
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., 2017 WL 875315 (Tex. App.—Austin 2017), <i>pet. granted</i>, 61 Tex. Sup. Ct. J. 1827 (Aug. 31, 2018) [17-0385]</u> | 1 |
| B. Exhaustion of Administrative Remedies | 1 |
| 1. <u>Garcia v. City of Willis, 523 S.W.3d 729 (Tex. App.—Beaumont 2017), <i>pet. granted</i>, 61 Tex. Sup. Ct. J. 1828 (Aug. 31, 2018) [17-0713]</u> | 1 |
| 2. <u>Mosley v. Tex. Health & Human Servs. Comm’n, 517 S.W.3d 346 (Tex. App.—Austin 2017), <i>pet. granted</i>, 61 Tex. Sup. Ct. J. 1826, (Aug. 31, 2018) [17-0345]</u> | 2 |
| C. Public Information Act | 2 |
| 1. <u>Tex. Dep’t of Criminal Justice v. Levin, 520 S.W.3d 225 (Tex. App.—Austin 2017), <i>pet. granted</i>, 62 Tex. Sup. Ct. J. 69 (Oct. 19, 2018) [17-0552]</u> | 2 |
| D. Public Utility Commission | 3 |
| 1. <u>Oncor Elec. Delivery Co. LLC v. Chaparral Energy, 546 S.W.3d 133 (Tex. Apr. 27, 2018) [16-0301]</u> | 3 |
| III. ARBITRATION | 3 |
| A. Enforcement of Arbitration Agreement | 3 |
| 1. <u>RSL Funding, LLC v. Newsome, 569 S.W.3d 116 (Tex. Dec. 21, 2018) [16-0998]</u> .. | 3 |
| B. Enforcement/Non-Signatories | 4 |
| 1. <u>Jody James Farms, JV v. Altman Grp., Inc., 547 S.W.3d 624 (Tex. May 11, 2018) [17-0062]</u> | 4 |
| IV. ATTORNEYS | 4 |
| A. Attorney-Client Privilege | 4 |
| 1. <u>In re City of Dickinson, 568 S.W.3d 642 (Tex. Feb. 15, 2019) [17-0020]</u> | 4 |
| B. Disqualification | 5 |
| 1. <u>In re RSR Corp., 568 S.W.3d 663 (Tex. Feb. 15, 2019) [18-0189]</u> | 5 |
| 2. <u>In re Thetford, 2017 WL 2590576 (Tex. App.—Fort Worth 2017), <i>argument granted on pet. for writ of mandamus</i>, 61 Tex. Sup. Ct. J. 1308 (June 8, 2018) [17-0634]</u> .. | 5 |
| C. Fees | 6 |
| 1. <u>Hill v. Shamoun & Norman, LLP, 544 S.W.3d 724 (Tex. Apr. 13, 2018) [16-0107]</u> | 6 |
| 2. <u>Rohrmoos Venture v. UTSW DVA Healthcare, LLP, 2015 WL 5783696 (Tex. App.—Dallas 2015), <i>pet. granted</i>, 61 Tex. Sup. Ct. J. 1488 (June 22, 2018) [16-0006]</u> | 6 |
| D. Sanctions | 7 |
| 1. <u>Pressley v. Casar, 567 S.W.3d 327 (Tex. Jan. 25, 2019) [17-0052, 17-0278]</u> | 7 |
| V. CONSTITUTIONAL LAW | 7 |
| A. Property Interests | 7 |
| 1. <u>Honors Acad., Inc. v. Tex. Educ. Agency, 555 S.W.3d 54 (Tex. Apr. 27, 2018) [16-0519]</u> | 7 |

| | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| VI. CONTRACTS | 8 |
| A. Fraudulent Inducement | 8 |
| 1. <u>Int’l Bus. Machs. Corp. v. Lufkin Indus., Inc.</u> , S.W.3d , 62 Tex. Sup. Ct. J. 644 (Tex. Mar. 15, 2019) [17-0666]. | 8 |
| 2. <u>Mercedes-Benz USA, LLC v. Carduco, Inc.</u> , S.W.3d , 62 Tex. Sup. Ct. J. 502 (Tex. Feb. 22, 2019) [16-0644]. | 9 |
| B. Interpretation | 10 |
| 1. <u>Barrow-Shaver Res. Co. v. Carrizo Oil & Gas, Inc.</u> , 516 S.W.3d 89 (Tex. App.—Tyler 2017), <i>pet. granted</i> , 61 Tex. Sup. Ct. J. 1826 (Aug. 31, 2018) [17-0332]. | 10 |
| C. Parol Evidence Rule | 10 |
| 1. <u>West v. Quintanilla</u> , 534 S.W.3d 34 (Tex. App.—San Antonio 2017), <i>pet. granted</i> , 61 Tex. Sup. Ct. J. 1827 (Aug. 31, 2018) [17-0454]. | 10 |
| D. Special Performance | 11 |
| 1. <u>Pathfinder Oil & Gas, Inc. v. Great Western Drilling, Ltd.</u> , 2017 WL 4413429 (Tex. App.—Eastland 2017), <i>pet. granted</i> , 62 Tex. Sup. Ct. J. 308 (Jan. 18, 2019) [18-0186]. | 11 |
| VII. DAMAGES | 11 |
| A. Evidence | 11 |
| 1. <u>Bombardier Aerospace Corp. v. SPEP Aircraft Holdings, LLC</u> , S.W.3d , 62 Tex. Sup. Ct. J. 419 (Tex. Feb. 1, 2019) [17-0578]. | 11 |
| B. Settlement Credits | 12 |
| 1. <u>Sky View at Las Palmas, LLC v. Martinez</u> , 555 S.W.3d 101 (Tex. June 1, 2018) [17-0140]. | 12 |
| C. Texas Sales Representative Act | 13 |
| 1. <u>JCB, Inc. v. Horsburgh & Scott Co.</u> , <i>certified question accepted</i> , 62 Tex. Sup. Ct. J. 178 (Nov. 30, 2018) [18-1099]. | 13 |
| VIII. EMPLOYMENT LAW | 13 |
| A. Collective Bargaining | 13 |
| 1. <u>Jefferson Cty. v. Jefferson Cty. Constables Ass’n</u> , 546 S.W.3d 661 (Tex. Apr. 13, 2018) [16-0498]. | 13 |
| 2. <u>Stines v. Jefferson Cty.</u> , 550 S.W.3d 178 (Tex. June 15, 2018) [17-0623]. | 14 |
| B. Employment Contracts | 14 |
| 1. <u>McAllen Hosps., L.P. v. Lopez</u> , 2017 WL 1549211 (Tex. App.—Corpus Christi-Edinburg 2017), <i>pet. granted</i> , 62 Tex. Sup. Ct. J. 308 (Jan. 18, 2019) [17-0733]. | 14 |
| C. Public Pension Systems | 15 |
| 1. <u>Degan v. Bd. of Trs. of the Dall. Police & Fire Pension Sys.</u> , <i>certified question accepted</i> , 62 Tex. Sup. Ct. J. 672 (Mar. 29, 2019) [19-0234]. | 15 |
| 2. <u>Eddington v. Dall. Police and Fire Pension Sys.</u> , S.W.3d , 62 Tex. Sup. Ct. J. 560 (Mar. 8, 2019) [17-0058]. | 15 |
| D. Sexual Harassment | 16 |
| 1. <u>Alamo Heights Indep. Sch. Dist. v. Clark</u> , 544 S.W.3d 755 (Tex. Apr. 6, 2018) [16-0244]. | 16 |
| E. Unemployment Compensation | 16 |
| 1. <u>Tex. Workforce Comm’n v. Wichita Cty.</u> , 548 S.W.3d 489 (Tex. May 25, 2018) [17-0130]. | 16 |

| | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| IX. EVIDENCE | 17 |
| A. Unfair Prejudice | 17 |
| 1. <u>JBS Carriers, Inc. v. Washington, 564 S.W.3d 830 (Tex. Dec. 21, 2018) [17-0151]</u> | 17 |
| X. EXPUNCTION OF ARREST RECORDS | 18 |
| A. Statutory Requirements | 18 |
| 1. <u>State v. T.S.N., 547 S.W.3d 617 (Tex. May 11, 2018) [17-0323]</u> | 18 |
| XI. FAMILY LAW | 19 |
| A. Child Support | 19 |
| 1. <u>In re C.Y.K.S., 549 S.W.3d 588 (Tex. June 8, 2018) [17-0214]</u> | 19 |
| B. Division of Community Property | 19 |
| 1. <u>Bradshaw v. Bradshaw, 555 S.W.3d 539 (Tex. June 29, 2018) [16-0328]</u> | 19 |
| C. Interference with Child Possession | 20 |
| 1. <u>Bos v. Smith, 556 S.W.3d 293 (Tex. June 8, 2018) [16-0341]</u> | 20 |
| D. Nonparent Standing | 21 |
| 1. <u>In re H.S., 550 S.W.3d 151 (Tex. June 15, 2018) [16-0715]</u> | 21 |
| E. Premarital Agreement | 21 |
| 1. <u>In re the Marriage of I.C. & Q.C., 551 S.W. 3d 119 (Tex. June 29, 2018) [16-0770]</u> | 21 |
| F. Spousal Support | 22 |
| 1. <u>Dalton v. Dalton, 551 S.W.3d 126 (Tex. June 29, 2018) [17-0155]</u> | 22 |
| G. Termination of Parental Rights | 22 |
| 1. <u>In re A.C., 560 S.W.3d 624 (Tex. Oct. 26, 2018) [17-0477]</u> | 22 |
| 2. <u>In re A.L.M.-F., 2017 WL 2623056 (Tex. App.—Waco 2017), <i>pet. granted</i>, 61 Tex. Sup. Ct. J. 1827 (Aug. 31, 2018) [17-0603]</u> | 23 |
| XII. FEDERAL PREEMPTION | 23 |
| A. Airline Deregulation Act | 23 |
| 1. <u>Sabre Travel Int’l, Ltd. v. Deutsche Lufthansa AG, 567 S.W.3d 725 (Tex. Feb. 1, 2019) [17-0538]</u> | 23 |
| XIII. GOVERNMENTAL IMMUNITY | 24 |
| A. Charter Schools | 24 |
| 1. <u>Neighborhood Ctrs. Inc. v. Walker, 544 S.W.3d 744 (Tex. Apr. 13, 2018) [16-0897]</u> | 24 |
| B. Contract Claims | 25 |
| 1. <u>City of Denton v. Rushing, S.W.3d , 62 Tex. Sup. Ct. J. 618 (Tex. Mar. 15, 2019) [17-0336]</u> | 25 |
| 2. <u>Dallas/Fort Worth Int’l Airport Bd. v. Vizant Techs., LLC, 2017 WL 6627542 (Tex. App.—Dallas 2017), <i>pet. granted</i>, 62 Tex. Sup. Ct. J. 3 (Sept. 28, 2018) [18-0059]</u> | 25 |
| 3. <u>Hughes v. Tom Green Cty., S.W.3d , 62 Tex. Sup. Ct. J. 566 (Tex. Mar. 8, 2019) [17-0409]</u> | 26 |
| 4. <u>Owens v. City of Tyler, 564 S.W.3d 850 (Tex. Dec. 21, 2018) [17-0888]</u> | 27 |
| 5. <u>Rosenberg Dev. Corp. v. Imperial Performing Arts, Inc., S.W.3d , 62 Tex. Sup. Ct. J. 575 (Tex. Mar. 8, 2019) [17-0660]</u> | 27 |
| 6. <u>Wasson Interests, Ltd. v. City of Jacksonville, 559 S.W.3d 142 (Tex. Oct. 5, 2018) [17-0198]</u> | 28 |

| | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| C. Sabine Pilot Doctrine | 29 |
| 1. <u>Hillman v. Nueces County</u> , S.W.3d , 62 Tex. Sup. Ct. J. 631, (Tex. Mar. 15, 2019) [17-0588]. | 29 |
| D. Specific Performance | 29 |
| 1. <u>Hays Street Bridge Restoration Grp. v. City of San Antonio</u> , S.W.3d , 62 Tex. Sup. Ct. J. 622 (Tex. Mar. 15, 2019) [17-0423]. | 29 |
| E. Suits by Inmates | 30 |
| 1. <u>Tarrant Cty. v. Bonner</u> , 2018 WL 1630631 (Tex. App.—Fort Worth 2018), <i>pet. granted</i> , 62 Tex. Sup. Ct. J. 309 (Jan. 18, 2019) [18-0431]. | 30 |
| F. Texas Tort Claims Act | 30 |
| 1. <u>Fort Worth Transp. Auth. v. Rodriguez</u> , 547 S.W.3d 830 (Tex. Apr. 27, 2018) [16-0542]. | 30 |
| 2. <u>Garza v. Harrison</u> , 531 S.W.3d 852 (Tex. App.—Houston [14th Dist.] 2017), <i>pet. granted</i> , 61 Tex. Sup. Ct. J. 1828 (Aug. 31, 2018) [17-0724]. | 31 |
| 3. <u>Harris Cty. v. Annab</u> , 547 S.W.3d 609 (Tex. May 11, 2018) [17-0329]. | 31 |
| 4. <u>PHI, Inc. v. Tex. Juvenile Justice Dep’t</u> , 537 S.W.3d 707 (Tex. App.—Fort Worth 2017), <i>pet. granted</i> , 62 Tex. Sup. Ct. J. 69 (Oct. 19, 2018) [18-0099]. | 32 |
| 5. <u>Univ. of Tex. M.D. Anderson Cancer Ctr. v. McKenzie</u> , 529 S.W.3d 177 (Tex. App.—Houston [14th Dist.] 2017), <i>pet. granted</i> , 61 Tex. Sup. Ct. J. 1828 (Aug. 31, 2018) [17-0730]. | 33 |
| 6. <u>Worsdale v. City of Killeen</u> , 2018 WL 1077242 (Tex. App.—Austin 2018), <i>pet. granted</i> , 62 Tex. Sup. Ct. J. 309 (Jan. 18, 2019) [18-0329]. | 33 |
| G. Ultra Vires Claims | 34 |
| 1. <u>City of Houston v. Hous. Mun. Emps. Pension Sys.</u> , 549 S.W.3d 566 (Tex. June 8, 2018) [17-0242]. | 34 |
| 2. <u>Meyers v. JDC/Firethorne, Ltd.</u> , 548 S.W.3d 477 (Tex. June 8, 2018) [17-0105]. | 35 |
| H. Waiver | 36 |
| 1. <u>Chambers-Liberty Ctys. Navigation Dist. v. State</u> , 2016 WL 3677448 (Tex. App.—Austin 2016), <i>pet. granted</i> , 61 Tex. Sup. Ct. J. 1827 (Aug. 31, 2018) [17-0365], <i>consolidated for oral argument with</i> <u>In re Sustainable Tex. Oyster Res. Mgmt., L.L.C.</u> , 2016 WL 3677448 (Tex. App.—Austin 2016), <i>argument granted on petition for writ of mandamus</i> , 61 Tex. Sup. Ct. J. 1828 (Aug. 31, 2018) [17-0404]. | 36 |
| XIV. HEALTH AND SAFETY | 36 |
| A. Disability Discrimination | 36 |
| 1. <u>Silguero v. CSL Plasma, Inc.</u> , <i>certified question accepted</i> , 62 Tex. Sup. Ct. J. 84 (Oct. 26, 2018) [18-1022]. | 36 |
| B. Involuntary Commitment | 37 |
| 1. <u>In re State</u> , 556 S.W.3d 821 (Tex. Apr. 27, 2018) [16-0829]. | 37 |
| XV. INSURANCE | 38 |
| A. Appraisal Clauses | 38 |
| 1. <u>Barbara Techs. Corp. v. State Farm Lloyds</u> , 2017 WL 1423714 (Tex. App.—San Antonio 2017), <i>pet. granted</i> , 62 Tex. Sup. Ct. J. 308 (Jan. 18, 2019) [17-0640]. | 38 |
| 2. <u>Ortiz v. State Farm Lloyds</u> , 2017 WL 5162315 (Tex. App.—San Antonio 2017), <i>pet. granted</i> , 62 Tex. Sup. Ct. J. 308 (Jan. 18, 2019) [17-1048]. | 38 |
| B. Insurance Code Liability | 39 |
| 1. <u>State Farm Lloyds v. Fuentes</u> , 549 S.W.3d 585 (Tex. June 8, 2018) [16-0369]. | 39 |

| | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| 2. <u>USAA Tex. Lloyds Co. v. Menchaca</u> , 545 S.W.3d 479 (Tex. Apr. 13, 2018) [14-0721]..... | 39 |
| C. Policies/Coverage | 40 |
| 1. <u>Anadarko Petroleum Corp. v. Hous. Cas. Co.</u> , S.W.3d , 62 Tex. Sup. Ct. J. 349 (Tex. Jan. 25, 2019) [16-1013]..... | 40 |
| 2. <u>Exxon Mobil Corp. v. Ins. Co. of the State of Pa.</u> , 568 S.W.3d 650 (Tex. February 15, 2019) [17-0200]..... | 41 |
| XVI. INTENTIONAL TORTS | 42 |
| A. Defamation | 42 |
| 1. <u>Dall. Morning News v. Tatum</u> , 554 S.W.3d 614 (Tex. May 11, 2018) [16-0098].. | 42 |
| 2. <u>Scripps NP Operating, LLC v. Carter</u> , 2016 WL 7972100 (Tex. App.—Corpus Christi-Edinburg 2016), <i>pet granted</i> , 62 Tex. Sup. Ct. J. 308 (Jan. 18, 2019) [17-0046]..... | 43 |
| B. Fraud | 43 |
| 1. <u>Anderson v. Durant</u> , 550 S.W.3d 605 (Tex. June 22, 2018) [16-0842]..... | 43 |
| XVII. JURISDICTION | 44 |
| A. Mandamus Jurisdiction | 44 |
| 1. <u>In re Occidental Chem. Corp.</u> , 561 S.W.3d 146 (Tex. Oct. 12, 2018) [18-0660].. | 44 |
| B. Personal Jurisdiction | 44 |
| 1. <u>Old Republic Nat’l Title Ins. Co. v. Bell</u> , 549 S.W.3d 550 (Tex. June 1, 2018) [17-0245]..... | 44 |
| C. Subject Matter Jurisdiction | 45 |
| 1. <u>Am. K-9 Detection Servs., LLC v. Freeman</u> , 556 S.W.3d 246 (Tex. June 29, 2018) [15-0932]..... | 45 |
| XVIII. MEDICAL LIABILITY | 46 |
| A. Emergency Care | 46 |
| 1. <u>Tex. Health Presbyterian Hosp. of Denton v. D.A.</u> , 569 S.W.3d 126 (Tex. Dec. 21, 2018) [17-0256]..... | 46 |
| B. Expert Reports | 47 |
| 1. <u>Abshire v. Christus Health Se. Tex.</u> , 563 S.W.3d 219 (Tex. Nov. 16, 2018) [17-0386]..... | 47 |
| 2. <u>Baylor, Scott & White v. Weems</u> , 2017 WL 1953416 (Tex. App.—Beaumont 2017), <i>pet. granted</i> , 61 Tex. Sup. Ct. J. 1827 (Aug. 31, 2018) [17-0563]..... | 47 |
| C. Sufficiency of the Evidence | 48 |
| 1. <u>Gunn v. McCoy</u> , 554 S.W.3d 645 (Tex. June 18, 2018) [16-0125]..... | 48 |
| 2. <u>Windrum v. Kareh</u> , S.W.3d , 62 Tex. Sup. Ct. J. 364 (Tex. Jan. 25, 2019) [17-0328]..... | 49 |
| XIX. MUNICIPAL LAW | 50 |
| A. State Law Preemption | 50 |
| 1. <u>City of Laredo v. Laredo Merchs. Ass’n</u> , 550 S.W.3d 586 (Tex. June 22, 2018) [16-0748]..... | 50 |
| XX. NEGLIGENCE | 50 |
| A. Negligent Hiring | 50 |
| 1. <u>Endeavor Energy Res., L.P. v. Cuevas</u> , 531 S.W.3d 375 (Tex. App.—Eastland 2017), <i>pet. granted</i> , 62 Tex. Sup. Ct. J. 120 (Nov. 16, 2018) [17-0925]..... | 50 |

| | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| B. Premises Liability | 50 |
| 1. <u>Rawson v. Oxea Corp., 2016 WL 7671375 (Tex. App.—Houston [1st Dist.] 2016), <i>pet. granted</i>, 61 Tex. Sup. Ct. J. 1405 (June 15, 2018) [17-0541].</u> | 50 |
| C. Vicarious Liability | 51 |
| 1. <u>Painter v. Amerimex Drilling I, Ltd., 561 S.W.3d 125 (Tex. Apr. 13, 2018) [16-0120].</u> | 51 |
| XXI. OIL AND GAS | 52 |
| A. Assignments | 52 |
| 1. <u>XOG Operating, LLC v. Chesapeake Expl. Ltd. P’ship, 554 S.W.3d 607 (Tex. Apr. 13, 2018) [15-0935].</u> | 52 |
| B. Executive Duty | 52 |
| 1. <u>Tex. Outfitters Ltd. v. Nicholson, 534 S.W.3d 65 (Tex. App.—San Antonio 2017), <i>pet. granted</i>, 61 Tex. Sup. Ct. J. 1405 (June 15, 2018) [17-0509].</u> | 52 |
| C. Leases | 53 |
| 1. <u>Burlington Res. Oil & Gas Co. v. Tex. Crude Energy, LLC, S.W.3d , 62 Tex. Sup. Ct. J. 529 (Tex. Mar. 1, 2019) [17-0266].</u> | 53 |
| 2. <u>Murphy Exploration & Prod. Co. v. Adams, 560 S.W.3d 105 (Tex. June 1, 2018) [16-0505].</u> | 54 |
| D. Lease Termination | 54 |
| 1. <u>Endeavor Energy Res. v. Discovery Operating, 554 S.W.3d 586 (Tex. Apr. 13, 2018) [15-0155].</u> | 54 |
| E. Royalties | 55 |
| 1. <u>U.S. Shale Energy II, LLC v. Laborde Props., L.P., 551 S.W.3d 148 (Tex. June 29, 2018) [17-0111].</u> | 55 |
| F. The <i>Duhig</i> Doctrine | 56 |
| 1. <u>Perryman v. Spartan Tex. Six Capital Partners, Ltd., 546 S.W.3d 110 (Tex. Apr. 27, 2018) [16-0804].</u> | 56 |
| 2. <u>Trial v. Dragon, 2017 WL 5162180 (Tex. App.—San Antonio 2017), <i>pet. granted</i>, 62 Tex. Sup. Ct. J. 308 (Jan. 18, 2019) [18–0203].</u> | 57 |
| G. Top Leases | 58 |
| 1. <u>TRO-X, L.P. v. Anadarko Petroleum Corp., 548 S.W.3d 458 (Tex. May 25, 2018) [16-0412].</u> | 58 |
| XXII. PROBATE: WILLS, TRUSTS, ESTATES, AND GUARDIANSHIPS | 58 |
| A. Intentional Interference with Inheritance | 58 |
| 1. <u>Archer v. Anderson, 556 S.W.3d 228 (Tex. June 22, 2018) [16-0256].</u> | 58 |
| B. Muniment of Title | 59 |
| 1. <u>Ferreira v. Butler, 531 S.W.3d 337 (Tex. App.—Houston [14th Dist.] 2017), <i>pet. granted</i>, 61 Tex. Sup. Ct. J. 1828 (Aug. 31, 2018) [17-0901].</u> | 59 |
| XXIII. PROCEDURE—APPELLATE | 60 |
| A. Waiver | 60 |
| 1. <u>Dudley Constr., Ltd. v. ACT Pipe and Supply, Inc., 545 S.W.3d 532 (Tex. Apr. 6, 2018) [16-0651].</u> | 60 |
| XXIV. PROCEDURE—PRETRIAL | 60 |
| A. Certificates of Merit | 60 |
| 1. <u>LaLonde v. Gosnell, 2016 WL 4538596 (Tex. App.—Fort Worth 2016), <i>pet. granted</i>, 61 Tex. Sup. Ct. J. 1211 (June 1, 2018) [16-0966].</u> | 60 |

| | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| B. Discovery | 61 |
| 1. <u>Glassdoor, Inc. v. Andra Grp., LP</u> , S.W.3d , 62 Tex. Sup. Ct. J. 380 (Tex. Jan. 25, 2019) [17-0463]. | 61 |
| 2. <u>In re N. Cypress Med. Ctr. Operating Co.</u> , 559 S.W.3d 128 (Tex. Apr. 27, 2018) [16-0851]. | 61 |
| C. Dismissal | 62 |
| 1. <u>In re Hous. Specialty Ins. Co.</u> , 569 S.W.3d 138 (Tex. Jan. 25, 2019) [17-1060]. . . . | 62 |
| D. Forum Non Conveniens | 62 |
| 1. <u>In re Mahindra, USA, Inc.</u> , 549 S.W.3d 541 (Tex. June 8, 2018) [17-0019]. | 62 |
| E. Responsible Third Party Designation | 63 |
| 1. <u>In re Dawson</u> , 550 S.W.3d 625 (Tex. June 22, 2018) [17-0122]. | 63 |
| F. Sanctions | 64 |
| 1. <u>In re Garza</u> , 544 S.W.3d 836 (Tex. Apr. 13, 2018) [17-0395]. | 64 |
| 2. <u>Medina v. Zuniga</u> , 2017 WL 2261767 (Tex. App.—San Antonio 2017), <i>pet. granted</i> , 62 Tex. Sup. Ct. J. 3 (Sept. 28, 2018) [17-0498]. | 64 |
| G. Sufficient Pleadings | 65 |
| 1. <u>DeRoeck v. DHM Ventures, LLC</u> , 556 S.W.3d 831 (Tex. June 22, 2018) [17-0033]. | 65 |
| H. Summary Judgment | 65 |
| 1. <u>Lujan v. Navistar, Inc.</u> , 555 S.W.3d 79 (Tex. Apr. 27, 2018) [16-0588]. | 65 |
| 2. <u>Seim v. Allstate Tex. Lloyds</u> , 551 S.W.3d 161 (Tex. June 29, 2018) [17-0488]. . . . | 66 |
| XXV. PROCEDURE—TRIAL AND POST-TRIAL | 67 |
| A. Enforcement of Judgments | 67 |
| 1. <u>In re Castle Tex. Prod. Ltd. P’ship</u> , 563 S.W.3d 216 (Tex. Nov. 16, 2018) [17-0863]. | 67 |
| B. Finality of Judgments | 67 |
| 1. <u>In re Elizondo</u> , 544 S.W.3d 824 (Tex. Apr. 13, 2018) [17-0197]. | 67 |
| C. Jury Instructions and Questions | 68 |
| 1. <u>Benge v. Williams</u> , 548 S.W.3d 466 (Tex. May 25, 2018) [14-1057]. | 68 |
| 2. <u>Musallam v. Ali</u> , 560 S.W.3d 636 (Tex. Oct. 26, 2018) [17-0762]. | 68 |
| XXVI. REAL PROPERTY | 69 |
| A. Condemnation | 69 |
| 1. <u>KMS Retail Rowlett, LP v. City of Rowlett</u> , 2017 WL 3048477 (Tex. App.—Dallas 2017), <i>pet. granted</i> , 61 Tex. Sup. Ct. J. 1308 (June 8, 2018) [17-0850]. | 69 |
| 2. <u>Morale v. State</u> , 557 S.W.3d 569 (Tex. June 22, 2018) [17-0049]. | 69 |
| B. Restrictive Covenants | 70 |
| 1. <u>Tarr v. Timberwood Park Owners Assoc., Inc.</u> , 556 S.W.3d 274 (Tex. May 25, 2018) [16-1005]. | 70 |
| XXVII. 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 | 71 |
| 1. <u>Agar Corp. v. Electro Circuits Int’l, LLC</u> , 2016 WL 7436811 (Tex. App.—Houston [14th Dist.] 2016), <i>pet. granted</i> , 62 Tex. Sup. Ct. J. 119 (Nov. 16, 2018) [17-0630]. 71 | |
| C. Date of Injury | 72 |
| 1. <u>Schlumberger Tech. Corp. v. Pasko</u> , 544 S.W.3d 830 (Tex. Apr. 13, 2018) [17-0231]. | 72 |

| | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| D. Discovery Rule | 73 |
| 1. <u>Carl M. Archer Trust No. 3 v. Tregellas, 566 S.W.3d 281 (Tex. Nov. 16, 2018) [17-0093, 17-0094].</u> | 73 |
| E. Waiver | 73 |
| 1. <u>Godoy v. Wells Fargo Bank, N.A., 542 S.W.3d 50 (Tex. App.—Houston [14th Dist.] 2017), <i>pet. granted</i>, 62 Tex. Sup. Ct. J. 227 (Dec. 14, 2018) [18-0071].</u> | 73 |
| XXVIII. TAXES | 74 |
| A. Property Tax | 74 |
| 1. <u>Bosque Disposal Sys., LLC v. Parker Cty. Appraisal Dist., 555 S.W.3d 92 (Tex. May 25, 2018) [17-0146].</u> | 74 |
| 2. <u>Brazos Elec. Power Coop., Inc. v. Tex. Comm’n on Env’tl. Quality, 538 S.W.3d 666 (Tex. App.—El Paso, 2017), <i>pet. granted</i>, 62 Tex. Sup. Ct. J. 120 (Nov. 16, 2018) [17-1003].</u> | 74 |
| 3. <u>Loving Cty. Appraisal Dist. v. EXLP Leasing, LLC, 563 S.W.3d 213 (Tex. Nov. 16, 2018) [15-0971].</u> | 75 |
| 4. <u>Reeves Cty. Appraisal Dist. v. Midcon Compression, L.L.C., 563 S.W.3d 207 (Tex. Nov. 16, 2018) [15-0969].</u> | 75 |
| 5. <u>Reeves Cty. Appraisal Dist. v. Valerus Compression Servs., 563 S.W.3d 210 (Tex. Nov. 16, 2018) [15-0970].</u> | 75 |
| 6. <u>Tex. Comm’n on Env’tl. Quality v. Brazos Valley Energy, LLC, 2017 WL 3044547 (Tex. App.—Austin 2017), <i>pet. granted</i>, 62 Tex. Sup. Ct. J. 143 (Nov. 16, 2017) [18-0128].</u> | 76 |
| 7. <u>Ward Cty. Appraisal Dist. v. EES Leasing LLC, 563 S.W.3d 203 (Tex. Nov. 16, 2018) [15-0965].</u> | 76 |
| 8. <u>Willacy Cty. Appraisal Dist. v. Sebastian Cotton & Grain, Ltd., 555 S.W.3d 29 (Tex. Apr. 27, 2018) [16-0626].</u> | 76 |
| B. Redemption | 77 |
| 1. <u>Sorrell v. Estate of Carlton, 504 S.W.3d 379 (Tex. App.—Houston [14th Dist.] 2016), <i>pet. granted</i>, 61 Tex. Sup. Ct. J. 1211 (June 1, 2018) [16-0874].</u> | 77 |
| XXIX. TEXAS CITIZENS PARTICIPATION ACT | 78 |
| A. Appeals | 78 |
| 1. <u>Dall. Symphony Ass’n, Inc. v. Reyes, S.W.3d , 62 Tex. Sup. Ct. J. 588 (Tex. Mar. 8, 2019) [17-0835].</u> | 78 |
| B. Attorney Immunity Defense | 79 |
| 1. <u>Youngkin v. Hines, 546 S.W.3d 675 (Apr. 27, 2018) [16-0935].</u> | 79 |
| C. Automatic Stay | 79 |
| 1. <u>In re Geomet Recycling, LLC, No. 05-18-00261-CV (Tex. App.—Dallas 2018), <i>argument granted on pet. for writ of mandamus</i>, 62 Tex. Sup. Ct. J. 309 (Jan. 18, 2019) [18-0443].</u> | 79 |
| D. Commercial Speech Exemption | 80 |
| 1. <u>Castleman v. Internet Money Ltd., 546 S.W.3d 684 (Tex. Apr. 27, 2018) [17-0437].</u> | 80 |
| E. Initial Burden | 80 |
| 1. <u>Adams v. Starside Custom Builders, LLC, 547 S.W.3d 890 (Tex. Apr. 20, 2018) [16-0786].</u> | 80 |
| 2. <u>Dall. Morning News, Inc. v. Hall, 524 S.W.3d 369 (Tex. App.—Fort Worth 2017), <i>pet. granted</i>, 61 Tex. Sup. Ct. J. 1827 (Aug. 31, 2018) [17-0637].</u> | 81 |

| | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| 3. <u>S&S Emergency Training Solutions, Inc. v. Elliott</u> , 564 S.W.3d 843 (Tex. Dec. 21, 2018) [17-0628]. | 81 |
| 4. <u>State v. Harper</u> , 562 S.W.3d 1 (Tex. June 29, 2018) [16-0647]. | 82 |
| XXX. TEXAS MEDICAID FRAUD PREVENTION ACT | 83 |
| A. Comparative Fault | 83 |
| 1. <u>In re Xerox Corp.</u> , 555 S.W.3d 518 (Tex. June 22, 2018) [16-0671]. | 83 |
| B. Counterclaims | 83 |
| 1. <u>Nazari v. State</u> , 561 S.W.3d 495 (Tex. June 22, 2018) [16-0549]. | 83 |
| XXXI. UNIFORM COMMERCIAL CODE | 84 |
| A. Bank Transactions | 84 |
| 1. <u>Compass Bank v. Calleja-Ahedo</u> , 569 S.W.3d 104 (Tex. Dec. 21, 2018) [17-0065]. | 84 |
| XXXII. UTILITIES | 85 |
| A. Rates | 85 |
| 1. <u>Time Warner Cable Tex. LLC v. CPS Energy</u> , 537 S.W.3d 157 (Tex. App.—Austin 2017), <i>pet. granted</i> , 62 Tex. Sup. Ct. J. 119 (Nov. 16, 2018) [17-0840]. | 85 |
| XXXIII. WORKERS' COMPENSATION | 85 |
| A. Judicial Review | 85 |
| 1. <u>Tex. Mut. Ins. Co. v. Chicas</u> , 522 S.W.3d 67 (Tex. App.—Houston [1st Dist.] 2017), <i>pet. granted</i> , 62 Tex. Sup. Ct. J. 3 (Sept. 28, 2018) [17-0501]. | 85 |
| B. Subrogation | 86 |
| 1. <u>Wausau Underwriters Ins. Co. v. Wedel</u> , 557 S.W.3d 554 (Tex. June 8, 2018) [17-0462]. | 86 |

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 April 1, 2018 through March 31, 2019. Petitions granted but not yet decided are also included.

II. ADMINISTRATIVE LAW

A. Disciplinary Action

1. Aleman v. Tex. Med. Bd., 2017 WL 875315 (Tex. App.—Austin 2017), *pet. granted*, 61 Tex. Sup. Ct. J. 1827 (Aug. 31, 2018) [17-0385].

At issue in this case is whether the Texas Medical Board properly sanctioned Ruben Aleman, M.D. under the Texas Occupations Code for his failure to electronically sign a death certificate. Under the Health and Safety Code, a person who completes the medical certification on a death certificate must submit the information and attest to its validity electronically using the Texas Electronic Death Registration system. Aleman signed a paper death certificate but did not submit the information electronically. The Board filed a complaint at 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 the violation constituted “unprofessional or dishonorable conduct that is likely to deceive or defraud the public” prohibited by Texas Occupations Code section 164.052(a)(5), which is defined under section 164.053(a)(1) as including “an act that violates any state or federal law if the act is connected with the physician’s practice of medicine.” The Board sanctioned Aleman based on the administrative law judge’s recommendations.

Aleman filed suit in the trial court seeking judicial review of the Board’s sanctioning order. The trial court affirmed the Board’s sanction except for a due-process waiver in the order. Aleman appealed, and the court of appeals

affirmed the trial court’s judgment. Specifically, the court of appeals held substantial evidence supported that Aleman engaged in conduct prohibited by section 164.053 of the Health and Safety Code, his conduct violated state law section 193.005, and was in connection with the “practice of medicine.” The court of appeals also held Aleman was not entitled to an impossibility defense for being unable to electronically submit the death certificate because the impossibility was a product of his own actions—his failure to register with the electronic death registration system.

Aleman appealed to the Supreme Court, arguing Occupations Code section 164.053(a)(1) does not contemplate electronic-submission violations. Alternatively, he asserts that no evidence supports the Board’s finding of “unprofessional or dishonorable conduct that is likely to deceive or defraud the public,” and signing a death certificate was not a “practice of medicine.” Aleman also argues he should not be sanctioned when compliance was impossible. The Court granted Aleman’s petition for review and heard oral argument on December 6, 2018.

B. Exhaustion of Administrative Remedies

1. Garcia v. City of Willis, 523 S.W.3d 729 (Tex. App.—Beaumont 2017), *pet. granted*, 61 Tex. Sup. Ct. J. 1828 (Aug. 31, 2018) [17-0713].

At issue in this case is whether the City of Willis is immune from suit in this challenge to the City’s red-light-camera ordinance based on the plaintiff’s failure to exhaust administrative remedies and failure to assert a valid ultra vires claim.

The City adopted an ordinance implementing a red-light-camera system, pursuant to Chapter 707 of the Transportation Code. Luis Garcia represents a putative class of residents who have paid a civil penalty for traffic violations under the red-light-camera ordinance. Garcia challenged the

constitutionality of the City’s ordinance and Chapter 707. Alternatively, Garcia alleged that the City failed to meet the Transportation Code’s requirement to conduct a traffic engineering study before installing the cameras and thus acted ultra vires in collecting civil penalties using the system. The City of Willis filed a plea to the jurisdiction on the grounds of governmental immunity and failure to exhaust administrative remedies. The trial court denied the plea, but the court of appeals reversed. It held that Chapter 707 of the Transportation Code directs cities to establish an “exclusive” administrative regime, which must be exhausted before filing suit in district court. It also held that the ultra vires exception does not apply because the requirement to conduct a traffic engineering study was merely a “regulatory requirement” insufficient to support an ultra vires claim. The Supreme Court granted Garcia’s petition for review and heard oral argument on November 1, 2018.

2. Mosley v. Tex. Health & Human Servs. Comm’n, 517 S.W.3d 346 (Tex. App.—Austin 2017), *pet. granted*, 61 Tex. Sup. Ct. J. 1826, (Aug. 31, 2018) [17-0345].

At issue in this case is whether petitioner was required to satisfy the Administrative Procedure Act’s motion-for-rehearing requirement before seeking judicial review when the Human Resources Code did not expressly require a motion for rehearing and the administrative law judge’s order stated that the petitioners’ “only recourse” was to file suit for judicial review within 30 days.

Patricia Mosley was placed on a Texas Department of Family and Protective Services Registry for a report of “abuse, neglect, or exploitation of an elderly person or person with a disability” after a group-home resident whom she was supervising swallowed batteries. Mosley requested an administrative appeal hearing. The administrative law judge sustained the determination and sent Mosley a letter stating that the order would become final unless she petitioned for judicial review. Believing that a motion for rehearing was not required, Mosley sued for judicial review. The agency filed a plea to the jurisdiction, arguing that under the Administrative Procedure Act, failure to file a motion for

rehearing deprived the trial court of jurisdiction. The trial court denied the plea, but the court of appeals reversed and rendered judgment dismissing Mosley’s claims. Mosley petitioned the Supreme Court for review arguing that a rehearing is not required under the Administrative Procedure Act but that if it is, such a requirement violates her rights to due process and due course.

The Court granted Mosley’s petition for review and heard oral argument on January 9, 2019.

C. Public Information Act

1. Tex. Dep’t of Criminal Justice v. Levin, 520 S.W.3d 225 (Tex. App.—Austin 2017), *pet. granted*, 62 Tex. Sup. Ct. J. 69 (Oct. 19, 2018) [17-0552].

At issue in this case is whether the Texas Department of Criminal Justice (TDCJ) proved the right to withhold from disclosure under the Texas Public Information Act (TPIA) the identity of a supplier of the lethal-injection drugs because disclosure “would create a substantial threat of physical harm.” Maurie Levin, Naomi Terr, and Hilary Sheard (collectively, Levin) represent capital defendants. Against the backdrop of the controversy regarding “botched” executions by lethal injection in other states, Levin made written requests of TDCJ under the TPIA for the agency’s execution protocol—the drugs used in lethal injections, any results of testing on those drugs, and the source of the drugs. TDCJ eventually produced all of the information requested except the specific source of the drugs. TDCJ then requested a ruling from the Office of the Attorney General (OAG) that it could lawfully withhold the specific identity of the pharmacy, relying on the common law protection against disclosure if the release of the information would create a “substantial threat of physical harm.” The OAG agreed with TDCJ and Levin sought judicial review. The trial court granted Levin’s motion for summary judgment and denied TDCJ’s. The court of appeals affirmed, finding that TDCJ’s summary judgment evidence presented mere isolated threats that, without more, did not support anything but speculation that disclosure of the pharmacy or pharmacist’s identity would necessarily give rise to a substantial—more likely than not—threat of physical harm.

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