

TEXAS CIVIL PROCEDURE UPDATE

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Texas Civil Procedure Update

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BIOGRAPHICAL INFORMATION

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Honors: Texas Extraordinary Women in Texas Law, Texas Lawyer Award 2008; Distinguished Alumna, South Texas College of Law 2008; State Bar of Texas Bar Foundation Outstanding Law Review Article of the Year, 1995; Vinson & Elkins Faculty Excellence Award; South Texas College of Law Outstanding Professor Award.

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Briefing Attorney (First Court of Appeals), Honorable James P. Wallace 1978-1980.

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Texas Civil Procedure Update

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Courtney Taylor Carlson was born in Houston, Texas, in 1983. She received her Bachelor of Business Administration from the University of Texas at Austin in 2005 and her Doctor of Jurisprudence from Houston College of Law (formerly known as South Texas College of Law) in 2008. She currently is an associate in the litigation section of Jackson Walker in the Houston office. Ms. Carlson's practice focuses on civil litigation and appellate issues. She has served on the adjunct faculty of Houston College of Law teaching Texas Procedure as well as Appellate Advocacy.

Ms. Carlson was a Briefing Attorney to Justice David M. Medina of the Supreme Court of Texas from 2008-2009. While at Houston College of Law, Ms. Carlson was a Staff Member on the Texas Journal of Business Law and a Member of Phi Delta Phi Legal International Fraternity. She received an American Jurisprudence Award in 2005 for obtaining the highest grade in her Legal Research and Writing course.

Ms. Carlson was a member of three varsity appellate advocacy teams, including the William B. Spong, Jr. National Moot Court Competition where her team won first place and received the Best Brief award, the Burton D. Wechsler First Amendment Moot Court Competition where her team received the Best Brief award and she was named the Third Best Speaker, and the American Bar Association National Appellate Advocacy Competition where her team won at the regional level. As a result of Ms. Carlson's active involvement in Houston College of Law's Advocacy Program, she was honored with the Dean's Student Advocacy Service Award for Most Outstanding Female Varsity Moot Court Advocate.

Ms. Carlson is a member of the American Bar Association, the State Bar of Texas (Litigation and Appellate sections), the Houston Bar Association (Litigation and Appellate sections), and the Houston Young Lawyers Association. Ms. Carlson is also a Texas Bar Foundation Fellow and serves on the Nominating Committee. She is also a Founding Member of both the Houston College of Law Young Alumni Council and the Central Houston, Inc. Millennial Enterprise, or CHIME, for short. She has co-authored several CLE papers for the State Bar of Texas as well as the University of Texas School of Law. Ms. Carlson was awarded the 2012 Young Alumni of the Year award from Houston College of Law and currently serves on the Alumni Board of Directors.

Texas Civil Procedure Update

TEXAS CIVIL PROCEDURE UPDATE	1
Arbitration	1
Attorneys	10
Courts	14
Subject Matter Jurisdiction.....	15
Personal Jurisdiction.....	22
Dominant Jurisdiction	31
Forum Non Conveniens.....	31
Venue.....	34
Declaratory Judgments	35
Class Actions	36
Multidistrict Litigation	37
Notice of Constitutional Challenges to Texas Attorney General.....	38
Pleadings.....	39
Pleading Amount In Controversy Range.....	39
Affirmative Defenses.....	40
Verified Denials.....	41
Amended Pleadings	41
Waiver of Pleading Defects.....	42
Parties	43
Compulsory Counterclaims	46
Severance.....	47
Immunity	47
In General	47
Immunity: Texas Tort Claims Act.....	49
Local Government Immunity	52
Default Judgments.....	54
Attacks on Defective Service	58
Early Dismissal On The Pleadings Under New Rule 91a.....	60
Dismissal Anti-SLAPP.....	65
Discovery.....	67
Scope of Discovery.....	67

Texas Civil Procedure Update

Electronic Discovery	69
Depositions	71
Request For Admissions	77
The Duty to Supplement and Amend Discovery Responses.....	78
Discovery of Expert and Expert Reports	78
Discovery Privileges.....	79
Attorney Client Privilege	79
Medical Records	80
Fifth Amendment Privilege	79
Litigation Immunity	81
Trade Secrets.....	79
Court Ordered Shared Discovery	84
Discovery From Jurors	84
Post Judgment Discovery	85
Sealing Court Records.....	85
Res Judicata	86
Summary Judgments	87
Choice of Law	97
Law of the Case	97
Limitations & Repose.....	98
Daubert-Sufficiency of Expert Opinions.....	107
Injunctive Relief	109
Jury Selection	112
In General	112
Batson Challenges to Peremptory Jury Strike	114
Right To Twelve Person Jury	117
Contractual Waiver of Right to Jury Trial.....	118
Jury Charge.....	118
Closing Argument to the Jury	124
Jury Misconduct	125
Nonjury Trial	126
Settlement.....	126
In General	126
Under Offer of Settlement Rule	126
Structured Settlements	128

Texas Civil Procedure Update

Dismissal	129
For Want of Prosecution.....	129
Dismissal Due to Forum Selection Clause	131
Dismissal Due to Failure To Comply With Statutory Prerequisites to Bringing Suit.....	134
Contempt, Sanctions & Spoliation	135
Contempt.....	135
Sanctions.....	136
Spoliation.....	138
Non Suit.....	140
Judgments	142
In General	142
Rendition.....	144
Agreed Judgment.....	145
One Satisfaction Rule	145
The Economic Loss Rule.....	146
Reducing Damages Due To Settlement Credit.....	147
Reducing Judgment Due To Proportionate Responsibility	147
Reducing Judgment Due To Statutory Caps	148
Reducing Damages to Those Actually Paid or Incurred	148
Reducing Punitive Award Damages That are Excessive	149
Pre-judgment Interest	151
Post Judgment Interest.....	151
Costs	153
Attorney's Fees	154
Guardian Ad Litem Fees.....	166
Remittitur.....	166
Election of Remedies.....	167
Judgment Finality	168
Funds In The Registry of the Court.....	168
Motion For New Trial	168
Other Post-Judgment Motions.....	172
Supersedeas	172
Enforcement of Domestic Judgment.....	177
In General	177
Fraudulent Transfer	178
Enforcement of Foreign Judgments	178

Texas Civil Procedure Update

Bill of Review.....	179
Restricted Appeal	180
Appellate Court Jurisdiction.....	181
Certified Question	188
Permissive Interlocutory Appeals	189
Appellate Record	191
Challenging the Sufficiency of the Evidence	192
Preservation of Error	196
Summary Judgment Appeals.....	203
Raising Appellate Complaints.....	204
Alternate Grounds to Affirm Judgment.....	204
Cross Points To Support Judgment JNOV	205
Complaint Raised In Body of Brief But Not In Points.....	205
Appellate Court Obligation to Rule on Appellate Complaints	205
Challenging The Sufficiency of the Evidence	206
Remand vs Rendition	208
Frivolous Appeals.....	209
Mandamus	210
In General	210
Mandamus Review of Trial Court’s Grant of Motion for New Trial...	213
Mandamus Review of Trial Court Denial of a Motion for New Trial.	222
Writ of Prohibition	222
Habeas Corpus.....	224
2016 Rule Amendments	225
Indigent Litigants.....	225
Evidence Rules 509 and 510	226
Three Judge Trial Courts	226

TEXAS CIVIL PROCEDURE UPDATE

Arbitration

Hoskins v. Hoskins, ___ S.W.3d ___, 2016 WL 2993929, *5-6 (Tex. May 20, 2016) (The Texas Supreme Court addressed, as a matter of first impression, whether the Texas General Arbitration Act (hereafter “TAA”) permits vacatur of an arbitration award on common-law grounds not enumerated in the statute. Resolving the split in the lower courts of appeals, the Court concludes that section 171.088 of the Texas Civil Practice and Remedies Code provides the *exclusive* grounds for vacatur of an arbitration award. Accordingly, manifest disregard and all other common-law vacatur doctrines are not viable grounds for vacating an arbitration award under the TAA. The Court notes:

In sum, the TAA mandates that, *unless* a statutory vacatur ground is offered, the court *shall* confirm the award. TEX. CIV. PRAC. & REM. CODE ANN. § 171.087 (West 2011). Thus, a party may avoid confirmation only by demonstrating a ground expressly listed in section 171.088. Leonard complains that “the TAA contains gaps that need [common-law] supplementation” in order to foreclose arbitration awards that are “unquestionably” improper. But we may not rewrite or supplement a statute to overcome its perceived deficiencies. The parties signed an agreement to arbitrate under the TAA, and that agreement contained no limitations on the arbitrator’s authority beyond those enumerated in the statute. Because manifest disregard is not an enumerated vacatur ground under section 171.088, the court of appeals correctly declined to consider it in affirming the trial court’s confirmation order.

The concurrence highlights the advantages in establishing the exclusivity of the TAA’s vacatur grounds. Not only does the Court’s decision provide lower courts with clear instruction, it also eradicates the ambiguity surrounding vacatur grounds that is still present in the Federal Arbitration Act. (at *6)

The American Arbitration Association adopted rules allowing parties to agree to submit commercial arbitration decisions to appellate review before an appellate arbitral panel. www.adr.org/ If the parties have not appointed an appeal tribunal nor not provided for any other method of appointment, the appeal tribunal will be appointed by the AAA. A notice of appeal must be

Texas Civil Procedure Update

filed with the AAA within thirty days of the arbitration agreement. The rules call for the filing of briefs and permit review of errors of law that are material and prejudicial, and determinations of fact that are clearly erroneous.

See also: <http://www.lexology.com/library/detail.aspx?g=1d466bd0-aeff-43e5-96b9-def338ff7baf>.

Good Times Stores, Inc. v. Macias, 355 S.W.3d 240, 244 (Tex. App.--El Paso 2011, pet. denied) (The grounds to vacate an arbitration award under the Federal Arbitration Act are exclusive under the U.S. Supreme Court decision of *Hall Street Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 128 S. Ct. 1396, 1404, 170 L.Ed.2d 254 (2008) and forecloses any common law grounds for vacatur. The FAA applies to maritime transactions and actions involving interstate commerce.).

Nafta Traders, Inc. v. Quinn, 339 S.W.3d 84, 97 (Tex. 2011) (The Texas Arbitration Act presents no impediment to an agreement that limits the arbitrator's authority and allows for judicial review of an arbitration award for reversible error. When an arbitration agreement is covered by both state and federal law, state law is preempted to the extent that it actually conflicts with federal law. While acknowledging judicial review of an arbitration award is not allowed under the Federal Arbitration Act, Texas law does not conflict with that law).

Forest Oil Corp. v. El Rucio Land, 446 S.W. 3d 58, 73-74, 81-87 (Tex. App.—Houston [1st Dist.] 2014, pet. abated) (The judicially created primary jurisdiction doctrine operates to allocate power between courts and agencies when both have authority to make initial determinations in a dispute. The Railroad Commission does not have primary jurisdiction over a landowner's non-regulatory based claims for injuries caused to the landowner's property by environmental contamination incident to oil and gas production. Simply because the Railroad Commission might have jurisdiction to determine some facts related to a controversy does not oust a court or the arbitrators of jurisdiction to make the underlying factual determinations.

The parties' arbitration agreement provided: "The arbitrators will have the authority to award punitive damages where allowed by Texas substantive law". This does not support the argument the parties agreed to expanded judicial review of the sufficiency of the evidence to support the arbitrator's

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