

Civil Trial Skills

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Agenda

- For most slides, I will be asking questions. Raise your hand to answer.
- For Scripted Scenarios:
 - I read the slide.
 - 3 volunteers read possible options.
 - Entire class votes on best option and gives explanations as to choices.
- For Discussion Questions:
 - I read the slide.
 - Work with table to answer questions and elect a reporter for the table.
 - Table reporter shares answers with the rest of the class.

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Resources:

www.tjctc.org (TJCTC website)

- Deskbooks, especially the Trial Notebook Deskbook for this class.
- Legal question board, charts, forms, webinars, modules, etc.

www.txcourts.gov

- Texas Rules of Civil Procedure (TRCP)
- Texas Rules of Evidence (TRE)

statutes.capitol.texas.gov

- Texas Constitution and Statutes

O'Connor's Books—Civil Trials and Causes of Action (COA)

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Beyond a Reasonable Doubt

Clear & Convincing

Preponderance

Probable Cause

Reasonable
Suspicion

Scintilla

Common Levels of Proof

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What is the Correct Way to Say Voir Dire?

- Jury pickin’!
- Each county has different ways to provide and screen potential jury members, so contact county for your specific details
 - They must be screened for qualifications and exemptions
 - If county does not do screen them, you must!
- Also Excuses, Strikes, and Challenges—So, Use Available Resources
 - See Chapter 4 in the Trial Notebook and Voir Dire Benchcard!

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Common Terminology Used During Trial

Pass the witness

Step down

Approach the bench

Outside the presence of the jury

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Scripted Scenario 1—“Objection, Your Honor — Hearsay!”

Judge: Defendant So-And-So, please raise your right hand: “Do you solemnly swear to tell the whole truth, nothing but the truth”?

Defendant: I do, Judge.

Judge: You may proceed.

Defendant: Your Honor, my neighbor said she was distraught seeing the plaintiff’s worker break the fence—

Plaintiff’s Attorney (interrupting):

Objection, Your Honor. That’s hearsay. The defendant is testifying to something another person said, which is inadmissible under Texas Rule of Evidence 802.

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Scripted Scenario 2—“Objection, Your Honor — Hearsay!”

**What if the same exact
situation occurred during
a jury trial?**

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Discovery

Pre-trial discovery

Post-judgment discovery

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Discovery Question (1 of 2)

You have a small claims case involving a contract dispute. The plaintiff is requesting the Court approve pretrial discovery, including Requests for Disclosure, Requests for Admissions, Interrogatories, Request for Productions, and 10 depositions each with a requested time of 6 hours. The motion includes hundreds of questions and calls for vast amounts of documents.

- What is the proper standard and procedure for determining pretrial discovery requests, and based on those, would you grant this motion for pretrial discovery?
- Is the process different when it's post-judgment discovery? Explain your answer.

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Discovery Question (2 of 2)

You have a small claims case involving an unjust enrichment claim. The plaintiff sends pretrial discovery to the defendant without the Court's knowledge or approval. The defendant answers part of the questions and provides half of the requested documents.

- Is the Court obligated to include the information and/or documents at trial that were provided by the defendant?
- What are the Court's options if the plaintiff files a motion to compel the defendant to respond to the rest of the discovery requests? Can the defendant's failure to provide all answers/documents be held against them since they did respond to some of the discovery?

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Work With Your Table and See

Handout 1:

Review the proposed order. Assume that you would approve all pre-trial discovery.

1. Any other issues with this order?
2. How do you rule on this motion? Explain your answer.

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False Imprisonment Question (1 of 2)

Plaintiff files a civil case for False Imprisonment. You found the O'Connor's Texas COA book in your county's law library, so you already know the outline of elements are: (1) the defendant was willfully detained by the plaintiff, (2) the detention was without the plaintiff's consent, and (3) the detention was without legal authority or justification.

- Can the Court summon a party to appear as a witness if the Judge thinks it is necessary to ensure a correct judgment and a speedy disposition?
- Work as a table to produce three appropriate questions to develop the case and three inappropriate questions that Judge should refrain from asking considering this COA.

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False Imprisonment Question (2 of 2)

In the same case as the previous slide, the defendant's attorney pleads the defense of immunity and lack of vicarious liability, and plaintiff's attorney disagrees on both accounts. Yet, neither party has submitted applicable statutes or case law in their pleadings or responses. This is a bench trial. Are there any options for a Court in this situation? Any procedures or rules to follow?

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What Rule Are You Talking About?

You are presiding over an eviction case with several witnesses on both sides. The defendant's attorney asks the Court to invoke "The Rule."

- What does that mean?
- Is the Court obligated to invoke The Rule?
- Are there exceptions to The Rule, and if so, what are they?

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Scripted Scenario 3—“Copious Court Case!”

You are near the end of a bench trial regarding a small claims matter, which includes a counterclaim. Both sides have provided lots of photos and documents regarding the case. One legal issue in the case is how to distinguish between an employee vs. an independent contractor. Unfortunately, you did not sleep well last night, it is almost lunch time, and while you knew this yesterday, you cannot remember the exact rules for the issue. To make matters more complicated, the defendant has supplied a 20-page brief citing numerous cases that he says are legally binding precedent for his exact issue on the day of trial. Plaintiff apparently was served this brief last week in preparation for today, but says the cases are not relevant.

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Jumbled Jury?

Both sides gave their closing arguments. Jury is about to be sent to deliberate. There was a document and three photos shown to jury during the case. Do they get a copy of those things while deliberating? What happens if they have a question while they are deliberating? How many jurors must agree for plaintiff to win? What if they cannot agree?

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Thank you!

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