

Introduction to the 2025 Edition

Texas Practice Guide: Personal Injury covers all aspects of Texas personal injury practice, including pre-litigation investigation, analysis, and employment of experts, theories of liability, evaluation of damages, settlement, filing suit, discovery, arbitration, trial, proving the case, judgment, and post-trial matters. It includes easy-to-use forms and checklists, citations to leading and recent cases, invaluable practice tips, statutes and rules, as well as examples, cautions, and ethical considerations, that give you concrete guidance.

Highlights include:

- New Practice Tip § 2:45, Review claimant’s insurance coverage—Ascertaining potential “bad faith” or unfair dealing liability; discussing *In re Illinois National Insurance Co.*, 685 S.W.3d 826, 841 (Tex. 2024) (orig. proceeding).
- New case discussion § 4:7. Negligence— Determine existence of duty; discussing *HNMC, Inc. v. Chan*, 683 S.W.3d 373, 381 (Tex. 2024).
- New example § 4:24. Negligence— Determine duties owed by particular defendants—Possessors and owners of land; discussing *HNMC, Inc. v. Chan*, 683 S.W.3d 373, 381 (Tex. 2024).
- New example § 4:40. Negligence— Determine duties owed by particular defendants—Psychiatric care professionals—Health care professions, in general—Creation of relationship; discussing *Ochoa v. Avila*, 697 S.W.3d 375, 380 (Tex. App.—El Paso 2024, no pet.).
- New case discussion § 4:96. Negligence— Pursuing negligent infliction of emotional distress claim—Availability to direct victim or bystander; discussing *In re Richardson Motorsports, Ltd*, 690 S.W.3d 42, 50 (Tex. 2024) (orig. proceeding).
- New example § 4:107. Employer liability for acts of employee, “respondeat superior”— Establishing prima facie case—Employment relationship—Independent contractors—Right to control; discussing *JMI Contractors, LLC v. Medellin*, 2024 WL 3954210 (Tex. App.—San Antonio Aug. 28, 2024, pet. filed).
- New example § 4:109. Employer liability for acts of employee, “respondeat superior”—Establishing prima facie

case—Employment relationship—Dual employment (“borrowed servant” rule); discussing *Priority Artificial Lift Services, LLC v. Chiles*, 698 S.W.3d 1, 8 (Tex. App.—Houston [14th Dist.] 2024, no pet.).

- New examples § 4:127. Employer liability for its own actions—Premises liability; discussing *HNMC, Inc. v. Chan*, 683 S.W.3d 373, 381 (Tex. 2024) and *Flores v. Oncor Electric Delivery Company, LLC*, 697 S.W.3d 465, 477 (Tex. App.—Dallas 2024, no pet. h.).
- New case discussion § 4:155. Corporate defendants—Individual liability by piercing the corporate veil; discussing *Keyes v. Weller*, 692 S.W.3d 274, 278 (Tex. 2024).
- New example § 4:158. Corporate defendants—Prima facie requirements for the alter ego doctrine—Alter ego liability necessary to avoid inequitable result; discussing *JNM Express, LLC v. Lozano*, 688 S.W.3d 327, 335 (Tex. 2024).
- New example § 4:244. Intentional infliction of emotional distress—Outrageous, extreme, and intolerable conduct—Outrageous conduct between individuals or based on a relationship; discussing *Gonzales v. Gonzales*, 2024 WL 3211239 (Tex. App.—Austin June 28, 2024, no pet. h.).
- New examples § 4:272. Premises liability—Elements—Actual or constructive notice; discussing *Albertsons, LLC v. Mohammadi*, 689 S.W.3d 313, 317 (Tex. 2024) and *Union Pac. RR. v. Prado*, 685 S.W.3d 848, 862 (Tex. 2024).
- New example § 4:275. Premises liability—Determining duties owed—Invitees—Duty of care; discussing *Flores v. Oncor Electric Delivery Company, LLC*, 697 S.W.3d 465, 477 (Tex. App.—Dallas 2024, no pet. h.).
- New example § 4:283. Premises liability—Duties owed to employees of independent contractors—Right to control; discussing *Oxy USA WTP LP v. Bringas*, 2024 WL 3349088 (Tex. App.—Houston 1st Dist. July 9, 2024, pet. denied).
- Extensive discussion of new case and new example § 4:429. Defenses—Compliance with standards; discussing *American Honda Motor Co., Inc. v. Milburn*, 696 S.W.3d 612, 621 (Tex. 2024).
- New example § 4:516. Expert reports—Effect of failure to comply with report requirement—Deficient reports; good faith effort; discussing *Walker v. Baptist St. Anthony’s Hospital*, 2024 WL 5099109 (Tex. Dec. 13, 2024).
- New practice tip § 5:74. Medical expenses; discussing *Noe v. Velasco*, 690 S.W.3d 1, 5 (Tex. 2024).
- New section § 5:141. Pain and suffering—What constitutes “pain and suffering”—Wrongful pregnancy or wrongful birth; discussing *Noe v. Velasco*, 690 S.W.3d 1, 5 (Tex. 2024).
- Extensive discussion of new case and new example § 5:251. Proportionate responsibility—Cases not covered by comparative causation scheme; discussing *Bay, Ltd v. Mulvey*, 686 S.W.3d 401, 406 (Tex. 2024).

- New example § 6:90. Responding to the demand counteroffer; when to terminate negotiations and file suit; discussing *Tex. State Univ. v. Tanner*, 689 S.W.3d 292, 298 (Tex. 2024).
- Extensive discussion of new case and new example § 6:141. Piecemeal settlements in multidefendant cases—Impact of piecemeal settlement on defendant’s rights—Nonsettling defendants entitled to reduction in amount of recovery; discussing *Bay, Ltd v. Mulvey*, 686 S.W.3d 401, 406 (Tex. 2024).
- Extensive discussion of new case and new example § 7:5. Suits against governmental units—Emergency action; discussing *City of Austin v. Powell*, 2024 WL 5249451 (Tex. Dec. 31, 2024).
- Discussion of new case § 7:34. Medical malpractice actions—Statute of limitations tolled, discussing *Hampton v. Thome*, 687 S.W.3d 496, 504 (Tex. 2024).
- New example § 7:66. Generally—Time runs from accrual of cause of action—Due diligence in obtaining service; discussing *Texas State University v. Tanner*, 689 S.W.3d 292, 300 (Tex. 2024).
- New example § 7:164. Who can sue—Challenging standing to sue; discussing *State v. Zurawski*, 690 S.W.3d 644, 657 (Tex. 2024).
- New example § 7:336. Forum non conveniens—Proof requirements for moving party; discussing *In re Weatherford International, LLC*, 688 S.W.3d 874, 880 (Tex. 2024) (orig. proceeding).
- Extensive discussion of new case § 8:223. Typical privileges relevant to bodily injury litigation—Psychologist and psychiatrist privileges; discussing *In re Richardson Motorsports, Ltd.*, 690 S.W.3d 42, 59 (Tex. 2024) (orig. proceeding).
- New example § 8:449. Request for admissions—Responding to requests for admissions—Withdrawal of admissions; discussing *In re Eules Pizza, LP*, 2024 WL 4996714 (Tex. Dec. 6, 2024) (orig. proceeding).
- Extensive discussion of new case and example § 9:18. Generally—Federal Arbitration Act—Basis for revocation of “any contract” in law or equity—Revocation on grounds of excessive costs; discussing *Lennar Homes of Texas Inc. v. Rafiei*, 687 S.W.3d 726, 733 (Tex. 2024).
- New example § 10:318. Summary judgment as a final discovery tool—When defendant may be entitled to judgment as matter of law—Expert’s affidavit in malpractice case—Conclusory or speculative affidavits; discussing *City of Houston v. Sauls*, 690 S.W.3d 60, 80 (Tex. 2024).
- New practice tip § 11:14. Separate trials; discussing *Sealy Emergency Room, L.L.C. v. Free Standing Emergency Room Managers of America, L.L.C.*, 685 S.W.3d 816, 822 (Tex. 2024).

- New example § 12:89. Rebutting plaintiff’s case—Establishing lack of duty—Premises liability defenses—Plaintiff as a trespasser or the like; discussing *Flores v. Oncor Electric Delivery Company, LLC*, 697 S.W.3d 465, 477 (Tex. App.—Dallas 2024, no pet. h.).
- Discussion of new case and new example § 12:342. Use of pretrial discovery—Requests for admissions—Withdrawal or amendment; discussing *In re Euless Pizza, LP*, 2024 WL 4996714 (Tex. Dec. 6, 2024) (orig. proceeding).
- New practice tip § 13:94. Objecting to opponent’s improper argument—Incurable argument; discussing *Alonzo v. John*, 689 S.W.3d 911, 914 (Tex. 2024).
- Discussion of new case and new example § 13:122. Submitting requests for jury instructions—Acceptance, modification, or refusal of tendered instruction by court—When refusal is prejudicial error; discussing *Horton v. Kansas City Southern Railway Company*, 692 S.W.3d 112, 139 (Tex. 2024).
- New practice tip § 16:1. Recourse against defendant’s liability insurer, discussing *In re Illinois National Insurance Company*, 685 S.W.3d 826, 835 (Tex. 2024) (orig. proceeding).
- New section § 16:59.1 Contribution among tortfeasors—Effect of settlement by one tortfeasor—Reduction of damages—One-satisfaction rule.
- New case summaries added throughout.