

Supreme Court of Texas Case Update

Hon. Jane Bland

The 2024-2025 Term at a Glance

By the Numbers

- 62 arguments
 - 5 certified questions (same as last term)
 - 1 signed opinion issued without argument
 - 39 opinions issued per curiam
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Court Composition Update



Justice Jimmy Blacklock was appointed as chief justice following the retirement of Chief Justice Nathan Hecht.



Justice James Sullivan was appointed to the Court in January.

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The Court has a vacancy following the retirement of Justice Jeff Boyd. A new justice has yet to be appointed.

Personal Jurisdiction

- Stream of Commerce Plus: *BRP-Rotax v. Shaik*
 - Purposeful action targeting Texas remains the touchstone for personal jurisdiction.
 - A defendant who deploys others to target Texas remains subject to personal jurisdiction themselves, but purposeful availment is not satisfied when the unilateral actions of third parties result in a product arriving in the state.
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Jurisdiction

- Jurisdiction of the Fifteenth Court: *Kelley v. Homminga & Devon Energy v. Oliver* (consolidated PC)
 - The Legislature did not intend the 15th Court to hear every appeal within its statewide jurisdiction.
 - It only intended the court to hear: (1) appeals within its exclusive intermediate appellate jurisdiction; and (2) appeals transferred into it by this Court for docket-equalization purposes.
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Pretrial Procedure

- Venue: *Rush Truck Centers of Tex. v. Sayre*
 - Section 15.003(b) of the Civil Practice and Remedies Code permits interlocutory appeal of a venue determination involving multiple plaintiffs only in cases where a plaintiff's independent claim to venue is at issue.
 - An interlocutory appeal is not permitted in multi-plaintiff cases when a trial court never needed to determine whether each plaintiff independently established venue— i.e. that different plaintiffs had differing venue facts.
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Contracts

- Damages: *White Knight Development, LLC v. Simmons*
 - There is a narrow set of circumstances where a court can equitably award monetary damages in addition to specific performance to return the party to the position it would have been but for the other party's performance delay.
 - These are not breach of contract damages, but a means to equalize the losses between the parties occasioned by the delay.
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Negligence

- Causation: *Werner Enterprises, Inc. v. Blake*
 - To establish negligence, the proximate cause element requires proof of both but-for causation and substantial-factor causation. Where the substantial factor explaining why an accident happened was the driver losing control of a pickup and crossing the highway in front of an 18-wheeler, evidence of substantial factor causation was insufficient as a matter of law. The 18-wheeler driver's negligence, if any, was too attenuated for a jury to consider whether it, too, was a substantial factor cause of the plaintiffs' injuries.
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Negligence

- Public Utilities: *In re Oncor Elec. Delivery Co.*
 - To be liable for intentional nuisance, a defendant must have “created” or affirmatively “maintained” a nuisance.
 - Because the defendant utility companies were not a source of the nuisance—here, freezing temperatures in a winter storm—the intentional nuisance claims had no basis in law.
 - The plaintiffs failed to plead facts showing that the Utilities’ acts or omissions in their response to ERCOT’s orders to cut power were consciously indifferent to support a claim for gross negligence. The Court remanded the claim for an opportunity to replead.
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Public Information Act

- State and Federal Interplay: *UT Austin v. GateHouse Media*
 - Section 552.026 of the PIA—which states that the act “does not require the release” of education records “except in conformity with” FERPA—grants discretion whether to disclose an education record if FERPA authorizes disclosure.
 - An educational institution is not required to obtain an OAG decision before withholding records under the discretion FERPA grants to it.
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Arbitration

- Delegation Clauses: *Cerna v. Urban Air*
 - While courts must decide challenges contesting the existence of arbitration agreements, a challenge that disputes an agreement's existence as to a particular claim is a challenge to the scope of the agreement, not its existence.
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Employment Discrimination

- Individual liability: *Butler v Collins*
 - Labor Code Chapter 21 provides the exclusive remedy against an employer when the “gravamen of a plaintiff’s case” is Chapter 21-covered discrimination.
 - Chapter 21 does not subject individual employees to liability, and the Court concluded that nothing in Chapter 21 indicates legislative intent to immunize a non-employer from recognized common law claims based on that individual’s own tortious conduct.
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Oil and Gas

- Surface v. Mineral Owner Rights: *Myers-Woodward, LLC v. Underground Services Markham, LLC* and *Cactus Water Servs., LLC v. COG Operating, LLC*
 - Subsurface storage voids encased in salt and created by the production of salt belonged to the surface owner.
 - A mineral conveyance using typical language to convey oil and gas rights, though not expressly addressing produced water, includes that substance as part of the conveyance.
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Constitutional Law

- Religion Clauses: *Perez v. City of San Antonio*
 - Article I, Section 6-a of the Texas Constitution, which forbids the state from “prohibit[ing] or limit[ing] religious services,” is categorical when it applies. but its scope is limited and does not reach the type of governmental actions about which Perez complained.
 - The Clause generally forbids the government from prohibiting people from gathering for a religious service, restricting the number or relationships of people who can gather for a religious service, or regulating the activities in which people may engage when they gather. The City’s decisions were not of that character and were thus not prohibited.
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Coming attractions

CASES GRANTED FOR 2025-26

- *S&B Engineers & Constructors, Ltd. v. Scallon Controls, Inc.*, [24-0525]: Can a defendant settle tort claims and then seek recovery under a contractual comparative-indemnity provision?
 - *Ortiz v. Nelapatla*, [23-0953]: Is the portion of a medical affidavit that is undisputed under Civil Practice and Remedies Code Chapter 18.001 admissible?
 - *S. Tex. Indep. Sch. Dist. v. Busse*, [24-0782]: Do taxpayers of an overlapping school district and county have standing to challenge a school district's changed use of *ad valorem* tax revenue?
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Questions?

Thank you!