clickable table of contents, so it is easy to navigate

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Appeals & Other Post-Judgment Motions

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Plenary Power – TRCP 507.1

- Once a judgment is signed, the court can make changes to it for up to 21 days after the date the judgment is signed
 - ***Changing the judgment should be a very rare occurrence***
- This power over a judgment is called plenary power
- Once the 21 days expires, the court cannot make any changes to a judgment

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Clerical Errors in the Judgment

- An exception to this limit is when a “clerical error” in the judgment needs to be fixed.
- What the judge announces in court is the “real” judgment, and the paper judgment can be changed to make sure it reflects the “real” judgment.
 - For example, the date is entered as 2/9/2020 instead of 2021
 - Or the judge awarded \$6000, but the paper judgment says \$600

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Judgment Nunc Pro Tunc

A judgment that corrects a clerical error is called a **judgment nunc pro tunc**.

A judgment nunc pro tunc can be issued whenever the error is discovered, even if the court’s plenary power has expired.

- Because the “real” judgment is what is announced in court, we aren’t changing the “real” judgment by issuing a nunc pro tunc.

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Legal Errors

Judgments nunc pro tunc **cannot** be used to correct **legal errors** in a judgment.

For example, say the judge thinks that contracts must be in writing. She rules against a plaintiff who was suing based on an oral contract. She comes to school and learns that oral contracts are valid. Can she change the judgment? – **POLL** yes or no

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What if a party doesn't like the outcome of a case?

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Post-Judgment Motions – TRCP 505.3

- Three main post-judgment motions to get rid of a judgment **and stay in justice court:**
 - Motion to Reinstate the Case
 - Motion to Set Aside Default Judgment
 - Motion for New Trial
- Motions and orders for all of these are on www.tjctc.org

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Motion to Reinstate the Case

Remember when a case is dismissed because of failure to move forward (DWOP)?

This motion allows the case to be restarted

Why not just re-file?

To save filing and service fees
Maybe the statute of limitations has now run out, so they can't start from scratch

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Motion to Set Aside Default Judgment

Remember when a case ends in a default because a party failed to answer?

This motion allows the case to be re-opened and the defendant to respond

Why would someone fail to answer and then file this motion?

They weren't actually served

They didn't understand the original paperwork

They mailed an answer that got lost in the mail

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Motion for New Trial

If the case went to a trial and the party thinks they lost because of how the trial proceeded in an unfair way

This motion allows the case to be reheard **IN THE SAME** justice court

Why would someone ask for a new trial?

Maybe they were not able to call a witness who could not make the trial date?

Maybe they have discovered new information?

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Filing Fee for
Motion for
New Trial

- SB 41 from the last legislative session required that a party pay the standard civil filing fee when filing a motion for new trial

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Post-Judgment Motions

Must be filed within 14 days of the signed judgment, dismissal, or default

Court has 21 days to rule from the day of the judgment, dismissal, or default (not date the motion filed)

Party making the motion must serve other side by next business day

Reason for granting the motion:

- Motion to reinstate/set aside default – “good cause”
- Motion for new trial – “Justice was not done in the trial of the case”

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Denial of Post-Judgment Motions

- If the judge has not ruled on one of these motions, the motion is **automatically denied** at 5:00 p.m. on the 21st day after the day the judgment, dismissal, or default was signed.

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What is an Appeal?

An appeal is when a party wants **another court** to decide the case because they don't like the decision of the justice court.

How long does a party have to file an appeal?

- 21 days after the judgment is signed OR
- 21 days after the justice court denies a motion for new trial (or a motion to set aside a default judgment or a motion to reinstate a case that has been dismissed).

Rule 506.1(a)

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The Appeal

May either side appeal?

- Yes!
- Even if they have an agreed judgment (unless they expressly waive any right to appeal)

Where does the case go?

- To the County Court (or a county court at law if your county has one)

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The Appeal

What happens?

- The entire case is presented all over as if there had been no previous trial!
- This is called “de novo” review.
 - It means “from the beginning” so the party gets a do-over!
 - *Rule 506.3*

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How Does Someone Appeal a Case?

- Three ways to appeal a case from justice court:
 - Appeal bond
 - Statement of Inability to Afford Payment of Court Costs
 - Cash Deposit

Rule 506.1(a)

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Appeal Bond

An appeal bond is a promise to see the appeal through and cover any damages if they don't pursue the appeal.

What is the amount of the bond?

If **Plaintiff** appeals = \$500

If **Defendant** appeals = double the amount of the judgment against the Defendant

For example, if the judgment is for \$3,500, then the Defendant's appeal bond would have to be for \$7,000.

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Appeal Bond - Procedures



How is the bond made?

A **surety** must sign it.

A surety is someone promising to pay if the party fails to pursue the appeal.



Who notifies the other side that the appeal bond has been filed?

The party filing the appeal is required to serve a written notice of the appeal on all other parties within seven days of filing the appeal bond. *Rule 506.1(b) and (e)*

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Statement of Inability to Afford Payment of Court Costs

What is this?

- It is a statement that the party cannot afford the costs of filing an appeal (or other costs).
- It must be signed under oath before a notary/clerk or be signed under penalty of perjury.
- It must contain complete information about the party's income and monthly expenses.

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Forms & Filing

- It must be on the form approved by the Supreme Court or contain the information in that form.
- The clerk must make this form available to everyone **without charge or request**.
- The statement may be the same one filed with the petition (if one was filed then).

Rule 506.1(d), Rule 502.3(b)

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Notification of Statement of Inability to Afford Payment of Court Costs

- Notice of the Statement of Inability:
 - If a Statement of Inability is filed, the **court** must notify all other parties that the Statement was filed no later than the **next business day**.

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Contesting a Statement of Inability to Afford Payment of Court Costs

- These statements may be **contested** – one party can claim that the other does not qualify to have the appeal bond waived.
- Procedure for a contest: see Civil Deskbook P. 20.
Rule 506.1(d) and (e)

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Cash Deposit



Instead of filing an appeal bond, the person who wants to appeal may deposit **cash** with the clerk of the court in the amount required for the appeal bond.



The cash deposit is payable to the appellee (the person who won in justice court) and is conditioned on the appellant (the person who lost and is appealing) pursuing the appeal and paying any judgment and costs rendered against them on appeal.



If the appellant files a cash deposit, then they (not the court) are required to send a written notice of the appeal to all other parties within seven days of filing the cash deposit.
Rule 506.1(c) and (e).

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Filing Fee for Appeal

SB 41 from the last legislative session required that a party appealing a case pay the standard civil filing fee for appeal

Note: They will also pay a (*different*) filing fee at the county court for appeal

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What Happens to the Case?

- When an appeal bond, a Statement of Inability, or a cash deposit is properly filed with the justice court, then the appeal is “**perfected.**”
 - **Once that happens the judgment of the justice court is “vacated” and no longer exists.**
 - The case is sent to the county court which will hear it from scratch.

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Clerk's Role in Appeal

- To send the case to county court the clerk sends:
 - Certified copy of all docket entries.
 - A certified copy of the bill of costs.
 - The original papers in the case.
- And you collect a transcript fee of \$10.00 (unless the party appealed by filing a Statement of Inability)

Rule 506.1(h), 506.2, 506.3, Govt. Code § 101.151(2)(A)

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But, the Case Might Bounce Back!

- The party appealing the case must also **pay a filing fee in county court!**
 - Unless they file a Statement of Inability.
- If the party does not pay that filing fee, the county court will not consider the case to be **perfected** and will dismiss the case filed in county court and send it back to justice court.
- If that happens, the judgment of the justice court is valid and it may be enforced just as if an appeal had not been filed.

Rule 506.1(h) and (i), Rule 143a

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Enforcement of Judgments

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What are the parties called AFTER a judgment?

- If the plaintiff wins, they are now the “**judgment creditor**”
- The losing defendant is the “**judgment debtor**”

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How Do You Enforce a Judgment?

- If the case is not appealed, the judgment remains in force, and the plaintiff may try to enforce the judgment (make the defendant pay) through the court.
- A justice court judgment can be enforced the same way that a county or district court judgment is enforced

Rule 505.2

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What is the Court's Role?

- The court does not pursue payment of the judgment by the losing party
- Instead, the court simply processes requests made by the winning party to enforce the judgment
- The court is **only** involved in response to a request from the winning party to sign an order or writ (an order directed to a constable or sheriff)

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Ways to Enforce a Judgment

Abstract of Judgment

Writ of Execution

Writ of Garnishment

Turnover Order

Appointment of a Receiver

Special Writ for Seizure and Delivery of Personal Property

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Abstract of Judgment

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What is an Abstract of Judgment?

A summary of information about a judgment that creates a lien against the judgment debtor's real property once it is filed with the County Clerk

Lien: A hold put on the real property (land & fixtures) of the judgment debtor in the county.

- If the property is sold, the person with the lien gets paid first.
- Example: when you sell your house, the bank is paid first because they hold a lien – your mortgage!
- Or if you sell your car the bank gets paid first to pay off the loan; you get what's left!

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Timing and Cost for Abstract of Judgment

When can a party get an abstract of judgment?

- Can be requested by judgment creditor as soon as the judgment is final.
- The abstract must be issued when requested.

There is a \$5 abstract fee per abstract

- The party can get multiple abstracts, since they will need to file one with the county clerk in each county where they want to create a lien on property of the judgment debtor.

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How is the Abstract Prepared?

It is prepared by the court clerk.

The clerk fills it in with whatever information is provided to them.

The clerk **does not** research additional information.

Attorneys can create and file their own abstracts with the county clerk, without your court being involved.

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What Information is in the Abstract?

If Available

- The defendant's birth date
- The last 3 numbers of their driver's license and social security number
- The number of the lawsuit
- The date and amount of the judgment
- The balance due on the judgment
- The rate of interest in the judgment

Property Code §52.003

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Writ of Execution

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What is a Writ of Execution

It is an order from the court to a constable or sheriff directing them to take property from the judgment debtor (the person who lost) and sell it and give the money to the judgment creditor (the person who won) to satisfy the judgment!

Rules 505.2 and 621

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How Does This Work?

The judgment creditor files an application with the court that issued the judgment for a writ of execution.

- Generally, this cannot be requested until 30 days after the judgment.
- There is a \$5 per page writ fee.

The writ is returnable to the court in 30, 60, or 90 days as requested by the judgment creditor (plaintiff).

- “Returnable” means that the writ has to be served and a return has to be filed with the court within that period of time.
- Whether it is 30, 60 or 90 days is up to the judgment creditor.
 - Rules 621, 622, 627 and Govt. Code § 101.151(a)(2)(c)

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Then What?

If the court finds the requirements are met, the court issues the writ.



The clerk should attach a copy of the bill of costs (*a list of all the fees and cost the winning party had to pay*).



Now it goes to the constable's office for them to serve on the judgment debtor in order to obtain property to satisfy the judgment.

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Execution Docket

Rule 507.3

The clerk must enter in the docket:

- Time when the writ of execution was issued.
- To whom it was directed and delivered.
- The amount of the debt, damages and costs.
- When the writ is returned, the clerk must note the return in the docket and show the manner in which it was executed.

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For More
Information
See

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Writ of Garnishment

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Writ of Garnishment – Rule 658

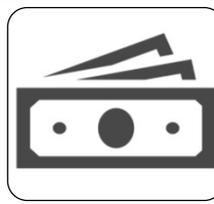
- What is a **writ of garnishment**?
 - An order from the court to a 3rd party who has some of the judgment debtor's assets to turn those assets over to the judgment creditor.
 - The assets must be **non-exempt**.
 - The 3rd party is called the **garnishee**, and is usually a bank.
- Note – garnishments are almost always filed post-judgment. For information on the limited situation where they are filed pre-judgment, see the Civil Deskbook

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Important Note on Garnishment



Many people think of “garnishment” as something that happens with someone’s paycheck or wages.



In “wage garnishment,” a person’s wages are intercepted before they ever get delivered to the employee, and given to the person who is entitled to the garnishment.



In Texas, **you cannot garnish wages for civil judgments**. But once the paycheck is deposited into a bank account, that money is now subject to garnishment.

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Garnishment Example

- Becky sues Ronda for \$7,500 and wins. Ronda doesn’t pay the judgment.
- Satisfying a judgment by using writs of execution can be difficult because of how much property is exempt, so Becky has been unable to get her judgment paid that way.
- Ronda doesn’t own real property, so Becky has no real use for an abstract of judgment.
- But Becky discovers that Ronda has a bank account with \$10,000 in it.
- Becky can use a writ of garnishment to have the bank ordered to turn \$7,500 (plus any costs of the garnishment) over to her to satisfy the judgment.

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Garnishment Module

- For detailed information on Garnishment procedures, see the Garnishment Module under *Online Education & Self-Paced Modules* on the TJCTC website.

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Turnover Orders and 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.

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For More Info on Turnover Orders & Appointing Receivers

Civil Deskbook Chapter 10, Sec. H

*Note: Justice Courts **must** now use the Supreme Court’s Order Appointing Receiver (on TJCTC forms page) except in very rare cases.*

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Enforcing Judgments for Personal Property

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Judgment for Personal Property

- A person may sue someone in justice court to get some item of personal property back (*provided it is worth less than \$20,000*).
 - For example, someone borrows your lawn mower and refuses to return it.
 - Or an angry ex-girlfriend takes her ex-boyfriend's fancy racing bike.
- A judgment in such a case must order that the plaintiff recover the specific articles of personal property, if they can be found, and if not, then their value as assessed by the judge or jury.

Rule 505.1(e)

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Writ of Sequestration

- During a case for a specific piece of personal property, the plaintiff may ask for a writ of sequestration, which is an order for the constable or sheriff to take the property into custody for safekeeping until the judge determines possession.
- For more on this process, please see the Civil Deskbook

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Special Writ

- When a judgment is for personal property, the court may award a **“Special Writ”** for the seizure and delivery of that property to the plaintiff.

Rule 505.2

- What is a **special writ**?
 - Some courts use a form called *“writ of possession”* – confusing because of eviction cases!
 - Others just use a form called *“special writ for seizure and delivery of property.”*
 - Still others use a *“writ of execution for specific articles.”*
 - The title isn’t important as long as the writ directs the constable to do what **Rule 505.2** says.

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BREAKOUT GROUP POP QUIZ TIME!

Fill out the blanks with the correct answers.

- 1) Lincoln gets a judgment against Tom. He knows Tom has a lake house on Lake Travis. In order to be able to get money from the sale of the lake house to pay the judgment, Lincoln needs a _____.
- 2) Seth wins a judgment against Brock and finds out in post-judgment discovery that Brock has money in the bank. If Seth wants to get that money, he needs a _____.
- 3) Daniel wins a judgment against Bray. Bray owns valuable pieces of art. In order for that art to be seized and sold, and the money given to Daniel, he should get a _____.
- 4) George wins a judgment against Al. Al has some property in a lockbox and won't allow the constable to look inside during execution. What kind of order could George get to force Al to let the constable take the property?
_____.

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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**.

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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!

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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**.

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

“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 the court determines 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 had already paid the judgment in full.

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Judgment Deadline Calculation 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?

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New Exempt Property Hearings

- Rule 679b now provides for a judgment debtor to claim that their seized property is exempt.
- See the Rules & TJCTC website for more information.
- Note: All judgments awarding money will also require new notices about this process and exempt property. (*TJCTC forms are updated!*)
- We will be offering a course at Experienced Clerks detailing these procedures.

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Questions?