

## TEXAS CASE LAW UPDATE

### A review of significant cases from the past year

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## Interpretation – “Common Disaster”

Stephens v. Beard – Page 1

484 S.W.3d 914 – Supreme Court of Texas

### Background

- H murdered W, shot self, died few hours later
- Legacies to nine individuals if common disaster
- Trial court and appeals court: common disaster

### Decision

- Not common disaster
- “die at very nearly the same time, with no way of determining the order of their deaths.”

**Moral:** Murder-suicide not common disaster if death orders can be determined.

## Election Wills

Estate of Cole – Page 2  
Ft. Worth Court of Appeals

### Background

- Q whether H's will put W to election
- Trial court: W put to election

### Decision

- Reversed
- Will disposed of only H's property
- "including my one-half interest in the community property"
- Did not clearly and unequivocally put W to election

**Moral:** Married testator should consider including an election provision in will expressly stating whether will is or is not intended to trigger election by surviving spouse.

## No Contest Clause

Estate of Cole – Page 2  
Ft. Worth Court of Appeals

### Background

- H's will – no contest clause
- If W contested "characterization of my property as my separate property" would forfeit all gifts
- W asserts community property interest property
- Trial court: did not trigger

### Decision

- Affirmed
- Asserting right to own property

**Moral:** Beneficiary's action must first fall within scope of no contest clause before good faith and just cause is relevant as defense to forfeiture.

## No Contest Clause

Ard v. Hudson – Page 2  
Ft. Worth Court of Appeals

### Background

- No contest clause
- B sued executors and trustees for breach of duty
- Trial court: triggered forfeiture

### Decision

- Reversed
- “beneficiary has an inherent right to challenge the actions of a fiduciary and does not trigger a forfeiture clause by doing so”
- Challenged conduct of fiduciaries, not will

**Moral:** In terrorem clauses enforceable if attempt to change dispositive plan. Not effective to protect executors and other fiduciaries from claims of breach of fiduciary duty.

## Will Contest

In re Estate of Parrimore – Page 3  
Houston Court of Appeals [14th Dist]

### Background

- H and W prepared H’s will with computer program
- Omitted two children
- Before signing will, H suffered stroke
- Will signing party at home
- W signed for H, three witnesses attested
- Continued therapy, drove, back to work
- Died year later
- Children argue
  - lacked testamentary intent
  - lacked testamentary capacity
  - undue influence by W
- Trial court admitted will to probate

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