



# Tricky Prejudgment Civil Scenarios

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## Funded by the Texas Court of Criminal Appeals

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# Resources

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

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## A little shorthand

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

$$f(w) = \int_{-\infty}^{\infty} f(x) e^{-2\pi i x w} dx \frac{d}{dw}$$

$$\rho \left( \frac{\partial^2 \psi}{\partial t^2} + v \cdot \nabla \psi \right) = -\nabla p + \nabla T + f$$

$$H = -\sum \rho(x) \log p(x)$$

$$\frac{1}{2} G^2 S^2 \frac{\partial^2 V}{\partial S^2} + r S \frac{\partial V}{\partial S} + \frac{\partial V}{\partial t} - r \cdot V = 0$$

$$TC(Q, q, m) = \sum_{i=1}^n \left[ \frac{D_i}{L-m-q} S_i + c_i \cdot D_i + \frac{q_i H_i V}{2} \left( m \cdot \left( 1 - \frac{D_i}{Q} \right) - 1 + 2 \frac{D_i}{Q} \right) \right]$$

$$\left[ \frac{d \Delta p(S, \phi)}{d \phi} \right] = \begin{bmatrix} \delta & -\Delta \\ -\beta & 0 \end{bmatrix} \begin{bmatrix} \Delta p(S, \phi) \\ \Delta M(S, \phi) \end{bmatrix}$$

$$\int_0^{\frac{\pi}{2}} (\log \sin x)^2 dx + \int_0^{\frac{\pi}{2}} (\log \cos x)^2 dx = \frac{\pi}{2} \left\{ \frac{\pi^2}{12} + (\log 2)^2 \right\}$$

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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  $\Delta$ .

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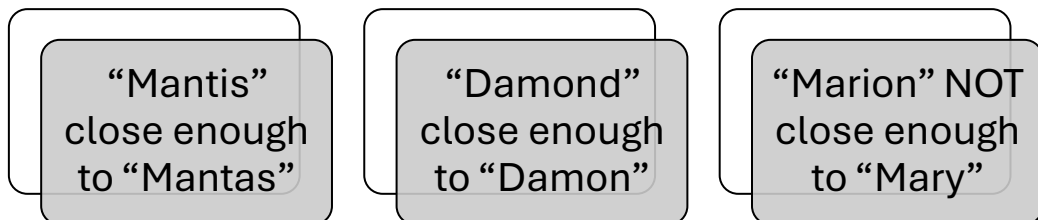
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## Scenario One

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?”

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## Examples of “Idem sonans” (i.e. sounds close enough)



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

But the plaintiff is not entitled to double-recovery.

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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?

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## 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?

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## 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.

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## 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?

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## Texas Supreme Court has stated:

“Courts should review and evaluate pro se pleadings with liberality and patience.” *Goldstein v. Sabatino*, 690 S.W.3d 287, 295 (Tex. 2024) (cleaned up).

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## Rule 502.7(b) – Part One (emphasis added)

A party may file a motion with the court asking that another party be required to clarify a pleading. The court must determine if the **pleading is sufficient to place all parties on notice of the issues** in the lawsuit, and may hold a hearing to make that determination.

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## Rule 502.7(b) – Part Two (emphasis added)

If the court determines a pleading is **insufficient**, the court **must** order the party **to amend** the pleading and set a date by which the party must amend. If a party **fails to comply** with the court's order, the pleading **may be stricken**.

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Time for a  
poll



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## Poll One

Can a party amend their pleading without leave of court?

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

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## Discussion question

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

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## 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)



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Time for a  
poll



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## 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.

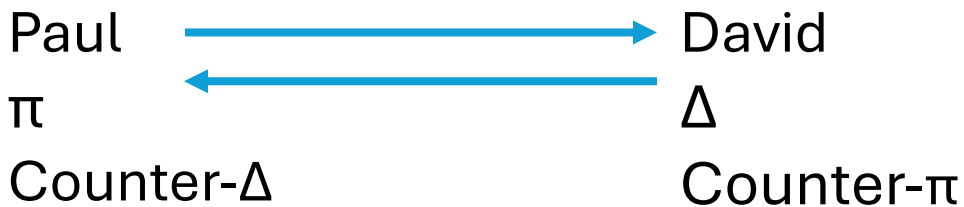
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Definition of  
“Counterclaim”

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- $\Delta$ .

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## When counterclaims are not permitted

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

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

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## 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?

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**Option one: try the claims together**

**Advantage:** it can be quicker and probably cheaper for the litigants.

**Disadvantage:** it can be complicated and confusing.

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Option two: sever the claims into two different lawsuits

Advantage: less confusing

Disadvantage: possible conflicting lawsuits, with each party having writ of execution over the other. It's time-consuming.

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## Option three: bifurcation

One lawsuit, two separate hearings, and one final judgment

Advantage: less confusing, allows for set-off of competing claims

Disadvantage: potentially time consuming

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## 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?

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### Definition of “Cross-claim”

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

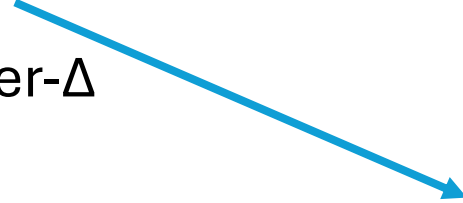
Paul sues both David and Dan for failing to mow his lawn. David claims that Dan pocketed the money that Paul gave them to mow the lawn. David has filed a cross-claim against Dan for the money David claims he is owed.

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Paul

$\pi$

Counter- $\Delta$



David

$\Delta$ , Counter- $\pi$

Cross-claim  $\pi$



Dan

$\Delta$

Cross-claim  $\Delta$

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## Handling Cross-Claim

Filing fee?  
Yes

Citation?  
Maybe

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## 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).

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## 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.

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## Handling Intervention

Filing fee?  
Yes

Citation?  
Probably not

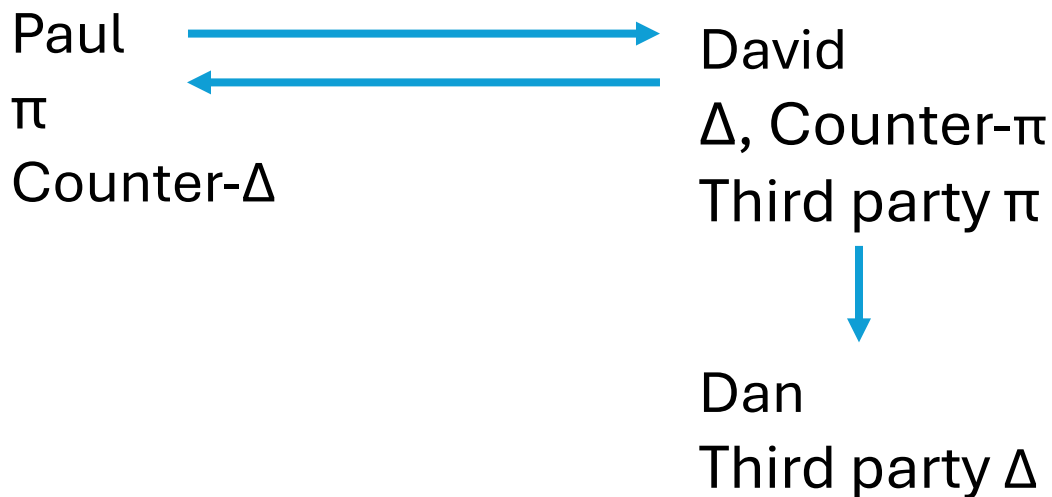
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### Definition of “Third party claim”

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  
move the lawn.  
David is the  
 $\Delta$ /third-party  $\pi$ .  
Dan is the third-  
party  $\Delta$ .

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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.

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## 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.

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Proportionate  
Responsibility

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Time for a  
poll



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## 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.

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## 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.

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## 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

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## 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?

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Defaults

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## 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?

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## 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?

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Thank you

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