Debt Claim and Receiverships

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Agenda

- **This is an interactive class covering two topics: debt claims and receiverships**
- **We will have activities and True/False questions for both topics**
- **We will finish off with discussion questions with a mix of the topics**

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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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Debt Claims

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True or False
Section 1

Get ready to make your choice!

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Debt Claim True/False (Question 1)

No hearing is necessary if plaintiff submits proof of damages in debt claims.

True or False?

7

Debt Claim True/False (Question 2)

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?

8

Debt Claim True/False (Question 3)

In defaults, proof of damages may be attached to petition and served with citation **or** may be filed with Court after no answer.

True or False?

9

Debt Claim True/False (Question 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?

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Debt Claim True/False (Question 5)

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?

11

Debt Claim True/False (Question 6)

To establish damages, there must be evidence that the account was closed.

True or False?

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Debt Claim True/False (Question 7)

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 (Question 8)

To establish damages, plaintiff must prove that they own the account and was the original creditor.

True or False?

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Debt Claim True/False (Question 9)

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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Default Judgment

Default Judgments do not necessarily require a hearing if:

- Plaintiff submits sufficient written evidence of damages
  - ✓ (Rule 508.3(c))

Goal: Court should avoid undue expense or delay



Plaintiff may request a hearing to prove damages

- 3-day notice to all parties
  - ✓ Rule 501.4(b)

Best Practice: Court should send out Hearing Notice to all parties

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Outcomes of Default Judgment Hearing

If the Plaintiff appears for the hearing and:

Defendant Does **Not** Answer or Appear

- If Plaintiff proves damages → Judgment for Plaintiff
- If Plaintiff does not prove damages → Judgment for Defendant

Defendant Does Not Answer, but Appears

- Do not enter judgment → Set case for Trial



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Receiverships

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Activity!

Exempt property hearings are often associated with Receiverships.

Review the list various property items

Select the **Non-Exempt** property items!

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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

Get ready to make your choice!

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Receiverships True/False (Question 1)

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?

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Receiverships True/False (Question 2)

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 (Question 3)

Generally, justice courts must use the Texas Supreme Court approved form to appoint a receiver?

True or False?

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Receiverships True/False (Question 4)

Someone can claim a homestead exemption even if they do not formally file the tax form with their county.

True or False?

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Receiverships True/False (Question 5)

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 (Question 6)

There is a $54 filing fee for an order appointing a receiver case.

True or False?

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Receiverships True/False (Question 7)

The Texas Supreme Court publishes a receivership payment fee schedule so, courts know exactly what to pay receivers.

True or False?

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Receiverships True/False (Question 8)

In the Order Appointing Receiver, Courts can set a final percentage of the funds collected during the receivership as their payment.

True or False?

33

Receiverships True/False (Question 9)

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?

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Receiverships True/False (Question 10)

Receivers are only able to be paid at the end of the receivership when all work has been completed.

True or False?

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Receiverships True/False (Question 11)

Receivers must always execute a good and sufficient bond before acting under the court's order.

True or False?

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Receiverships True/False (Question 12)

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!

- Type your response into the Word Cloud / Q&A
- Feel free to use any available resources to answer, including www.tjctc.org materials.

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Question 1

What are the 3 Texas Rules of Civil Procedure where you find requirements for civil filings and petitions, including debt claim petitions?

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Question 2

Which rule sets forth the 4 types of categories for a debt claim petition?

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Question 3

What are some ways your court ensures petitions have the required information for each type of case?

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Question 4

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 5

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?

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Best Practices for Judgments:

- ❖ Amount of money (or personal property) awarded
- ❖ Attorney fees, if applicable
- ❖ Post-judgment interest rate
- ❖ Pre-judgment interest rate, if applicable
- ❖ Court Costs
- ❖ No injunctive relief allowed
- ❖ Required language about personal property exemption and appeal procedures

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Question 6

What are some of the steps you take if you are concerned about proper service during a default judgment proceeding?

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Question 7

Are all default procedures the same in civil cases?

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Key Points for Default Judgments

- Defendant's failure to answer means Court assumes Petition as true
- Plaintiffs are always required to prove damages
- All defaults must have proof:
  - ✓Defendant was served
  - ✓Return of Service on file 3 days
  - ✓Last known mailing address
  - ✓SCRA affidavit

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Question 8

Are Turnover Orders and Receiverships the same thing?

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Turnover vs. Receivership

- Turnover Orders direct debtor to turn over non-exempt property
- Receiver acts under the Court's authority
- Turnovers **and** Receiverships require proof of:
  - ✓Property owned
  - ✓Property is not exempt
- Orders can be *ex parte*

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Questions?

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Thank You!

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