

Civil Causes of Action and Calculation of Damages

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Civil Deskbook

O'Connor's Texas Causes of
Action

Texas Rule of Civil Procedure
508

Resources

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Definitions
& Intro

Debt Claim
Cases

Contracts

Torts

Other Civil
Cases

Damages

What We Will Cover

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Some Helpful Definitions

- **Injury** – Includes both bodily injury and economic injury.
- **Damages** – Money a party receives based on their cause of action.
- **Actual or Proximate Cause** – This means the defendant's action resulted in the injury. Cause can be "**actual cause**" where the action directly caused injury, or "**proximate cause**" meaning the action started a chain of events that inevitably resulted in the injury.
 - To be a "proximate cause," the action has to be a "**but for**" cause, meaning "but for the action" the injury wouldn't have occurred. Also, the injury must be a **foreseeable** outcome of the action.

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- If the idea of proximate cause has your head spinning, don't worry: you're not alone!
- Bill runs a red light and his car strikes a car driven by Jan. Bill running the red light is the **actual cause** of Jan's damage and injuries.
- After Bill strikes Jan's car, it slides into Norah who is walking down the street, breaking her leg. Bill running the red light is the **proximate cause** of Norah's broken leg.

Understanding "Proximate Cause"

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- When the ambulance is taking Norah to the hospital, the ambulance driver crashes, breaking Norah's arm. This injury was not a foreseeable result of Bill's action of running the light, so Bill running the red light was **not the actual cause and not a proximate cause** of Norah's broken arm.

Understanding
"Proximate
Cause" -
Foreseeable

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How Do You Decide a Case at Trial?

- Easy to get bogged down in "noise"
- What should you be listening for?
- How do you know what is important?
- How do you decide what questions to ask?

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Causes of Action

In criminal cases, you must consider “**elements of the offense,**” which are what the state must prove for someone to be guilty of a criminal offense.

In civil cases, there will be elements of the case that must be proven as well, but instead of elements of the offense, they are elements of the **cause of action.**

Less likely to be clearly spelled out in statute than criminal elements are – O’Connor Causes of Action is a great resource!

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Break it Down and Make it Simpler

- **EXAMPLE of a “difficult” rule**
- The tort of intentional infliction of emotional distress exists if the defendant acted with either extreme or outrageous conduct and intended to cause severe emotional distress to plaintiff or behaved with reckless disregard to emotional state of plaintiff and the acts were the actual or proximate cause of the distress and severe emotional distress actually occurred.

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Make it Bite-Sized

Cause of action of *intentional infliction of emotional distress* exists **IF:**

- the defendant acted with *extreme conduct* **OR** *outrageous conduct*

AND

- *intended* to cause *severe* emotional distress to plaintiff **OR**
- behaved with *reckless disregard* to emotional state of plaintiff

AND

- the acts were the *actual or proximate cause* of the distress

AND

- *severe* emotional distress actually occurred.

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- Once you answer each individual decision point, your conclusion becomes clear, and answering single questions is much easier:

- Did the defendant act with extreme conduct, yes or no?
- Did the defendant act with outrageous conduct, yes or no?
 - If you answer both of these “no”, then the plaintiff hasn’t proven an element of the cause of action and so they can’t recover damages for it.
 - If you answer **either** question with yes (since it is an **OR**, not an **AND**), move to the next step.
- If you get all the way through, plaintiff can recover, if not, they cannot. Simple as that!

Making the Case Simpler

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But Wait?!

- “If the answers to those questions determine how I must rule on a cause of action, isn’t that taking away my judicial discretion? I’m a judge, not a robot or kiosk!”
 - No! Because every judge will see things differently on the individual questions.
- Judges **can** have different answers to the question “Did the defendant act with outrageous conduct?” but **can’t** have different answers to the question “Does the plaintiff win if they prove their cause of action?”

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Practice Tips

Have a “cheat sheet” of the elements of the offense or cause of action on the bench and make notes as to which elements you have heard evidence on

Make a flowchart/checklist if necessary to ensure the right result

Can you “take the day off” with a jury trial, since this is all their job anyway? Why or why not?

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Cases Without Causes

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Parties don't need "the magic words" to file a claim

- Remember that the parties don't have to know the specific names of causes of action.
- If the petition only alleges a cause of action that justice courts don't have jurisdiction over (such as slander, defamation, or divorce), you should dismiss the case without request from the other side.
- If the petition alleges multiple causes of action, but one is defamation, you would dismiss the defamation claim, and proceed on the others.

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When the Petition Has No Cause of Action

- If the petition alleges something that isn't a valid cause of action, such as the description earlier of "they said a mean thing to me on Yelp", the court doesn't dismiss it on its own motion.
- Instead, the defendant could file a motion for summary disposition.
- Or, the case could go to trial if they don't make that motion, and the defendant will win.

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Determining Cause of Action

- If the plaintiff files a petition with allegations of bad conduct by the defendant, you need to determine if a valid cause of action does exist that matches the allegation.

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Debt Claim Cases

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Filing the Case

The plaintiff **only** has a debt claim case if they are suing for debt **and** if they are one of the following:

- Debt collector or collection agency
- Assignee of a claim
- Financial institution
- Person or entity primarily engaged in the business of lending money at interest

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Filing the Case

TJCTC has modified its petition to help prevent plaintiffs and courts from mis-labeling cases.

We also feel it is not legal advice to answer what type of case a plaintiff has or what type of petition they need.

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The petition needs to comply with Rules 502.2 and 508.2

- This was reviewed at Stage 2 and covered in Chapter 4 of the Civil Deskbook

But what if a debt claim petition **doesn't** comply with the rules?

The Petition

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The Rules are silent on petitions that are missing required items.

TJCTC Recommendation:

- Issue citations on all petitions filed, even if they are missing requirements
- If the defendant answers, proceed. They may file a motion to have the plaintiff amend or clarify if they want to get additional information. – TRCP 502.7
- If the defendant **doesn't** answer, we recommend **not** granting default judgments on petitions that don't comply with the Rules.

The Petition

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Remember the general rule in debt claim cases:

- If the defendant does not file an answer or otherwise appear by the answer date, the judge should render a default judgment – **without a hearing** – upon plaintiff's proof of the amount of damages.

This is **not** the rule in most small claim cases.

- See Ch. 4 of the Civil Deskbook for a full review of default judgment procedures

Default Judgment (Rule 508.3)

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What Documents Can I Consider?

At trial, the rules of evidence don't apply, so you can consider whatever you feel is credible and relevant.

For default judgment, you can only consider documents that are "proven up" by the plaintiff, which means there must be a sworn statement accompanying the document as required by Rule 508.3.

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If the Defendant Answers

*Dismissal for Want of Prosecution

Pretrial Conference or Mediation could be helpful.

Be aware of DWOP* issues, as these cases can drag on.

What if the defendant's answer admits the debt?

Sometimes you will never get a return of citation.

Sometimes the plaintiff won't submit proof of damage, the defendant doesn't answer, and the plaintiff doesn't request a default hearing.

Sometimes the plaintiff wants constant continuances, as they are working on settling the case.

Plaintiff may request summary disposition, see Civil Deskbook

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Statute of Limitations – Debt Claim Cases

- The statute of limitations in a case for debt is four years.
- Current caselaw says you start the clock on the four years when “dealings between the parties” stop.
- Usually, that will mean from the last charge made or payment sent by the defendant.
- If the case is outside the statute of limitations, the plaintiff cannot have a judgment, even if the defendant doesn’t bring that up, and even if the defendant never appears.

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Contracts

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What is a contract?

- Most simply, it's an agreement between two or more parties (either people or organizations) which the law recognizes and will enforce.
- It may require a party to do something, or may require them not to do something (often phrased as "must **refrain** from" doing something.)

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Do All Contracts Have to Be Written?

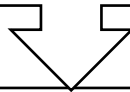
A common misconception is that a contract must always be in writing.

However, **most** contracts can be oral. Having an oral contract does make it much more difficult to prove terms of a contract at trial! What are some ways that a party might be able to prove the existence of an oral contract?

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Statute of Frauds

Texas Law does require that **some** contracts be in writing in order to be enforceable.



The list, found at Section 26.01 of the Business & Commerce Code, includes leases longer than one year, sale of goods for more than \$500, and any contract which **cannot** be performed within one year of the date of making the agreement

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- There are two types of contracts, **express** and **implied**.
- An **express** contract is a written or oral agreement that demonstrates the existence of the agreement and its terms.
- In an **implied** contract, the existence of the agreement and its terms are inferred from the conduct of the parties.
 - Gas station pump; Doctor's visit

Express vs. Implied Contracts

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How a Contract is Created

- First a person or a company, who we will call the **offeror**, makes an **offer**.
- Generally speaking, if the offer is **accepted** by the person or company to whom the offer is made (the **offeree**), a contract is created.
- Therefore, **offer** and **acceptance** are the two main (but not the only) “ingredients” necessary to form a contract.
- Even if we have a valid offer and acceptance, the contract is not necessarily enforceable. (More on that later.)

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The Offer: Three “Ingredients” to Make it Binding

1. Intent

The offeror must intend for the offer to be legally binding. If the “offer” is intended as a joke, an invitation to negotiate, or is made only as a result of the excitement or anger of the offeror, then the “offer” won’t create a binding obligation if accepted.

2. Communication of the Offer

The offer must be delivered to the receiving party. If it is never received, there is no acceptance or mutual assent.

3. Definite Terms

Clearly defined terms are required to establish the parties’ intention.

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- An offer remains open after it has been extended unless one of the following occurs:
 - Rejection by the offeree
 - **Revocation**, or withdrawal, of the offer before it's accepted
 - Death, incapacity, or insanity of either party
 - Destruction of the subject matter
 - Expiration of a specified or "reasonable" time
 - Counteroffer with different terms

How Long Does the Offer Last?

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Acceptance of the Offer

A party can accept an offer by communicating their acceptance, or by beginning performance in some cases.

- An offer may communicate how it must be accepted. If so, that is the only valid way to accept the offer.

A risk of beginning performance without communication is that the offer may have been withdrawn before you begin performance.

- The mailbox rule makes an **acceptance** valid when it is deposited in the mail (**revocation** valid when received.)

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Poll: Valid Offer and Acceptance?

Thea offers Bronson \$100.00 to paint her office green and gold.
Bronson says “No, but I’ll paint it crimson and cream for \$400.00.”
Bronson has:

1. Modified and accepted the offer
2. Made a counteroffer
3. Terrible taste in paint colors
4. Bad negotiating skills

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Valid Offer and Acceptance?

- Say Thea says “No, thanks, Bronson, I don’t like crimson and cream.” Bronson says “OK, no problem”, and comes in on the weekend and paints Thea’s office green and gold.
- Does Thea owe Bronson \$100?
- Why or why not?
- Has Bronson now accepted Thea’s original offer?

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Valid Offer and Acceptance?

- Bob offers ABC Tree Trimming \$600.00 to remove two trees from his yard. He says he's "not in a hurry," but would like it done as soon as possible. ABC doesn't respond to Bob's email.
- Six months later, Bob comes home and finds the trees removed and a bill for \$600.00 taped to his front door. Was the offer still valid? What question do you have to answer to determine that?

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- Rebecca offers Sonya \$800.00 to prepare her 2022 federal income tax returns. Rebecca's letter states that her offer must be accepted by April 1. Sonya mails a letter accepting the offer on March 27. Rebecca receives the letter on April 2. Did Sonya accept the offer before it expired?
- What if Rebecca's offer says acceptance must be received by April 1 to be valid?
- What if Rebecca didn't say it must be received by April 1, but did mail a letter on March 26 telling Sonya "never mind" and Sonya receives that letter on March 31?

Valid Offer and Acceptance

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Four Ingredients of an Enforceable Contract

- All contracts, whether express or implied, are enforceable only if the following factors are present:
 - Mutual assent
 - Consideration
 - Legal capacity
 - Legality

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Ingredient 1: Mutual Assent

- Any contract must be entered into freely and with an intent to be bound by its terms. Mutual assent can be viewed as the “agreement” and is often called the “**meeting of the minds.**”
- Therefore, both the offer and acceptance must be free, knowing, and voluntary.
- While offer and acceptance usually show mutual assent, it is possible to have an offer and acceptance without mutual assent.

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Mutual Assent

- We **don't** expect people to be bound by unintended promises, promises made in response to "force," or promises that arise out of mistakes about the facts.
- We **do** expect parties to follow through on intended promises so that the reasonable expectations of all parties are met.

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Things Which Affect Mutual Assent

- ***Duress***
 - The use of force, threat of force, or mental stress can create duress.
- ***Undue Influence***
 - An abuse of a relationship of trust by the trusted person, causing the other party to act against his or her own free will.
- ***Fraud or misrepresentation***
 - A misrepresentation of information or terms or the inducement of another party by deceit.
- ***Mutual mistake***
 - Where both parties are mistaken about the subject matter of the contract.

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Amber “helps” her elderly and wealthy Grandmother around the house and with her finances. Grandma has dementia. Grandma’s other grandchildren discover that Grandma has contracted to pay Amber’s Yard Service \$4,500.00 per month for mowing the lawn. Is this a valid contract?

Mutual Assent Scenario 1

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Mutual Assent Scenario 2

- Rebecca has a collection of Michael Kors purses. Jessica sees her carry them at work and is very jealous. Jessica offers Rebecca \$1000 for “that sparkly one I saw you carrying with the bedazzled cross.”
- Jessica means one with pink bedazzles, but Rebecca can’t remember which Jessica has seen, and thinks she means a different one with silver bedazzles instead of pink.
- Rebecca responds “Sure, it’s a deal.”
- Is there an offer and acceptance?
- Is there mutual assent?

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Ingredient 2: Consideration

- **Consideration** is the **value** that parties are to give or receive from each other under the contract.
- This can either be a promise or performance, and usually takes the form of money, property or services given or received.
- If an agreement is not made for consideration, no enforceable contract exists.

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Consideration

Past consideration is *not valid*. Any goods or services to be exchanged must be exchanged at or after the time of contract formation.

A pre-existing duty *does not* count as consideration.

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Consideration?

Jeff paints Laura's house for \$1,000.00. Laura isn't satisfied, and complains to Jeff. Jeff says, "well, I'll paint your barn for free," but he never does. Laura has to hire Angie to paint her barn for \$500.00 instead. Laura then sues Jeff for the \$500.00.

Was there consideration for Jeff's promise to paint the barn?

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Consideration?

Amy is stressed out with wedding planning and is complaining to her mom about it. Her mom says "Let me send you \$1,000 to help ease your stress."

Amy's mom didn't send the money.

Was there consideration?

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Loc hires Bronson to mow his yard each week for six months for a total of \$1,500.00. After two weeks, Loc says: “you’re doing a great job; keep it up and I’ll pay you an extra \$500.00. At the end of six months, Loc doesn’t pay Bronson the \$500.00 “bonus.” Was there consideration for Loc’s promise?

Consideration?

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Ingredient 3: Legal Capacity

- You must have the power and authority to enter into a contract. “**Legal capacity**” means capacity that is approved by law.
- A person or entity who does not have legal capacity to enter into a contract will not be bound by the terms of the contract.

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What Affects Legal Capacity?

Mental Capacity - If you are mentally incompetent, or under the influence of drugs or alcohol, you lack the requisite capacity to contract. Guardians may contract for wards.

Legal Age – Usually 18 years of age. Contract entered into by minors are voidable, but may be enforceable if for necessities.

Authority to act – All parties must have authority to act. This comes into play when persons sign for others or for companies.

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Legal Capacity

- Al and Bronson play golf. Bronson shoots his worst round in years. After the round, Bronson has eight shots of Fireball cinnamon whiskey. Al says “Hey, I’ll buy that new driver from you from \$20, you obviously can’t hit it anyway.” The driver cost \$500 when purchased. Bronson says OK.
- Binding contract?

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Ingredient 4: Legality

- The subject matter must not be illegal in light of statute or public policy (*e.g.*, crimes, obstruction of justice, usury).
 - “I will pay you \$5000 not to testify in this case.”
 - “I will deliver you 8 ounces of marijuana for \$1700.”
- Such contracts are unenforceable, and the offeror and offeree may be subject to criminal penalties.

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Elements of a Contract Case

In order to recover in a contract suit, the plaintiff will have to show:

1. The existence of a valid and enforceable **contract**.
 - This is where the things we have discussed so far come into play, such as offer and acceptance, mutual assent, consideration, legal capacity, and legality of the contract.
2. The plaintiff **performed** their obligation under the contract or were excused from doing so (for example, because the defendant breached.)
3. That the defendant **breached** the contract.
 - The defendant didn't live up to their end of the agreement.
4. The breach **caused** the plaintiff economic **injury**.
 - Can be actual/proximate cause, as long as damages are foreseeable.

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Deciding if There Was a Breach

- Once you have gone through the steps we have covered to establish that there was a contract, the next decision you must make is whether the defendant breached the contract.
- Sometimes the defendant will file a **counterclaim**, saying that in fact it is the plaintiff who has breached the contract.
 - In a case like this, both parties may **stipulate**, or agree, that there was a contract. If so, we can ignore the previous steps on mutual assent, consideration, etc., and jump right to this question.
 - *Remember the benefits of pretrial hearings!*

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Deciding if There Was a Breach

- Information that you use to decide if there was a breach could include:
 - The contract language itself
 - Testimony regarding any discussion between the parties
 - Testimony regarding the conduct of the parties

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Defenses to Breach of Contract Include

Standing
(wrong plaintiff)

No Legal Contract

Impossibility (contract
couldn't be performed)

Unconscionability
(contract was **legally**
unfair)

Modification

Statute of
Limitations

Statute of Frauds

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Other Ways to Recover – Contract Cases

- There are a few ways where a plaintiff can recover damages in a case that looks like a contract case, but the plaintiff is missing one or more of the elements of the cause of action.
- These include:
 - **Promissory Estoppel**
 - **Quantum Meruit**

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Promissory Estoppel – The Elements

This is also caused “detrimental reliance.”

The plaintiff can recover if:

- The defendant made a **promise** to the plaintiff;
- The plaintiff **reasonably relied** on the promise which caused them **harm**;
- The reliance was **foreseeable** by the defendant; and
- Enforcing the promise **avoids an injustice**.

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Promissory Estoppel – What’s it Look Like?

Remember earlier when Amy’s mom promised to send \$1,000 to help with her wedding?

Now imagine that Amy relied on that promise and paid for an open bar rather than a cash bar, and would not have done that if not for her mom’s promise.

Should Amy be able to enforce the \$1,000 promise now?

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Quantum Meruit – The Elements

This is also caused “unjust enrichment.”

The plaintiff can recover if:

- **Valuable services or materials** were provided to the defendant;
- The defendant **accepted** the service or materials; and
- The defendant had reasonable notice that the plaintiff **expected compensation**.

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Quantum Meruit – What’s it Look Like?

Jessica asks John to help her with some legal contract drafting. She says “Let me know afterwards how much time you spend on the work, and I’ll take care of you.”

After performing the work, John sends her an invoice saying he did 5 hours of work and billing her \$1,000. She refuses to pay, saying they never decided a price.

Was there mutual assent, and therefore a contract?

Can John recover under “unjust enrichment”?

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Statute of Limitations – Contract Cases

- The statute of limitations in a contract case (as well as the related cases discussed) is four years.
- The parties can contract for a different statute of limitations, but it cannot be for less than two years.
- If the case is outside the statute of limitations, the plaintiff cannot have a judgment, even if the defendant doesn't bring that up, and even if the defendant never appears.

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Tort Cases

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Something that is not a breach of contract but a party can recover money for under civil law

Generally, damage to someone's property or economic harm/bodily injury to the person

Purpose: Deter wrongful conduct, make injured parties whole

What is a Tort?

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Keep in Mind

- Self-represented litigants may not know the legal term for their cause of action. They don't have to know the "magic words." Your job is to determine what happened and award damages if appropriate.
- Many behaviors can be punished civilly, criminally, or both. (For example, the O.J. Simpson case)
- It is not up to you to decide if the person should pursue a civil case or if a prosecution should occur.
- Process the case that has been filed with you. Do not advise someone what to file or whether to file.

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Intentional Torts vs. Negligence

- There are two main categories of tort cases.
- **Intentional torts** are actions that a party does on purpose (or sometimes recklessly) that cause damage to property or injury to a person.
- **Negligence** is when a party causes damage or injury, not on purpose, but instead by not being careful enough with the actions they take (or fail to take).

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When is an Action an Intentional Tort?

The action was taken to intentionally cause the damage or injury or knowing that it is substantially certain to be caused.

Can “transfer” intent from intended target to actual target.

- Bronson is at the OU-Texas football game, becomes enraged, and wants to throw his flask at the referee.
- Bronson is a horrendous athlete and so instead he beans a fan four rows in front of him, causing injury.
- Even though the intent was to hit the referee, the intent is transferred to the fan, making this still an intentional tort.

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Types of Intentional Torts

Assault/Battery

Conversion

Trespass to Chattels (personal property) or Land

False Imprisonment

Intentional Infliction of Emotional Distress

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What is Assault/Battery?

- Civil **assault** is:
 - 1) a harmful touching causing bodily injury;
 - 2) an offensive or provocative touching; **or**
 - 3) causing **apprehension** (fear) of an imminent harmful touching.
- O'Connors uses "assault" to refer to all of these actions, rather than differentiate between assault and battery, and we will here as well.

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What is Assault?

- The “touching” doesn’t have to be direct contact. So for example, if Dale intentionally rams an empty parked car that then slides into a person injuring them, that would be a “harmful touching” and Dale could be liable for assault.

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Assault Causing Bodily Injury – The Elements

1. Defendant acted intentionally, knowingly, or **recklessly**.
2. Contact with the plaintiff’s body or something attached to it.
3. Plaintiff suffered injury as a result.
 - If the injury was not a direct result, but instead was a consequential result, the plaintiff must prove **foreseeability**, meaning the defendant should have known that this injury was a reasonably likely outcome of their conduct.
 - For example, Calvin finds a snowball on the ground and throws it at Susie’s head to flirt. There was a rock inside the snowball and Susie’s head is busted open. Was that **foreseeable**?

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Assault by Threat of Bodily Injury – The Elements

1. Defendant acted intentionally or knowingly.
2. Defendant threatened plaintiff with **imminent** bodily injury.
 - Imminent means that it is on the verge of happening, not at some vague future time.
3. Plaintiff suffered injury as a result
 - The plaintiff must prove **foreseeability**, meaning the defendant should have known that this injury was a reasonably likely outcome of their conduct.
 - Injury includes “apprehension of bodily injury.”

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Assault by Offensive Physical Contact – The Elements

1. Defendant acted intentionally or knowingly.
2. Contact with the plaintiff’s body or something attached to it.
3. Defendant had knowledge that the plaintiff would find the contact **offensive or provocative**.
4. Plaintiff suffered injury as a result
 - The plaintiff must prove **foreseeability**, meaning the defendant should have known that this injury was a reasonably likely outcome of their conduct.
 - Injury includes “personal indignity.”

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- Justice court civil filings that would be considered assault could include:
 - Jeff is stopped in traffic on I-35 and gets out of his car and screams through the window of the car in front of him “move or you’re a dead man!” – no contact, but **apprehension of imminent bodily injury**.
 - The OU-Texas flask-throwing debacle from earlier, which **caused bodily injury**.
 - Mark is in line at Chick-Fil-A. He gets annoyed with someone who is not paying attention and is standing in the way and slaps their cell phone out of their hand. This is an **offensive/provocative contact**.

How Does Assault Get Filed in Justice Court?

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What is Conversion?

- Conversion is when someone takes another person’s personal property and uses it without permission.

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Conversion – The Elements

1. The plaintiff owned, possessed, or had the right to possess the property.
2. The property was personal property, such as a car or domesticated animal.
3. The defendant exercised control over the property wrongfully.
 - The defendant could have obtained the property legally, but then doesn't use it lawfully, such as a constable keeping someone's property they picked up on a writ of execution rather than selling it.
4. The plaintiff suffered damage – “loss of value or loss of use”

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- Justice court civil filings that would be considered conversion could include:
 - Randy has a very expensive and fancy triathlon bicycle. His neighbor has a junky old ten-speed. His neighbor takes Randy's bicycle without permission, and Randy doesn't have the bicycle for his Kona Ironman race, so he has to go purchase another one. He sues the neighbor for the cost of the bike.
 - April has a ranch with 1200 cattle. Jeff has a neighboring ranch and leaves a gate open and some of her cattle go onto his ranch. She asks him to return them and he says that will be too much work to separate them and that “these things just happen.”

How Does Conversion Get Filed in Justice Court?

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What is Trespass?

- Trespass is using someone's land or personal property without permission.
- Trespass to **chattels** is what it is called when it is personal property.
 - This is very similar to conversion, previously discussed.
- Trespass to real property is what it is called when it is land.

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Trespass to Land – The Elements

1. The plaintiff **owned** or had a lawful **right to possess the real property**.
2. The defendant made a physical, intentional, voluntary, and unauthorized **entry** onto the property.
3. The plaintiff suffered an **injury to their right of exclusive possession**.

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- Justice court civil filings that would be considered trespass could include:
 - Hatfield has a tree on his property. Birds nest in the tree and make unwelcome deposits on the immaculately restored T-Bird of his neighbor, McCoy. McCoy comes onto Hatfield's land and cuts down the tree.
 - Gorton has a pond on his land, where he raises fish and sells them. Tyson comes onto his land without permission and fishes the pond.

How Does Trespass Get Filed in Justice Court?

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What is False Imprisonment?

- False imprisonment is detaining a person without legal authority to do so.

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False Imprisonment – The Elements

1. The defendant **willfully detained** plaintiff.
2. The detention was **without the consent** of the plaintiff.
 - It is not necessary for the plaintiff to have verbally resisted to be without consent.
3. There was **no legal authority** for the detention.
 - Shopkeepers, employers, peace officers have the authority to make limited detentions. If the detention is longer than necessary, this can eliminate the legal authority.
4. The plaintiff suffered **injury**, which may include physical or mental injuries such as humiliation and shame.

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- Justice court civil filings that would be considered false imprisonment could include:
 - Thea cannot find her autographed copy of O'Connor's Causes of Action. She believes that someone in the office took it. She orders that no one can leave the office until someone turns over the book.
 - Judge Roadrage is cut off in traffic. She follows the person until they stop and then orders them to come to her court and explain why they shouldn't be held in contempt.
 - Note that you have judicial immunity against false imprisonment **only** if acting in good faith within the scope of your judicial capacity. Is Judge Roadrage in her official capacity?

How Does False Imprisonment Get Filed in Justice Court?

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What is Intentional Infliction of Emotional Distress?

- A rare cause of action where a defendant acts in an extreme or outrageous manner intentionally to cause emotional distress in the plaintiff.

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Intentional Infliction of Emotional Distress – The Elements

1. The plaintiff must be a **person**, not a business or company.
2. The defendant must have acted **intentionally or recklessly**.
 - Primary risk of the conduct must be emotional distress, not physical injury.
3. The plaintiff suffered **severe** emotional distress.
4. The defendant's conduct was **extreme or outrageous**.
 - Not enough to be rude or insensitive.
5. The conduct **caused** the distress.
6. No other cause of action gives a remedy.

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- Most of the time when a plaintiff files a claim for emotional distress, either the distress will not be severe enough or the conduct will not be extreme or outrageous enough to allow recovery:
 - One court recently had someone file because the defendant responded to plaintiff's Yelp review saying "mean things about the plaintiff." Similar filings about mean postings or messages on Facebook or other social media often fall well short.
 - Cases finding extreme/outrageous conduct have involved acts like sexual harassment and death threats, which will often create damages higher than our \$20,000 limit.

How Does Intentional Infliction of Emotional Distress Get Filed in Justice Court?

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Defenses to Intentional Torts May Include

Consent Self-Defense
 or Defense of
 Others Necessity

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Negligence

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What is Negligence?

- Negligence is a very common cause of action in justice court (even though many of the people filing the cases may not know to use that word.)
- At its base level, a negligence cause of action is saying that the defendant caused injury to the plaintiff by either:
 - Doing something that they shouldn't have done, **or**
 - Failing to do something that they should have done.

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Negligence – The Elements

1. The defendant had a legal **duty** to act in a certain way toward the plaintiff.
2. The defendant **breached** that duty.
3. The breach **caused** injury to the plaintiff.

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Negligence Element 1 - **Duty**

- A **general duty** exists to use **ordinary care** to avoid **foreseeable risk** of injury to others.
- There is **not** a general duty to provide aid or protect others, unless there is a special relationship.
- Duty can be created by a relationship between the parties.
 - For example, attorney-client, accountant-client, parent-child.
- Civil and criminal laws create statutory duties as well.
 - You have a duty to stop at a red light.

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Negligence Scenario - Duty

- The location: a local bar. Amanda is drunkenly juggling beer bottles. Bob is walking back from the bathroom into the path of the bottles. Chris sees this, but says nothing. A bottle lands on Bob's head, knocking him unconscious. Dan and Elizabeth see this and provide no medical assistance. Dan is a lawyer, and Elizabeth is a doctor.
- Bob sues Amanda, Chris, Dan, and Elizabeth. Who, if anyone, had a duty toward Bob in this scenario?

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Negligence Element 2 - Breach

In each situation where a person has a duty to another, they have what is called a **standard of care**. If they fail to meet this standard, they have **breached** their duty.

Normally, the standard is "ordinary care", which is what an "ordinary prudent person" would have done (or not done) in that situation.

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Negligence Element 2 - Breach

- Situations where a different standard other than “ordinary care” may apply include:
 - Potential breach by a “**professional**” such as an attorney or a physician.
 - The professional is held to the standard of an **ordinarily prudent professional** would have done in that situation, rather than a non-professional.
 - **Common carriers** and **handlers of dangerous commodities** are also held to a higher standard of care.

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Negligence Element 2 - Breach

When determining what an “ordinary prudent person” would do, the defendant’s age, experience, intelligence, and knowledge are taken into consideration.



Violation of a statute is considered “**negligence per se**”, meaning the act is negligent on its face.

The defendant may be able to provide a defense to this by showing that it was necessary to violate this law – for example, speeding to rush someone having a heart attack to the hospital.

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Negligence Element 3 – Causation

- In negligence cases, the breach must be the **actual or proximate cause** of the plaintiff's injury.
- As discussed before, there is a two-part test for proximate cause:
 - **Cause-in-fact** – If the negligence was a substantial factor in the injury and whether the injury would have otherwise occurred. – “**but for**” test discussed earlier
 - **Foreseeability** – A person of ordinary intelligence should have anticipated the danger caused by the negligence.

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Understanding Proximate Cause

- A prison guard fails to search an inmate, which is a job responsibility. The inmate stabs the magistrate on duty with a screwdriver they smuggled in.
- Did the prison guard have a duty?
- Did the guard breach that duty?
- Was that breach a proximate cause of the magistrate's injury?
 - Was the negligence a substantial factor in the injury?
 - Would the injury have occurred without the negligence?
 - Would a prison guard of ordinary intelligence foresee a risk of this injury?

100

A very common category of negligence cases are **premises liability** cases – these are cases where someone sues not based on the defendant’s actions, but on the condition of a premises that the defendant was responsible for.

- Standard “slip and fall” cases are in this category.

In these cases, the duty varies depending on who the potential plaintiff is and their relationship with the defendant.

- See TJCTC Recordings for Credit page for Premises Liability webinar for details

Duty – Premises Liability Cases

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Defenses to Negligence Include:

Contributory
Negligence by
Plaintiff

Release
Agreement

Assumption of
the Risk (hit
by a foul ball)

Act of God

Unavoidable
Accident

Limitations

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Statute of Limitations – Tort Cases

- The statute of limitations in a tort case (both intentional torts and negligence) is two years.
- The statute in some cases does not start running until a party is aware or should have been aware of the tort.
- If the case is outside the statute of limitations, the plaintiff cannot have a judgment, even if the defendant doesn't bring that up, and even if the defendant never appears.

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Other Civil Cases & Issues

Deed restriction cases
Parent/Child Liability
Additional Causes of
Action

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Deed Restriction Cases

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What is a Deed Restriction Case?

- A deed restriction is a written agreement that affects real property in a subdivision.
- A lawsuit may be brought whenever someone is violating these agreements.
- Justice courts have jurisdiction to hear these cases, but **not** to enter an order making the defendant stop violating the deed restriction.
 - Gov't Code Sec. 27.034

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So What Can I Do Then?

If you find the defendant violated the deed restriction, you can assess a civil penalty of \$200 per day for every day that the violation continues.

- Prop. Code Sec. 202.004(c).

You have jurisdiction to do this, even if the total amount exceeds \$20,000.

- Gov't Code Sec. 27.034

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HOA Records Cases

- Deed restriction cases are separate from suits filed with a justice court to force a HOA to turn over its records to a member. These are covered in Ch. 201 of the Property Code as well as Ch. 13 of the Civil Deskbook.

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Parent- Child Liability

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Child Liability - Contracts

- People under 18 generally cannot enter into binding contracts, except for **necessaries**. What would be examples of necessaries?
- If someone does enter into a contract that is not for necessaries, and they are under 18, that is a voidable contract, which means the minor (**but not the other party**) can cancel the contract.
 - So Jerry offers 14 year old Hermione \$50 to wash his car. Hermione fails to do so, and he has to pay Ginny \$100 to do it. Hermione can void the contract, and Jerry can't recover from Hermione.
 - However, if Hermione washes the car, Jerry is **not allowed** to void the contract, and if he doesn't pay, she could sue him and recover the \$50.

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Child Liability – Intentional Torts

- Children are liable for their own intentional torts.
- There is no “bright line” minimum age at which they are responsible.

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Child Liability – Intentional Torts

- A parent is **not liable** for a child’s intentional tort, though they may be liable for the parent’s own negligence that allowed the child to take that action.
- For example, Mike lets his 14-year-old daughter Monroe take the car out for a spin. She hits Maryse with the car on purpose. Maryse could file suit against Monroe for assault and against Mike for negligence.

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Child Liability – Negligence

- A child under the age of 5 cannot be negligent as a matter of law.
- A child between the ages of 5 and 14 is held to a child's standard of care – remember we vary the standard of care based on the actor.
 - However, if a child is “**acting as an adult**” they are held to an adult standard of care. This would happen when the child is engaging in adult activities such as operating a car or boat or other activity placing the general public in danger.
- A child over the age of 14 is held to an adult's standard of care, unless it is shown that the child should not be held to that standard based on disability or other reason.

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Suits By and Against Children

- A child cannot file a lawsuit. They must have an adult file it for them as “next friend.”
- A child (someone under 18) may not be sued in their own name. The parent would be named as defendant and would represent the child's interest.
 - This is separate from a parent being sued for the parent's own liability as discussed earlier.
 - Here the judgment would be against the child if the plaintiff proved the case, not the parent.
 - The child must be served with the citation of the suit.
- See Rules 44 and 173; CPRC Sec. 16.001.

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Additional Causes of Action

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Medical Liability Claim Procedures

- Medical liability claims are rare in justice court, but may increase after September 2020. Three statutes in Ch. 74 of the Civil Practice & Remedies Code create procedures that are different than the standard in our court.

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Medical Liability Claim Procedures

- A person asserting a claim must give written notice of the claim by certified mail at least 60 days before filing suit. The notice must have the form required by Sec. 74.052 included.
 - Sec. 74.051
- The pleadings should not specify an amount of money damages.
 - Sec. 74.053
- The plaintiff must serve on each defendant an expert report within 120 days of the defendant's answer. If they fail to do so, the defendant can recover attorney's fees and costs, and the plaintiff's claim is dismissed against that defendant with prejudice.
 - Sec. 74.351

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Calculation of damages

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What are Damages?

Damages are one of the main elements of every civil case

Same burden as all of the other elements – plaintiff must prove by a preponderance of the evidence

- You should develop the facts of the case and ask questions designed to determine the amount of damages.

Plaintiff may have a valid cause of action, but no damages

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Determine and identify the cause of action

Damages – Step 1

Different causes of action have different types and measures of damage available

This information is provided in
O'Connor's Causes of Action

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Damages – Step 2

- Once you have determined what the cause of action is, and what damages are available, you must determine:
 - What type of damages are being sought?
 - What is the appropriate method of measurement?
 - What proof has been offered from each side?
 - What other questions should you ask of the parties or witnesses?

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Types of Damages

Court Costs

Attorney's Fees

Pre-Judgment Interest

Post-Judgment Interest

Compensatory Damages

Punitive or Exemplary Damages

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Court Costs/Fees

The winning party is entitled to recover the costs involved with the case, such as filing fees, service fees, jury fees, interpreter fees if appropriate, etc.

They do not have to request this explicitly, the Rules of Civil Procedure say the court must award costs.

- TRCP 505.1(d)

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Attorney's Fees

Attorney's fees are awardable in certain causes of action, and not others. If they are awardable, you award "reasonable and necessary" attorney's fees.

Unlike court costs, the plaintiff **does** have to specifically request attorney's fees, and must prove they are reasonable and necessary, either with affidavits or live testimony from the attorney.

To determine if the fees are reasonable and necessary, look at hours worked, and rate charged. If those numbers are reasonable and necessary, the fees are as well.

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Attorney's Fees – Ch. 38, CPRC

- Sec. 38.001 lists the types of suits where a party can recover attorney's fees:
 - Rendered services or performed labor
 - Furnished material
 - Freight or express overcharge or loss/damage
 - Killed or injured stock
 - Sworn accounts
 - Oral or written contract
- What about torts, like a car accident case?

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Attorney's Fees – Ch. 38, CPRC

To recover attorney's fees, the claimant must be represented by an attorney, and must make the claim for fees to the opposing party and not have been paid within 30 days of the claim.

Usual and customary attorney's fees are presumed to be reasonable, but that presumption may be rebutted.

Sec. 38.002, 38.003

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Attorney's Fees – Reasonable?

- This may result in a “reasonable” attorney’s fee award that seems large compared to the amount in controversy.
 - If I am owed \$1000, it may take an attorney several hours at \$200/hr to pursue my case. If this isn’t allowed, I may never recover my \$1000.
 - Again remember, you’ve already decided that the hours worked are reasonable, and the rate charged is reasonable.

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Attorney's Fees – Percentage Based

- The court should not make awards based on a percentage of the judgment.
 - Often, attorneys will have a contract with their client that awards the attorney a percentage of the judgment. These contracts are usually in tort cases, where the court may not award attorney’s fees. The court awards the judgment to the party, and the attorney collects from them.

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Attorney's Fees – Average Case

- The court must not award attorney's fees based on an "average case" basis.
 - For example, "usually these cases take 5 hours at \$250 an hour, so just award me \$1250 per case." This is not fair, because a defendant whose case took 3 hours is paying extra fees because of a completely unrelated case.

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Pre-Judgment Interest – What?

- This is interest that begins accruing on whichever is earlier:
 - The day suit is filed; or
 - 180 days after the defendant receives notice of the plaintiff's claim (if notice meets certain requirements)
- Stops accruing the day before the judgment is signed, and calculated as simple interest, at the same rate as post-judgment interest.
- The reason this exists is to encourage settlements and discourage delays in litigation. The award of pre-judgment interest compensates the plaintiff for not being able to have the use of their money.

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Pre-Judgment Interest – When?

- It is only awarded on actual damages, not exemplary damages, court costs, or attorney's fees. It is calculated as **simple interest** (meaning it accrues only on the principal and not on accrued interest) and is the same rate as post-judgment interest.
- Should be automatically added whether requested or not in personal injury and property damage cases.
 - See Finance Code 304.102

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All money judgments **must** include an interest rate that apply to the judgment.

- Finance Code Sec. 304.001.

Unless a contract specifies otherwise (with a maximum of 18%) , the court should use the rate located at: <https://occc.texas.gov/publications/interest-rates>

- Currently 8.5% as of March 2024, changes monthly, so court needs to check it.

Post-Judgment Interest

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Available Damages – *Contracts Cases*

Compensatory Damages	Attorney's Fees	Pre-Judgment Interest (if specified in the contract)
	Court Costs & Post-Judgment Interest (available in all cases)	Punitive Damages are not available .

133

Compensatory Damages, Sometimes Called “**Actual Damages**”

Main idea – Put plaintiff back in the position where they would have been if not for defendant's conduct.

These damages **compensate** the plaintiff for their loss.

Can be **economic** (medical bills, lost wages, property), **or**

non-economic (pain & suffering, mental anguish, etc.)

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Compensatory Damages

- Do not include the costs of coming to court in actual or compensatory damages.
- Lost income from work can be awarded if the work is missed due to the injury, but not lost income for the day that the party comes to court.
- Travel costs to court are not recoverable.

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Measure of Compensatory Damages – ***Contract Cases***

The main idea of **compensatory damages in a contract case** is to give a party “the benefit of their bargain” by placing them in the economic position they would have been in if the contract had been performed.

They include **loss of value** and **consequential losses**, which are losses that naturally flow from the breach of the contract and were foreseeable by the parties.

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Compensatory
Damage
Scenario –
Contract Case

Willie agrees to purchase 2000 widgets from Widgets R Us for \$2 each. In the contract, he specifies that he uses those widgets to create WidgetSpinners©, and he is having a WidgetSpinner© convention where he will sell the spinners for \$10 each.

Widgets R Us breaches and provides 0 widgets. If Willie has to pay \$3 each for widgets, what are his compensatory damages?

What if no other widgets are available, so he has no WidgetSpinners© at the convention? Do his lost profits flow from the breach of contract? If so, would he recover \$10 x 2000? If not, how much?

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Damage
Calculation
Issues –
Contract Cases

Many contracts contain clauses that specify what the amount of damages will be in the event of the breach. These are called **liquidated damage clauses**, and they fall under compensatory damages. This is to avoid the difficult issues involved in proving damages in these cases.

Parties cannot recover compensatory damages for inconvenience or delay, unless there is a specific clause in the contract stating that there is a certain time by which the work must be complete.

- This is called a “**time is of the essence clause.**”

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Damage Calculation Scenario – *Contract Case*

- Audrey hires Red Pool Company to build a pool in her backyard. The contract is signed February 1 and Red Pool says it should take about 3 months. Audrey agrees to pay \$8,000.
- Red Pool hits delay after delay and finally Audrey fires them on July 5th, without having paid them any money.
- Audrey now hires Blue Pool for \$7,700 and they complete the pool on October 1st.
- Audrey files suit against Red Pool seeking damages for missing the whole summer with no pool. What are her damages?

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Available Damages – *Intentional Tort Cases*

Compensatory
Damages (personal
injury and property
damage)

Punitive/
Exemplary
Damages

Court Costs/Post-
Judgment Interest
(available in all
cases).

Pre-Judgment Interest
(personal injury or property
damage cases only, **not on
economic damage cases**)

Attorney's Fees are
not available in
intentional tort
cases.

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Available Damages – ***Negligence Cases***

Compensatory
Damages (personal
injury and property
damage)

Punitive/
Exemplary
Damages (Gross
Negligence only)

Court Costs/Post-
Judgment Interest
(available in all
cases).

Pre-Judgment Interest
(personal injury or property
damage cases only, ***not on
economic damage cases***)

Attorney's Fees are
not available in
negligence cases.

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Punitive or Exemplary Damages

- These are damages that are awarded, not to compensate the plaintiff, but instead to **punish**, or make an **example** out of, the defendant.
- Goal is to punish the defendant for its bad action, as well as deter any future parties from engaging in the same bad behavior.
 - Notable examples include McDonald's being forced to pay punitive damages in the "hot coffee" case and Ford being forced to pay punitive damages when they knew of the Ford Pinto explosion danger.

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Damage Calculation Issues – *Punitive Damages*

Punitive damages are available if the defendant acted with **malice** (intent to harm the plaintiff) or **gross negligence** (defendant was aware of an extreme degree of risk but disregarded that risk)

How do you decide what amount of punitive damages is appropriate?

How much is sufficient to punish the defendant for what they did, and put other actors on notice that they should not engage in that behavior?

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Damage Calculation Issues - *Contributory Negligence*

- In **negligence** cases, the finder of fact (judge or jury) must assign a percentage of responsibility to each party.
- If the plaintiff is more than 50% responsible, they recover \$0, due to what is called **contributory negligence**.
- If the plaintiff is less than 50% responsible, they recover against the defendant the percentage of their damages that the defendant is responsible for.
 - So if damages are \$5,000 and the jury finds the defendant 40% responsible and the plaintiff 60%, how much does the plaintiff get? What if they flip those percentages?

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Compensatory Damages – Property Damage

- In **both negligence and intentional tort cases**, a party may seek to recover compensatory damages for property damage. These damages can include:
- Valuation Damages
 - Market Value
 - Replacement Value
 - Sentimental Value
- Repair Damages
- Loss-of-Use Damages

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Damage Calculation Issues – Personal Property

- How to calculate sentimental value?
 - Similar to pain/anguish, the plaintiff offers testimony and the **finder of fact** decides what an appropriate and reasonable value would be.
 - Generally unavailable for common household goods or clothing.
 - Available on items such as heirlooms, rare items, or irreplaceable items such as pictures, etc.
- How to decide what measure to use out of market value, replacement value, or repair costs?
 - Generally, the lowest value that still makes the plaintiff **whole**, placing them back where they were before the tort happened.

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- Imagine if I took this glass and smashed it against the wall while teaching. The Sonesta Bee Caves scoops up all the pieces and sends them to a world-famous glass craftswoman in Florence, Italy. She reconstitutes the shards back into this glass, good as new.
- The Sonesta files suit against me for the cost of this service, \$8,500.
- Reasonable and fair? Why or why not? What is a better measure of damages?

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Compensatory Damages – **Personal Injury**

- In **both negligence and intentional tort cases**, a party may seek to recover compensatory damages for personal injury. These damages can include:
 - Physical pain (past and future)
 - Mental anguish (past and future)
 - Disfigurement or physical impairment
 - Medical expenses
 - Loss of earning capacity
 - Loss of consortium (love & protection) – unlikely in justice court

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Pain &
Suffering /
Mental
Anguish?

Yes, you can award pain and suffering and/or mental anguish damages.

These damages are very difficult to accurately gauge and put a number on.

- Each **finder of fact (judge or jury)** may find a different answer on the same facts.

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Pain &
Suffering

The idea is to compensate the person for the pain they endured.

- Medical bills cover economic damages, but not the actual pain. In a personal injury situation, if the victim didn't get medical treatment, their only actual damages are the pain they suffered.

How to decide how much?

- How much would someone have to be paid to willingly endure the pain?
- You can look at the other damages in the case to get a feel for what the person endured (broken glasses, stitches, etc.)
- The person can testify as to the pain they suffered.

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Mental Anguish

The idea is to compensate the person for the mental pain they endured.

- Can be awarded if there is either a traumatic bodily injury **or**
- If offered direct evidence of the nature and severity of the mental anguish, and how it disrupted the plaintiff's daily routine.

Must be more than just "being mad or upset," something traumatic.
– again rare in justice court, because significant trauma will usually incur other damages that are more than \$20,000.

How to decide how much?

- How much would someone have to be paid to willingly endure the pain?
- What disruptions did the mental anguish cause?

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Questions?

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