

Supreme Court of Texas Update

Hon. Jane Bland

2023-2024 Term

By the Numbers

- 69 cases argued, including 3 certified questions and 2 direct appeals
 - 26 granted to argue in the new term (more to come)
 - 222 mandamuses; 151 denied (5 with a PC); 6 granted; 4 set to argue next term
 - 31 per curiam opinions
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Subject Matter

- 33 Categories
 - Case Summary Paper (divided by decided and pending cases)
 - Updated Monthly; rolling one year time frame
 - www.txcourts.gov/supreme/case-summaries
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Jurisdiction

- *Morath v. Lampasas Independent School Dist.*: the Commissioner of Education had jurisdiction over a detachment administrative appeal; provision setting a deadline for a Commission decision was not jurisdictional.
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Defamation

- *Polk County Publishing Co. v. Coleman*: a newspaper article is not defamatory if the gist of the article is true. A challenged statement is not actionable if the true account would be more damaging to one's reputation than the allegedly false statement.
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Civil Trial

- *University of Texas System v. Franklin Center*: An investigator acting as a lawyer's representative is covered by the attorney client privilege if the investigative documents are intended to be kept confidential. A published report waives the privilege to the extent the report discloses part of the contents of the disputed documents.
 - *Jackson v. Takara*: The trial court did not abuse its discretion in permitting a fact witness to testify. Counsel represented to the court without contradiction that the parties had agreed to extend the discovery deadline. The opposing party was aware of the witness, referred to the witness in testimony, and did not show unfair surprise.
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Civil Trial

- *Horton v. Kansas City Railroad*: The *Casteel* presumption of harm does not apply to alternative facts when legally sufficient evidence otherwise supports a valid legal claim. Charge error must still be examined for harm. The court of appeals must state why any charge error is harmless.
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Constitutional Law

- *Borgelt v. Austin Firefighters Association*: A collective bargaining agreement did not violate the Gift Clauses because the agreement required sufficient City oversight of the use of the leave time that was in dispute and had a public purpose. Abuse of that leave was a violation of the contract, not a violation of the Gift Clauses.
 - *Hogan v. Southern Methodist University*: The Pandemic Protection Liability Act shielding universities from damages associated with in-person education was not unconstitutional as a retroactive law. There was no settled, recognized cause of action for such damages at common law, and the impossibility doctrine would have barred most of the claim.
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Immunity

- *Campellton Road Ltd. v. City of San Antonio Water System*: Developer who provided sewer services sufficiently demonstrated a written contract and breach to overcome a plea to jurisdiction based on immunity. The contract sufficiently stated essential terms, and the contractor alleged recoverable damages under Chapter 271.
 - *Texas Tech University v. Martinez*: The plaintiff in an age discrimination case sufficiently pleaded a claim against her employer but did not allege facts sufficient to demonstrate control over the employment decision by the university system or its board of regents under *Runnels*. The Court remanded for discovery and repleading.
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Appellate Jurisdiction

- *In re Dallas County*: Article V, Section 1 in the Texas Constitution authorizing the Legislature to “establish other courts as it may deem necessary” permits the Legislature to establish a Fifteenth Court of Appeals of limited statewide jurisdiction.
 - Overlapping jurisdiction is not a constitutional infirmity; five appellate courts have some overlapping jurisdiction; the Legislature has adjusted these boundaries for decades. The provision that divides appellate courts did away with the historic one appellate court; it did not require that jurisdictional limitations be geographic, as demonstrated by case transfers among the appellate courts— which the Court upheld in 1903.
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Appellate Jurisdiction

- *Sealy Emergency Room, L.L.C. v. Free Standing Emergency Room Managers of America, L.L.C.*: If an order in a severed cause disposes of all the claims in that action or includes express finality language, then it is a final judgment, even if claims remain pending in the original action.
 - *In re A.C.T.M.*: The court of appeals had jurisdiction to reach merits of an appeal where first notice of appeal was premature but effective under TRAP 27.1 and second notice of appeal was filed after the court of appeals remanded the case to obtain a final judgment.
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Rules Update

- Disciplinary Rules Referendum
 - Business Court Rules
 - Judicial Administration Task Force (HB 2384)
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Coming attractions

Granted Cases for Next Term

- *Henry S. Miller v. Newsom*: whether a client may assign proceeds and settlement control for a legal malpractice judgment to the client's former adversary.
 - *In re Jane Doe*: whether the judicial panel for multi-district litigation panel erred by declining to remand a case to the trial court for lack of common questions of fact.
 - *University of Texas v. Gatehouse Media*: whether the Public Information Act permits a university to withhold information about the results of student disciplinary proceedings.
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Welcome back to school.