## Probate Code History

The **Texas annexation** was the 1845 annexation of the Republic of Texas into the United States. Texas was admitted to the Union as the 28th state on **December 29, 1845**.

The Surrey Council of England[[1]](#footnote-1) presents a history of Probate in England and Wales from the early 13th century until the Court of Probate Act of 1857.

“Since the church had little jurisdiction over real estate there are few references in church records to land disputes. Whilst the church had some authority over litigation before the interregnum, disputes were often considered a matter for the King's court not the ecclesiastical ones, and after the interregnum any land or property disputes were usually conducted in Chancery (eg in "Bleak House" by Charles Dickens).”

The Surrey Council does not mention trusts in their published history of probate. Seagle[[2]](#footnote-2) gives a history of the creation of trusts as follows:

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“The evasion of feudal dues and burdens began in the second half of the fourteenth century when the great landowners hit upon the idea of conveying the legal titles to their lands to groups of friends, with the understanding, however, that they would hold the land to certain uses of the grantor. Since the group of “feoffees to uses” as it was called, could renew itself, the feudal burdens which attached only on death could be avoided. Feudalism, it is true, was a chain of holding, and they lost in relation to their subtenants, but gained immeasurably more, in view of the vastness of their holdings, in relation to the greatest lord of all, who was the king. The common-law courts recognized only the legal title, but the Court of Chancery, being a court of conscience, stood ready to see to it that the feofees discharged the obligations of the uses. Henry VIII tried to end the process of evasion by extorting from a rather reluctant Parliament the Statute of Uses in 1535. But it was not long before this was evaded by a ridiculously transparent device. Estates were now conveyed to A for the use of B. The Statute of Uses executed the first use, for it provided that when one stood seized of land to the use of another, the feofee should be deemed the legal owner. It was held, however, that the statute did not execute the second use! It has been well said that “by this means a statute made upon great consideration, introduced is a solemn and pompous manner, has had no other effect than to add at most three words to a conveyance.5 The double use became what was called a trust, and the protection of the rights of the cestui que trust became the most important function of the Court of Chancery.”

Texas Probate

In 1854, the state legislature authorized a commission to codify existing laws. The [Penal Code and Code of Criminal Procedure](http://www.lrl.state.tx.us/collections/oldcodes.cfm) were completed in 1856. The civil statutes followed in [1879](https://www.sll.texas.gov/library-resources/collections/historical-texas-statutes/#1879). Subsequent revisions and recodifications followed in [1895](https://www.sll.texas.gov/library-resources/collections/historical-texas-statutes/#1895) and [1911](https://www.sll.texas.gov/library-resources/collections/historical-texas-statutes/#1911). In [1925](https://www.sll.texas.gov/library-resources/collections/historical-texas-statutes/#1925), there was a reorganization of the statutes, which still serves as the basis for our current statutes.

Between the years of 1911 and 1925, there was not an “official” publication of Texas statutes even though the legislature continued to meet every other year to write and amend laws.

To fill in the gaps in the official statutes, publisher John Sayles and his son Henry Sayles compiled and published unofficial volumes of Texas statutes in 1914. Called “Vernon’s Sayles’” after the publisher, these volumes contain the text of statutes, valuable annotations, and indexes from 1911 through 1921.

After 1925, the evolution of the Texas statutes is more complicated. The statutes are not reprinted in their entirety after each legislative session. Instead, the few complete reprintings of the statutes are updated with supplemental volumes after regular legislative sessions, which occur every 2 years.

In 1936, The Vernon Law Book Company published an unannotated compilation of the 1925 Revised Civil and Criminal Statutes, updated with changes through January 1, 1936. Between 1936 and 1948, this was updated with non-cumulative biennial supplements. In 1948, a new compilation was published, and biennial updates continued.

As the result of this history, the user of Vernon’s Texas Civil Statutes must wade through numerous printed statutes that are legally ineffective, must sort out surplus from substance, must adapt to confusing inconsistency of expression, capitalization, spelling, and punctuation, and must try to comprehend an alphabetical arrangement and often bizarre numbering scheme.

The “Texas Probate Code” was enacted in 1955, (effective January 1, 1956) as an effort to alleviate some of these problems. However, the Probate Code was an exception to the general chaos that had accumulated within the 1925 Revised Statutes. Texas had not yet adopted any organized system of statutory codification at the time, so the Texas Probate Code was incorporated into Vernon’s Revised Civil Statutes as Volumes 17A, 17B, and 17C. Without the privately-published Vernon’s Revised Civil Statutes, finding statutory law would be almost impossible for the average lawyer. Numerous compilations, revisions and changes occurred over the years. These changes and revisions were enacted into law in 2009, 2011, and 2013 and went into effect at the same time – January 1, 2014, as the Texas Estates Code.

“Probate proceedings are not within the common law jurisdiction of our courts, but of their statutory jurisdiction.” *White v. Baker*, 118 S.W.2d 319, 322 (Tex. Civ. App. 1938)

Probate Code § 5A(b) plainly states that in proceedings in the statutory probate courts and district courts, the phrases "appertaining to estates" and "incident to an estate" includes " *all claims by or against an estate* ", "all actions for trial of the right of property", and "generally all matters relating to the settlement, partition, and distribution of estates of wards and deceased persons." The Supreme Court has found that the determination of a decedent's right to probate assets necessarily falls within the scope of being an action "incident to an estate." *English v. Cobb,*[593 S.W.2d 674, 676](https://casetext.com/case/english-v-cobb" \l "p676) (Tex. 1979). An action is "incident to an estate" when the outcome will have a direct bearing on the assimilation, collection, and distribution of the decedent's estate. *English v. Cobb, supra; Lucik v. Taylor,*[596 S.W.2d 514](https://casetext.com/case/lucik-v-taylor) (Tex. 1980). *Pullen v. Swanson*, 667 S.W.2d 359, 362 (Tex. App. 1984)

A statutory probate court also has concurrent jurisdiction with the district court in all actions involving an inter vivos trust, involving a charitable trust, and involving a testamentary trust, regardless of whether the actions involving trusts are "incident to an estate." TEX. PROB. CODE ANN. § 5A(e). Specifically, probate code sections 5A(c), (d), and (e) provide:

(c) A statutory probate court has concurrent jurisdiction with the district court in all actions:

(2) involving an inter vivos trust;

(3) involving a charitable trust; and

(4) involving a testamentary trust.

(d) A statutory probate court may exercise the pendent and ancillary jurisdiction necessary to promote judicial efficiency and economy.

(e) Subsections (c)(2), (3), and (4) and Subsection (d) apply whether or not the matter is appertaining to or incident to an estate. *Shell Cortez Pipeline v. Shores*, 127 S.W.3d 286, 293 (Tex. App. 2004)

Quo Warranto:

Candace pro se in the SDTX: obtained a favorable appellate opinion on the probate exception in the Fifth Circuit and then obtained a preliminary injunction and a trust accounting assembled by a Special Master.

Candace by way of Attorney agency: asks the federal court for fees and then asks the court to do what it cannot do (remand) in order to obtain a result that cannot be obtained (probate court) other than in appearance and from there continues to ask for fees while undermining his clients cause by agreement with the other attorneys (consolidation) that cannot be done other than by illusion. [[3]](#footnote-3)

## Plaintiff cannot do by agency what she cannot do herself

Candace could not remand her case to the probate court even if she wanted to because the federal court had no authority to issue the order to remand.

Probate:

The probate court had no authority to transfer the federal case to itself even if there was a probate proceeding then pending in that court.

Candace could not file her federal claims in the probate court because they do not qualify as probate proceeding or matter related to a probate proceeding.

There were no probate proceedings then proceeding in the probate court and nothing for any claims to be related to. Pour-over wills, independent administration, verified inventory filed, independent administration closed. No further action could be had in that court.

There was no transmogrification of the federal case into a probate case and no consolidation of the federal case with a probate case not pending in the probate court and no transfer of the district court case to probate.

Quo Warranto: An attorney manufactured money cow hostage ransom negotiation with the attorneys sucking at the trust teat for all its worth. More than a Million Dollars in attorney fees and only injury to the beneficiary: Absolutely no benefit to anyone but the poser advocates acting in their own interests and not those of the client. It’s the manufactured illusion of judicial proceedings where there are no judicial proceedings, a hologram of litigation hell.

The remand order is void. It could be considered the equivalent of a dismissal but that is probably a question better addressed after we return to the point of consideration. Vacate the remand order issued in want or excess of jurisdiction and go from there as there are issues with the pollution of diversity that should be viewed from our now illuminated vantage and some issues with respect for the dignity and authority to the court that should also be addressed.

## What are matters "incident to an estate"?

What are matters "incident to an estate"? The Texas Supreme Court has answered that question. Probate courts' jurisdiction over matters incident to an estate is limited to matters in which the controlling issue is the settlement, partition, or distribution of an estate. Seay v. Hall, [677 S.W.2d 19, 23](https://casetext.com/case/seay-v-hall-1#p23) (Tex. 1984). Another way of stating the proposition of Seay v. Hall is to say that an action incident to an estate is one in which the outcome will have direct bearing on assimilating, collecting, or distributing the decedent's estate. English v. Cobb, [593 S.W.2d 674, 676](https://casetext.com/case/english-v-cobb#p676) (Tex. 1979); Pullen v. Swanson, [667 S.W.2d 359, 362](https://casetext.com/case/pullen-v-swanson#p362) (Tex.App.-Houston [14th Dist.] 1984, writ ref'd n.r.e.). Stated in still another way, matters incident to an estate are those in which the outcome of the controversy must be necessary to the resolution of the particular estate. Farah v. Fashing, [666 S.W.2d 341, 342](https://casetext.com/case/farah-v-fashing#p342) (Tex.App. — El Paso 1984, no writ). Chamberlain v. Witts, 696 S.W.2d 204 (Tex. App. 1985)

* *Mobil Oil v. Shores*, 128 S.W.3d 718, 723-25 (Tex. App. 2004) (“

**THE STATUTORY PROBATE COURT'S SUBJECT MATTER JURISDICTION**

A statutory probate court may exercise only that jurisdiction accorded it by statute. Appellees contend that the probate court below has subject matter jurisdiction by virtue of former probate code sections 5(d), 5A(b), and 5A(c)(2)-(3). Former section 5(d) states in pertinent part that "[a] statutory probate court has concurrent jurisdiction with the district court . . . in all actions involving an inter vivos trust [and] in all actions involving a charitable trust." Former section 5A(b) defines the phrases "appertaining to estates" and "incident to an estate":

In proceedings in the statutory probate courts and district courts, the phrases "appertaining to estates" and "incident to an estate" in this Code include the probate of wills, the issuance of letters testamentary and of administration, and the determination of heirship, and also include, but are not limited to, all claims by or against an estate, all actions for trial of title to land and for the enforcement of liens thereon, all actions for trial of the right of property, all actions to construe wills, the interpretation and administration of testamentary trusts and the applying of constructive trusts, and generally all matters relating to the settlement, partition, and distribution of estates of deceased persons.

Former section 5A(c) provides that "[a] statutory probate court has concurrent jurisdiction with the district court in all actions . . . (2) involving an inter vivos trust [and] (3) involving a charitable trust." The Bench Family Trust's, Whiteis's, and Armor's claims do not fall within any of the specific examples listed in former section 5A(b). Nor is the "controlling issue" in this suit "the settlement, partition, and distribution of estates of deceased persons." Therefore, we must determine whether the claims of the Bench Family Trust, Whiteis, and Armor are actions involving an inter vivos or charitable trust under former probate code sections 5(d) and 5A(c)(2) and (3). A statutory probate court's jurisdiction over actions involving trusts is concurrent with that of a district court. Thus, the district court's jurisdiction over actions involving trusts determines the extent of a statutory probate court's jurisdiction over such actions. The trust actions over which a district court has jurisdiction are enumerated in section 115.001(a) of the Texas Trust Code, as follows:

(1) construe a trust instrument;

(2) determine the law applicable to a trust instrument;

(3) appoint or remove a trustee;

(4) determine the powers, responsibilities, duties, and liability of a trustee;

(5) ascertain beneficiaries;

(6) make determinations of fact affecting the administration, distribution, or duration of a trust;

(7) determine a question arising in the administration or distribution of a trust;

(8) relieve a trustee from any or all of the duties, limitations, and restrictions otherwise existing under the terms of the trust instrument or of this subtitle;

(9) require an accounting by a trustee, review trustee fees, and settle interim or final accounts; and

(10) surcharge a trustee.

Texas courts considering [section 115.001(a)](https://casetext.com/statute/texas-codes/property-code/title-9-trusts/subtitle-b-texas-trust-code-creation-operation-and-termination-of-trusts/chapter-115-jurisdiction-venue-and-proceedings/subchapter-a-jurisdiction-and-venue/section-115001-jurisdiction) and its predecessor, Texas Trust Act article 7425b-24(A), have consistently held that those statutes provide the exclusive list of actions "concerning trusts" over which a district court has jurisdiction. No cause of action alleged by appellees in this case is specifically enumerated in [section 115.001(a)](https://casetext.com/statute/texas-codes/property-code/title-9-trusts/subtitle-b-texas-trust-code-creation-operation-and-termination-of-trusts/chapter-115-jurisdiction-venue-and-proceedings/subchapter-a-jurisdiction-and-venue/section-115001-jurisdiction). Nevertheless, appellees argue that this is a proceeding "concerning trusts" under Texas Trust Code [section 115.001(a)(6)](https://casetext.com/statute/texas-codes/property-code/title-9-trusts/subtitle-b-texas-trust-code-creation-operation-and-termination-of-trusts/chapter-115-jurisdiction-venue-and-proceedings/subchapter-a-jurisdiction-and-venue/section-115001-jurisdiction) and (a)(7), because the trustees have the power under the Texas Trust Code to enter into mineral leases and to contest claims of or against a trust. In essence, appellees contend that because the trustees have these powers, every suit to which they are a party raises questions "affecting the administration, distribution, or duration of a trust" and questions "arising in the administration or distribution of a trust." We believe this argument proves too much. Under appellees' theory, every lawsuit to which a trustee is a party would come within [section 115.001](https://casetext.com/statute/texas-codes/property-code/title-9-trusts/subtitle-b-texas-trust-code-creation-operation-and-termination-of-trusts/chapter-115-jurisdiction-venue-and-proceedings/subchapter-a-jurisdiction-and-venue/section-115001-jurisdiction) no matter what the subject matter. The mere fact that a plaintiff happens to be a trustee, however, does not transform a case into one "concerning trusts." Moreover, construing [section 115.001(a)(6)](https://casetext.com/statute/texas-codes/property-code/title-9-trusts/subtitle-b-texas-trust-code-creation-operation-and-termination-of-trusts/chapter-115-jurisdiction-venue-and-proceedings/subchapter-a-jurisdiction-and-venue/section-115001-jurisdiction)-(7) as appellees suggest would vitiate the remaining carefully drafted provisions in [section 115.001(a)](https://casetext.com/statute/texas-codes/property-code/title-9-trusts/subtitle-b-texas-trust-code-creation-operation-and-termination-of-trusts/chapter-115-jurisdiction-venue-and-proceedings/subchapter-a-jurisdiction-and-venue/section-115001-jurisdiction). It is an axiom of Texas law that the court may not construe a statute in any manner that fails to give effect to all the provisions the legislature enacted or that reduces any provision to mere surplusage. We are unwilling to ignore or undo the legislature's care in limiting matters concerning trusts for jurisdictional purposes by embracing the all-encompassing construction appellees urge here. For the reasons stated above, we hold that the Bench Family Trust's, Whiteis's, and Armor's claims for damages relating to the royalty payments at issue in this case are not within the statutory probate court's limited statutory jurisdiction. Therefore, the probate court's order denying appellants' motions to transfer venue as to these appellees is void. ”)

## NO PROBATE PROCEEDING THEN PROCEEDING

No Probate Matter; Probate Proceedings; Proceeding in Probate; Proceedings for Probate then proceeding/pending in the probate court

Sec. 22.029. PROBATE MATTER; PROBATE PROCEEDINGS; PROCEEDING IN

PROBATE; PROCEEDINGS FOR PROBATE. The terms "probate matter,"

"probate proceedings," "proceeding in probate," and "proceedings for probate" are synonymous and include a matter or proceeding relating to a decedent's estate.

## What does “proceeding” mean?

<https://legal-dictionary.thefreedictionary.com/Proceeding>:

n. any legal filing, hearing, trial and/or judgment in the on-going conduct of a lawsuit or criminal prosecution. Collectively they are called "proceedings" as in "legal proceedings."

* In re J.L.M., No. 05-22-00758-CV, at \*5 (Tex. App. Feb. 13, 2023)

This Court has interpreted "a judicial proceeding" to mean "an actual, pending judicial proceeding." See Levatino v. Apple Tree Café Touring, Inc., [486 S.W.3d 724, 728](https://casetext.com/case/levatino-v-apple-tree-cafeacute-touring-inc#p728) (Tex. App.-Dallas 2016, pet. denied).

* *Levatino v. Apple Tree Café Touring, Inc.*, 486 S.W.3d 724, 728-29 (Tex. App. 2016)

(Case Referring to a former legal proceeding – not active proceeding)

(“For the reasons discussed below, we conclude that the ordinary meaning of “a judicial proceeding” is an actual, pending judicial proceeding. See [Tex. R. Civ. P. 22](https://casetext.com/rule/texas-court-rules/texas-rules-of-civil-procedure/part-ii-rules-of-practice-in-district-and-county-courts/section-2-institution-of-suit/rule-22-commenced-by-petition) (“A civil suit ... shall be commenced by a petition filed in the office of the clerk.”); [Fed. R. Civ. P. 3](https://casetext.com/statute/united-states-code/title-28-appendix/federal-rules-of-civil-procedure/title-ii-commencing-an-action-service-of-process-pleadings-motions-and-orders/rule-3-commencing-an-action) (“A civil action is commenced by filing a complaint with the court.”). That is, a judicial proceeding is “any proceeding initiated to procure an order or decree, whether in law or in equity.” See Judicial proceeding, Black's Law Dictionary (10th ed.2014)”).

* *Dyer v. Medoc Health Servs., LLC*, 573 S.W.3d 418, 429 (Tex. App. 2019)

(“[T]he ordinary meaning of ‘a judicial proceeding’ is an actual, pending judicial proceeding." Levatino v. Apple Tree Cafe Touring, Inc. , [486 S.W.3d 724, 728–29](https://casetext.com/case/levatino-v-apple-tree-cafeacute-touring-inc#p728) (Tex. App.—Dallas 2016, pet. denied). A "judicial proceeding" is "any proceeding initiated to procure an order or decree, whether in law or in equity." Id. (quoting Judicial proceeding , BLACK'S LAW DICTIONARY (10th ed. 2014)” )

* *In re L.R.M.*, No. 13-19-00598-CV, at \*1 (Tex. App. Nov. 18, 2021)

*(“[T]he ordinary meaning of 'a judicial proceeding' is an actual, pending judicial proceeding." Dyer v. Medoc Health Servs., LLC,* [*573 S.W.3d 418, 429*](https://casetext.com/case/todd-dyer-phrk-intervention-inc-v-medoc-health-servs-llc-3#p429) *(Tex. App.-Dallas 2019, pet. denied) (quoting Levatino v. Apple Tree Cafe Touring, Inc.,* [*486 S.W.3d 724, 728-29*](https://casetext.com/case/levatino-v-apple-tree-cafeacute-touring-inc#p728) *(Tex. App.- Dallas 2016, pet. denied)).*”

* *Jetall Cos. v. Hoover Slovacek LLP*, No. 14-20-00691-CV, at \*5-6 (Tex. App. Mar. 29, 2022)

(“Regarding the first step, only the right to petition is implicated here. As defined in the TCPA, the "exercise of the right to petition" means "a communication in or pertaining to . . . a judicial proceeding." [Tex. Civ. Prac. & Rem. Code § 27.001(4)(A)(i)](https://casetext.com/statute/texas-codes/civil-practice-and-remedies-code/title-2-trial-judgment-and-appeal/subtitle-b-trial-matters/chapter-27-actions-involving-the-exercise-of-certain-constitutional-rights/section-27001-definitions). A "communication" is statutorily defined and includes "the making or submitting of a statement or document in any form or medium, including oral, visual, written, audiovisual, or electronic." Id. § 27.001(1); see also Adams v. Starside Custom Builders, LLC, [547 S.W.3d 890, 894](https://casetext.com/case/adams-v-starside-custom-builders-llc-4#p894) (Tex. 2018) (statutory definition of "communication" covers "[a]lmost every imaginable form of communication, in any medium"). We construe the phrase "pertaining to" according to its ordinary meaning as relating directly to or concerning or having to do with. See Black's Law Dictionary (11th ed. 2019) ("pertain" means "to relate directly to; to concern or have to do with"). And courts have determined that "the ordinary meaning of 'a judicial proceeding'" is "an actual, pending judicial proceeding." Levatino v. Apple Tree Café Touring, Inc., [486 S.W.3d 724, 728](https://casetext.com/case/levatino-v-apple-tree-cafeacute-touring-inc#p728) (Tex. App.-Dallas 2016, pet. denied); see also Black's Law Dictionary (11th ed. 2019) (defining "judicial proceeding" as "any court proceeding; any proceeding initiated to procure an order or decree, whether in law or in equity"). ”)

* *Graham v. Miller*, No. 05-22-00766-CV, at \*6 (Tex. App. Feb. 13, 2023)

(“The ordinary meaning of "judicial proceeding" is "an actual, pending judicial proceeding" or "any proceeding initiated to procure an order or decree, whether in law or in equity." See Dyer v. Medoc Health Servs., LLC, [573 S.W.3d 418, 429](https://casetext.com/case/todd-dyer-phrk-intervention-inc-v-medoc-health-servs-llc-3#p429) (Tex. App.-Dallas 2019, pet. denied) (quoting Levatino v. Apple Tree Cafe Touring, Inc., [486 S.W.3d 724, 728-29](https://casetext.com/case/levatino-v-apple-tree-cafeacute-touring-inc#p728) (Tex. App.-Dallas 2016, pet. denied)). The statute further defines "exercise of the right to petition" to mean "a communication in connection with an issue under consideration or review by a . . . judicial body" and a "communication that is reasonably likely to encourage consideration or review of an issue by a . . . judicial body." [Tex. Civ. Prac. & Rem. Code Ann. § 27.001(4)(B)](https://casetext.com/statute/texas-codes/civil-practice-and-remedies-code/title-2-trial-judgment-and-appeal/subtitle-b-trial-matters/chapter-27-actions-involving-the-exercise-of-certain-constitutional-rights/section-27001-definitions), (C).”)

* *Mattress Firm, Inc. v. Deitch*, 612 S.W.3d 467, 486 (Tex. App. 2020)

(“With respect to the first definition, a communication "in or pertaining to a judicial proceeding," courts have held that "the ordinary meaning of ‘a judicial proceeding’ is an actual, pending judicial proceeding." Dyer , [573 S.W.3d at 429](https://casetext.com/case/todd-dyer-phrk-intervention-inc-v-medoc-health-servs-llc-3#p429) ; QTAT BPO Sols., Inc. v. Lee & Murphy Law Firm, G.P. , [524 S.W.3d 770, 778](https://casetext.com/case/qtat-bpo-solutions-inc-v-firm-1#p778) (Tex. App.—Houston [14th Dist.] 2017, pet. denied) ; Levatino v. Apple Tree Café Touring, Inc. , [486 S.W.3d 724, 728–29](https://casetext.com/case/levatino-v-apple-tree-cafeacute-touring-inc#p728) (Tex. App.—Dallas 2016, pet. denied) (also noting that Black's Law Dictionary defines "judicial proceeding" as "any proceeding initiated to procure an order or decree, whether in law or in equity") (quoting Judicial proceeding , BLACK'S LAW DICTIONARY (10th ed. 2014)).”)

* Long Canyon Phase II & III Homeowners Ass'n, Inc. v. Cashion, 517 S.W.3d 212, 220-19 (Tex. App. 2017)

“The ordinary meaning of the phrase "judicial proceeding"—versus, e.g., "future," "potential," or "threatened" judicial proceeding—is an actual, pending judicial proceeding.”

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See Levatino v. Apple Tree Café Touring, Inc., [486 S.W.3d 724, 728–29](https://casetext.com/case/levatino-v-apple-tree-cafeacute-touring-inc#p728) (Tex. App.–Dallas 2016, pet. denied) (citing [Tex. R. Civ. P. 22](https://casetext.com/rule/texas-court-rules/texas-rules-of-civil-procedure/part-ii-rules-of-practice-in-district-and-county-courts/section-2-institution-of-suit/rule-22-commenced-by-petition) ("A civil suit ... shall be commenced by a petition filed in the office of the clerk."); [Fed. R. Civ. P. 3](https://casetext.com/statute/united-states-code/title-28-appendix/federal-rules-of-civil-procedure/title-ii-commencing-an-action-service-of-process-pleadings-motions-and-orders/rule-3-commencing-an-action) ("A civil action is commenced by filing a complaint with the court."); Judicial proceeding, Black's Law Dictionary (10th ed. 2014)); see also TGS– NOPEC Geophysical Co. v. Combs, [340 S.W.3d 432, 439, 441](https://casetext.com/case/tgs-nopec-geophysical-co-v-combs#p439) (Tex. 2011) ("We presume that the legislature chooses a statutes' language with care, including each word chosen for a purpose, while purposefully omitting words not chosen." (citing In re M.N., [262 S.W.3d 799, 802](https://casetext.com/case/in-re-mn-2#p802) (Tex. 2008) ).

* *Qtat Bpo Solutions, Inc. v. Firm*, 524 S.W.3d 770, 777-78 (Tex. App. 2017)

The Fifth Court of Appeals recently addressed whether pre-suit discovery falls within the term "judicial proceeding". In Levatino v. Apple Tree Café Touring, Inc. , [486 S.W.3d 724](https://casetext.com/case/levatino-v-apple-tree-cafeacute-touring-inc) (Tex. App.–Dallas 2016, pet. denied), an individual asserted that his pre-suit demand letters were communications " ‘in or pertaining to ... a judicial proceeding.’ " Id. at 728 (quoting [Tex. Civ. Prac. & Rem. Code Ann. § 27.001(4)(A)(i)](https://casetext.com/statute/texas-codes/civil-practice-and-remedies-code/title-2-trial-judgment-and-appeal/subtitle-b-trial-matters/chapter-27-actions-involving-the-exercise-of-certain-constitutional-rights/section-27001-definitions) ). The court rejected the appellant's position, and concluded that the ordinary meaning of "judicial proceeding" is a pending judicial proceeding. Id. at 728–29 (citing [Tex. R. Civ. P. 22](https://casetext.com/rule/texas-court-rules/texas-rules-of-civil-procedure/part-ii-rules-of-practice-in-district-and-county-courts/section-2-institution-of-suit/rule-22-commenced-by-petition) ; [Fed. R. Civ. P. 3](https://casetext.com/statute/united-states-code/title-28-appendix/federal-rules-of-civil-procedure/title-ii-commencing-an-action-service-of-process-pleadings-motions-and-orders/rule-3-commencing-an-action) );see alsoid. at 729 ("[A] judicial proceeding is ‘any proceeding initiated to procure an order or decree, whether in law or equity.’ " (quoting Judicial proceeding , Black's Law Dictionary (10th ed. 2014))). The court concluded that the phrase "pertaining to" does not expand the ordinary meaning of "judicial proceeding" to include anticipated or potential judicial proceedings. Id.

Fn 7 [Texas Rules of Civil Procedure 22](https://casetext.com/rule/texas-court-rules/texas-rules-of-civil-procedure/part-ii-rules-of-practice-in-district-and-county-courts/section-2-institution-of-suit/rule-22-commenced-by-petition), entitled "Commenced by Petition," provides that "[a] civil suit ... shall be commenced by a petition filed in the office of the clerk." [Tex. R. Civ. P. 22](https://casetext.com/rule/texas-court-rules/texas-rules-of-civil-procedure/part-ii-rules-of-practice-in-district-and-county-courts/section-2-institution-of-suit/rule-22-commenced-by-petition). [Federal Rules of Civil Procedure 3](https://casetext.com/statute/united-states-code/title-28-appendix/federal-rules-of-civil-procedure/title-ii-commencing-an-action-service-of-process-pleadings-motions-and-orders/rule-3-commencing-an-action) similarly provides that "[a] civil action is commenced by filing a complaint with the court." [Fed. R. Civ. P. 3](https://casetext.com/statute/united-states-code/title-28-appendix/federal-rules-of-civil-procedure/title-ii-commencing-an-action-service-of-process-pleadings-motions-and-orders/rule-3-commencing-an-action).

[T]he ordinary meaning of ‘judicial proceeding’ is an actual, pending proceeding and the TCPA's use of the phrase ‘pertaining to’ does not expand the ordinary meaning of ‘judicial proceeding’ to include anticipated or potential future proceedings." *Casey on Behalf of Est. of Glover v. Stevens* , [601 S.W.3d 919, 927](https://casetext.com/case/casey-ex-rel-estate-of-glover-v-stevens#p927) (Tex. App.—Amarillo 2020, no pet.) (quoting *Levatino v. Apple Tree Café Touring, Inc.* , [486 S.W.3d 724, 728–29](https://casetext.com/case/levatino-v-apple-tree-cafeacute-touring-inc#p728) (Tex. App.—Dallas 2016, pet. denied) ) (citing *QTAT BPO Sols., Inc. v. Lee & Murphy Law Firm, G.P.* , [524 S.W.3d 770, 777–78](https://casetext.com/case/qtat-bpo-solutions-inc-v-firm-1#p777) (Tex. App.—Houston [14th Dist.] 2017, pet. denied)

The general common law rule in Texas is that the court in which suit is first filed acquires dominant jurisdiction to the exclusion of other coordinate courts. Cleveland v. Ward,[116 Tex. 1](https://casetext.com/case/cleveland-et-al-v-ward-et-al), [285 S.W. 1063](https://casetext.com/case/cleveland-et-al-v-ward-et-al) (1926); Ex parte Lillard,[159 Tex. 18](https://casetext.com/case/ex-parte-lillard-1), [314 S.W.2d 800](https://casetext.com/case/ex-parte-lillard-1) (1958). Any subsequent suit involving the same parties and the same controversy must be dismissed if a party to that suit calls the second court's attention to the pendency of the prior suit by a plea in abatement.

Weldon v. Hill, 678 S.W.2d 268, 277 (Tex. App. 1984)

1. http://www.surreycc.gov.uk/recreation-heritage-and-culture/archives-and-history/archives-and-history-research-guides/wills-and-probate-records/a-brief-history-of-probate-in-england-and-wales [↑](#footnote-ref-1)
2. Book IV of “the Quest for Law” (William Seagle 1941) Chapter 13 “The Quest for Equity” page 190 [↑](#footnote-ref-2)
3. Court is defined as “competent jurisdiction”. You cannot compose a court of competent jurisdiction without all of the components of jurisdiction. Attorney Jason Ostroms’ retainer agreement did not authorize him to act in any court other than SDTX.

   No federal court authority to remand

   No subject matter jurisdiction in probate

   No state court authority to transfer

   No probate proceeding or matter related to a probate proceeding filed in probate court

   No transmogrification and no consolidation

   No Amended action filed in probate court

   No Counter Complaint filed in probate court [↑](#footnote-ref-3)