
SUPREME COURT OF TEXAS UPDATE

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TABLE OF CONTENTS

I. SCOPE OF THIS ARTICLE	1
II. ADMINISTRATIVE LAW	1
A. Disciplinary Action	1
1. <u>Aleman v. Tex. Med. Bd., 573 S.W.3d 796 (Tex. May 24, 2019) [17-0385].</u>	1
B. Exhaustion of Administrative Remedies	2
1. <u>E.A. v. Tex. Dep’t of Family & Protective Servs., 587 S.W.3d 408 (Tex. Oct. 25, 2019) [17-0521].</u>	2
2. <u>Horton v. Tex. Dep’t of Family & Protective Servs., 587 S.W.3d 12 (Tex. Oct. 25, 2019) [17-0514].</u>	2
3. <u>Mosley v. Tex. Health & Human Servs. Comm’n, 593 S.W.3d 250 (Tex. May 3, 2019) [17-0345].</u>	2
4. <u>Wallace v. Tex. Dep’t of Family & Protective Servs., 586 S.W.3d 407 (Tex. Oct. 25, 2019) [17-0428].</u>	3
C. Public Information Act	3
1. <u>Tex. Dep’t of Criminal Justice v. Levin, 572 S.W.3d 671 (Tex. Apr. 12, 2019) [17-0552].</u>	3
D. Teacher Termination	4
1. <u>N.E. Indep. Sch. Dist. v. Riou, 2018 WL 3551247 (Tex. App.—San Antonio 2018), <i>pet. granted</i>, 62 Tex. Sup. Ct. J. 1561 (Aug. 30, 2019) [18-0986].</u>	4
III. ARBITRATION	5
A. Class Actions	5
1. <u>Robinson v. Home Owners Mgmt. Enters., Inc., 590 S.W.3d 518 (Tex. Nov. 22, 2019) [18-0504].</u>	5
B. Enforcement of Arbitration Agreement	5
1. <u>Bonsmara Natural Beef Co. v. Hart of Tex. Cattle Feeders, LLC, 583 S.W.3d 705 (Tex. App.—Amarillo 2019), <i>pet. granted</i>, 63 Tex. Sup. Ct. J. 4 (Oct. 4, 2019) [19-0263].</u>	5
IV. ATTORNEYS	6
A. Attorney-Client Privilege	6
1. <u>In re City of Dickinson, 568 S.W.3d 642 (Tex. Feb. 15, 2019) [17-0020].</u>	6
B. Disciplinary Proceedings	6
1. <u>Comm’n for Lawyer Discipline v. Cantu, 587 S.W.3d 779 (Tex. Oct. 25, 2019) [18-0879].</u>	6
C. Disqualification	7
1. <u>In re Murrin Bros. 1885, Ltd., S.W.3d , 63 Tex. Sup. Ct. J. 235 (Tex. Dec. 20, 2019) [18-0737].</u>	7
2. <u>In re RSR Corp., 568 S.W.3d 663 (Tex. Feb. 15, 2019) [18-0189].</u>	8
3. <u>In re Thetford, 574 S.W.3d 362 (Tex. May 24, 2019) [17-0634].</u>	8
D. Fees	9
1. <u>Barnett v. Schiro, 579 S.W.3d 73 (Tex. Apr. 26, 2019) [18-0278].</u>	9
2. <u>Nath v. Tex. Children’s Hosp., 576 S.W.3d 707 (Tex. June 21, 2019) [17-0110].</u>	9
3. <u>Rohrmoos Venture v. UTSW DVA Healthcare, LLP, 578 S.W.3d 469 (Tex. Apr. 26, 2019) [16-0006].</u>	10

E. Legal Malpractice	11
1. <u>Erikson v. Renda</u> , 590 S.W.3d 557 (Tex. Dec. 20, 2019) [18-0486].	11
2. <u>Gray v. Skelton</u> , 547 S.W.3d 272 (Tex. App.—San Antonio 2018), <i>pet. granted</i> , 62 Tex. Sup. Ct. J. 1312 (June 28, 2019) [18-0386].	11
F. Sanctions	12
1. <u>Brewer v. Lennox Hearth Prods., LLC</u> , 546 S.W.3d 866 (Tex. App.—Amarillo 2018), <i>pet. granted</i> , 62 Tex. Sup. Ct. J. 1313 (June 28, 2019) [18-0426].	12
2. <u>In re Casey</u> , 589 S.W.3d 850 (Tex. Nov. 22, 2019) [18-0289]..	12
V. CONSTITUTIONAL LAW	13
A. Due Process	13
1. <u>In re R.R.S.</u> , 536 S.W.3d 67 (Tex. App.—El Paso 2017), <i>pet. granted</i> , 62 Tex. Sup. Ct. J. 1560 (Aug. 30, 2019) [17-0819].	13
B. Home Equity Loans	13
1. <u>Fed. Home Loan Mortg. Corp. v. Zepeda</u> , <i>certified question accepted</i> , 62 Tex. Sup. Ct. J. 1546 (Aug. 23, 2019) [19-0712].	13
C. Takings	14
1. <u>KMS Retail Rowlett, LP v. City of Rowlett</u> , 593 S.W.3d 175 (Tex. May 17, 2019) [17-0850].	14
VI. CONTRACTS	15
A. Formation	15
1. <u>Chalker Energy Partners III, LLC v. Le Norman Operating LLC</u> , 547 S.W.3d 27 (Tex. App.—Houston [1st Dist.] 2018), <i>pet. granted</i> , 62 Tex. Sup. Ct. J. 1561 (Aug. 30, 2019) [18-0352].	15
B. Fraudulent Inducement	15
1. <u>Int’l Bus. Machs. Corp. v. Lufkin Indus., Inc.</u> , 573 S.W.3d 224 (Tex. Mar. 15, 2019) [17-0666].	15
2. <u>Mercedes-Benz USA, LLC v. Carduco, Inc.</u> , 583 S.W.3d 553 (Tex. Feb. 22, 2019) [16-0644].	16
C. Interpretation	17
1. <u>Barrow-Shaver Res. Co. v. Carrizo Oil & Gas, Inc.</u> , 590 S.W.3d 471 (Tex. June 28, 2019) [17-0332].	17
2. <u>Credit Suisse AG v. Claymore Holdings LLC</u> , 584 S.W.3d 18 (Tex. App.—Dallas 2018), <i>pet. granted</i> , 63 Tex. Sup. Ct. J. 3 (Oct. 4, 2019) [18-0403].	17
D. Liquidated Damages	18
1. <u>Atrium Med. Ctr., LP v. Hous. Red C LLC</u> , 546 S.W.3d 305 (Tex. App.—Houston [14th Dist.] 2017), <i>pet. granted</i> , 62 Tex. Sup. Ct. J. 1312 (June 28, 2019) [18-0228].	18
E. Parol Evidence Rule	18
1. <u>West v. Quintanilla</u> , 573 S.W.3d 237 (Tex. Apr. 5, 2019) [17-0454].	18
F. Special Performance	19
1. <u>Pathfinder Oil & Gas, Inc. v. Great W. Drilling, Ltd.</u> , 574 S.W.3d 882 (Tex. May 24, 2019) [18-0186].	19
G. Statute of Frauds	20
1. <u>Copano Energy, LLC v. Stanley D. Bujnoch, Life Estate</u> , S.W.3d , 63 Tex. Sup. Ct. J. 348 (Tex. Jan. 31, 2020) [18-0044].	20

VII. DAMAGES	20
A. Evidence	20
1. <u>Bombardier Aerospace Corp. v. SPEP Aircraft Holdings, LLC, 572 S.W.3d 213 (Tex. Feb. 1, 2019) [17-0578].</u>	20
2. <u>Innovative Block of S. Tex., Ltd. v. Valley Builders Supply, Inc., 2018 WL 5993950 (Tex. App.—Corpus Christi–Edinburg 2018), <i>pet. granted</i>, 63 Tex. Sup. Ct. J. 272 (Jan. 17, 2020) [18-1211].</u>	21
B. Texas Sales Representative Act	21
1. <u>JCB, Inc., v. Horsburgh & Scott Co., S.W.3d , 62 Tex. Sup. Ct. J. 1199 (Tex. June 7, 2019) [18-1099].</u>	21
VIII. EMPLOYMENT LAW	22
A. Employment Contracts	22
1. <u>McAllen Hosps., L.P. v. Lopez, 576 S.W.3d 389 (Tex. May 17, 2019) [17-0733].</u>	22
2. <u>Eddington v. Dall. Police and Fire Pension Sys., 589 S.W.3d 799 (Tex. Mar. 8, 2019) [17-0058].</u>	23
B. Public Pension Systems	23
1. <u>Degan v. Bd. of Trs. of Dall. Police & Fire Pension Sys., S.W.3d , 63 Tex. Sup. Ct. J. 371 (Tex. Jan. 31, 2020) [19-0234].</u>	23
C. Whistleblower Actions	24
1. <u>Office of the Attorney Gen. v. Rodriguez, 535 S.W.3d 54 (Tex. App.—El Paso 2017), <i>pet. granted</i>, 62 Tex. Sup. Ct. J. 1311 (June 28, 2019) [17-0970].</u>	24
IX. EXPEDITED DECLARATORY JUDGMENT ACT	24
A. Applicability	
1. <u>City of Conroe v. San Jacinto River Auth., 559 S.W.3d 656 (Tex. App.—Austin 2018), <i>pet. granted</i>, 63 Tex. Sup. Ct. J. 3 (Oct. 4, 2019) [18-0989].</u>	
X. EXPUNCTION OF ARREST RECORDS	
A. Statutory Requirements	25
1. <u>Ex parte E.H., 582 S.W.3d 445 (Tex. App.—Fort Worth 2018), <i>pet. granted</i>, 63 Tex. Sup. Ct. J. 98 (Nov. 15, 2019) [18-0932].</u>	25
XI. FAMILY LAW	25
A. Conservatorship	25
1. <u>In re F.E.N., 579 S.W.3d 74 (Tex. June 28, 2019) [18-0439].</u>	25
B. Finality of Judgments	26
1. <u>In re R.R.K., 590 S.W.3d 535 (Tex. Dec. 13, 2019) [18-0273].</u>	26
C. Mediated Settlement Agreements	26
1. <u>Highsmith v. Highsmith, 587 S.W.3d 771 (Tex. Oct. 25, 2019) [18-0262].</u>	26
D. Parental Presumption	27
1. <u>In re C.C., 2019 WL 3064472 (Tex. App.—Fort Worth 2019), <i>argument granted on pet. for writ of mandamus</i>, 63 Tex. Sup. Ct. J. 273 (Jan. 17, 2020) [19-0694].</u>	27
E. Termination of Parental Rights	28
1. <u>In re A.L.M.-F., 593 S.W.3d 271 (Tex. May 3, 2019) [17-0603].</u>	28
2. <u>In re C.W., 586 S.W.3d 405 (Tex. Oct. 18, 2019) [18-1034].</u>	28
3. <u>In re D.S., 555 S.W.3d 301 (Tex. App.—Dallas 2018), <i>pet granted</i>, 63 Tex. Sup. Ct. J. 272 (Jan. 17, 2020) [18-0908].</u>	29
4. <u>In re N.G., 577 S.W.3d 230 (Tex. May 17, 2019) [18-0508].</u>	29
5. <u>In re Z.M.M., 577 S.W.3d 541 (Tex. May 17, 2019) [18-0734].</u>	30

6. <u>In re B.C.</u> , 592 S.W.3d 133 (Tex. Dec. 20, 2019) [19-0306].	30
XII. FARM ANIMAL ACTIVITIES ACT	31
A. Interpretation and Application.	31
1. <u>Waak v. Rodriguez</u> , 562 S.W.3d 570 (Tex. App.—Houston [1st Dist.] 2018), <i>pet. granted</i> , 63 Tex. Sup. Ct. J. 155 (Dec. 13, 2019) [19-0167].	31
XIII. FEDERAL PREEMPTION.	31
A. Airline Deregulation Act	31
1. <u>Sabre Travel Int’l, Ltd. v. Deutsche Lufthansa AG</u> , 567 S.W.3d 725 (Tex. Feb. 1, 2019) [17-0538].	31
2. <u>Tex. Mut. Ins. Co. v. PHI Air Med., LLC</u> , 549 S.W.3d 804 (Tex. App.—Austin 2018), <i>pet. granted</i> , 63 Tex. Sup. Ct. J. 154 (Dec. 13, 2019) [18-0216].	32
XIV. GOVERNMENTAL IMMUNITY	33
A. Arbitration	33
1. <u>San Antonio River Auth. v. Austin Bridge & Road, L.P.</u> , 2017 WL 3430897 (Tex. App.—San Antonio 2017), <i>pet. granted</i> , 62 Tex. Sup. Ct. J. 1311 (June 28, 2019) [17-0905].	33
B. Contract Claims	33
1. <u>City of Denton v. Rushing</u> , 570 S.W.3d 708 (Tex. Mar. 15, 2019) [17-0336].	33
2. <u>Dallas/Fort Worth Int’l Airport Bd. v. Vizant Techs., LLC</u> , 576 S.W.3d 362 (Tex. May 17, 2019) [18-0059].	34
3. <u>El Paso Educ. Initiative, Inc. v. Amex Props., LLC</u> , 564 S.W.3d 228 (Tex. App.—El Paso 2018), <i>pet. granted</i> , 63 Tex. Sup. Ct. J. 31 (Oct. 18, 2019) [18-1167].	34
4. <u>Hughes v. Tom Green Cty.</u> , 573 S.W.3d 212 (Tex. Mar. 8, 2019) [17-0409].	35
5. <u>Rosenberg Dev. Corp. v. Imperial Performing Arts, Inc.</u> , 571 S.W.3d 738 (Tex. Mar. 8, 2019) [17-0660].	36
C. Governmental Unit	36
1. <u>Univ. of Incarnate Word v. Redus</u> , 2018 WL 1176652 (Tex. App.—San Antonio 2018), <i>pet. granted</i> , 62 Tex. Sup. Ct. J. 1560 (Aug. 30, 2019) [18-0351].	36
D. Independent Contractors	37
1. <u>GTECH Corp. v. Steele</u> , 549 S.W.3d 768 (Tex. App.—Austin 2018), <i>pet. granted</i> , 62 Tex. Sup. Ct. J. 1312 (June 28, 2019) [18-0159].	37
2. <u>Nettles v. GTECH Corp.</u> , 2017 WL 3097627 (Tex. App.—Dallas 2017), <i>pet. granted</i> , 62 Tex. Sup. Ct. J. 1311 (June 28, 2019) [17-1010].	37
E. Inmate Activities	38
1. <u>Tarrant Cty. v. Bonner</u> , 574 S.W.3d 893 (Tex. May 24, 2019) [18-0431].	38
F. Recreational Use Statute	38
1. <u>Univ. of Tex. at Austin v. Garner</u> , S.W.3d , 63 Tex. Sup. Ct. J. 41 (Tex. Oct. 18, 2019) [18-0740].	38
G. Sabine Pilot Doctrine	39
1. <u>Hillman v. Nueces Cty.</u> , 579 S.W.3d 831 (Tex. Mar. 15, 2019) [17-0588].	39
H. Specific Performance.	40
1. <u>Hays Street Bridge Restoration Grp. v. City of San Antonio</u> , 570 S.W.3d 697 (Tex. Mar. 15, 2019) [17-0423].	40
I. Standing	40
1. <u>Garcia v. City of Willis</u> , 593 S.W.3d 201 (Tex. May 3, 2019) [17-0713].	40

J. Summary Judgments	41
1. <u>Town of Shady Shores v. Swanson</u> , 590 S.W.3d 544 (Tex. Dec. 13, 2019) [18-0413].....	41
K. Texas Tort Claims Act	42
1. <u>Garza v. Harrison</u> , 574 S.W.3d 389 (Tex. May 24, 2019) [17-0724].....	42
2. <u>PHI, Inc. v. Tex. Juvenile Justice Dep’t</u> , 593 S.W.3d 296 (Tex. Apr. 26, 2019) [18-0099].....	42
3. <u>Tarrant Reg’l Water Dist. v. Johnson</u> , 572 S.W.3d 658 (Tex. Apr. 12, 2019) [17-0095].....	43
4. <u>Tex. Dep’t of Criminal Justice v. Rangel</u> , 2018 WL 3150882 (Tex. App.—Houston [1st Dist.] 2018), <i>pet. granted</i> , 62 Tex. Sup. Ct. J. 1381 (June 28, 2019) [18-0721].....	43
5. <u>Univ. of Tex. M.D. Anderson Cancer Ctr. v. McKenzie</u> , 578 S.W.3d 506 (Tex. June 28, 2019) [17-0730].....	44
6. <u>VIA Metro. Transit v. Meck</u> , 2018 WL 1831681 (Tex. App.—San Antonio 2018), <i>pet. granted</i> , 63 Tex. Sup. Ct. J. 98 (Nov. 15, 2019) [18-0458].....	45
7. <u>Worsdale v. City of Killeen</u> , 578 S.W.3d 57 (Tex. June 14, 2019) [18-0329].....	45
L. Waiver	46
1. <u>Chambers–Liberty Counties Navigation Dist. v. State</u> , 575 S.W.3d 339 (Tex. May 10, 2019) [17-0365, 17-0404].....	46
XV. HEALTH AND SAFETY	47
A. Disability Discrimination	47
1. <u>Silguero v. CSL Plasma, Inc.</u> , 579 S.W.3d 53 (Tex. June 28, 2019) [18-1022].....	47
XVI. INSURANCE	47
A. Appraisal Clauses	47
1. <u>Barbara Techs. Corp. v. State Farm Lloyds</u> , 589 S.W.3d 806 (Tex. June 28, 2019) [17-0640].....	47
2. <u>Hurst v. Nat’l Sec. Fire & Cas. Co.</u> , S.W.3d ___, 63 Tex. Sup. Ct. J. 257 (Tex. Dec. 20, 2019), <i>dissent from the denial of a petition</i> [17-0719].....	48
3. <u>Ortiz v. State Farm Lloyds</u> , 589 S.W.3d 127 (Tex. June 28, 2019) [17-1048].....	49
B. Duty to Defend	49
1. <u>Loya Ins. Co. v. Avalos</u> , 2018 WL 3551260 (Tex. App.—San Antonio 2018), <i>pet. granted</i> , 63 Tex. Sup. Ct. J. 272 (Jan. 17, 2020) [18-0837].....	49
2. <u>State Farm Lloyds v. Richards</u> , <i>certified question accepted</i> , 62 Tex. Sup. Ct. J. 1604 (Sept. 13, 2019) [19-0802].....	50
C. Policies/Coverage	51
1. <u>Exxon Mobil Corp. v. Ins. Co. of the State of Pa.</u> , 568 S.W.3d 650 (Tex. Feb. 15, 2019) [17-0200].....	51
D. Standing	51
1. <u>Farmers Tex. Cty. Mut. Ins. Co. v. Beasley</u> , 2018 WL 1940562 (Tex. App.—Tyler 2018), <i>pet. granted</i> , 62 Tex. Sup. Ct. J. 1313 (June 28, 2019) [18-0469].....	51
XVII. INTENTIONAL TORTS	52
A. Defamation	52
1. <u>Scripps NP Operating, LLC v. Carter</u> , 573 S.W.3d 781 (Tex. May 24, 2019) [17-0046].....	52
2. <u>Warner Bros. Entm’t, Inc. v. Jones</u> , 538 S.W.3d 781 (Tex. App.—Austin 2017), <i>pet. granted</i> , 62 Tex. Sup. Ct. J. 1312 (Tex. June 28, 2019) [18-0068].....	52

XVIII. JURISDICTION	53
A. Mandamus Jurisdiction	53
1. <u>In re Corpus Christi Liquefaction, LLC, 588 S.W.3d 275 (Tex. Oct. 25, 2019) [19-0671]</u>	53
B. Personal Jurisdiction	53
1. <u>Luciano v. SprayFoamPolymers.com, LLC, 584 S.W.3d 44 (Tex. App.—Austin 2018), pet. granted, 63 Tex. Sup. Ct. J. 3 (Oct. 4, 2019) [18-0350]</u>	53
C. Ripeness	54
1. <u>Sw. Elec. Power Co. v. Lynch, 2018 WL 2925891 (Tex. App.—Texarkana 2018), pet. granted, 62 Tex. Sup. Ct. J. 1561 (Aug. 30, 2019) [18-0768]</u>	54
XIX. MEDICAL LIABILITY	54
A. Damages	54
1. <u>Regent Care of San Antonio, L.P. v. Detrick, 567 S.W.3d 752 (Tex. App.—San Antonio 2018), pet. granted, 63 Tex. Sup. Ct. J. 98 (Nov. 15, 2019) [19-0117]</u>	54
B. Expert Reports	55
1. <u>Baylor Scott & White, Hillcrest Med. Ctr. v. Weems, 575 S.W.3d 357 (Tex. Apr. 26, 2019) [17-0563]</u>	55
2. <u>In re Turner, 591 S.W.3d 121 (Tex. Dec. 20, 2019) [18-0102]</u>	55
C. Health Care Liability Claims	56
1. <u>Coming Attractions Bridal & Formal, Inc. v. Tex. Health Res., 552 S.W.3d 335 (Tex. App.—Dallas 2018), pet. granted, 62 Tex. Sup. Ct. J. 1314 (June 28, 2019) [18-0591]</u>	56
XX. MUNICIPAL LAW	56
A. State Law Preemption	56
1. <u>City of Fort Worth v. Rylie, 563 S.W.3d 346 (Tex. App.—Fort Worth 2018), pet. granted, 63 Tex. Sup. Ct. J. 3 (Oct. 4, 2019) [18-1231]</u>	56
XXI. NEGLIGENCE	57
A. Negligent Hiring	57
1. <u>Endeavor Energy Res., L.P. v. Cuevas, 593 S.W.3d 307 (Tex. May 3, 2019) [17-0925]</u>	57
B. Premises Liability	57
1. <u>Hillis v. McCall, 562 S.W.3d 98 (Tex. App.—San Antonio 2018), pet. granted, 63 Tex. Sup. Ct. J. 3 (Oct. 4, 2019) [18-1065]</u>	57
C. Roaming Livestock	58
1. <u>Pruski v. Garcia, S.W.3d , 63 Tex. Sup. Ct. J. 364 (Tex. Jan. 31, 2020) [18-0953]</u>	58
XXII. OIL AND GAS	59
A. Assignments	59
1. <u>Piranha Partners v. Neuhoﬀ, 2018 WL 2223132 (Tex. App.—Amarillo 2018), pet. granted, 62 Tex. Sup. Ct. J. 1313 (June 28, 2019) [18-0581]</u>	59
2. <u>Yowell v. Granite Operating Co., 557 S.W.3d 794 (Tex. App.—Amarillo 2018), pet. granted, 63 Tex. Sup. Ct. J. 3 (Oct. 4, 2019) [18-0841]</u>	59
B. Executive Duty	60
1. <u>Tex. Outfitters Ltd., LLC v. Nicholson, 572 S.W.3d 647 (Tex. Apr. 12, 2019) [17-0509]</u>	60

C. Leases	61
1. <u>Burlington Res. Oil & Gas Co. v. Tex. Crude Energy, LLC, 573 S.W.3d 198 (Tex. Mar. 1, 2019) [17-0266].</u>	61
D. The <i>Duhig</i> Doctrine	61
1. <u>Trial v. Dragon, 593 S.W.3d 313 (Tex. June 21, 2019) [18-0203].</u>	61
XXIII. PARTNERSHIPS	62
A. Breach of Partnership Agreement	62
1. <u>Pike v. Tex. EMC Mgmt., LLC, 2017 WL 2507783 (Tex. App.—Waco 2017), <i>pet. granted</i>, 62 Tex. Sup. Ct. J. 1310 (June 28, 2019) [17-0557].</u>	62
B. Formation	63
1. <u>Energy Transfer Partners, L.P. v. Enter. Prods. Partners, L.P., S.W.3d , 63 Tex. Sup. Ct. J. 340 (Tex. Jan. 31, 2020) [17-0862].</u>	63
XXIV. PROBATE: WILLS, TRUSTS, ESTATES, AND GUARDIANSHIPS	64
A. Trust Creation	64
1. <u>Episcopal Diocese v. Episcopal Church, 547 S.W.3d 353 (Tex. App.—Fort Worth 2018), <i>pet. granted</i>, 62 Tex. Sup. Ct. J. 1561 (Aug. 30, 2019) [18-0438].</u>	64
B. Will Construction	64
1. <u>ConocoPhillips Co. v. Ramirez, S.W.3d , 63 Tex. Sup. Ct. J. 299 (Tex. Jan. 24, 2020) [17-0822].</u>	64
XXV. PROCEDURE—APPELLATE	65
A. Waiver	65
1. <u>Horton v. Stovall, 591 S.W.3d 567 (Tex. Dec. 20, 2019) [18-0925].</u>	65
XXVI. PROCEDURE—PRETRIAL	65
A. Certificates of Merit	65
1. <u>LaLonde v. Gosnell, 593 S.W.3d 212 (Tex. June 14, 2019) [16-0966].</u>	65
B. Dismissal	66
1. <u>Bethel v. Quilling, Selander, Lownds, Winslett & Moser, P.C., 2018 WL 2434410 (Tex. App.—Dallas 2018), <i>pet. granted</i>, 62 Tex. Sup. Ct. J. 1314 (June 28, 2019) [18-0595].</u>	66
C. Forum-Selection Clauses	67
1. <u>Rieder v. Woods, 2018 WL 5074703 (Tex. App.—Fort Worth 2018), <i>pet. granted</i>, 63 Tex. Sup. Ct. J. 98 (Nov. 15, 2019) [19-0077].</u>	67
D. Sanctions	67
1. <u>Medina v. Zuniga, 593 S.W.3d 238 (Tex. Apr. 26, 2019) [17-0498].</u>	67
E. Venue	68
1. <u>In re Fox River Real Estate Holdings, Inc., S.W.3d , 63 Tex. Sup. Ct. J. 356 (Tex. Jan. 31, 2020) [18-0913].</u>	68
XXVII. PROCEDURE—TRIAL AND POST-TRIAL	68
A. Right to Appear	68
1. <u>In re Commitment of Bluit, 562 S.W.3d 665 (Tex. App.—Fort Worth 2018), <i>pet. granted</i>, 62 Tex. Sup. Ct. J. 1561 (Aug. 30, 2019) [18-1053].</u>	68

XXVIII. REAL PROPERTY	69
A. Easements	69
1. <u>Teal Trading & Dev., L.P. v. Champee Springs Ranches Prop. Owners Ass’n</u> , S.W.3d	
<u>, 63 Tex. Sup. Ct. J. 318 (Tex. Jan. 31, 2020) [17-0736]</u>	69
B. Implied Covenants	70
1. <u>Chicago Title Ins. Co. v. Cochran Invs., Inc.</u> , 550 S.W.3d 196 (Tex. App.—Houston	
<u>[14th Dist.] 2018), pet. granted</u> , 63 Tex. Sup. Ct. J. 155 (Dec. 13, 2019) [18-	
<u>0676]</u>	70
C. Redemption	70
1. <u>Sorrell v. Estate of Carlton</u> , 593 S.W.3d 167 (Tex. May 3, 2019) [16-0874]	70
D. Submerged Land	71
1. <u>Bush v. Lone Oak Club, LLC</u> , 546 S.W.3d 766 (Tex. App.—Houston [1st Dist.] 2018),	
<u>pet. granted</u> , 62 Tex. Sup. Ct. J. 1312 (June 28, 2019) [18-0264]	71
XXIX. STATUTE OF LIMITATIONS	71
A. Breach of Warranty	71
1. <u>Nghiem v. Sajib</u> , 567 S.W.3d 718 (Tex. Feb. 1, 2019) [17-0636]	71
B. Civil Conspiracy	72
1. <u>Agar Corp. v. Electro Circuits Int’l, LLC</u> , 580 S.W.3d 136 (Tex. Apr. 5, 2019) [17-	
<u>0630]</u>	72
C. Probating a Will	72
1. <u>Ferreira v. Butler</u> , 575 S.W.3d 331 (Tex. Apr. 12, 2019) [17-0901]	72
D. Waiver	73
1. <u>Godoy v. Wells Fargo Bank N.A.</u> , 575 S.W.3d 531 (Tex. May 10, 2019) [18-	
<u>0071]</u>	73
XXX. TAXES	74
A. Foreign Trade Zone Exemptions	74
1. <u>PRSI Trading, LLC v. Harris Cty.</u> , 2017 WL 2686328 (Tex. App.—Houston [1st Dist.]	
<u>2017), pet. granted</u> , 62 Tex. Sup. Ct. J. 1561 (Aug. 30, 2019) [18-0664]	74
B. Franchise Taxes	74
1. <u>Hegar v. Am. Multi-Cinema, Inc.</u> , 2017 WL 74416 (Tex. App.—Austin 2017), <i>pet.</i>	
<u>granted</u> , 62 Tex. Sup. Ct. J. 1310 (June 28, 2019) [17-0464]	74
2. <u>Hegar v. Gulf Copper & Mfg. Corp.</u> , 535 S.W.3d 1 (Tex. App.—Austin 2017), <i>pet.</i>	
<u>granted</u> , 62 Tex. Sup. Ct. J. 1311 (June 28, 2019) [17-0894]	74
3. <u>Lockheed Martin Corp. v. Hegar</u> , 550 S.W.3d 855 (Tex. App.—Austin 2018), <i>pet.</i>	
<u>granted</u> , 63 Tex. Sup. Ct. J. 154 (Dec. 13, 2019) [18-0566]	75
4. <u>Sunstate Equip. Co., LLC, v. Hegar</u> , 2017 WL 279602 (Tex. App.—Austin 2017), <i>pet.</i>	
<u>granted</u> , 62 Tex. Sup. Ct. J. 1310 (June 28, 2019) [17-0444]	76
C. Property Taxes	76
1. <u>Brazos Elec. Power Coop., Inc. v. Tex. Comm’n on Envtl. Quality</u> , 576 S.W.3d 374	
<u>(Tex. May 3, 2019) [17-1003]</u>	76
2. <u>Tex. Comm’n on Envtl. Quality v. Brazos Valley Energy, LLC</u> , 582 S.W.3d 277 (Tex.	
<u>May 3, 2019) [18-0128]</u>	77
D. Tax Protests	77
1. <u>EBS Solutions, Inc. v. Hegar</u> , 549 S.W.3d 849 (Tex. App.—Austin 2018), <i>pet. granted</i> ,	
<u>62 Tex. Sup. Ct. J. 1313 (June 28, 2019) [18-0503]</u>	77

XXXI. TEXAS CITIZENS PARTICIPATION ACT	78
A. Appeals	78
1. <u>Dall. Symphony Ass’n, Inc. v. Reyes, 571 S.W.3d 753 (Tex. Mar. 8, 2019) [17-0835]</u>	78
B. Automatic Stay	78
1. <u>In re Geomet Recycling LLC, 578 S.W.3d 82 (Tex. June 14, 2019) [18-0443]</u>	78
C. Initial Burden	79
1. <u>Dall. Morning News, Inc. v. Hall, 579 S.W.3d 370 (Tex. May 10, 2019) [17-0637]</u>	79
D. Matter of Public Concern	80
1. <u>Creative Oil & Gas, LLC v. Lona Hills Ranch, LLC, 591 S.W.3d 127 (Tex. Dec. 20, 2019) [18-0656]</u>	80
XXXII. TEXAS TIM COLE ACT	80
A. Actual Innocence	80
1. <u>In re Lester, argument granted on pet. for writ of mandamus, 63 Tex. Sup. Ct. J. 98 (Nov. 15, 2019) [18-1041]</u>	80
XXXIII. TEXAS UNIFORM FRAUDULENT TRANSFER ACT	81
A. Good Faith Defense	81
1. <u>Janvey v. GMAG, L.L.C., 592 S.W.3d 125 (Tex. Dec. 20, 2019) [19-0452]</u>	81
XXXIV. UTILITIES	82
A. Rates	82
1. <u>Time Warner Cable Tex. LLC v. CPS Energy, 593 S.W.3d 291 (May 17, 2019) [17-0840]</u>	82
XXXV. WORKERS’ COMPENSATION	82
A. Course and Scope of Employment	82
1. <u>Orozco v. Cty. of El Paso, 545 S.W.3d 638 (Tex. App.—El Paso 2016), pet. granted, 62 Tex. Sup. Ct. J. 1310 (June 28, 2019) [17-0381]</u>	82
B. Intentional Injury	83
1. <u>Mo-Vac Serv. Co. v. Escobedo, 2018 WL 3599195 (Tex. App.—Corpus Christi–Edinburg 2018), pet. granted, 63 Tex. Sup. Ct. J. 155 (Dec. 13, 2019) [18-0852]</u>	83
C. Judicial Review	83
1. <u>Tex. Mut. Ins. Co. v. Chicas, 593 S.W.3d 284 (Tex. Apr. 5, 2019) [17-0501]</u>	83

SUPREME COURT OF TEXAS UPDATE

J. Brett Busby
Justice
Supreme Court of Texas

I. SCOPE OF THIS ARTICLE

This article surveys cases that were decided by the Supreme Court of Texas from February 1, 2019 through January 31, 2020. Petitions granted but not yet decided are also included.

II. ADMINISTRATIVE LAW

A. Disciplinary Action

1. Aleman v. Tex. Med. Bd., 573 S.W.3d 796 (Tex. May 24, 2019) [17-0385].

At issue in this case was whether the Texas Medical Board properly sanctioned Ruben Aleman, M.D., under the Medical Practice Act for his failure to electronically certify a death certificate. The Health and Safety Code requires a person who completes the medical certification for a death certificate to submit the information and attest to its validity electronically using the state-approved system. A patient of Aleman's died in July 2011, but Aleman was not registered to use the system at that time; accordingly, the patient's death certificate was "dropped to paper" by the funeral director who prepared it before it was sent to Aleman for certification. Aleman certified the paper certificate manually rather than submitting the information electronically. The Board filed a complaint with the State Office of Administrative Hearings (SOAH) seeking disciplinary action against Aleman for his failure to submit the information electronically. The administrative law judge concluded that Aleman violated the Medical Practice Act by committing "unprofessional or dishonorable conduct that is likely to deceive or defraud the public," which statutorily includes "an act that violates any state or federal law if the act is connected with the physician's practice of medicine." TEX. OCC. CODE §§ 164.052(a)(5), .053(a)(1). The Board sanctioned Aleman based on these findings.

Aleman petitioned for judicial review of the Board's order, which the trial court affirmed. The

court of appeals affirmed the trial court's judgment.

The Supreme Court reversed in part, holding that the Board's complaint complied with the Act's statutory requirements but that the Act did not authorize disciplinary action against Aleman for the conduct at issue. Interpreting the provisions of the Act as a whole and in context, the Court held that an act that violates state or federal law is subject to disciplinary action only if the act is connected with the practice of medicine in a manner that makes it likely to deceive or defraud the public. The Court explained that, by classifying the prohibited conduct as "unprofessional or dishonorable conduct likely to deceive or defraud the public," the Legislature unambiguously expressed its intent to authorize sanctions only for conduct that falls within that overarching classification. Construing the phrase "connected with the practice of medicine" more broadly than that, as the Board would do, renders the Legislature's categorization of the conduct a nullity and improperly favors microscopic examination of isolated words over consideration of the statute as a contextual whole.

In light of the Court's holding that disciplinary action was not authorized, the Court did not reach the issues involving Aleman's impossibility defense or the severity of his sanction. Finally, the Court agreed with the Board that Aleman was not entitled to recover attorney's fees. Accordingly, the Court affirmed in part, reversed in part, and rendered judgment vacating the sanctions imposed against Aleman.

Justice Blacklock, joined by Justice Brown, concurred. In the view of the concurrence, section 164.053(a)(1) is not triggered any time a physician violates any state or federal law. It is only triggered when a physician "commits an act that violates any state or federal law." The Legislature's invocation of an act-omission distinction is quite sensible. Section

164.053(a)(1) does not encompass the Board's allegations against Dr. Aleman, which stem from his unlawful failures to act, not from unlawful actions.

B. Exhaustion of Administrative Remedies

1. E.A. v. Tex. Dep't of Family & Protective Servs., 587 S.W.3d 408 (Tex. Oct. 25, 2019) [17-0521].

This case presented issues identical to those the Supreme Court decided in *Mosley v. Texas Health & Human Services Commission*, ___ S.W.3d ___, 62 Tex. Sup. Ct. J. 894 (Tex. May 3, 2019) [17-0345]. In *Mosley*, the Court held that a party seeking judicial review of an administrative order must first move for rehearing before the administrative law judge, but that an agency's affirmative misrepresentation of the proper procedure for judicial review may violate a party's right to due process. E.A. did not seek rehearing before the administrative law judge of an order she challenged. But because, as in *Mosley*, the agency misrepresented the proper procedure for judicial review in a letter to E.A., the Court held that E.A. was denied due process. For the reasons expressed in *Mosley*, the Court reversed in part in a per curiam opinion, holding the government violated E.A.'s due-course-of-law rights under the Texas Constitution. The Court directed the Department of Family and Protective Services to reinstate E.A.'s administrative case and afford her an opportunity to seek rehearing before the administrative law judge of the order she challenged.

2. Horton v. Tex. Dep't of Family & Protective Servs., 587 S.W.3d 12 (Tex. Oct. 25, 2019) [17-0514].

This case presented issues identical to those the Supreme Court decided in *Mosley v. Texas Health & Human Services Commission*, 593 S.W.3d 250 (Tex. May 3, 2019) [17-0345]. In *Mosley*, the Court held that a party seeking judicial review of an administrative order must first move for rehearing before the administrative law judge, but that an agency's affirmative misrepresentation of the proper procedure for judicial review may violate a party's right to due process. Roderic Horton did not seek rehearing before the administrative law judge of an order he

challenged. But because, as in *Mosley*, the agency misrepresented the proper procedure for judicial review in a letter to Horton, the Court held that Horton was denied due process. For the reasons expressed in *Mosley*, the Court reversed in part in a per curiam opinion, holding the government violated Horton's due-course-of-law rights under the Texas Constitution. The Court directed the Department of Family and Protective Services to reinstate Horton's administrative case and afford him an opportunity to seek rehearing before the administrative law judge of the order he challenged.

3. Mosley v. Tex. Health & Human Servs. Comm'n, 593 S.W.3d 250 (Tex. May 3, 2019) [17-0345].

In this case the Supreme Court addressed whether under the Administrative Procedure Act (APA), an appellant seeking judicial review of an administrative order must first file a motion for rehearing with the administrative law judge. The Court also addressed whether an agency's misrepresentation of the proper procedures to seek judicial review of an adverse order can, at least under some circumstances, violate the appellant's right to procedural due process.

The Department of Aging and Disability Services placed Patricia Mosley, an employee of a licensed facility, on an Employee Misconduct Registry based on allegations concerning her care of a group-home resident. As the Court noted, placement in the registry is effectively career ending. Mosley administratively appealed the decision to the Health and Human Services Commission. An administrative law judge (ALJ) sustained the determination and sent Mosley a final decision and order informing her she had the right to seek judicial review of the decision within thirty days. The letter, which relied heavily on a now-repealed rule promulgated by the Department of Family and Protective Services (DFPS), did not indicate that filing a motion for rehearing of the ALJ's decision was a prerequisite to judicial review.

Claiming she relied on the letter's instructions, Mosley filed for judicial review without seeking rehearing. The Commission and DFPS argued that the trial court lacked jurisdiction, insisting the APA required Mosley to

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