

Basic Civil Process



Course Number 3131

TEXAS COMMISSION ON LAW ENFORCEMENT

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Abstract

The Basic Civil Process course covers the civil jurisdiction of courts, officer's responsibilities, the rules and codes that govern the service and return of civil citations, wits, subpoenas and other documents.

Note to Training Providers:

This instructor guide is designed as a standardized outline for all training providers; however instructors are expected to develop detailed lesson plans that supplement this outline. Scenarios may be incorporated to facilitate learning of the material. Obtaining the most current copy of *LexisNexis – “Civil Process for Texas”* is not required, but recommended as a resource to help facilitate teaching the course material.

The development of the course is in response to requests for assistance with the 20-hour legislative training requirement. It is an alternative to other available training courses already in use. Training providers have the option of presenting this course as written (course 3131) or selecting section(s) of this course and reporting it under generic Civil Process (course 3101).

It is the responsibility of the training provider to ensure individual copies of the course are current. This may be done by contacting TCOLE or checking the website at www.tcole.state.tx.us. This course ***is not*** designed to provide legal advice.

Target Population: Peace Officer and/or officers serving Civil Process

Prerequisites: Licensed Texas Peace Officer.

Certification

Requirements: None

Length of Course: A minimum of 20 hours

Instructional Material: Computer, projector, TCOLE Curriculum, PowerPoint Presentation, end-of-course exam w/answer key, and any appropriate student handout.

Instructor Qualifications: Instructor should be familiar with the civil jurisdictions of courts, be very knowledgeable about the codes, rules and laws of this state governing the issuance, service and return of civil documents. **The instructor should discuss with the class the specific authority that applies to each subject area.**

Facility Requirement: Standard classroom environment

Evaluation Processes and Procedures: A written examination (developed by the instructor/provider) is given at the end of the course. An evaluation of the course and instructor should also be completed. Classroom participation in discussion and scenarios are also required.

Reference Materials:

Title	Abbreviation
Black's Law Dictionary, 9 th Edition	Black's
Federal Bankruptcy Code	FBC
Texas Business Act	Tex BA
Texas Business & Commerce Code	Tex BCC
Texas Business Organizations Code	Tex BOC
Texas Civil Practice & Remedies Code	CPRC
Texas Code of Criminal Procedure	CCP
Texas Family Code	FC
Texas Finance Code	Tex Fin. Code
Texas Local Government Code	Tex. Loc. Gov't Code
Texas Occupations Code	Tex Occ. Code
Texas Penal Code	Tex Pen. Code
Texas Probate Code	Tex Prob. Code
Texas Property Code	Tex Prop. Code
Texas Rules of Civil Procedure	TRCP
Texas Rules of Evidence	Tex R.Ev.
Texas Transpiration Code	Tex Trans. Code
Texas Tax Property Code	Tex Tax Prop. Code
Texas Commission On Law Enforcement Officer Education and Standards Rules	TCOLE-R

Introduction

This course covers the civil jurisdiction of courts, officer's responsibilities, the rules and codes that govern the service and return of civil citations, writs, subpoenas and other documents.

Civil procedure is the body of law that sets out the rules and standards courts follow when adjudicating civil lawsuits (as opposed to procedures in criminal law matters). These rules govern how a lawsuit or case may be commenced, what kind of service of process (if any) is required, the types of pleadings or statements of case, motions or applications, and orders allowed in civil cases, the timing and manner of depositions and discovery or disclosure, the conduct of trials, the process for judgment, various available remedies, and how the courts and clerks must function. On average, Courts are prepared to deal with all preliminary issues, and process a matter through conclusion --- by trial or settlement --- within two years of initiation of suit, so prompt disposition of civil suits requires an organized effort by the court to move each case through the process efficiently and reduce the volume of complex issues to manageable proportions.

Civil Process according to Blacks' Law Dictionary, 9th Edition, is defined as 1. The proceedings in any action or prosecution <due process of law> 2. A summons or writ, esp. to appear or respond in court <service of process>. Simply, process is an order of the court directing that an action be done. Constitutionally, the sheriff and constable of each county are responsible for carrying out the service of civil process within each county of jurisdiction. While deputies may be assigned to serve civil process other deputies within the department may also serve process and all who serve are subject to liability for improper service.

The service of documents advises citizens of complaints filed against them or of court actions they may be involved in as a witness. This is their fundamental right, guaranteed in the constitution. The person serving the documents has a tremendous responsibility to follow the rules and codes that govern the service and execution of the documents. Failure to do so correctly may delay the court proceeding, or even create liability to the server.

In many states, civil process constables and their deputies can serve legal papers regarding a civil (not a criminal) lawsuit, however in some states, sheriffs perform these duties as well. Texas constables have numerous responsibilities which include serving arrest warrants, making arrests and enforcing state laws along with other responsibilities. It is somewhat surprising they have continued to serve legal papers concerning civil suits as the state and their responsibilities have grown. Civil Process can also be served by private companies in Texas. Sometimes utilizing private process serving companies is the best choice as long as the individual serving the papers is not party to the suit and is certified by the Texas Supreme court to serve papers.

Learning Objectives

- 1.0 **Functional Area:**To provide the student with an understanding of the Occupations Code and Texas Commission on Law Enforcement (Commission) Rules and give them a working knowledge specifically to maintaining licensure and reporting responsibilities.
- 1.1 **Learning Objective:**The student will be able to identify the selected statutory requirements of Chapter 1701.253 (establish curriculum), 1701.351 (Continuing Education for Peace Officers) and 1701.354 (20 hr. civil training mandatory for deputy constables) of the Occupations Code.
- 1.2 **Learning Objective:**The student will be able to identify the TECLEOSE rules that govern the requirements and procedures for obtaining a Civil Proficiency Certificate.
- 2.0 **Functional Area:**To provide the student with a basic and working knowledge of courts and their jurisdiction in the Justice System.
- 2.1 **Learning Objective:**The student will be able to identify a Court's civil and criminal Jurisdiction.
- 2.2 **Learning Objective:**The student will be able to identify the court structure of Texas.
- 3.0 **Functional Area:**To provide the student with a basic understanding of Civil Process system.
- 3.1 **Learning Objective:**The student will be able to identify the Objective of the Rules of Civil Procedure (TRCP) and identify the legislative restriction placed on the rules.
- 3.2 **Learning Objective:**The student will be able to identify the statutes that relate to the fees for Civil Process.
- 3.3 **Learning Objective:**The student will be able to define citations, identify TRCP section which apply to civil citations, and identify the case elements of preventing execution of civil process.
- 3.4 **Learning Objective:**The student will be able to identify and list the rules which apply to civil Subpoenas and the codes that apply to criminal subpoenas
- 3.5 **Learning Objective:**The student will be able to identify and list the different Prejudgment Writs, their origination and purpose.
- 4.0 **Functional Area:** To provide the student with an understanding of Post Judgment Writs

Learning Objectives

- 4.1 **Learning Objective:** The student will be able to identify the procedure for enforcement of out of state judgment documents.
- 4.2 **Learning Objective:** The student will be able to identify and define writ of execution and execution process.
- 4.3 **Learning Objective:** The student will be able to identify and define Turnover Orders and the Turnover Order process.
- 5.0 **Functional Area:** The student will gain a basic understanding of legal remedies available for landlord, tenant disputes
- 5.1 **Learning Objective:** The student will be able to define Distress Warrant and identify and discuss the Texas Property Code and the Texas Rules of Civil Procedure that apply to Distress Warrants.
- 5.2 **Learning Objective:** The student will be able to define Reentry and identify the requirements and officer duties in the execution of Writ of Reentry
- 5.3 **Learning Objective:** The student will be able to define Writ of Restoration and identify service requirements and the penalty for failing to comply with the Writ of Restoration.
- 5.4 **Learning Objective:** The student will be able to describe the Enforcement of Landlord's Duty to Repair and Remedy and the purpose of Texas Rules Civil Procedure 737.
- 5.5 **Learning Objective:** The student will be able to define Eviction Suits, discuss the process of eviction suits and the Texas Property Codes that covers Eviction Suits.
- 5.6 **Learning Objective:** The student will be able to identify an eviction Writ of Possession and the requirements of a writ of possession.
- 5.7 **Learning Objective:** The student will be able to define premises in Chapter 94 of the Texas Property Code and identify and discuss the section of the Transportation Code related to Manufactured Home Evictions
- 6.0 **Functional Area:** The student will gain a basic understanding of foreclosure property, seizures and sales suits.
- 6.1 **Learning Objective:** The student will be able to define tax foreclosure, identify tax foreclosure as a lien enforcement action and matters relating to a Tax Warrant.

Learning Objectives

- 6.2 **Learning Objective:**The student will be able to define Order of Sale (Real Property) and identify sale procedures for the sale of real property (real estate) in a tax foreclosure suit.
- 7.0 **Functional Area:**The student will gain a basic understanding of the three types of Protective Orders.
- 7.1 **Learning Objective:** The student will be able to define Protective Orders and identify the procedures for issuance and enforcement of Protective Orders.
- 7.2 **Learning Objective:** The student will be able to identify Magistrate's Emergency Order and the process of enforcing the order.
- 7.3 **Learning Objective:** The student will be able to identify Temporary Ex Parte Order and the process of enforcing the order

UNIT ONE
Occupational Code and Commission Rules

- 1.0 **Functional Area:** To provide the student with an understanding of the Occupations Code and Texas Commission on Law Enforcement (Commission) Rules and give them a working knowledge specifically to maintaining licensure and reporting responsibilities
- 1.1 **Learning Objective:** The student will be able to identify the selected statutory requirements of Chapter 1701.253 (establish curriculum), 1701.351 (Continuing Education for Peace Officers) and 1701.354 (20 hr. civil training mandatory for deputy constables) of the Occupations Code.
- A. Occupation Code, Chapter 1701
1. Commission Authority to Establish Curriculum - 1701.253
 2. Continuing Education Requirements for Peace Officer – 1701-351
 3. Continuing Education for Constables and Deputy Constables – 1701-354

<p><u>Instructor's Note:</u> The license holder must meet these requirements in order to maintain their license in an active status.</p>

- 1.2 **Learning Objective:** The student will be able to identify the TCOLE Rules that govern the requirements and procedures for obtaining a Civil Proficiency Certificate.
- A. Civil Proficiency Certificate (TCOLE Rules Handbook)
1. Commission Rule (s) §221.1 & 221.25

UNIT TWO Criminal Justice System

- 2.0 **Functional Area:** To provide the student with a basic and working knowledge of courts and their jurisdiction in the Justice System.
- 2.1 **Learning Objective:** The student will be able to identify civil and criminal jurisdiction.

Instructor's Note: The civil suit belongs to the plaintiff. The plaintiff or his attorney is responsible for filing the suit, requesting the issuance of documents, and identifying the name and address of the persons upon whom they want documents delivered. (TRCP 79, 99 and 502.2) In the criminal courts the officer investigates an offense, follows up with any necessary case work and files appropriate charges.

- 2.2 **Learning Objective:** The student will be able to identify the court structure of Texas for civil jurisdiction.

A. Courts and Their Jurisdiction

The appellate courts of Texas include a Supreme Court, a Court of Criminal Appeals and 14 intermediate courts of appeals.

THE TEXAS CONSTITUTION ARTICLE 5. JUDICIAL DEPARTMENT

Sec. 1. JUDICIAL POWER; COURTS IN WHICH VESTED. The judicial power of this State shall be vested in one Supreme Court, in one Court of Criminal Appeals, in Courts of Appeals, in District Courts, in County Courts, in Commissioners Courts, in Courts of Justices of the Peace, and in such other courts as may be provided by law. The Legislature may establish such other courts as it may deem necessary and prescribe the jurisdiction and organization thereof, and may conform the jurisdiction of the district and other inferior courts thereto. (Amended Aug. 11, 1891, Nov. 8, 1977, and Nov. 4, 1980.)

1. Supreme Court Established in the Constitution (Judge must be an attorney)

Jurisdiction: The Supreme Court of Texas has statewide, final appellate jurisdiction in civil and juvenile cases. In 1941 the Supreme Court was granted the authority by the legislature to create the Texas Rules of Civil Procedure. One stipulation of the legislation was the court could not write a rule that contradicted a state law.

2. Court of Criminal Appeals Established in the Constitution

(Judge must be an attorney)

Jurisdiction: This court has no civil jurisdiction. The Court of Criminal Appeals has statewide, final appellate jurisdiction in criminal cases; exclusive jurisdiction over automatic appeals in death penalty cases; and the power to issue writs. It is empowered to promulgate rules of evidence and rules for appellate procedure in criminal cases.

3. Courts of Appeals Established Legislatively

(Judge must be an attorney)

Jurisdiction: These 14 courts have intermediate appellate jurisdiction in civil and criminal cases from trial courts in each respective geographical court of appeals district of the State. These courts have limited original writ jurisdiction.

4. District Courts

(Judge must be an attorney) (Established Legislatively)

Jurisdiction:

1. All felonies
2. Civil \$200.00 and greater
3. Contested elections
4. Appeals from commissioners courts
5. Land Disputes
6. Title to land
7. Slander
8. Probate Appeals
9. Non Criminal against Sheriffs, attorneys and others
10. Divorces
11. Child Custody
12. Child Support
13. Protective Orders
14. Juvenile

5. Constitutional County Courts

(Judge is not required to be an attorney)(Created in the constitution)

Jurisdiction: Civil jurisdiction up to \$10,000.00, non contested probate matters, Class C misdemeanor appeals from Municipal and Justice of the Peace Courts. The County Judge is not required to be an attorney. Geographical jurisdiction is countywide.

<p>Instructor's Note: The commissioner's court is not a judicial entity; rather it is the governing body of the county. It is presided over by the constitutional county judge and includes four elected commissioners. Although it performs no judicial duties, the commissioner's court can issue contempt citations.</p>
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6. Statutory County Courts

(Judge must be an attorney)(Created by the legislature)

Jurisdiction:

1. County Courts At Law: May have Criminal & Civil jurisdiction-
 - A. Criminal Jurisdiction is Class A & B misdemeanors
 - B. Civil Jurisdictions up to \$100,000.00.
 - C. May be established as appeal courts for class C misdemeanors
 - D. **Geographical jurisdiction:** Countywide

7. Probate County Courts

(Judge required to be an attorney) (Created by the Legislature)

Jurisdiction:

- A. Contested and non contested probate matters
- B. Appointment of Guardians
- C. Geographic Jurisdiction is county wide

Instructor's Note: If there is no Probate Court within a county the Probate jurisdiction reverts back to the District Courts

8. Justice Of The Peace Courts

(Judge not required to be attorney) (Created in the Constitution)

Jurisdiction:

The Justice of the Peace is also the judge of the Small Claims Court, Debt Claim, Repair and Remedy and Evictions in his precinct. Justice Court civil jurisdiction is up to \$10,000.00, Class C Misdemeanors. They may not try title to land disputes, only who gets possession in Eviction suits. Justices of The Peace may also perform marriages.

Geographic Jurisdiction: Disputes within their precinct or involve residence of their precinct

Instructor's Note: A court's jurisdiction over a matter is questioned by either party (plaintiff or defendant), but not the officer. The officer's duties are defined within the codes, rules and laws. Questioning the court's jurisdiction is not one of them. A Justice of The Peace in many areas of the state may perform death inquests.

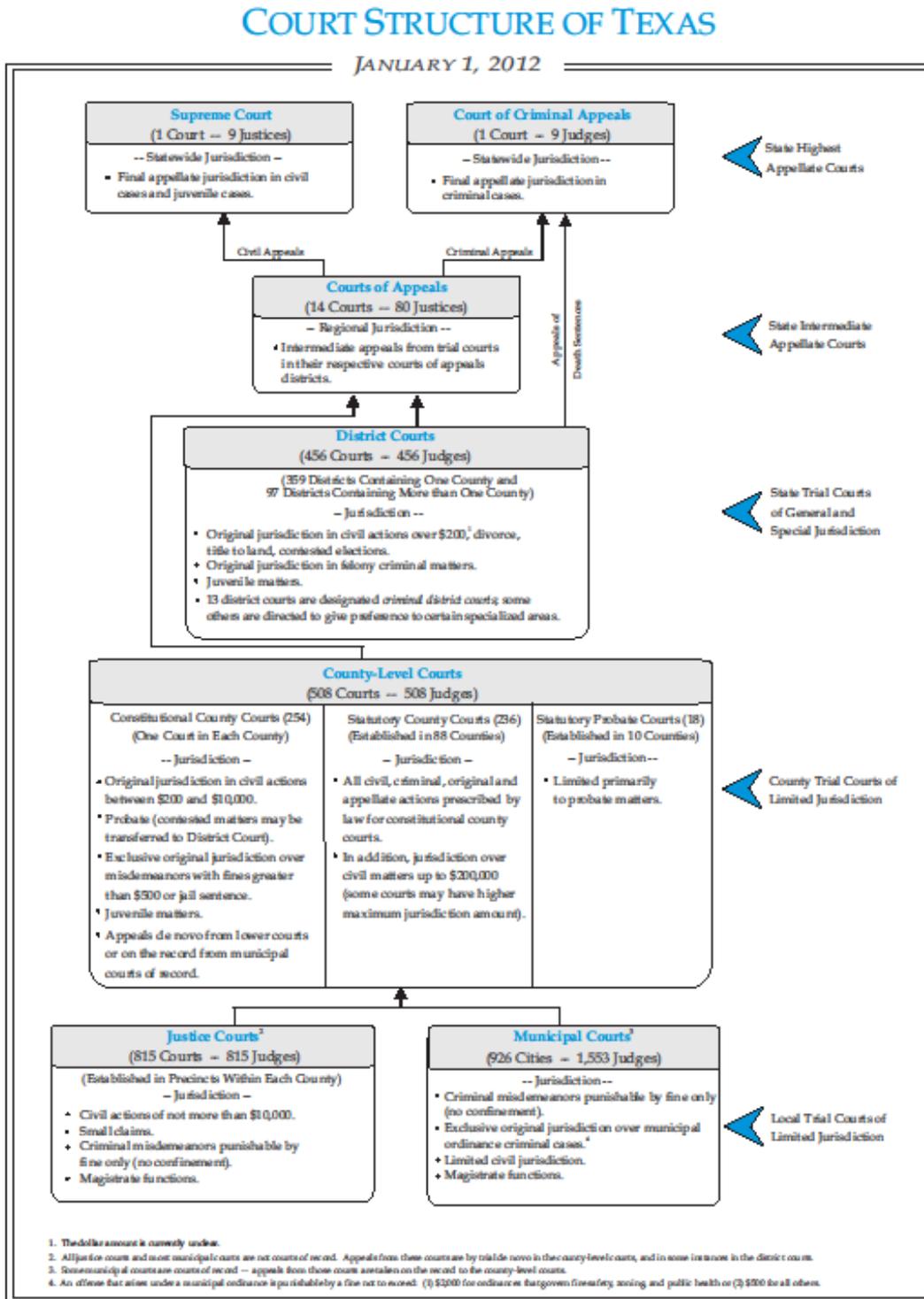
9. Municipal Courts

(Judge not required to be attorney)(Created by legislation-Authority was granted to municipalities to create municipal courts)

Jurisdiction:Class C misdemeanors, Health and Safety Issues (City Ordinances) Animal Cruelty and Truancy (District Juvenile Court must give permission to hear truancy cases). Municipal judges may perform marriages.

Geographic jurisdiction: Within the municipal boundaries

B. Court structure of Texas (See chart below)



**UNIT THREE
CIVIL PROCESS**

- 3.0 **Functional Area:** To provide the student with a basic understanding of Civil Process system.
- 3.1 **Learning Objective:** The student will be able to identify the Objective of the Rules of Civil Procedure (TRCP) and the legislative restrictions placed on the rules.
- A. Objective of Rules - TRCP 1
- B. Scope of Rules - TRCP 2
- C. Legislative Restrictions
1. TRCP 2 (Scope of Rules) reflects the legislative restriction included in the 1941 statute that made the Rule of Civil Procedure the governing authority when no statute exist.
- 3.2 **Learning Objectives:** The student will be able to identify the statutes that relate to the fees for Civil Process.

Officer to Execute Process	TRCP 17
Parties Responsible	TRCP 125
Fee for Execution of Process, Demand	TRCP 126
Parties Liable for Other Costs	TRCP 127
Mail Cost In Addition To Fee	CPRC 17.025
All Constable Service Fees Go To County	LGC 86.021(d)
Overcharging of Fees; Penalty	LGC 118.801
Definition	LGC 154.001
Salary Paid in Lieu of Fees and Commissions	LGC 154.002
Collection and Disposition of Fees and Commissions of Salaried Officer	LGC 154.003
State and County Prohibited From Paying Fees or Commissions to Salaried Officer	LGC 154.004
Effect of Failure to Collect Fee or Commission	LGC 154.009
Attorney General’s Office – Child Support	FC 231.202
Self – Authentication	Rex R. Ev. 901 (2)

Instructor’s Note: Service Fees for Tax Suits – The tax unit does not have to pay service fees. However, the final judgment in the suit can assess these fees against the defendant. The return should have the standard service fee entered of the document.

3.3 **Learning Objective:** The student will be able to define citations, identify TRCP section which apply to civil citations, and identify the case elements of preventing execution of civil process.

A. Define Citation:

Citation is a court-issued writ that commands a person to appear at a certain time and place to do something demanded in the writ, or to show cause for not doing so (Black's Law Dictionary, 2009 P277)

The Black's Law definition indicates a citation is a writ. However in the Texas Rules of Civil Procedure (Rule 15) it states Texas courts issue *Writs* and *Process*. In rule 99 and 501 the document is better defined as notification of litigation being filed against the defendant and what action is required on the defendant's part. In district and county courts it will be a written response filed with the court by 10:00 AM the first Monday after expiration of 20 calendar days counting from the next day after the service date (TRCP 4, 99). For Justice of The Peace Courts the response will be written,

"You have been sued. You may employ an attorney to help you in defending against this lawsuit. But you are not required to employ an attorney. You or your attorney must file an answer with the court. Your answer is due by the end of the 14th day after the day you were served with these papers. If the 14th day is a Saturday, Sunday, or legal holiday, your answer is due by the end of the first day following the 14th day that is not a Saturday, Sunday, or legal holiday. Do not ignore these papers. If you do not file an answer by the due date, a default judgment may be taken against you. For further information, consult Part V of the Texas Rules of Civil Procedure, which is available online and also at the court listed on this citation."

Both rule 106 and 501.1 require a copy of the petition be delivered with the citation.

Regular civil citations do not expire. However, tax citations expire in 90 days from the date of issuance. TRCP 117a,6

B. Texas Rules of Civil Procedure (Citations)

Issuance of Citation	99(a)-501.1
Form of Citation	99(b)-501.1(a)
Who may serve	103-501.2(a)
When service may not be made	6 – 501.2(d)
Duty of Officer or Person Receiving	105- 501.2(e)(1)(2)
Methods of Service	106-501.2(b)
Citation by Publication	109
Service By Publication	116
Other Substituted Service	109(a)
Return of Service	16-105-107- 501.3(g)

Instructor's Note: Stress that service is not complete until the document is returned to the court. District and county court citation returns must be on file 10 days before the court can proceed with the case. Justice and small claims citation returns must be on file 3 days before the court can proceed with the case.

Rule 107 and 501.2(e) permit the officer to attach a return to the citation. There is no uniform citation used throughout the state. They should all meet the requirements set out in Rule 99 and 501.1. The citations may not give the officer sufficient room to write in dates, times and the other information. The officer is required to complete the return. These returns are generally designed by persons who have never served a document.

C. Case elements of Preventing Execution of Civil Process

1. Preventing execution of civil process 38.16
2. Interference with Public Duties 38.15

Instructor’s Note: Penal Code 38.15 can apply when any of the peace officers duties are interfered with by any individual. The instructor should emphasize officer safety when serving citations.

3.4 **Learning Objective:** The student will be able to identify and list the rules which apply to Civil Subpoenas and codes that apply to Criminal Subpoenas

Instructor’s Note: The instructor should stress civil subpoenas are issued and served under civil rules. They have different requirements than criminal subpoenas. There is no Subpoena Duces Tecum in the civil rules. When the current rule 176 was enacted Duces Tecum was removed. The current rule allows for subpoena of people, records and other things to be brought to court with a Subpoena.

A. Definition & Rules for Civil Subpoenas

1. Subpoena - To serve with a subpoena to appear before a court or other tribunal. (Black’s Law Dictionary, 2009 P1563).

Form	TRCP 176.1 – 500.8(c)
Required Actions	TRCP 176.2 – 500.8(a)
Limitations	TRCP 176.3-CPRC 22.002
Who May Issue	TRCP 176.4 – 500.8 (b)
Service	TRCP 176.5 -500.8(d)
Enforcement of Subpoena	TRCP 176.8 – 500.8(g)
Witness fee	CPRC 22.001
Fee for Production or Certification of Documents	CPRC 22.004
Privilege from Arrest	CPRC 22.011

B. Criminal Subpoenas

Instructor’s Note: The instructor should stress that criminal subpoenas are served under different rules than civil subpoenas and there are different requirements.

Issuance of subpoenas-Requirements for Server	CCP 24.01(b)(1)(2)
Subpoena for person younger than 18	CCP 24.011

Subpoena duces tecum	CCP 24.02
Service and return	CCP 24.04
Neglect to execute	CCP 2.16

Instructor’s Note: The legislature may establish agencies or Commissions that are granted subpoena power. These Commissions or agencies will establish their own rules that govern the issuance and return of their subpoenas. The officer should request a copy of their subpoena procedures when he receives a subpoena from one of these organizations for proper service and return.

3.5 **Learning Objective:**The student will be able to identify and list the different Prejudgment Writs, their origination and purpose.

A. Define **Writ of Attachment**

1. Pre Judgment Attachment – An attachment ordered before a case is decided.
2. Provisional Attachment – A prejudgment attachment in which the debtor’s property is seized so that if the creditor ultimately prevails, the creditor will be assured of recovering on the judgment through the sale of the seized property.(Black’s Law Dictionary 2009 P145)
3. Courts may issue writs of attachment for property.
 - a. CPRC 61.021 - The judge or clerk of a district, county or justice of the peace court may issue this writ
 - b. CPRC 61.023 - Before the writ may issue the plaintiff must post a bond set by the court.
 - c. The attachment of property is an ***Ancillary Proceedings*** and only property subject to Execution maybe seized. After final judgment a writ of execution would be issued to seize the property.

Instructor’s Note: TRCP 621 – Writs expire in 30, 60 or 90 days does not apply to pre judgment writs. The rule specifies it only applies to judgment enforcement document and this is a pre judgment writ.

Instructor’s Note: TheService member’s Relief Act provides for a stay of civil attachments. If the officer is made aware of this relief possibly being available to the defendant, the officer should advise the court.

Instructor’s Note:The instructor should stress the return of the writ is due 15 days from the issue date on the first Monday thereafter, by 10:00am.

Who May Issue	CPRC 61.021
Bond	CPRC 61.023
Application for Writ of Attachment & Order	TRCP 592
Bond for Attachments	TRCP 592(a)

Form of Attachment Bond	TRCP 592(b)
Requisites for Writ	TRCP 593
Form of Writ	TRCP 594
Several Writs	TRCP 595
Service member's civil Relief Act (Stay)	50 U.S.C. APP. 524 - 525

4. Duties related to the seizure of personal and real property

a. The officer's first duty is to levy on a sufficient amount of the defendant's property found within the officer's county to satisfy the amount specified in the writ. The property subject to levy is the same property subject to Execution. Exempt property is not subject to levy unless it is specifically named in the writ. When it is named in the writ the court has determined it is not exempt.

b. Personal property must be taken into the officer's possession. He must keep the property safe and protect the value of the property. Perishable property requires immediate notification of the court. The court may issue sale orders to preserve the value of the property and prescribe the method of sale.

c. Real property (land and the building there on) is levied on by writing the levy on the writ and delivering the copy of the writ to the County Clerk. The copy is placed in the deed records. This action establishes the court's control over the property. The officer completes the return and sends it back to the issuing court.

d. Disobedience to the court order can result in the plaintiffs filing of a show cause order to have the defendant held in contempt of court.

Duty of Officer	TRCP 597
Levy, How Made	TRCP 598
Service of Writ on Defendant	TRCP 598(a)-21a
Defendant May Replevy	TRCP 599
Sale of Perishable Property	TRCP 600
To Protect Interests	TRCP 601
Bond of Applicant For Sale	TRCP 602
Procedure for Sale	TRCP 603
Return of Sale	TRCP 604
Judge May Make Necessary Orders	TRCP 605
Return of Writ	TRCP 606
Report of Disposition of Property	TRCP 607
Subject Property	CPRC 61.041
Attachment of Personalty	CPRC 61.042
Attachment of Realty	CPRC 61.043

Attachment Lien	CPRC 61.061
Judgment and Foreclosure	CPRC 61.062
Judgment on Replevied Property	CPRC 61.063

5. “Exempt Property” as described in the Texas Property Code.

Instructor’s Note:

Discuss the definitions of rural and urban homesteads.

Discuss how the homestead exemption is filed.

Discuss property that is exempt and not to be calculated in the aggregate value to determine seizure of property.

Discuss the personal property list in section 42.002 of the Texas Property Code and the aggregate value of these items as they relate to exempt amount.

Discuss the additional exemption for retirement, health care plans and college saving plans.

Discuss when exempt property may be designated.

Discuss how child support liens affect exempt property rights. (*Dryden v. Dryden*, 97 S.W.3d 863 2003 Tex. App.) *The payment of child support is a natural and legal duty, not a debt. The enforcement of such arrearages does not violate the Tex Const.*

Interests in Land Exempt from Seizure	Tex Prop Code 41.001
Definition of Homestead	Tex Prop Code 41.002
Temporary Renting of Homestead	Tex Prop Code 41.003
Voluntary Designation of Homestead	Tex Prop Code 41.005
Tax Homestead Exemption	Tex Prop Code 41.005(e)
Notice to Designate	Tex Prop Code 41.021
Personal Property Exemptions	Tex Prop Code 42.001
Exempt Personal Property	Tex Prop Code 42.002
Exemption Retirement & Health Saving	Tex Prop Code 42.0021
Exemption College Savings Plans	Tex Prop Code 42.0022
Designation of Exempt Property	Tex Prop Code 42.003
Child Support Lien	Tex Prop Code 42.005

B. Define Writ of Sequestration (Pre judgment)

1. The process by which property is removed from the possessor pending the outcome of a dispute in which two or more parties contend for it. (Black’s Law Dictionary, 2009 P1488)

2. General provisions of sequestration.

a. The Sequestration will take property and place it under the control of the court in order to protect the value. The first duty of the officer after normal endorsements on the writ is to seize the property.

b. Service is made on the defendant under rule 21a. The instructor should note this rule establishes when the document is considered served. These times, set out in the rule, have a direct effect on the defendant’s sole replevy right for the first 10

days after the date of service, not the date of seizure. The Plaintiff's posting bond may act as his replevy bond if the court so orders in the writ.

c. Once demand has been made for the property under the provisions of 21a if the defendant does not turn the property over to the officer the writ should be return to the court noting the refusal. This allows the plaintiff to proceed with show cause for contempt of court.

Instructor's Note: TRCP 621 – Writs expire in 30, 60 or 90 days does not apply to pre judgment writs. The rule specifies it only applies to *judgment enforcement document* and this is a pre judgment writ, no judgment has been rendered.

3. Define **Replevy Bond**.

Replevy Bond is the bond that protects the attaching officer and ensures the property's safekeeping until the court decides whether it should be returned to the defendant. (Black's Law Dictionary 2009 P202)

4. Provisions for the Replevy Bond, release or sale of sequestered property.

TRCP 698 allows the plaintiff's posting bond to act as his replevy as long as the bond meets the requirements set out in TRCP 708. The order should reflect if the court allows the posting bond to act as the plaintiff's replevy bond.

The court should prepare a written order to the officer to release the property. If the court orders the property sold, it should be an Order of Sale directing the officer to sell the property. Property is sold according to the Rules of Civil Procedure for the sale of property.

Pending Suit Required	CPRC 62.002
Application for Writ	TRCP 696
Who May Issue	CPRC 62.021
Required Statement of Rights	TRCP 699-CPRC 62.023
Officer's Liability and Duty of Care	CPRC 62.061
Compensation of Officer	CPRC 62.062
Indemnification of Officer for Money Spent	CPRC 62.063
Bond for Sequestration	TRCP 698
Requisites of Writ	TRCP 699
Service of Writ on Defendant	TRCP 700(a)-21a
Defendant May Replevy	TRCP 701
Bond for Personal Property	TRCP 702
Plaintiff may Replevy	TRCP 708
Bond for Real Estate	TRCP 703
Return of Bond & Entry of Judgment	TRCP 704
Defendant May Return Sequestered Property	TRCP 705
Disposition of the Property by Officer	TRCP 706
Plaintiff May Replevy	TRCP 708

When Bond Forfeited	TRCP 709
Sale of Perishable Goods	TRCP 710
Order of Sale For	TRCP 711
Return of Order	TRCP 712
Sale of Debt Not Due	TRCP 713
Purchaser's Bond	TRCP 714
Return of Bond	TRCP 715
Recovery of Bond	TRCP 716

Instructor's Note: The instructor should include examples of Writs of Sequestrations and returns. Also, officer safety should be stressed. There are times when repossession people will no longer attempt to take the property because of a threat or actual violence has occurred.

C. Define **Writ of Garnishment (Pre or Post Judgment)**

1. A judicial proceeding in which a creditor (or potential creditor) asks the court to order a third party who is indebted to or is bailee for the debtor to turn over to the creditor any of the debtor's property (such as wages or bank accounts) held by that third party. A Plaintiff initiates a garnishment action as a means of either prejudgment seizure or post judgment collection. (Black's Law Dictionary, 2009 P750)
2. General provisions of garnishment.

Instructor's Note: In 2007, the legislature added 17.028 to the Civil Practices and Remedies Code. Service is now allowed on the Registered Agent or The President or a branch manager at any office in the state.

Instructor's Note: Delays in service of these documents may create liability for the agency as well as the officer. The definition of Garnishee should be stressed versus the defendant in the case. If the officer has a garnishment for the Garnishee and a Garnishment for the defendant the TRCP rule 663a says to serve the defendant as soon as is practicable following service on the Garnishee.

Grounds	CPRC 63.001
Who May Issue	CPRC 63.002
Effect of Service	CPRC 63.003
Current Wages Exempt	CPRC 63.004
Judgment Final for Garnishment	TRCP 657
Application for Writ or Garnishment & Order	TRCP 658
Bond for Garnishment	TRCP 658(a)
Case Docketed	TRCP 659
Form of Writ	TRCP 661
Delivery of Writ	TRCP 662

Who to Serve Financial Institution	CPRC 17.028(b),(1),(2)
Who to Serve Credit Union	CPRC 17.028(c),(1),(2)
Execution & Return of Writ	TRCP 663
Service of Writ on Defendant	TRCP 663(a)-21a
Defendant May Replevy	TRCP 664

D. Define Writ of Habeas Corpus (Pre or Post judgment writ)

1. Habeas Corpus is a writ employed to bring a person before a court, most frequently to ensure that the person's imprisonment or detention is not illegal. (Black's Law Dictionary, 2009 P778)
2. Courts with jurisdiction to issue Habeas Corpus (CCP 11.05)
 - a. County,
 - b. District
 - c. Appeals Court
3. Purpose of the Habeas Corpus Writ.
 - a. Civil, to order the person alleged to be restraining a person, to produce that person at a time or place named.
 - b. Criminal, to order the person holding a person in custody to produce and show cause, why the person is being held.
4. Statutes which grants the authority to issue Writ of Habeas Corpus:

Jurisdiction (Parent-Child relationship)	FC 157.371
What writ is	CCP 11.01
To whom directed	CCP 11.02
By whom writ may be granted	CCP 11.05
Scope of writ	CCP 11.23
Who may serve writ	CCP 11.26
How writ may be served and returned	CCP 11.27
Return under oath	CCP 11.28
Disobeying writ	CCP 11.34
Applicant may be brought before court	CCP 11.36
Refusing to execute writ	CCP 11.60

E. Define Capias (For Person)

1. Capias is any of various types of writs that require an officer to take a named defendant into custody. (Black's Law Dictionary, 2009 P236)
2. Capias Pro Fine – A writ for the arrest of a person who has not paid an imposed fine. (Black's Law Dictionary, 2009 P236)

F. Define **Attachment (For Person)**

1. Provisional Attachment (2) is the arrest of a person who either is in contempt of court or is to be held as security for the payment of a judgment. (Black’s Law Dictionary 2009 P145)

Instructor’s Note: Civil attachments of persons are permitted in most codes for any number of reasons. The level of force used to execute an attachment of a person should be that same used the execution of a class c misdemeanor.

G. Who may issue.

1. Any court having subpoena power or contempt jurisdiction may issue these documents. It is issued by a clerk of a court under seal, or by any magistrate or by the foreman of a grand jury, in any criminal action or proceeding authorized by law commanding some peace officer to take the body of a witness and bring him before such court, magistrate or grand jury. (CCP 24.11)

Instructor’s Note: It may or may not authorize the person to be placed in the county jail.

H. Statutes which gives the authority to issue.

Instructor Note: A Capias or Warrant for enforcement of child support shall be entered into TCIC only, cannot be entered NCIC. The case originates in civil courts but it has criminal responsibilities attached to the final judgment.

Instructor Note: FC sec. 152, Uniform Child Custody Jurisdiction and Enforcement Act. 152.311 – Warrant to Take Physical Custody of a Child.

Requisites of an Attachment	CCP 24.11
When Attachment May Issue	CCP 24.12
Attachment for Resident Witness	CCP 24.14
Secure Attendance Before Grand Jury	CCP 24.15
Bench Warrant; Attachment in Custody	TFC 52.0151
Capias Duty of Law Enforcement Officials	TFC 157.102
Failure to Appear	TFC 157.114

I. Define **Temporary Restraining Orders& Temporary Injunctions (Pre judgment Writ)**

1. Temporary Restraining is a court order preserving the status quo until the plaintiff’s application for a preliminary or permanent injunction can be heard (Black’s Law Dictionary, 2009 P1603).

2. Injunction is a court order commanding or preventing an action (Black’s Law Dictionary, 2009 P855).

3. Preliminary Injunction is a temporary injunction issued before or during a trial to prevent an irreparable injury from occurring before the court has a chance to decide the case (Black’s Law Dictionary, 2009 P855).

J. General provisions of temporary restraining orders and injunctions.

Instructor Note: Temporary Restraining Orders must have a hearing date set no later than 14 days after the filing. Extension of the TRO’s may be granted. Temporary Injunctions require a written response 20 days from the date of service the first Monday thereafter.

1. Rules and codes that govern these documents.

Conflict With Texas Rules of Civil Procedure	CPRC 65.045
Grounds Generally	CPRC 65.011
Jurisdiction of Proceeding	CPRC 65.021
Place for Trial	CPRC 65.023
Temporary Restraining Orders	TRCP 680
Temporary Injunctions: Notice	TRCP 681
Sworn Petition	TRCP 682
Form & Scope of Injunction or Restraining Order	TRCP 683
Applicants Bond	TRCP 684
Filing & Docketing	TRCP 685
Citation	TRCP 686
Requisites of Writ	TRCP 687
Clerk to Issue Writ	TRCP 688
Service & Return	TRCP 689
The Answer	TRCP 690
Disobedience	TRCP 692

K. Service requirements for citations and other documents under the Probate Code.

1. Citation, Notices & Writs shall be served by certified mail by the court clerk. If personal service is requested, that service will be done by the sheriff or constable. The sheriff or constable shall deliver the citation or notice to the person named a true copy of such citation or notice at least (10) days before the return day (court date) thereof, exclusive of the date of service. (Tex. Prob. Code Section 33(f)(1))

2. What documents maybe issued by Probate Courts

a. Probate courts may issue any document that any other court can issue. This includes eviction writs. The court may also prescribe the method of service and return. Officer should read the document to determine the courts service and return instruction. It may or may not follow the same procedure as set out in the Rules of Civil Procedure. (Tex. Prob. Code 33(d)).

3. Probate Execution are returnable in 60 days. Tex.Prob. Code Sec. 25.

**UNIT FOUR
POST JUDGEMENT WRITS**

4.0 **Functional Area:** To provide the student with an understanding of Post Judgment Writs

4.1 **Learning Objective:** The student will be able to identify the procedure for enforcement of foreign judgment documents.

Definition	CPRC 35.001
Filing and Status of Foreign Judgments	CPRC 35.003
Fees	CPRC 35.007

4.2 **Learning Objective:** The student will be able to define and identify writ of execution and execution process.

A. Define Writ of Execution

1. A court order directing a sheriff or other officer to enforce a judgment, usually by seizing and selling the judgment debtor’s property. (Black’s Law Dictionary, 2009 P650)

B. Identify when and what courts may issue Executions.

1. The judgment is rendered by a District, County or Justice of the Peace Court. Execution is issued at the request of the plaintiff when the conditions of the judgment have not been complied with.

2. Writ may not issue until 30 days from the time a final judgment is signed. Plaintiff may file an affidavit within the 30 days stating the defendant is about to remove, transfer or secrete the property for the purpose of defrauding his creditors. If the court agrees the writ may issue at that time.

3. Justice Courts may stay an execution. Within 10 days of judgment the defendant may grant a motion to stay the judgment. No writ will issue for 3 months when all conditions are met and the motion is granted.

Enforcement of Judgment	TRCP 621 TRCP 505.2 (Justice Courts) TRCP 507.4 (Justice Courts)
Execution	TRCP 622
Time For Issuance	TRCP 627
Execution Within Thirty Days	TRCP 628
Stay of Execution in Justice Court	TRCP 635

C. Identify the requisites of an execution.

1. A correct copy of the bill of cost shall be attached to the writ. Many of the current Writ of Execution forms have a “Bill of Cost” printed on the writ itself. It is not

required to be certified. The writ must be returned within a specific time, i.e. 30, 60 or 90 days from the date of issuance.

Instructor Notes: Rule 630, 631, 632 and 633 will determine the writ's commandments.

Requisites of Execution	TRCP 629
Execution on Judgment for Money	TRCP 630
Execution for Sale of Particular Property	TRCP 631
Execution for Delivery of Certain Property	TRCP 632
Execution for Possession or Value of Personal Property	TRCP 633

D. Sections of the TRCP and CPRC that define the officer duties in Writs of Executions.

Endorsements by Officer	TRCP 636
Duties of Executing Officer	CPRC 34.071
Timing of Execution and Return	CPRC 34.072
Transfer of Writ; No Duty to Levy Outside of County	CPRC 34.073
Liability Regarding Execution of Writs May not require indemnification bond to execute	CPRC 7.003(b)
Levy of Execution	TRCP 637
Property not to be Designated	TRCP 638
Levy	TRCP 639
Transfer of Writ; No Duty to Levy Outside of County	CPRC 34.073
Levy on Stock Running At Large	TRCP 640
Levy on Shares of Stock	TRCP 641
Levy on Goods Pledged or Mortgaged	TRCP 643
Purchase by Officer Void	CPRC 34.048
Effect of Plaintiff's Death	CPRC 34.002
Effect of Defendant's Death	CPRC 34.003

E. Liabilities issues when executing Writs of Execution

Liability for Refusal or Neglect in Performance of Official Duties	CPRC 7.001
Liability Regarding Execution of Writs	CPRC 7.003
Duty Toward Seized Personalty: Liability	CPRC 34.061
Improper Endorsement of Writ	CPRC 34.063
Improper Return of Writ	CPRC 34.064
Failure to Levy or Sale	CPRC 34.065
Improper Sale	CPRC 34.066
Failure to Deliver Money Collected	CPRC 34.067
Wrongful Levy	CPRC 34.075

F. Sale procedures for the sale of Personal Property

1. *Personal Property (anything that is not land)*

2. **Bill of Sale** – An instrument for conveying title to personal property, absolutely or by way of security. (Black’s Law 2009 P189)

3. Personal property must be displayed at the time and location of the sale; therefore most sales are conducted where personal property is stored.

4. Sale notice should indicate the approximate time the sale will take place. This time must be between the hours of 10:00 am and 4 pm.

Notice of Sale of Personal Property	TRCP 650
When Execution Not Satisfied	TRCP 651
Purchaser Failing to Comply	TRCP 652
Resale of Property	TRCP 653

G. Procedure for the sale of Real Property.

1. Real Property define is land and anything growing on it, attached to, or erected on it, excluding anything that may be severed without injury to the land. (Black’s Law Dictionary 2009 P1337)

2. Venditioni Exponas define is a Writ of Execution requiring a sale of particular goods to be made. (Black’s Law Dictionary 2009 P1694) In some jurisdictions (Texas is one), a *Venditioni Exponas* is issued to require a sale of property seized under an earlier writ, after the property has been condemned or passed upon by inquisition. The Supreme Court ruled this was a valid writ to sell seized property after the original writ has expired. It does not allow for additional seizures, just the sale of property already in the officer’s possession.

Instructor Note: The sale of real property takes place on the first Tuesday of the Month, even if the first Tuesday is a holiday. TRCP only address holidays in Rule 4 for the calculations of time.

Sale of Real Property	TRCP 646a
Notice of Sale of Real Property	TRCP 647
“Courthouse Door” Defined	TRCP 648
Venditioni Exponas	TRCP 647
Sale at Place Other Than Courthouse door	CPRC 34.041
Resale of Property	TRCP 653
Sale of City Lots	CPRC 34.042
Sale of Rural Property	CPRC 34.043
Person Eligible to Purchase Real Property	CPRC 34.0445
Conveyance of Title After Sale	CPRC 34.045

Instructor Note: Discuss the possibility of other existing writs for the defendant.

H. Sections of the Texas Property Code that pertain to exemptions.

Instructor Note: Exempt property was addressed in “Pre Judgment Writs-Attachment (*Learning Objective 3.5.1.4*)”. If pre judgment writs have not been addressed before Execution, then exempt property should be taught in this section.

Interests in Land Exempt from Seizure	Tex Prop Code 41.001
Definition of Homestead	Tex Prop Code 41.002
Temporary Renting of a Homestead	Tex Prop Code 41.003
Voluntary Designation of Homestead	Tex Prop Code 41.005
Tax Homestead Exemption	Tex Prop Code 41.005(e)
Notice to Designate	Tex Prop Code 41.021
Personal Property Exemptions	Tex Prop Code 42.001
Personal Property	Tex Prop Code 42.002
Additional Exemption for Certain Savings Plans	Tex Prop Code 42.0021
Exemption College Saving Plan	Tex Prop Code 42.0022
Designation of Exempt Property	Tex Prop Code 42.003
Child Support Lien	Tex Prop Code 42.005

I. Requirements of and calculations for judgments according to the Finance Code.

Instructor Note: Section 304 of the Finance Code applies to money judgments of a court in this state. Banking codes do not. The instructor should be very knowledgeable in the application of this code.

Interest Rate Required in Judgment	Tex Fin Code 304.001
Judgment Interest Rate: (Interest Rate in Contract)	Tex Fin Code 304.002
Judgment Interest Rate: (Interest Rate or Time Price Differential Not in Contract)	Tex Fin Code 304.003
Publication of Interest Rate	Tex Fin Code 304.004
Accrual of Judgment Interest	Tex Fin Code 304.005
Compounding of Judgment Interest	Tex Fin Code 304.006
Accrual of Prejudgment Interest (Prejudgment Interest Rate for Condemnation Case)	Tex Fin Code 304.104

Instructor Note: Instructor may provide a worksheet and have the student calculate a judgment.

J. Non eviction Writs of Possession/Execution

Instructor Note: TRCP 632 authorizes “Execution for Delivery of Certain Property”. TRCP 308 carries it step further. It allows for a special writ to issue for return of personal property when that property has special value to the plaintiff. This writ is also known as a Writ of Possession. TRCP 310 authorizes a “Writ of Possession” for an order foreclosing a lien. The purchaser is placed in possession of the property.

Execution for Delivery of Certain Property	TRCP 632
Court Shall Enforce Its Decrees	TRCP 308
Writ of Possession	TRCP 310
Execution for Possession or Value of Personal Property	TRCP 633
Eminent Domain-Concurrent Jurisdiction	Tex Prop Code 21.001
Eminent Domain-Transfer of Cases	Tex Prop Code 21-002

4.3 **Learning Objective:** The student will be able to identify and define Turnover Orders and the Turnover Order process.

A. Define **Turnover Order**

1. An order by which the court commands a judgment debtor to surrender certain property to a judgment creditor, or to the sheriff or constable on the creditor’s behalf. (Black’s Law Dictionary 2009 P1207)

B. Officer’s duty in the execution of a Turnover Order

Instructor’s Note: Texas law prohibits the order from directing the defendant to turnover property directly to the plaintiff. It may direct the sheriff or constable to take possession of a business and turn that business over to a receiver. It should also be noted that CPRC 31.005 does not permit the court to order wages turnover. The title is misleading.

Collection of Judgment Through Court Proceeding	CPRC 31.002
Authority of Court to Order Turnover of Wages	CPRC 31.0025
Turnover by Financial Institution	CPRC 31.010

C. Officer’s duty when property is not turned over

1. The order directs the defendant to turnover what the writ directs. The order is to air in the execution process.

Collection of Judgment Through Court Proceeding	CPRC 31.002
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4.4 **Learning Objective:** The student will be able to identify and define Orders of Sale and the Order of Sale process.

A. Define Order of Sale

Judgments for the foreclosure of mortgages and other liens shall be that the plaintiff recover his debt, damages and costs, with a foreclosure of plaintiff's lien on the property subject thereto, and, except in judgments against executors, administrators and guardians, that an order of shall issue to any sheriff or constable within the State of Texas, directing him to seize and sell the same as under execution, in satisfaction of the judgment; and, if the property cannot be found, or if the proceeds of such sale be insufficient to satisfy the judgment, then to take the money or any balance thereof remaining unpaid, out of any other property of the defendant, as in case of ordinary execution. (TRCP 309).

B. Issued by (TRCP 621)

C. Requirements (TRCP 309)

D. Delivered by (TRCP 309)

E. Day and time to deliver (TRCP 6)

F. Expiration (TRCP 621)

G. Method of delivery (TRCP 647)

H. Officer's duties (TRCP 637, 639, 309, 21a; TCPRC 34.041-045)

I. Officer's return (TRCP 654)

4.5 **Learning Objective:** The student will be able to identify and define the purpose and execution of the Writ/Order of Retrieval.

Definition

An order authorizing entry and property retrieval; Peace Officer to accompany the person if the person is unable to reenter the person's residence or former residence to retrieve personal property belonging to the person or the person's dependent because the current occupant is denying the person entry to retrieve specific items of personal property..

(Tex Pro Code Chapter 24A.002)

Issued by

Justice of The Peace

Requirements

1. Applicant certify that applicant is unable to enter the residence because the current occupant of the residence has denied the applicant access to the residence.
2. Certify that, to the best of the applicant's knowledge, the applicant is not:
 - (A) Subject to an activity protective order or a magistrate's order for emergency protection
 - (B) Otherwise prohibited by law from entering the residence.
3. Allege that the applicant or minor dependant requires personal items located in the residence and that are only of the following types:

- (A) Medical records
 - (B) Medicine and medical supplies
 - (C) Clothing
 - (D) Child-care items;
 - (E) Legal or financial documents
 - (F) Checks or bank or credit cards in the name of applicant;
 - (G) Employment records; or
 - (H) Personal identification documents;
4. Describe with specificity the items that the applicant intends to retrieve.
 5. Allege the applicant or dependents will suffer personal harm if the items are not retrieved.
 6. Include a lease or other documentary evidence that shows the applicant is currently or was formerly authorized to occupy the residence.

Before the Justice of The Peace may issue, the applicant must execute a bond payable to the occupant of the residence in an amount set by the Justice of the Peace. The bond is condition on the applicant paying all damages and costs adjudged against the applicant for wrongful property retrieval. The bond shall be filed with the Justice Court

If there is sufficient evidence of urgency and potential harm to the health and safety of any person and after sufficient notice to the current occupant and an opportunity to be heard, the Justice of The Peace may grant the application and issue the order.

Peace Office Duty

- (a) Shall accompany and assist the applicant in making the authorized entry and retrieving the items of personal property listed in the application
- (b) If the current occupant is present the peace officer shall provide the occupant a copy of the court order.
- (c) Before removing the property the applicant must submit all property to the peace officer to be inventoried. The peace officer will give a copy to the applicant, the occupant (if present) If not present the officer will leave a copy in a conspicuous place. The officer shall file the original inventory with the return for the court order.
- (d) The peace officer may use reasonable force in providing assistance under this section.
- (e) The peace officer who provides assistance in good faith and with reasonable diligence is not
 - (1) Civilly liable for an act or omission of the officer that arises in connection with providing the assistance; or
 - (2) Civilly or criminally liable for the wrongful appropriation of any personal property by the person the officer is assisting. (Tex Pro Code 24A.003)

The Landlord is not civilly or criminally liable for an act or omission that arises in connection with permitting or facilitating the entry. Tex Pro Code 24A.004

The officer shall make return to the court detailing the execution of the writ or order with the inventory attached.

Offense

A person commits an offense if the person interferes with a person or peace officer entering a residence and retrieving personal property under the authority of a court order issued under Section 24A.002. Offense is a Class B Misdemeanor. (Tex Pro Code 24A.005)

Hearing: Review

Not later than the 10th day after the date of the authorized entry, the occupant may file a complaint in the court that issued the order alleging that the applicant has appropriated property belonging to the occupant or the occupant's dependents.

The court shall promptly hold a hearing on a complaint submitted under this section and rule on the disposition of the disputed property. This section does not limit the occupant's remedies under any other law. (Tex Pro Code 24A.006)

**UNIT FIVE
LANDLORD TENANT**

5.0 **Functional Area:** The student will gain a basic understanding of legal remedies available for landlord tenant disputes

5.1 **Learning Objective:** The student will be able to define Distress Warrant and identify and discuss the Texas Property Code and the Texas Rules of Civil Procedure that apply to Distress Warrants.

A. Define Distress Warrants.

1. A landlord’s warrant, distain—to force by the seizure and detention of personal property, to perform an obligation (such as paying overdue rent). (Black’s Law Dictionary 2009 P1723-P542)

B. Texas Property Code defining issuing requirements and jurisdiction

Instructor Note: The warrant is a lien enforcement document. Eviction writs may not be used to enforce this lien. It may only be issued for agricultural and commercial property. It is not available for residential tenants.

Lien (Agricultural)	T Prop Code 54.001
Duration of Lien	T Prop Code 54.004
Distress Warrant	T Prop. Code 54.006
Lien (Commercial)	T Prop. Code 54.021
Duration of Lien	T Prop. Code 54.024
Distress Warrant	T Prop. Code 54.025

C. Texas Rules of Civil Procedure that applies to Distress Warrants

Application for Distress Warrant	TRCP 610
Bond for Distress Warrant	TRCP 611
Requisites for Warrant	TRCP 612
Service of Warrant on Defendant	TRCP 613
Defendant May Replevy	TRCP 614
Sale of Perishable Property	TRCP 615
Procedure for Sale	TRCP 617
Citation for Defendant	TRCP 619

5.2 **Learning Objective:** The student will be able to define Reentry and identify the requirements for issuance and the officer duties in the execution of Writ of Reentry

A. Define **Reentry**

1. The act or an instance of retaking possession of land by someone who formerly held the land and who reserved the right to retake it when the new hold let it go. (Black’s Law Dictionary 2009 P2392)

B. Identify the requirements for issuance of a writ of Reentry.

Residential Tenant’s Right of Reentry After Unlawful Lockout	T Prop. Code 92.009
Residential Lockout (defined)	T. Prop. Code 92.0081(b)
Writ of Reentry Fee (Residential)	T Prop. Code 92.009(l)
Commercial Tenant’s Right of Reentry After Unlawful Lockout	T Prop. Code 93.003
Commercial Lockout (defined)	T Prop. Code 93..002(c)
Writ of Reentry Fee (Commercial)	T Prop. Code.93.002(l)

C. Officer’s duties in the execution of the Writ of Reentry

Residential Reentry (officer)	T Prop. Code 92.009(i)
Commercial Reentry (officer)	T Prop. Code 93.003(i)

Instructor’s Note: Instructor should stress reasonable force in execution of this writ.

5.3 **Learning Objective:** The student will be able to define Writ of Restoration and identify service requirements and the penalty for failing to comply with the Writ of Restoration.

A. Define **Write of Restoration**

1. A writ to a landlord directing him to restore utility service that has been unlawfully interrupted. Texas Property Code 92.0091

B. The student will be able to identify service requirements for the Writ of Restoration.

Residential Tenant’s Right of RestorationAfter Unlawful Utility Disconnection	T Prop. Code 92.0091
Service Fee	T Prop. Code 92.0091(k)

C. Identify the penalty for failing to comply with the Writ.

Residential Tenant’s Right of Restoration After Unlawful Utility Disconnection	T Prop. Code 92.0091(j)
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5.4 **Learning Objective:** The student will be able to define the purpose of TRCP 509 identify service and return requirements for citation issued under TRCP 509

A. Define the purpose of TRCP 509

1. A suit to enforce the landlord’s duty to repair or remedy a condition materially affecting the physical health or safety of an ordinary tenant. TRCP 509.1

B. Identify service and return requirements for the citations issued under TRCP 509

Citation: Issuance; Appearance Date	TRCP 509.33
Service and Return of Citation	TRCP 509.4 (a)
Alternative Service of Citation	TRCP 509.4 (b)

5.5 **Learning Objective:** The student will be able to define Eviction Suits, discuss the process of eviction suits and the Texas Property Codes that covers Eviction Suits.

A. Define **Eviction Suits**

1. The act or process of legally dispossessing a person of land or rental property. (Black’s Law Dictionary 2009 P635)

B. Identify the sections of the Texas Property Code that govern the landlord notice to vacate.

Notice to Vacate Prior to Filing Eviction	T Prop. Code 24.005
Attorney’s Fees and Cost of Suit	T Prop. Code 24.006

C. Identify the sections of the Texas Property Code that define Forcible Entry and Detainer, and Forcible Detainer as grounds for an eviction suit.

Forcible Entry and Detainer	T Prop. Code 24.001
Forcible Detainer	T Prop. Code 24.002

D. Identify original jurisdiction in eviction suits

Jurisdiction	T Prop. Code 24.004 – 510.3(b)
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E. Identify the rule that allows the eviction suit to be joined with a suit for back rent

May Sue for Rent	TRCP 510.3 (3)(d)
Only Issue (Possession- eviction suit)	TRCP 510.3 (e)

Instructor’s Note: These are really two suits being heard at the same time. The judgment for back rent is a money judgment. The defendant has 10 days to appeal a money judgment. In the eviction suit the defendant has 5 days to appeal the possession ruling.

F. Identify the required language on the eviction citation

Instructor’s Note: In addition to the standard language the eviction citation requires a hearing date no less than six days and no more than 10 days from the date of service. Effective 9-1-2007 it also requires specific language in English and Spanish about the time frame for eviction and the right to an attorney. This language is located in Texas Property Code 24.0051.

Citation	TRCP 510.4(a)
Complainant May Have Possession	TRCP
Procedures Applicable in Suit to Evict and Recover Unpaid Rent	T Prop. Code 24.0051

G. Identify the service and return duties for Eviction Citations specified in Texas Rules of Civil Procedure

Complainant May Have Possession	TRCP
Service of Citation	TRCP 510.4 (b)
Service by Delivery to Premises	TRCP 510.4 (c)
Computation of Time Trial	TRCP 510.4 (a)(10)

H. Define the conflict in the Texas Property Code 24.0052, 24.0053, 24.0054 with the Texas Rules of Civil Procedure 510 (a) , and 510 (b), and which prevails

Instructor’s Note: The Rules of Civil Procedure provides for the issuance of a Writ of Restitution when the pauper fails to pay the rent into the court. The Property Code provides for the issuance of a Writ of Possession. Property Code prevails. Rules cannot supersede law. In landlord tenant relations, Writ of Restitution was changed to Writ of Possession in the early 80’s.

Pauper's Affidavit Statement of inability to pay	TRCP 510.9 (c) (1)
Pauper's Affidavit in Nonpayment of Rent Appeals	TRCP 510.9 (c) (5)
Tenant Appeal on Pauper's Affidavit	T Prop Code 24.0052
Payment of Rent During Appeal of Eviction	T Prop Code 24.0053
Tenant's Failure to Pay Rent During Appeal	T Prop Code 24.0054
Scope of Rules	TRCP 2

5.6 **Learning Objective:** The student will be able to identify an eviction Writ of Possession and the requirements of a writ of possession.

A. Identify an eviction Writ of Possession

Writ of Possession	T Prop Code 24.0061
Writ of Possession	TRCP 510.8 (d)
Writ of Possession	T Prop. Tax Code 33.51
Writ Of Possession	510.8(d)1

Instructor's Note: The instructor should discuss that a writ of possession cannot be executed 90 days after the judgment for possession is signed.

B. Define the officer duties as stated in the Writ of Possession

Writ of Possession	T Prop Code 24.061 (1, 2 a through h) (New d-1)

Instructor's Note: The instructor should discuss each of these duties.

C. Define the officer requirements if tenant's property is stored.

Warehouseman's Lien	T Prop Code 24.0062
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Instructor's Note: The instructor should have a sample storage notification.

5.7 **Learning Objective:** The student will be able to define premises in Chapter 94 of the Texas Property Code and identify and discuss the section of the Transportation Code

A. Define premises in Chapter 94 of the Texas Property Code

Definitions	T Prop. Code 94.001 (9)
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B. Identify the applicability of Tex Prop Code Chapter 94 to manufactured homes

Definitions	T Prop Code 94.001 (1) thru (11)
Applicability	T Prop Code 94.002
Waiver of Rights and Duties	T Prop Code 94.003
Landlord's Right of Entry	T Prop Code 94.004

C. Identify who determines if the manufactured home is to be removed from the space after the writ of possession is issued

Eviction Procedures Generally	T Prop Code 94.203
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Instructor's Note: Once the writ is issued the landlord may exclude the tenant from the premise without removing the manufactured home from the premise. The landlord does not have to go to the expense to move home and the tenant can't live in it. He may return to move the home. Tex. Prop. Code 94.203(a)

D. Identify the section of the Transportation Code that allows the required permit to be issued, with an eviction Writ of Possession

Permits	Tex. Trans. Code 623 – 093(d) & (f)
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**UNIT SIX
TAX FORECLOSURE SUITS**

6.0 **Functional Area:** The student will gain a basic understanding of tax foreclosure property, seizures and sales suits.

6.1 **Learning Objective:** The student will be able to define tax foreclosure, identify tax foreclosure as a lien enforcement action and matters relating to Tax Warrant.

A. Define of **tax foreclosure**

1. Tax Foreclosure – A public authority’s seizure and sale of property for nonpayment of taxes. (Black’s Law Ninth Edition P719)

B. Identify the tax foreclosure as a lien enforcement action

Suit to Collect Delinquent Tax	Tex Tax Prop. Code 33.41
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C. Identify a Tax Warrant as a seizure of Personal or Realproperty warrant

Personal Property Subject to Seizure	Tex Tax Prop Code 33.21
Institution of Seizure	Tex Tax Prop Code 33.22
Tax Warrant	Tex Tax Prop Code 33.23
Suit to Collect Delinquent Tax	Tex Tax Prop Code 33.41
Real Property Subject to Seizure	Tex Tax Prop Code 33.91 Municipality Tex Tax Prop Code 33.911 County

D. Identify the sale procedure for property seized under a Tax Warrant

Tax Sale: Notice; Method; Disposition of Proceeds	Tex Tax Prop Code 33.25
Bond for Payment of Taxes	Tex Tax Prop Code 33.24
Sale of Personal Property	TRCP 649
Sale of Real Property	Tex Tax Prop Code 33.94,34.01,33.53
Notice of Sale of Personal Property	TRCP 650
Sale of Real Property	Tex Tax Prop Code 33.41,33.53,33.49, TRCP 647
Purchaser Failing to Comply	TRCP 652

6.2 **Learning Objective:**The student will be able to define Order of Sale (Real Property) and identify sale procedures for the sale of real property (real estate) in a tax foreclosure suit.

A. Define **Order of Sale**

1. Order – 1. A command, direction, or instruction. 2. A written direction or command delivered by a court or judge. (Black’s Law Ninth Edition P1206)
2. Foreclosure Sale – The sale of mortgaged property, authorized by a court degree or power of sale clause, to satisfy the debt (Black’s Law Ninth Edition P1455)

B. Identify sale procedures for the sale of real property (real estate) in a tax foreclosure suit.

Sale of Property	Tex Tax Prop Code 34.01
Persons Eligible to Purchase Real Property	Tex Tax Prop Code 34.015
Not Eligible Person Owning Property	Tex Tax Prop Code 33.50(c)
Adjudged Value	Tex Tax Prop Code 33.50
Minimum Bid	Tex Tax Prop Code 33.50(b)
Distribution of Proceeds	Tex Tax Prop Code 34.02
Distribution of Excess Proceeds	Tex Tax Prop Code 34.03
Claims for Excess Proceeds	Tex Tax Prop Code 34.04
Resale by Taxing Unit	Tex Tax Prop Code 34.05
Challenge to Validity of Tax Sale	Tex Tax Prop Code 34.08
Right of Redemption	Tex Tax Prop Code 34.21
Order of Sale; Payment Before Sale	Tex Tax Prop Code 33.53
Sale of Real Property	TRCP 647
“Courthouse Door” Defined	TCPRC 648

Instructor’s Note: The Tax foreclosure *Order of Sale* expires 181 days after the issue date. Tex. Tax Code 33.53(1).TRCP Rule 621 (judgment enforcement documents expire in 30, 60 or 90 days) does not apply to the Tax Order of Sale.

Instructor’s Note: When a tax entity request the sheriff or constable to resale a struck off property, the officer will follow the sale rules for a Writ of Execution sale, not The Tax Property Code Sec.34.01.

Instructor’s Note: Real property sold under a tax warrant may be sold for less than the Appraised value or the taxes owed. The tax warrant was obtained because the taxing unit knew it would not sell for either. They proved the property had been abandon for at least a year and the value was less than either amount to have the warrant issued.

**UNIT SEVEN
PROTECTIVE ORDERS**

- 7.0 **Functional Area:** The officer will gain a basic understanding of the three types of Protective Orders.

Instructor’s Note: Protective Orders are issued from numerous codes. This section primarily addresses Family Violence Protective Orders.

- 7.1 **Learning Objective:** The new officer will be able to define Protective Orders and identify the procedures of enforcement.

A. Define **Protective Order**

1. A court order prohibiting or restricting a party from engaging in conduct... that unduly annoys or burdens the opposing party or a third-party witness.

(Black’s Law Dictionary 2009, P. 1343)

2. A civil court order issued to prevent continuing acts of family violence (Texas Attorney General website)

B. Identify courts who may issue Protective Orders

C. Identify how service is accomplished

D. Identify how long a Protective Order remains in effect

E. Identify how out of state Protective Orders are enforced

Issuance of Protective Order	FC Ch. 85 – Subchapter A
Contents of Protective Order	FC Ch. 85 – Subchapter B
Delivery of Protective Order	FC Ch. 85 – Subchapter C
Violation of Protective Order or Magistrate’s Order	Texas Penal Code 25.07
Uniform Interstate Enforcement of Domestic-Violence Protection Orders Act	FC Ch. 88
Duties of Peace Officer	CCP 5.04/FC Ch. 86

- 7.2 **Learning Objective:** The new officer will be able to identify a Magistrate’s Emergency Order and the process of enforcing the Order.

A. Identify when this Order may issue.

Revised July 2015

Magistrate's Order For Emergency Protection	CCP 17.291
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B. Identify the duration the Order remains in effect

Magistrate's Order For Emergency Protection	CCP 17.292(j)
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C. Identify how the order is enforced

Violation of Certain Court Order	Texas Penal Code 25.07
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7.3 **Learning Objective:** The new officer will be able to identify Temporary Ex Parte Order and the process of enforcing the Order.

A. Identify courts who may issue the Ex Parte Order

Temporary Ex Parte Orders	FC Ch. 83
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B. Identify service requirements

Service and return	TRCP 689
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C. Identify the duration of the Order

Duration of Order; Extension	FC 83.002
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D. Identify how the Order is enforced

Violation of Certain Court Orders	Texas Penal Code 25.07
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