

Texas Civil Procedure

Texas Civil Procedure

Trial and Appellate Practice

2018–2019 EDITION

William V. Dorsaneo III

CHIEF JUSTICE JOHN AND LENA HICKMAN DISTINGUISHED
FACULTY FELLOW AND PROFESSOR OF LAW
SOUTHERN METHODIST UNIVERSITY DEDMAN SCHOOL OF LAW

Elizabeth G. Thornburg

RICHARD R. LEE ENDOWED PROFESSOR
SOUTHERN METHODIST UNIVERSITY DEDMAN SCHOOL OF LAW

Elaine Grafton Carlson

STANLEY J. KRIST DISTINGUISHED PROFESSOR OF TEXAS LAW
SOUTH TEXAS COLLEGE OF LAW

David Crump

JOHN B. NEIBEL PROFESSOR OF LAW
UNIVERSITY OF HOUSTON



CAROLINA ACADEMIC PRESS

Durham, North Carolina

Copyright © 2018
Carolina Academic Press, LLC
All Rights Reserved

Texas Civil Procedure: Trial and Appellate Practice
ISSN: 2159-4090
LCCN: 2018950235

ISBN: 978-1-5310-1244-1
eISBN: 978-1-53101-245-8

Carolina Academic Press, LLC
700 Kent Street
Durham, NC 27701
Telephone (919) 489-7486
Fax (919) 493-5668
www.caplaws.com

Printed in the United States of America

Table of Practice Exercises

Practice Exercise #1	32
Practice Exercise #2	41
Practice Exercise #3	48
Practice Exercise #4	94
Practice Exercise #5	98
Practice Exercise #6	107
Practice Exercise #7	136
Practice Exercise #8	209
Practice Exercise #9	267
Practice Exercise #10	330
Practice Exercise #11.....	358
Practice Exercise #12	387
Practice Exercise #13	450
Practice Exercise #14.....	459
Practice Exercise #15	503
Practice Exercise #16.....	541
Practice Exercise #17	631
Practice Exercise #18	651
Practice Exercise #19	737
Practice Exercise #20	756
Practice Exercise #21	764
Practice Exercise #22	792

Contents

Introduction	xxii
Chapter 1 • Pretrial Preparation and Motion Practice	3
§ 1.01 Scheduling the Trial	3
[A] Setting the Case for Trial in Accordance With Local Rules	3
[1] Trial Settings	3
[a] Methods of Setting for Trial	3
[b] Consequences of Failure to Set Case for Trial	4
[c] Notice of Setting for Trial	4
[d] Expedited Trial Settings	5
[e] Preferential Settings	5
[2] Announcements at Docket Calls	6
[a] Generally	6
[b] Consequences of Failure to Announce	6
[3] Dismissals for Want of Prosecution	7
<i>Villarreal v. San Antonio Truck & Equipment</i>	7
Notes and Questions	11
<i>Smith v. Babcock & Wilcox Construction Co., Inc.</i>	13
Notes and Questions	15
[B] Continuances	16
[1] Continuance for Absence of Counsel:	
The Scheduling Dilemma	16
[a] Conflicting Engagements	17
<i>Oates v. Oates</i>	17
<i>Reyna v. Reyna</i>	18
Notes and Questions	19
[b] Withdrawal of Counsel	20
<i>Villegas v. Carter</i>	20
Notes and Questions	22
[2] Continuance for Want of Testimony (Missing Witness)	22
<i>Burke v. Scott</i>	23
Notes and Questions	25
[3] Continuance for Absence of a Party	28
Notes and Questions	28
[4] Legislative Continuance	29

Practice Exercise #1	32
[5] Expedited Actions	32
§ 1.02 Obtaining a Trial by Jury	33
[A] The Right to a Jury Trial in Texas	33
<i>State of Texas v. Credit Bureau of Laredo, Inc.</i>	33
<i>State v. Landry</i>	37
Notes and Questions	39
Practice Exercise #2	41
[B] Jury Fee, Demand, and Waiver	42
<i>Halsell v. Dehoyos</i>	43
<i>Six Flags Over Texas, Inc. v. Parker</i>	44
Notes and Questions	46
[C] Do You Really Want to Demand a Jury? The Choice Between Trial by Jury and Trial to the Court	47
William V. Dorsaneo III, Texas Litigation Guide	47
Practice Exercise #3	48
§ 1.03 The Motion <i>In Limine</i> and Other Motions on the Eve of Trial	48
[A] Nature and Use of the Motion <i>in Limine</i>	48
William V. Dorsaneo III, Texas Litigation Guide	48
<i>Acord v. General Motors Corp.</i>	50
<i>Tempo Tamers, Inc. v. Crow-Houston Four, Ltd.</i>	50
Notes and Questions	51
[B] Practical Use of the Motion <i>in Limine</i>	53
[1] Deciding Upon Subjects of the Motion; Opposing the Motion	53
William V. Dorsaneo III, Texas Litigation Guide	53
[2] Drafting the Motion	55
William V. Dorsaneo III, Texas Litigation Guide	55
Notes and Questions	57
[C] Other Motions on the Eve of Trial	58
Note	58
Appendix—Jury Trials, Trial Settings, Continuances, Motions In <i>Limine</i> and the Texas Bar Exam	59
Chapter 2 · Jury Selection	67
§ 2.01 Selection of Jury Panel	67
[A] Jury Wheel System	67
[B] Mechanical or Electronic System	68
[C] Summoning Jurors	68
[D] Empaneling the Jury	69
[1] Number of Jurors; Panel Selection	69
[2] Qualifications	70
[3] Exemptions	71
[E] Assignment for Service	72
[1] Interchangeable Juries	72

[2] Juries in Other Counties	73
§ 2.02 <i>Voir Dire</i> Examination	74
[A] Purpose and Scope of Examination	74
<i>Hyundai Motor Co. v. Vasquez</i>	74
<i>In re Commitment of Hill</i>	89
Notes and Questions	91
Practice Exercise #4	94
[B] Challenges for Cause	95
[1] Statutory Disqualification Grounds	95
Practice Exercise #5	98
[2] Bias or Prejudice	99
<i>Cortez ex rel. Puentes v. HCCI-San Antonio, Inc.</i>	99
<i>El Hafi v. Baker</i>	105
Practice Exercise #6	107
[3] Preservation of Error	107
<i>Hallett v. Houston Northwest Medical Center</i>	107
Notes and Questions	109
[C] Peremptory Challenges	110
[1] Properly Allocating the Number of Peremptory Strikes	110
<i>Tamburello v. Welch</i>	110
<i>Patterson Dental Company v. Dunn</i>	114
Notes	119
[2] Constitutionally Flawed Peremptory Challenges	120
[a] Impermissible Bases for Exercising Peremptory Strikes	121
<i>Powers v. Palacios</i>	121
Notes and Questions	122
<i>Davis v. Fisk Electric Co.</i>	123
Notes and Questions	133
[b] Procedures for Urging <i>Batson</i> Challenges and Burden of Proof	133
Notes and Questions	136
Practice Exercise #7	136
§ 2.03 Jury Selection in Practice	137
[A] The Conduct of the <i>Voir Dire</i> Examination in Practice	137
D. Crump, Attorneys' Goals and Tactics in <i>Voir Dire</i> Examination	137
A Sample <i>Voir Dire</i> Examination: Examination by Joseph D. Jamail In <i>Aspromonte v. General Motors</i>	142
Notes and Questions	163
[B] The Exercise of Peremptory Challenges	164
Sample Jury Information Forms and Jury Strikes: D. Crump, <i>The Anatomy of a Civil Suit: Obiedio v. J. Weingarten, Inc.</i>	164
Notes and Questions	174
Appendix— Jury Selection and the Texas Bar Exam	176

Chapter 3 · The Trial	181
§ 3.01 The Order of Proceedings in a Jury Trial	181
[A] The Events in a Trial	181
[1] Empaneling the Jury	181
[2] Opening Statements	182
[3] “The Rule”	182
[4] Order and Nature of Proof	182
[5] The Motion for Instructed Verdict	184
[6] The Jury Charge	184
[7] Jury Argument	185
[8] Jury Deliberations and Receipt of Verdict	185
[9] Judgment and New Trial	185
[10] Summary	186
[B] The Right to Open and Close	186
<i>Montoya v. Nueces Vacuum Service, Inc.</i>	186
Notes and Questions	194
§ 3.02 Opening Statements	195
<i>Ranger Insurance Co. v. Rogers</i>	196
Notes and Questions	199
§ 3.03 Invoking “The Rule”	200
<i>Drilex Systems, Inc. v. Flores</i>	200
Practice Exercise #8	209
§ 3.04 The Mechanics of Presenting Proof	209
[A] Exhibits: Presenting and Excluding Evidence	209
<i>Guetersloh v. C.I.T. Corp.</i>	209
Notes and Questions	211
Dorsaneo & Johnson, Texas Civil Trial Guide	211
[B] Stipulations	215
<i>Jackson v. Lewis</i>	215
[C] Direct Examination of Witnesses: The Format of Making One’s Proof	219
D. Crump, Some Problems of Direct Examination and Their Solutions	219
Introduction to Sample Direct Examination of Plaintiff as Witness in <i>Obiedio v. J. Weingarten, Inc.</i>	223
A Sample Witness Examination: Excerpts From Testimony of the Plaintiff, Record at 81–94, <i>Obiedio v. J. Weingarten, Inc.</i>	224
Notes and Questions	233
[D] The Relationship Between the Evidence and Instructed Verdict	234
Note on Instructed Verdict	234
<i>J. Weingarten, Inc. v. Obiedio</i>	234
[E] Cross-Examination and Examination of Adverse Parties	239
<i>Kiel v. Texas Employers Insurance Association</i>	239
Note	240

<i>Truco Properties, Inc. v. Charlton</i>	241
[F] Use of Discovery Materials at Trial	241
[G] Use of Opinion Testimony at Trial	242
[1] Overview: Lay and Expert Testimony	242
Dorsaneo & Johnson, Texas Civil Trial Guide	242
[2] The Texas Supreme Court Applies Daubert/Robinson	245
<i>Gammill v. Jack Williams Chevrolet, Inc.</i>	245
Notes and Questions	257
[H] Control by the Court of the Presentation of Proof: Comments, Rulings, and Preservation of Error	259
[1] Prejudicial Comments; Preserving Error as to Excluded Evidence	259
J. Pope & C.E. Hampton, Presenting And Excluding Evidence	259
<i>Texas Employers' Insurance Association v. Garza</i>	262
[2] Preserving Error as to Admitted Evidence	266
<i>Harlow v. Swift and Co.</i>	266
Practice Exercise #9	267
§ 3.05 Trial Motion Practice	268
William V. Dorsaneo III, Texas Litigation Guide	268
Appendix—Invoking the Rule, Expert Testimony, and the Texas Bar Exam	271
Chapter 4 • The Jury Charge	277
§ 4.01 The Jury Charge—Background and Overview	277
[A] The Purpose of the Jury Charge	277
[B] A Sample Texas Jury Charge	278
[1] Broad Form Submission	278
Notes and Questions	284
[2] Separate and Distinct Submission	284
Notes and Questions	285
[C] Historical Development and Pervasive Issues	285
[1] Pre-1973: Specific Questions (Special Issues)	285
[2] The Transition Period: 1973–1988	286
[3] Treatment of the Inferential Rebuttal Defense	288
[4] Variance Problems	290
<i>Brown v. American Transfer and Storage Co.</i>	291
Notes and Questions	294
[5] The Court Commits to Broad Form	294
<i>Island Recreational Development Corp. v. Republic of Texas Savings Association</i>	294
Notes and Questions	301
§ 4.02 Mandatory Broad-Form Submission: The Current System	301
[A] Question Format	302
<i>Texas Department of Human Services v. E.B.</i>	302

<i>Keetch v. Kroger Co.</i>	304
<i>H.E. Butt Grocery Co. v. Warner</i>	307
<i>Crown Life Insurance Co. v. Casteel</i>	308
Notes and Questions	315
<i>Harris County v. Smith</i>	316
Notes and Questions	326
Practice Exercise #10 (Jury Questions)	330
[B] The Relationship of Explanatory Instructions and Definitions to the Jury Questions	331
[1] Historical Development and Overview	331
[2] Relating Instructions and Definitions to “Jury Questions”	331
<i>Diamond Offshore Management Co. v. Guidry</i>	331
Note	333
[3] When Instructions are “Proper”	333
<i>Brandon v. Cooper</i>	333
Notes and Questions	335
[4] Improper Judicial Comments: Instructions that Nudge the Jury, Comment on the Weight of the Evidence, or Inform the Jury of the Effect of its Answers	337
<i>Acord v. General Motors Corp.</i>	337
<i>Maddox v. Denka Chemical Corp.</i>	340
<i>Lone Star Gas Co. v. Lemond</i>	342
Notes and Questions	344
[5] Submission of Inferential Rebuttal Instructions	345
<i>Dillard v. Texas Electric Cooperative</i>	345
[6] Informing Jurors of Effect of Answers on Judgment	350
<i>H.E. Butt Grocery Co. v. Bilotto</i>	350
Notes and Questions	356
Practice Exercise #11 (Instructions and Definitions)	358
§ 4.03 Requests to Charge and Objections to the Charge	358
[A] Preservation of Charge Complaints	358
[1] Traditional Rules	359
William V. Dorsaneo, III, <i>Revision and Recodification of the Texas Rules of Civil Procedure Concerning the Jury Charge</i>	359
<i>Lyles v. Texas Employers’ Insurance Association</i>	360
Notes and Questions	361
[2] The Texas Supreme Court’s New Approach	361
<i>State Dep’t of Highways and Public Transp. v. Payne</i>	361
Notes and Questions	367
[B] The Timing of Objections and Requests	370
<i>Missouri Pacific Railroad Co. v. Cross</i>	370
Notes and Questions	375
[C] The Manner of Making Requests to Charge and Objections to the Court’s Proposed Charge	376

[1] Making Objections	376
<i>Monsanto Company v. Milam</i>	376
[2] Making Requests	379
<i>Department of Human Services v. Hinds</i>	379
<i>Dallas Market Center Development v. Liedeker</i>	383
Notes and Questions	386
Practice Exercise #12 (Objections and Requests)	387
[D] The Consequences of Failure to Object	388
[1] Waiver of Substantive Legal Theory	388
<i>Barfield v. Brogdon</i>	388
<i>Holland v. Wal-Mart Stores, Inc.</i>	391
Notes and Questions	395
[2] Deemed Elements	396
<i>Hawes v. Central Texas Production Credit Association</i>	396
[3] Waived Grounds	398
<i>Sudderth v. Howard</i>	398
Notes and Questions	400
Appendix—The Jury Charge and the Texas Bar Exam	402
Chapter 5 • Jury Argument	405
§ 5.01 The Legitimate Functions of Argument to the Jury	405
Notes and Questions	413
<i>McInnes v. Yamaha Motor Corp., U.S.A.</i>	414
Notes and Questions	416
§ 5.02 How Jury Argument Works in Practice	418
<i>Crump, Effective Jury Argument: The Organization</i>	418
Notes and Questions	420
Court’s Charge in <i>Pennzoil Co. v. Texaco, Inc.</i>	421
Excerpts From Jury Arguments or Summations in <i>Pennzoil Co. v. Texaco, Inc.</i>	423
§ 5.03 Proper and Improper Types of Jury Argument	428
[A] Appeals to Passion and Prejudice	428
Matter of Marriage of Knighton	428
<i>Texas Employers’ Insurance Association v. Guerrero</i>	431
Notes and Questions	436
[B] Evidence, Remarks Outside the Record, and Inferences from the Evidence	437
<i>Younger Brothers, Inc. v. Myers</i>	437
Notes and Questions	439
[C] Arguments About the Law and Arguments Diverting the Jury from its Duty	441
Notes and Questions	443
[D] Personal Invective and Accusations of Misconduct	444

<i>American Petrofina, Inc. v. PPG Industries, Inc.</i>	444
Notes and Questions	446
[E] The “Open Door” or “Invited Argument” Doctrine	446
<i>Fulmer v. Thompson</i>	446
Notes and Questions	449
Practice Exercise #13	450
Appendix—Jury Argument and the Texas Bar Exam	451
Chapter 6 · Jury Deliberations and the Verdict	453
§ 6.01 Introduction	453
§ 6.02 Conduct of Jury During Deliberations	453
[A] The Jury’s “Code of Conduct”	453
Practice Exercise #14	459
Notes and Questions	460
[B] Misconduct During Deliberation and the Harmless Error Rule	461
<i>Pharo v. Chambers County</i>	462
<i>Golden Eagle Archery, Inc. v. Jackson</i>	466
Notes and Questions	478
§ 6.03 The Conduct of the Court: Post-Deliberation Commencement	
Communications	481
[A] Responding to Communications From the Jurors	481
<i>Garza v. San Antonio Light</i>	481
Notes and Questions	484
[B] The Use of Verdict-Urging Instructions	484
§ 6.04 Receipt of Verdict	486
[A] The “Duty” to Receive the Verdict and Render Judgment	486
<i>McCauley v. Charter Oak Fire Insurance Company</i>	486
Notes and Questions	489
[B] The Partial Verdict; Consequences of Failure to Insist on a	
Complete Verdict	490
<i>Fleet v. Fleet</i>	490
<i>Elliott v. Hamilton</i>	492
<i>Garcia v. Spohn Health System</i>	494
Notes and Questions	498
[C] Conflicting Findings	499
<i>First Nat. Bank at Lubbock v. J.E. Mitchell Co.</i>	499
Note	503
Practice Exercise #15	503
<i>Little Rock Furniture Mfg. Co. v. Dunn</i>	503
Notes And Questions	508
Appendix—Jury Deliberations, the Jury Verdict and the Texas Bar	
Exam	511
Chapter 7 · Nonjury Trial	515
§ 7.01 Characteristics of a Nonjury Trial	515

[A] Differences from Jury Trial: Consideration of Evidence	515
[B] Order of Trial Proceedings	516
[C] Motion for Judgment	516
[D] Trial by Consent	517
[E] The Function of Express Findings and Conclusions	517
[1] Presumption of Implied Findings	517
[2] Effect of Trial Judge's Express Findings	518
[F] The Procedure for Requesting Findings and Conclusions	519
Notes and Questions	519
[G] Effect of Requests for Findings on Appellate Timetable	520
<i>IKB Industries v. Pro-Line Corp.</i>	520
Notes and Questions	524
[H] The Consequences of a Trial Court's Failure to Make Findings	525
[1] Interference with the Proper Presentation of the Appeal	525
<i>Fraser v. Goldberg</i>	525
<i>Texas Eastern Transmission Corporation v. Sealy Independent School District</i>	528
Notes and Questions	528
[2] Omitted and Presumed Findings	531
<i>Stretcher v. Gregg</i>	531
Note	537
[I] Additional Findings of Fact	538
<i>Hood v. Adams</i>	538
<i>Western Steel Co. v. Coast Investment Corp.</i>	540
Notes and Questions	541
Practice Exercise #16	541
§ 7.02 Bases for Challenging Trial Court's Findings of Fact	542
<i>McGalliard v. Kuhlmann</i>	542
Notes and Questions	545
Chapter 8 · Taking the Case Away From the Jury: Instructed Verdict and Post-Trial Motions	547
§ 8.01 The Standards for Granting Motions for Instructed Verdict and Post-Trial Motions	547
§ 8.02 Motion for Instructed Verdict	552
[A] The Standards for Granting an Instructed Verdict	552
[1] No Evidence: The Standard for Instructing a Verdict in Favor of the Party Without the Burden of Persuasion	552
<i>Kindred v. Con/Chem, Inc.</i>	552
<i>Wal-Mart Stores, Inc. v. Gonzalez</i>	555
Notes and Questions	559
[2] Matter of Law: The Standard for Directing a Verdict in Favor of the Party With the Burden of Persuasion	566

<i>Collora v. Navarro</i>	566
Notes and Questions	569
[3] Judicial Admissions and Contradictory Testimony	570
[4] Credibility Determinations; Disbelief of Testimony	571
Notes and Questions	571
<i>Obiedio v. J. Weingarten, Inc.</i> , Record at 94–98	572
Notes and Questions	572
[5] The Clear and Convincing Evidence Standard	573
<i>In re J.F.C.</i>	573
[B] Procedure for Moving for, and Granting, an Instructed Verdict	576
[1] The Motion Itself: Statement of Grounds	576
Notes and Questions	577
[2] Timing of the Motion for Instructed Verdict	578
[3] Effect of Defective Pleadings or Evidence	579
§ 8.03 The Motion for Judgment Notwithstanding the Verdict or to Disregard Jury Findings	579
<i>Equistar Chemicals, L.P. v. Dresser-Rand Co.</i>	579
Notes and Questions	583
§ 8.04 The Motion for Judgment on the Verdict	586
<i>Litton Industrial Products v. Gammage</i>	586
<i>First National Bank of Beeville v. Fojtik</i>	588
Note	589
§ 8.05 The Motion for New Trial	589
[A] Nature and Purpose of the Motion	589
[B] Procedural Grounds for New Trial	590
[1] New Trial Because of Misconduct of Jury, Party, Attorney, Court Officer, or Third Party	590
Note on Presenting Matters Not Yet in the Record by the Motion for New Trial	590
[2] New Trial Because of Newly Discovered Evidence	592
<i>Jackson v. Van Winkle</i>	592
Notes and Questions	597
[3] A New Trial on Equitable Grounds or for Related Reasons	598
<i>Bank One, Texas, N.A. v. Moody</i>	598
Notes and Questions	602
[C] New Trial Because of Factual Issues	605
[1] Insufficient Evidence; Great Weight and Preponderance	605
<i>Cooper v. Argonaut Insurance Co.</i>	605
Notes and Questions	608
[2] Excessive or Inadequate Damages; Remittitur	608
<i>Larson v. Cactus Utility Co.</i>	608
Notes and Questions	611
§ 8.06 Modification of the Trial Court’s Judgment; Plenary Power	612
[A] Motions to Modify the Trial Court’s Judgment	612

<i>Brazos Elec. Power Co-Op, Inc. v. Callejo</i>	612
Notes	615
[B] “Plenary Power” and the Effect of Post-Judgment Motions	616
<i>Lane Bank Equip. Co. v. Smith Southern Equip., Inc.</i>	616
Historical Note	622
Notes and Questions	623
<i>Moritz v. Preiss</i>	624
Notes and Questions	626
<i>Levit v. Adams</i>	626
Note	628
[C] Judgments “Nunc Pro Tunc”	629
<i>Escobar v. Escobar</i>	629
Notes and Questions	631
Practice Exercise #17	631
[D] The Equitable Bill of Review	632
Appendix— Sufficiency of the Evidence, Motions for the New Trial, Motions for Judgement N.O.V. and the Texas Bar Exam	637
Chapter 9 • Review of Final and Interlocutory Orders in the Appellate Courts	643
§ 9.01 Appealable Orders: The Requirement of Finality and Its Exceptions	643
Practice Exercise #18	651
§ 9.02 “What Is a Final Judgment”	651
[A] A Series of Orders Disposing of All Claims	651
<i>Webb v. Jorns</i>	652
Notes	652
[B] Overlooked Claims and the Mother Hubbard Clause	655
[1] Summary Judgments Not Purporting to be Final	655
<i>Mahan v. Bost</i>	655
[2] The <i>Aldridge</i> Presumption and the Birth of Mother Hubbard	656
[3] Mother Hubbard’s Replacement: Current Law	658
<i>Lehmann v. Har-Con Corp.</i>	659
<i>M.O. Dental Lab v. Rape</i>	667
Notes and Questions	670
Appendix— Appellate Review of Final Judgements and Interlocutory Orders	674
Chapter 10 • The Court of Appeals	677
§ 10.01 The Subject Matter Jurisdiction of the Court of Appeals in Civil Cases	677
[A] Amount in Controversy & Geographical Restrictions	677
<i>Tune v. Texas Department of Public Safety</i>	678
Notes and Questions	684

[B] General Final Judgment Requirement	684
[C] Duty to Exercise Jurisdiction	684
§ 10.02 Appellate Prerequisites and Preliminary Considerations	685
[A] Trial Court Complaint: Preservation of the Right to Complain	685
<i>Cecil v. Smith</i>	685
Notes and Questions	687
[B] Suspending Enforcement of the Judgment Pending Appeal	689
<i>In re Smith</i>	689
Notes and Questions	694
[C] Frivolous Appeals	698
<i>Bridges v. Robinson</i>	698
Note	703
§ 10.03 Introduction to the Appellate Process	704
§ 10.04 Commencement and Modification of the Appellate Process and Timetables	705
[A] Effect of Modified Trial Court Judgment	705
<i>Check v. Mitchell</i>	705
Notes and Questions	706
[B] No Notice of Trial Court’s Judgment	708
<i>St. Louis Federal Savings & Loan Association v. Summerhouse Joint Venture</i>	708
Note	709
§ 10.05 Procedures for Prosecuting Ordinary Appeal	709
[A] Perfection of the Appeal	709
[1] Preparation and Filing of Notice of Appeal	709
[2] Motion for Extension of Time to File Notice of Appeal	711
<i>Garcia v. Kastner Farms, Inc.</i>	711
<i>Verburgt v. Dorner</i>	713
Notes and Questions	717
[B] Preparation and Filing of Appellate Record	718
[1] Reporter’s Record	718
<i>CMM Grain Co., Inc. v. Ozgunduz</i>	719
Notes and Questions	721
[2] Clerk’s Record	722
[3] Filing the Clerk’s and Reporter’s Records	723
[C] Preparation and Filing of Appellate Briefs	723
[1] Timetable for Extension of Time to File Briefs	723
[2] Contents of Appellant’s Brief	724
<i>Lang v. Harwood</i>	724
[3] Contents of the Appellee’s Brief: Reply Points and Cross-Points	728
[4] Appellant’s Reply Brief	729
[5] Amended or Supplemental Briefs	729
§ 10.06 Procedures for Prosecuting Accelerated and Restricted Appeals	730

[A] Accelerated Appeals	730
[B] Restricted Appeals	732
<i>Davenport v. Scheble</i>	732
Note	737
Practice Exercise #19	737
§ 10.07 Oral Argument	738
§ 10.08 Judgment Making in the Court of Appeals	742
[A] Rendition or Remand?	742
Notes and Questions	743
[B] Partial Remand	744
§ 10.09 Motions for Rehearing and en Banc Reconsideration	744
[A] Motion for Rehearing	744
[B] En Banc Reconsideration	746
Appendix— Invoking Appellate Jurisdiction and Suspending Judgement Enforcement and the Texas Bar Exam	747
Chapter 11 • Appellate Proceedings in the Texas Supreme Court	749
§ 11.01 Jurisdiction	749
[A] Appeals From Courts of Appeals	749
<i>Pool v. Ford Motor Co.</i>	750
Notes and Questions	754
Practice Exercise #20	756
[B] Direct Appeals From Trial Court	757
<i>Texas Workers' Compensation Commission v. Garcia</i>	757
Notes and Questions	758
§ 11.02 Securing Appellate Review on the Merits	759
[A] Appellate Process and Timetable	759
<i>City of San Antonio v. Hartman</i>	761
Note	764
Practice Exercise #21	764
[B] Obtaining Relief in Texas Supreme Court	765
[C] Certified Questions From United States Courts	765
<i>Amberboy v. Societe de Banque Privee</i>	765
[D] Supreme Court Briefing	769
<i>Williams v. Khalaf</i>	769
Notes	771
[E] Rehearing	772
Chapter 12 • Original Proceedings in Appellate Courts	773
§ 12.01 Constitutional and Statutory Authority for Original Proceedings	773
[A] Comparison to Appeals	773
[B] Constitutional and Statutory Authority for Original Proceedings	774
§ 12.02 Mandamus Proceedings	775
[A] Mandamus Jurisdiction: Shared Jurisdiction With the Courts of Appeals	775

<i>Lesikar v. Anthony</i>	775
Notes and Questions	777
[B] Conditions for Granting the Writ of Mandamus	778
<i>In re the Prudential Insurance Co. of America</i>	779
<i>In re Columbia Medical Center of Las Colinas</i>	786
Note	792
Practice Exercise #22	792
Notes and Questions	793
[C] Mandamus Procedure: The Petition, its Consideration, and the Response	795
<i>Wright v. Valderas</i>	795
<i>Packer v. Fifth Court of Appeals</i>	796
Notes and Questions	797
§ 12.03 Habeas Corpus Proceedings	798
<i>Ex parte McDonald</i>	798
<i>Ex parte Barnett</i>	799
Notes and Questions	803
§ 12.04 Other Original Proceedings in the Appellate Courts	805
Table of Cases	811
Index	833