

Debt Claim and Receiverships

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Agenda

- This is an **interactive class** covering two topics: debt claims and receiverships.
- We will have:
 - True/False Questions
 - An Activity
 - Discussion Questions

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Resources:

www.tjctc.org (TJCTC website)

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

www.txcourts.gov

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

statutes.capitol.texas.gov

- Texas Constitution and Statutes

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True or False

Section 1

After I read the question,
shout out if you know it!

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Debt Claim True/False (1 of 4)

- No default judgment hearing is necessary if plaintiff submits proof of damages in debt claims cases. True or False?
- In debt claims, proof of damages may be attached to petition and served with citation **or** may be filed with Court after no answer. True or False?

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Debt Claim True/False (2 of 4)

- In debt claim defaults, plaintiff **must** provide evidence in a sworn statement with documentary evidence, as there is no hearing and plaintiff cannot provide evidence in live testimony. True or False?
- To establish damages, there must be evidence that the account or loan was issued to defendant, and defendant is obligated to pay it. True or False?

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Debt Claim True/False (3 of 4)

- To establish damages, there must be evidence that the that the account was closed. True or False?
- To establish damages, there must be evidence of the amount due on the account or loan as of a date certain after all payment credits and offsets have been applied. True or False?

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Debt Claim True/False (4 of 4)

- To establish damages, plaintiff must prove that they own the account and are the original creditor. True or False?
- For documentary evidence, we look to the Texas Rules of Evidence 803(6 or 7) and 902(10) governing Business Records Affidavits. True or False?

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Debt Claim Damages Per TRCP 508.3(b)(4)

Documentary evidence may be considered if it is attached to a sworn statement:

- (A) the documents were kept in the regular course of business;
- (B) it was the regular course of business for an employee or representative with knowledge of the act recorded to make the record or to transmit information to be included in such record;
- (C) the documents were created at or near the time or reasonably soon thereafter; **and**
- (D) the documents attached are the original or exact duplicates of the original.

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Debt Claim Damages—Issues

- A judge is not required to accept a sworn statement if the source of information or the method or circumstances of preparation **indicate lack of trustworthiness.**
- But a judge may not reject a sworn statement only because it is not made by the original creditor or because the documents attested to were created by a third party and subsequently incorporated into and relied upon by the business of the plaintiff.

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Activity!

We often see exempt property hearings associated with receiverships. See Handout for a list of different types of property. Work with your table and circle the items that are non-exempt property. We will go over answers here, and answers will be included in the handout passed out after class too.

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Non-exempt Property

- Personal wages that have been deposited into a banking account
- One boat per family
- Real property used for rental purposes
- Monies in savings account under \$1,500
- Proceeds from the sale of a homestead within 9 months after the sale

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Exempt Property Hearings Notices

- Money judgments need to have protected property warning
- Receiver or judgment creditor must serve debtor the Notice, Instructions, and Claim Form within 3 days of seizure or freeze. *TRCP 679b(a)*
- No sale or distribution within 14 days of service of these documents [17 days if service was by mail. *TRCP 679b(b)*]

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Exempt Property Hearings (1 of 2)

- If claim form (or other sworn document with the same information) is filed, the Court **must** hold a hearing within 10 days
- Receiver or officer cannot sell property or distribute funds until Court decides if property is exempt
- Debtor has the burden to prove property is exempt and the value of the property

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Exempt Property Hearings (2 of 2)

- Debtor can satisfy burden of proof with a sworn statement (including the initial form) if statement is not challenged
- If exempt property, Court must order its release within 3 business days. *TRCP 679b(c)*
- No right to appeal Court's decision

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True or False

Section 2

After I read the question,
shout out if you know it!

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Receiverships True/False (1 of 4)

- To get a Turnover Order, creditors must prove debtor's property could not be readily attached or levied on by ordinary legal process (i.e., a writ of execution will not work). True or False?
- In Turnover Orders, the Court may not order the judgment debtor to turn the property over directly to the judgment creditor, but instead, should order it turned over to a designated sheriff or constable for execution. True or False?

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Receiverships True/False (2 of 4)

- Generally, justice courts must use the Texas Supreme Court approved form to appoint a receiver? True or False?
- Someone can claim a homestead exemption even if they do not formally file the tax form with their county. True or False?
- The Judge cannot develop the facts of the case in exempt property hearings because the case is only about the execution of the judgment. True or False?

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Receiverships True/False (3 of 4)

- There is a \$54 filing fee for an order appointing a receiver case. True or False?
- The Texas Supreme Court publishes a receivership payment fee schedule, so courts know exactly what to pay receivers. True or False?
- In the order granting receivership, Courts can set a final percentage of the funds collected during the receivership as their payment. True or False?

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Receiverships True/False (4 of 4)

- Receivers can establish their fees as fair and reasonable based on written agreement with debtor or proof of work done and results of work. True or False?
- Receivers are only able to be paid at the end of the receivership when all work has been completed. True or False?
- Receivers must always execute a good and sufficient bond before acting under the court's order. True or False?
- Receivers must always provide an accounting or receipts for any reasonable and necessary expenses, which may be taxed against the debtor. True or False?

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Discussion Questions!

- You will work with your table.
- Nominate a table "Reporter" for each slide who will share your answers for that slide.
- Feel free to use any available resources to answer, including www.tjctc.org materials.

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Question 1

- What are the 3 TRCPs where you find requirements for civil filings and petitions, including debt claim petitions? What are the 4 categories set out in the debt claim petition Rule? What are some ways courts can ensure petitions have the required information for each type of case? Handout will be passed out after class with Rule requirements.

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Question 2

- According to the Supreme Court form, how long does an initial term of the receivership last? May that be extended? Does an agreed motion vs. just the receiver's request impact your decision on whether to extend?
- Many Courts have seen receivers ask for an "administrative closure" to end the receivership except for accepting payments as part of a payment plan. Is this allowed? What are the Court's options for dealing with this?

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Question 3

Plaintiff and defendant seem to come to an agreement in a debt claim case. They submit for your approval an agreed judgment. The judgment fails to say anything about court costs. The judgment also includes:

- an arrangement that the parties agree to abate the case for 6 months; and
- defendant will pay \$500 a month to plaintiff for 6 months, and if defendant fails to make those payments, defendant will paint the outside of the plaintiff's office to work off the debt.

**Would you sign the agreed judgment?
Explain your answer.**

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Question 4

You discover that there is a debt claim case that has been filed as a small claims case, including being given the wrong cause number. What steps should the Court take in processing the claim? Would those steps be different if it was a small claims case filed as a debt claim?

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Question 5

- Servicemembers Civil Relief Act (SCRA) affidavits are required to grant defaults when a defendant did not answer. It must state defendant's military status, if known, and show necessary facts to support the affidavit. Generally, the supporting facts will be established by a printout from the Department of Defense's website.
- Is that printout required or can the supporting facts be established by something else? If so, provide examples of something that would establish supporting facts?
- What if something else is missing, like a petition requirement? Should the Court automatically dismiss the case before the hearing?

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Question 6

- **What may happen when a Judge is concerned about proper service during a default proceeding?**
- **Are all default procedures the same in civil cases? Explain your answer.**

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Question 7

Default Judgments occur when a defendant fails to answer or appear in a case.

- Why is a default judgment better for the plaintiff than a regular judgment?
- What must the plaintiff still prove up?
- What must be provided to proceed with a default judgment?

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Question 8

- Are Turnover Orders and Receiverships the same thing?
- What does a creditor need to prove to get Turnover Order? Is this different in receiverships?
- Does a debtor need to be notified prior to issuance of turnover order?

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