

What Is Important to the Jurisprudence of the State?

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Between September 1, 1999, and August 31, 2000, litigants filed more than 1,300 petitions for review, direct appeals, certified questions, and original proceedings with the Texas Supreme Court. Office of Court Administration, *Annual Report of the Texas Judicial System, Fiscal Year 2000*, at 97. In that same period, the Court issued opinions in only 96 of those cases, either *per curiams* or opinions issued after oral argument.¹ Obviously, the odds weigh against a party's persuading the Court that his or her case merits the Court's review — that the case is important to the jurisprudence of the State. This paper is intended to focus on factors that may persuade the Court to grant (or not to grant) review. Any opinions, speculations, or suggestions it contains are strictly the author's and not the Court's or any Justice's.

I. Jurisdiction

In 1987, the Texas Legislature significantly altered the Supreme Court's jurisdiction. The Court received jurisdiction over family-law cases, which had previously been final in the courts of appeals. See Act of May 29, 1987, 70th Leg., R.S., ch. 1106, § 2, 1987 Tex. Gen. Laws 3804, 3805 (Appendix I). At the same time, the Legislature amended section 22.001(a)(6) of the Government Code to provide the Court with discretionary jurisdiction in cases “in which it appears that an error of law has been committed by the court of appeals, and that error is of such importance to the jurisprudence of the state that, in the opinion of the supreme court, it requires correction, but excluding those cases in which the jurisdiction of the court of appeals is made final by statute.” TEX. GOV'T CODE § 22.001(a)(6). In that change to section 6, the Legislature transformed what had previously been referred to as “obligatory jurisdiction” into “discretionary jurisdiction.” See Carlson & Garcia, *Discretionary Review Powers of the Texas Supreme Court*, 50 TEX. B.J. 1201, 1201 (1987).

The importance of this change was heightened by the Court's adoption of the 1997 amendments to the Texas Rules of Appellate

¹According to OCA, the Court decided 99 “causes.” By the author's count, though, the Court issued opinions in only 96 cases. And in 6 of those cases, the Court did not grant review, but instead issued *per curiam* opinions either explaining why the Court was not granting the case, see, e.g., *Stevens v. Nat'l Educ. Ctrs, Inc.*, 11 S.W.3d 185 (Tex. 2000), or expressing disagreement with the court of appeals' reasoning or disposition, e.g., *Judwin Properties, Inc. v. Griggs & Harrison*, 11 S.W.3d 188 (Tex. 2000); *Wilson v. Tex. Parks & Wildlife Dep't*, 8 S.W.3d 634 (Tex. 1999).

Procedure. First, the Court implemented a new petition-for-review system, focusing on “issues” instead of points of error. The emphasis in a petition for review should be on “reasons why the Supreme Court should exercise jurisdiction to hear the case with reference to the factors listed in Rule 56.1(a).” TEX. R. APP. P. 53.2(i). The factors listed in TRAP 56.(a)(1) include “whether the court of appeals appears to have committed an error of law of such importance to the state’s jurisprudence that it should be corrected,” and “whether the court of appeals has decided an important issue of state law that should be, but has not been, resolved by the Supreme Court.” TEX. R. APP. P. 56.1(a)(5), (6). TRAP 56.1(a) suggests that the Court has, to some extent, incorporated section 6’s “important to the jurisprudence” standard in deciding whether to grant review in cases to which other sections of the statute governing the Court’s jurisdiction apply.² According to TRAP 56.1(a), “Whether to grant review is a matter of judicial discretion,” and a case involving a dissent or conflict should involve an “important” question of law. TEX. R. APP. P. 56.1(a)(1), (2). Moreover, although the “important to the jurisprudence” standard, like TRAP 56.1, literally applies only to appeals, some opinions dissenting to the denial of writs of mandamus suggest that the Court may apply the same test in deciding whether to exercise its discretionary jurisdiction over original proceedings under section 22.002 of the Government Code. *See, e.g., In re Gaylord Broadcasting Co.*, 22 S.W.3d 848 (Hecht, J., dissenting to denial of mandamus petition); *In re Tex. Farmers Ins. Exch.*, 12 S.W.3d 807 (Hecht, J., dissenting to denial of mandamus petition).

Unfortunately, the TRAP rules provide no specific guidance about what the Court considers “important.” Moreover, although Justice Hecht, often joined by Justice Owen, has issued a number of opinions dissenting to the Court’s denial of petitions that set out their views on what is “important,” the Court’s opinions generally do not discuss why the Court granted the cases. As set out below in section II.A, the input the Justices provided during the development of a program to train new briefing attorneys in preparing study memos for the Court provides some insight into what the Justices consider “important.” Some appellate authorities have identified other characteristics that might make cases appropriate for Supreme Court review, and the opinions dissenting to orders denying petitions offer some insight into the dissenters’ thought processes. Finally, some inferences may be drawn from a review of one full term’s worth of the Court’s opinions.

II. What They Say

A. The Justices

²That is, cases “in which the Justices of a court of appeals disagree on a question of law material to the decision”; cases “in which one of the courts of appeals holds differently from a prior decision of another court of appeals or of the supreme court”; cases “involving the construction or validity of a statute”; cases involving state revenue; or cases in which the railroad commission is a party. TEX. GOV’T CODE § 22.001(a)(1)-(5).

When the Court replaced the old application-for-writ-of-error process with the petition-for-review system in 1997, the thought was that the Justices would be able to decide, relatively easily, whether a case should be granted simply by reading the fifteen-page petition. See Pamela Stanton Baron, *The New Petition for Review: Larger Issues, Smaller Briefs*, STATE BAR OF TEXAS, ADVANCED CIVIL APPELLATE PRACTICE COURSE (1996), at L-3.³ And it is true that the Justices are often able to determine that they are not interested in granting a case by reviewing the petition. But, after implementing the system, the Court soon found that further staff review frequently is necessary in order to determine whether a case should be granted. As a result, the Court developed internal procedures for assigning cases to individual briefing attorneys to prepare “study memos.” See E. Lee Parsley and Julie Caruthers Parsley, *Texas Supreme Court Internal Procedures and Statistics*, UNIVERSITY OF TEXAS SCHOOL OF LAW, 10TH ANNUAL CONFERENCE ON STATE AND FEDERAL APPEALS, Tab 6, at 11. As the procedures have evolved, the focus of study memos has changed from analyzing whether the court of appeals erred to providing the Court with enough information and analysis to decide whether a case should be granted. Study memos are assigned on the vote of three Justices; once a memo is assigned, the Court requests full briefing on the merits from the parties.⁴

In developing a training program for new briefing attorneys, each of the Justices was interviewed to obtain their views on what kinds of cases they consider “grant-worthy.” While not all of the Justices agree or would give equal weight to them, the characteristics listed below were identified by the Justices as weighing in favor of a grant. (The italicized material reflects the author’s comments.)

- ◆ The case presents an issue of first impression for the Court. If the issue is likely to recur, the level of interest rises. Some Justices, however, prefer that novel issues have the opportunity to “percolate” through the courts of appeals to allow divergent judicial views to emerge before the Supreme Court takes it on. (*If an issue has not previously reached many Texas courts of appeals, a practitioner might try to convince the Court that the issue has been well developed in the courts of other states or in the federal courts.*)
- ◆ The case involves the construction or interpretation of a statute of statewide importance. (*As discussed in section III below, statutory-interpretation cases garnered much of the Court’s attention in its 2000 term. In several*

³Under the old writ-of-error practice, each application was assigned to a particular Justice, and one of the Justice’s briefing attorneys prepared a memorandum summarizing the parties’ arguments, analyzing the issues, and recommending a disposition.

⁴Previously, it took two votes to request a study memo. See Parsley & Parsley at 10. A practitioner who is asked for a brief on the merits should bear in mind that briefs on the merits must perform two functions: First, they must reinforce arguments in the petition or response about why the Court should, or should not, grant the petition. But briefs on the merits should also focus on persuading the Court to reach the result the petitioner or respondent advocates..

cases, the Court even considered statutes that had been repealed or amended. See, e.g., Cash Am. Int'l v. Bennett, 35 S.W.3d 12 (Tex. 2000); State ex rel. Dep't of Criminal Justice v. VitaPro Foods, Inc., 8 S.W.3d 316 (Tex. 1999).)

- ◆ The case presents an issue where statewide uniformity is important. *(It seems likely that statewide uniformity might be particularly important on statutory interpretation and procedural issues, so that litigants in one court of appeals district will not be at a disadvantage compared to litigants in other districts. Statewide uniformity may also be particularly important on issues affecting commercial transactions.)*
- ◆ The court of appeals' opinion is likely to mislead or confuse other courts of appeals if the petition were denied. If the court of appeals' opinion is published, the likelihood of confusion is greater. At least one Justice took the view that a court of appeals opinion that is *not* "blatantly outlandish" would be more worthy of a grant than one that is, on the theory that other courts of appeals would be likely to recognize truly egregious analysis.
- ◆ Uniformly, the Justices consider constitutional issues generally important.
- ◆ The case involves an issue that is emerging nationally, and allows the Court to decide whether Texas will participate in a nationwide trend. *(A practitioner who wishes to rely on a nationwide trend to pique the Court's interest might consider including a tabular compilation describing the other 50 states' treatment of the issue. The briefing attorney who is ultimately directed to conduct a 50-state search will undoubtedly be grateful for the assistance. Moreover, the Court is generally interested in knowing what, if anything, the relevant Restatement would say about a particular issue.)*
- ◆ The case allows the Court to clarify a Supreme Court opinion that is being misinterpreted by the trial courts or courts of appeals. *(This may be the type of case that would be appropriate for a per curiam opinion, since it would not normally involve breaking new ground. A litigant might improve his or her chances of obtaining relief from an unfavorable court of appeals decision by arguing that the case would be appropriate for per curiam disposition).*

The Justices also identified a number of other characteristics that weigh against a grant. Respondents, of course, should try to emphasize these in persuading the Court that the case should not be granted. Conversely, petitioners should try to anticipate and defuse any apparent problems, if possible. Although the Court occasionally misses a problem in its initial review of a case, flaws and

obstacles usually come to light. It is *not* a good idea simply to hope that a problem will not be noticed. Some common characteristics weighing against a grant are:

- ◆ The apparently important issue cannot be reached because the issue has been waived, the lower courts' treatment of the issue results in a harmless error, or a lesser issue prevents the Court from reaching it. (*For example, the important issue is whether a party is entitled to particular type of damages, but his or her claim is barred by limitations. Cf. Stevens v. Nat'l Educ. Ctrs, Inc., 11 S.W.3d 185 (Tex.2000) (noting that a jury instruction was erroneous, but denying review because petitioner specifically asked Court not to remand for a new trial). Litigants should be aware that under the Court's study memo policy, a briefing attorney is given the option of submitting a study memo that addresses only an issue that he or she believes is dispositive and then lists the issues left unaddressed. The Court can then request an additional memo addressing the remaining issues.*)
- ◆ There is a critical gap in the record. (*This seems to occur more commonly in original proceedings, when, for example, the court reporter's record from a critical hearing is not included in the record.*)
- ◆ If the briefing is poor, the Court may decide to wait for a case that is better developed and briefed, even if the issue is important. This may be less of a consideration if the issue is relatively simple and straightforward. (*Occasionally, the Court may get enough assistance from amicus briefs to overcome poor briefing by the litigants. The Court sometimes concludes that oral argument is likely to be of little help in a poorly briefed case; if the Court believes that the court of appeals incorrectly resolved a relatively simple issue, it may decide the case in a per curiam decision.*)
- ◆ The issue is unlikely to recur because of unique facts, a repealed statute, etc. (*But, as noted above, the Court has decided a number of cases involving repealed or amended statutes.*)
- ◆ The court of appeals' opinion is unpublished. (*Because, under the current rules, unpublished opinions cannot be cited as authority, it can be argued that an erroneous decision cannot adversely affect the state's jurisprudence. But important issues can arise even in unpublished decisions, and the Court sometimes grants petitions arising from unpublished decisions. The Court usually orders the opinion published when it issues its opinion.)*
- ◆ Several Justices believe that no-evidence issues normally are not important to the state's jurisprudence. (*Interestingly, these Justices can find Supreme Court authority supporting the view that a no-evidence issue does not involve an error of such importance to the jurisprudence of the state as to require correction. In the early*

part of the 20th century, the Court exercised “important-to-the jurisprudence” jurisdiction that was described almost identically to the Court’s present section 6 jurisdiction. See Appendix II. In one early case, the Court expressed its view on the importance of no-evidence and some-evidence points of error:

We do not consider a ruling of the Court of Civil Appeals in a particular case either that there was some evidence warranting the submission of a given issue to the jury, or that there was no evidence justifying its submission, as within the purview of [the Court’s important-to-the jurisprudence jurisdiction] unless it can be fairly regarded as so flagrantly wrong as to amount to a virtual denial and abrogation of the established rules of law which, in the one instance, enjoin upon the trial court the exercise of its essential function, and in the other preserve the right of jury trial.

Decker v. Kirlicks, 216 S.W. 385, 387 (Tex. 1919). On the other hand, the dissent in that case argued fairly persuasively that

a holding by the Court of Civil Appeals, approving or directing the submission by the district court to the jury of a given issue when . . . there is no evidence to support it, or approving or directing the refusal of a district court to submit to the jury a given issue when . . . there is evidence to support it, constitutes inevitably in every instance “a serious departure from the established law,” and introduces into our jurisprudence a “doctrine violative of fundamental principles.”

Id. A practitioner trying to convince the Court to grant (or deny) a no-evidence case might find inspiration in Decker.)

This list of considerations favoring and disfavoring a grant is, of course, not exhaustive. Some students of the Court have offered some additional suggestions that may be helpful to practitioners in their efforts to develop arguments about why their cases are important to the state’s jurisprudence.

B. Commentators

One authority has suggested that practitioners should take into account the criteria listed in TRAP 47.4, the standards for publication of courts of appeals’ decisions. See Pamela Stanton Barron, *Petitions for Review: Frequently Asked Questions*, 7

APPELLATE ADVOCATE 3, 8 (June 1999). TRAP 47.4 provides that an opinion should be published only if it establishes a new rule of law or alters an existing rule; applies an existing rule to a novel fact situation that is likely to recur; involves a legal issue of continuing public interest; criticizes existing law; or resolves an apparent conflict of authority. Presumably, TRAP 47.4 reflects the Court's view on the types of opinions that are likely to advance or develop the state's jurisprudence. Although the Court could not have intended that every published court of appeals decision would be so important to the jurisprudence of the state as to warrant review under section 6, TRAP 47.4's criteria do resemble some of the grant-worthiness characteristics the Justices have identified. And if, for example, a case presents an issue of "continuing public interest" so that publication of the court of appeals' decision is appropriate, it is also possible that the Court may want to take the case as a vehicle to establish statewide law on the same issue.

Two other co-authors also identified factors that might make a case important to the state's jurisprudence soon after the Court's jurisdictional statute was amended. *See* Carlson & Garcia, *supra*, at 1204. The factors identified by these authors also echo some of those articulated by the Justices. These authors suggested the following list:

- (1) The issues raised will affect persons beyond the named litigants;
- (2) The case is one of first impression, or raises an issue that should be readdressed due to recent developments;
- (3) Issues pertaining to a public entity affect the public in general;
- (4) The lower court's judgment will adversely affect the public;
- (5) The lower court's statement of legal principles is erroneous and seriously departs from established legal principles;
- (6) The case presents issues that the Court has recognized as important (presumably, by granting a petition) in other pending cases.

Id. The recommendation that practitioners should suggest that the Court might want to reconsider a previously decided issue because of recent developments could be particularly useful in areas that were formerly primarily matters of common law, but in which the Legislature has recently been active. *See, e.g., Hernandez v. Tokai Corp.*, 2 S.W.3d 251 (Tex. 1999); *Sipriano v. Great Spring Waters of Am.*, 1 S.W.3d 75 (Tex. 1999). On one hand, the Court might be interested in examining the interplay between the statute and the common law, as in *Tokai*, 2 S.W.3d at 256 n.6. On the other, the fact that the Legislature has recently focused on an issue may be persuasive evidence of the issue's inherent importance, as in *Sipriano*. And the Court's relatively high interest in cases raising

sovereign or official immunity issues (slightly more than 9 percent of the cases decided by the Court in its 1999-2000 term involved sovereign immunity issues) could well reflect recognition that a judgment against a governmental entity, at some level, affects the public at large.

C. The Dissents

As noted above, Justice Hecht, often joined by Justice Owen, has issued a number of opinions dissenting to the Court's denial of petitions for review or mandamus. These dissents set out his views about why the Court should have granted review. For example, in *Gaylord Broadcasting Co. v. Francis*, a defamation case, Justice Hecht focused on the issue of a broadcaster's actual malice. 35 S.W.3d 599. Justice Hecht opined that the issues in the case were "of substantial importance not only to the litigants in this case but to the public generally." He noted that the issues were related to a case pending before the Court, and that they were "among the few issues over which the Legislature has expressly given th[e] Court jurisdiction in interlocutory appeals, which is another indication of their importance to the law." *Id.* at 602. Other indicators of importance identified by Justice Hecht include:

- ◆ The issue has arisen in several cases. *Todd Shipyards Corp. v. Perez*, 35 S.W.3d 598 (Hecht, J., dissenting to denial of petition for review).
- ◆ The issue is likely to recur. *Id.*; see also *In re GNC Franchising, Inc.*, 22 S.W.3d 929 (Hecht, J., dissenting to denial of petition for writ of mandamus).
- ◆ The courts that have considered the issue have been in disagreement. *Todd Shipyards*, 35 S.W.3d 598.
- ◆ The court of appeals' decision defeated legislative policy. *Texas Workers' Comp. Ins. Fund v. Serrano*, 22 S.W.3d 341, 343 (Hecht, J., dissenting to denial of petition for review).
- ◆ A grant is necessary to resolve a conflict among the courts of appeals. *Id.*
- ◆ A trial court's order granting a new trial in the interest of Justice without explaining reasons was "in the interest of injustice." *In re Volkswagen of Am., Inc.* 22 S.W.3d 462 (Hecht, J., dissenting to denial of petition for writ of mandamus); see also *In re Bayerische Motor Werke, AG*, 8 S.W.3d 326 (Hecht, J., dissenting to denial of petition for writ of mandamus).
- ◆ The order at issue may be a significant intrusion on constitutional rights. *In re Gaylord Broadcasting Co.*, 22

S.W.3d 848 (Hecht, J., dissenting to denial of petition for writ of mandamus).

- ◆ The case affects every attorney who investigates a client's claim and significantly intrudes on attorney-client relationships. *In re Tex. Farmers' Ins. Exch.*, 12 S.W.3d 807, Hecht, J., dissenting to denial of petition for writ of mandamus.
- ◆ The case raises important question about interplay between local court rules and statute and statewide rules. *In re Rio Grande Valley Gas Co.*, 8 S.W.3d 303 (Hecht, J., dissenting to denial of petition for writ of mandamus).
- ◆ A trial court's refusal to allow defendants to supersede the judgment will cause two respected educational institutions economic and noneconomic injury and impair the cause of higher education. *In re South Texas College of Law*, 4 S.W.3d 219 (Hecht, J., dissenting to denial of petition for writ of mandamus).

The last case is particularly instructive because Justice Owen issued an opinion concurring in the Court's denial of the mandamus petition. Justice Owen explained that the trial court's order was founded on evidence that students were likely to be harmed if the judgment were superseded, while any injury to the institutions would be relatively slight. *Id.* at 223. Justice Owen's concurring opinion illustrates that the denial of a petition does not necessarily mean that the Court does not consider the case important, but may result from other considerations. The Court may believe, as Justice Owen did in *South Texas*, that the lower courts correctly decided the case. It may also mean that the case is affected by one or more of the factors weighing against a grant discussed in section II.A above.

III. The Opinions (or, What They Do)

Of course, what the Court considers important to the state's jurisprudence may be best illustrated by the cases it grants, or otherwise chooses to write in. The author looked at all of the Court's opinions from its September 1, 1999-August 31, 2000 term in order to see what inferences could be drawn. The table attached as Appendix III summarizes the results of that review. The author attempted to identify the central issues in every opinion, a somewhat subjective process, and assigned a numeric code to each type of issue (*e.g.*, appellate procedure, damages, etc.). Many opinions addressed multiple issues that were significant. Issues that were not expected to, and did not frequently recur were lumped into the category of miscellaneous. Although Appendix III includes opinions dissenting from denials, the table below includes only opinions issued by the Court. While some of the opinions included in the total are *per curiam* opinions denying review, they are included in the total on the theory that the Court would probably not have written anything if it did not attach some importance to the case.

Issue	Occurrences	
(1) Administrative law	6	
(2) Appellate procedure	17	
(3) Class actions	3	
(4) Constitutional law (TX)		7
(5) Constitutional law (US)	5	
(6) Contracts		6
(7) Damages		7
(8) Employment	4	
(9) Family law	12	
(10) Insurance law	8	
(11) Intentional torts	4	
(12) Municipal law	4	
(13) Negligence	9	
(14) Oil & gas	3	
(15) Products liability	1	
(16) Quasi-criminal	2	
(17) Sovereign immunity	9	
(18) Statutory construction	27	
(19) Tax	1	
(20) Trial procedure	30	
(21) UCC	1	
(22) Workers' compensation	7	
(23) Legal sufficiency	8	
(24) Miscellaneous	23	

A number of inferences can be drawn from this information, although most are subject to debate.

1. Procedure is important.

Forty-seven of the Court's opinions touched on procedural issues, either appellate or trial. The Court clearly invests a lot of interest in the manner in which trials are conducted, *see, e.g., Crown Life Ins. Co. v. Casteel*, 22 S.W.3d 378 (Tex. 2000) (charge error); *In re Union Pac. Resources Co.*, 22 S.W.3d 338 (Tex. 2000) (discovery), and how and whether parties can appeal, *e.g., In re K.C.A.*, 36 S.W.3d 501 (Tex. 2000) (appeal as indigent); *Qwest Communications Corp. v. AT&T Corp.*, 24 S.W.3d 334 (Tex. 2000) (order appealable temporary injunction). The high number might be attributable to some extent to the fact that the Court may have felt compelled to grant mandamus in a number of cases to protect confidential material or otherwise prevent harm that could not be remedied on appeal. *E.g., In re George*, 28 S.W.3d 511 (Tex. 2000) (client confidences); *In re Daisy Mfg. Co.*, 17 S.W.3d 654 (Tex. 2000), and *In re Alcatel USA, Inc.*, 11 S.W.3d 173 (Tex. 2000) (apex depositions); *In re Dallas Morning News*, 10 S.W.3d 298 (Tex. 1999) (unsealing "court records"). It may also be, of course, that procedural issues can arise in virtually any case. Nonetheless, while procedural issues may be less interesting to the litigants than issues bearing on the merits of a case, they may present an opportunity to gain entrée to the Court.

2. Statutory construction is important.

The Court issued 27 opinions in which the construction or interpretation of a statute was a central issue. This relatively high number may reflect that fact that statewide uniformity is inherently important in the construction of statute. It may also be a result of increased activity by the Legislature in areas that have previously been left to the common law. Furthermore, fully one-third of the statutory interpretation cases the Court decided — 9 of 27 — involved governmental or quasi-governmental entities, supporting Carlson and Garcia's suggestion, Section II.B, *supra*, that issues affecting public entities may be important because they affect the public in general. *See, e.g., Tex. Dep't of Transp. v. Able*, 35 S.W.3d 608 (Tex. 2000); *Tex. Workers' Comp. Ins. Fund v. Del Indus., Inc.*, 35 S.W.3d 591 (Tex. 2000); *Kerrville State Hosp. v. Fernandez*, 28 S.W.3d 1 (Tex. 2000); *Tune v. Tex. Dep't of Public Safety*, 23 S.W.3d 358 (Tex. 2000); *FM Prop. Operating Co. v. City of Austin*, 22 S.W.3d 868 (Tex. 2000); *City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000); *Wilson v. Andrews*, 10 S.W.3d 663 (Tex. 1999); *Tex. Dep't of Criminal Justice v. VitaPro Foods, Inc.*, 8 S.W.3d 316 (Tex. 1999); *Fleming Foods of Tex., Inc. v. Rylander*, 6 S.W.3d 278 (Tex. 1999). And, as stated above, that a statute has been repealed or amended does not necessarily stifle the Court's interest. *See, e.g., Cash Am. Int'l, Inc. v. Bennett*, 35 S.W.3d 12 (Tex. 2000); *VitaPro Foods, Inc.*, 8 S.W.3d 316.

4. Family law is emerging as an important area.

The Court issued a fairly surprising number of family law opinions (12 of 96). That number is largely attributable to the 6 opinions in which the Court interpreted the Parental Notification Act. Under the Act, a physician cannot perform an abortion on a minor without notifying her parents unless the minor obtains a judicial bypass of the notification requirement. *See* TEX. FAM. CODE Ch. 33. After the Act took effect on January 1, 2000, the Court issued 6 opinions interpreting the statutory bypass guidelines. *In re Doe*, 19

S.W.3d 249 (Tex. 2000); *In re Doe 2*, 19 S.W.3d 278 (Tex. 2000); *In re Doe 3*, 19 S.W.3d 300 (Tex. 2000); *In re Doe 4*, 19 S.W.3d 322 (Tex. 2000); *In re Doe 4*, 19 S.W.3d 337 (Tex. 2000); *In re Doe*, 19 S.W.3d 346 (Tex. 2000). But the Court also wrote 6 other opinions addressing family law issues, ranging from a noncustodial parent's right to see his child's psychologist's notes, *Abrams v. Jones*, 35 S.W.3d 620 (Tex. 2000), to a woman's ability to partition her ex-husband's military retirement benefits, *Havlen v. McDougall*, 22 S.W.3d 343 (Tex. 2000). Of course, the relatively high number of family law cases may simply reflect the fact that divorce and other family law matters made up about 67 percent of the district court's dockets in the 2000 fiscal year. Office of Court Administration, *Annual Report, Fiscal Year 2000*, at 160.

5. Legal sufficiency may not be as important as it used to be.

For a Court whose treatment of legal sufficiency issues has been the subject of some debate in recent years, cases in which no-evidence points were the central issue were relatively rare. See William Powers, Jr., *Judge and Jury in the Texas Supreme Court*, 75 TEX. L. REV. 1699 (1997); Chief Justice Phil Hardberger, *Juries Under Siege*, 30 ST. MARY'S L. J. 1 (1998). In at least two of the nine cases touching on no-evidence issues, the Court reversed when the courts of appeals held that there was no evidence. See *Morgan v. Anthony*, 27 S.W.3d 928 (Tex. 2000) (some evidence to support IIED claim); *Texas Comm. Bank Nat'l Assoc. v. New*, 3 S.W.3d 515 (Tex. 1999) (affidavits legally sufficient to support default judgment). The dearth of no-evidence cases is consistent with several Justices' public statements about their relative disinterest in legal-sufficiency cases.

6. Sovereign immunity issues gain the Court's attention.

The Court also addressed sovereign immunity issues in a fair number of cases (9 of 96). This attention may, again, give credence to Carlson and Garcia's suggestion that issues affecting public entities are important because they affect the public at large. It may also be that sovereign immunity questions generally involve statutes, so that statewide uniformity becomes a significant consideration. See, e.g., *Tex. Dep't of Transp. v. Able*, 35 S.W.3d 608 (Tex. 2000) (Tort Claims Act permitted suit against governmental unit engaging in a joint enterprise); *Kerrville State Hosp. v. Fernandez*, 28 S.W.3d 1 (Tex. 2000) (State Applications Act waives state agencies' immunity to suits under the Anti-Retaliation law).

7. Sometimes the more important issue is obscured.

Occasionally, an issue that is somewhat peripheral in the Court's opinion appears to be, on reflection, more significant than the central issue in the case. For example, in *Cash America International, Inc. v. Bennett*, the central issue in the case (which involved property valued at less than \$6,000) was more or less mooted by the amendment of the Pawnshop Act. But the opinion contains what is perhaps the Court's clearest articulation of the difference between the primary jurisdiction and exhaustion-of-remedies doctrines in

administrative law. *See Cash Am.*, 35 S.W.3d at 15-16, 18. In another relatively small-stakes case, the Court decided a jurisdictional issue that could ultimately have far-reaching effects. In *Tune v. Department of Public Safety*, the issue was whether the court of appeals had jurisdiction over a hand-gun license appeal. 23 S.W.3d 358 (Tex. 2000). The Court construed a legislative recodification of the statute governing the courts of appeals' jurisdiction to restrict the general jurisdiction of those courts across the board to cases in which the amount in controversy exceeds \$100, although "those courts' jurisdiction had never been held to be so limited before." *Id.* at 366 (Hecht, J., concurring). And in *Dubai Petroleum Co. v. Kazi*, the central issue was whether plaintiffs were entitled to proceed under a statute allowing claims for injuries in foreign countries with "equal treaty rights" with the United States. 12 S.W.3d 71 In reaching that issue, however, the Court overruled prior caselaw, and held that a plaintiff's failure to establish all elements of a statutory claim does not deprive courts of subject-matter jurisdiction. *Id.* at 76. These cases suggest that there may opportunities to gain the Court's attention with issues that are several steps removed from the central issues in the case.

IV. Conclusion

There are no hard-and-fast rules about what makes a case important to the state's jurisprudence. In some instances, it appears that merely correcting an erroneous decision by the lower courts is important. *See, e.g., In re Univ. Interscholastic League*, 20 S.W.3d 690 (Tex. 2000) (granting mandamus when trial court ordered UIL to schedule baseball playoff game). But counsel attempting to persuade the Court to grant review should avoid merely focusing on the court of appeals' error. Wherever possible, practitioners should try to alert the Court to the presence of any of the characteristics that the Justices have identified as indicators of importance, either inferentially in their opinions, or expressly in the appellate rules and in the guidance the Justices provided on study memos.

V. Update

This paper was originally compiled in the spring of 2001, and it was based upon 96 opinions issued by the Court in its 1999-2000 term. Based upon those opinions, the paper concluded that statutory construction, sovereign immunity, and procedural issues were important to the state's jurisprudence in the Court's view, that family law issues were more prevalent than expected, and that the Court wrote on no-evidence issues less frequently than expected. While no new analysis of the Court's opinions issued in the 2000-2001 term has been performed, a look at the 35 cases the Court has granted since January 1st of this year suggests that, while some of those trends remain steady, some changes might be occurring.

Based upon a review of the issues presented in the granted petitions, it seems clear that the Court probably will remain fairly involved with statutory construction issues: at least 11 of the 35 cases granted this calendar year may involve statutory construction. Similarly, at least 13 of the cases granted raise procedural issues. Somewhat surprisingly, however, the Court has granted only two

petitions that focus on immunity issues. This discrepancy may be because the Court frequently addresses sovereign immunity claims in per curiam opinions. When that happens, the case isn't granted before the Court issues its opinion. Similarly, the Court has granted only two family law cases so far this year. Because judicial bypass cases, in which a minor seeks permission to proceed with an abortion without notifying her parents, are generally decided without oral argument, the number of cases granted may not be a true indicator that the Court's interest in family law cases has declined. Interestingly, the Court has granted 5 cases raising intentional tort issues so far this year, while it issued only 4 intentional-tort opinions in the term discussed in the main body of the paper. And it appears that no-evidence issues may be increasingly gaining the Court's attention: at least 5 of cases granted so far this year raise no-evidence issues.

Comparing cases granted to opinions actually issued is, admittedly, something of an apples-to-oranges scenario because the Court often does not reach every issue presented in a granted petition for review. For example, most cases raising no-evidence issues also raise other issues, and it may be that the Court's opinions ultimately will not reach the no-evidence issues. The cases granted do suggest, however, that, while some changes may be taking place in the Court's docket, they do not appear to be radical.

Issues key:

- (1) Administrative law
- (2) Appellate procedure
- (3) Class actions
- (4) Constitutional law (TX)
- (5) Constitutional law (US)
- (6) Contracts
- (7) Damages
- (8) Employment
- (9) Family law
- (10) Insurance law
- (11) Intentional torts
- (12) Municipal law
- (13) Negligence
- (14) Oil & gas
- (15) Products liability
- (16) Quasi-criminal
- (17) Sovereign immunity
- (18) Statutory construction
- (19) Tax
- (20) Trial procedure
- (21) UCC
- (22) Workers' compensation
- (23) Legal sufficiency
- (24) Miscellaneous

Case	Issue	Holding	Disposition
<i>Horizon Healthcare Corp. v. Auld</i> ; 34 S.W.3d 887	4, 7, 18	Civ. P. Rem. Code § 41.007, not art. 4590i, caps health care liability punitive damages; prejudgment interest subject to 4590i cap; applying cap to survival claim not unconstitutional	AFFPT/ REVPT/ REMTTC
<i>Tex. Dep't of Transp. v. Able</i> , 35 S.W.3d 608	17, 18,	Tort Claims Act allows suit against governmental unit engaging in a joint enterprise	AFF
<i>Cash Am. Int'l, Inc. v. Bennett</i> , 35 S.W.3d 12	1, 18	Consumer Credit Commissioner has neither exclusive nor primary jurisdiction over claim for lost pledged goods	AFF
<i>Abrams v. Jones</i> , 35 S.W.3d 620	9, 18	Parent not entitled to mental health professional's notes re: child under Family Code § 153.072 or Health & Safety Code § 611.0045	REV
<i>Grapevine Excav. Inc. v. Maryland Lloyd's</i> , 35 S.W.3d 1 (certified question)	7, 10, 18	Insured in suit subject to Civ. P. Rem. Code § 38.006 entitled to attorney's fees under § 38.001 of Code	YES
<i>In re Southwestern Bell Telephone Co.</i> , 35 S.W.3d 602 (mandamus) (per curiam)	20	TC lacked jurisdiction to set aside venue order one year after signing transfer order even though one party had filed bankruptcy at time order signed	COND. GRANTED
<i>Bishop v. Tex. A&M Univ.</i> , 35 S.W.3d 605 (per curiam)	13, 17, 23	A&M liable under Tort Claims Act for faculty advisers' negligence in assisting Drama Club; legally sufficient evidence that advisers acted as A&M employees	REV/REM CA
<i>In re K.C.A.</i> , 36 S.W.3d 501 (per curiam)	2, 16	Minor is not required to file indigency affidavit to be declared indigent in appeal of delinquency proceeding	REV/REM CA
<i>Gaylord Broadcasting Co. v. Francis</i> , 35 S.W.3d 599 (J. Hecht dissenting to denial of PFR)	11	Issues in defamation case important to jurisprudence	PFR DENIED
<i>Todd Shipyards Corp. v. Perez</i> , 35 S.W.3d 598 (J. Hecht & J. Owen dissenting to denial of PFR)	13,	Issues in case re: effect of employer's bankruptcy discharge on wrongful death claim based on pre-petition conduct important	PFR DENIED

<i>In re Living Centers</i> , 35 S.W.3d 596 (J. Owen & J. Hecht dissenting to denial of mandamus petition)	20,	Court errs in denying mandamus petition in light of bankruptcy stay	MAND. PET. DENIED
<i>Tex. Workers' Comp. Ins. Fund v. Del Industrial, Inc.</i> , 35 S.W.3d 591	18, 22	Staff Leasing Services Act does not require company that purchased workers' comp. for its employees to pay premiums for leased employees.	AFF
<i>City of Ft. Worth v. Zimlich</i> , 29 S.W.3d 62	7, 8, 20, 23	Legally sufficient evidence of 1 of 3 Whistleblower Act claims, but no evidence of malice; venue proper & constitutional in Travis County	REVPT/ REM/CA
<i>Prudential Ins. Co. of Am. v. Financial Review Svcs. Inc.</i> , 29 S.W.3d 74	11, 23	Tortious interference defendant did not conclusively establish justification defense, so SJ improper	AFF
<i>Kerrville State Hosp. v. Fernandez</i> , 28 S.W.3d 1	8, 17, 18	State Applications Act waives state agencies' immunity to suits under the Anti-Retaliation Law	AFF
<i>Payne v. Galen Hosp. Corp.</i> , 28 S.W.3d 15	22	Workers' comp. benefits exclusive remedy for hospital employee whose on-the-job injury was aggravated by prescription filled by hospital pharmacy; dual-capacity doctrine did not apply	AFF
<i>M.D. Anderson Hosp. & Tumor Inst. v. Willrich</i> , 28 S.W.3d 22 (per curiam)	8, 20	Wrongful-termination plaintiff can rely on movant's SJ evidence, but no fact issue established; stray remarks by persons not involved in actions resulting in job loss remote in time from discharge no evidence of pretext	REV/REN
<i>In re George</i> , 28 S.W.3d 511	20	New counsel retained after former counsel disqualified can public info in former counsel's files; rebuttable presumption that work product confidential	MAND DEN. FOR TC TO APPLY NEW LAW
<i>Morgan v. Anthony</i> , 27 S.W.3d 928 (per curiam)	11, 23	Some evidence to support IIED claim	REV/REM TC

<i>Qwest Communications Corp. v. AT&T Corp.</i> , S.W.3d 334 (per curiam)	2, 20	TC order placing restrictions on defendant was appealable temporary injunction	REV/REM CA
<i>In re V.L.K.</i> , S.W.3d 338	9, 18	Presumption that appointment of natural parent as managing conservator is in child's best interest doesn't apply in modification proceeding	REV/REN
<i>Ken Petroleum Corp. v. Questor Drilling Corp.</i> , S.W.3d 344	10, 14, 18	Mutual indemnity obligations under contract between drilling contractor and operator not void under the Texas Oilfield Anti-Indemnity Act	REVPT/ REM & REVPT/ REN
<i>K-Mart Corp. v. Honeycutt</i> , S.W.3d 357 (per curiam)	20	TC did not abuse discretion by excluding plaintiff's human factors and safety expert testimony; opinions not beyond average juror's knowledge, so not helpful	REV/REN
<i>Golden Eagle Archery, Inc. v. Jackson</i> , S.W.3d 362	4, 5, 20	Rules prohibiting juror testimony re: deliberations not unconstitutional; other evidence offered was either inadmissible or did not conclusively show misconduct	REV/REM CA
<i>Kroger v. Keng</i> , 23 S.W.3d 347	18, 22	Court granted case to resolve conflict among CAs; nonsubscriber defendant not entitled to comparative fault question	AFF
<i>Stringer v. Cendant Mortg. Corp.</i> , 23 S.W.3d 353 (certified question)	4	Under Texas Constitution, home-equity lender may require the borrower to pay off third-party debt not secured by the homestead with loan proceeds	YES

<i>Tune v. Tex. Dep't of Pub. Safety</i> , 23 S.W.3d 358	2, 18	Minimum amount in controversy in hand-gun license denial appeal established by \$140 licensing fee, so CA had jurisdiction	AFF
<i>In re Union Pacific Resources Co.</i> , 22 S.W.3d 338 (per curiam)	20	TC did not abuse discretion by partially sustaining insurer's objections to discovery based on relevance when insurer presented no evidence in support of objection	CA MAND'D
<i>Tex. Workers' Compensation Ins. Fund v. Serrano</i> , 22 S.W.3d 341 (J. Hecht dissenting to denial of PFR)	10, 22	Issue is allocation of settlement amounts for subrogation purposes; Court should grant to protect legislative policy and to resolve conflict in CAs	PFR DEN
<i>Havlen v. McDougall</i> , 22 S.W.3d 343	5, 9	1990 federal law preempts former spouse's ability to partition military retirement benefits	REV/REN
<i>In re Avila</i> , 22 S.W.3d 349 (J. Hecht dissenting to denial of PFM)	20	Issue is whether attorney-client privilege protects a party from being required to disclose that attorney referred her to a physician for treatment; Court should grant because no case addresses & rule requiring disclosure would be significant incursion into attorney-client privilege	MAND PET DEN
<i>City of Garland v. Dallas Morning News</i> , 22 S.W.3d 351	12, 18,	Under 1993 version of Public Information Act, government can seek declaratory judgment against requestor; although Act incorporates deliberative process privilege, privilege did not protect memo presented to council re terminating finance director	AFF
<i>Crown Life Ins. Co. v. Casteel</i> , 22 S.W.3d 378	10, 18, 20,	Insurance agent had standing under Ins. Code art. 21.21 except for DTPA claims requiring consumer status; submission of invalid theories in broad-form question was harmful error requiring new trial	AFF/PT REV/PT/ REMTC
<i>Badouh v. Hale</i> , 22 S.W.3d 392	18,	Daughter exercised dominion and control over expectancy under will by pledging it as security, so could not disclaim bequest	AFF/PT REV/PT/ REN
<i>Levy v. City of Plano</i> , 22 S.W.3d 397	12	Case remanded to CA in light of <i>Quick v. City of Austin</i>	REV/REM

<i>Intratex Gas Co. v. Beeson</i> , 22 S.W.3d 398	3, 14	TC abused discretion in certifying class defined in terms of the ultimate liability issue; Court declines to redefine class	REV/REM TC
<i>Johnstone v. State</i> , 22 S.W.3d 408 (per curiam)	20,	Person appealing commitment order not required to file motion for new trial to attack factual sufficiency of the evidence on appeal	REV/REM CA
<i>Borneman v. Steak & Ale of Tex., Inc.</i> , 22 S.W.3d 411 (per curiam)	18, 20	Jury question improperly submitted causation in Dram Shop Act case; because error was defect & not omission, CA erred in rendering	REV/REM TC
<i>Embrey v. Royal Ins. Co. of Am.</i> , 22 S.W.3d 414	7, 10	Insurance policy did not require insurer to pay prejudgment interest in excess of policy limits	AFF
<i>Gulf Ins. Co. v. Burns Motors, Inc.</i> , 22 S.W.3d 417	6	Insurance agency agreement did not require insurance company to reimburse agent for agreed judgment based on agent's intentional misrepresentations	REV/REN
<i>Southwestern Refining Co. v. Bernal</i> , 22 S.W.3d 425	2, 3	Court had conflicts jurisdiction over interlocutory appeal of class certification decision because CA's decision conflicted with <i>Moriel</i> ; that case a class action not a material distinction; TC abused discretion in certifying class of personal injury plaintiffs because common issues did not predominate	REV/REM TC
<i>Ford Motor Co. v. Sheldon</i> , 22 S.W.3d 444	2, 3, 4	Statute granting Court jurisdiction over interlocutory appeals of class certification decisions involving auto dealers not an unconstitutional special law & did not violate equal protection; TC abused discretion in certifying class defined in terms of ultimate liability issue	REV/REM
<i>In re Volkswagen of Am., Inc.</i> , 22 S.W.3d 462 (J. Hecht & J. Owen dissenting to denial of PFM)	20	TC order granting new trial in interest of justice should not be shielded from all review	MAND PET DEN
<i>Chilkewitz v. Hyson</i> , 22 S.W.3d 825	20	Art. 4590i limitations provision, which applies "notwithstanding any other law," did not preclude extension of limitations under TRCP 28	REV/REM CA

<i>In re Gaylord Broadcasting Co.</i> , 22 S.W.3d 848 (J. Hecht & J. Owen dissenting to denial of PFM)	5, 20	Issue is can TC allow some TV stations to televise court proceedings but exclude station that's been critical of judge. Court should grant because case presents significant constitutional issue affecting a free press	MAND PET DEN
<i>Waco Indep. School Dist. v. Gibson</i> , 22 S.W.3d 849	20	Challenge to plan for test-based school promotion not ripe because no student had been retained at time suit filed	CA VAC/ TC DISM AFF
<i>Lopez v. Muñoz, Hockema & Reed, L.L.P.</i>	2, 6	Case "appealed" under contingency fee agreement when notice of appeal filed, so attorneys did not breach fiduciary duty by charging higher fee for appeal despite apparent settlement	REV/REN/ PT REV/REM CA/PT
<i>FM Properties Operating Co. v. City of Austin</i> , 22 S.W.3d 868	4, 12, 18	Statute that delegated power to private landowners to create water quality protection zones in cities' ETJs unconstitutionally delegated legislative power	AFF
<i>Univ. of Houston v. Clark</i> , 22 S.W.3d 915	17	Good faith test applies in police pursuit case; established as a matter of law in one consolidated case, but not in a second	REV/REM CA/PT & AFF
<i>In re GNC Franchising, Inc.</i> , 22 S.W.3d 929 (J. Hecht & J. Owen dissenting to denial of PFM)	6	TC refused to enforce valid forum selection clause; issue likely to recur & significant to state's jurisprudence	MAND PET DEN
<i>In re G.C.</i> , 22 S.W.3d 932 (per curiam)	2, 9	Because TC did not timely sign order or extend time for hearing, statements in affidavit of indigency were deemed true & parent whose rights were terminated was allowed to proceed with appeal as indigent	REV/REM CA
<i>In re Birdwell</i> , 20 S.W.3d 685		Attorney subject to compulsory discipline; conspiracy to defraud US crime of moral turpitude	BD DISC APP REV
<i>In re Univ. Interscholastic League</i> , 20 S.W.3d 690		TC abused discretion in granting temporary injunction requiring UIL to schedule baseball playoff game	MAND PET COND

<i>Keck, Mahin & Cate v. Nat'l Union Fire Ins. Co.</i> , 20 S.W.3d 692	6, 10, 13,	Insured's release covered malpractice claims, but KMC did not establish that release not invalid; excess carrier's failure to contribute to defense before primary's tender of policy limits irrelevant, & failure to contribute to settlement no evidence of fault	AFF
<i>Kagan-Edelman Enterp. v. Bond</i> , 20 S.W.3d 706 (per curiam)	2	Parties agree that CA erred in reversing judgment as to one party, so court reverses & renders in part	REV/REN
<i>Louisiana-Pacific Corp. v. Andrade</i> , 19 S.W.3d 5	7, 13, 23	Lack of safety or lock-out policy and managers' conflicting testimony no evidence that defendant's personnel were subjectively aware of or consciously indifferent to risk of injury; <i>Moriele</i> does not preclude CAs from doing factual sufficiency review of gross negligence findings	REV/REN
<i>In re Doe</i> , 19 S.W.3d 9	2, 9, 18,	Parental Notification Act does not preclude Supreme Court from issuing opinions in appeal of judicial bypass denial; whether minor is "mature & sufficiently well informed" is a fact question subject to review for legal and factual sufficiency; TC should make findings re "maturity"	CA AFF BUT REM IN INT JUST
<i>In re Doe 2</i> , 19 S.W.3d 278	2, 9, 18, 20,	Whether parental notification is not in minor's best interest reviewable for abuse of discretion; identifies factors relevant to "best interest;" TC should make findings re "best interest;" TC erred in <i>sua sponte</i> ruling statute unconstitutional	CA AFF BUT REM IN INT JUST
<i>In re Doe 1</i> , 19 S.W.3d 300 (J. Hecht dissenting to Court issuing order reversing judicial bypass denial with opinion to follow)	9,	J. Hecht dissents from "hasty and ill-considered action"	REV/REN
<i>In re Doe 3</i> , 19 S.W.3d 300	9,	5 justices hold that minor failed to establish she was mature and sufficiently well informed to proceed with an abortion without notifying her parents; 4 justices would hold that minor established emotional abuse as a matter of law and reverse denial of judicial bypass; 6 justices join in judgment reversing and remanding in interest of justice	CA JDT SET ASIDE & REM IN INT JUST

<i>In re Doe 4</i> , 19 S.W.3d 322	9,	Minor's testimony did not establish as a matter of law that parental notification would not be in her best interest; remanded in interest of justice because minor did not have benefit of <i>In re Doe</i> regarding establishing that she was mature and sufficiently well informed to proceed with an abortion without notifying her parents	CA VAC & REM IN INT JUST
<i>In re Doe 4</i> , 19 S.W.3d 337	9,	Minor did not show that she was sufficiently well informed to be entitled to bypass, and TC did not abuse discretion in failing to find that minor's notifying her parents would not be in her best interests	AFF
<i>In re Doe</i> , 19 S.W.3d 346	2, 9, 18,	Minor conclusively established that she was sufficiently well informed to be entitled to bypass; implied finding that minor was not mature did not support denial of bypass	REV/REN
<i>Continental Cas. Ins. Co. v. Functional Restoration Assoc.</i> , 19 S.W.3d 393	10, 18, 22	Workers' comp. carrier was not statutorily entitled to judicial review of medical benefits decision, and carrier did not plead inherent right to review	REVCA & AFF TC DISM
<i>Huckabee v. Time Warner Entertainment Co.</i> , 19 S.W.3d 413	11, 20	"Clear and convincing" standard not applicable in summary judgment in defamation case; defendant negated actual malice as a matter of law, and plaintiff didn't controvert	AFF
<i>Hughes Wood Prod., Inc. v. Wagner</i> , 18 S.W.3d 202	22,	Under section 184 of Restatement of Conflicts of Law, defendant employer is immune to employee's suit based on on-the-job injury in another state if employer would be immune under other state's law; most-significant-relationship test should be applied to particular issue under consideration; employer did not establish immunity under other state's law	AFF
<i>City of Midland v. O'Bryant</i> , 18 S.W.3d 209	8, 11	Employer does not owe duty of good faith and fair dealing to employees; city's decision to reclassify positions did not amount to extreme and outrageous conduct to support claims for intentional infliction of emotional distress	AFF/PT REV/PT REM/TC

<i>State v. \$217,590.000</i> 18 S.W.3d 631	16, 20	Voluntariness of consent to search is a mixed question of fact & law reviewed for abuse of discretion	REV/REM CA
<i>Henson v. Southern Farm Bureau Cas. Ins. Co.</i> , 17 S.W.3d 652	7, 10	Insurer not liable for prejudgment interest on under/uninsured motorist claims because no liability under the contract until underlying tort liability is established	AFF
<i>In re Daisy Mfg. Co.</i> , 17 S.W.3d 654 (per curiam)	20	CA abused discretion in ordering TC to lift protective order preventing apex deposition because plaintiff did not show that deposition is reasonably calculated to lead to admissible evidence that cannot be discovered by less-intrusive methods	CA MAND'D
<i>CMH Homes, Inc. v. Daenen</i> , 15 S.W.3d 97	13, 23	No evidence supported negligence finding against premises owner because there was no evidence that steps that shifted and caused injury posed an unreasonable risk of harm when installed or that premises owner knew of any risk of harm at times steps became unstable	REV/REN
<i>National Liability and Fire Ins. Co. v. Allen</i> , 15 S.W.3d 525	18, 20, 22	Statute requiring claimant appealing Workers' Compensation Commission decision to file copy of petition with agency when petition filed in court was not jurisdictional; filing requirement subject to mailbox rule; evidence from comp. hearing must comply with Texas Rules of Evidence to be admissible in <i>de novo</i> trial on review	AFF
<i>Kinnear v. Tex. Comm'n on Human Rights</i> , 14 S.W.3d 299 (per curiam)	17, 20	Commission waived sovereign immunity defense to claim for attorneys fees by failing to plead it	REV/PT/ REN
<i>Fireman's Fund County Mut. Ins. Co. v. Hidi</i> , 13 S.W.3d 767 (per curiam)	10, 18	Former Insurance Code art. 21.79E does not provide for recovery of deductibles from county mutual insurance company	REV/REN

<i>Baker Hughes, Inc. v. Keco R. & D., Inc.</i> , 12 S.W.3d 1	2, 4,	Misappropriation claim that was barred by limitations was not revived by passage of three-year limitations statute; applying new statute would be unconstitutionally retroactive; fact issue precluded summary judgment on breach of contract claim; CA should have ruled on grounds raised in summary judgment motion that had been denied before later summary judgment was granted	REV/PT AFF/PT REM/TC
<i>Brainard v. State</i> , 12 S.W.3d 6	7, 17,	Riparian landowners were entitled to gain title to new land resulting from erection of dam; legislative resolution authorizing boundary suit did not authorize award of attorneys fees	REV/PT AFF/PT
<i>Osterberg v. Peca</i> , 12 S.W.3d 31	2, 5, 18, 23	Election Code provision authorizing suit for Code violations does not require claimant to establish that violator was award that he was violating law; law was not unconstitutional except to the extent that it required husband and wife to form PAC to make campaign expenditure	AFF/PT REV/PT REMCA
<i>Dubai Petroleum Co. v. Kazi</i> , 12 S.W.3d 71	18, 20,	A plaintiff's failure to establish all elements of a statutory claim does not deprive courts of subject-matter jurisdiction, overruling <i>Mingus v. Wadley</i> ; plaintiffs established right to proceed under section 71.031 of Civ. P. & Rem. Code, which allows claims for injuries in foreign counties if foreign country has "equal treaty rights" with the United States; International Covenant on Civil and Political Rights satisfied equal treaty rights requirement	AFF
<i>In re Tex. Farmers Ins. Exchange</i> , 12 S.W.3d 807 (J. Hecht & J. Owen dissenting to denial of PFM)	20	TC order requiring insurer to produce report prepared by attorney in capacity of investigator is important to state's jurisprudence because it affects all parties who hire attorneys to investigate claims	MAND DEN
<i>Koch Refining Co. v. Chapa</i> , 11 S.W.3d 153 (per curiam)	13	Premises owner does not incur duty to insure safety of independent contractor's employees merely by placing a safety employee on the job site	REV/REN

<i>Mallios v. Baker</i> , 11 S.W.3d 157		Because client that partially assigned legal malpractice claim to third party retained part of claim, summary judgment was improper; Court does not decide whether assignment invalid	AFF
<i>In re Alcatel USA, Inc.</i> , 11 S.W.3d 173	20	Plaintiff not entitled to take apex depositions; no showing that executives had unique or superior knowledge, so CA did not abuse discretion in granting mandamus to defendant	MAND DEN
<i>Stevens v. Nat'l Educ. Ctrs, Inc.</i> , 11 S.W.3d 185 (per curiam denial of PFR)	2, 20	Although jury instruction on mental anguish erroneous, Court denies review because petitioner specifically requested that Court not remand for new trial and only asked for rendition; new trial was appropriate remedy	PFR DEN
<i>Univ. of Tex. Southwestern Medical Ctr. of Dallas v. Margulis</i> , 11 S.W.3d 186 (per curiam)	2, 17	CA had jurisdiction over appeal of denial of summary judgment motion based on qualified immunity	REV/REM CA
<i>Judwin Properties, Inc. v. Griggs & Harrison</i> , 11 S.W.3d 188 (per curiam)	24	In suit alleging that law firm committed malpractice by negligently disclosing confidences in suit by firm to collect fee, Court disapproves of CA's statement that TRE 503(d)(3) "conclusively disproved the duty element of Judwin's [the former client's] claim."	PFR DEN
<i>Wembley Inv. Co. v. Herrera</i> , 11 S.W.3d 924 (per curiam)	20	Bill of review plaintiff's failure to obtain ruling on its motion for new trial while a default judgment remained interlocutory in prior suit resulted from accident or wrongful acts of others, not from lack of diligence	REV/REM CA
<i>In re the Dallas Morning News, Inc.</i> , 10 S.W.3d 298	20	In action under TRCP 76a, party to settled suit was not entitled to mandamus to halt a hearing to determine whether documents sought were "court records" within meaning of rule; mandamus issued against CA	CA MAND'D
<i>Lane Bank Equip. Co. v. Smith Southern Equip., Inc.</i> , 10 S.W.3d 308	2, 20	A postjudgment motion seeking sanctions sought to modify the judgment, and thus extended both the TC's plenary jurisdiction and the appellate timetable	AFF

<i>Wilson v. Andrews</i> , 10 S.W.3d 663	4, 5, 12, 18	Amendments to Civil Service Act authorizing arbitration of claims adopted after home rule city voted to adopt the Act's procedures bound city; arbitration by "neutral qualified arbitrator" was not unconstitutional delegation	REV/REN
<i>Am.n Honda Motors Co. v. Dupriest Automotive, Inc.</i> , 10 S.W.3d 673 (per curiam denying PFR)	1	Court neither approves nor disapproves CA's holding that Motor Vehicle Commission had exclusive jurisdiction over dispute about purchase of auto dealership	PFR DEN
<i>In re L&L Kempwood Assoc.</i> , 9 S.W.3d 125 (per curiam)	5, 24	Construction contract affected interstate commerce, so FAA applied & arbitration required; <i>United State v. Lopez</i> , 514 U.S. 549 (1995), did not restrict scope of FAA	MAND COND GR
<i>Mireles v. Tex. Dep't of Pub. Safety</i> , 9 S.W.3d 128 (per curiam)	1, 20	In appeal of driver's license suspension, evidence of blood alcohol concentration of more than .10 was more than a scintilla of evidence to support administrative suspension	AFF
<i>Tex. Dep't of Pub. Safety v. Davis</i> , 9 S.W.3d 132 (per curiam)	1, 20	Case remanded to CA in light of <i>Mireles</i>	REV/REM CA
<i>Tex. Dep't of Pub. Safety v. Welch</i> , 9 S.W.3d 132 (per curiam)	1, 20	Case remanded to CA in light of <i>Mireles</i>	REV/REM CA
<i>Elliott-Williams Co. v. Diaz</i> , 9 S.W.3d 801	6, 13	General contractor does not retain control over subcontractor's work so as to incur liability to third parties for subcontractor's negligence merely by contracting with premises owner to be responsible for subcontractor's employees' actions	REV/REN
<i>Walls Regional Hosp. v. Bomar</i> , 9 S.W.3d 805 (per curiam)	22	Workers' Comp. Act provided exclusive remedy for nurses who alleged that employer negligently allowed doctor to sexually harass them	REV/REN
<i>In re Rio Grande Valley Gas Co.</i> , 8 S.W.3d 303 (J. Hecht & J. Owen dissenting to denial of PFM)	20	Issue is whether local rules trump statutory and statewide rules governing transfers, assignments, and recusals. CA opinion nullifies authority given regional presiding judges	MAND DEN

<i>El Paso Natural Gas Co. v. Minco Oil & Gas, Inc.</i> , 8 S.W.3d 309	2, 6, 14, 21	UCC duty of good faith doesn't apply to the formation or procurement of a release from contractual obligations; alleged error about enforceability of second release not waived, and release was enforceable	REV/REN
<i>Tex. Dep't of Criminal Justice v. VitaPro Foods, Inc.</i> , 8 S.W.3d 316	6, 18	VitaPro, a soy-based meat substitute was not an agricultural commodity under the Direct Purchasing Statute; as a result, TDCJ had no authority to directly contract to purchase VitaPro; no other statute authorized contracts	REV/REN
<i>In re Bayerische Motoren Werke, AG</i> , 8 S.W.3d 326 (J. Hecht & J. Owen dissenting to denial of MRH on PFM)	20	Issue is whether TC can order new trial in the interest of justice without explaining reasons. Dissenters would say no.	MAND DEN
<i>Wilson v. Tex. Parks & Wildlife Dep't</i> , 8 S.W.3d 634 (per curiam denying PFR)	13, 17	CA remanded plaintiffs' claims against TP&WD on issue of whether agency controlled river conditions; remand on that issue would be futile because there was no evidence of control; but remand appropriate on issue whether agency undertook duty to make park safe	PFR DEN
<i>Tex. Dep't of Transp. v. Jones</i> , 8 S.W.3d 636 (per curiam)	17, 20	Governmental immunity from suit deprives TC of subject matter jurisdiction and is properly raised in plea to jurisdiction	REV/REM CA
<i>Peña v. Peña</i> , 8 S.W.3d 639 (per curiam disapproving language in CA opinion)	9	Court disapproves of language in CA opinion suggesting that whether spouse provoked violence relevant in custody dispute in which wife argued she provided credible evidence of a history or pattern of domestic violence	PFR DEN
<i>Fleming Foods of Tex., Inc. v. Rylander</i> , 6 S.W.3d 278	1, 18, 19	When language of codified statute cannot be reconciled with pre-codification statute and codified statute is unambiguous, give effect to codified version, even if codification purports to be nonsubstantive; indirect payor of tax is entitled to seek refund under Tax Code without securing an assignment from the vendor through which it paid the taxes; because Comptroller's regulation implementing statute conflicted with codified statute, no deference due to administrative interpretation; statute unambiguous, legislative acceptance doctrine did not apply	REV/REM TC

<i>Kroger Co. v. Robins</i> , 5 S.W.3d 221 (per curiam denying PFR)	15	Court denies petition; whether fact issue on risk-utility test on defective design claim could not be determined because defendants' motions for summary judgment did not attempt to apply it	PFR DEN
<i>Mellon Mort. Co. v. Holder</i> , 5 S.W.3d 654 (plurality)	13	Plaintiff brought to parking garage by police officer and sexually assaulted sued garage owner. 3 justices would render judgment for owner because victim not foreseeable; one justice would render for owner because victim was trespasser to whom owner only owed duty not to injure intentionally, wilfully, or through gross negligence; one justice would render for owner because sexual assault not foreseeable; three dissenting justices would hold owner was not entitled to summary judgment because there was evidence that victim was licensee and there was fact issue about owner's awareness of risk of criminal conduct in garage	REV/REN
<i>In re South Tex. College of Law and Tex. A&M Univers.</i> , 4 S.W.3d 219 (J. Hecht dissenting to denial of PFM & J. Owen concur in denial & responds to dissent)	2	J. Hecht would grant petition and hold that relators were entitled to supersede TC judgment enjoining relators from continuing to operate under affiliation agreement; J. Owen supports denial because of evidence of potential harm in the absence of injunction	MAND DEN
<i>Tex. Commerce Bank Nat'l Assoc. v. New</i> , 3 S.W.3d 515 (per curiam)	20, 23	Affidavits containing unobjected-to hearsay were legally sufficient to support default judgment	REV/REM TC ENTRY JDT
<i>Gross v. Kahanek</i> , 3 S.W.3d 518 (per curiam)	13, 24	Limitations under art. 4590i barred wrongful death claim; no continuing course of treatment for injury caused by prescription drug where another doctor beside defendant began prescribing the drug; survival claim not barred because limitations would have been tolled by decedent's minority	REV/REN/ PT REV/REM/ PT

