

Debts and Disagreements: Civil Scenarios

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Resources

- TJCTC Website
 - <https://www.tjctc.org/>
 - Civil Deskbook, Webinar Recordings, Self-Paced Modules, Legal Question Board, Publications, Forms
- Texas Rules of Civil Procedure
 - <https://www.txcourts.gov/rules-forms/rules-standards/>
- Texas Constitution and Statutes
 - <https://statutes.capitol.texas.gov/>

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Agenda

- Spot the Mistakes!
- Discussion Questions
- Scenarios
- Questions?

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Spot the Mistakes!

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Story #1

Amber is a justice court clerk. Rebecca comes into the court and files a small claims case against Bronson for \$20,000 plus court costs and any attorneys' fees that are incurred. Amber tells Rebecca she can't accept the filing because it will be outside of the jurisdiction of the court. Rebecca says she just won't get an attorney then and crosses that part out.

Rebecca asks Amber what kind of evidence she should bring to the hearing. Amber tells Rebecca a few things that she thinks Rebecca should make sure to mention. Rebecca gives Amber a note to give to the judge so that the judge will understand the background information of the case.

Amber puts the note on the judge's desk and tells Rebecca that once the defendant answers, the case will be set for trial and all parties will receive notice of the trial date 30 days ahead of time.

After Rebecca leaves, Amber notices that the proper venue for the case is in a different precinct. Amber sets the case for a pre-trial hearing on venue so that the judge can determine whether the case should be transferred.

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Story #2

Darby is a court clerk. An attorney, Randy, has filed a debt claim case. Sufficient proof of the amount of damages has been filed as required by Rule 508.3. Proof of service, certificate of last known address, and military service affidavit (defendant is not in the military) have all been filed, the defendant has not answered, and the answer deadline has passed. Randy has contacted the court and asked if a default judgment has been entered yet. Darby says that can't be done until after a hearing has been held. So Randy requests a hearing and it is set. Darby makes a note to send notice of the hearing to the defendant if they file an answer.

At the hearing, the judge hasn't reviewed the proof of damages that was submitted, but since the defendant does not answer/appear, they don't worry about it and go ahead and enter the default. After the judge has signed the judgment, Randy offers to mail it to the defendant since he's going to the post office anyways. Darby prepares the notice and gives it to Randy.

Six months later, the defendant comes in and says she just found out that there was a whole case against her and that shady lawyer hid it from her. She claims she was never served, never lived at that address, and never got notice of a judgment. She files a motion to set aside default judgment. The judge grants the motion and sets the case for trial.

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Discussion Questions

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Handling Dockets

- How many civil cases does your court get per month?
 - If a lot, what strategies do you use to keep things moving efficiently?
 - If not many, what issues do you face from not doing them often?
- Pretrial hearings
 - How can these help? Why do them?
 - When/how often do you do them?

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Service Issues

- On defaults, what is your general procedure for ensuring that service was proper?
- How would you handle if it came to your attention that a private process server was not filling out their returns accurately (describing who was served and it's not the defendant, saying it was served personally when it wasn't, etc.)?
- How would you handle it if your constable/sheriff was letting citations pile up and not getting service requests done?

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Attorney Issues

- **Local Counsel (Usually Debt Claim Cases)**
 - Have you had local counsel appearing for the firm representing the plaintiff, but they don't know anything about the case?
 - What problems might this cause?
 - What can the court do?
- **Attorney vs. Self-Represented Litigants**
 - What issues arise when you have an attorney on one side and a self-represented litigant on the other?
 - What can the court do?

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Scenarios

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Scenario #1

A plaintiff mailed in a small claims case to our office regarding a breach of contract where the plaintiff is seeking proceeds from the sale of real property from the defendant. The original date of this claim is July 23rd, 2020.

- What is the general statute of limitations for a contract case?
- Can this case be dismissed if it no longer falls under the statute of limitations?

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Scenario #2

The statute of limitations for a debt claim is 4 years, calculated from the date that the “dealings between the parties” stop.

- What counts as a “dealing”?

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Scenario #3

Cases have different statutes of limitations. But does the case just need to be filed within the SOL period? Or does it need to be served and/or heard by a certain time as well?

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Scenario #4

After a big storm, a tree on one person's land falls and lands across the property line on their neighbor's car.

- Who is responsible?
- What questions might you need to ask at trial?

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Scenario #5

You receive an agreed judgment. It includes the total amount owed by the defendant, a payment plan that the defendant must follow, and a provision that if they miss a payment, they will owe an additional amount.

- What do you have the authority to include in a judgment you sign?
- What can the parties do if they want to include provisions that can't go in the judgment?
- Instead of an agreed judgment, could the parties request a continuance on the hearing until after the date that the defendant has agreed to make their last payment?

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Scenario #6

The defendant in a case is saying the case needs to be transferred to the District Court because they've filed a claim against the plaintiff that is related to the same matter and is outside of the court's jurisdiction.

- Can the JP court transfer the case to the district court?

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Scenario #7

A person came in and wants to file a small claim against her neighbor for building a barn on her property. She had her property surveyed and wants the barn removed, or she wants the neighbor to purchase the property.

- Is this something your court can hear?

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Scenario #8

- Can a plaintiff subpoena someone out of county on a small claims case and how is that accomplished? What are the rules that apply?
- Can a plaintiff testify even if they're outside of the reach of a subpoena?

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Scenario #9

A default judgment was rendered in a debt claim where the defendant did not show so a default judgment was rendered in January 2022. Three months later, the plaintiff requests a dismissal for the default judgment due to the defendant's filing bankruptcy and the debt being discharged.

- Can the court dismiss a default judgment?
- Are there any other options?

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Scenario #10

Plaintiff files a petition with a copy of a contract with Defendant. Defendant was supposed to pay plaintiff \$22,000 for some machinery equipment. Plaintiff delivered the equipment, but Defendant's check bounced and plaintiff didn't get paid. The court sets the case for a hearing on jurisdiction. At the hearing, the plaintiff says they'll just ask for \$20,000 instead.

- Can the plaintiff reduce its claim so that it fits within the court's jurisdiction?

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