
SUPREME COURT OF TEXAS UPDATE
March 2023 through April 2024

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Table of Contents

I. SCOPE OF THIS PAPER	1
II. DECIDED CASES	1
A. ADMINISTRATIVE LAW	1
1. Jurisdiction	1
B. ARBITRATION	1
1. Admission Pro Hac Vice	1
2. Arbitrability	2
3. Enforcement of Arbitration Agreement	5
C. ATTORNEYS	6
1. Attorney–Client Privilege	6
2. Escrow	7
3. Fees	8
D. CLASS ACTIONS	9
1. Class Certification	9
E. CONSTITUTIONAL LAW	11
1. Abortion.....	11
2. Retroactivity	12
3. Separation of Powers	12
F. CONTRACTS	13
1. Damages.....	13
2. Interpretation	14
3. Releases and Reliance Disclaimers.....	14
G. CORPORATIONS	15
1. Stock Redemption	15
H. DAMAGES	16
1. Settlement Credits.....	16
2. Wrongful Death	17
I. ELECTIONS	18
1. Injunctive Relief.....	18
J. EMPLOYMENT LAW	19
1. Disability Discrimination	19

2.	Employment Discrimination	19
K.	EVIDENCE.....	20
1.	Exclusion for Untimely Disclosure	20
2.	Expert Testimony	21
3.	Medical Expense Affidavits.....	22
L.	FAMILY LAW.....	22
1.	Division of Community Property	22
2.	Termination of Parental Rights	23
M.	FEDERAL LAW.....	26
1.	Regulatory Interpretation	26
N.	FEDERAL PREEMPTION	27
1.	Railroads	27
O.	GOVERNMENTAL IMMUNITY	28
1.	Arm of the State.....	28
2.	Condemnation Claims	29
3.	Contract Claims	30
4.	Texas Tort Claims Act	33
5.	Texas Whistleblower Act	36
6.	Ultra Vires Claims.....	37
P.	HEALTH AND SAFETY.....	38
1.	Involuntary Commitment.....	38
Q.	INSURANCE.....	38
1.	Appraisal Clauses	38
2.	Incorporation by Reference	39
3.	Policies/Coverage	40
4.	Rescission of Policy	40
R.	INTENTIONAL TORTS	41
1.	Defamation.....	41
S.	JURISDICTION	42
1.	Appellate	42
2.	Mandamus Jurisdiction.....	44
3.	Personal Jurisdiction.....	44
4.	Subject Matter Jurisdiction	45

T.	JUVENILE JUSTICE	46
1.	Mens Rea.....	46
U.	MEDICAL MALPRACTICE.....	46
1.	Expert Reports.....	46
V.	MEDICAL LIABILITY.....	47
1.	Health Care Liability Claims.....	47
W.	MUNICIPAL LAW.....	48
1.	Authority.....	48
2.	State Law Preemption.....	48
X.	NEGLIGENCE.....	49
1.	Duty.....	49
2.	Premises Liability.....	50
3.	Res Ipsa Loquitur.....	51
4.	Unreasonably Dangerous Conditions.....	52
5.	Willful and Wanton Negligence.....	52
Y.	OIL AND GAS.....	53
1.	Deed Construction.....	53
2.	Force Majeure.....	53
3.	Leases.....	54
4.	Release Provisions.....	56
5.	Royalty Payments.....	57
Z.	PROCEDURE—PRETRIAL.....	59
1.	Compulsory Joinder.....	59
2.	Discovery.....	60
3.	Dismissal.....	61
4.	Forum Non Conveniens.....	62
5.	Personal Jurisdiction.....	63
6.	Statute of Limitations.....	65
7.	Summary Judgment.....	66
8.	Venue.....	67
AA.	PROCEDURE—TRIAL AND POST-TRIAL.....	68
1.	Batson Challenge.....	68
2.	New Trial Orders.....	68

3.	Rendition of Judgment	69
BB.	REAL PROPERTY	70
1.	Easements	70
2.	Subrogation.....	71
CC.	STATUTE OF LIMITATIONS	71
1.	Lien on Real Property.....	71
2.	Tolling	72
DD.	SUBJECT MATTER JURISDICTION	73
1.	Standing.....	73
EE.	TAXES	74
1.	Property Tax	74
FF.	TEXAS CITIZENS PARTICIPATION ACT	75
1.	Interpretation and Application	75
GG.	TEXAS DISASTER ACT	76
1.	Executive Power	76
III.	GRANTED CASES	76
A.	ADMINISTRATIVE LAW	76
1.	Judicial Review	76
2.	Public Utility Commission	77
B.	ATTORNEYS	78
1.	Legal Malpractice	78
C.	CLASS ACTIONS	79
1.	Class Certification	79
D.	CONSTITUTIONAL LAW	80
1.	Abortion.....	80
2.	Free Speech.....	80
3.	Gender Dysphoria Treatments	81
4.	Gift Clauses.....	82
E.	CONTRACTS	82
1.	Interpretation	82
F.	EMPLOYMENT LAW	83
1.	Age Discrimination	83
2.	Sexual Harassment	83

G.	FAMILY LAW	84
1.	Division of Marital Estate	84
H.	GOVERNMENTAL IMMUNITY	85
1.	Independent Contractors.....	85
2.	Official Immunity	85
3.	Texas Commission on Human Rights Act	86
4.	Texas Tort Claims Act.....	87
5.	Texas Whistleblower Act.....	88
6.	Ultra Vires Claims.....	89
I.	INTENTIONAL TORTS	89
1.	Fraud.....	89
J.	JURISDICTION	90
1.	Injunctions	90
2.	Service of Process.....	90
3.	Subject Matter Jurisdiction	91
4.	Territorial Jurisdiction.....	91
K.	MEDICAL LIABILITY	92
1.	Damages.....	92
L.	OIL AND GAS	93
1.	Assignments.....	93
2.	Contract Interpretation.....	93
3.	Leases.....	94
4.	Pooling.....	94
M.	PROCEDURE—APPELLATE	95
1.	Interlocutory Appeal Jurisdiction	95
N.	PROCEDURE—PRETRIAL	96
1.	Compulsory Joinder.....	96
2.	Discovery	96
3.	Multidistrict Litigation	98
4.	Responsible Third-Party Designation.....	99
5.	Summary Judgment	99
O.	PROCEDURE—TRIAL AND POST-TRIAL	100
1.	Collateral Attack	100

2.	Jury Instructions and Questions	100
P.	PRODUCTS LIABILITY	101
1.	Design Defects	101
2.	Statute of Repose	102
Q.	PROFESSIONAL SERVICES	102
1.	Anti-Fracturing Rule	102
R.	REAL PROPERTY	103
1.	Implied Reciprocal Negative Easements	103
2.	Landlord Tenant	104
S.	RES JUDICATA	104
1.	Elements of Res Judicata	104
T.	TAXES	105
1.	Property Tax	105
2.	Tax Protests	106

I. SCOPE OF THIS PAPER

This paper surveys cases that the Supreme Court of Texas decided from March 1, 2023, through April 30, 2024. Petitions granted but not yet decided are also included.

The summaries do not constitute the Court's official descriptions or statements. Readers are encouraged to review the Court's official opinions for specifics regarding each case. The Court appreciates suggestions and corrections, which may be sent via email to amy.starnes@txcourts.gov.

II. DECIDED CASES

A. ADMINISTRATIVE LAW

1. *Jurisdiction*

- a) *Morath v. Lampasas Indep. Sch. Dist.*, ___ S.W.3d ___, 2024 WL 648671 (Tex. Feb. 16, 2024) [22-0169]

The central issue in this case is whether the Commissioner of Education had jurisdiction over a detachment-and-annexation appeal.

A land development company petitioned two school boards to detach undeveloped property from one school district and annex it to the other. Under the relevant statutory provisions, if both boards agree on the disposition of a petition, the decision is final. But if only one board “disapproves” a petition, the Commissioner can settle the matter in an administrative appeal. Here, one board approved the petition, but the other board took no action following a hearing. The company appealed to the Commissioner, asserting that the board constructively disapproved the petition by its inaction. The Commissioner approved the annexation but

surpassed a statutory deadline to issue a decision. In a suit for judicial review, the trial court affirmed. The court of appeals vacated the judgment and dismissed the case, holding that a board's inaction cannot provide the requisite disagreement for an appeal to the Commissioner.

The Supreme Court reversed. The Court held that the Commissioner had jurisdiction because, under a plain reading of the statute, a board “disapproves” a petition by not approving it within a reasonable time after a hearing. The Court further held that the Commissioner did not lose jurisdiction when the statutory deadline passed. The deadline is not jurisdictional, and the Legislature did not intend dismissal as a consequence for noncompliance with that deadline. The Court remanded the case to the court of appeals to address other challenges to the Commissioner's decision.

B. ARBITRATION

1. *Admission Pro Hac Vice*

- a) *In re AutoZoners, LLC*, ___ S.W.3d ___, 2024 WL 1819655 (Tex. Apr. 26, 2024) (per curiam) [22-0719]

In this case, the Court addressed motions by out-of-state attorneys seeking to appear pro hac vice. Velasquez sued his employer, AutoZoners, for age discrimination. A Texas attorney, Koehler, filed an answer for AutoZoners. The signature block included the electronic signature of Koehler. Below this signature, the signature block included two out-of-state attorneys, Riley and Kern, with statements that an “application for pro hac vice admission will be forthcoming.” Shortly

thereafter, Riley and Kern filed motions to appear pro hac vice. Velasquez objected to their admission.

At a hearing, Riley and Kern testified that they had reviewed the answer and provided input but denied preparing and filing the answer. The trial court denied their motions to appear pro hac vice on the sole ground that Riley and Kern were “signing documents before being admitted.” Auto-Zoners sought mandamus relief from the order denying the motions.

The court of appeals denied mandamus relief. The Supreme Court granted mandamus relief. The Court held that Riley and Kern had not signed any pleadings, and the trial court abused its discretion in denying the motions to appear pro hac vice on that ground. The Court concluded that Riley and Kern had not engaged in the unauthorized practice of law and had not appeared on a frequent basis in Texas courts and that Kern’s conduct in a federal case was not grounds for denying her motion. The Court concluded that mandamus relief was available to remedy the trial court’s abuse of discretion.

2. Arbitrability

- a) *Alliance Auto Auction of Dall., Inc. v. Lone Star Cleburne Autoplex, Inc.*, 674 S.W.3d 929 (Tex. Sept. 1, 2023) (per curiam) [22-0191]

This case concerns the issue of incorporation of American Arbitration Association rules into their contract delegate the question of arbitrability to the arbitrator when the selection of AAA rules is contingent on another clause in the agreement.

Lone Star sued Alliance, alleging that Alliance conspired with two of Lone Star’s employees to embezzle money from Lone Star. Alliance moved to stay the suit and compel arbitration, relying on arbitration clauses contained in authorization agreements between Lone Star and a third party. Alliance argues those agreements designate it as a third-party beneficiary who may invoke the arbitration clause against Lone Star. The arbitration agreement states that if the parties are unable to agree on an alternative dispute resolution firm, the arbitration will be conducted under AAA rules.

The trial court denied Alliance’s motion to compel arbitration. The court of appeals affirmed, holding that the question of whether a case should be sent to arbitration is a gateway issue that courts must decide. After Alliance filed its petition for review in the Supreme Court, it issued its decision in *Totalenergies E&P USA, Inc., v. MP Gulf of Mexico, LLC*, ___ S.W.3d ___, 2023 WL 2939648 (Tex. April 14, 2023), which held that the general rule is that the incorporation of AAA rules constitutes a clear and unmistakable agreement that the arbitrator must decide whether the parties’ disputes must be resolved through arbitration.

Lone Star argues that this case is distinguishable from *TotalEnergies* because (1) the parties here agreed to arbitrate under the AAA rules only if they are unable to agree on a different ADR firm; and (2) Alliance is not a party to the arbitration agreement but is instead a third-party beneficiary that may, or may not, elect to invoke the arbitration agreement. In a per curiam opinion, the Court remanded to

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