

# Tricky Prejudgment Scenarios

1

## Funded by the Texas Court of Criminal Appeals

Copyright © 2026 Texas Justice Court Training Center

All rights reserved. No part of this work may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying and recording, or by any information storage or retrieval system without the prior written permission of the Texas Justice Court Training Center unless copying is expressly permitted by federal copyright law.

Address inquiries to: Permissions  
Texas Justice Court Training Center  
1701 Directors Blvd. Suite 530  
Austin, TX, 78744

2

# Resources

- Civil Deskbook
- Texas Rules of Civil Procedure
- O'Connor's Texas Rules – Civil Trials

3

## A little shorthand

- $\pi$  = Plaintiff
- $\Delta$  = Defendant

$f(w) = \int_{-\infty}^{\infty} f(x) e^{-2\pi i x w} dx \frac{dw}{2\pi}$   
 $\nabla \cdot E = 0 \quad \frac{\partial H}{\partial t} = 0 \quad \nabla \cdot H = \frac{\partial F}{\partial t}$   
 $\nabla \cdot E = -\frac{\partial H}{\partial t} \quad \nabla \cdot H = \frac{\partial F}{\partial t}$   
 $\nabla \cdot \Psi = H \Psi$   
 $\rho \left( \frac{\partial v}{\partial t} + v \cdot \nabla v \right) = -\nabla p + \nabla T + f$   
 $H = -\sum \rho(x) \log p(x)$   
 $\frac{1}{2} G^2 S^2 \frac{\partial^2 V}{\partial S^2} + r S \frac{\partial V}{\partial S} + \frac{\partial V}{\partial t} - r V = 0$   
 $TC(Q, q, m) = \sum_{i=1}^n \left[ \frac{D_i}{L-m-q} S_i + c_i D_i + \frac{q_i H_i V}{2} \left( m \left( 1 - \frac{D_i}{Q} \right) - 1 + 2 \frac{D_i}{Q} \right) \right]$   
 $\left[ \begin{array}{c} \frac{\partial \Delta p(S, \phi)}{\partial \phi} \\ \frac{\partial \Delta M(S, \phi)}{\partial \phi} \end{array} \right] = \left[ \begin{array}{c} \delta - \Delta \\ -\beta \quad 0 \end{array} \right] \left[ \begin{array}{c} \Delta p(S, \phi) \\ \Delta M(S, \phi) \end{array} \right]$   
 $\int_{\log(sinx)}^{\log(sinx)} dx = \int_{\log(sinx)}^{\log(sinx)} dx = \frac{\pi}{2} \left\{ \frac{\pi^2}{12} + (\log)^2 \right\}$

4

## Definition of “Claim”

The legal theory and facts that, if proven, entitle a party to relief against another party. Rule 500.2(c), 510.2(c)

Paul claimed that David breached their contract when David mowed the lawn poorly or not at all. Paul is  $\pi$ . David is  $\Delta$ .

5

Paul  
 $\pi$



David  
 $\Delta$

6

## Scenario One

Bronson files a claim against “Marc Zuniga.” He has the citation served on me, “Mark Zuniga.” I call and complain. How do you handle this? Is your answer any different if he sued “Marcos Zuniga?” What about “Mark Zúñiga?” “Mark Súñiga?”

7

**A plaintiff can assert  
different legal theories  
for the same injury**

But the plaintiff is not entitled to double-recovery.

8

A plaintiff can use one lawsuit to file two separate claims.

For example, a debt collection agency can file one lawsuit against a defendant for two very different credit cards.

Why would they do that?

9

## Scenario Two

Paul has two separate legal arguments why David owes him a total of \$11k. Does your court have the jurisdiction to hear this case? What if Paul has two separate claims, each worth \$11k. Does your court have jurisdiction then in one suit?

10

## What is subrogation?

The insurance company pays its customer for his claim, then the insurance company steps into the customer's shoes and sues a third party in the name of the customer.

11

## Scenario Three

Pro se  $\pi$  sues for "breach of contract." Attorney for  $\Delta$  files motion to dismiss because  $\pi$  did not plead consideration for the contract. How is this handled?

12

## Time for a poll

13

### Poll One

Can a party amend their pleading without leave of court?

- A. Always
- B. Never
- C. Not less than 7 days before trial.

14

## Discussion question

- If amending the petition would be an unfair surprise, what are the court's options?

15

## What is a defense?

“Defense” is an assertion by a defendant that the plaintiff is not entitled to relief from the court. Rule 500.2(k), 510.2(i)

16

## Time for a poll

17

### Poll Two

When  $\Delta$  filed a general denial, they failed to mention that the  $\pi$ 's breach of contract claim is barred by statute of limitations. At trial, the judge discovers that the breach of contract occurred more than four years before the suit was filed. Is  $\Delta$  entitled to that defense?

- A. Always
- B. Never
- C. It's available in justice court, but not district court.

18

Definition of  
“Counterclaim”

A claim brought by a party who has been sued against the party who filed the lawsuit. Rule 500.2(e).

David asserts that Paul breached the contract by not paying him. David is the counter- $\pi$ . Paul is the counter- $\Delta$ .

19



20

## When counterclaims are not permitted

- Repair and remedy cases. Rule 509.47
- Eviction suits. Rule 510.6(f)

21

Is a filing fee or  
SOI required to  
assert a  
counterclaim?  
Is a citation  
required?

22

## Scenario Four

Paul files a claim against David for \$11k. David files a counterclaim for \$11k that has nothing to do with the original claim. Can he do that? What are the court's options?

23

## Scenario Five

Both Paul and David file separate lawsuits in your court over the same contract. How would you handle this?

What if Paul filed in your court and David filed in another?

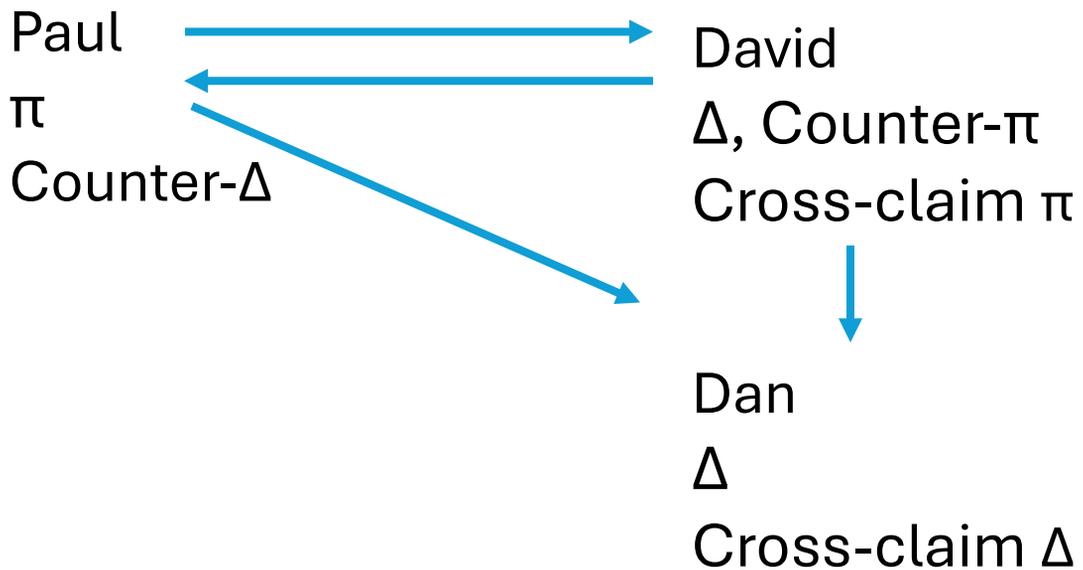
24

Definition of  
"Cross-claim"

A claim brought by one party against another party on the same "side" of a lawsuit. Rule 500.2(h).

Paul sues both David and Dan for failing to mow his lawn. David claims that Dan pocketed the money that Paul gave them to mow the lawn. David has filed a cross-claim against Dan for the money David claims he is owed.

25



26

## Handling Cross-Claim

Filing fee?  
Yes

Citation?  
Maybe

27

## Intervention

A party may intervene by filing a pleading, subject to being stricken out by the court for sufficient cause on the motion of any party.

Rule 60

But remember Rule 500.1(e)(1).

28

## Test for intervention

Does the intervenor have a “justiciable interest” in the dispute. *E.G.*, that’s not  $\pi$ ’s couch or  $\Delta$ ’s couch—it’s mine.

29

## Handling Intervention

Filing fee?  
Yes

Citation?  
Probably not

30

Definition of  
“Third party  
claim”

A claim brought by  
a party being sued  
against someone  
who is not yet a  
party to the case.  
Rule 500.2(aa)

Paul sues David  
for failing to mow  
his lawn. David  
claims that he  
paid Dan to  
mow the lawn.  
David is the  
 $\Delta$ /third-party  $\pi$ .  
Dan is the third-  
party  $\Delta$ .

31

Paul  
 $\pi$   
Counter- $\Delta$



David  
 $\Delta$ , Counter- $\pi$   
Third party  $\pi$



Dan  
Third party  $\Delta$

32

## What is an interpleader?

Party knows they have to pay; they don't know who gets the money. Normally happens with insurance or title companies.

33

## Requirements of an interpleader (Rule 43)

1. No unreasonable delay (if  $\pi$  wants attorney's fees)
2. Reasonable anticipation of rival claims and reasonable doubt as to which claim is valid.
3. The  $\pi$  tenders the disputed funds unconditionally.
4. The  $\pi$  asks for order of discharge.

34

Proportionate  
Responsibility

35

Time for a  
poll

36

## Poll Three

The  $\pi$  suffered \$10k in damage in a three-car pileup. At trial, the jury determines that  $\pi$  is 40% responsible, David is 40% responsible, and Dan is 20% responsible. What recovery is  $\pi$  entitled to?

- A. \$10k from both David and Dan
- B. \$6k from both David and Dan
- C. \$4k from David, \$2k from Dan
- D. \$2k from Dan, nothing from David because they are equally responsible.

37

## Poll Two

The  $\pi$  suffered \$10k in damage in a car accident. At trial, the jury determines that  $\pi$  is 50% responsible and  $\Delta$  is 50% responsible. What recovery is  $\pi$  entitled to?

- A. \$10k
- B. \$5k
- C. Nothing.

38

## Poll Four

The  $\pi$  suffered \$10k in damage in a car accident. At trial, the jury determines that  $\pi$  is 51% responsible and  $\Delta$  is 49% responsible. What recovery is  $\pi$  entitled to?

- A. \$10k
- B. \$4,900
- C. Nothing

39

## Scenario Six

Paul sues David over a car accident. In David's answer, he indicates that Paul's adult son Peter was in the car with Paul, and that Peter's actions contributed to the accident. How do you handle this?

40

# Defaults

41

## Scenario Seven

Paul sues David. David timely makes a jury demand and pays the fee. On the day of trial David is nowhere to be found. What happens next?

42

## Scenario Eight

Paul sues David. David was served thirty days earlier, but the return of service was filed Tuesday. David never filed an answer. Paul comes in on Friday and asks for a default. The claim is based on an oral contract. Paul has submitted a sworn statement of all payments made and all amounts due. Can you grant a default judgment at this point? Why or why not?

43

Thank you

Mark Zuniga,  
Staff Attorney TJCTC

44