

Chapter 1

Introduction to Personal Injury Trial Law

1. Learning Objective

This chapter will provide attorneys with a foundational understanding of personal injury trial law as practiced in Texas. Attorneys will apply the elements of tort-based claims, analyze procedural rules governing litigation, and develop a professional strategy in screening and evaluating potential claims during the initial client intake process. Particular emphasis will be placed on early-stage legal analysis, ethical client communication considerations, and the calculated identification of viable legal theories.

2. Overview

Personal injury trial law is a complex and evolving sub-specialty of civil litigation designed to vindicate the rights of individuals harmed by the negligent or intentional conduct of others. In Texas, personal injury law is primarily grounded in tort principles operating within the framework of the Texas Civil Practice and Remedies Code, the Texas Rules of Civil Procedure, and common law doctrines developed through appellate jurisprudence.

The attorney must possess not only substantive knowledge of negligence law—including duty, breach, causation, and damages—but also procedural fluency in case development, pleading standards, discovery, and admissibility of evidence. It is important to note that personal injury litigation is client-driven. The attorney must ethically and efficiently assess case viability, manage client expectations, and make critical decisions regarding resource allocation based on anticipated recovery, potential defenses, and prevailing jury trends.

While the legal doctrines discussed in this handbook apply to a broad spectrum of tort actions, the primary analytical focus of this handbook will be on motor vehicle accident (MVA) litigation. Motor vehicle collisions constitute the most prevalent category of personal injury claims adjudicated in Texas civil courts, making them an ideal framework for studying tort law, civil procedure, and trial advocacy.

The ubiquity of MVAs in personal injury practice provides a consistent and practical context for exploring legal theories of negligence, causation, damages,

insurance coverage, settlement negotiation, and evidentiary challenges. Moreover, MVA cases present a wide range of factual patterns and procedural complexities, allowing attorneys to engage with both foundational principles and advanced litigation strategies. From client intake and pre-suit investigation to trial and post-judgment motions, the motor vehicle case serves as a representative model through which attorneys can develop the competencies essential to real-world legal practice.

Accordingly, this handbook will utilize MVAs as the dominant subject matter for case analysis and drafting exercises. The structure and sequencing of this handbook emphasize the substantive and procedural dimensions in the life cycle of an MVA litigated in Texas courts.

This handbook adopts the plaintiff's perspective—the injured party's—as its primary analytical framework. This orientation reflects the procedural and evidentiary realities of civil litigation in Texas, where the plaintiff bears the burden of proof on each essential element of a personal injury claim, including duty, breach, causation, and damages. By focusing on the plaintiff's side of the case, the course provides attorneys with a structured approach to case development, legal analysis, and evidentiary presentation.

Importantly, effective trial lawyers must understand not only how to construct a case but also how to anticipate and rebut counterarguments. To foster a balanced and adversarial perspective, the course integrates substantive and procedural defense strategies throughout. These include comparative fault arguments under Chapter 33 of the Texas Civil Practice and Remedies Code, medical causation defenses often supported by expert testimony, and procedural tools such as motions to exclude expert witnesses (under Daubert/Robinson standards) and dispositive motions including summary judgment practice.

Each chapter strives to incorporate both plaintiff and defense perspectives on the topic under study, reflecting the dual roles attorneys may assume in litigation and cultivating critical thinking about strategic decision-making in an adversarial system. The goal is to prepare attorneys to evaluate claims objectively, respond to defense tactics with procedural and evidentiary rigor, and develop an appreciation for the ethical and strategic complexities of civil litigation.

3. Substantive Elements of Tort Law

Personal injury claims in Texas generally arise under tort law, with negligence being the most prevalent theory of liability. A plaintiff must establish four essential elements:

1. Duty – A legal obligation requiring the defendant to conform to a standard of conduct.
2. Breach – A failure to conform to the required standard.
3. Causation – A sufficiently close causal connection between the conduct and the resulting injury, including both cause-in-fact and proximate cause.
4. Damages – Actual harm or injury recognized by law, including physical, emotional, and economic loss.

While negligence remains the foundational theory in most personal injury litigation, Texas law recognizes a broad array of alternative liability doctrines that may be asserted independently or in conjunction with negligence claims. These legal frameworks reflect distinct doctrinal evolutions and address diverse policy considerations, evidentiary burdens, and remedial goals.

Intentional torts such as assault, battery, false imprisonment, and intentional infliction of emotional distress impose liability for deliberate, wrongful acts. Unlike negligence, intentional torts require proof of intent to commit the act that causes harm. In the civil context, the focus is not on criminal culpability but on compensating the victim for personal and dignitary injuries.

Strict liability applies in circumstances where the law imposes responsibility regardless of whether there is fault or intent. The most common application in personal injury litigation arises in product liability, where manufacturers, sellers, and distributors may be held strictly liable for defective products that are unreasonably dangerous due to design flaws, manufacturing defects, or failure to provide adequate warnings or instructions. The Texas Products Liability Act, codified in Chapter 82 of the Texas Civil Practice and Remedies Code, governs these claims and imposes specific evidentiary standards, including requirements for expert testimony.

Statutory torts also play a significant role in modern personal injury practice. These include:

- Wrongful death and survival actions under Chapter 71 of the Texas Civil Practice and Remedies Code, which allow designated beneficiaries

and estates to recover for pecuniary losses and the decedent's pain and suffering.

- Medical liability claims, governed by the Texas Medical Liability Act (TMLA), which impose strict pre-suit requirements, including expert reports, and caps on non-economic damages.
- The Texas Dram Shop Act imposes liability on alcohol providers who serve obviously intoxicated individuals who subsequently cause injury or death.
- Premises liability claims impose duties on property owners to protect invitees from known and discoverable hazards, particularly in commercial settings.
- Civil rights and employment-based torts, which may arise under federal statutes such as 42 U.S.C. § 1983 or the Americans with Disabilities Act, and often intersect with state law claims involving public entities or employers.

Each of these causes of action introduces unique procedural demands, affirmative defenses, and policy implications. For example, the TMLA requires the timely disclosure of expert reports, subject to a penalty of dismissal, and Dram Shop liability may be mitigated through proof of compliance with training programs, such as TABC certification. Claims brought under federal civil rights statutes typically require exhaustion of administrative remedies and may involve defenses related to sovereign or qualified immunity.

Understanding and effectively litigating these alternative theories requires a deep understanding of the relevant doctrines, strategic pleading, and precise evidentiary presentation. Legal practitioners must be equipped to select and develop appropriate legal theories based on the facts of the case, the identity of the defendant, and the nature of the harm. Mastery of these alternative frameworks not only expands the scope of recovery for injured parties but also enhances the practitioner's ability to tailor litigation strategy to meet the client's objectives in complex and multi-faceted disputes.

4. Maintaining Access to Governing Rules and Professional Standards

Effective legal representation in personal injury litigation—particularly in wrongful death and catastrophic injury matters—requires not only substantive legal knowledge but also continual familiarity with the rules that govern civil practice, evidence, appellate procedure, and attorney conduct. These procedural frameworks are not static; they evolve through legislative action, judicial interpretation, and administrative updates by the Supreme Court of Texas.

Attorneys engaged in litigation must ensure they have ready and current access to the following foundational authorities:

1. Texas Rules of Civil Procedure (TRCP) – These govern the procedural framework for filing, serving, litigating, and resolving civil cases in Texas trial courts. They regulate everything from pleading standards to discovery, trial procedure, and post-judgment motions.
2. Texas Rules of Evidence (TRE) – These control the admissibility of testimony, documents, expert opinions, and demonstrative evidence in court proceedings. Mastery of evidentiary standards is crucial in tort litigation, where proof of causation, damages, and credibility often determines the outcome of the case.
3. Texas Rules of Appellate Procedure (TRAP) – These govern the initiation and prosecution of appeals in Texas courts, including deadlines, standards of review, record preparation, and briefing requirements. In high-stakes personal injury litigation, appellate issues often arise from pretrial rulings, jury charge objections, or evidentiary exclusions.
4. Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary Procedure – These set the ethical framework for attorney behavior, including obligations related to conflicts of interest, client communication, candor to the tribunal, fee arrangements, and competency. These rules are binding standards that may carry disciplinary consequences if violated.

5. Importance of Consulting Updated Sources

Given the frequency with which procedural rules and professional standards are amended, attorneys must refer to the most current official versions when drafting pleadings, preparing for trial, or advising clients. Relying on outdated materials can lead to procedural default, evidentiary error, or ethical missteps.

Fortunately, the Supreme Court of Texas makes these rules available to the public, free of charge, through its official website. Practitioners are strongly advised to bookmark and regularly consult the following page:

Official Rules and Standards Portal

<https://www.txcourts.gov/rules-forms/rules-standards/>

This portal includes:

- The full text of the TRCP, TRE, and TRAP;
- The Texas Code of Judicial Conduct;
- The Texas Disciplinary Rules of Professional Conduct and Disciplinary Procedure;
- Proposed amendments and recent rule changes adopted by the Supreme Court.

6. Conclusion

Rule-based competence is a baseline requirement for all attorneys in Texas. In the context of serious injury and wrongful death litigation—where procedural missteps can result in irreparable harm to the client—the margin for error is slim. Mastery of the Texas Rules of Civil Procedure, the Texas Rules of Evidence, the Texas Rules of Appellate Procedure, and the Texas Disciplinary Rules is not optional; it is foundational to ethical, effective, and professional practice. These resources are readily accessible and should form part of every litigator’s standard toolkit.

7. Client Intake as the Case Foundation

Effective client intake serves as a foundational component of ethical and strategic legal representation, particularly in personal injury litigation. The intake process is not merely an administrative formality; it is a diagnostic and evaluative phase in which the attorney gathers preliminary facts, assesses the viability of legal claims, and determines whether the firm can competently and ethically undertake representation.

During intake, the attorney must conduct a comprehensive factual interview, identify potential causes of action, assess the client's credibility, screen for statutory and common law defenses, and identify any conflicts of interest under Rule 1.06 of the Texas Disciplinary Rules of Professional Conduct. Texas law and professional standards also require attorneys to clearly communicate the scope of representation (Rule 1.02), ensure competency under Rule 1.01, and obtain the client's informed consent.

A properly conducted intake process includes the memorialization of client statements, the early identification of key witnesses, the collection of preliminary documentation such as crash reports, photographs, insurance declarations, and initial medical records, and the evaluation of time-sensitive procedural issues, including applicable statutes of limitation under Texas Civil Practice and Remedies Code § 16.003.

Beyond evidentiary and procedural considerations, the intake process sets the tone for the attorney-client relationship. A systematic and ethically sound intake protocol promotes efficiency, reduces the risk of malpractice or missed deadlines, enhances client communication, and ensures that representation begins on a well-informed, compliant foundation.

Form
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Form 1-1: Personal Injury Client Intake Form

Please complete this questionnaire thoroughly. Your responses are confidential and will be used to evaluate your legal matter.

1. Personal and Contact Information

Full Legal Name: _____

Other Names Used (maiden, aliases): _____

Date of Birth: _____

Social Security Number: _____

Driver's License Number and State: _____

Residential Address: _____

Mailing Address (if different): _____

Home Phone: _____

Cell Phone: _____

Work Phone: _____

Email Address: _____

Preferred Method of Contact: _____

Emergency Contact Name and Phone: _____

How did you hear about us? Who referred you to us? _____

2. Employment and Income

Employer Name and Address: _____

Occupation/Job Title: _____

Employment Type: Full-Time / Part-Time / Self-Employed / Unemployed / Retired / Student _____

Date Employment Began: _____

Average Weekly Earnings: _____

Have you missed work due to the injury? If so, how much time and lost wages:

Employer Contact for Verification: _____

3. Incident Information

Date and Time of Incident: _____

Location of Incident (address/intersection): _____

Type of Incident: Auto / Truck / Motorcycle / Pedestrian / Slip & Fall / Other (describe): _____

Describe how the incident occurred: _____

Was a police/incident report filed? _____

Report Number and Law Enforcement Agency: _____

Were any traffic citations issued? _____

Did the other party admit fault at the scene? _____

Weather/road conditions at time of incident: _____

4. Vehicle and Property Damage (If Applicable)

Vehicle Year/Make/Model: _____

Owner of Vehicle: _____

Were you the driver/passenger? _____

Where is the vehicle now located? _____

Insurance company handling property damage: _____

Estimate of Damage (attach photos or report): _____

Was the vehicle towed? _____

Have repairs been completed? _____

5. Injuries and Medical Treatment

List all injuries sustained (head, neck, back, limbs, internal, etc.): _____

Were you taken by ambulance? If yes, to which hospital? _____

First medical provider/date seen: _____

Current symptoms: _____

All providers seen (doctors, chiropractors, therapists): _____

Have you had imaging done? (X-rays, MRI, CT): _____

Are you still being treated? _____

Do you need future treatment or surgery? _____

Do you have any pre-existing conditions worsened by this incident? _____

6. Insurance Information

Your Auto Insurance Carrier: _____

Policy Number: _____

Do you have PIP/MedPay coverage? _____

Have you reported the incident to your insurer? _____

Other Party's Insurance Company: _____

Claim Number (if known): _____

Adjuster's Name and Phone: _____

Have you provided a recorded statement to any insurance company? _____

Do you have health insurance? Provider and Policy Number: _____

7. Witnesses and Supporting Evidence

Were there any witnesses? Names and contact info: _____

Do you have photos/videos of the scene/vehicles/injuries? _____

Do you have a copy of the police/incident report? _____

Other documentation available: _____

8. Prior Medical and Legal History

Have you ever had similar injuries before? If yes, describe and list treating physicians: _____

Have you filed any prior personal injury or workers' compensation claims?

Have you ever been involved in other accidents (auto or otherwise)? _____

Have you ever been convicted of a felony or crime of dishonesty? _____

9. Client Goals and Additional Information

What are your expectations regarding your case? _____

What concerns do you have about the process or outcome? _____

Is there anything else you think we should know? _____

Signed: _____

Date: _____