

## Resolving the Quandary of Conflicting, Mandatory-Venue Statutes in Texas

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I.	A Brief Summary of Texas Mandatory Venue .....	90
II.	Mandatory-Venue Statutes in Texas .....	96
	A. Mandatory-Venue Statutes Located Within Subchapter B of Chapter 15 of the Texas Civil Practice and Remedies Code.....	97
	B. Mandatory-Venue Statutes Located Outside Subchapter B of Chapter 15 of the Texas Civil Practice and Remedies Code .....	99
III.	Conflicting Mandatory-Venue Statutes in Texas.....	101

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A.	The Various Rationales Used by Texas Courts to Decide Between Competing Mandatory-Venue Statutes .....	101
1.	Rationale 1: Venue Should be Determined Based on the Principal Relief Sought .....	103
2.	Rationale 2: Plaintiff’s Choice Prevails .....	105
3.	Rationale 3: Mandatory-Venue Statutes Located <i>Outside</i> of Chapter 15 Prevail Over Those Located <i>Within</i> Chapter 15 .....	107
4.	Rationale 4: The Statute With the Most “Longstanding” History Controls .....	109
5.	Rationale 5: The More-Specific, Later-Enacted Statute Controls .....	111
6.	Rationale 6: Harmonize Competing Statutes Through a Process of Elimination .....	114
7.	Rationale 7: Prioritize a Pre-Suit Agreement When Mandated by Statute .....	116
B.	Scrutinizing the Various Approaches .....	119
1.	Countering Rationale 1 That Venue Should Be Determined Based on the Principal Relief Sought ....	119
2.	Countering Rationale 2 That Plaintiff’s Choice Prevails .....	122
3.	Countering Rationale 3 That Mandatory-Venue Statutes Located <i>Outside</i> of Chapter 15 Prevail Over Those Located <i>Within</i> Chapter 15 .....	126
4.	Countering Rationale 4 That the Statute With the Most “Longstanding” History Controls .....	131
5.	Countering Rationale 5 That the More-Specific, Later-Enacted Statute Controls .....	135
6.	Countering Rationale 6 That Would Harmonize Competing Statutes Through a Process of Elimination .....	138
7.	Countering Rationale 7 That a Pre-Suit Agreement is Prioritized by Statute .....	141
IV.	A Proposed Solution to Resolving Conflicting Mandatory-Venue Statutes .....	153
V.	Conclusion .....	157

2016] *CONFLICTING MANDATORY-VENUE STATUTES* 87

Appendix: Specific Mandatory-Venue Statutes in Texas .....	159
A. Chapter 15 of the Texas Civil Practice and Remedies Code .....	159
1. Tex. Civ. Prac. & Rem. Code Ann. § 15.011 – Suits Involving Real Property .....	160
2. Tex. Civ. Prac. & Rem. Code Ann. § 15.0115 – Landlord-Tenant .....	162
3. Tex. Civ. Prac. & Rem. Code Ann. § 15.012 – Injunction Against Suit .....	163
4. Tex. Civ. Prac. & Rem. Code Ann. § 15.013 – Injunction Against Execution of Judgment.....	164
5. Tex. Civ. Prac. & Rem. Code Ann. § 15.014 – Head of State Department.....	165
6. Tex. Civ. Prac. & Rem. Code Ann. § 15.015 – Counties .....	166
7. Tex. Civ. Prac. & Rem. Code Ann. § 15.0151 – Certain Political Subdivisions.....	167
8. Tex. Civ. Prac. & Rem. Code Ann. § 15.017 – Libel, Slander, Privacy Invasion.....	167
9. Tex. Civ. Prac. & Rem. Code Ann. § 15.018 – FELA.....	168
10. Tex. Civ. Prac. & Rem. Code Ann. § 15.0181 – Jones Act.....	169
11. Tex. Civ. Prac. & Rem. Code Ann. § 15.019 – Inmate Litigation.....	170
12. Tex. Civ. Prac. & Rem. Code Ann. § 15.020 – Major Transactions: Specification of Venue by Agreement.....	171
a. Defining a “Major Transaction” .....	171
b. To Whom Does the “Major Transactions” Statute Apply?.....	172
c. When Does an Action “Arise From a Major Transaction?” .....	175
d. Limitations in the Major Transaction Statute .....	176
B. Statutes Outside Subchapter B of Chapter 15 of the Texas Civil Practice and Remedies Code .....	177

1. Tex. Civ. Prac. & Rem. Code Ann. § 65.023 – Injunctions.....	178
2. Tex. Civ. Prac. & Rem. Code Ann. § 101.102(a) – Texas Tort Claims Act.....	180
3. Tex. Civ. Prac. & Rem. Code Ann. § 171.096 – Arbitration Application.....	182
4. Texas Family Code Ann. – Suits Affecting Parent- Child Relationship .....	183
5. Tex. Trust Code Ann. § 115.002 – Suits By or Against a Trustee of a Trust.....	184
6. Tex. Prop. Code Ann. § 21.013 – Eminent Domain ..	185
7. Tex. Nat. Res. Code Ann. § 11.078 – Public Lands ..	186
8. Tex. Labor Code Ann. § 410.252 & Tex. Gov. Code § 2001.176– Judicial Review of Workers’ Compensation Decisions.....	186

“Any trial lawyer knows the importance of venue.”<sup>1</sup>

While a Texas, state-court plaintiff may permissibly assert venue in one of multiple counties under general, permissive, or mandatory venue rules,<sup>2</sup> it is well established that mandatory-venue statutes always trump permissive ones.<sup>3</sup> Theoretically, a practitioner might assume that selecting

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<sup>1</sup>William D. Underwood, *Reconsidering Derivative-Venue in Cases Involving Multiple Parties and Multiple Claims*, 56 BAYLOR L. REV. 579, 581 (2004). Underwood quotes the remarks of Louis Muldrow, Leon Jaworski Professor of Practice and Procedure at Baylor University School of Law and accomplished Texas trial lawyer:

Testifying before the Texas Senate Economic Development Committee in connection with proposed venue reform legislation in 1995, Professor Louis Muldrow observed that “[e]very trial lawyer in this chamber, I think, would agree that venue or the county in which the case is to be tried, is without question one of the most significant factors, perhaps the most significant factor, in the outcome of the case.”

*Id.* at 581 n.1 (quoting 1 SCOTT A. SHERMAN, TEXAS TORT REFORM: THE LEGISLATIVE HISTORY—VENUE, AT II-1 (1995)).

<sup>2</sup>*Wilson v. Tex. Parks & Wildlife Dep’t*, 886 S.W.2d 259, 260 (Tex. 1994).

<sup>3</sup>*See* TEX. CIV. PRAC. & REM. CODE ANN. § 15.001(b) (West 2002) (providing that venue is only proper in a particular county under a permissive venue statute, including the general venue rule, if a mandatory-venue statute does not apply); *see also* Langdeau v. Burke Inv. Co., 358 S.W.2d 553, 556 (Tex. 1962) (a “permissive [venue] statute applicable to actions of a particular kind must always yield to a mandatory [venue] provision”); *In re* Cty. of Galveston, 211 S.W.3d

venue based on a mandatory-venue statute would provide certainty of venue for the suit. The reality may be very different. What happens when, after the plaintiff pleads venue under one mandatory-venue statute, the defendant asserts that a separate mandatory-venue statute, or some sort of pre-suit agreement, requires venue of the suit to be in a different county? This Article addresses this question for Texas trial lawyers and courts.

The quandary of resolving competing mandatory-venue statutes has perplexed Texas courts. Different Texas courts have utilized different approaches to reach different results when two separate mandatory-venue statutes mandate venue in two different Texas counties. As a result, the resolution of mandatory venue in Texas civil litigation presents practitioners with uncertainty and an opportunity for advocacy. This Article identifies the various rationales employed by Texas courts to determine the priority between competing mandatory-venue statutes. This Article exists to educate practitioners on the different approaches to resolving competing mandatory-venue statutes in Texas, and to arm them with the resources and authority to establish venue in (or transfer venue to) the desired county of mandatory venue.

Part I sets the backdrop for the issue by providing a brief overview of the Texas venue scheme as it relates to mandatory venue.<sup>4</sup> Part II discusses the benefits of invoking a mandatory-venue statute, and then lists several specific mandatory-venue statutes in Texas, located both *within* and *outside* of Chapter 15 of the Texas Civil Practice and Remedies Code.<sup>5</sup> The Appendix to this Article corresponds to Part II and provides further analysis of Texas courts' interpretations of these various mandatory-venue statutes, in order to provide Texas practitioners with the resources necessary to support application of the mandatory-venue statute favorable to their case.<sup>6</sup> Part III presents seven different approaches that various Texas courts have used or considered in attempting to resolve the quandary of two competing

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879, 881 (Tex. App.—Houston [14th Dist.] 2006, orig. proceeding) (“mandatory venue provisions control over permissive venue provisions”); *Chiriboga v. State Farm Mut. Auto. Ins. Co.*, 96 S.W.3d 673, 677 (Tex. App.—Austin 2003, no pet.) (“Mandatory provisions trump permissive ones.”); *K.J. Eastwood Invs., Inc. v. Enlow*, 923 S.W.2d 255, 258 (Tex. App.—Fort Worth 1996, no writ) (holding that trial court had “no discretion to deny the motion to transfer venue” when the movant made a prima facie showing that the action fell under a mandatory-venue statute).

<sup>4</sup> See *infra* Part I.

<sup>5</sup> See *infra* Part II.

<sup>6</sup> See *infra* Appendix (“Specific Mandatory-Venue Statutes in Texas”).

mandatory-venue statutes.<sup>7</sup> Because the quandary will not be resolved until either the Supreme Court of Texas or the Texas Legislature definitively addresses the issue, Part IV presents the proposal of these authors for a synthesized rule to eliminate the quandary of competing mandatory-venue statutes in Texas.<sup>8</sup>

### I. A BRIEF SUMMARY OF TEXAS MANDATORY VENUE

“At common law, venue meant the neighborhood, place, or county in which the injury is declared to have been done or in fact declared to have happened.”<sup>9</sup> In Texas, “venue” refers to the county in which suit is proper within the forum state.<sup>10</sup> The Texas venue scheme is unique from federal venue and somewhat more complex.<sup>11</sup> In 1995, the Texas Legislature codified venue statutes by enacting Chapter 15 of the Texas Civil Practice

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<sup>7</sup> See *infra* Part III.

<sup>8</sup> See *infra* Part IV.

<sup>9</sup> State v. Blankenship, 170 S.W.3d 676, 681 (Tex. App.—Austin 2005, pet. ref’d) (citing BLACK’S LAW DICTIONARY (6th ed. 1991)).

<sup>10</sup> *In re* Great Lakes Dredge & Dock Co., 251 S.W.3d 68, 73 (Tex. App.—Corpus Christi 2008, no pet.). From the outset, it is important to recognize the difference between the terms “forum,” “jurisdiction,” and “venue.” “‘Forum’ generally refers to a sovereign or a state.” Ramsay v. Tex. Trading Co., 254 S.W.3d 620, 627 (Tex. App.—Texarkana 2008, pet. denied) (citing Scott v. Gallagher, 209 S.W.3d 262, 264 (Tex. App.—Houston [1st Dist.] 2006, no pet.)). “‘Jurisdiction’ deals with the power of a court to determine an action involving a particular subject matter as between the parties and to render a certain judgment.” Brightwell v. Barlow, Gardner, Tucker & Garesk, 619 S.W.2d 249, 254 (Tex. Civ. App.—Fort Worth 1981, no writ). “Venue ‘refers to the propriety of prosecuting, in a particular forum, a suit on a given subject matter with specific parties, over which the forum must, necessarily, have subject-matter jurisdiction.’” Scott, 209 S.W.3d at 264 (citing Gordon v. Jones, 196 S.W.3d 376, 383 (Tex.App.—Houston [1st Dist.] 2006, no pet. h.). “It is axiomatic that ‘venue’ provisions do not confer ‘jurisdiction.’” Compass Expl., Inc. v. B-E Drilling Co., 60 S.W.3d 273, 277 (Tex. App.—Waco 2001, no pet.); see also Cantu v. Howard S. Grossman, P.A., 251 S.W.3d 731, 734 (Tex. App.—Houston [14th Dist.] 2008, pet. denied) (“Venue concerns the geographic location within the forum where the case may be tried.”).

<sup>11</sup> See, e.g., 1 William V. Dorsaneo, III et. al., *Texas Civil Procedure: Pretrial Litigation* § 5.1 (2012) (“The Texas [venue] scheme is somewhat complex: it includes both general rules and exceptions, provisions that are mandatory and others that are permissive.”); see also Bristol-Myers Squibb Co. v. Goldston, 957 S.W.2d 671, 674 (Tex. App.—Fort Worth 1997, pet. denied) (explaining that venue “is a matter of public concern, and the venue statutes are structured in accord with many public policy principles” (citing Bonner v. Hearne, 12 S.W. 38, 39 (1889))).

and Remedies Code, which sets forth the basic venue framework in Texas.<sup>12</sup> Rules 86, 87, and 88 of the Texas Rules of Civil Procedure set forth the procedural mechanisms, standards, and burdens of proof that govern venue disputes.<sup>13</sup>

The venue of a suit filed in Texas “may be proper in many counties under general, mandatory, or permissive venue rules.”<sup>14</sup> Because Texas values a plaintiff’s right to choose where to assert her rights and pursue her claims, the “plaintiff is given the first choice [of venue] in the filing of the lawsuit.”<sup>15</sup> So long as suit is initially filed in a county of proper venue, the plaintiff’s venue choice cannot be disturbed unless an exception applies.<sup>16</sup> These exceptions to the general venue rule are statutes whereby the Texas Legislature has provided that venue is either “permissible” or “mandatory” for specific types of actions in particular counties.<sup>17</sup>

Section 15.001 of the Texas Civil Practice and Remedies Code provides that “proper venue” means the county of venue required by a mandatory-venue statute or if no mandatory-venue statute applies, then the county provided under the general venue rule or under the permissive venue statutes.<sup>18</sup> Section 15.002 provides the general venue rule that will apply so long as a mandatory-venue statute does not require venue of the suit to be in another county.<sup>19</sup> The general venue rule is a permissive venue rule, like the express permissive exceptions listed in other permissive venue statutes, because these provisions identify where a suit “may” properly be

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<sup>12</sup> See Act of May 18, 1995, 74<sup>th</sup> Leg., R.S., ch 138 § 1, 1995 Tex. Gen. Laws 978, 978 (currently codified at TEX. CIV. PRAC. & REM. CODE ANN. ch. 15).

<sup>13</sup> See TEX. R. CIV. P. 86–88.

<sup>14</sup> *Wilson v. Tex. Parks & Wildlife Dep’t*, 886 S.W.2d 259, 260 (Tex. 1994).

<sup>15</sup> *Id.* at 260.

<sup>16</sup> See *Chiriboga v. State Farm Mut. Auto Ins. Co.*, 96 S.W.3d 673, 677 (Tex. App.—Austin 2003, no pet.).

<sup>17</sup> See, e.g., TEX. CIV. PRAC. & REM. CODE ANN. §§ 15.011–.020 (West 2002 & Supp. 2015) (Subchapter B entitled “Mandatory Venue”); TEX. CIV. PRAC. & REM. CODE ANN. §§ 15.031 – 15.039 (Subchapter C entitled “Permissive Venue”); see also 2 ROY W. McDONALD & ELAINE A. GRAFTON CARLSON, TEXAS CIVIL PRACTICE § 6:9 (2d. ed. 2003) (“The exceptions to the venue general rule are numerous and distinctive. Some exceptions apply due to the nature of the cause of action alleged, others rely upon the status of the defending party, such as a corporation or a political subdivision.”).

<sup>18</sup> TEX. CIV. PRAC. & REM. CODE ANN. § 15.001(b) (providing that the general venue rule or a permissive venue statute will only apply when venue is not required in a particular county by a mandatory venue provision).

<sup>19</sup> *Id.* § 15.002(a).

maintained.<sup>20</sup> When both a mandatory and a permissive venue statute apply to a suit, the permissive statute must yield to the mandatory statute, meaning venue is only proper in the county provided by the mandatory-venue statute.<sup>21</sup>

Pursuant to Sections 15.004 and 15.005, mandatory venue as to a claim against one defendant allows the plaintiff to establish derivative venue as to all related claims and defendants in the case.<sup>22</sup> These derivative-venue statutes mean that when a lawsuit contains multiple claims against a defendant for a single act or set of related acts and one of those causes of action would make venue proper in a county, all of the claims and causes of action may be properly litigated in that county.<sup>23</sup> If one of these claims or causes of action is subject to a mandatory-venue statute, all of the related claims and causes of action must be litigated in the county provided by the mandatory-venue statute.<sup>24</sup>

To properly establish venue, the plaintiff must satisfy an initial pleading burden by pleading facts which establish that venue is proper in the chosen county under a venue statute.<sup>25</sup> Venue facts are determined at the time the

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<sup>20</sup> See 2 MCDONALD & CARLSON, *supra* note 17 § 6:21 (2d. ed. 2003); see also TEX. CIV. PRAC. & REM. CODE ANN. § 15.002; TEX. CIV. PRAC. & REM. CODE ANN. §§ 15.031 – 15.039 (Subchapter C entitled “Permissive Venue”).

<sup>21</sup> See, e.g., *Randall Cty. v. Todd*, 542 S.W.2d 236, 237–38 (Tex. Civ. App.—Amarillo 1976, no writ) (“It is recognized that the permissive provisions must yield to the mandatory provisions of the venue statute.”).

<sup>22</sup> See TEX. CIV. PRAC. & REM. CODE ANN. §§ 15.004, 15.005; see also *In re Reynolds*, 369 S.W.3d 638, 656 (Tex. App.—Tyler 2012, orig. proceeding) (“Section 15.005 is a derivative venue statute”); *Underwood*, *supra* note 1, at 582 (“Derivative-venue simply means venue over a particular claim or party that is derived from venue over some other claim or party in the same lawsuit—venue that would not exist independent of the other claim or party.”).

<sup>23</sup> See TEX. CIV. PRAC. & REM. CODE ANN. § 15.005; see also, e.g., *Santos v. Holzman*, No. 13-02-662-CV, 2005 WL 167309 at \*3 (Tex. App.—Corpus Christi, Jan. 27, 2005, pet. denied) (mem. op., not designated for publication) (“When there are multiple defendants involved, the plaintiff must first establish proper venue against at least one defendant; venue is then proper as to all defendants in all claims arising out of the same transaction, occurrence, or series of transactions or occurrences.”).

<sup>24</sup> See TEX. CIV. PRAC. & REM. CODE ANN. § 15.004 (“In a suit in which a plaintiff properly joins two or more claims or causes of action arising from the same transaction, occurrence, or series of transactions or occurrences, and one of the claims or causes of action is governed by the mandatory venue provisions of Subchapter B, the suit shall be brought in the county required by the mandatory venue provision.”).

<sup>25</sup> See TEX. R. CIV. P. 87(2)(a) (“A party who seeks to maintain venue of the action in a particular county in reliance upon [the general, permissive, or mandatory-venue statutes] has the



cause of action accrues.<sup>26</sup> A trial court must treat all venue facts properly pled by the plaintiff as true unless an adverse party specifically denies them.<sup>27</sup> A cause of action, when properly pled by the plaintiff, must simply be accepted by the court as true for venue purposes.<sup>28</sup> Because a plaintiff can establish proper venue by carrying this initial pleading burden,<sup>29</sup> a defendant has a pleading burden to specifically deny any venue facts pled by the plaintiff (other than a properly pleaded cause of action), if the defendant intends to challenge the accuracy of those facts in a motion to transfer venue.<sup>30</sup>

Although the plaintiff is entitled to the first choice of venue, a defendant may challenge the plaintiff's venue selection, and a court must transfer an action to another county of proper venue if the county in which the action is pending is not a county of proper venue.<sup>31</sup> If the plaintiff's venue choice is

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burden to make proof, as provided in paragraph 3 of this rule, that venue is maintainable in the county of suit."); TEX. R. CIV. P. 87(3)(a) ("All venue facts, when properly pleaded, shall be taken as true unless specifically denied by the adverse party.").

<sup>26</sup> See TEX. CIV. PRAC. & REM. CODE ANN. § 15.006 (providing that "[a] court shall determine the venue of a suit based on the facts existing at the time the cause of action that is the basis of the suit accrued.").

<sup>27</sup> *Union Carbide Corp. v. Loftin*, 256 S.W.3d 869, 873 (Tex. App.—Beaumont 2008, pet. dismissed); see TEX. R. CIV. P. 87(3)(a).

<sup>28</sup> See TEX. R. CIV. P. 87(2)(b) ("It shall not be necessary for a claimant to prove the merits of a cause of action, but the existence of a cause of action, when pleaded properly, shall be taken as established as alleged by the pleadings."); *Newton v. Newton*, 895 S.W.2d 503, 505–06 (Tex. App.—Fort Worth 1995, no writ).

<sup>29</sup> See TEX. R. CIV. P. 87(3)(a).

<sup>30</sup> See *id.*; see also *Union Carbide*, 256 S.W.3d at 873 ("All of the appellants who timely filed motions to transfer venue specifically denied [venue facts pled by the plaintiffs]; therefore, the burden shifted to the plaintiffs to present prima facie proof of these venue facts.").

<sup>31</sup> See *In re Team Rocket, L.P.*, 256 S.W.3d 257, 259 (Tex. 2008) (orig. proceeding) (internal citations and quotations omitted); see also TEX. CIV. PRAC. & REM. CODE ANN. § 15.063(1) ("The court, on motion filed and served concurrently with or before the filing of the answer, shall transfer an action to another county of proper venue if: (1) the county in which the action is pending is not a proper county as provided by this chapter;"); TEX. R. CIV. P. 86–87. It should be noted that there is a second category of venue challenge, seeking to transfer venue from a *proper* county of venue pursuant to TEX. CIV. PRAC. & REM. CODE ANN. § 15.063(2)–(3) (providing that a court "shall" also "transfer an action to another county of proper venue if: . . . (2) an impartial trial cannot be had in the county in which the action is pending; or (3) written consent of the parties to transfer to any other county is filed at any time."). See also TEX. CIV. PRAC. & REM. CODE ANN. § 15.002(b) (regarding motions to transfer venue from a county of proper venue for *convenience* of the parties); TEX. R. CIV. P. 255, 257.

not properly challenged through a motion to transfer venue, venue is fixed in the county chosen by the plaintiff.<sup>32</sup>

In the “great majority” of venue battles, the dispute revolves around whether the plaintiff filed suit in a county of proper venue.<sup>33</sup> If the plaintiff files suit in a county where venue is not proper under the Texas venue statutes, the plaintiff waives the right to choose venue in the current suit, and the defendant may have the suit transferred to a proper venue.<sup>34</sup> When a defendant seeks to transfer venue from an allegedly *improper* county of venue, the motion to transfer must state that the action should be transferred to another specified county of *proper* venue because either: (a) the county where the action is pending is not a proper county; (b) mandatory venue of the action in another county is prescribed by one or more specific mandatory-venue statutes; or (c) the party seeking the transfer cannot receive a fair trial in the chosen county.<sup>35</sup>

When a defendant timely objects and properly challenges the plaintiff’s choice of venue, the burden of proof shifts to the plaintiff to present prima facie proof that venue is proper where the plaintiff filed suit.<sup>36</sup> To do so, the plaintiff must specifically deny any factual allegations supporting the defendant’s motion and offer prima facie evidence to support the plaintiff’s pled venue facts. “Prima facie proof is made when the venue facts are properly pleaded and an affidavit, and any duly proved attachment to the affidavit, are filed fully and specifically setting forth the facts supporting such pleading.”<sup>37</sup> This “prima facie proof [of a venue fact] is not subject to rebuttal, cross-examination, impeachment, or disproof.”<sup>38</sup> If the plaintiff

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<sup>32</sup>Wilson v. Tex. Parks & Wildlife Dep’t, 886 S.W.2d 259, 260 (Tex. 1994).

<sup>33</sup>See, e.g., 2 MCDONALD & CARLSON, *supra* note 17 § 6:36 (“The statutes and rules relating to venue fall into two groups, differing in content and procedural incidents. The great majority of venue questions turns on the propriety of venue in a particular county under the general venue statute or under some other special venue statute.”).

<sup>34</sup>See *Wilson*, 886 S.W.2d at 260 (internal citations omitted).

<sup>35</sup>TEX. R. CIV. P. 87(3).

<sup>36</sup>See TEX. R. CIV. P. 87(2)(a) (“A party who seeks to maintain venue of the action in a particular county in reliance upon [the venue statutes] has the burden to make proof, as provided in paragraph 3 of this rule, that venue is maintainable in the county of suit.”); see also *GeoChem Tech Corp. v. Verseckes*, 962 S.W.2d 541, 543 (Tex. 1998).

<sup>37</sup>TEX. R. CIV. P. 87(3)(a) (“Affidavits shall be made on personal knowledge, shall set forth specific facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify.”).

<sup>38</sup>*Shamoun & Norman, LLP v. Yarto Int’l Grp., LP*, 398 S.W.3d 272, 287 (Tex. App.—Corpus Christi 2012, pet. dismissed) (citing *Ruiz v. Conoco, Inc.*, 868 S.W.2d 752, 757 (Tex. 1993)).

meets this burden, the trial court must maintain the lawsuit in the county where it was filed.<sup>39</sup>

When a defendant makes a prima facie showing that venue is mandatory in a county under a mandatory-venue statute, the court must transfer the action from a county of only permissive venue to the county of mandatory venue (since the latter is the county of *proper* venue pursuant to Section 15.001),<sup>40</sup> and it is reversible error to deny such a transfer when the motion is based on a mandatory statute.<sup>41</sup>

As a general rule, neither interlocutory appeal nor mandamus review is available for venue determinations, but the Texas Legislature has carved out an exception to this general rule, providing an immediate right to seek a writ of mandamus “to enforce the mandatory venue provisions.”<sup>42</sup> Regardless of when the trial court’s ruling on a motion to transfer venue is considered by an appellate court, the Texas Legislature “has declared that improper venue cannot be harmless error.”<sup>43</sup> The Texas Supreme Court has established a “clear abuse of discretion” standard for mandamus reviews of

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<sup>39</sup> See *Wilson*, 886 S.W.2d at 261 (“[I]f the plaintiff chooses a county of proper venue, and this is supported by proof as required by Rule 87, no other county can be a proper venue in that case. . . . This rule gives effect to the plaintiff’s right to select a proper venue.”); see also *K.J. Eastwood Invs., Inc. v. Enlow*, 923 S.W.2d 255, 256 (Tex. App.—Fort Worth 1996, orig. proceeding) (“If a plaintiff initially files in a county of ‘proper venue,’ the case cannot be transferred to another county where venue would also be proper.”).

<sup>40</sup> See TEX. CIV. PRAC. & REM. CODE ANN. § 15.001(b) (West 2002) (defining “proper venue” as a county of mandatory venue if a mandatory-venue statute applies).

<sup>41</sup> See TEX. R. CIV. P. 87(3)(c); see also *Wichita Cty. v. Hart*, 917 S.W.2d 779, 781 (Tex. 1996) (“If the plaintiff’s chosen venue rests on a permissive venue statute and the defendant files a meritorious motion to transfer based on a mandatory venue provision, the trial court must grant the motion.”) (internal citation omitted).

<sup>42</sup> TEX. CIV. PRAC. & REM. CODE ANN. § 15.0642 (“A party may apply for a writ of mandamus with an appellate court to enforce the mandatory venue provisions of this chapter. An application for the writ of mandamus must be filed before the later of: (1) the 90th day before the date the trial starts; or (2) the 10th day after the date the party receives notice of the trial setting.”); see also *In re Lopez*, 372 S.W.3d 174, 176–77 (Tex. 2012) (holding that mandamus relief is available to correct a trial court’s erroneous ruling on a mandatory venue contest, and it is not necessary that the petitioner demonstrate that the petitioner has no adequate remedy by appeal); *In re Mo. Pac. R.R. Co.*, 998 S.W.2d 212, 216 (Tex. 1999) (holding that “adequacy of an appellate remedy is not a requisite of a mandatory venue mandamus [review] under Section 15.0642.”). The Texas Legislature has also provided for interlocutory appeal of a trial court’s venue determination in a suit involving multiple plaintiffs. See TEX. CIV. PRAC. & REM. CODE ANN. § 15.003.

<sup>43</sup> *Ford Motor Co. v. Miles*, 967 S.W.2d 377, 382 (Tex. 1998) (citing TEX. CIV. PRAC. & REM. CODE ANN. § 15.064(b)).

mandatory venue decisions.<sup>44</sup> A trial court has no discretion to refuse to enforce a properly pled and proven mandatory-venue statute.<sup>45</sup>

An appellate court should not review the evidence for factual sufficiency.<sup>46</sup> If there is any probative evidence to support the plaintiff's chosen venue as a county of proper venue, the granting of a motion to transfer is reversible error.<sup>47</sup>

The question then arises: When some probative evidence supports the existence of mandatory venue in the county of suit, is it possible for the defendant to nevertheless raise a competing mandatory-venue statute and thereby establish that the plaintiff's choice of mandatory venue does *not* constitute proper venue? That is the question addressed by the remainder of this Article, starting with an overview of key mandatory-venue statutes.

## II. MANDATORY-VENUE STATUTES IN TEXAS

Simply put, mandatory-venue statutes reign as the kings of venue in Texas. The Texas venue scheme is set forth in Chapter 15 of the Texas

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<sup>44</sup>See *In re Mo. Pac.*, 998 S.W.2d at 215, n.8 (Tex. 1999) (citing *Walker v. Packer*, 827 S.W.2d 833, 839-40 (Tex. 1992)).

<sup>45</sup>See *K.J. Eastwood Invs., Inc. v. Enlow*, 923 S.W.2d 255, 258 (Tex. App.—Fort Worth 1996, no writ) (holding that trial court had “no discretion to deny the motion to transfer venue” when the movant made a prima facie showing that the action fell under a mandatory-venue statute); see also *In re Lovell-Osburn*, 448 S.W.3d 616, 620 (Tex. App.—Houston [14th Dist.] 2014, orig. proceeding) (“Texas courts have long held that . . . a trial court has a ministerial duty to transfer venue when the statutory terms [of a mandatory-venue statute] are satisfied.”). Note that when a plaintiff establishes venue under the general venue rule, as opposed to a mandatory-venue statute, a court may still transfer the action from a county of proper venue to another county of proper venue for the convenience of the parties. See TEX. CIV. PRAC. & REM. CODE ANN. § 15.002(b).

<sup>46</sup>See *Bonham State Bank v. Beadle*, 907 S.W.2d 465, 471 (Tex. 1995) (citing *Ruiz v. Conoco, Inc.*, 868 S.W.2d 752, 758 (Tex. 1993)).

<sup>47</sup>*Moveforfree.com, Inc. v. David Hetrick, Inc.*, 288 S.W.3d 539, 541-42 (Tex. App.—Houston [14<sup>th</sup> Dist.] 2009, no pet.). If the county chosen by the plaintiff is a county of proper venue, then a county to which a suit is transferred “cannot be a county of proper venue as a matter of law.” *Wilson v. Tex. Parks & Wildlife Dep’t*, 886 S.W.2d 259, 261-62 (Tex. 1994); see also *Ford*, 967 S.W.2d at 380. Although some appellate courts have stated that the trial court’s venue determination must be upheld if there is any probative evidence in the record that venue was proper in the county where judgment was rendered. *Ruiz*, 868 S.W.2d at 758. The court in *Ruiz* was addressing a case in which the trial court had denied the motion to transfer and retained venue in the county of original filing. See, e.g., *Jaska v. Tex. Dep’t of Protective & Regulatory Servs.*, 106 S.W.3d 907, 909-10 (Tex. App.—Dallas 2003, no pet.).

Civil Practice and Remedies Code.<sup>48</sup> Subchapter B of Chapter 15 contains a non-exclusive collection of mandatory-venue statutes.<sup>49</sup> In addition, the Texas Legislature has enacted numerous mandatory-venue statutes outside of Subchapter B for certain types of actions.<sup>50</sup>

*A. Mandatory-Venue Statutes Located Within Subchapter B of Chapter 15 of the Texas Civil Practice and Remedies Code*

Table 1 below identifies each of the mandatory-venue statutes located within Chapter 15 of the Texas Civil Practice and Remedies Code. Analyses of the language of each statute and of the arguments in Texas courts that have supported the application of each statute are set forth in the Sections of the Appendix indicated in the third column of Table 1 below.

<b>TABLE 1</b> <b>Mandatory-Venue Statutes Located <u>Within</u> Subchapter B of Chapter 15</b>		
<b>Mandatory-Venue Statute</b>	<b>Type of Action to Which Statute Applies</b>	<b>Corresponding Analysis in the Appendix</b>
TEX. CIV. PRAC. & REM. CODE ANN. § 15.011	Real Property	A.1
TEX. CIV. PRAC. & REM. CODE ANN. § 15.0115	Landlord-Tenant Relationships	A.2
TEX. CIV. PRAC. & REM. CODE ANN. § 15.012	Anti-Suit Injunctions	A.3
TEX. CIV. PRAC. & REM. CODE ANN. § 15.013	Injunctions Against Execution of Judgment	A.4

<sup>48</sup> See TEX. CIV. PRAC. & REM. CODE ANN. §§ 15.011–15.020 (“Subchapter B. Mandatory Venue”).

<sup>49</sup> See *id.*, with an overview provided in *infra* Part II.A. For analyses of the authority interpreting these statutes, see Appendix *infra* at Sections A.1 through A.12.

<sup>50</sup> For a list of several often-cited mandatory-venue statutes existing outside of Chapter 15 of the Texas Civil Practice and Remedies Code, see *infra* Part II.B. For analyses of the authority interpreting these statutes, see Appendix *infra* at B.1–B.8.

TEX. CIV. PRAC. & REM. CODE ANN. § 15.014	Mandamus Against Head of State Department	A.5
TEX. CIV. PRAC. & REM. CODE ANN. § 15.015	Actions Against Counties	A.6
TEX. CIV. PRAC. & REM. CODE ANN. § 15.0151	Actions Against Political Subdivisions	A.7
TEX. CIV. PRAC. & REM. CODE ANN. § 15.017	Libel, Slander, Privacy	A.8
TEX. CIV. PRAC. & REM. CODE ANN. § 15.018	Federal Employers' Liability Act (FELA) <sup>51</sup>	A.9
TEX. CIV. PRAC. & REM. CODE ANN. § 15.0181	Jones Act <sup>52</sup>	A.10
TEX. CIV. PRAC. & REM. CODE ANN. § 15.019	Inmate Litigation	A.11
TEX. CIV. PRAC. & REM. CODE ANN. § 15.020	Major Transactions	A.12

The mandatory-venue statutes regarding real property<sup>53</sup> and major transactions<sup>54</sup> have been the subject of significant recent developments in Texas case law.<sup>55</sup> Accordingly, Texas practitioners will particularly benefit

<sup>51</sup> 45 U.S.C. §§ 51–60 (2012).

<sup>52</sup> 46 U.S.C. § 30104 (2012).

<sup>53</sup> TEX. CIV. PRAC. & REM. CODE ANN. § 15.011.

<sup>54</sup> TEX. CIV. PRAC. & REM. CODE ANN. § 15.020.

<sup>55</sup> See, e.g., *In re Fisher*, 433 S.W.3d 523, 529–31 (Tex. 2014) (orig. proceeding) (corrected op. on reh'g) (addressing “when an action ‘arises from’ a major transaction under Section 15.020” as a matter of first impression); *In re Applied Chem. Magnesias Corp.*, 206 S.W.3d 114, 118–19 (Tex. 2006) (orig. proceeding) (holding that a declaratory judgment suit to determine the rights of the parties to a contract to acquire surface and mineral leases was an action involving an interest in real property thus making it subject to the mandatory venue provision in Section 15.011); *Shamoun & Norman, LLP v. Yarto Int'l Grp., LP*, 398 S.W.3d 272, 294–96 (Tex. App.—Corpus Christi 2012, pet. dismissed) (analyzing several novel arguments in the context of the application of the mandatory venue provisions of Section 15.020 and delineating the distinctions between subSections (b) and (c) of Section 15.020 in detail); *In re City Nat'l Bank*, 257 S.W.3d 452, 454 (Tex. App.—Tyler 2008, orig. proceeding [mand. denied]) (holding that a lien created by a deed of trust is an encumbrance on the title to real property, and therefore, a suit to regarding foreclosure on the deed of trust lien, pledged as security to a promissory note, was “tantamount to

from a review of the Sections in the Appendix that analyze these mandatory-venue statutes.<sup>56</sup>

*B. Mandatory-Venue Statutes Located Outside Subchapter B of Chapter 15 of the Texas Civil Practice and Remedies Code*

A number of statutes located outside of Subchapter B of Chapter 15 of the Texas Civil Practice and Remedies Code contain mandatory venue provisions.<sup>57</sup> As a general rule, when a statute directs that suit “shall be brought” in a specified county or other location, then the statute qualifies as a mandatory-venue statute because Texas courts have repeatedly held that venue provisions containing the word “shall” are mandatory in nature.<sup>58</sup>

Table 2 below identifies a number of the more commonly cited mandatory-venue statutes that are located *outside* of Subchapter B of Chapter 15 of the Texas Civil Practice and Remedies Code. Analyses of the language of each statute and of the arguments in Texas courts that have supported the application of each statute are set forth in the Sections of the Appendix indicated in the third column of Table 2 below.

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a suit to remove an encumbrance from the title [to] real property,” which made venue mandatory in the county where the land was located).

<sup>56</sup> See *infra* Appendix at A.1 (real property) and A.12 (major transactions).

<sup>57</sup> See *infra* Table 2 for examples of such mandatory-venue statutes.

<sup>58</sup> See, e.g., *Bachus v. Foster*, 122 S.W.2d 1058, 1060 (Tex. 1939) (holding that the Legislature’s use of the term “shall” in a venue-related statute is mandatory in character and “leaves no room to doubt that the legislature meanS to lay the venue of [a suit governed by the statute] exclusively in the county” provided by the statute); see also *Wichita Cty. v. Hart*, 917 S.W.2d 779, 781 (Tex. 1996) (“When considering venue, we have noted that the Legislature’s use of the word ‘shall’ in a statute generally indicates the mandatory character of the provision.”). Similarly, Texas courts interpret the ordinary meaning of the word “must” to be of mandatory effect. See, e.g., *Helena Chem. Co. v. Wilkins*, 47 S.W.3d 486, 493 (Tex. 2001) (The word “must” is “mandatory, creating a duty or obligation.”); *In re Hartford Underwriters Ins. Co.*, 168 S.W.3d 293, 295 (Tex. App.—Eastland 2005, orig. proceeding) (holding that a statute providing that “the petition must be filed in Travis County district court” was a mandatory venue provision requiring that the action be filed in Travis County).

<b>TABLE 2</b> <b>Mandatory-Venue Statutes Located <i>Outside</i> Subchapter B of Chapter 15</b>		
<b>Mandatory-Venue Statute</b>	<b>Type of Action to Which Statute Applies</b>	<b>Corresponding Analysis in the Appendix</b>
TEX. CIV. PRAC. & REM. CODE ANN. § 65.023	Injunctions	B.1
TEX. CIV. PRAC. & REM. CODE ANN. § 101.102	Texas Tort Claims Act	B.2
TEX. CIV. PRAC. & REM. CODE ANN. § 171.096	Application for Enforcement of Arbitration Agreements	B.3
TEX. FAM. CODE ANN. §§ 103.001, 155.201	Suits Affecting Parent-Child Relationships	B.4
TEX. TRUST CODE ANN. § 115.002 <sup>59</sup>	Suits By or Against a Trustee of a Trust	B.5
TEX. PROP. CODE ANN. § 21.013	Eminent Domain (Condemnation Proceedings)	B.6
TEX. NAT. RES. CODE ANN. § 11.078	Public Lands	B.7
TEX. LABOR CODE ANN. § 410.252 and TEX. GOV. CODE ANN. § 2001.176	Judicial Review of Decisions by the Texas Workers' Compensation Commission Appeals Panel	B.8

Table 2 does not, and is not intended to, represent *all* of the mandatory-venue statutes available under Texas law. Texas practitioners who are

<sup>59</sup> See TEX. PROP. CODE ANN. § 111.001 (West 2014) (“This subtitle may be cited as the Texas Trust Code.”).



considering bringing suit under a Texas statute should review associated statutes for venue-related provisions.

### III. CONFLICTING MANDATORY-VENUE STATUTES IN TEXAS

When a plaintiff files suit in a county of proper venue under a mandatory-venue statute, “no other county can be a proper venue in that case.”<sup>60</sup> Conversely, when a defendant moves to transfer venue under a mandatory-venue statute, “it is reversible error to deny a transfer.”<sup>61</sup> But what happens when both parties bring a mandatory venue “king” to the venue battle? Does the plaintiff’s mandatory venue choice prevail, or is it possible for the defendant to overcome the plaintiff’s choice with a “more mandatory” venue statute?

This question of prioritizing mandatory-venue statutes has led various Texas courts to reach different answers under different theories of analysis. This Section first provides an overview of the potentially conflicting approaches, then scrutinizes each approach in more depth.

#### A. *The Various Rationales Used by Texas Courts to Decide Between Competing Mandatory-Venue Statutes*

Under current Texas law, Texas practitioners can find supporting authority for at least seven different rationales in Texas appellate opinions to resolve conflicts between competing mandatory-venue statutes: (1) venue should be determined based on the nature of the principal right asserted and the relief sought;<sup>62</sup> (2) the plaintiff’s choice of venue controls;<sup>63</sup> (3) a mandatory-venue statute located *outside* of Subchapter B of Chapter 15 of the Texas Civil Practice and Remedies Code controls over a mandatory-

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<sup>60</sup> See *Wilson v. Tex. Parks & Wildlife Dep’t*, 886 S.W.2d 259, 261 (Tex. 1994) (holding that “[when] a plaintiff files suit in a county of proper venue, it is reversible error to transfer venue [] even if the county of transfer would have been proper if originally chosen by the plaintiff.”).

<sup>61</sup> *Chiriboga v. State Farm Mut. Auto Ins. Co.*, 96 S.W.3d 673, 677 (Tex. App.—Austin 2003, no pet.) (citing *Wichita Cty. v. Hart*, 917 S.W.2d 779, 781 (Tex. 1996)).

<sup>62</sup> E.g., *Brown v. Gulf Television Co.*, 306 S.W.2d 706, 708–09 (Tex. 1957) (holding that “[w]here the venue depends on the nature of the suit, such venue is ordinarily determined by the nature of the principal right asserted and the relief sought for the breach thereof.” (internal citations and quotations omitted)); see also *infra* Parts III.A.1 and III.B.1.

<sup>63</sup> E.g., *Marshall v. Mahaffey*, 974 S.W.2d 942, 947 (Tex. App.—Beaumont 1988, pet. denied) (holding that “where there is a conflict between two mandatory venue provisions, “[t]he general scheme of the venue statute is that plaintiffs may choose between two *proper* venues.” (citing *Wilson*, 886 S.W.2d at 259–61)); see also *infra* Parts III.A.2 and III.B.2.

venue statute located *within* that subchapter;<sup>64</sup> (4) the mandatory-venue statute with the most “longstanding” history in Texas law controls;<sup>65</sup> (5) under rules of statutory construction, the “more-specific” and “later-enacted” statute controls;<sup>66</sup> (6) the two competing statutes should be harmonized if possible through a process of elimination that yields one county of proper venue as the common denominator amongst the statutes;<sup>67</sup> and (7) the county of venue specified in a pre-suit agreement between the parties controls.<sup>68</sup> Texas practitioners who understand these arguments and their supporting authority will have the flexibility to advocate for the

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<sup>64</sup> See, e.g., *In re Wheeler*, 441 S.W.3d 430, 434 (Tex. App.—Waco 2014, orig. proceeding) (holding that “[S]ection 15.016 of the Texas Civil Practice and Remedies code requires that the mandatory-venue provisions in Section 115.002 of the Texas Property Code prevail over [the mandatory venue provision in] Section 15.011 of the Texas Civil Practice and Remedies Code[.]” because “[S]ection 115.002 of the Texas Property Code originates from outside of [C]hapter 15 of the Texas Civil Practice and Remedies Code[.]” (citing TEX. CIV. PRAC. & REM. CODE ANN. § 15.016)); see also *infra* Parts III.A.3 and III.B.3.

<sup>65</sup> See, e.g., *In re Fort Bend Cty.*, 278 S.W.3d 842, 844–45 (Tex. App.—Houston [14th Dist.] 2009, orig. proceeding) (holding that because “[t]he venue rule that a county must be sued in that county [Section 15.015 of the Texas Civil Practice and Remedies Code,] is longstanding and finds its origin in the first Texas Legislature[.]” the mandatory venue provision in Section 15.015 controlled over the mandatory venue provision in Section 101.102(a) of the Texas Civil Practice and Remedies Code); see also *infra* Parts III.A.4 and III.B.4.

<sup>66</sup> *In re Sosa*, 370 S.W.3d 79, 82 (Tex. App.—Houston [14th Dist.] 2012, orig. proceeding) (holding that “we find the more-specific, later-enacted statute of mandatory venue in Section 171.096(b) [of the Texas Civil Practice and Remedies Code] controls over the prior-enacted statute of mandatory venue in Section 65.023(a) [of the Texas Civil Practice and Remedies Code].” (citing TEX. GOV’T CODE ANN. § 311.026(b) (West 2013))); see also *infra* Parts III.A.5 and III.B.5.

<sup>67</sup> See *In re Fort Bend*, 278 S.W.3d at 848 (Guzman, J., concurring) (concluding “that this case presents no conflict between Sections 15.015 and 101.102(a) [of the Texas Civil Practice and Remedies Code], because transferring venue to Fort Bend County fulfills the mandatory requirements of both statutes” based on a process of elimination of all of the “possible venues” that would not fulfill the requirements of both mandatory-venue statutes); see also *infra* Parts III.A.6 and III.B.6.

<sup>68</sup> See *In re Fisher*, 433 S.W.3d 523, 533–34 (Tex. 2014) (orig. proceeding) (holding that where parties entered pre-suit agreement selecting venue for claims arising out of or relating to a major transaction, the mandatory venue provisions in Section 15.020 of the Texas Civil Practice and Remedies Code controlled over Section 15.017 of the Texas Civil Practice and Remedies Code because “the language of Section 15.020 applies to an action arising from a major transaction notwithstanding any other provision of this title[,] . . . indicat[ing] that the Legislature intended for [Section 15.020] to control over other mandatory venue provisions.”) (internal quotations and citations omitted); see also *infra* Parts III.A.7 and III.B.7.

rationale most beneficial to a particular case. Each of these separate approaches is addressed in turn.

### 1. Rationale 1: Venue Should be Determined Based on the Principal Relief Sought

In 1957, the Texas Supreme Court stated that “[w]here the venue depends on the nature of the suit, such venue is ordinarily determined by the nature of the principal right asserted and the relief sought for the breach thereof.”<sup>69</sup> In *Brown v. Gulf Television Co.*, the plaintiff, an airport owner, filed suit against a television company, seeking an injunction that would compel the television company to remove a television antenna from the airport’s runway path.<sup>70</sup> Alternatively, the plaintiff prayed for recovery of damages.<sup>71</sup> Under the statutory predecessor to Section 15.011 of the Texas Civil Practice and Remedies Code regarding real property,<sup>72</sup> venue for the suit was mandatory in Brazoria County, the location of the plaintiff’s allegedly damaged land.<sup>73</sup> Under the statutory predecessor to Section 65.023 of the Texas Civil Practice and Remedies Code regarding suits for injunctive relief,<sup>74</sup> venue for the suit was mandatory in a different county, the county of the defendant’s residence.<sup>75</sup> The question before the Court was which of the two mandatory-venue statutes controlled.<sup>76</sup>

The Court first found that both statutes provided for mandatory venue.<sup>77</sup> Rather than finding that the two mandatory-venue statutes were in conflict, however, the Court stated that the statutes “need not be and have not been construed as conflicting.”<sup>78</sup> The Court reasoned that:

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<sup>69</sup> *Brown v. Gulf Television Co.*, 306 S.W.2d 706, 708–09 (Tex. 1957).

<sup>70</sup> *Id.* at 706–07; *see also id.* at 710 (Smith, J., dissenting).

<sup>71</sup> *See id.* at 707.

<sup>72</sup> *See* TEX. REV. CIV. STAT. ANN. art. 1995 § 14 (West 1952), *repealed by* Act of May 17, 1985, 69th Leg., R.S., ch. 959, § 9, 1985 TEX. GEN. LAWS 3242, 3322 (codified at TEX. CIV. PRAC. & REM. CODE ANN. § 15.011 (West 2002)).

<sup>73</sup> *Brown*, 306 S.W.2d at 708; *see also id.* at 710, 712 (Smith, J. dissenting).

<sup>74</sup> *See* TEX. REV. CIV. STAT. ANN. art. 4656 (West 1952), *repealed by* Act of May 17, 1985, 69th Leg., R.S., ch. 959, § 9, 1985 TEX. GEN. LAWS 3242, 3322 (current version at TEX. CIV. PRAC. & REM. CODE ANN. § 65.023).

<sup>75</sup> *See Brown*, 306 S.W.2d at 708–09.

<sup>76</sup> *See id.*

<sup>77</sup> *Id.* at 708 (“The directions in both Article 1995, Section 14 and Article 4656 are stated in mandatory terms.”).

<sup>78</sup> *Id.*

Whenever it can properly be said from the pleadings that the issuance of an injunction is merely ancillary to a judgment awarding a recovery of lands or quieting the title thereto, Article 1995, § 14 has application. On the other hand where the petition discloses that the issuance of a perpetual injunction is the primary and principal relief sought, the special venue provisions of Article 4656 control. Where the venue depends on the nature of the suit, such venue is ordinarily determined by the nature of the principal right asserted and the relief sought for the breach thereof.<sup>79</sup>

Because the Court found that the true nature of the plaintiff's suit was to primarily seek injunctive relief, the Court held that the mandatory-venue statute regarding suits for injunctive relief controlled over the mandatory-venue statute regarding suits involving real property.<sup>80</sup>

Texas commentators have recognized this "primary relief sought" approach as one approach that Texas courts have used to resolve conflicting mandatory-venue statutes.<sup>81</sup> Lower Texas courts, though, have not uniformly used this approach to resolve such conflicts.<sup>82</sup> The apparent

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<sup>79</sup> *Id.* (internal citations omitted).

<sup>80</sup> *See id.* at 709.

<sup>81</sup> *See, e.g.,* 2 MCDONALD & CARLSON, *supra* note 17 § 6:8 ("Ultimately, the court should resolve the conflict by applying the mandatory exception that most nearly corresponds to the principal relief sought. The principal relief sought is determined by the allegations in the plaintiff's petition." (citing *Brown*, 306 S.W.2d at 709; *Gonzalez v. Texaco, Inc.*, 645 S.W.2d 324, 327 (Tex. App.—Corpus Christi 1982, no writ); *Trice v. State*, 712 S.W.2d 842, 845 (Tex. App.—Waco 1986, writ ref'd n.r.e.)); *see also* William V. Dorsaneo III, et al., *Texas Civil Procedure: Pretrial Litigation* § 290 (2013–14 ed.) ("If more than one mandatory provision applies so that an apparent conflict between two provisions occurs, the Texas Supreme Court has reasoned that the conflict should be reconciled and venue determined based on the 'principal relief sought.' This tie-breaker is easy to articulate but difficult to apply." (citing *Brown*, 306 S.W.2d at 709; *Gonzalez*, 645 S.W.2d at 324)).

<sup>82</sup> *See* Dorsaneo *supra* note 81 ("Other cases suggest that apparent conflicts between mandatory exceptions contained in Chapter 15 [of the Texas Civil Practice and Remedies Code] and mandatory exceptions contained in other statutes should be resolved in favor of the other statutes." (citing *In re Adan Volpe Props., Ltd.*, 306 S.W.3d 369, 375 (Tex. App.—Corpus Christi 2010, orig. proceeding); *In re Sosa*, 370 S.W.3d 79, 81 (Tex. App.—Houston [14th Dist.] 2012, orig. proceeding); *In re Tex. Windstorm Ins. Ass'n*, 121 S.W.3d 821, 824–25 (Tex. App.—Beaumont 2003, orig. proceeding) (mand. granted); *Marshall v. Mahaffey*, 974 S.W.2d 942, 947 (Tex. App.—Beaumont 1998, pet. denied))).

limitations of this “primary relief sought” approach are discussed in Part III.B.1.<sup>83</sup>

## 2. Rationale 2: Plaintiff’s Choice Prevails

In a 1998 opinion, the Beaumont Court of Appeals resolved a conflict between the mandatory venue provisions in Sections 15.011 and 15.017 of the Texas Civil Practice and Remedies Code.<sup>84</sup> In *Marshall v. Mahaffey*, the plaintiffs filed suit in Montgomery County, asserting mandatory venue for their slander action pursuant to Section 15.017. The defendant moved to transfer venue to Harris County under the mandatory venue provision in Section 15.011 of the Texas Civil Practice and Remedies Code.<sup>85</sup> The trial court denied the defendant’s motion to transfer.<sup>86</sup> Following judgment for the plaintiffs, the defendant argued on appeal that the trial court erred in denying the motion to transfer venue.<sup>87</sup>

The court of appeals found that the evidence supported the application of the mandatory venue provision in Section 15.011,<sup>88</sup> which would mandate venue in Harris County, where the defendant had sought to transfer venue.<sup>89</sup> However, because evidence in the record also supported the plaintiff’s cause of action for slander, the court found the plaintiffs properly established mandatory venue in Montgomery County under Section 15.017.<sup>90</sup> Because the parties established that venue was proper in two different counties under two separate mandatory-venue statutes, the court had to resolve the conflict between the two statutes.<sup>91</sup>

In resolving the conflict, the court acknowledged, “[i]f the plaintiff’s chosen venue rests on a permissive venue statute and the defendant files a meritorious motion to transfer based on a mandatory venue provision, the trial court must grant the motion.”<sup>92</sup> On the other hand, “where there is a

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<sup>83</sup> See *infra* Part III.B.1 discussing how lower courts have applied the Court’s approach in *Brown*.

<sup>84</sup> See *Marshall*, 974 S.W.2d at 946–47, 950.

<sup>85</sup> *Id.* at 945.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.* at 944.

<sup>88</sup> TEX. CIV. PRAC. & REM. CODE ANN. § 15.011 (West 2002).

<sup>89</sup> *Marshall*, 974 S.W.2d at 947.

<sup>90</sup> *Id.* at 950.

<sup>91</sup> See *id.* at 946–50.

<sup>92</sup> *Id.* at 947 (quoting *Wichita Cty. v. Hart*, 917 S.W.2d 779, 781 (Tex. 1996)) (internal quotations omitted).

conflict between two mandatory venue provisions, the general scheme of the venue statute is that plaintiffs may choose between two *proper* venues.”<sup>93</sup> Using this approach to resolve the conflict between the two statutes, the court ultimately found that “[t]he conflict between two mandatory venue provisions allowed the [plaintiffs] to choose between the two proper venues—and they elected Montgomery County. Accordingly, venue was proper in Montgomery County.”<sup>94</sup>

The Corpus Christi Court of Appeals and a different panel of justices sitting on the Beaumont Court of Appeals have cited to *Marshall* for the proposition that “the general scheme of the venue statutes typically permits the plaintiff to choose between two conflicting mandatory venue provisions”<sup>95</sup> *unless* there is a separate basis for granting priority of one mandatory-venue statute over another (such as by determining that mandatory-venue statutes located *outside* of Subchapter B of Chapter 15 controlled over the mandatory-venue statute located within that subchapter),<sup>96</sup> as discussed in the next subSection. The Texarkana Court of Appeals has stated that the “normal rule followed” when there is a conflict between two mandatory venue provisions “is that the plaintiff’s choice prevails” (but ultimately supported its holding by applying a different

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<sup>93</sup> *Id.* (quoting *Wichita Cty. v. Hart*, 892 S.W.2d 912, 920 (Tex. App.—Austin 1994), *rev’d on other grounds*, 917 S.W.2d 779 (Tex. 1996)). The court stated that the Supreme Court disagreed with the Austin Court of Appeals’s conclusion in *Wichita County* “that both venue provisions in question were mandatory and found one to be permissive—thus the mandatory provision trumped the permissive provision.” *Marshall*, 974 S.W.2d at 947, n.4 (citing *Wichita Cty. v. Hart*, 917 S.W.2d 779, 781–82 (Tex. 1996)).

<sup>94</sup> *Id.* at 950.

<sup>95</sup> *In re Adan Volpe Props., Ltd.*, 306 S.W.3d 369, 375 (Tex. App.—Corpus Christi 2010, orig. proceeding) (citing *Marshall*, 974 S.W.2d at 947); *see also In re Dole Food Co.*, 256 S.W.3d 851, 856 (Tex. App.—Beaumont 2008, orig. proceeding) (citing *Marshall*, 974 S.W.2d at 947).

<sup>96</sup> *See In re Adan*, 306 S.W.3d at 375 (holding that Section 65.023, providing for mandatory venue in injunction suits and located *outside* of Subchapter B, prevailed over Section 15.017 based on Section 15.016 of the Texas Civil Practice and Remedies Code); *see also In re Dole Food*, 256 S.W.3d at 856 (same).

approach as well).<sup>97</sup> The “plaintiff’s choice prevails” rule has additionally found support from some Texas commentators.<sup>98</sup>

Most recently, in articulating the venue policy in Texas, the Texas Supreme Court acknowledged that “[v]enue may be proper in multiple counties under mandatory venue rules, and the plaintiff is generally afforded the right to choose venue when suit is filed[.]”<sup>99</sup> There, however, the Court ultimately determined that the defendant’s assertion of mandatory venue in the case prevailed over the plaintiff’s choice of mandatory venue due to the specific language of another mandatory-venue statute.<sup>100</sup>

Arguments for and against defaulting to “the plaintiff’s choice” for mandatory venue are analyzed in more depth in Part III.B.2.<sup>101</sup>

### 3. Rationale 3: Mandatory-Venue Statutes Located *Outside* of Chapter 15 Prevail Over Those Located *Within* Chapter 15

When a mandatory-venue statute located *outside* of Chapter 15 of the Texas Civil Practice and Remedies Code conflicts with a mandatory-venue statute located *within* Chapter 15, most (but not all) Texas courts addressing this conflict have held that the statute located *outside* of Chapter 15 should prevail.<sup>102</sup> Texas courts have based this approach on Section 15.016 of the

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<sup>97</sup> *Glover v. Columbia Fort Bend Hosp.*, No. 06-01-00101-CV, 2002 WL 1430783, at \*4 (Tex. App.—Texarkana July 3, 2002, no pet.) (not designated for publication) (citing *Marshall*, 974 S.W.2d at 947 as the “normal rule followed” but finding that Section 15.015 regarding suits against counties prevailed over Section 15.017 regarding defamation actions because Section 15.015 provided “the exclusive venue for suits against counties be in that county”).

<sup>98</sup> See 1 Kim J. Askew & Adele Hedges, *Texas Practice Guide: Civil Pretrial* § 6:39 (2015) (“Venue may be proper in multiple counties under mandatory venue rules. In such cases, the plaintiff is generally afforded the right to choose venue when suit is filed.” (citing *In re Fisher*, 433 S.W.3d 523, 533 (Tex. 2014) (corrected op. on reh’g); *Wilson v. Tex. Parks & Wildlife Dep’t*, 886 S.W.2d 259, 260 (Tex. 1994))).

<sup>99</sup> See *In re Fisher*, 433 S.W.3d at 533–34.

<sup>100</sup> See *id.* (citing *Wilson*, 886 S.W.2d at 260) (finding that Section 15.020 of the Texas Civil Practice and Remedies Code controlled over Section 15.017 of that code only because of the language in Section 15.020(c) that Section 15.020(c) “applies to an action arising from a major transaction [n]otwithstanding any other provision of this title.” (quoting TEX. CIV. PRAC. & REM. CODE ANN. § 15.020(c) (West 2002))).

<sup>101</sup> See *infra* Part III.B.2 discussing the circumstances in which courts have and have not resolved conflicting mandatory venue provisions by simply giving priority to the plaintiff’s choice.

<sup>102</sup> See, e.g., *In re Wheeler*, 441 S.W.3d 430, 434 (Tex. App.—Waco 2014, orig. proceeding) (holding that Section 115.002 of the Texas Property Code prevailed over Section 15.011 of the

Texas Civil Practice and Remedies Code, which provides that “[a]n action governed by any other statute prescribing mandatory venue shall be brought in the county required by that statute.”<sup>103</sup> Many Texas courts that have endorsed this approach have also cited to a statement by the Texas Supreme Court in a *per curiam* opinion, where the Court stated in dicta that “Section 15.016 provides that if an action is governed by a separate mandatory venue provision, then the action shall be brought in the county required by the separate venue provision.”<sup>104</sup> This interpretation has similarly found support amongst commentators.<sup>105</sup>

Despite the considerable support for this interpretation, an alternative argument exists, simply interpreting Section 15.016 as placing mandatory-venue statutes outside of Subchapter B on equal parity with those statutes residing within Subchapter B. This alternative argument is discussed in Part III.B.3.<sup>106</sup>

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Texas Civil Practice and Remedies Code); *see also In re J.P. Morgan Chase Bank, N.A.*, 373 S.W.3d 615, 618 (Tex. App.—San Antonio 2012, orig. proceeding) (holding that Section 115.002 of the Texas Property Code prevailed over Section 15.011); *In re Adan*, 306 S.W.3d at 375 (holding that Section 65.023 of the Texas Civil Practice and Remedies Code, providing for mandatory venue in injunction suits and located *outside* of Chapter 15, prevailed over Section 15.017); *In re Dole Food*, 256 S.W.3d at 856 (holding that Section 65.023 prevailed over Section 15.017).

<sup>103</sup> *See* TEX. CIV. PRAC. & REM. CODE ANN. § 15.016; *see also, e.g., In re Hannah*, 431 S.W.3d 801, 807 (Tex. App.—Houston [14th Dist.] 2014, orig. proceeding) (*per curiam*) (stating that “[a]s relator relies on a mandatory venue provision within Chapter 15 of the Texas Civil Practice and Remedies Code in support of venue in Harris County, we begin our analysis with the Texas Estates Code because, in the event any mandatory jurisdiction or venue provision in the Estates Code applies to the underlying suit, such provision would control.” (citing TEX. CIV. PRAC. & REM. CODE ANN. § 15.016)); *In re Sosa*, 370 S.W.3d 79, 81 (Tex. App.—Houston [14th Dist.] 2012, orig. proceeding) (“If a suit is governed by a mandatory venue provision outside of Chapter 15, that suit must be brought in the county required by that mandatory venue provision.” (citing TEX. CIV. PRAC. & REM. CODE ANN. § 15.016)).

<sup>104</sup> *In re Tex. Dep’t of Transp.*, 218 S.W.3d 74, 76 (Tex. 2007) (orig. proceeding) (*per curiam*); *see also In re Wheeler*, 441 S.W.3d at 434 (quoting *In re Tex. Dep’t of Transp.*, 218 S.W.3d at 76); *In re J.P. Morgan Chase Bank*, 373 S.W.3d at 613; *In re Adan*, 306 S.W.3d at 375 (citing *In re Tex. Dep’t of Transp.*, 218 S.W.3d at 76); *In re Dole Food*, 256 S.W.3d at 856 (quoting *In re Tex. Dep’t of Transp.*, 218 S.W.3d at 76).

<sup>105</sup> *See, e.g., 72 Tex. Jur. 3d Venue* § 40 (2013) (“If there is a conflict between a mandatory venue provision from within the mandatory venue statutes of Chapter 15 of the Texas Civil Practice and Remedies Code and one from outside these venue statutes, courts apply the provision stating that an action governed by any other statute prescribing mandatory venue must be brought in the county required by that statute.” (citing TEX. CIV. PRAC. & REM. CODE ANN. § 15.016)).

<sup>106</sup> *See infra* Part III.B.3 discussing a reasonable alternative interpretation.



#### 4. Rationale 4: The Statute With the Most “Longstanding” History Controls

Section 15.015 of the Texas Civil Practice and Remedies Code provides that “[a]n action against a county shall be brought in that county.”<sup>107</sup> When this mandatory-venue statute from within Chapter 15 of the Texas Civil Practice and Remedies Code conflicted with another mandatory-venue statute from outside of Chapter 15, the Court of Appeals for the Fourteenth District of Texas in Houston held that the mandatory venue provision in Section 15.015 will always prevail.<sup>108</sup>

In *In re Fort Bend County*, a man driving on the wrong side of the Westpark Tollway in Harris County collided head-on with the plaintiffs, who were driving the right way on the toll road, causing the plaintiffs’ child to suffer fatal injuries.<sup>109</sup> The plaintiffs, on behalf of their deceased child, brought a premises-defect claim in Harris County under the Texas Tort Claims Act against Fort Bend County, the Fort Bend County Toll Road Authority, Harris County, the Harris County Toll Road Authority, and the Texas Department of Transportation (TXDOT).<sup>110</sup> Though the defendant driver entered the toll road within Fort Bend County, he traveled more than eight miles on the toll road before the accident occurred in Harris County.<sup>111</sup> The plaintiffs asserted mandatory venue in Harris County under Section 101.102(a) of the Texas Civil Practice and Remedies Code, which requires that a suit under the Texas Tort Claims Act “be brought in state court in the county in which the cause of action or a part of the cause of action arises.”<sup>112</sup>

Predictably, Fort Bend County moved to transfer the claims to Fort Bend County under the mandatory venue provision in Section 15.015.<sup>113</sup>

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<sup>107</sup>TEX. CIV. PRAC. & REM. CODE ANN. § 15.015.

<sup>108</sup>*In re Fort Bend Cty.*, 278 S.W.3d 842, 843–45 (Tex. App.—Houston [14th Dist.] 2009, orig. proceeding) (holding that the mandatory venue provision in Section 15.015 controlled over the mandatory venue provision in Section 101.102 of the Texas Civil Practice and Remedies Code); see also *In re San Jacinto Cty.*, 416 S.W.3d 639, 642 (Tex. App.—Houston [14th Dist.] 2013, orig. proceeding) (per curiam) (holding that “when a county is sued, venue is mandatory in that county irrespective of any other venue statutes, whether mandatory or permissive”).

<sup>109</sup>*In re Fort Bend*, 278 S.W.3d at 843.

<sup>110</sup>*Id.*

<sup>111</sup>*Id.*

<sup>112</sup>*Id.* at 846 (citing TEX. CIV. PRAC. & REM. CODE ANN. § 101.102(a)).

<sup>113</sup>*Id.* at 843 (citing TEX. CIV. PRAC. & REM. CODE ANN. § 15.015, which requires an action against a county “to be brought in that county”).

The trial court denied Fort Bend County's motion to transfer because the court found that Section 101.102(a), a mandatory-venue statute located *outside* of Chapter 15, controlled over Section 15.015, which is located *within* Chapter 15.<sup>114</sup> Fort Bend County petitioned the court of appeals for a writ of mandamus to order transfer of the action to Fort Bend County, arguing that "there is no exception to Section 15.015, and that [Section 15.015] takes precedence over any other conflicting mandatory venue provision."<sup>115</sup>

The court of appeals issued the writ, finding that based on the "longstanding" history of Section 15.015 and its predecessors requiring a suit against a county to be filed in that county, Section 15.016 was not an exception to Section 15.015, and therefore, the mandatory venue provision in Section 15.015 controlled over Section 101.102.<sup>116</sup>

The *In re Fort Bend County* opinion appears to have elevated the mandatory-venue statute in Section 15.015 for suits against a county to the status of a "super-mandatory" venue statute, to which no exceptions apply, and which arguably would always trump any other mandatory-venue statute based solely on the "longstanding" history of Section 15.015.<sup>117</sup>

Four years later, the court confirmed in a subsequent opinion that this broad reading of the *In re Fort Bend County* holding was the court's

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<sup>114</sup> *See id.*

<sup>115</sup> *Id.* at 844.

<sup>116</sup> *See id.* at 844–45 (citing *Montague Cty. v. Meadows*, 31 S.W. 694, 694 (Tex. Civ. App. 1895—Fort Worth, writ ref'd) ("The first legislature of the state made it the law in Texas that all suits against a county shall be instituted in some court of competent jurisdiction within such county."); *City of Tahoka v. Jackson*, 276 S.W. 662, 663 (Tex. 1925) (holding that the predecessor to Section 15.015 "expressly exempts counties, which are public corporations created by law, from all other exceptions enumerated in the article"); *Hodges v. Coke Cty.*, 197 S.W.2d 886, 887 (Tex. Civ. App.—Amarillo 1946, no writ) (observing that "it was the intention of the Legislature to expressly exclude counties from the terms of the exceptions in the venue statutes and to fix venue in suits against a county exclusively under the provisions of [the predecessor statute to Section 15.015]"); *Glover v. Columbia Fort Bend Hosp.*, No. 06-01-00101-CV, 2002 WL 1430783, at \*4 (Tex. App.—Texarkana July 3, 2002, no pet.) (not designated for publication) (observing that, "in construing Section 15.015 and its statutory predecessors, appellate courts have uniformly held that, in enacting this venue provision, the Legislature intended that counties be exempt from exceptions to general venue rules and the exclusive venue for such suits against counties be in that county").

<sup>117</sup> *See In re Fort Bend*, 278 S.W.3d at 844–45 ("Texas courts have interpreted Section 15.015 as having no exception.").

intention,<sup>118</sup> holding that “when a county is sued, venue is mandatory in that county irrespective of any other venue statutes, whether mandatory or permissive.”<sup>119</sup>

A Texas practitioner could argue for a trial court to use this “longstanding” history approach to enforce other mandatory-venue statutes that, like Section 15.015, can be traced back to the first Texas Legislature.<sup>120</sup> The only other court that has directly resolved a conflict between Section 15.015 and another mandatory-venue statute by using this “longstanding” history approach is the Texarkana Court of Appeals in an unpublished opinion in 2002.<sup>121</sup> An analysis of these opinions is provided with the discussion of this rule in Part III.B.4.<sup>122</sup>

### 5. Rationale 5: The More-Specific, Later-Enacted Statute Controls

The Court of Appeals for the Fourteenth District in Houston does not always accord priority to the most longstanding mandatory-venue statute. The Fourteenth Court has also resolved a conflict between two mandatory-venue statutes by holding that the “more-specific, later-enacted statute of mandatory venue” controls over “the prior-enacted statute of mandatory

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<sup>118</sup> See *In re San Jacinto Cty.*, 416 S.W.3d 639, 641–42 (Tex. App.—Houston [14th Dist.] 2013, orig. proceeding) (stating that in *In re Fort Bend County*, “[t]his court concluded that there is no exception to Section 15.015” (citing *In re Fort Bend*, 278 S.W.3d at 844)).

<sup>119</sup> *In re San Jacinto*, 416 S.W.3d at 642.

<sup>120</sup> See, e.g., TEX. CIV. PRAC. & REM. CODE ANN. § 65.023 (West 2008) (providing for mandatory venue for suits seeking injunctive relief); see also *In re City of Dallas*, 977 S.W.2d 798, 803 (Tex. App.—Fort Worth 1998, orig. proceeding) (“The important right provided to a defendant under [Section 65.023] to defend a suit for permanent injunction in the county of the defendant’s domicile originated with our first state legislature in 1846, and it has been preserved since that time by all successive legislatures.” (citing Act approved May 13, 1846, 1st Leg. § 152, 1846 Tex. Gen. Laws 363, 406, reprinted in 2 H.P.N. GAMMEL, THE LAWS OF TEXAS 1838–1846, at 1669, 1812 (Austin, Gammel Book Co. 1898); TEX. REV. CIV. STAT. art. 2996 (West 1895); TEX. REV. CIV. STAT. ANN. art. 4656 (West 1952), repealed by Act of May 17, 1985, 69th Leg., R.S., ch. 959, § 9, 1985 TEX. GEN. LAWS 3242, 3322 (current version at TEX. CIV. PRAC. & REM. CODE ANN. § 65.023))).

<sup>121</sup> See *Glover*, 2002 WL 1430783, at \*4 (stating that although “[t]he normal rule followed [when there is a conflict between two mandatory venue provisions] is that the plaintiff’s choice prevails[] . . . in construing Section 15.015 and its statutory predecessors, appellate courts have uniformly held that, in enacting this venue provision, the Legislature intended that counties be exempt from exceptions to general venue rules and the exclusive venue for suits against counties be in that county.”).

<sup>122</sup> See *infra* Part III.B.4.

venue[.]”<sup>123</sup> In reaching this holding, the court explicitly disagreed with the “plaintiff’s choice prevails” approach to resolving conflicting mandatory-venue statutes, an approach that both the Beaumont and Corpus Christi Courts of Appeals have endorsed.<sup>124</sup>

In *In re Sosa*, both parties claimed that venue was governed by a mandatory venue provision that originated from outside of Chapter 15 of the Texas Civil Practice and Remedies Code.<sup>125</sup> The plaintiffs argued that Section 171.096(b) of the Texas Civil Practice and Remedies Code (relating to written arbitration agreements)<sup>126</sup> mandated that venue was proper in Harris County, where the plaintiffs had filed suit.<sup>127</sup> The defendants argued that Section 65.023(a) of the Texas Civil Practice and Remedies Code (relating to venue for injunctive relief)<sup>128</sup> mandated that venue was proper in Fort Bend County, where the defendants had moved to transfer venue.<sup>129</sup> After the trial court granted the defendants’ motion to transfer venue to Fort Bend County, the plaintiffs sought a writ of mandamus from the court of appeals that would order the trial court to vacate the transfer order.<sup>130</sup>

Granting the plaintiffs’ petition for the writ, the court of appeals stated that “[t]he question presented, where does venue lie if two mandatory venue

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<sup>123</sup>*In re Sosa*, 370 S.W.3d 79, 82 (Tex. App.—Houston [14th Dist.] 2012, orig. proceeding) (holding that because Section 171.096(b) of the Texas Civil Practice and Remedies Code was a “more-specific” and “later-enacted” mandatory-venue statute than Section 65.023(a) of that code, the Texas Legislature intended for 171.096(b) to control over Section 65.023(a) when the two statutes were in conflict).

<sup>124</sup>*See id.* at 81 (“The Beaumont and Corpus Christi courts of appeals have concluded that if two mandatory venue statutes conflict, then the plaintiff may lay venue under either statute. We disagree.” (citing *Marshall v. Mahaffey*, 974 S.W.2d 942, 947 (Tex. App.—Beaumont 1998, pet. denied); *In re Adan Volpe Props., Ltd.*, 306 S.W.3d 369, 375 (Tex. App.—Corpus Christi 2010, orig. proceeding); *In re Dole Food Co.*, 256 S.W.3d 851, 856 (Tex. App.—Beaumont 2008, orig. proceeding))).

<sup>125</sup>*In re Sosa*, 370 S.W.3d at 81.

<sup>126</sup>*See* TEX. CIV. PRAC. & REM. CODE ANN. § 171.096(b) (“If the agreement to arbitrate provides that the hearing before the arbitrators is to be held in a county in this state, a party *must* file the initial application with the clerk of the court of that county.” (emphasis added)).

<sup>127</sup>*See In re Sosa*, 370 S.W.3d at 81.

<sup>128</sup>*See* TEX. CIV. PRAC. & REM. CODE ANN. § 65.023(a) (“Except as provided by SubSection (b), a writ of injunction against a party who is a resident of this state *shall* be tried in a district or county court in the county in which the party is domiciled. If the writ is granted against more than one party, it may be tried in the proper court of the county in which either party is domiciled.” (emphasis added)).

<sup>129</sup>*See In re Sosa*, 370 S.W.3d at 81.

<sup>130</sup>*Id.* at 80.

statutes conflict and *neither* originates from Chapter 15 [of the Texas Civil Practice and Remedies Code], is one of first impression for this court.”<sup>131</sup> The court noted that this question had “also not been addressed by either the Supreme Court of Texas or our sister Houston court of appeals.”<sup>132</sup>

The court rejected the “plaintiff’s choice prevails” approach endorsed by other courts of appeals, on the basis that “[v]enue is a matter of statute” and no statute expressly states that “if there is a conflict between two statutes as to the mandatory venue, the plaintiff has a right to choose the county in which the Legislature mandated venue.”<sup>133</sup> Then, looking to the Texas Government Code<sup>134</sup> for guidance, the court stated:

If there is an actual or apparent conflict between two statutes as to whether mandatory venue of the case under review is in Harris County or Fort Bend County, Texas law requires us to resolve this conflict by statutory construction, rather than allowing the plaintiff to resolve this conflict by choice.<sup>135</sup>

Drawing on this reasoning, the court looked to the legislative history of the two mandatory-venue statutes at issue.<sup>136</sup> The court found that the Texas Legislature enacted Section 65.023(a) in 1985 to provide for venue in the county of the defendant’s domicile when injunctive relief is sought against a Texas resident.<sup>137</sup> In contrast, the court found that the Texas Legislature enacted Section 171.096 in 1997 to provide that a written arbitration agreement specifying the location of arbitration establishes the mandatory venue for enforcement of the arbitration agreement.<sup>138</sup> Based on the

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<sup>131</sup> *Id.* at 81 (emphasis added).

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> See TEX. GOV’T CODE ANN. § 311.026 (West 2015) (entitled “Special or Local Provision Prevails Over General and providing that: “(a) If a general provision conflicts with a special or local provision, the provisions shall be construed, if possible, so that effect is given to both. (b) If the conflict between the general provision and the special or local provision is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later enactment and the manifest intent is that the general provision prevail.”).

<sup>135</sup> See *In re Sosa*, 370 S.W.3d at 81–82.

<sup>136</sup> See *id.* at 82.

<sup>137</sup> See *id.* (citing Act of May 27, 1985, 69th Leg., R.S., ch. 959, § 1, 1985 Tex. Gen. Laws 3242, 3294) (codified at TEX. CIV. PRAC. & REM. CODE ANN. § 65.023 (West 2015)).

<sup>138</sup> See *id.* (citing Act of May 8, 1997, 75th Leg., R.S., ch. 195, § 5.01, 1997 Tex. Gen. Laws 327, 336) (codified at TEX. CIV. PRAC. & REM. CODE ANN. § 171.096).

legislative history of these statutes, the court found that the “Legislature, cognizant of the general mandatory venue rule as to injunctive relief, has expressly provided that this general rule does not apply under the facts of the case under review[,]” where the agreement to arbitrate specified “Houston, Texas” as the location for arbitration.<sup>139</sup> As such, the court held that because Section 171.096(b) was a “more-specific” and “later-enacted” mandatory-venue statute than Section 65.023(a), the Texas Legislature intended for Section 171.096(b) to control when the two statutes conflicted.<sup>140</sup>

Texas practitioners can argue that under *In re Sosa*, a court faced with two conflicting mandatory-venue statutes should use a “statutory construction” approach that looks to the legislative history of the statutes to imply that the Texas Legislature intended for the later-enacted mandatory-venue statute to control over the earlier-enacted statute.<sup>141</sup> This rationale is discussed in more depth in Part III.B.5.<sup>142</sup>

#### 6. Rationale 6: Harmonize Competing Statutes Through a Process of Elimination

While concurring in the judgment in *In re Fort Bend County* (mandating venue for suit against a county in that county, as discussed in the fifth rationale<sup>143</sup> above), current Texas Supreme Court Justice Eva M. Guzman reached the conclusion that venue for the plaintiffs’ claims was mandatory in Fort Bend County “for different reasons.”<sup>144</sup>

Justice Guzman characterized Section 101.102(a) of the Texas Civil Practice and Remedies Code as containing “both mandatory and permissive aspects.”<sup>145</sup> Justice Guzman reasoned that Section 101.102(a) “is mandatory in that it defines the [limited] set of possible venues, but it is permissive in that it does not differentiate among the members of that set, but leaves that

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<sup>139</sup> *See id.*

<sup>140</sup> *See id.*

<sup>141</sup> *See id.*

<sup>142</sup> *See infra* Part III.B.5.

<sup>143</sup> *See supra* Part III.A.5

<sup>144</sup> *See In re Fort Bend Cty.*, 278 S.W.3d 842, 845 (Tex. App.—Houston [14th Dist.] 2009, orig. proceeding) (Guzman, J., concurring).

<sup>145</sup> *See id.* at 848 (citing TEX. CIV. PRAC. & REM. CODE ANN. § 101.102(a) (West 2015)). Section 101.102(a) provides that “[a] suit under [the Texas Tort Claims Act] shall be brought in state court in the county in which the cause of action or a part of the cause of action arises.” TEX. CIV. PRAC. & REM. CODE ANN. § 101.102(a).

selection to the plaintiff.”<sup>146</sup> Viewed in this light, because parts of the plaintiffs’ cause of action arose in both Harris County and Fort Bend County, Justice Guzman found that “[t]he mandatory aspect of Section 101.102(a) is satisfied if the suit is prosecuted in Harris County *or* Fort Bend County, but as between these alternatives, venue is permissive under Section 101.102(a) because neither alternative is mandated by the statute.”<sup>147</sup> Then, when Section 15.015 is added into the equation, the list of potential mandatory venues is narrowed even further because the “set of possible venues that would fulfill the requirements of Section 15.015 consists of a single member: venue of a plaintiff’s claims against a county is mandatory in that county.”<sup>148</sup> Through a process of elimination, Justice Guzman concluded that if Section 101.102(a) effectively eliminated all counties other than Harris and Fort Bend, then Section 15.015 further eliminated all counties other than Fort Bend, and therefore, Fort Bend County was the only county of “proper venue” under the venue statutes.<sup>149</sup> As such, Justice Guzman concluded that there actually was no conflict between Sections 15.015 and 101.102(a) because transferring venue to Fort Bend County would harmonize and fulfill the mandatory requirements of both statutes.<sup>150</sup>

In a footnote, Justice Guzman identified two other reasons that her opinion differed from the majority opinion, where Justice Guzman stated that the “majority’s summary of the legislative history of Section 15.015’s predecessor . . . is both unnecessary and unhelpful” and that “the majority’s conclusion in dicta that Section 15.016 is not an exception to Section 15.015” was “unnecessary to resolve any issue properly before this court[.]”<sup>151</sup>

While the majority of the court did not apply this process of elimination approach to resolving conflicting mandatory-venue statutes, Texas practitioners could potentially rely on Justice Guzman’s concurring opinion to advocate for a Texas court to use this approach in resolving conflicting mandatory-venue statutes. Practically, Justice Guzman’s approach would satisfy what courts have recognized as the goal of statutory construction: to

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<sup>146</sup> *In re Fort Bend*, 278 S.W.3d at 848 (Guzman, J., concurring).

<sup>147</sup> *Id.*

<sup>148</sup> *Id.* (citing TEX. CIV. PRAC. & REM. CODE ANN. § 15.015).

<sup>149</sup> *Id.* (citing TEX. CIV. PRAC. & REM. CODE ANN. § 15.001(b) (defining “proper venue”).

<sup>150</sup> *Id.*

<sup>151</sup> *Id.* at 848 n.3 (Guzman, J., concurring).

give effect to both statutes apparently in conflict.<sup>152</sup> Several mandatory-venue statutes in Texas include the “permissive aspects” that Justice Guzman discussed in the context of Section 101.102(a).<sup>153</sup> As such, a defendant might advocate for application of this process of elimination approach when venue would be proper in a different county (other than the county in which suit was filed) under a separate mandatory-venue statute, but the plaintiff chose to file suit in a county pursuant to a mandatory-venue statute that had a “permissive aspect” (allowing venue to be asserted in one of numerous counties including the county mandated by the separate venue statute).

### 7. Rationale 7: Prioritize a Pre-Suit Agreement When Mandated by Statute

Because of the ever-increasing use of various pre-suit agreements in commerce today, Texas practitioners are likely to encounter scenarios where a pre-suit venue-selection agreement purports to control the question of venue.<sup>154</sup> Historically, the general rule applicable when a venue-selection agreement conflicts with a mandatory-venue statute has been straightforward: “Texas law prohibits parties from contracting away mandatory venue.”<sup>155</sup> However, the Texas Legislature has altered this general rule by enactment of statutes applicable in specific circumstances, such as Section 15.020 of the Texas Civil Practice and Remedies Code

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<sup>152</sup>See *In re Sosa*, 370 S.W.3d 79, 81 (Tex. App.—Houston [14th Dist.] 2012, orig. proceeding) (“If a suit is governed by two mandatory venue provisions that appear to conflict, under both common law and statute, we should strive, if possible, to give effect to both statutes.” (citing TEX. GOV. CODE ANN. § 311.026(a) (West 2005))).

<sup>153</sup>See, e.g., TEX. CIV. PRAC. & REM. CODE ANN. § 15.017 (providing that a suit for defamation “shall be brought and can only be maintained in the county in which the plaintiff resided at the time of the accrual of the cause of action, or in the county in which the defendant resided at the time of filing suit, or in the county of the residence of defendants, or any of them, or the domicile of any corporate defendant, at the election of the plaintiff.”).

<sup>154</sup>See, e.g., *In re Tex. Ass’n of Sch. Bds., Inc.*, 169 S.W.3d 653, 655–56, 660 (Tex. 2005) (orig. proceeding) (holding that a venue-selection clause in the parties’ agreement, which provided that “[t]his agreement shall be governed and construed in accordance with the laws of the State of Texas, and venue shall lie in Travis County, Texas, unless otherwise mandated by law[.]” was unenforceable).

<sup>155</sup>*In re Great Lakes Dredge & Dock Co.*, 251 S.W.3d 68, 79 (Tex. App.—Corpus Christi 2008, orig. proceeding).



allowing pre-suit selection of venue in “major transactions.”<sup>156</sup> As a result, the general rule is now more aptly stated as follows: “venue-selection clauses are generally unenforceable in Texas unless the contract evinces a ‘major transaction’ as defined in the venue rules,”<sup>157</sup> or the venue-selection clause is expressly made enforceable by another statute.<sup>158</sup>

The “major transaction” statute is found within Subchapter B of Chapter 15 of the Texas Civil Practice and Remedies Code, the mandatory venue subchapter.<sup>159</sup> The statute generally provides that parties may select where venue will lie for actions arising from a “major transaction.”<sup>160</sup> The language of the statute determines whether a contract that includes a venue-selection clause evinces a major transaction, so Texas practitioners should familiarize themselves with the language of Section 15.020 and Texas courts’ interpretations of the statute.<sup>161</sup>

The Texas Supreme Court has recently acknowledged the elevated status of a pre-suit venue agreement meeting the “major transaction” specifications of Section 15.020. In *In re Fisher*, the court resolved a conflict between the mandatory venue provisions in Sections 15.020<sup>162</sup> and 15.017<sup>163</sup> of the Texas Civil Practice and Remedies Code.<sup>164</sup> The plaintiff

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<sup>156</sup> See TEX. CIV. PRAC. & REM. CODE ANN. § 15.020 (titled “Major Transactions: Specification of Venue by Agreement”); see also *infra* Appendix at A.12 (thoroughly analyzing Section 15.020).

<sup>157</sup> *Hiles v. Arnie & Co.*, 402 S.W.3d 820, 828 (Tex. App.—Houston [14th Dist.] 2013, pet. denied) (citing TEX. CIV. PRAC. & REM. CODE ANN. § 15.020; *In re Tex. Ass’n of Sch. Bds.*, 169 S.W.3d at 660; *Yarber v. Iglehart*, 264 S.W.2d 474, 476 (Tex. Civ. App.—Dallas 1953, no writ)); see also *In re Grp. 1 Realty, Inc.*, 441 S.W.3d 469, 472 (Tex. App.—El Paso 2014, orig. proceeding) (“Although the fixing of venue by contract is generally invalid, Section 15.020 creates a limited exception in cases involving ‘major transactions.’” (citing *In re Great Lakes*, 251 S.W.3d at 76)); *Shamoun & Norman, LLP v. Yarto Int’l Grp., LP*, 398 S.W.3d 272, 293 (Tex. App.—Corpus Christi 2012, pet. dism’d) (“In general, the fixing of venue by contract is invalid.”).

<sup>158</sup> See, e.g. *In re Sosa*, 370 S.W.3d 79, 82 (Tex. App.—Houston [14th Dist.] 2012, orig. proceeding) (holding pursuant to Section 171.096(b) of the Texas Civil Practice and Remedies Code that a pre-suit arbitration agreement specifying the county of venue for an arbitration hearing took priority as a “more-specific” and “later-enacted” mandatory-venue statute than Section 65.023(a) of that code); see *supra* Rationale 4 in Part III.A.4.

<sup>159</sup> See TEX. CIV. PRAC. & REM. CODE ANN. § 15.020.

<sup>160</sup> See *id.*

<sup>161</sup> See *infra* Appendix at A.12 for a thorough discussion of Section 15.020 of the Texas Civil Practice and Remedies Code.

<sup>162</sup> TEX. CIV. PRAC. & REM. CODE ANN. § 15.020 (titled “Major Transactions: Specification of Venue by Agreement”).

<sup>163</sup> *Id.* § 15.017 (titled “Libel, Slander, or Invasion of Privacy”).

argued that he had properly established mandatory venue in Wise County, the county where the plaintiff resided at the time his cause of action accrued, under Section 15.017.<sup>165</sup> The defendants moved to transfer venue to Tarrant County under the mandatory venue provisions in Section 15.020 based on the venue-selection clause contained in an agreement that the parties signed prior to any litigation.<sup>166</sup> After the trial court denied the defendants' motion to transfer and the court of appeals denied mandamus relief, the defendants sought mandamus relief from the Texas Supreme Court.<sup>167</sup>

The Court granted the writ, finding that the trial court abused its discretion by failing to enforce the venue selection clauses in the parties' acquisition documents, despite the plaintiff's reliance on the mandatory-venue statute in Section 15.017.<sup>168</sup> After thoroughly analyzing the parameters of the "major transaction" mandatory-venue statute,<sup>169</sup> the Court concluded the "major transaction" statute applied to the action.<sup>170</sup> To resolve the conflict between the mandatory venue provisions in Sections 15.017 and 15.020, the court stated that "in this case, the language of

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<sup>164</sup> See *In re Fisher*, 433 S.W.3d 523, 533–34 (Tex. 2014) (orig. proceeding).

<sup>165</sup> See *id.* at 533 (citing TEX. CIV. PRAC. & REM. CODE ANN. § 15.017).

<sup>166</sup> See *id.* at 525, 529. There were three primary agreements regarding the transaction at issue in *Fisher*: (1) a Stock Purchase Agreement; (2) an agreement for the purchase of the goodwill of the plaintiff's corporation (the Goodwill Agreement); and (3) a Promissory Note. *Id.* at 525. Each contained a clause naming Tarrant County as the venue for state court actions. *Id.* The Court placed the most emphasis on the Goodwill Agreement, which included the following provision:

*Jurisdiction; Service of Process.* Any proceeding arising out of or relating to this Agreement may be brought in the courts of the State of Texas, Tarrant County, or if it has or can acquire jurisdiction, in the United States District Court for the Northern District of Texas, and each of the parties irrevocably submits to the non-exclusive jurisdiction of each such court in any such proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the proceeding may be heard and determined in any such court and agrees not to bring any proceeding arising out of or relating to this Agreement in any other court.

*Id.* at 525–26.

<sup>167</sup> *Id.* at 525, 527.

<sup>168</sup> See *id.* at 525, 533–34.

<sup>169</sup> See *id.* at 528–533; see also *infra* Appendix at A.12(c) (discussing the court's interpretation of Section 15.020).

<sup>170</sup> See *In re Fisher*, 433 S.W.3d. at 528–533; see also *id.* at 533 ("We have already concluded that Section 15.020 applies, mandating that [the plaintiff's] actions must be brought in Tarrant County.") .

Section 15.020 applies to an action arising from a major transaction “[n]otwithstanding any other provision of this title.”<sup>171</sup> The Court held this language indicated that the Texas “Legislature intended for it to control over other mandatory venue provisions.”<sup>172</sup>

The limitations of this argument are discussed below in Part III.B.7.<sup>173</sup>

### *B. Scrutinizing the Various Approaches*

As demonstrated, Texas courts have differed considerably in their approaches to resolving a conflict between competing mandatory-venue statutes. Part III.A is designed to assist Texas practitioners in identifying these different approaches and understanding how to advocate for a trial court to utilize the respective approach that will most benefit a client. Part III.B, conversely, scrutinizes each of these various approaches, to equip Texas practitioners in advocating *against* a trial court’s utilization of a particular approach.

#### 1. Countering Rationale 1 That Venue Should Be Determined Based on the Principal Relief Sought

To oppose a trial court’s application of the “principal relief sought” approach, practitioners can argue that the Texas Supreme Court’s holding in *Brown v. Gulf Television Company* is limited.<sup>174</sup>

As discussed in Part III.A.1 above, *Brown* involved the mandatory-venue statute regarding suits seeking injunctive relief.<sup>175</sup> The *Brown* Court stated, “Where the venue depends on the nature of the suit, such venue is ordinarily determined by the nature of the principal right asserted and the relief sought for the breach thereof.”<sup>176</sup> Accordingly, for the injunctive-relief, mandatory-venue statute to apply at all, the plaintiff’s petition had to “disclose that the issuance of a perpetual injunction [was] the primary and

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<sup>171</sup> *Id.* at 533–34 (quoting TEX. CIV. PRAC. & REM. CODE ANN. § 15.020(c) (West 2015)).

<sup>172</sup> *Id.* at 534 (citing *Molinet v. Kimbrell*, 356 S.W.3d 407, 413–14 (Tex. 2011) (holding that the phrase “notwithstanding any other law” indicates a legislative intent that the provision prevail over conflicting law)).

<sup>173</sup> See *infra* Part III.B.7 evaluating this approach to resolving a conflict between mandatory-venue statutes.

<sup>174</sup> See 306 S.W.2d 706, 708 (Tex. 1957).

<sup>175</sup> *Id.*

<sup>176</sup> See *id.* (internal citations and quotations omitted).

principal relief sought.”<sup>177</sup> If the issuance of an injunction were merely ancillary to the plaintiff’s suit, then the injunction venue statute would not even apply.<sup>178</sup> On this basis, the Texas Supreme Court found that the two mandatory-venue statutes at issue were not actually in conflict.<sup>179</sup>

Practitioners can argue that Texas courts have *not* applied the “primary relief sought” approach to resolve *conflicts* between two mandatory-venue statutes; instead, courts have consistently applied the “primary relief sought” approach to resolve the predicate question of whether the mandatory-venue statute for suits seeking injunctive relief<sup>180</sup> actually applies to the suit at all.<sup>181</sup> As one court of appeals explained, “where the main purpose of suit is for something other than injunctive relief and the injunction is ‘ancillary, incidental, or adjunctive,’ Section 65.023(a) [the mandatory-venue statute for suits seeking injunctive relief] does not apply.”<sup>182</sup> Therefore, Texas practitioners have support for the argument that the “primary relief sought” approach should be limited to evaluating the predicate question of whether the mandatory-venue statute for suits

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<sup>177</sup> *Id.*

<sup>178</sup> *See id.* (“Whenever it can properly be said from the pleadings that the issuance of an injunction is merely ancillary to a judgment awarding a recovery of lands or quieting title thereto, [the mandatory venue provision regarding suits involving land] has application. . . . On the other hand where the petition discloses that the issuance of a perpetual injunction is the primary and principal relief sought, the special venue provisions [of the mandatory-venue statute regarding suits seeking injunctive relief] control.”) (internal citations omitted).

<sup>179</sup> *See id.* (finding that the two mandatory-venue statutes at issue “need not be and have not been construed as conflicting”).

<sup>180</sup> *See* TEX. CIV. PRAC. & REM. CODE ANN. § 65.023 (West 2002).

<sup>181</sup> *See, e.g., In re Cont’l Airlines, Inc.*, 988 S.W.2d 733, 736–37 (Tex. 1998) (orig. proceeding) (trial court does not abuse its discretion in refusing to apply mandatory venue provision in Section 65.023 of the Texas Civil Practice and Remedies Code when plaintiffs seek primary relief by declaratory judgment); *Ex parte Coffee*, 328 S.W.2d 283, 287 (Tex. 1959) (orig. proceeding) (“It is settled that [former Revised Civil Statute] Art. 4656 only applies to and governs the issuance and return of writs and trial in cases in which the relief sought is purely or primarily injunctive.”); *In re Hardwick*, 426 S.W.3d 151, 162–63 (Tex. App.—Houston [1st Dist.] 2012, orig. proceeding) (finding that because the suit qualified as a suit to recover real property interests and did not purely or primarily seek injunctive relief, the mandatory venue provisions in Section 15.011 of the Texas Civil Practice and Remedies Code controlled over Section 65.023); *In re Adan Volpe Props., Ltd.*, 306 S.W.3d 369, 374–75 (Tex. App.—Corpus Christi 2010, orig. proceeding); *In re Dole Food Co.*, 256 S.W.3d 851, 854 (Tex. App.—Beaumont 2008, orig. proceeding); *In re City of Dallas*, 977 S.W.2d 798, 806 (Tex. App.—Fort Worth 1998, orig. proceeding).

<sup>182</sup> *In re Adan*, 306 S.W.3d at 375.

involving injunctive relief even applies at all, and the statute should not apply to the question of how to resolve a conflict between two mandatory-venue statutes.<sup>183</sup> In sum, this rationale can be characterized as an effort to avoid a conflict between mandatory-venue statutes (by potentially eliminating from the case the applicability of the statute establishing mandatory venue for injunctive relief), rather than as a basis to choose between conflicting mandatory-venue statutes.<sup>184</sup>

Discussion of the “primary relief sought” in the context of mandatory venue has almost always arisen in cases in which one of the mandatory-venue statutes in question was arguably applicable because of a claim for injunctive relief.<sup>185</sup> On rare occasions, a court has applied a “primary relief sought” rationale to determine whether a different mandatory-venue statute (other than for injunctive relief) is applicable,<sup>186</sup> or to decide between competing mandatory-venue statutes when neither statute related to a claim for injunctive relief,<sup>187</sup> but the rarity of these applications actually serves to reinforce the notion that the “primary relief sought” rationale is generally limited to determining whether Section 65.023(a) [the mandatory-venue

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<sup>183</sup> See, e.g., *In re City of Dallas*, 977 S.W.2d at 803–06 (holding that because the City of Fort Worth’s pleadings plainly showed that the City of Fort Worth was seeking a declaratory judgment that the City of Dallas and Dallas Love Field Airport remained restricted by a previously entered agreement and the issuance of a permanent injunction would only be necessary if a party contravened the trial court’s decision regarding the declaratory judgment, the primary relief sought in the City of Fort Worth’s suit was a declaratory judgment and Section 65.023 did not apply (citing *Renwar Oil Corp. v. Lancaster*, 276 S.W.2d 774, 775 (Tex. 1955))); see also *In re Adan*, 306 S.W.3d at 375, 377 (stating that although the mandatory-venue statute for suits seeking injunctive relief, found in Section 65.023, would normally prevail over the mandatory-venue statute in Section 15.017 for defamation suits based on application of Section 15.016, in this case Section 65.023 had no application and there was no conflict to resolve because the relief sought was not “purely or primarily injunctive”).

<sup>184</sup> See *Brown*, 306 S.W.2d at 708 (finding that the two mandatory-venue statutes at issue “need not be and have not been construed as conflicting”).

<sup>185</sup> See *In re City of Dallas*, 977 S.W.2d at 803; *In re Adan*, 306 S.W.3d at 375; *In re Conti’l Airlines*, 988 S.W.2d at 736.

<sup>186</sup> See *Siba v. Bowers*, 756 S.W.2d 835, 840 (Tex. App.—Corpus Christi 1988, no writ) (the “primary relief sought” was declaratory in nature because the suit primarily sought the construction of a will, and therefore, the mandatory venue rule for suits affecting land did not apply); *Scarth v. First Bank & Tr. Co.*, 711 S.W.2d 140, 141, 143 (Tex. App.—Amarillo 1986, no writ) (suit to fix or foreclose a lien was not “primarily” to recover land or damages thereto, and therefore, the statutory predecessor to Section 15.011 did not apply to compel mandatory venue).

<sup>187</sup> See *In re Brown*, No. 01-98-00819-CV, 1998 WL 880893, at \*7 (Tex. App.—Houston [1st Dist.] Dec. 16, 1998, no pet.) (not designated for publication) (evaluating the “primary relief sought” to decide which of two mandatory-venue statutes to apply).

statute for suits seeking injunctive relief] even raises a mandatory-venue conflict.

When a court does find, however, that the primary relief sought is injunctive, and therefore that the mandatory-venue statute for injunctions applies and poses a conflict with another mandatory-venue statute, many Texas courts have then resolved the conflict between the two statutes in favor of Section 65.023 by applying Section 15.016 of the Texas Civil Practice and Remedies Code (to give priority to mandatory-venue statutes outside of Chapter 15), rather than simply resolving the issue by deciding which of the plaintiff's claims is the "primary" claim.<sup>188</sup> This method of resolving the conflict raises two considerations.

First, the realization that Texas courts have resorted to a basis for resolving the conflict other than by simply relying on a determination of the "primary relief" suggests a judicial recognition that deciding the "primary relief" constitutes a poor tie-breaker. This realization is supported by common sense. It is often extremely difficult and speculative for a court to decide from a plaintiff's initial pleadings which claim (amidst multiple claims and causes of action) constitutes the primary claim for relief.

Second, since Texas courts have routinely limited the "primary relief sought" approach to the predicate question of whether Section 65.023 applies, Texas practitioners seeking to oppose a finding of mandatory venue under Section 65.023 must also prepare to argue against the application of Section 15.016 as well. That topic is discussed below in Part III.B.3.

## 2. Countering Rationale 2 That Plaintiff's Choice Prevails

Clearly the "plaintiff's choice prevails" approach does not work in all instances. The Texas Supreme Court has recently provided an example of a mandatory-venue statute asserted by the defendants prevailing over the plaintiff's assertion of a competing mandatory-venue statute.<sup>189</sup> The Court acknowledged, "Venue may be proper in multiple counties under

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<sup>188</sup> See, e.g., *In re Dole Food Co.*, 256 S.W.3d 851, 855–56 (Tex. App.—Beaumont 2008, orig. proceeding) (holding that where injunctive relief was "not merely ancillary but comprise[d] the primary relief sought[,] application of Section 15.016 required that "the separate mandatory venue provision for injunction suits prevails over the venue provision found in Section 15.017"); see also *supra* Part III.A.3 and *infra* Part III.B.3.

<sup>189</sup> See *In re Fisher*, 433 S.W.3d 523, 533–34 (Tex. 2014) (orig. proceeding) (finding that the language of Section 15.020(c) indicated "that the Legislature intended for it to control over other mandatory venue provisions." (citing TEX. CIV. PRAC. & REM. CODE ANN. § 15.020(c) (West 2002))).

mandatory venue rules, and the plaintiff is generally afforded the right to choose venue when suit is filed.”<sup>190</sup> Nevertheless, despite this stated general rule, the Court determined that the defendants’ assertion of venue pursuant to Texas Civil Practice and Remedies Code § 15.020 prevailed over the plaintiff’s assertion of Section 15.017.<sup>191</sup> The question then arises: Under what circumstances is the plaintiff’s assertion of mandatory venue controlling simply based on the rationale that the “plaintiff’s choice prevails”?

For a practitioner seeking to oppose application of the “plaintiff’s choice prevails” approach, the best argument will often depend upon demonstrating an express legislative intent for the defendant’s choice of venue statute to prevail over the plaintiff’s chosen statute. For example, in the recent *Fisher* opinion,<sup>192</sup> the Texas Supreme Court relied upon the phrase “[n]otwithstanding any other provision of this title” in Texas Civil Practice and Remedies Code § 15.020 to prioritize that statute over the plaintiff’s mandatory-venue choice.<sup>193</sup> In many cases, this argument of legislative intent will depend on where the two conflicting, mandatory-venue statutes are located, based upon language found in Texas Civil Practice and Remedies Code § 15.016.

In *Marshall v. Mahaffey*, the Beaumont Court of Appeals faced a conflict between Sections 15.011 and 15.017 of the Texas Civil Practice and Remedies Code.<sup>194</sup> Both of these statutes are located *within* Subchapter B of Chapter 15 of the Texas Civil Practice and Remedies Code.<sup>195</sup> The court found that “where there is a conflict between two mandatory venue provisions, the general scheme of the venue statute is that the plaintiffs may choose between two *proper* venues.”<sup>196</sup> Nevertheless, the Court of Appeals for the Fourteenth District in Houston has rejected the “plaintiff’s choice prevails” approach to resolving conflicting mandatory-venue statutes in at least three separate opinions.<sup>197</sup> Upon closer reading of these opinions, it is

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<sup>190</sup> *Id.* at 533.

<sup>191</sup> *Id.*

<sup>192</sup> *Id.* at 534.

<sup>193</sup> *See id.* at 533-34.

<sup>194</sup> 974 S.W.2d 942, 946-47 (Tex. App.—Beaumont 1998, pet. denied).

<sup>195</sup> *See* TEX. CIV. PRAC. & REM. CODE ANN. §§ 15.011, 15.017 (West 2002).

<sup>196</sup> *Marshall*, 974 S.W.2d at 947 (internal citations and quotations omitted).

<sup>197</sup> *See In re San Jacinto Cty.*, 416 S.W.3d 639, 642 (Tex. App.—Houston [14th Dist.] 2013, orig. proceeding); *In re Sosa*, 370 S.W.3d 79, 81 (Tex. App.—Houston [14th Dist.] 2012, orig.

apparent that the location of the conflicting, mandatory-venue statutes carried significant weight in the analyses.<sup>198</sup>

When one of the mandatory-venue statutes at issue originates from *outside* of Chapter 15 and the other statute at issue originates from *within* Chapter 15, various courts of appeals have accepted the argument that Section 15.016 mandates application of the statute originating from *outside* of Chapter 15 over the plaintiff's choice.<sup>199</sup> Based on the language of Section 15.016 ("An action governed by any other statute prescribing mandatory venue shall be brought in the county required by that statute[]"), if the plaintiff chose to file suit in the county specified by a statute within Chapter 15, the opponent can argue that the plaintiff's choice should yield to the county specified by a mandatory-venue statute located outside of Chapter 15, based on courts' interpretation of Section 15.016.<sup>200</sup>

What if the mandatory statutes asserted by the plaintiff and the defendant *both* originate *outside* of Chapter 15? The *In re Sosa* Court faced

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proceeding); *In re Fort Bend Cty.*, 278 S.W.3d 842, 844–45 (Tex. App.—Houston [14th Dist.] 2009, orig. proceeding).

<sup>198</sup> See, e.g., *In re Sosa*, 370 S.W.3d at 81 ("In this case, both parties claim venue is governed by a mandatory venue provision that originates from outside Chapter 15. The question presented, where does venue lie if two mandatory venue statutes conflict and neither originates from Chapter 15, is one of first impression for this court. It has also not been addressed by either the Supreme Court of Texas or our sister Houston court of appeals.").

<sup>199</sup> See, e.g., *In re Hannah*, 431 S.W.3d 801, 807 (Tex. App.—Houston [14th Dist.] 2014, orig. proceeding) (per curiam) (stating that "[a]s relator relies on a mandatory venue provision within Chapter 15 of the Texas Civil Practice and Remedies Code in support of venue in Harris County, we begin our analysis with the Texas Estates Code because, in the event any mandatory jurisdiction or venue provision in the Estates Code applies to the underlying suit, such provision would control." (internal citations omitted)); *In re Wheeler*, 441 S.W.3d 430, 434 (Tex. App.—Waco 2014, orig. proceeding) (holding that Section 115.002 of the Texas Property Code prevailed over Section 15.011 of the Texas Civil Practice and Remedies Code); *In re J.P. Morgan Chase Bank, N.A.*, 373 S.W.3d 610, 613–14 (Tex. App.—San Antonio 2012, orig. proceeding) (holding that Section 115.002 of the Texas Property Code prevailed over Section 15.011); *In re Adan Volpe Props., Ltd.*, 306 S.W.3d 369, 375 (Tex. App.—Corpus Christi 2010, orig. proceeding) (holding that § 65.023 of the Texas Civil Practice and Remedies Code, providing for mandatory venue in injunction suits and located *outside* of Chapter 15, prevailed over Section 15.017); *In re Dole Food Co.*, 256 S.W.3d 851, 856 (Tex. App.—Beaumont 2008, orig. proceeding) (holding that Section 65.023 prevailed over Section 15.017); see also *In re Sosa*, 370 S.W.3d at 81 (stating in dicta "If a suit is governed by a mandatory venue provision outside of Chapter 15, that suit must be brought in the county required by that mandatory venue provision." (citing TEX. CIV. PRAC. & REM. CODE ANN. § 15.016)).

<sup>200</sup> See TEX. CIV. PRAC. & REM. CODE ANN. § 15.016; see also *supra* note 199 and cases cited therein.



this dilemma.<sup>201</sup> Rather than simply allowing the plaintiff's choice to prevail because Section 15.016 provided no basis for deciding between the statutes, the court decided to resolve the priority of the two conflicting statutes through further statutory construction and a review of the legislative history of the two statutes.<sup>202</sup>

When both conflicting mandatory-venue statutes at issue originate from within Chapter 15, the practitioner seeking to oppose the application of the "plaintiff's choice prevails" approach could attempt to persuade the court to draw upon the *In re Sosa* Court's reasoning for rejecting that approach.<sup>203</sup> In the *In re Sosa* opinion, the court explicitly stated, "The Beaumont and Corpus Christi courts of appeals have concluded that if two mandatory venue statutes conflict, then the plaintiff may lay venue under either statute. We disagree."<sup>204</sup> In circumstances where statutory construction could be utilized to prioritize one venue statute over another, the court stated its reasoning for disagreeing with the "plaintiff choice prevails" approach as follows:

Venue is a matter of statute. There is no venue statute providing that, if there is a conflict between two statutes as to the mandatory venue, the plaintiff has a right to choose the county in which the Legislature mandated venue. If there is an actual or apparent conflict between two statutes as to whether mandatory venue of the case under review is in Harris County or Fort Bend County, Texas law requires us to resolve this conflict by statutory construction, rather than allowing the plaintiff to resolve this conflict by choice.<sup>205</sup>

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<sup>201</sup> *In re Sosa*, 370 S.W.3d at 81 (referring to Sections 171.096(b) and 65.023(a) of the Texas Civil Practice and Remedies Code).

<sup>202</sup> *See id.*

<sup>203</sup> *See id.*

<sup>204</sup> *Id.* (citing *Marshall v. Mahaffey*, 974 S.W.2d 942, 947 (Tex. App.—Beaumont 1998, pet. denied); *In re Adan*, 306 S.W.3d at 375; *In re Dole Food*, 256 S.W.3d at 856)).

<sup>205</sup> *Id.* at 81. In a footnote, the court stated that:

Of course, the plaintiff may choose between two or more counties if there are several counties of *permissive* venue and no county of *mandatory* venue. Likewise, a single mandatory venue statute may mandate venue in one of several counties, and in that case, the Legislature has also decided that the plaintiff may choose from the indicated counties.

On occasion, courts have relied upon a longstanding and accepted prioritization of a mandatory-venue statute rather than upon express legislative language as a justification for overriding the plaintiff's choice.<sup>206</sup> If the plaintiff chose to rely upon a mandatory-venue statute that conflicted with Section 15.015 of the Texas Civil Practice and Remedies Code, which provides for mandatory venue in suits against counties, the practitioner could oppose application of the "plaintiff's choice prevails" approach by attempting to persuade the court that "there is no exception to Section 15.015."<sup>207</sup>

### 3. Countering Rationale 3 That Mandatory-Venue Statutes Located *Outside* of Chapter 15 Prevail Over Those Located *Within* Chapter 15

As indicated, many courts have interpreted Section 15.016 of the Texas Civil Practice and Remedies Code to require that a mandatory-venue statute located outside of Chapter 15 of that code should control over a mandatory-venue statute located within Chapter 15.<sup>208</sup> Because a number of courts have used this approach, a practitioner seeking to oppose this approach to resolving a conflict between two such mandatory-venue statutes appears to face an uphill battle. However, the battle is not necessarily insurmountable because there appears to be an alternative, reasonable construction of the text in Section 15.016.<sup>209</sup>

In statutory interpretation, it is well-settled that when there is more than one reasonable interpretation of a statute, there is an ambiguity.<sup>210</sup> Section 15.016 provides that "[a]n action governed by any other statute prescribing mandatory venue shall be brought in the county required by that statute."<sup>211</sup> Courts have read the language of this statute to require that mandatory venue provisions outside of Chapter 15 of the Texas Civil Practice and

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*Id.* at 81 n.1.

<sup>206</sup> See *In re San Jacinto Cty.*, 416 S.W.3d 639, 642 (Tex. App.—Houston [14th Dist.] 2013, orig. proceeding) (citing *In re Fort Bend Cty.*, 278 S.W.3d 842, 844 (Tex. App.—Houston [14th Dist.] 2009, orig. proceeding)).

<sup>207</sup> *Id.* at 641–642; see also *supra* Part III.A.4.

<sup>208</sup> See *supra* note 199 and cases cited therein.

<sup>209</sup> See TEX. CIV. PRAC. & REM. CODE ANN. § 15.016 (West 2002).

<sup>210</sup> See, e.g., *Entergy Gulf States, Inc. v. Summers*, 282 S.W.3d 433, 446 (Tex. 2009) (Hecht, J., concurring) ("But when language is subject to more than one reasonable interpretation, it is ambiguous. That is the plain meaning of ambiguous.").

<sup>211</sup> TEX. CIV. PRAC. & REM. CODE ANN. § 15.016.

Remedies Code should prevail over mandatory venue provisions located within Chapter 15.<sup>212</sup> However, the language in Section 15.016 does not include any comparative words.<sup>213</sup> The statute does not explicitly provide, for example, that in the event of a conflict between two mandatory-venue statutes, a mandatory-venue statute originating from outside Chapter 15 should control over a mandatory-venue statute originating from within Chapter 15.<sup>214</sup> Rather, the plain language of the statute simply states, “venue shall be brought in the county required by that statute.”<sup>215</sup>

It is certainly possible that by enacting Section 15.016, the Texas Legislature merely intended to state that venue statutes originating from outside of Chapter 15<sup>216</sup> should be treated in the same manner as those within Chapter 15 and also receive mandatory treatment according to their use of language such as “shall” or “must.”<sup>217</sup> The Texas Supreme Court has recognized that “[w]hen considering venue, we have noted that the Legislature’s use of the word ‘shall’ in a statute generally indicates the mandatory character of the provision.”<sup>218</sup> One reasonable interpretation of

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<sup>212</sup> See, e.g., *In re Wheeler*, 441 S.W.3d 430, 434 (Tex. App.—Waco 2014, orig. proceeding) (“Section 115.002 of the Texas Property Code is a mandatory-venue provision. As such, Section 15.016 of the Texas Civil Practice and Remedies Code requires that the mandatory-venue provisions in Section 115.002 of the Texas Property Code prevail over Section 15.011 of the Texas Civil Practice and Remedies Code.” (internal citations omitted)); see also *In re Adan Volpe Props., Ltd.*, 306 S.W.3d 369, 375 (Tex. App.—Corpus Christi 2010, orig. proceeding) (holding that because “[S]ection 15.016 of the civil practice and remedies code provides that [a]n action governed by any other statute prescribing mandatory venue shall be brought in the county required by that statute.”).

<sup>213</sup> See TEX. CIV. PRAC. & REM. CODE ANN. § 15.016.

<sup>214</sup> See *id.*

<sup>215</sup> *Id.*

<sup>216</sup> See *id.* §§ 15.011–15.020 (Subchapter B of Chapter 15, titled “Mandatory Venue”).

<sup>217</sup> See, e.g., *Bachus v. Foster*, 122 S.W.2d 1058, 1060 (Tex. 1939) (holding that the Legislature’s use of the term “shall” in a venue-related statute is mandatory in character and “leaves no room to doubt that the legislature meanS to lay the venue of [a suit governed by the statute] exclusively in the county” provided by the statute); see also *Helena Chem. Co. v. Wilkins*, 47 S.W.3d 486, 493 (Tex. 2001) (The word “must” is “mandatory, creating a duty or obligation.”); *Wichita Cty. v. Hart*, 917 S.W.2d 779, 781 (Tex. 1996) (“When considering venue, we have noted that the Legislature’s use of the word ‘shall’ in a statute generally indicates the mandatory character of the provision.”); *In re Hartford Underwriters Ins. Co.*, 168 S.W.3d 293, 295 (Tex. App.—Eastland 2005, orig. proceeding) (holding that a statute providing that “the petition must be filed in a Travis County district court” was a mandatory venue provision requiring that the action be filed in Travis County).

<sup>218</sup> *Hart*, 917 S.W.2d at 781.

the plain language of Section 15.016 could be that the Texas Legislature simply intended to codify this principle, confirming that venue statutes located outside of Chapter 15 should also be treated as mandatory when indicated by use of the appropriate language.<sup>219</sup>

The Texas Supreme Court arguably endorsed this limited reading of Section 15.016 in a case that involved the interpretation of only one mandatory-venue statute that originated from outside of Chapter 15.<sup>220</sup> In *In re Transcontinental Realty Investors, Inc.*, the question before the Court involved the interpretation of the word “resides” in the mandatory venue provision for condemnation proceedings.<sup>221</sup> Importantly, the Court was not deciding whether one mandatory-venue statute should control over another because only one mandatory-venue statute, Section 21.013 of the Texas Property Code, was at issue.<sup>222</sup> Nonetheless, to support the Court’s assertion that “Section 21.013 is a mandatory venue statute, so it is enforceable by mandamus[,]” the Court cited to Section 15.016 of the Texas Civil Practice and Remedies Code.<sup>223</sup> The Court’s citation to Section 15.016 for this assertion can be interpreted to indicate that the Texas Supreme Court read the plain language of Section 15.016 to represent the statutory confirmation that venue statutes located outside of Chapter 15, like Section 21.013 of the Texas Property Code, can appropriately be treated as mandatory.<sup>224</sup>

A number of courts of appeals have based their holdings (that Section 15.016 requires a mandatory-venue statute originating from outside of Chapter 15 to control over a mandatory-venue statute originating from within Chapter 15) on another statement by the Texas Supreme Court in a 2007 *per curiam* opinion.<sup>225</sup> In *In re Texas Department of Transportation*,

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<sup>219</sup> See TEX. CIV. PRAC. & REM. CODE ANN. § 15.016 (West 2002). This limited reading of Section 15.016 is consistent with the apparent purpose of the Texas Civil Practice and Remedies Code, which contains a similar provision for permissive venue statutes, stating that “[a]n action governed by any other statute prescribing permissive venue may be brought in the county allowed by that statute.” *Id.* § 15.038. Section 15.038 does not appear to be intended to elevate permissive venue statutes outside of Chapter 15 above those within Chapter 15, but rather to simply place them on the same permissive level.

<sup>220</sup> See *In re Transcon. Realty Inv’rs, Inc.*, 271 S.W.3d 270, 271 (Tex. 2008) (*per curiam*).

<sup>221</sup> See *id.* (citing TEX. PROP. CODE ANN. § 21.103(a) (West 2002)).

<sup>222</sup> See *id.*

<sup>223</sup> See *id.* (citing TEX. CIV. PRAC. & REM. CODE ANN. §§ 15.016, 15.0642).

<sup>224</sup> See *id.*

<sup>225</sup> See, e.g., *In re Wheeler*, 441 S.W.3d 430, 434 (Tex. App.—Waco 2014, orig. proceeding) (“[I]f an action is governed by a separate mandatory venue provision, then the action shall be brought in the county required by the separate venue provision.” (quoting *In re Tex. Dep’t of*

the Court stated that “Section 15.016 provides that if an action is governed by a separate mandatory venue provision, then the action shall be brought in the county required by the separate venue provision.”<sup>226</sup> However, a closer look at this opinion indicates that the Court may not have intended for this statement to receive such broad application extending beyond the narrow holding of the Court.<sup>227</sup>

In *In re Texas Department of Transportation*, like in *In re Transcontinental Realty Investors, Inc.*,<sup>228</sup> the Texas Supreme Court did not address a conflict between two mandatory-venue statutes.<sup>229</sup> At the trial court level, the plaintiffs had established venue in Travis County under the theory that the mandatory venue provision in Section 101.102(a) required venue in Travis County.<sup>230</sup> The defendants had moved to transfer venue to Gillispie County on two grounds: (1) that Section 101.102(a) actually required mandatory venue in Gillispie County; and (2) that the mandatory venue provision in Section 15.015 also required venue in Gillispie County.<sup>231</sup> After the trial court denied the defendants’ motion, the defendants sought a writ of mandamus from the Texas Supreme Court that would order the trial court to transfer the case to Gillispie County.<sup>232</sup> In its opinion, the Court *only* addressed whether Section 101.102(a) applied in the case.<sup>233</sup> The Court made the limitations of its holding clear in a footnote, stating that “[b]ecause our decision is based on . . . Section 101.102(a), we

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Transp., 218 S.W.3d 74, 76 (Tex. 2007) (orig. proceeding)); *In re J.P. Morgan Chase Bank, N.A.*, 373 S.W.3d 610, 613 (Tex. App.—San Antonio 2012, orig. proceeding) (same); *In re Adan Volpe Props., Ltd.*, 306 S.W.3d 369, 375 (Tex. App.—Corpus Christi 2010, orig. proceeding) (holding that because “[a]n action governed by any other statute prescribing mandatory venue shall be brought in the county required by that statute[,] . . . the separate mandatory venue provision for injunction suits prevails over the venue provision regarding libel, slander, and defamation found in Section 15.017.” (citing TEX. CIV. PRAC. & REM. CODE ANN. § 15.016; *In re Tex. Dep’t of Transp.*, 218 S.W.3d at 76)).

<sup>226</sup> See *In re Tex. Dep’t of Transp.*, 218 S.W.3d at 76.

<sup>227</sup> See *id.* at 75–78; see also Appendix at 21–23 (discussing the mandatory venue provision in Section 101.102(a) of the Texas Civil Practice and Remedies Code).

<sup>228</sup> *In re Transcon.*, 271 S.W.3d at 271.

<sup>229</sup> See *In re Tex. Dep’t of Transp.*, 218 S.W.3d at 75, 76, 78 (holding that because the plaintiffs did not properly plead and prove facts to support application of the mandatory venue provision in Section 101.102(a) of the Texas Civil Practice and Remedies Code, Section 101.102(a) had no application in the case).

<sup>230</sup> See *id.* at 75–76.

<sup>231</sup> See *id.* at 76.

<sup>232</sup> See *id.* at 75.

<sup>233</sup> See *id.* at 76.

do not address the effect of Section 15.015.”<sup>234</sup> The Court only cited to Section 15.016 of the Texas Civil Practice and Remedies Code to support its assertion that Section 101.102(a), in fact, should be treated as a mandatory venue provision.<sup>235</sup> As such, Texas practitioners can certainly argue that in *In re Texas Department of Transportation*, the Texas Supreme Court, again, read the plain language of Section 15.016 to represent the statutory confirmation that venue statutes with mandatory terms located outside of Chapter 15 of the Texas Civil Practice and Remedies Code—*i.e.*, Section 101.102(a)—should appropriately be treated as mandatory-venue statutes.<sup>236</sup>

As discussed in Part III.A.4, the Court of Appeals for the Fourteenth District in Houston has specifically held that there is no exception to Section 15.015 of the Texas Civil Practice and Remedies Code,<sup>237</sup> even when the competing statute originates from outside of Chapter 15.<sup>238</sup> This interpretation clearly contradicts the idea that Section 15.016 legislatively prioritizes mandatory-venue statutes outside of Chapter 15 over those located within Chapter 15.

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<sup>234</sup> See *id.* n.1 (emphasis added); see also *In re Fort Bend Cty.*, 278 S.W.3d 842, 844 n.1 (Tex. App.—Houston [14th Dist.] 2009, orig. proceeding) (“The Texas Supreme Court has not addressed the relationship between Sections 15.015 and 101.102(a). In *In re Texas Department of Transportation*, the court held that venue in Gillespie County, where accident occurred, was proper under a premises-defect theory in a suit brought pursuant to the Tort Claims Act against the Texas Department of Transportation and Gillespie County. Because the court based its decision on Section 101.102(a), it did not consider the effect of Section 15.015. Although venue would have been proper in Gillespie County under either Section 101.102(a) or Section 15.015, the Department could not avail itself of Section 15.015 because it is not a county.” (internal citations omitted)).

<sup>235</sup> See *In re Tex. Dep’t of Transp.*, 218 S.W.3d at 76 (“Section 15.016 provides that if an action is governed by a separate mandatory venue provision, then the action shall be brought in the county required by the separate venue provision. Section 101.102(a) is such a mandatory provision.”).

<sup>236</sup> See *id.*; see also *In re Transcon. Realty Inv’rs, Inc.*, 271 S.W.3d 270, 271 (Tex. 2008) (per curiam).

<sup>237</sup> See *In re San Jacinto Cty.*, 416 S.W.3d 639, 641–42 (Tex. App.—Houston [14th Dist.] 2013, orig. proceeding) (per curiam) (holding that “when a county is sued, venue is mandatory in that county irrespective of any other venue statutes, whether mandatory or permissive”).

<sup>238</sup> See *In re Fort Bend*, 278 S.W.3d at 844–45 (“Against this backdrop of Section 15.015’s history, we conclude that Section 15.016 is not an exception to Section 15.015.”).

#### 4. Countering Rationale 4 That the Statute With the Most “Longstanding” History Controls

In *In re Fort Bend County*, the court resolved the conflict between Sections 15.015 and 101.102(a) of the Texas Civil Practice and Remedies Code by looking to the legislative history of Section 15.015.<sup>239</sup> Against the backdrop of Section 15.015’s “longstanding” history and “its origin in the first Texas Legislature[.]” the court found that Section 15.015 controlled over Section 101.102(a).<sup>240</sup> Subsequently, the same court confirmed this “longstanding” history approach by finding that “when a county is sued, venue is mandatory in that county irrespective of any other venue statutes, whether mandatory or permissive.”<sup>241</sup>

When a practitioner seeks to elevate a mandatory-venue statute located outside of Chapter 15 of the Texas Civil Practice and Remedies Code over Section 15.015 of that code and, therefore, to oppose the application of this “longstanding” history approach, the practitioner can argue that Section 15.016 demands this result.<sup>242</sup> Numerous courts of appeals have read Section 15.016 to require that a mandatory-venue statute originating from *outside* of Chapter 15 of the Texas Civil Practice and Remedies Code should prevail over a conflicting, mandatory-venue statute that originates from *within* Chapter 15.<sup>243</sup>

The court in *In re Fort Bend County* held that “[S]ection 15.016 is not an exception to Section 15.015.”<sup>244</sup> The court based this holding on a finding that “Texas courts have interpreted Section 15.015 as having no exception.”<sup>245</sup> However, practitioners can point out that none of the cases

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<sup>239</sup> See *id.* at 844.

<sup>240</sup> *Id.* at 844–45.

<sup>241</sup> See *In re San Jacinto Cty.*, 416 S.W.3d at 641–42 (holding that because “[S]ection 15.016 is not an exception to Section 15.015[.]” venue was mandatory in the county provided for in Section 15.015 irrespective of whether Sections of the former Texas Probate Code called for mandatory venue in the probate court of a different county).

<sup>242</sup> See TEX. CIV. PRAC. & REM. CODE ANN. § 15.016 (West 2002) (“An action governed by any other statute prescribing mandatory venue shall be brought in the county required by that statute.”).

<sup>243</sup> See *supra* note 102 and cases cited therein (cases that have applied Texas Civil Practice and Remedies Code Section 15.016 to hold that a mandatory-venue statute outside of Chapter 15 takes priority over a statute located within Ch. 15).

<sup>244</sup> 278 S.W.3d at 845.

<sup>245</sup> *Id.* at 844–45 (citing *Montague Cty. v. Meadows*, 31 S.W. 694, 694 (Fort Worth 1895, writ *ref’d*); *City of Tahoka v. Jackson*, 276 S.W. 662, 663 (Tex. 1925); *Hodges v. Coke Cty.*, 197

relied upon by the *In re Fort Bend County* Court for this point made any reference to Section 15.016.<sup>246</sup> Of the four cases that the court cited, three were issued prior to the Texas Legislature's enactment of Section 15.016:<sup>247</sup> one was decided in 1895;<sup>248</sup> another in 1925;<sup>249</sup> and the third in 1946.<sup>250</sup> The fourth case that the court relied upon, *Glover v. Columbia Fort Bend Hospital*,<sup>251</sup> though decided in 2002, was a pro se action, in which the plaintiff never raised Section 15.016 to support his venue claim.<sup>252</sup> Further, that court expressly stated that the court "may not consider points of error or issues on appeal which are not included in the brief."<sup>253</sup> Although the court in *In re Fort Bend County* asserted that "Texas courts have interpreted Section 15.015 as having no exception[.]"<sup>254</sup> no Texas court had actually interpreted Section 15.015 in light of the Texas Legislature's enactment of Section 15.016.<sup>255</sup>

The *In re Fort Bend County* Court also stated in a footnote that "[t]he Texas Supreme Court has not addressed the relationship between Sections 15.015 and 101.102(a) [of the Texas Civil Practice and Remedies Code]."<sup>256</sup> Yet, if a trial court were to accept other courts' interpretation of Section 15.016,<sup>257</sup> then the *Texas Legislature* arguably has addressed this

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S.W.2d 886, 888 (Tex. Civ. App.—Amarillo 1946, no writ); *Glover v. Columbia Fort Bend Hosp.*, No. 06-01-00101-CV, 2002 WL 1430783, at \*4 (Tex. App.—Texarkana July 3, 2002, no pet.) (not designated for publication).

<sup>246</sup> See *id.*; see also *Meadows*, 31 S.W. at 694; *Jackson*, 276 S.W. at 663; *Hodges*, 197 S.W.2d at 888; *Glover*, 2002 WL 1430783, at \*4.

<sup>247</sup> The Texas Legislature enacted Section 15.016 in 1985. See Act effective Sept. 1, 1985, 69th Leg., ch. 959, § 1, 1985 Tex. Gen. Laws 3293–94 (codified at TEX. CIV. PRAC. & REM. CODE ANN. § 15.016).

<sup>248</sup> See *Meadows*, 31 S.W. at 694.

<sup>249</sup> See *Jackson*, 276 S.W. at 662.

<sup>250</sup> See *Hodges*, 197 S.W.2d at 886.

<sup>251</sup> 2002 WL 1430783, at \*4.

<sup>252</sup> See generally *id.*

<sup>253</sup> See *id.* at \*5.

<sup>254</sup> 278 S.W.3d 842, 844 (Tex. App.—Houston [14th Dist.] 2009, orig. proceeding) (internal citations omitted).

<sup>255</sup> See *City of Tahoka v. Jackson*, 276 S.W. 662, 663 (Tex. 1925); *Montague Cty. v. Meadows*, 31 S.W. 694, 694 (Fort Worth 1895, writ ref'd); *Hodges*, 197 S.W.2d at 888; *Glover*, 2002 WL 1430783, at \*4.

<sup>256</sup> 278 S.W.3d at 844 n.1 (citing to *In re Tex. Dep't of Transp.*, 218 S.W. 3d 74, 76 n.1, 79 (Tex. 2007) (orig. proceeding) (per curiam)).

<sup>257</sup> See, e.g., *In re Wheeler*, 441 S.W.3d 430, 434 (Tex. App.—Waco, 2014, orig. proceeding) ("As such, Section 15.016 of the Texas Civil Practice and Remedies Code requires that the



relationship by enacting Section 15.016.<sup>258</sup> The *In re Fort Bend County* Court never addressed any ambiguity in Section 15.016.<sup>259</sup> Practitioners can argue that beyond the “longstanding” history of Section 15.015, the *In re Fort Bend County* Court offered no other reason for disregarding the “well-settled” principle of statutory construction that “when the Legislature has spoken on a subject, its determination is binding upon the courts unless the Legislature has exceeded its constitutional authority.”<sup>260</sup> Counsel can argue for application of the basic rule of statutory construction that courts should enforce the plain meaning of an unambiguous statute,<sup>261</sup> which other Texas courts have found to mean that Section 15.016 requires a mandatory-venue statute located outside of Chapter 15 to control over a statute located within Chapter 15, notwithstanding the statute’s history.<sup>262</sup>

To further support this argument, practitioners can point out that the same court that decided *In re Fort Bend County* has actually endorsed other courts’ interpretation of Section 15.016.<sup>263</sup> In fact, the author of the majority opinion in *In re Fort Bend County*, current Texas Supreme Court Justice Jeffrey V. Brown, subsequently authored the majority opinion in *In*

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mandatory-venue provisions in Section 115.002 of the Texas Property Code prevail over Section 15.011 of the Texas Civil Practice and Remedies Code.” (citing TEX. CIV. PRAC. & REM. CODE ANN. § 15.016 (West 2002))).

<sup>258</sup> See TEX. CIV. PRAC. & REM. CODE ANN. § 15.016 (“An action governed by any other statute prescribing mandatory venue shall be brought in the county required by that statute.”)

<sup>259</sup> See 278 S.W.3d at 844–45; see also TEX. CIV. PRAC. & REM. CODE ANN. § 15.016 (“An action governed by any other statute prescribing mandatory venue shall be brought in the county required by that statute.”).

<sup>260</sup> See *Polaris Inv. Mgmt. Corp. v. Abascal*, 892 S.W.2d 860, 862 (Tex. 1995) (orig. proceeding) (citing *Pub. Util. Comm’n of Tex. v. Cofer*, 754 S.W.2d 121, 124 (Tex. 1988)).

<sup>261</sup> See, e.g., *Klein v. Hernandez*, 315 S.W.3d 1, 9 (Tex. 2010) (Willett, J., concurring) (“Faced with unequivocal language, the judge’s inquiry is at an end.” (quoting *Alex Sheshunoff Mgmt. Servs., L.P. v. Johnson*, 209 S.W.3d 644, 652 n.4 (Tex. 2006)); *Entergy Gulf States, Inc. v. Summers*, 282 S.W.3d 433, 437 (Tex. 2009) (“Where text is clear, text is determinative of [legislative] intent.”); *In re Estate of Nash*, 220 S.W.3d 914, 917 (Tex. 2007) (“If a statute is clear and unambiguous, we apply its words according to their common meaning without resort to rules of construction or extrinsic aids.”); *Cail v. Serv. Motors, Inc.*, 660 S.W.2d 814, 815 (Tex. 1983) (“If the disputed statute is clear and unambiguous extrinsic aids and rules of statutory construction are inappropriate . . .”).

<sup>262</sup> See *supra* note 102 and cases cited therein.

<sup>263</sup> See *In re Hannah*, 431 S.W.3d 801, 806–07 (Tex. App.—Houston [14th Dist.] 2014, orig. proceeding) (“However, [i]f a suit is governed by a mandatory venue provision outside of Chapter 15, that suit must be brought in the county required by that mandatory venue provision.” (citing *In re Sosa*, 370 S.W.3d 79, 81 (Tex. App.—Houston [14th Dist.] 2012, orig. proceeding)).

*re Sosa*,<sup>264</sup> where the Fourteenth District Court of Appeals's reasoning appears to expressly contradict the "longstanding" history approach utilized in the *In re Fort Bend County* opinion.<sup>265</sup> In *In re Sosa*, the court implied that the Texas Legislature enacted a later mandatory-venue statute while "cognizant" of the earlier enacted mandatory-venue statute.<sup>266</sup> The Texas Supreme Court has offered support for this assertion by stating that "a statute is presumed to have been enacted by the legislature with complete knowledge of the existing law and with reference to it."<sup>267</sup> Citing the *In re Sosa* holding, practitioners can argue that, contrary to the holding in *In re Fort Bend County*, the Texas Legislature enacted Section 15.016 while "cognizant" of the earlier enacted mandatory-venue statute in Section 15.015 applying to suits against counties.<sup>268</sup> As such, practitioners can argue that the Texas Legislature intended for a mandatory-venue statute originating from outside Chapter 15 to control over a mandatory-venue statute located within Chapter 15, including Section 15.015, by subsequently enacting Section 15.016.<sup>269</sup>

In addition, based on the "[n]otwithstanding any provision of this title" language in Section 15.020(c), counsel can argue that where a county entered some sort of venue-selection agreement that met the "major transaction" requirements in Section 15.020, Section 15.020(c) would govern venue "[n]otwithstanding" Section 15.015's longstanding history.<sup>270</sup>

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<sup>264</sup> 370 S.W.3d at 79.

<sup>265</sup> *See id.* at 82 ("Accordingly, we find the more-specific, later-enacted statute of mandatory venue in Section 171.096(b) controls over the prior-enacted statute of mandatory venue in Section 65.023(a)." (citing TEX. GOV'T CODE ANN. § 311.026(b) (West 2015))).

<sup>266</sup> *Id.* ("Thus the Legislature, cognizant of the general mandatory venue rule as to injunctive relief, has expressly provided that this general rule does not apply under the facts of the case under review.").

<sup>267</sup> *Wichita Cty. v. Hart*, 917 S.W.2d 779, 782 (Tex. 1996) (citing *Acker v. Tex. Water Comm'n*, 790 S.W.2d 299, 301 (Tex. 1990)).

<sup>268</sup> *See In re Sosa*, 370 S.W.3d at 81–82.

<sup>269</sup> *See id.*; *see also* TEX. CIV. PRAC. & REM. CODE ANN. § 15.016 (West 2002).

<sup>270</sup> *See* TEX. CIV. PRAC. & REM. CODE ANN. § 15.020(c); *see also In re Fisher*, 433 S.W.3d 523, 533–34 (Tex. 2014) (orig. proceeding).

### 5. Countering Rationale 5 That the More-Specific, Later-Enacted Statute Controls

In *In re Sosa*, the court resolved a conflict between Sections 65.023 and 171.096 of the Texas Civil Practice and Remedies Code.<sup>271</sup> The court ultimately found that the more-specific, later-enacted statute of mandatory venue in Section 171.096(b) controls over the prior-enacted statute of mandatory venue in Section 65.023(a).<sup>272</sup> A practitioner seeking to oppose the application of this “more-specific, later-enacted statute controls” approach can point to the inconsistencies in the same court’s opinions in *In re Fort Bend County*<sup>273</sup> and *In re Sosa*.<sup>274</sup>

In *In re Fort Bend County*, the Court of Appeals for the Fourteenth District in Houston held that Section 15.015 would control over Section 101.102(a) based upon the “longstanding” legislative history of Section 15.015.<sup>275</sup> The court rested this conclusion on the fact that the first Texas Legislature enacted the statutory predecessor to Section 15.015 on May 11, 1846, two days before the first Legislature enacted the general venue statute and its eleven exceptions.<sup>276</sup> On the basis of this “longstanding” history, the court found that when the Legislature enacted Section 15.016 in 1985, the Legislature did not intend for Section 15.016 to apply to Section 15.015 despite the express language of Section 15.016.<sup>277</sup> Yet, in *In re Sosa*, the same court held that Section 171.096(b), enacted in 1997,<sup>278</sup> controlled over Section 65.023(a), enacted in its current form in 1985,<sup>279</sup> because the

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<sup>271</sup> *In re Sosa*, 370 S.W.3d at 82.

<sup>272</sup> *See id.*

<sup>273</sup> *In re Fort Bend Cty.*, 278 S.W.3d 842, 844–45 (Tex. App.—Houston [14th Dist.] 2009, orig. proceeding).

<sup>274</sup> *In re Sosa*, 370 S.W.3d at 82.

<sup>275</sup> *See In re Fort Bend*, 278 S.W.3d at 844–45.

<sup>276</sup> *See id.* (“The venue rule that a county must be sued in that county is longstanding and finds its origin in the first Texas Legislature.”) (internal citations omitted).

<sup>277</sup> *See id.*; *see also* Act of May 17, 1985, 69th Leg., R.S., ch. 959, § 1, 1985 Tex. Gen. Laws 3242, 3248 (codified at TEX. CIV. PRAC. & REM. CODE ANN. § 15.016) (West 2002)).

<sup>278</sup> *See* Act of May 8, 1997, 75th Leg., R.S., ch. 165, § 5.01, 1997 Tex. Gen. Laws 327, 336 (codified at TEX. CIV. PRAC. & REM. CODE ANN. § 171.096).

<sup>279</sup> *See* Act of May 17, 1985, 69th Leg., R.S., ch. 959, § 1, 1985 Tex. Gen. Laws 3242, 3294 (codified at TEX. CIV. PRAC. & REM. CODE ANN. § 65.023).

Legislature was “cognizant” of the earlier-enacted Section 65.023(a) when the Legislature later enacted Section 171.096(b).<sup>280</sup>

Interestingly, the *In re Sosa* Court did not point out that, in fact, the statutory predecessor to Section 65.023(a) dates back to the first Texas Legislature in 1846, enacted just two days after Section 15.015, “and it has been preserved since that time by all successive legislatures.”<sup>281</sup> Although the *In re Sosa* Court only traced the statutory origin of Section 65.023 to 1985,<sup>282</sup> the Fort Worth Court of Appeals has described the longstanding history of Section 65.023 as follows: “The important right provided to a defendant under [Section 65.023] to defend a suit for permanent injunction in the county of the defendant’s domicile originated with our first state legislature in 1846, and it has been preserved since that time by all successive legislatures.”<sup>283</sup>

Based on the emphasis placed by the Fourteenth Court of Appeals on tracing statutory history to the first Texas Legislature in *In re Fort Bend County*, it is unclear why the court only traced the statutory history of Section 65.023 of the Texas Civil Practice and Remedies Code to 1985 in

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<sup>280</sup> See *In re Sosa*, 370 S.W.3d 79, 82 (Tex. App.—Houston [14th Dist.] 2012, orig. proceeding) (“Accordingly, we find the more-specific, later-enacted statute of mandatory venue in Section 171.096(b) controls over the prior-enacted statute of mandatory venue in Section 65.023(a).” (internal citation omitted)).

<sup>281</sup> See *In re City of Dallas*, 977 S.W.2d 798, 803 (Tex. App.—Fort Worth 1998, orig. proceeding) (“The important right provided to a defendant under [Section 65.023(a) of the Texas Civil Practice and Remedies Code] to defend a suit for permanent injunction in the county of the defendant’s domicile originated with our first state legislature in 1846, and it has been preserved since that time by all successive legislatures.” (citing Act approved May 13, 1846, 1st Leg., R.S., § 152, 1846 Tex. Gen. Laws 363, 406, reprinted in 2 H.P.N. Gammel, *The Laws of Texas 1838–1846*, at 1669, 1812 (Austin, Gammel Book Co. 1898); TEX. CIV. REV. STAT. art. 2996 (West 1895); TEX. REV. CIV. STAT. ANN. art. 4656 (West 1952), repealed by Act of May 17, 1985, 69th Leg., R.S., ch. 959, § 9, 1985 Tex. Gen. Laws 3242, 3322 (codified at TEX. CIV. PRAC. & REM. CODE ANN. § 65.023))).

<sup>282</sup> See *In re Sosa*, 370 S.W.3d at 82 (“In 1985, the Legislature enacted Section 65.023(a) providing that for cases in which injunctive relief is sought against a Texas resident, venue shall be in the county of the defendant’s domicile.” (citing Act of May 17, 1985, 69th Leg., R.S., ch. 959, § 1, 1985 Tex. Gen. Laws 3242, 3294)).

<sup>283</sup> See *In re City of Dallas*, 977 S.W.2d at 803 n.17 (citing Act approved May 13, 1846, 1st Leg., R.S., § 152, 1846 Tex. Gen. Laws 363, 406, reprinted in 2 H.P.N. Gammel, *The Laws of Texas 1838–1846*, at 1669, 1812 (Austin, Gammel Book Co. 1898); TEX. REV. CIV. STAT. art. 2996 (West 1895); TEX. REV. CIV. STAT. ANN. art. 4656 (West 1952), repealed by Act of May 17, 1985, 69th Leg., R.S., ch. 959, § 9, 1985 Tex. Gen. Laws 3242, 3322 (codified at TEX. CIV. PRAC. & REM. CODE ANN. § 65.023)).

*In re Sosa*.<sup>284</sup> Nonetheless, practitioners can argue that had the *In re Sosa* Court applied its prior “longstanding” history approach, the outcome in *In re Sosa* would have been different.<sup>285</sup>

The *In re Sosa* Court rejected the “plaintiff’s choice prevails” approach because the court found no statute which expressly states that “if there is a conflict between two statutes as to the mandatory venue, the plaintiff has a right to choose the county in which the Legislature mandated venue.”<sup>286</sup> As a result, the court stated that:

If there is an actual or apparent conflict between two statutes as to whether mandatory venue of the case under review is in Harris County or Fort Bend County, Texas law requires us to resolve this conflict by statutory construction, rather than allowing the plaintiff to resolve this conflict by choice.<sup>287</sup>

Professor Ron Beal describes this process of statutory construction as follows:

[W]hen an apparent conflict exists, it is the duty of the court to resolve the inconsistencies and effectuate the dominant legislative intent. The most common method utilized by the courts is to determine if one statute is more general and the other more specific, regardless of temporal sequence, and then hold that the specific statute controls over the more general one. However, such construction is only necessary and will be utilized by the courts after they have first attempted to reconcile the two statutes by statutory interpretation.<sup>288</sup>

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<sup>284</sup> Compare *In re Sosa*, 370 S.W.3d at 81–82, with *In re Fort Bend Cty.*, 278 S.W.3d 842, 844–45 (Tex. App.—Houston [14th Dist.] 2009, orig. proceeding).

<sup>285</sup> Compare *In re Fort Bend*, 278 S.W.3d at 844–45 (finding that there is no exception to Section 15.015 based on its “longstanding” history), with *In re Sosa*, 370 S.W.3d at 82 (holding that the “more-specific, later-enacted statute of mandatory venue” controlled “over the prior-enacted statute of mandatory venue”).

<sup>286</sup> *In re Sosa*, 370 S.W.3d at 81.

<sup>287</sup> *Id.*

<sup>288</sup> Ron Beal, *The Art of Statutory Construction: Texas Style*, 64 BAYLOR L. REV. 339, 415 (2012).

Practitioners can argue that the *In re Sosa* Court failed to first attempt to reconcile by statutory interpretation the two mandatory-venue statutes in question (by utilizing its prior “longstanding” history approach) before deciding to enforce by mandamus the “more-specific, later-enacted statute.”<sup>289</sup>

In sum, if the *In re Sosa* Court had utilized its prior “longstanding” history approach, the outcome of the conflicting mandatory-venue statutes issue in *Sosa* would have been different.<sup>290</sup> Likewise, if the court in *In re Fort Bend County* had acknowledged that the Legislature was “cognizant” of the earlier-enacted Section 15.015 when the Legislature enacted Section 101.102(a) (and thus utilized the “more-specific, later-enacted statute controls” approach), then the venue determination in the *In re Fort Bend County* case would have been different.<sup>291</sup> With both opinions issuing from the Fourteenth Court of Appeals, the resulting inconsistencies in approach leave practitioners stranded in a sea of uncertainty as to which approach a court will utilize to determine venue.

#### 6. Countering Rationale 6 That Would Harmonize Competing Statutes Through a Process of Elimination

Concurring in the judgment in *In re Fort Bend County*, current Texas Supreme Court Justice Eva M. Guzman proposed an approach to harmonize separate mandatory-venue statutes by identifying all of the “possible venues” that would satisfy each mandatory-venue statute, then using a process of elimination to find the county representing the common denominator between the two statutes at issue.<sup>292</sup> Practitioners arguing against the application of this approach can first point out that a majority of the court did not support Justice Guzman’s approach.<sup>293</sup> To date, it does not appear that any other Texas court has issued an opinion relying upon Justice Guzman’s approach.

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<sup>289</sup> See *In re Sosa*, 370 S.W.3d at 82.

<sup>290</sup> Compare *In re Fort Bend*, 278 S.W.3d at 844–45 (finding that there is no exception to Section 15.015 based on its “longstanding” history), with *In re Sosa*, 370 S.W.3d at 81–82 (holding that the “more-specific, later-enacted statute of mandatory venue” controlled “over the prior-enacted statute of mandatory venue”).

<sup>291</sup> Compare *In re Fort Bend*, 278 S.W.3d at 844–45, with *In re Sosa*, 370 S.W.3d at 81–82.

<sup>292</sup> See *In re Fort Bend*, 278 S.W.3d at 848 (Guzman, J., concurring).

<sup>293</sup> See *id.* at 845, 848.

Justice Guzman's solution also appears to have limited applicability, applying only when, first, a plaintiff has chosen to establish venue under a mandatory-venue statute that "is mandatory in that it defines the set of possible venues, but it is permissive in that it does not differentiate among the members of that set, but leaves that selection to the plaintiff."<sup>294</sup> Secondly, to apply, Justice Guzman's approach would require that the defendant filed a motion to transfer venue to another county satisfying both the mandatory requirements of the statute relied upon by the plaintiff and the mandatory requirements of another mandatory-venue statute that contained no "permissive aspect."<sup>295</sup> Under Justice Guzman's approach, these two statutes would actually not be in conflict because transferring venue to the single county that satisfied both mandatory-venue statutes would harmonize the two statutes.<sup>296</sup>

Practitioners seeking to oppose the application of Justice Guzman's proposed solution can first argue that the approach fails to fully harmonize with the language of Texas Civil Practice and Remedies Code Section 15.063.<sup>297</sup> According to that statute, a trial court only "shall transfer an action to another county of proper venue" when "the county in which the action is pending is not a proper county as provided by" Chapter 15 of the Texas Civil Practice and Remedies Code.<sup>298</sup> "Proper venue" is defined to mean "the venue required by the mandatory provisions of Subchapter B [of Chapter 15] or another statute prescribing mandatory venue[.]"<sup>299</sup> Therefore, if a plaintiff establishes venue in a county under a mandatory-venue statute, venue is proper in that county.<sup>300</sup> As the *In re Sosa* Court explained, "a single mandatory-venue statute may mandate venue in one of several counties, and in that case, the Legislature has also decided that the plaintiff may choose from the indicated counties."<sup>301</sup>

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<sup>294</sup> See *id.* at 848 (referring to TEX. CIV. PRAC. & REM. CODE ANN. § 101.102(a) (West 2011)).

<sup>295</sup> See *id.* (referring to TEX. CIV. PRAC. & REM. CODE ANN. § 15.015).

<sup>296</sup> See *id.*

<sup>297</sup> TEX. CIV. PRAC. & REM. CODE ANN. § 15.063 (describing when a trial court "shall" grant a motion to transfer venue).

<sup>298</sup> See *id.*

<sup>299</sup> See *id.* § 15.001(b)(1).

<sup>300</sup> See *id.*

<sup>301</sup> *In re Sosa*, 370 S.W.3d 79, 81–82 n.1 (Tex. App.—Houston [14th Dist.] 2012, orig. proceeding).

When this occurs, the predicate finding necessary to subject a trial court to a mandatory duty to transfer venue to another county of proper venue is absent.<sup>302</sup> In other words, when the plaintiff establishes venue in one county under a mandatory-venue statute, venue in that county is “proper” under the venue statutes such that a trial court is not statutorily required to transfer venue to another county that might have also been proper under a separate mandatory-venue statute.<sup>303</sup> A trial court could arguably have discretion to grant the motion to transfer because venue would also be “proper” in another county under a separate mandatory-venue statute<sup>304</sup> (assuming the court does not agree that “the plaintiff’s choice controls”). Practically speaking, however, based on the statutory language that a trial court “shall” only transfer an action to another county of proper venue if the county in which the action is pending is “not a proper county[,]”<sup>305</sup> a trial court’s decision to *deny* a motion to transfer because the plaintiff properly established venue under a mandatory-venue statute could hardly rise to an abuse of discretion justifying mandamus.<sup>306</sup> A trial court only abuses its discretion if the court “reaches a decision so arbitrary and unreasonable as to amount to a clear and prejudicial error of law, or if it clearly fails to correctly analyze or apply the law.”<sup>307</sup> Because courts are not legally *required* to transfer an action from a county that the plaintiff has established is a county of proper venue under a mandatory-venue statute,<sup>308</sup> practitioners can argue that a trial court should not apply Justice Guzman’s proposed “process of elimination” approach because it does not adequately harmonize all of the venue-related laws.

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<sup>302</sup> See TEX. CIV. PRAC. & REM. CODE ANN. § 15.063(1) (“The court[] . . . shall transfer an action to another county of proper venue if: (1) the county in which the action is pending is not a proper county as provided by this chapter[.]”).

<sup>303</sup> See *id.*; see also *id.* § 15.001(b)(1).

<sup>304</sup> See *id.* § 15.001(b)(1).

<sup>305</sup> See *id.* § 15.063(1).

<sup>306</sup> See, e.g., *In re Fort Bend Cty.*, 278 S.W.3d 842, 843 (Tex. App.—Houston [14th Dist.] 2009, orig. proceeding) (holding that to justify issuing a writ of mandamus to enforce a mandatory venue provision, “[t]he relator must demonstrate that the trial court abused its discretion, but is not required to show the lack of an adequate remedy by appeal.” (citing TEX. CIV. PRAC. & REM. CODE ANN. § 15.0642; *In re Mo. Pac. R.R. Co.*, 998 S.W.2d 212, 215–16 (Tex. 1999) (orig. proceeding))).

<sup>307</sup> See *id.* (citing *In re Cerberus Capital Mgmt., L.P.*, 164 S.W.3d 379, 382 (Tex. 2005) (orig. proceeding) (per curiam)).

<sup>308</sup> See TEX. CIV. PRAC. & REM. CODE ANN. § 15.063(1).



### 7. Countering Rationale 7 That a Pre-Suit Agreement is Prioritized by Statute

Texas practitioners seeking to oppose the enforcement of a pre-suit agreement purporting to control the choice of venue should familiarize themselves with the policy reasons behind the general rule that “Texas law prohibits parties from contracting away mandatory venue.”<sup>309</sup> Once these policy underpinnings are understood, Texas practitioners should thoroughly analyze Section 15.020 of the Texas Civil Practice and Remedies Code to understand when a venue-selection clause that is part of a statutorily defined “major transaction” is enforceable.<sup>310</sup> This Section addresses these two issues in turn.

In *In re Great Lakes Dredge & Dock Co. L.L.C.*, the Corpus Christi Court of Appeals held that the Texas Supreme Court’s recent decisions regarding the enforcement of forum-selection clauses did not “supplant firmly established Texas law regarding the enforcement of venue-selection agreements that contravene a mandatory venue statute.”<sup>311</sup> To illustrate this firmly established Texas law and the distinction between a *forum*-selection clause and a *venue*-selection clause, a closer look at this decision is necessary. In the case, when the plaintiff, Mr. Ramos, was employed by Great Lakes Dredge & Dock Company, L.L.C. (Great Lakes), the company required Mr. Ramos to sign a document titled, “Employee Acceptance of Forum Selection” (Great Lakes Agreement).<sup>312</sup> This agreement, which Mr. Ramos undisputedly signed, expressly provided as follows:

As a condition of employment with Great Lakes . . . the EMPLOYEE and Great Lakes . . . mutually agree that any claim for personal, emotional, physical, or economic injury [including death] pursuant to Federal law, general maritime law, the Jones Act, or the laws of any State, or otherwise

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<sup>309</sup>*In re Great Lakes Dredge & Dock Co.*, 251 S.W.3d 68, 79 (Tex. App.—Corpus Christi 2008, orig. proceeding).

<sup>310</sup>*See Hiles v. Arnie & Co.*, 402 S.W.3d 820, 828 (Tex. App.—Houston [14th Dist.] 2013, pet. denied) (stating that “venue-selection clauses are generally unenforceable in Texas unless the contract evinces a ‘major transaction’ as defined in the venue rules.” (citing TEX. CIV. PRAC. & REM. CODE ANN. § 15.020(a); *In re Tex. Ass’n of Sch. Bds., Inc.*, 169 S.W.3d 653, 660 (Tex. 2005) (orig. proceeding); *Yarber v. Iglehart*, 264 S.W.2d 474, 476 (Tex. Civ. App.—Dallas 1953, no writ))).

<sup>311</sup>*See In re Great Lakes*, 251 S.W.3d at 77.

<sup>312</sup>*Id.* at 69.

arising out of EMPLOYEE'S employment with Great Lakes . . . shall, if ever made the basis of litigation initiated by EMPLOYEE be filed, at the *option* of the EMPLOYEE, in any one of the following jurisdictions *only*:

(a) the Circuit Court for the County of DuPage, State of Illinois; or

(b) The Court designated below in the State of residence of the EMPLOYEE or in the State in which the accident made the basis of the lawsuit occurred, as follows:

STATE	STATE COURT
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. . . .

Florida	Clay County
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. . . .

Texas	District Courts of Harris County, Texas
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. . . .

or

(c) The United States Federal District Court in the State of residence of the EMPLOYEE or in the State in which the accident made the basis of the lawsuit occurred, as follows:

STATE	FEDERAL COURT
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. . . .

Florida	Middle District of Florida, Jacksonville Division
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. . . .

Texas	Southern District of Texas, Houston Division <sup>313</sup>
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Subsequently, Mr. Ramos allegedly sustained injuries aboard a vessel that Great Lakes owned and operated, and Mr. Ramos filed suit against

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<sup>313</sup>*Id.* at 69–70.

Great Lakes in Hidalgo County District Court under the Jones Act,<sup>314</sup> alleging that his injuries resulted from maritime negligence and the unseaworthiness of Great Lakes's vessel.<sup>315</sup> Great Lakes responded by filing a Motion to Dismiss or, in the alternative, Motion to Transfer Venue.<sup>316</sup> Great Lakes argued that the Great Lakes Agreement mandated suit be filed in either a state district court in Harris County, Texas, or in the United States District Court for the Southern District of Texas, Houston Division.<sup>317</sup>

Mr. Ramos filed a response, arguing that the mandatory venue provision for the Jones Act required Mr. Ramos's suit to be filed in Hidalgo County and that the Great Lakes Agreement was vague, unjust, and unreasonable.<sup>318</sup> After a hearing, the Hidalgo County District Court denied Great Lakes's motion to dismiss without stating the reasons for the court's rulings.<sup>319</sup> Great Lakes then sought a writ of mandamus that would compel the district court to enforce the venue requirements set forth in the Great Lakes Agreement.<sup>320</sup>

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<sup>314</sup> 46 U.S.C. § 30104 (2012).

<sup>315</sup> *In re Great Lakes*, 251 S.W.3d at 70.

<sup>316</sup> *Id.*

<sup>317</sup> *Id.* Great Lakes also filed a Complaint for Declaratory Judgment in the United States District Court for the Southern District of Texas, Houston Division, seeking a declaration of its rights under the Great Lakes Agreement that the federal court had not decided at the time of the court of appeals's decision. *See id.* at 70 n.4 (citing *Great Lakes Dredge & Dock Co. v. Ramos*, No. H-07-0630, 2007 WL 2787837, at \*1 (S.D. Tex. Sept. 24, 2007)). Additionally, Great Lakes had previously filed a declaratory judgment action seeking an injunction and a declaration that seamen-plaintiffs, similar to Mr. Ramos, in pending state-court actions, could not proceed against Great Lakes anywhere other than in the Harris County District Courts or the Southern District of Texas pursuant to the same Great Lakes Agreement at issue. *See id.* (citing *Great Lakes Dredge & Dock Co. v. Larrisquitu*, Nos. H-06-3489, H-06-3669, H-06-4040, 2007 WL 2330187, at \*7-8, (S.D. Tex. Aug. 15, 2007)). Though the federal court had held that it had authority to issue a declaration that the Great Lakes Agreement was enforceable and that the *Larrisquitu* seamen had breached the Great Lakes Agreement by filing suit in Hidalgo County in denying the *Larrisquitu* seamen's motion to dismiss the federal court action, the court of appeals held that because the federal district court had not issued a declaratory judgment in either case and because the federal district court expressly recognized Texas state courts' authority to make a determination of these issues in the state court cases, the court of appeals would proceed to make its own determination about the enforceability of the Great Lakes Agreement under Texas law. *See id.*

<sup>318</sup> *See id.* at 71.

<sup>319</sup> *See id.* at 71-72.

<sup>320</sup> *See id.* at 71.

In its petition for mandamus, Great Lakes argued that the trial court abused its discretion by refusing to enforce a forum-selection agreement because, under recent Texas Supreme Court precedent, forum-selection agreements are presumptively enforceable, and Mr. Ramos had not raised a valid defense to enforcement of the Great Lakes Agreement.<sup>321</sup> Mr. Ramos responded that the mandatory-venue statute in place at the time suit was filed, former Section 15.018 of the Texas Civil Practice and Remedies Code, provided that Mr. Ramos's Jones Act claim could be brought in Hidalgo County, where Mr. Ramos resided, and could *not* be brought in Harris County.<sup>322</sup> Mr. Ramos further argued that under the Supreme Court of Texas's decisions in *Leonard v. Paxson*<sup>323</sup> and *Fidelity Union Life Ins. Co. v. Evans*,<sup>324</sup> a party's pre-suit agreement to set venue in a particular county *that is contrary to a mandatory-venue statute* is void and unenforceable.<sup>325</sup> Great Lakes countered Mr. Ramos's argument by

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<sup>321</sup> See *id.* at 72 (citing *In re AutoNation, Inc.*, 228 S.W.3d 663, 668 (Tex. 2007) (orig. proceeding); *Michiana Easy Livin' Country, Inc. v. Holten*, 168 S.W.3d 777, 793 (Tex. 2005) (“[E]nforcement of a forum-selection clause is mandatory absent a showing that ‘enforcement would be unreasonable and unjust, or that the clause was invalid due to fraud or overreaching.’”); *In re Automated Collection Techs., Inc.*, 156 S.W.3d 557, 559–60 (Tex. 2004) (orig. proceeding) (per curiam); *In re AIU Ins. Co.*, 148 S.W.3d 109, 111–15 (Tex. 2004) (orig. proceeding)).

<sup>322</sup> See *id.* at 72. It is worthy of note that the Texas Legislature amended the former Section 15.018 of the Texas Civil Practice and Remedies Code and codified the current version of the statute as Section 15.0181 of the Texas Civil Practice and Remedies Code. See TEX. CIV. PRAC. & REM. CODE ANN. § 15.0181 (West 2015). The language of Section 15.0181 is set forth, in full, in the Appendix *supra* at A.10. While numbered differently in the current statute, the former statute provided that:

[S]uit[] brought under the . . . Jones Act *shall* be brought [in one of three designated counties:] (1) in the county in which all or a substantial part of the events or omissions giving rise to the claim occurred; (2) in the county where the defendant's principal office in this state is located; or (3) in the county where the plaintiff resided at the time the cause of action accrued.

See *In re Great Lakes*, 251 S.W.3d at 72 n.5 (emphasis added); see also Act of May 8, 1995, 74th Leg., R.S., ch. 138, § 2, 1995 Tex. Gen. Laws 978, 980 (codified at former TEX. CIV. PRAC. & REM. CODE ANN. § 15.018), amended by Act of May 21, 2007, 80th Leg., R.S., ch. 203, § 2, 2007 Tex. Gen. Laws 288, 289 (codified at TEX. CIV. PRAC. & REM. CODE ANN. § 15.0181). Because it was undisputed that Mr. Ramos resided in Hidalgo County, the court held that “the mandatory venue statute expressly gave Ramos the option to choose venue from the three alternatives.” See *In re Great Lakes*, 251 S.W.3d at 72 n.5.

<sup>323</sup> 654 S.W.2d 440, 441–42 (Tex. 1983) (orig. proceeding).

<sup>324</sup> 477 S.W.2d 535, 537 (Tex. 1972).

<sup>325</sup> See *In re Great Lakes*, 251 S.W.3d at 72–73.

asserting that *Leonard* and *Fidelity* were decided prior to the Supreme Court of Texas's recent trend of enforcing forum-selection agreements and, therefore, had been supplanted.<sup>326</sup>

The Corpus Christi Court of Appeals disagreed with *Great Lakes* and denied mandamus relief, holding that the venue requirements in the pre-suit *Great Lakes Agreement* contradicted a mandatory-venue statute and, thus, were void and unenforceable.<sup>327</sup> Specifically, the court held because “Texas law prohibits parties from contracting away mandatory venue[,] [t]he trial court properly refused to enforce such an agreement in this case.”<sup>328</sup> The court relied heavily upon the distinction between a “venue selection agreement” and a “forum selection agreement” and Texas’s longstanding refusal to enforce venue selection agreements that contradict mandatory-venue statutes on public policy grounds.<sup>329</sup>

First, the court recognized that although Texas case law has sometimes muddled the distinction, “forum” and “venue” each have a distinct legal meaning.<sup>330</sup> “Forum” generally refers to a sovereign or a state.<sup>331</sup> On the other hand, “[a]t common law, venue meant the neighborhood, place, or county in which the injury is declared to have been done or in fact declared to have happened.”<sup>332</sup> In Texas, the court noted, “venue” refers to the county in which suit is proper within the forum state.<sup>333</sup> Therefore, the court concluded, a “forum”-selection agreement is one that chooses another state

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<sup>326</sup> *Id.* at 73.

<sup>327</sup> *Id.* at 73, 79.

<sup>328</sup> *Id.* at 79.

<sup>329</sup> *See generally id.*

<sup>330</sup> *See id.* at 73 (citing *Liu v. CiCi Enters., L.P.*, No. 14-05-00827-CV, 2007 WL 43816, at \*2–3 (Tex. App.—Houston [14th Dist.] Jan. 9, 2007, no pet.) (mem. op., not designated for publication) (“The distinction between a forum selection clause and a venue selection clause is critical.”); *Accelerated Christian Educ., Inc. v. Oracle Corp.*, 925 S.W.2d 66, 68 n.1 (Tex. App.—Dallas 1996, no writ), *overruled on other grounds by In re Tyco Elecs. Power Sys., Inc.*, No. 05-04-01808-CV, 2005 WL 237232, at \*4 n.1 (Tex. App.—Dallas 2005, orig. proceeding) (mem. op., not designated for publication) (“‘[V]enue’ has a particular legal meaning in Texas . . .”).

<sup>331</sup> *Id.* (citing *Scott v. Gallagher*, 209 S.W.3d 262, 264 (Tex. App.—Houston [1st Dist.] 2006, no pet.) (“[V]enue refers to the propriety of prosecuting, in a particular form, a suit on a given subject matter with specific parties, over which the *forum* must, necessarily, have subject-matter jurisdiction.”) (emphasis added) (internal quotation marks omitted)).

<sup>332</sup> *Id.* (quoting *State v. Blankenship*, 170 S.W.3d 676, 681 (Tex. App.—Austin 2005, pet. ref’d) (internal quotation marks omitted)).

<sup>333</sup> *Id.* (citing *Accelerated Christian*, 925 S.W.2d at 73; *Estrada v. State*, 148 S.W.3d 506, 508 (Tex. App.—El Paso 2004, no pet.)).

or sovereign as the location for trial, whereas a “venue”-selection agreement chooses a particular county or court within that state or sovereign.<sup>334</sup> Because of the *venue* requirements in the Great Lakes Agreement, the court found that the Great Lakes Agreement, though cleverly labeled as and argued by Great Lakes to be a *forum*-selection agreement, was, in actuality a *venue*-selection agreement.<sup>335</sup>

Next, the court proceeded to discuss “nearly a hundred years of Texas case law”<sup>336</sup> that Texas courts will not enforce venue-selection agreements that contradict mandatory-venue statutes, as a matter of strong, established public policy.<sup>337</sup> The court noted that as early as 1919, the Texas Supreme Court refused to enforce an agreement contravening the Texas statutory venue scheme because the venue-limiting agreement was void as against public policy.<sup>338</sup> In that case, the Texas Supreme Court based its holding on two important premises.<sup>339</sup> First, the Court based its holding on the policy behind venue statutes, which the Court articulated as follows:

The rules to determine in what courts and counties actions may be brought are fixed, upon considerations of general convenience and expediency, by general law; to allow them to be changed by the agreement of parties would disturb the symmetry of the law, and interfere with such convenience.<sup>340</sup>

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<sup>334</sup> *Id.* at 73–74.

<sup>335</sup> *Id.* at 79.

<sup>336</sup> *Id.* at 79 n.11 (citing *In re Calderon*, 96 S.W.3d 711, 716–17 (Tex. App.—Tyler 2003, orig. proceeding); *Bristol-Myers Squibb Co. v. Goldston*, 957 S.W.2d 671, 674 (Tex. App.—Fort Worth 1997, pet. denied); *Docta, Inc. v. Mediserve, Inc.*, 607 S.W.2d 301, 302 (Tex. Civ. App.—Waco 1980, no writ); *McGinn v. Fid. Union Life Ins. Co.*, 474 S.W.2d 320, 320–21 (Tex. Civ. App.—Texarkana 1971, writ ref’d n.r.e.); *Tilley v. Capital Nat’l Bank in Austin*, 367 S.W.2d 359, 361–62 (Tex. Civ. App.—Austin 1963, no writ); *Bexar Cty. Mut. Ins. Co. v. Ward*, 245 S.W.2d 325, 326 (Tex. Civ. App.—Eastland 1952, no writ); *Gen. Motors Acceptance Corp. v. Hunsaker*, 50 S.W.2d 367, 367–68 (Tex. Civ. App.—Amarillo 1932, writ dism’d); *Pfeifer v. E.J. Hermann Sales Co.*, 43 S.W.2d 484, 485–86 (Tex. Civ. App.—San Antonio 1931, no writ)).

<sup>337</sup> See generally *id.*

<sup>338</sup> See *id.* at 74 (citing *Int’l Travelers’ Ass’n v. Branum*, 212 S.W. 630, 631–32 (Tex. 1919) (holding that a statute giving a plaintiff the right to sue in several counties cannot be overridden by a contract undertaking to deprive the plaintiff of that right because such an agreement to limit venue was void as against public policy)).

<sup>339</sup> See *id.* (citing *Int’l Travelers’*, 212 S.W. at 631–32).

<sup>340</sup> *Id.* (quoting *Int’l Travelers’*, 212 S.W. at 631 (internal quotation marks omitted)).

Secondarily, the Texas Supreme Court relied upon what would later come to be known as the “ouster” doctrine.<sup>341</sup> The Corpus Christi Court of Appeals noted that *both* policy reasons were relied upon by the Texas Supreme Court, in *Branum*, to refuse to enforce a venue-selection agreement.<sup>342</sup> The court of appeals pointed out that the Texas Supreme Court reaffirmed its conclusion in 1939, holding that “venue is fixed by law and any contract whereby it is agreed to change the law with reference thereto is void.”<sup>343</sup> The court of appeals then discussed two more recent cases where the Texas Supreme Court had expanded upon the traditional justifications for refusing to enforce venue-selection agreements.<sup>344</sup>

The court of appeals explained that the Texas Supreme Court’s recent trend toward enforcement of *forum*-selection agreements has *only* been based on the Court’s rejection of the “ouster” doctrine.<sup>345</sup> The court found that this trend does not supplant firmly established Texas law refusing to enforce *venue*-selection agreements that contravene a mandatory-venue statute.<sup>346</sup> The court of appeals explained that although the Texas Supreme

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<sup>341</sup> *Id.* at 74–75 (citing *Int’l Travelers’*, 212 S.W. at 631–32). The “ouster” doctrine traces back to the decision of the Supreme Court of the United States in *Ins. Co. v. Morse*, 87 U.S. 445, 451 (1874). (The Court held that forum selection clauses were unenforceable because a person cannot “bind himself in advance by an agreement, which may be specifically enforced, thus to forfeit his rights at all times and on all occasions, whenever the case may be presented. . . . agreements in advance to *oust* the courts of the jurisdiction conferred by law are illegal and void.” (emphasis added)).

<sup>342</sup> *In re Great Lakes*, 251 S.W.3d at 75 (citing *Int’l Travelers’*, 212 S.W. at 631–32).

<sup>343</sup> *Id.* (quoting *Ziegelmeyer v. Pelphrey*, 125 S.W.2d 1038, 1040 (Tex. 1939)).

<sup>344</sup> *See id.* at 75–76 (citing *Leonard v. Paxson*, 654 S.W.2d 440, 441–42 (Tex. 1983) (orig. proceeding) (holding that the mandatory venue provisions of the Texas Family Code could not be “negated by contract” and “[t]o hold otherwise would defeat the legislature’s intent that matters affecting the parent-child relationship be heard in the county where the child resides, and would promote forum shopping by contract.”); *Fid. Union Life Ins. Co. v. Evans*, 477 S.W.2d 535, 537 (Tex. 1972) (holding that a venue-selection agreement that contravened the provisions of a mandatory-venue statute was invalid and unenforceable and stating that “the fixing of venue by contract, *except in such instances as permitted by* [TEX. REV. CIV. STAT. ANN. art. 1995, § 5, *repealed by* Act of May 17, 1985, 69th Leg., R.S., ch. 959, § 9(1), 1985 Tex. Gen. Laws 3242, 3322 (eff. Sept. 1, 1985) (current version at TEX. CIV. PRAC. & REM. CODE ANN. § 15.035 (West 1985))], is invalid and cannot be the subject of a private contract. . . . [A mandatory-venue statute] placed venue for an injunction suit in the county in which defendant Evans had his domicile; we hold that a variance of that statute is not the subject of a private contract.”) (emphasis added)).

<sup>345</sup> *See id.* at 77.

<sup>346</sup> *See id.* at 77–78.

Court rejected the “ouster” doctrine in *In re AIU Insurance Co.*,<sup>347</sup> a *forum*-selection agreement “will not be enforced if enforcement would contravene a strong public policy of the forum where the suit was brought[.]”<sup>348</sup> The court of appeals read this exception to imply that refusing to enforce a venue-selection agreement that contradicted a mandatory-venue statute would actually be consistent with the Texas Supreme Court’s recent pronouncements regarding *forum*-selection agreements and with the legislative venue scheme.<sup>349</sup>

Moreover, the court of appeals noted that the Texas Supreme Court was certainly aware of the Court’s own holdings in *Branum*, *Leonard*, and *Fidelity* at the time the Court decided *In re AIU*, but the Texas Supreme Court chose not to expressly overrule those cases, not even referencing the cases at all.<sup>350</sup> Finally, the court of appeals noted that while the Texas Supreme Court rejected the “ouster” doctrine, the Court had never rejected, nor even addressed, “a separate, critical reason for why venue selection agreements in contravention of mandatory venue statutes should not be enforced.”<sup>351</sup> The Texas Supreme Court never addressed the Texas Legislature’s prerogative to set venue or the policy reasons for refusing to enforce a *venue*-selection clause in light of those legislative choices, a prerogative upon which the Texas Supreme Court relied heavily in refusing to enforce a *venue*-selection agreement contrary to a mandatory venue provision in prior decisions.<sup>352</sup> As such, because the court of appeals could not discern any clear legislative intent that would permit the court to essentially add an exception to the mandatory-venue statutes in Chapter 15 of the Texas Civil Practice and Remedies Code or the policies expressed in that chapter, the court declined to create such an exception.<sup>353</sup> The court of appeals stated it had implicitly recognized as much by refusing to enforce

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<sup>347</sup> 148 S.W.3d 109, 122–23 (Tex. 2004) (orig. proceeding) (rejecting the “ouster” doctrine and holding that *forum*-selection agreements are generally enforceable).

<sup>348</sup> See *In re Great Lakes*, 251 S.W.3d at 77 (citing *In re AIU*, 148 S.W.3d at 112).

<sup>349</sup> See *id.* at 78.

<sup>350</sup> See *id.* (citing *In re AIU*, 148 S.W.3d at 109–21); see also *In re AIU Ins. Co.*, 148 S.W.3d at 123 (Phillips, J., dissenting) (whereby Justice Phillips explicitly cited to *Branum*, *Leonard*, and *Fidelity* and carefully explained that these cases related to *venue*).

<sup>351</sup> *In re Great Lakes*, 251 S.W.3d at 77–78.

<sup>352</sup> *Id.* at 78.

<sup>353</sup> *Id.* at 79.



venue-selection agreements that contravened a mandatory venue provision in prior decisions.<sup>354</sup>

Other Texas courts have recognized and endorsed the general rule that venue-selection agreements contravening a mandatory-venue statute are unenforceable.<sup>355</sup> This general rule, based on the venue policy in Texas, stems from the early recognition by Texas courts that the fixing of venue by contract, except in such instances as specifically permitted by statute, is invalid.<sup>356</sup> One such exception, where fixing of venue by contract has been specifically permitted by statute, can be found in Section 15.020 of the Texas Civil Practice and Remedies Code.<sup>357</sup> This exception has led Texas courts to find that “venue-selection clauses are generally unenforceable in Texas unless the contract evinces a ‘major transaction’ as defined in the venue rules.”<sup>358</sup>

Texas practitioners, seeking to oppose the application of this exception in Section 15.020, will need to be able to argue that Section 15.020 does not apply to their case. Because the language of the statute will determine

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<sup>354</sup> *Id.* (citing *Liu v. CiCi Enters., L.P.*, No. 14-05-00827-CV, 2007 WL 43816, at \*2–3 (Tex. App.—Houston [14th Dist.] Jan. 9, 2007, no pet.) (mem. op., not designated for publication) (distinguishing between “forum” and “venue” and holding that venue-selection agreements are unenforceable); *Fleming v. Ahumada*, 193 S.W.3d 704, 712–13 (Tex. App.—Corpus Christi 2006, no pet.) (holding that a contractual provision attempting to fix venue in a settlement agreement was invalid)).

<sup>355</sup> *See, e.g., In re Grp. 1 Realty, Inc.*, 441 S.W.3d 469, 472 (Tex. App.—El Paso 2014, orig. proceeding) (“Although the fixing of venue by contract is generally invalid, Section 15.020 creates a limited exception in cases involving ‘major transactions.’” (citing *In re Great Lakes*, 251 S.W.3d at 78)); *see also In re Lovell-Osburn*, 448 S.W.3d 616, 620 (Tex. App.—Houston [14th Dist.] 2014, orig. proceeding) (“This comports with the general rule in Texas that ‘venue selection cannot be the subject of private contract unless otherwise provided by statute.’” (quoting *Liu*, 2007 WL 43816, at \*2); *Shamoun & Norman, L.L.P. v. Yarto Int’l Grp., L.P.*, 398 S.W.3d 272, 293 (Tex. App.—Corpus Christi 2012, pet. dism’d) (“In general, the fixing of venue by contract is invalid.”)).

<sup>356</sup> *See, e.g., Fleming v. Ahumada*, 193 S.W.3d 704, 712–13 (Tex. App.—Corpus Christi 2006, no pet.) (holding that a contractual provision attempting to fix venue in a settlement agreement was invalid because “[i]n general, the fixing of venue by contract, except in such instances as [specifically permitted by statute], is invalid and cannot be the subject of private contract.” (alteration in original) (internal quotation marks omitted) (citing *Fid. Union Life Ins. Co. v. Evans*, 477 S.W.2d 535, 537 (Tex. 1972))).

<sup>357</sup> *See* TEX. CIV. PRAC. & REM. CODE ANN. § 15.020(b) (West 2009).

<sup>358</sup> *See Hiles v. Arnie & Co.*, 402 S.W.3d 820, 828 (Tex. App.—Houston [14th Dist.] 2013, pet. denied) (citing TEX. CIV. PRAC. & REM. CODE ANN. § 15.020(a)); *In re Tex. Ass’n of Sch. Bds., Inc.*, 169 S.W.3d 653, 660 (Tex. 2005); *Yarber v. Iglehart*, 264 S.W.2d 474, 476 (Tex. Civ. App.—Dallas 1953, no writ)).

whether Section 15.020 is applicable, practitioners should review the discussion of Texas courts' application and interpretation of Section 15.020 in the Appendix.<sup>359</sup> Three particular limitations of Section 15.020 are highlighted here due to their importance to a practitioner who seeks to oppose the application of Section 15.020.

First, Section 15.020 “does not affect venue and jurisdiction in an action arising from a transaction that is not a major transaction.”<sup>360</sup> Accordingly, if a practitioner can show that the statutory definition of a “major transaction” is not satisfied, then Section 15.020 has no application, and therefore, the venue-selection clause should generally be unenforceable.<sup>361</sup> Secondly, for a court to transfer venue to the county specified in the parties' venue-selection agreement because “the party bringing the action has agreed in writing that an action arising from the transaction must be brought in another county[,]” that county must be a county of proper venue under the venue statutes.<sup>362</sup> Thirdly, Section 15.020, by its own terms, does not apply to an action if “venue is established under a statute of this state other than this title.”<sup>363</sup> On this basis, a practitioner can at least argue that, in the event of a conflict, a mandatory-venue statute that originates from *outside* the Texas Civil Practice and Remedies Code would control over Section 15.020.<sup>364</sup>

For the purposes of resolving a conflict between Section 15.020 and another mandatory-venue statute, a practitioner should also understand the

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<sup>359</sup> See *infra* Appendix at A.12.

<sup>360</sup> See TEX. CIV. PRAC. & REM. CODE ANN. § 15.020(e).

<sup>361</sup> See *id.*; see also, e.g., *Hiles*, 402 S.W.3d at 828.

<sup>362</sup> See TEX. CIV. PRAC. & REM. CODE ANN. § 15.020(c)(2); see also *Shamoun & Norman, L.L.P. v. Yarto Int'l Grp., L.P.*, 398 S.W.3d 272, 295–96 (Tex. App.—Corpus Christi 2012, pet. dismiss'd) (finding that although the party bringing the action signed a written agreement that an action arising from the major transaction “must be brought” in Travis County, Section 15.020 did not apply to mandate transfer of venue of the action to Travis County because Travis County was not a county of proper venue under the venue statutes in Chapter 15 of the Texas Civil Practice and Remedies Code).

<sup>363</sup> See TEX. CIV. PRAC. & REM. CODE ANN. § 15.020(d)(3).

<sup>364</sup> See *id.* Note also the distinction between Section 15.020(d)(3) of the Texas Civil Practice and Remedies Code and Section 15.016 of the Texas Civil Practice and Remedies Code. Compare TEX. CIV. PRAC. & REM. CODE ANN. § 15.020(d)(3) (“This Section does not apply to an action if: . . . venue is established under a statute of this state *other than this title.*”) (emphasis added), with TEX. CIV. PRAC. & REM. CODE ANN. § 15.016 (“An action governed by *any other statute* prescribing mandatory venue shall be brought in the county required by that statute.”) (emphasis added).

limitations in the Texas Supreme Court's recent opinion in *In re Fisher*.<sup>365</sup> There, after finding that Section 15.020 applied to the case, the court resolved the conflict between the mandatory venue provisions in Sections 15.017 and 15.020 of the Texas Civil Practice and Remedies Code by looking to the language in Section 15.020.<sup>366</sup> The court stated that "in this case, the language of Section 15.020 applies to an action arising from a major transaction '[n]otwithstanding any other provision of this title'" and held that this language indicated that the Texas Legislature "intended for it to control over other mandatory venue provisions."<sup>367</sup>

While the language in the *In re Fisher* opinion could be read to have elevated Section 15.020 to "super-mandatory" status, such that Section 15.020 should always receive preferential treatment over other mandatory venue provisions,<sup>368</sup> practitioners can argue that such a reading is unwarranted based on the text of Section 15.020.<sup>369</sup> The language that justified the court's preferential treatment of Section 15.020 is found in Section 15.020(c).<sup>370</sup> The court stated that the "[n]otwithstanding any other provision of this title" language in Section 15.020(c)<sup>371</sup> indicated that "the Legislature intended for *it* to control over other mandatory venue provisions."<sup>372</sup> The "it" that the court referenced is Section 15.020(c), *not* Section 15.020 as a whole.<sup>373</sup> Texas practitioners can argue that the *In re Fisher* opinion was not an invitation to apply preferential treatment to Section 15.020 carte blanche, but rather was simply an acknowledgement

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<sup>365</sup> 433 S.W.3d 523, 533–34 (Tex. 2014) (orig. proceeding).

<sup>366</sup> *See id.*

<sup>367</sup> *Id.* at 533–34 (quoting TEX. CIV. PRAC. & REM. CODE ANN. § 15.020(c)).

<sup>368</sup> *See, e.g.*, 1 Adele Hedges & Kim J. Askew, *Texas Practice Guide: Civil Pretrial* § 6:36 (2015) ("Section 15.020 overrides other venue provisions and requires the trial court to enforce the venue agreements." (citing *In re Fisher*, 433 S.W.3d at 533–34)).

<sup>369</sup> *See, e.g.*, TEX. CIV. PRAC. & REM. CODE ANN. § 15.020(d), (e).

<sup>370</sup> *See id.* § 15.020(c) (providing that "[n]otwithstanding any other provision of this title, an action arising from a major transaction may not be brought in a county if: (1) the party bringing the action has agreed in writing that an action arising from the transaction may not be brought in that county, and the action may be brought in another county of this state or in another jurisdiction; or (2) the party bringing the action has agreed in writing that an action arising from the transaction must be brought in another county of this state or in another jurisdiction, and the action may be brought in that other county, under this Section or otherwise, or in that other jurisdiction." (emphasis added)).

<sup>371</sup> *See id.*

<sup>372</sup> *See In re Fisher*, 433 S.W.3d at 533–34 (emphasis added).

<sup>373</sup> *See id.*

that when an action falls under Section 15.020(c), Section 15.020(c) applies “[n]otwithstanding any other provision” of the Texas Civil Practice and Remedies Code.<sup>374</sup>

While this argument appears hyper-technical, the distinction could severely affect a trial court’s decision as to how to resolve a conflict between Section 15.020 and another mandatory-venue statute. SubSection (c) of Section 15.020 only applies whenever the party bringing the action has agreed in writing that an action arising from the transaction either: (1) may not be brought in the county where the party filed suit; or (2) must be brought in a county different than the county where the party filed suit.<sup>375</sup> Importantly, under subSection (c), the county to where the party relying upon the venue-selection agreement seeks to transfer venue must be a county of proper venue.<sup>376</sup> Further, subSection (c) should only receive preferential treatment over other mandatory venue provisions located *within* the Texas Civil Practice and Remedies Code.<sup>377</sup> This is consistent with subSection (d) of Section 15.020, which states that the “major transaction” statute does not apply to an action if “venue is established under a statute of this state other than this title.”<sup>378</sup>

Based on the language in Section 15.020, practitioners can certainly argue that a mandatory-venue statute located *outside* of the Texas Civil Practice and Remedies Code would control over Section 15.020, including subSection (c).<sup>379</sup> This interpretation of the statute would comport with other Texas courts’ reading of Section 15.016 of the Texas Civil Practice and Remedies Code.<sup>380</sup> However, if the conflicting mandatory venue provision was located elsewhere in the Texas Civil Practice and Remedies

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<sup>374</sup> See *id.*; see also TEX. CIV. PRAC. & REM. CODE ANN. § 15.020(c).

<sup>375</sup> See TEX. CIV. PRAC. & REM. CODE ANN. § 15.020(c).

<sup>376</sup> See *id.*; see also Shamoun & Norman, L.L.P. v. Yarto Int’l Grp., L.P., 398 S.W.3d 272, 295–96 (Tex. App.—Corpus Christi 2012, pet. dismiss’d).

<sup>377</sup> See TEX. CIV. PRAC. & REM. CODE ANN. § 15.020(c) (“Notwithstanding any other provision of *this title*, an action arising from a major transaction may not be brought in a county if: . . .” (emphasis added)).

<sup>378</sup> See *id.* § 15.020(d)(3); see also *In re Royalco Oil & Gas Corp.*, 287 S.W.3d 398, 399 n.2 (Tex. App.—Waco 2009, orig. proceeding) (Stating in a footnote that “Section 15.0115 and Section 15.020 are both mandatory venue provisions. However, Section 15.020(c) provides in pertinent part that, when applicable, Section 15.020 controls over other venue statutes in title 2 of the Civil Practice and Remedies Code.” (citing TEX. CIV. PRAC. & REM. CODE ANN. § 15.020(c))).

<sup>379</sup> See TEX. CIV. PRAC. & REM. CODE ANN. § 15.020(c), (d)(3).

<sup>380</sup> See *id.* § 15.016; see also *supra* note 241 and cases cited therein.

Code,<sup>381</sup> then the “super-mandatory” language in Section 15.020(c) appears to require that subSection (c) of Section 15.020 would govern the venue of the dispute.<sup>382</sup>

#### IV. A PROPOSED SOLUTION TO RESOLVING CONFLICTING MANDATORY-VENUE STATUTES

As demonstrated, based on the numerous and often inconsistent approaches that Texas courts have used to resolve apparent conflicts between mandatory-venue statutes, Texas practitioners are currently in a quandary regarding how a court will resolve a conflict between two mandatory-venue statutes. Until the Texas Supreme Court or the Texas Legislature provides such guidance by *expressly* addressing the subject, Texas practitioners will be left with uncertainty and unpredictability.

In *Wilson v. Texas Parks and Wildlife Department*, the Texas Supreme Court held that when a plaintiff files suit in a county of proper venue, it is reversible error to transfer venue to another county even if the county of new venue would have been proper if originally chosen by the plaintiff.<sup>383</sup> The court based this holding on the importance of a plaintiff’s *right* to select venue, stating that:

[I]f the plaintiff chooses a county of proper venue, and this is supported by proof as required by Rule 87, no other county can be a proper venue in that case. This rule gives effect to the plaintiff’s *right* to select a proper venue. The [defendant] urges that reversible error exists only if the county of trial [to which venue was transferred] was one where permissive or mandatory venue never could have been sustained. Such a rule would eviscerate the plaintiff’s *right* to select venue.<sup>384</sup>

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<sup>381</sup> See, e.g., TEX. CIV. PRAC. & REM. CODE ANN. § 65.023 (mandatory venue in suits seeking injunctive relief).

<sup>382</sup> See *id.* § 15.020(c) (“Notwithstanding any other provision of *this title*, an action arising from a major transaction may not be brought in a county if: . . .”) (emphasis added); see also *id.* § 15.020(d)(3) (“This Section does *not* apply if: . . . venue is established under a statute of this state *other than this title*.”) (emphasis added).

<sup>383</sup> 886 S.W.2d 259, 261 (Tex. 1994).

<sup>384</sup> *Id.* (footnote omitted) (emphasis added) (citing *Maranatha Temple, Inc. v. Enter. Prods. Co.*, 833 S.W.2d 736, 741 (Tex. App.—Houston [1st Dist.] 1992, writ denied).

The Court elaborated on this policy that a plaintiff has a *right* to select venue, so long as the plaintiff chooses a county of proper venue, by endorsing the policy-based language of a court of appeals opinion,<sup>385</sup> stating:

The First Court of Appeals correctly understood the harsh effect of such a rule: [W]hen the plaintiff files suit in a permissible county, and the trial court *wrongly* transfers venue to another county, even a permissible one, the plaintiff has lost his right to choose where to bring his suit. He has neither waived his option by filing in an impermissible county *nor* had his suit transferred because the defendant has properly shown that it should be. Yet, he has lost the *right* to bring suit in the permissible county of his choice. He has lost a *right* which he neither waived nor was rightfully divested of. The harmless error rule should not apply to such a circumstance.<sup>386</sup>

While the Texas Supreme Court in *Wilson* was not deciding whether one mandatory venue provision controlled over another conflicting mandatory venue provision, the Court endorsed in no uncertain terms the policy that a plaintiff has a *right* to choose where to have claims litigated.<sup>387</sup> So long as the plaintiff chooses a county of proper venue, the policy underlying the Texas venue scheme supports the determination that the plaintiff's choice should not be disturbed.<sup>388</sup> Arguably, the Texas Legislature has recognized this point by only *requiring* a court to transfer an action to another county if the plaintiff filed suit in a county of improper venue, as defined by the venue statutes.<sup>389</sup>

In *In re Fisher*, the Court actually addressed a conflict between two competing mandatory-venue statutes.<sup>390</sup> There, the Court explicitly endorsed the general policy behind the Texas venue framework by citing to the *Wilson* opinion for the assertion that “[v]enue may be proper in multiple

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<sup>385</sup> See *Maranatha*, 833 S.W.2d at 741.

<sup>386</sup> *Wilson*, 886 S.W.2d at 261 (citing *Maranatha*, 833 S.W.2d at 741) (third and fourth emphasis added).

<sup>387</sup> See *id.*

<sup>388</sup> See *Chiriboga v. State Farm Mut. Auto. Ins. Co.*, 96 S.W.3d 673, 677 (Tex. App.—Austin 2003, no pet.).

<sup>389</sup> See TEX. CIV. PRAC. & REM. CODE ANN. § 15.063(1) (West 2008).

<sup>390</sup> 433 S.W.3d 523, 533–34 (Tex. 2014) (orig. proceeding).

counties under mandatory venue rules, and the plaintiff is generally afforded the *right* to choose venue when suit is filed.”<sup>391</sup> Because the conflict at issue in *In re Fisher* was between Section 15.020, the “major transaction” statute, and Section 15.017 regarding suits for defamation, the Court held that Section 15.020 prevailed over Section 15.017.<sup>392</sup> The Court reached this conclusion, however, based on the following reasoning: “But in this case, the language of Section 15.020 applies to an action arising from a major transaction ‘[n]otwithstanding any other provision of this title.’ This indicates that the Legislature intended for it to control over other mandatory venue provisions.”<sup>393</sup> Thus, after approvingly citing the general venue policy expressed in *Wilson*, the Court only found that the plaintiff’s choice of venue would not prevail because of the *express* terms of the statute in Section 15.020(c).<sup>394</sup> This view comports with the “general rule in Texas that ‘venue selection cannot be the subject of private contract unless otherwise provided *by statute*.’”<sup>395</sup>

This is the rule that the authors of this Article humbly propose Texas courts should apply in order to resolve the quandary of competing mandatory venue provisions: When two mandatory-venue statutes provide that venue is mandatory in two different counties, the plaintiff’s choice between the two proper counties should prevail unless the Legislature has *expressly* stated that one statute should control over the other.

This bright-line rule makes sense. Venue is “a creature of legislative grace, and because a change of venue was unknown to the common law, the power to make venue changes is purely statutory.”<sup>396</sup> Currently, there “is no venue statute providing that, if there is a conflict between two statutes as to

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<sup>391</sup> *Id.* at 533 (emphasis added) (citing *Wilson*, 886 S.W.2d at 260).

<sup>392</sup> *See id.* at 533–34.

<sup>393</sup> *Id.* (citations omitted) (internal quotation marks omitted).

<sup>394</sup> *See id.*; *see also* TEX. CIV. PRAC. & REM. CODE ANN. § 15.020(c) (“Notwithstanding any other provision of this title . . .”).

<sup>395</sup> *See In re Lovell-Osburn*, 448 S.W.3d 616, 620 (Tex. App.—Houston [14th Dist.] 2014, orig. proceeding) (emphasis added) (quoting *Liu v. CiCi Enters., L.P.*, No. 14-05-00827-CV, 2007 WL 43816, at \*2 (Tex. App.—Houston [14th Dist.] Jan. 9, 2007, no pet.) (mem. op., not designated for publication)); *see also Fleming v. Ahumada*, 193 S.W.3d 704, 712–13 (Tex. App.—Corpus Christi 2006, no pet.) (holding that a contractual provision attempting to fix venue in a settlement agreement was invalid because “[i]n general, the fixing of venue by contract, except in such instances as [specifically permitted by statute], is invalid and cannot be the subject of private contract.” (alteration in original) (internal quotation marks omitted) (citing *Fid. Union Life Ins. Co. v. Evans*, 477 S.W.2d 535, 537 (Tex. 1972))).

<sup>396</sup> *See Polaris Inv. Mgmt. Corp. v. Abascal*, 892 S.W.2d 860, 862 (Tex. 1995).

the mandatory venue, the plaintiff has a right to choose the county in which the Legislature mandated venue.”<sup>397</sup> Yet, there is a statute that defines “proper venue” as the “venue required by” a mandatory-venue statute.<sup>398</sup> Further, another venue statute only requires that a trial court “shall” transfer an action when the action is pending in a county of *improper* venue.<sup>399</sup> When a plaintiff files suit in a county in accordance with “the mandatory provisions of Subchapter B [of Chapter 15] or another statute prescribing mandatory venue,” that county is a county of proper venue under the venue rules.<sup>400</sup>

“The declared purpose of the rules [of civil procedure] in both [the Texas and Federal] systems is ‘to secure the just, speedy, and inexpensive determination of every action . . . .’”<sup>401</sup> The bright-line rule proposed in this Article will accomplish this expressed purpose and make both practical and economic sense by providing much-needed clarity for Texas practitioners. This bright-line rule will enable Texas practitioners to be certain that, when venue is established under a mandatory-venue statute, the parties will not be forced into spending excessive hours and expenses on unnecessary venue hearings and appeals of *pre-merits* decisions in their cases. Finally, this bright-line rule is consistent with the recognized venue policy in Texas that a plaintiff is generally afforded the *right* to choose where to set venue, so

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<sup>397</sup> See *In re Sosa*, 370 S.W.3d 79, 81 (Tex. App.—Houston [14th Dist.] 2012, orig. proceeding).

<sup>398</sup> See TEX. CIV. PRAC. & REM. CODE ANN. § 15.001(b).

<sup>399</sup> See *id.* § 15.063(1).

<sup>400</sup> See *id.* § 15.001(b).

<sup>401</sup> See William A. Vinson, *Federal Rules and Texas Rules of Appellate Procedure—A Comparison*, 20 TEX. L. REV. 46, 46 (1941). Mr. Vinson, one of the founding partners of the well-known international law firm Vinson & Elkins LLP, drafted this article only a year after Mr. Vinson had been appointed by the Texas Supreme Court to serve on the Texas Supreme Court Advisory Committee on Rules of Procedure, a committee appointed to “prepare a code of civil procedure for all the Texas civil courts.” See Ann Hornak, *VINSON, WILLIAM ASHTON*, TEXAS STATE HISTORICAL ASSOCIATION (June 15, 2010), <http://www.tshaonline.org/handbook/online/articles/fvi13>. The Advisory Committee on Rules of Procedure wholeheartedly endorsed this principle, citing to the article in the General Commentary added to Rule 1 of the Texas Rules of Civil Procedure in 1966. See TEX. R. CIV. P. 1 (Gen. Commentary 1966); see also FED. R. CIV. P. 1 (Stating that the rules of procedure should be construed and administered “to secure the just, speedy, and inexpensive determination of every action.”).



long as the plaintiff chooses a county of proper venue,<sup>402</sup> subject to the power of the Texas Legislature to expressly provide otherwise.

In *In re Fisher*, the Texas Supreme Court did not look to rules of statutory construction and determine that the “more-specific, later-enacted statute of mandatory venue” should control.<sup>403</sup> The Court did not use statutory interpretation to determine that the statute with the longer-standing “history” should control.<sup>404</sup> Instead, the Court recognized the venue policy in Texas, as stated in *Wilson v. Texas Parks and Wildlife Department*,<sup>405</sup> and only departed from that policy because of the *express* language of the mandatory-venue statute at issue.<sup>406</sup> Therefore, to consolidate the various inconsistent approaches of Texas courts and resolve the quandary of competing mandatory-venue statutes in Texas, the courts of Texas should apply the following bright-line rule: When two mandatory-venue statutes provide that venue is mandatory in two different counties, the plaintiff’s choice between the two proper counties should prevail unless the Legislature has *expressly* stated that one statute should control over the other.

## V. CONCLUSION

Based on the differing and conflicting approaches that Texas courts have endorsed to decide between competing mandatory-venue statutes, Texas practitioners currently have the ability to select among multiple rationales and advocate for a trial court to utilize the rationale most favorable to their venue position. Texas practitioners should find the tools and resources to advocate for their position in this Article. The downside to this opportunity for advocacy is inconsistency, uncertainty, and unpredictability. A bright-line rule, such as the one proposed in this Article, is needed from the Texas Supreme Court or the Texas Legislature to

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<sup>402</sup> See, e.g., *Chiriboga v. State Farm Mut. Auto. Ins. Co.*, 96 S.W.3d 673, 677 (Tex. App.—Austin 2003, no pet.).

<sup>403</sup> Compare *In re Fisher*, 433 S.W.3d 523, 533–34 (Tex. 2014) (orig. proceeding), with *In re Sosa*, 370 S.W.3d 79, 81–82 (Tex. App.—Houston [14th Dist.] 2012, orig. proceeding).

<sup>404</sup> Compare *In re Fisher*, 433 S.W.3d at 533–34, with *In re Fort Bend Cty.*, 278 S.W.3d 842, 844–45 (Tex. App.—Houston [14th Dist.] 2009, orig. proceeding).

<sup>405</sup> 886 S.W.2d 259, 261 (Tex. 1994) (“Therefore, if the plaintiff chooses a county of proper venue, and this is supported by proof as required by Rule 87, no other county can be a proper venue in that case.”).

<sup>406</sup> See *In re Fisher*, 433 S.W.3d at 533–34.

eradicate the inconsistency, unpredictability, and excessive cost of resolving conflicts between mandatory venue provisions.

## APPENDIX: SPECIFIC MANDATORY-VENUE STATUTES IN TEXAS

Directing the trial court to a mandatory-venue statute provides significant advantages to a litigant. For one, a trial court has no discretion to refuse to enforce a mandatory-venue statute over a general or permissive venue statute, assuming the proponent of the statute makes the necessary prima facie showing that the asserted mandatory-venue statute is applicable to the case.<sup>407</sup> For another, when a plaintiff properly joins two or more claims or causes of actions, and one of the claims or causes of action is governed by a mandatory-venue statute, “the suit shall be brought in the county required by the mandatory venue provision.”<sup>408</sup> Further, a party can apply for a writ of mandamus to enforce a mandatory venue provision rather than awaiting appeal after trial.<sup>409</sup> This Appendix is devoted to providing Texas practitioners with legal background for many of the most commonly-cited mandatory venue provisions in Texas.

*A. Chapter 15 of the Texas Civil Practice and Remedies Code*

The Texas venue scheme is set forth in Chapter 15 of the Texas Civil Practice and Remedies Code. A non-exclusive collection of mandatory-venue statutes is set forth in Subchapter B, entitled “Mandatory Venue,” of Chapter 15 of the Texas Civil Practice and Remedies Code.<sup>410</sup> However, the

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<sup>407</sup> See TEX. CIV. PRAC. & REM. CODE ANN. § 15.001 (West 2002) (the general venue rule providing that venue is only proper in a particular county under a permissive venue statute, including the general venue rule, if a mandatory-venue statute does not apply); TEX. R. CIV. P. 87(2)–(3) (setting forth the requirements for making a prima facie showing); see also *In re Lovell-Osburn*, 448 S.W.3d 616, 620 (Tex. App.—Houston [14th Dist.] 2014, orig. proceeding) (“Texas courts have long held that . . . a trial court has a ministerial duty to transfer venue when the statutory terms [of a mandatory-venue statute] are satisfied.”); *K.J. Eastwood Invs., Inc. v. Enlow*, 923 S.W.2d 255, 258 (Tex. App.—Fort Worth 1996, no writ) (holding that trial court had “no discretion to deny the motion to transfer venue” when the movant made a prima facie showing that the action fell under a mandatory-venue statute).

<sup>408</sup> See TEX. CIV. PRAC. & REM. CODE ANN. § 15.004 (titled “Mandatory Venue Provisions Governs Multiple Claims”).

<sup>409</sup> See *id.* § 15.0642 (“A party may apply for a writ of mandamus with an appellate court to enforce the mandatory venue provisions of this chapter. An application for the writ of mandamus must be filed before the later of: (1) the 90th day before the date the trial starts; or (2) the 10th day after the date the party receives notice of the trial setting.”); see also *In re Lopez*, 372 S.W.3d 174, 176–77 (Tex. 2012) (holding that mandamus relief is available to correct a trial court’s erroneous ruling on a mandatory venue contest, and it is not necessary that the petitioner demonstrate that the petitioner has no adequate remedy by appeal).

<sup>410</sup> See TEX. CIV. PRAC. & REM. CODE ANN. §§ 15.011–15.020.

Texas Legislature has enacted numerous mandatory-venue statutes outside of Subchapter B as well.<sup>411</sup>

This Section addresses the mandatory-venue statutes located within Subchapter B of Chapter 15<sup>412</sup> in order to assist Texas trial lawyers in determining when these statutes will apply to their suit.

### 1. Tex. Civ. Prac. & Rem. Code Ann. § 15.011 – Suits Involving Real Property

The first mandatory venue provision in Subchapter B<sup>413</sup> addresses actions for recovery of interests in real property.<sup>414</sup> This mandatory venue provision provides as follows:

Actions for recovery of real property or an estate or interest in real property, for partition of real property, to remove encumbrances from the title to real property, for recovery of damages to real property, or to quiet title to real property shall be brought in the county in which all or a part of the property is located.<sup>415</sup>

Importantly, the Texas Supreme Court has held that when the Texas Legislature enacted Section 15.011, the Legislature “intended Section 15.011 to be more inclusive [than Section 15.011’s now-repealed predecessor statute<sup>416</sup>] regarding the types of real property suits subject to mandatory venue.”<sup>417</sup> Specifically, the Court relied on the Legislature’s

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<sup>411</sup> See, e.g., TEX. CIV. PRAC. & REM. CODE ANN. § 65.023 (providing that “a writ of injunction against a party who is a resident of this state shall be tried in a district or county court in the county in which the party is domiciled.”); TEX. PROP. CODE ANN. § 21.013 (West 2014) (providing that the “venue of a condemnation proceeding is the county in which the owner of the property being condemned resides if the owner resides in a county in which part of the property is located. Otherwise, the venue of a condemnation proceeding is any county in which at least part of the property is located.”).

<sup>412</sup> TEX. CIV. PRAC. & REM. CODE ANN. §§ 15.011–15.020.

<sup>413</sup> *Id.*

<sup>414</sup> See *id.* § 15.011.

<sup>415</sup> *Id.*

<sup>416</sup> See Act of Dec. 10, 1863, 10th Leg., ch. 17, § 1, 1863 Tex. Gen. Laws 10 (relevant version available at TEX. REV. CIV. STAT. ANN. art. 1995, §§ 12–15 (West 1950)).

<sup>417</sup> *In re Applied Chem. Magnesias Corp.*, 206 S.W.3d 114, 118–19 (Tex. 2006) (orig. proceeding) (holding that a declaratory judgment suit to determine the rights of the parties to a contract to acquire surface and mineral leases was an action involving an interest in real property thus making it subject to the mandatory venue provision in Section 15.011).

addition of the term “or interest in real property” to indicate the legislative intent to expand the scope of the types of actions that are subject to mandatory venue under Section 15.011.<sup>418</sup>

To establish the applicability of Section 15.011:

a party must allege two venue facts, and establish them by prima facie proof if specifically denied, to show that venue is mandatory under Section 15.011: (1) that the nature of the suit fits within those listed in Section 15.011, and (2) that all or part of the realty at issue is located in the county of suit.<sup>419</sup>

It is the ultimate or dominant purpose of a suit, and not how the causes of action are described by the parties, which determines whether the nature of the suit makes it subject to Section 15.011.<sup>420</sup> The nature of the plaintiff’s claim is determined from the principal right asserted and the relief sought in the petition.<sup>421</sup> Texas courts have held that a lien created by a deed of trust is an encumbrance on the title to real property under this mandatory venue provision<sup>422</sup> and that a suit to cancel a deed of trust procured by fraud is a suit to remove an encumbrance from title, which affects an interest in land under this mandatory venue provision.<sup>423</sup> Along these lines, a demand for a constructive trust on an interest in land is considered tantamount to an attempt to recover real property and, therefore, is subject to the mandatory

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<sup>418</sup> See *id.* at 117–18.

<sup>419</sup> See *In re City Nat’l Bank*, 257 S.W.3d 452, 454–55 (Tex. App.—Tyler 2008, orig. proceeding [mand. denied]) (internal quotations omitted) (holding that a “lien created by a deed of trust is an encumbrance on the title to real property,” and therefore, a suit regarding foreclosure on the deed of trust lien, pledged as security to a promissory note, was “tantamount to a suit to remove an encumbrance from the title [to] real property,” which made venue mandatory in the county where the land was located).

<sup>420</sup> See *In re Applied Chem.*, 206 S.W.3d at 118–19 (holding that “special distinctions for real property suits” should not be made simply because the suit is “couched in terms of a declaratory judgment action” and holding that venue was mandatory in the county of the land at issue because the plaintiff was “using the declaratory judgment mechanism as an indirect means of quieting title to the mineral estate” of the land at issue); see also *In re City Nat’l Bank*, 257 S.W.3d at 454; *Bracewell v. Fair*, 638 S.W.2d 612, 615 (Tex. App.—Houston [1st Dist.] 1982, no writ).

<sup>421</sup> See *In re City Nat’l Bank*, 257 S.W.3d at 454–55; see also *In re Stroud Oil Props., Inc.*, 110 S.W.3d 18, 25 (Tex. App.—Waco 2002, orig. proceeding).

<sup>422</sup> See *In re City Nat’l Bank*, 257 S.W.3d at 455 (citing *Pringle v. S. Bankers Life Ins. Co.*, 296 S.W.2d 347, 349 (Tex. Civ. App.—Austin 1956, no writ)).

<sup>423</sup> See *id.*

venue provision in Section 15.011.<sup>424</sup> Moreover, Texas courts have held that suits for rescission of a contract transferring real property and suits seeking royalty and overriding royalty interests in minerals are subject to Section 15.011.<sup>425</sup>

In summary, any deed, contract, judgment, or other instrument not void on its face that purports to convey any interest in or makes any change upon the land of a true owner, the invalidity of which would require proof, is a cloud upon legal title and, thus, would satisfy the requirements under this mandatory venue provision.<sup>426</sup> This mandatory venue provision has broad applicability because “[o]nce it is demonstrated that the court’s judgment would have some effect on an interest in land, then the venue of the suit is properly fixed under the mandatory-venue statute.”<sup>427</sup>

## 2. Tex. Civ. Prac. & Rem. Code Ann. § 15.0115 – Landlord-Tenant

Section 15.0115, another mandatory venue provision within Chapter 15, addresses suits involving landlord-tenant relationships, providing that:

- (a) Except as provided by another statute prescribing mandatory venue, a suit between a landlord and a tenant arising under a lease shall be brought in the county in which all or a part of the real property is located.

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<sup>424</sup> See *In re Kerr*, 293 S.W.3d 353, 358, 360 (Tex. App.—Beaumont 2009, orig. proceeding [mand. denied]) (holding that a suit for breach of fiduciary duty based on the allegedly fraudulent acquisition of profits from mineral leases depended on the rightful ownership of real property and, therefore, satisfied Section 15.011’s mandatory venue requirements because “[w]hen rightful ownership of real property must be decided as a prerequisite to the relief requested, the mandatory venue statute governs.”).

<sup>425</sup> See, e.g., *In re Signorelli Co.*, 446 S.W.3d 470, 475–76 (Tex. App.—Houston [1st Dist.] 2014, no pet.) (holding that in a suit premised upon allegations of breach of contract and fraud relating to contracts for two parcels of land, the substance of at least one of the plaintiff’s claims affected an interest in real property, and thus, venue was mandatory in the county where that real property was located under Section 15.011); see also *Madera Prod. Co. v. Atl. Richfield Co.*, 107 S.W.3d 652, 659–60 (Tex. App.—Texarkana 2003, pet. denied in part, pet. dism’d in part) (“Because [the plaintiff] bases its claims to damages on the ownership right to a real property interest, transfer of this case to Gregg County where the mineral interest was located was proper [under Section 15.011].”).

<sup>426</sup> See *In re City Nat’l Bank*, 257 S.W.3d at 455 (citing *DRG Fin. Corp. v. Wade*, 577 S.W.2d 349, 352 (Tex. Civ. App.—Houston [14th Dist.] 1979, no writ)).

<sup>427</sup> See *id.* (citing *N. Nat. Gas v. Chisos Joint Venture I*, 142 S.W.3d 447, 453 (Tex. App.—El Paso 2004, no pet.)).

(b) In this Section, “lease” means any written or oral agreement between a landlord and a tenant that establishes or modifies the terms, conditions, or other provisions relating to the use and occupancy of the real property that is the subject of the agreement.<sup>428</sup>

Despite not defining “landlord” or “tenant” in the statute, Texas courts have held that the terms are clearly intended to apply in the context of commercial leases, leases of farm or ranch land, and even leases for a salt water disposal well.<sup>429</sup> Like Section 15.011, the basis for this mandatory venue provision is the location of real property. Therefore, to establish the applicability of this mandatory venue provision, the plaintiff must allege the necessary “two venue facts (and establish them by *prima facie* proof if specifically denied) to show that venue is mandatory under the real property venue exceptions: (1) that the nature of the suit fits within the requirements of the exception; and (2) that all or part of the realty at issue is located in the county of suit.”<sup>430</sup>

### 3. Tex. Civ. Prac. & Rem. Code Ann. § 15.012 – Injunction Against Suit

Section 15.012 addresses anti-suit injunctions and provides that: “Actions to stay proceedings in a suit shall be brought in the county in which the suit is pending.”<sup>431</sup> As explained below, another mandatory venue provision, located outside of Chapter 15, provides that a writ of injunction against a Texas resident must be brought in the county in which the Texas resident is domiciled.<sup>432</sup> Texas courts have interpreted the latter

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<sup>428</sup>TEX. CIV. PRAC. & REM. CODE ANN. § 15.0115 (West 2002).

<sup>429</sup>*See, e.g., In re Freestone Underground Storage, Inc.*, 429 S.W.3d 110, 117–18 (Tex. App.—Texarkana 2014, orig. proceeding) (“We believe that if restrictive definitions of the terms ‘landlord’ and ‘tenant’ were required for a proper interpretation or application of Chapter 15 of the Texas Civil Practice and Remedies Code, the Legislature would have provided such restrictive definitions. . . . The terms ‘landlord’ and ‘tenant’ are commonly used in the context of commercial leases and leases of farm or ranch land. In fact, the Waco Court of Appeals has used the terms ‘landlord’ and ‘tenant’ to describe a lease for a salt water disposal well.” (citing *In re Royalco Oil & Gas Corp.*, 287 S.W.3d 398, 399 (Tex. App.—Waco 2009, orig. proceeding))).

<sup>430</sup>2 Roy W. McDONALD & ELAINE A. GRAFTON CARLSON, TEXAS CIVIL PRACTICE § 6:12 (2d ed. 2002).

<sup>431</sup>TEX. CIV. PRAC. & REM. CODE ANN. § 15.012.

<sup>432</sup>*See id.* § 65.023.

mandatory venue provision, Section 65.023, to only apply to suits where the relief sought was primarily injunctive.<sup>433</sup>

Anti-suit injunctions covered by Section 15.012 obviously constitute a far more narrow category of injunctive relief than that encompassed by Section 65.023, but in one respect Section 15.012 may be more broadly applied than Section 65.023. At least one Texas court has interpreted Section 15.012 to not require a showing that the primary relief sought is primarily injunctive.<sup>434</sup> The court explained the significance of this distinction as follows:

We find nothing in the plain language of Section 15.012 limiting this mandatory venue Section to suits that are primarily injunctive. Accordingly, we determine the scope of this mandatory venue provision involving anti-suit injunctions includes [both] primarily injunctive relief suits and suits in which injunctive relief sought is ancillary to other relief.<sup>435</sup>

Therefore, when the requested injunctive relief qualifies as an anti-suit injunction, Texas practitioners can support mandatory venue with a lesser showing under Section 15.012 than under Section 65.023.

#### 4. Tex. Civ. Prac. & Rem. Code Ann. § 15.013 – Injunction Against Execution of Judgment

Another seldom-used mandatory-venue statute within Chapter 15, Section 15.013, addresses suits where one party seeks to enjoin the execution of a judgment and provides that “[a]ctions to restrain execution of

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<sup>433</sup> See, e.g., *In re Cont'l Airlines, Inc.*, 988 S.W.2d 733, 736–37 (Tex. 1998) (holding that a suit for declaratory relief was not primarily seeking injunctive relief, so venue was not mandatory under Section 65.023 and stating that “[t]he mere possibility that a defendant will disobey the final judgment of a court, causing it to resort to enforce its judgment through injunction, does not transform the suit into an injunction suit under Section 65.023(a.)”); *Ex parte Coffee*, 328 S.W.2d 283, 287 (Tex. 1959).

<sup>434</sup> See *O'Quinn v. Hall*, 77 S.W.3d 452, 455–56 (Tex. App.—Corpus Christi 2002, no pet.) (distinguishing *In re Cont'l Airlines, Inc.*, 988 S.W.2d 733 (Tex. 1998) and the Texas Supreme Court's interpretation of Section 65.023 by stating that “the defendant in *In re Cont'l Airlines* did not assert that Section 15.012 of the venue statute mandated venue. Neither did the Court acknowledge that Section 15.012 applied only to suits where the relief sought was primarily injunctive.”).

<sup>435</sup> *O'Quinn*, 77 S.W.3d at 456.



a judgment based on invalidity of the judgment or of the writ shall be brought in the county in which the judgment was rendered.”<sup>436</sup> This mandatory venue provision “was intended to establish mandatory venue ‘only [for] suits attacking the judgment, questioning its validity, or presenting defenses properly connected with the suit in which it was rendered, and which should have been adjudicated therein.’”<sup>437</sup>

#### 5. Tex. Civ. Prac. & Rem. Code Ann. § 15.014 – Head of State Department

Section 15.014 provides for venue of suits seeking mandamus against the State: “[a]n action for mandamus against the head of a department of the state government shall be brought in Travis County.”<sup>438</sup> This mandatory-venue statute applies if the relief sought is to compel action pursuant to a mandatory legal duty, even where the petition does not use the term “mandamus.”<sup>439</sup>

As Roy McDonald and Elaine Carlson point out, this mandatory-venue statute “was adopted by the Republic of Texas to relieve the commissioner of the general land office from process from distant counties.”<sup>440</sup> In addition to the commissioner of the general land office, heads of a department of the state government would include heads of the Texas Parks and Wildlife Department, the State Department of Health, and other state administrative

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<sup>436</sup>TEX. CIV. PRAC. & REM. CODE ANN. § 15.013.

<sup>437</sup>*See Lopez v. Tex. Workers’ Comp. Ins. Fund*, 11 S.W.3d 490, 494 (Tex. App.—Austin 2000, pet. denied) (holding that an action by the Workers’ Compensation Insurance Fund, which sought a declaration as to whether the Fund was statutorily required to pay benefits to a claimant pending the Fund’s appeal of a district court judgment awarding benefits, did not attack the validity of the district court judgment, but simply affected when the Fund would have to pay, and thus, venue was not mandatory in the county where the judgment was rendered); *see also Hageman/Fritz, Byrne, Head & Harrison, L.L.P. v. Luth*, 150 S.W.3d 617, 629 (Tex. App.—Austin 2004, no pet.) (holding that venue for settlement creditor’s action seeking declaratory judgment relating to settlement funds that deputy constables of the court of the first county seized during creditor’s settlement conference with the judgment debtor, was mandatory in the court of the second county that issued the writ of execution on prior judgment against creditor, because the substance of the case was validity of the writ of execution, and the prior judgment was valid on its face).

<sup>438</sup>TEX. CIV. PRAC. & REM. CODE ANN. § 15.014.

<sup>439</sup>*See* 2 MCDONALD & CARLSON, *supra* note 430 § 6:14 (citing *State Bd. of Ins. v. Adams*, 316 S.W.2d 773, 779 (Tex. Civ. App.—Houston 1958, writ ref’d n.r.e.).

<sup>440</sup>*See id.* § 6:14 n.4.

agencies.<sup>441</sup> This statute has also been held to apply to the Board of Regents for a public or state university.<sup>442</sup>

#### 6. Tex. Civ. Prac. & Rem. Code Ann. § 15.015 – Counties

Section 15.015, an important mandatory-venue statute, provides that “[a]n action against a county shall be brought in that county.”<sup>443</sup> Some Texas courts of appeals have applied special significance to Section 15.015.<sup>444</sup> At least one Texas court has held that a suit is deemed to be against a county, even though the county is not named, when the suit is brought against the county officials in their official capacity and is based upon a claim growing out of transactions with the county, to which the county officials have no personal interest.<sup>445</sup> While the fact that other codefendants are residents of other counties does not alter this mandatory-venue statute requiring the suit against the county to be brought in that county, it should be noted that when a county is named as a third-party defendant, this mandatory-venue statute would not control over the statute relied upon to establish venue of the main action.<sup>446</sup>

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<sup>441</sup> See 1 Kim J. Askew & Adele Hedges, *Texas Practice Guide: Civil Pretrial* § 6:26 (2015).

<sup>442</sup> See *Univ. of Tex. v. Booker*, 282 S.W.2d 740, 743 (Tex. Civ. App.—Texarkana 1955, no writ) (construing the predecessor statute, TEX. REV. CIV. STAT. ANN. art. 1995, § 20, repealed by Act of May 17, 1985, 69th Leg., R.S., ch. 959 § 9(1), 1985 TEX. GEN. LAWS 3242).

<sup>443</sup> TEX. CIV. PRAC. & REM. CODE ANN. § 15.015.

<sup>444</sup> See *In re San Jacinto Cty.*, 416 S.W.3d 639, 642 (Tex. App.—Houston [14th Dist.] 2013, no pet.) (holding that in a declaratory judgment action seeking a declaration that mineral interests owned by a decedent were not included in a Section of real property devised to San Jacinto County that “when a county is sued, venue is mandatory in that county irrespective of any other venue statutes, whether mandatory or permissive.”); *In re Fort Bend Cty.*, 278 S.W.3d 842, 844 (Tex. App.—Houston [14th Dist.] 2009, orig. proceeding) (stating that “Texas courts have interpreted Section 15.015 as having no exception”).

<sup>445</sup> See 2 MCDONALD & CARLSON, *supra* note 430 § 6:13 (citing *Cobb v. H.C. Burt & Co.*, 241 S.W. 185 (Tex. Civ. App.—Beaumont 1922, no writ)).

<sup>446</sup> See 72 Tex. Jur. 3d *Venue* § 46 (2013) (citing *In re Cty. of Galveston*, 211 S.W.3d 879, 881–82 (Tex. App.—Houston [14th Dist.] 2006, no pet.) (construing TEX. CIV. PRAC. & REM. CODE § 15.062(a), which states that venue of the main action “shall” establish venue of a third-party claim, controlled over Section 15.015 in a suit where Galveston County was joined as a third-party defendant)).

### 7. Tex. Civ. Prac. & Rem. Code Ann. § 15.0151 – Certain Political Subdivisions

Section 15.0151 addresses suits against certain political subdivisions, providing that:

(a) Except as provided by a law not contained in this chapter, an action against a political subdivision that is located in a county with a population of 100,000 or less shall be brought in the county in which the political subdivision is located. If the political subdivision is located in more than one county and the population of each county is 100,000 or less, the action shall be brought in any county in which the political subdivision is located.<sup>447</sup>

This mandatory-venue statute defines a “political subdivision” as a governmental entity in Texas, other than a county, which is not a state agency.<sup>448</sup> A “political subdivision” includes “a municipality, school or junior college district, hospital district, or any other special purpose district or authority.”<sup>449</sup> Practitioners should be aware that a suit against an administrator of a political subdivision in the administrator’s individual capacity, however, would not qualify as an action against the political subdivision for venue purposes.<sup>450</sup>

### 8. Tex. Civ. Prac. & Rem. Code Ann. § 15.017 – Libel, Slander, Privacy Invasion

Section 15.017 provides for mandatory venue in defamation and invasion of privacy suits, stating that:

A suit for damages for libel, slander, or invasion of privacy shall be brought and can only be maintained in the county in which the plaintiff resided at the time of the accrual of the cause of action, or in the county in which the defendant

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<sup>447</sup> TEX. CIV. PRAC. & REM. CODE ANN. § 15.0151(a).

<sup>448</sup> *Id.* § 15.0151(b).

<sup>449</sup> *Id.*; see also *Sabine Cty. Hosp. Dist. v. Packard*, No. 12-11-00272-CV, 2012 WL 1268386, at \*2 (Tex. App.—Tyler April 11, 2012, no pet.) (not designated for publication) (“A hospital district is a special purpose district.”).

<sup>450</sup> See *McIntosh v. Copeland*, 894 S.W.2d 60, 63–64 (Tex. App.—Austin 1995, writ denied) (“We hold that a tort action against a county hospital administrator in his individual capacity is not an action against the county for venue purposes.”).

resided at the time of filing suit, or in the county of the residence of defendants, or any of them, or the domicile of any corporate defendant, at the election of the plaintiff.<sup>451</sup>

Before the enactment of the original version of this mandatory-venue statute in 1919, a plaintiff could establish venue for a libel suit in any county where a publication had been distributed.<sup>452</sup> To prevent abusive forum shopping, this mandatory-venue statute limits the counties of proper venue for the action to the counties set forth in the statute.<sup>453</sup> Texas courts have long held that this mandatory-venue statute is to be liberally construed in favor of the plaintiff bringing a defamation suit.<sup>454</sup> Importantly, practitioners should note that Section 15.017 only applies to suits where damages are sought.<sup>455</sup>

To establish proper venue under this mandatory statute, the plaintiff often must show that: (1) a cause of action for defamation or invasion of privacy in fact has accrued; and (2) at the time the cause of action accrued, the plaintiff resided in the county in which the suit was filed.<sup>456</sup>

#### 9. Tex. Civ. Prac. & Rem. Code Ann. § 15.018 – FELA

Section 15.018 provides for mandatory venue in suits brought under the Federal Employers' Liability Act (FELA)<sup>457</sup> in Texas state courts.<sup>458</sup> This mandatory venue provision requires FELA suits to be brought:

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<sup>451</sup> TEX. CIV. PRAC. & REM. CODE ANN. § 15.017.

<sup>452</sup> See 2 MCDONALD & CARLSON, *supra* note 430 § 6:16.

<sup>453</sup> See *id.*; see also TEX. CIV. PRAC. & REM. CODE ANN. § 15.017.

<sup>454</sup> See 72 Tex. Jur. 3d *Venue* § 49 (2013) (citing *Evans v. Am. Publ'g Co.*, 13 S.W.2d 358, 361 (Tex. Comm'n App. 1929) (“We therefore conclude that [the predecessor to Section 15.017] should be liberally construed in favor of the plaintiff in a suit for damages for libel or slander.”).

<sup>455</sup> See *Johnson v. Davis*, 178 S.W.3d 230, 236–37 (Tex. App.—Houston [14th Dist.] 2005, pet. denied) (holding that Section 15.017 only applies “in a suit for damages[,]” and therefore, “[b]ecause [the plaintiff] did not seek damages, his reliance on Section 15.017 [was] misplaced.”).

<sup>456</sup> See 2 MCDONALD & CARLSON, *supra* note 430 § 6:16 (citing *TEX. R. CIV. P.* 87(3); *Moriarty v. Williams*, 752 S.W.2d 610, 612 (Tex. App.—El Paso 1988, writ denied); *Crook v. Finch*, 347 S.W.2d 335, 336 (Tex. Civ. App.—Waco 1961, no writ); *Burkhart v. Bard*, 299 S.W.2d 392, 394 (Tex. Civ. App.—Texarkana 1957, no writ); *Evans*, 13 S.W.2d at 359; *Express Publ'g Co. v. Gonzalez*, 326 S.W.2d 544, 545 (Tex. Civ. App.—San Antonio 1959, writ dismissed).

<sup>457</sup> 45 U.S.C. §§ 51–60 (2014).

<sup>458</sup> See TEX. CIV. PRAC. & REM. CODE ANN. § 15.018.

(1) in the county in which all or a substantial part of the events or omissions giving rise to the claim occurred; (2) in the county where the defendant's principal office in this state is located; or (3) in the county where the plaintiff resided at the time the cause of action accrued."<sup>459</sup>

In an important decision regarding a venue challenge in a FELA action, the Supreme Court of Texas clarified that to make a prima facie showing as to where an entity's principal office is located, the plaintiff must present "evidence of the corporate structure and the authority of the officers in the county of suit as compared with the remainder of the state."<sup>460</sup>

#### 10. Tex. Civ. Prac. & Rem. Code Ann. § 15.0181 – Jones Act

Section 15.0181 addresses maritime suits brought under the Jones Act,<sup>461</sup> providing that venue is mandatory in such suits in one of the following counties: (1) the county where the defendant's principal office in this state is located; (2) the county in which all or a substantial part of the events or omissions giving rise to the claim occurred; or (3) in the county where the plaintiff resided at the time the cause of action accrued.<sup>462</sup> The statute defines a "Coastal county,"<sup>463</sup> "Coastal erosion,"<sup>464</sup> an "Erosion response project,"<sup>465</sup> a "Gulf Coast state,"<sup>466</sup> and "Inland waters."<sup>467</sup>

More specifically, the statute provides that if all or a substantial part of the events or omissions giving rise to the claim occurred on the inland waters of Texas, ashore in Texas, or during the course of an erosion response project in Texas, the suit must be brought in the county in which all or a substantial part of the events giving rise to the claim occurred or in the county where the defendant's principal office in Texas is located.<sup>468</sup> Further, if all or a substantial part of the events or omissions giving rise to the claim occurred on inland waters outside this state, ashore in a Gulf

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<sup>459</sup> *Id.* § 15.018(b).

<sup>460</sup> *See In re Mo. Pac. R.R. Co.*, 998 S.W.2d 212, 220 (Tex. 1999).

<sup>461</sup> 46 U.S.C. § 30104 (2014).

<sup>462</sup> TEX. CIV. PRAC. & REM. CODE ANN. § 15.0181(b), (c).

<sup>463</sup> *See id.* § 15.0181(a)(1).

<sup>464</sup> *See id.* § 15.0181(a)(2).

<sup>465</sup> *See id.* § 15.0181(a)(3).

<sup>466</sup> *See id.* § 15.0181(a)(4).

<sup>467</sup> *See id.* § 15.0181(a)(5).

<sup>468</sup> *Id.* § 15.0181(d).

Coast state, or during the course of an erosion response project in a Gulf Coast state, the suit shall be brought:

- (1) in the county where the defendant's principal office in this state is located if the defendant's principal office in this state is located in a coastal county;
- (2) in Harris County unless the plaintiff resided in Galveston County at the time the cause of action accrued;
- (3) in Galveston County unless the plaintiff resided in Harris County at the time the cause of action accrued; or
- (4) if the defendant does not have a principal office in this state located in a coastal county, in the county where the plaintiff resided at the time the cause of action accrued.<sup>469</sup>

#### 11. Tex. Civ. Prac. & Rem. Code Ann. § 15.019 – Inmate Litigation

Section 15.019 provides for mandatory venue in inmate litigation, but the statute does not apply to suits brought under the Texas Family Code.<sup>470</sup> Section 15.019 provides that, except for actions against heads of state departments,<sup>471</sup> “an action that accrued while the plaintiff was housed in a facility operated by or under contract with the Texas Department of Criminal Justice shall be brought in the county in which the facility is located.”<sup>472</sup> In addition, the statute clarifies that “an action brought by two or more plaintiffs that accrued while the plaintiffs were housed in a facility operated by or under contract with the Texas Department of Criminal Justice shall be brought in a county in which a facility that housed one of the plaintiffs is located.”<sup>473</sup>

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<sup>469</sup> *Id.* § 15.0181(e).

<sup>470</sup> *See id.* § 15.019(c).

<sup>471</sup> *See id.* § 15.014.

<sup>472</sup> *Id.* § 15.019(a); *see also* Johnson v. Davis, 178 S.W.3d 230, 237 (Tex. App.—Houston [14th Dist.] 2005, pet. denied) (holding that the plaintiff “was incarcerated within the Texas Department of Criminal Justice and was being housed in Walker County when he filed suit[.]” so “venue was mandatory in Walker County.”).

<sup>473</sup> TEX. CIV. PRAC. & REM. CODE ANN. § 15.019(b).

## 12. Tex. Civ. Prac. & Rem. Code Ann. § 15.020 – Major Transactions: Specification of Venue by Agreement

The last mandatory-venue statute within Chapter 15 addresses venue for “Major Transactions” and is set forth in Section 15.020.<sup>474</sup> Unique from all the other mandatory-venue statutes in Chapter 15, the mandatory venue provision in Section 15.020 provides that “[a]n action arising from a major transaction shall be brought in a county if the party against whom the action is brought has agreed in writing that a suit arising from the transaction may be brought in that county.”<sup>475</sup> This mandatory-venue statute is particularly significant because “venue-selection clauses are generally unenforceable in Texas unless the contract evinces a ‘major transaction’ as defined in the venue rules.”<sup>476</sup>

### *a. Defining a “Major Transaction”*

Section 15.020 first defines a “major transaction” as “a transaction evidenced by a written agreement under which a person pays or receives, or is obligated to pay or entitled to receive, consideration with an aggregate stated value equal to or greater than \$1 million.”<sup>477</sup> A “major transaction” does not include a transaction entered into primarily for personal, family, or household purposes, or to settle a personal injury or wrongful death claim, without regard to the aggregate value.<sup>478</sup> Texas courts have strictly construed this definition, holding that proof of the value of a transaction is not sufficient to trigger the mandatory-venue statute if the written agreement, itself, fails to *expressly* identify the aggregate stated value of the

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<sup>474</sup> See *id.* § 15.020.

<sup>475</sup> *Id.* § 15.020(b).

<sup>476</sup> *Hiles v. Arnie & Co.*, 402 S.W.3d 820, 828 (Tex. App.—Houston [14th Dist.] 2013, pet. denied) (citing *In re Tex. Ass’n of Sch. Bds.*, 169 S.W.3d 653, 660 (Tex. 2005)); *Yarber v. Iglehart*, 264 S.W.2d 474, 476 (Tex. Civ. App.—Dallas 1953, no writ); see also *In re Grp. 1 Realty, Inc.*, 441 S.W.3d 469, 472 (Tex. App.—El Paso 2014, orig. proceeding) (“Although the fixing of venue by contract is generally invalid, Section 15.020 creates a limited exception in cases involving ‘major transactions.’” (citing *In re Great Lakes Dredge & Dock Co.*, 251 S.W.3d 68, 76 (Tex. App.—Corpus Christi 2008, orig. proceeding)); *Shamoun & Norman, LLP v. Yarto Int’l Grp., LP*, 398 S.W.3d 272, 293 (Tex. App.—Corpus Christi 2012, pet. dismiss’d) (“In general, the fixing of venue by contract is invalid.”).

<sup>477</sup> TEX. CIV. PRAC. & REM. CODE ANN. § 15.020(a).

<sup>478</sup> *Id.*

consideration or transaction.<sup>479</sup> Additionally, parties have litigated what, under the statute, qualifies as “an aggregate stated value equal to or greater than \$1 million.”<sup>480</sup>

Notably, the definition of a “major transaction” in “the statute does not require that a party to the . . . lawsuit be obligated to pay or entitled to receive \$1 million or more in consideration.”<sup>481</sup> Rather, the “Major Transactions” mandatory-venue statute “merely requires that ‘a person’ be obligated to pay or entitled to receive such consideration.”<sup>482</sup> Though the statute does not define “person,” Texas courts have held that transactions solely between corporate entities can be subject to Section 15.020.<sup>483</sup>

*b. To Whom Does the “Major Transactions” Statute Apply?*

The operative language providing for mandatory venue under the “Major Transactions” statute is set forth in subSections (b) and (c).<sup>484</sup> SubSection (b) provides that “[a]n action arising from a major transaction

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<sup>479</sup> See, e.g., *In re Togs Energy, Inc.*, No. 05-09-01018-CV, 2009 WL 3260910, at \*1 (Tex. App.—Dallas Oct. 13, 2009, orig. proceeding) (mem. op., not designated for publication) (“The Settlement and Release Agreement does not state the consideration paid for the real estate leases in question. Real party in interest has submitted an affidavit stating that the value of the property rights is well over \$1 million. This affidavit [is] not relevant to our analysis. Under Section 15.020(a), the parties’ agreement must contain the aggregate stated value of the consideration. Because the Settlement and Release Agreement does not contain this information, it fails to qualify as a ‘major’ transaction under Section 15.020.”); *In re Newpark Mats & Integrated Servs., LLC*, No. 09-14-00518-CV, 2015 WL 181782, at \*1 (Tex. App.—Beaumont Jan. 15, 2015, orig. proceeding) (mem. op., not designated for publication) (per curiam) (holding that the trial court did not abuse its discretion by failing to enforce a mandatory venue agreement when the agreement did not expressly contain an aggregate stated value).

<sup>480</sup> See *In re Royalco Oil & Gas Corp.*, 287 S.W.3d 398, 400–01 (Tex. App.—Waco 2009, orig. proceeding) (holding that a lease that provided for a fixed term of 99 years and required monthly rental payments of \$20,000 created a tenancy for years and, thus, constituted “a ‘major transaction’ for purposes of Section 15.020 because [the lease] provides for the payment of ‘consideration with an aggregate stated value’ of more than \$1 million.” (citing TEX. CIV. PRAC. & REM. CODE ANN. § 15.020(a) (West 2002))); cf. *In re Tex. Ass’n of Sch. Bds.*, 169 S.W.3d at 658–60 (finding that a 1-year insurance contract did not constitute a “major transaction” because the aggregated stated value of consideration for the 1-year insurance contract with annual premiums of \$41,973 was the amount of the annual premium even though the contract provided for coverage of more than \$17 million).

<sup>481</sup> *Shamoun*, 398 S.W.3d at 294 (citing TEX. CIV. PRAC. & REM. CODE ANN. § 15.020(a)).

<sup>482</sup> *Id.*

<sup>483</sup> See *id.* (citing *In re Tex. Ass’n of Sch. Bds.*, 169 S.W.3d at 657–658).

<sup>484</sup> See TEX. CIV. PRAC. & REM. CODE ANN. § 15.020(b), (c).



shall be brought in a county if the party against whom the action is brought has agreed in writing that a suit arising from the transaction may be brought in that county.”<sup>485</sup> SubSection (c), on the other hand, provides as follows:

(c) Notwithstanding any other provision of this title, an action arising from a major transaction may not be brought in a county if:

(1) the party bringing the action has agreed in writing that an action arising from the transaction may not be brought in that county, and the action may be brought in another county of this state or in another jurisdiction; or

(2) the party bringing the action has agreed in writing that an action arising from the transaction must be brought in another county of this state or in another jurisdiction, and the action may be brought in that other county, under this Section or otherwise, or in that other jurisdiction.<sup>486</sup>

The distinction between subSections (b) and (c) is critical because “the major transaction statute does not apply to *all* suits arising out of major transactions.”<sup>487</sup> Rather, subSections (b) and (c) of the “Major Transaction” statute restrict the operation of the statute to limited circumstances.<sup>488</sup> By their very terms, subSections (b) and (c) apply in different ways to different parties, depending upon who signed the agreement asserted to establish mandatory venue.<sup>489</sup> In *Shamoun & Norman, LLP v. Yarto International Group, LP*, the Corpus Christi Court of Appeals explained the distinctions between subSections (b) and (c) in detail.<sup>490</sup>

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<sup>485</sup> *Id.* § 15.020(b).

<sup>486</sup> *Id.* § 15.020(c).

<sup>487</sup> *Shamoun*, 398 S.W.3d at 295.

<sup>488</sup> *See id.*

<sup>489</sup> Compare TEX. CIV. PRAC. & REM. CODE ANN. § 15.020(b) (“[I]f the party *against whom the action is brought* has agreed in writing that a suit arising from the transaction *may be brought in that county*.” (emphasis added)), with *id.* § 15.020(c) (“an action . . . *may not be brought in a county* if: the party *bringing the action* has agreed in writing that an action arising from the transaction *may not be brought in that county* . . . .” (emphasis added)).

<sup>490</sup> *See Shamoun*, 398 S.W.3d at 294–96 (discussing the distinctions between subSections (b) and (c) and explaining why neither subSection was met in the case).

The court, in *Shamoun & Norman, LLP*, held that the “the party against whom the action [was] brought”—the defendant—could not rely upon subSection (b) to establish mandatory venue because the defendant was not a signatory or a party to the settlement agreement at issue, regardless of whether the defendant could be considered a third-party beneficiary to the agreement.<sup>491</sup> While the court found that subSection (c)(2) was satisfied because “the party bringing the action”—the plaintiff—had agreed that the suit “must be brought” in Travis County (though the plaintiff filed suit in Hidalgo County), subSection (c)(2) would compel the transfer of the plaintiff’s suit to Travis County “if and only if” the action could have been brought in Travis County “under this Section or otherwise.”<sup>492</sup> Because Travis County was not a county of proper venue under the general venue statute or any other statute, however, the court found that it could not be said that the plaintiff’s action “may be brought” in Travis County.<sup>493</sup> Therefore, subSection (c)(2) did not apply,<sup>494</sup> and ultimately, the court found that subSection (c)(1) was inapplicable for the same reason.<sup>495</sup>

The distinctions between subSections (b) and (c) of the “Major Transaction” statute are even more important for Texas practitioners to recognize because Texas courts have interpreted the “[n]otwithstanding any other provision of this title” language in Section 15.020(c) to allow the venue provisions in subSection (c) – but not in subSection (b) – to override other mandatory-venue statutes in the Texas Civil Practice and Remedies Code.<sup>496</sup>

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<sup>491</sup> See *id.* at 295.

<sup>492</sup> See *id.* at 295–96 (citing TEX. CIV. PRAC. & REM. CODE ANN. § 15.020(c)(2)).

<sup>493</sup> See *id.* at 296 (citing TEX. CIV. PRAC. & REM. CODE ANN. §§ 15.002(a), 15.020(c)(2)).

<sup>494</sup> See *id.* (citing TEX. CIV. PRAC. & REM. CODE ANN. § 15.020(c)(2)).

<sup>495</sup> See *id.* at 296–97 (citing TEX. CIV. PRAC. & REM. CODE ANN. § 15.020(c)(1)).

<sup>496</sup> See *In re Fisher*, 433 S.W.3d 523, 533–34 (Tex. 2014) (orig. proceeding) (“But in this case, the language of Section 15.020 applies to an action arising from a major transaction ‘[n]otwithstanding any other provision of this title.’ This indicates that the Legislature intended for it to control over other mandatory venue provisions.” (internal citations omitted)); see also *Molinet v. Kimbrell*, 356 S.W.3d 407, 413–14 (Tex. 2011) (holding that the phrase “notwithstanding any other law” indicates a legislative intent that the provision prevail over conflicting law); 1 Kim J. Askew & Adele Hedges, *Texas Practice Guide: Civil Pretrial* § 6:36 (2015) (“Section 15.020 overrides other venue provisions . . .”).

c. *When Does an Action “Aris[e] From a Major Transaction?”*

The “Major Transaction” statute provides for mandatory venue in actions “arising from” a major transaction.<sup>497</sup> Yet, the statute does not define what constitutes an action “arising from” a major transaction.<sup>498</sup> Logically, venue of a suit cannot be fixed by agreement under the statute when the claimed agreement is executed after the suit was filed.<sup>499</sup> In a recent opinion,<sup>500</sup> though, the Supreme Court of Texas addressed “when an action ‘arises from’ a major transaction under Section 15.020” as a matter of first impression.<sup>501</sup> The Court found that in determining whether claims arise from a major transaction, courts should use a “common-sense examination of the substance of the claims” to determine if they “arise” from the major transaction.<sup>502</sup>

Importantly, the Court stated that the “Major Transaction” mandatory venue clause “does not require that an action arise out of a specific agreement[,]” but rather applies “to an action ‘arising from a major transaction’ if the party bringing the action has agreed in writing that the action will be brought in a certain jurisdiction.”<sup>503</sup> Finally, relying upon

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<sup>497</sup> See TEX. CIV. PRAC. & REM. CODE ANN. § 15.020(b), (c).

<sup>498</sup> See *id.*

<sup>499</sup> See *In re Med. Carbon Research Inst., L.L.C.*, No. 14-08-00104-CV, 2008 WL 961750, at \*2 (Tex. App.—Houston [14th Dist.] Apr. 9, 2008, orig. proceeding) (mem. op., not designated for publication) (per curiam) (“It would be erroneous to conclude that venue of a suit was fixed by agreement under Section 15.020(b) when the claimed agreement was not executed until weeks after suit was filed.”); see also TEX. CIV. PRAC. & REM. CODE ANN. § 15.006 (“A court shall determine the venue of a suit based on the facts existing at the time the cause of action that is the basis of the suit accrued.”).

<sup>500</sup> *In re Fisher*, 433 S.W.3d at 529–32 (holding that claims by a limited partner of an acquired oilfield services company against executives of the acquiring company arose from a major transaction, the purchase of the company from the limited partner, as required under Section 15.020, because the limited partner was seeking, in substance, to recover \$6.5 million owed to him under a promissory note provided for in a goodwill agreement, which included a clause whereby the parties irrevocably submitted to the nonexclusive jurisdiction of the courts in Tarrant county and irrevocably agreed not to bring any proceeding arising out of or relating to the agreement in any other court, and for actions flowing directly from the acquisition and doing more than just touching matters included in the goodwill agreement and note).

<sup>501</sup> *Id.* at 529 (“We have not previously addressed when an action ‘arises from’ a major transaction under Section 15.020, but we have previously addressed similar issues as to forum selection agreements.”).

<sup>502</sup> *Id.* at 529.

<sup>503</sup> *Id.* at 531 (citing TEX. CIV. PRAC. & REM. CODE ANN. § 15.020(a)).

cases such as *Southwestern Bell Telephone Co. v. DeLanney*<sup>504</sup> and *In re Weekley Homes, L.P.*,<sup>505</sup> the Court held that because the plaintiff's claims did more than "touch matters" included in the agreement and the note at issue in the case, liability for failure to pay on the note had to be determined by reference to these agreements, and when an injury is to the subject matter of a contract, the action is ordinarily "*on the contract*."<sup>506</sup> Based on this analysis, the Court held that the plaintiff's claims, including claims for breach of fiduciary duty and fraud, actually arose from the major transaction to which the venue selection agreement pertained, and thus, venue was mandatory in the county provided by the parties' agreement.<sup>507</sup>

*d. Limitations in the Major Transaction Statute*

Beyond what has previously been discussed, the "Major Transactions" statute is further limited by its own terms.<sup>508</sup> Specifically, the statute does not apply to a transaction that is not a "major transaction" as defined in the statute.<sup>509</sup> Further, the "Major Transactions" statute does not apply if venue is established under a statute outside of the Texas Civil Practice and Remedies Code.<sup>510</sup> The "Major Transactions" statute does not apply to an action if the agreement regarding venue is voidable under Chapter 272 of the Texas Business and Commerce Code.<sup>511</sup> Additionally, the "Major Transactions" statute does not apply to an action if "the agreement described by this Section was unconscionable at the time that it was made."<sup>512</sup>

At least one court has observed that the "Major Transactions" statute "does not delineate fraud itself as a defense to enforcement of the selected venue," but only provides for a defense to enforcement based on

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<sup>504</sup> 809 S.W.2d 493, 494 (Tex. 1991).

<sup>505</sup> 180 S.W.3d 127, 131–32 (Tex. 2005).

<sup>506</sup> *In re Fisher*, 433 S.W.3d at 531 (citing *S.W. Bell Tel. Co.*, 809 S.W.2d at 494).

<sup>507</sup> *Id.* at 529–34.

<sup>508</sup> See TEX. CIV. PRAC. & REM. CODE ANN. § 15.020(d), (e) (West 2002).

<sup>509</sup> See *id.* § 15.020(e) ("This Section does not affect venue and jurisdiction in an action arising from a transaction that is not a major transaction.").

<sup>510</sup> See *id.* § 15.020(d)(3).

<sup>511</sup> See *id.* § 15.020(d)(2). Chapter 272 of the Texas Business and Commerce Code is titled "Law Applicable to Certain Contracts for Construction or Repair of Real Property Improvements" and applies "only to a contract that is principally for the construction or repair of an improvement to real property located in [Texas]." TEX. BUS. & COM. CODE ANN. § 272.001 (West 2015).

<sup>512</sup> *Id.* § 15.020(d)(1).

unconscionability.<sup>513</sup> In the context of a forum-selection clause, however, courts allow an opposing party to overcome a presumption of validity if the opposing party meets a “heavy burden of proof” to show that: (1) the clause was procured by fraud, undue influence, or overreaching; or (2) enforcement would be unreasonable and unjust.<sup>514</sup> To enable a court to find an asserted venue-selection agreement unenforceable under the “Major Transactions” statute, the party opposing enforcement of the agreement must present evidence of the unconscionability of the agreement prior to a venue determination by the court at a motion to transfer venue hearing.<sup>515</sup>

*B. Statutes Outside Subchapter B of Chapter 15 of the Texas Civil Practice and Remedies Code*

Numerous other statutes, outside of Subchapter B of Chapter 15 of the Texas Civil Practice and Remedies Code, contain mandatory venue provisions. Due to the significant control over the forum battle that statutes outside of Subchapter B arguably provide, practitioners are wise to be fully informed of all of these available statutes. Some of these statutes are found within other chapters of the Texas Civil Practice and Remedies Code,<sup>516</sup> while others are contained in substantive statutes in other areas of the law, including the Texas Family Code<sup>517</sup> and the Texas Property Code.<sup>518</sup> As a general rule, when considering bringing suit under a Texas statute, practitioners should scour the statute for venue-related provisions. If a statute directs that suit “shall be brought” in a specified county or other location, then the statute qualifies as a mandatory-venue statute because Texas courts have repeatedly held that venue provisions containing the word “shall” are mandatory in nature.<sup>519</sup>

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<sup>513</sup> See *In re R.R. Repair & Maint., Inc.*, No. 05-09-01035-CV, 2009 WL 3531636, at \*7 (Tex. App.—Dallas Nov. 2, 2009, orig. proceeding) (mem. op., not designated for publication).

<sup>514</sup> See *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 17 (1972).

<sup>515</sup> See *In re R.R. Repair*, 2009 WL 3531636 at \*7 (holding that because the plaintiff did not present evidence supporting its claims of fraud or unconscionability until it responded to a petition for writ of mandamus, well-after the hearing on the defendant’s motion to transfer venue, the evidence could not be considered in making the venue determination).

<sup>516</sup> See, e.g., TEX. CIV. PRAC. & REM. CODE ANN. §§ 65.023, 101.102(a), 171.096.

<sup>517</sup> See, e.g., TEX. FAM. CODE ANN. §§ 103.001, 155.201(b) (West 2014).

<sup>518</sup> See, e.g., TEX. PROP. CODE ANN. §§ 21.013, 115.002 (West 2014).

<sup>519</sup> See, e.g., *Bachus v. Foster*, 122 S.W.2d 1058, 1060 (Tex. 1939) (holding that the Legislature’s use of the term “shall” in a venue-related statute is mandatory in character and “leaves no room to doubt that the legislature meanS to lay the venue of [a suit governed by the

The location or source of a mandatory-venue statute becomes exceedingly important when considering the priority of potentially competing mandatory-venue statutes. The purpose of this Section is to collect and bring to light for the benefit of Texas practitioners some of the mandatory-venue statutes that are located outside of Subchapter B of Chapter 15 of the Texas Civil Practice and Remedies Code.

### 1. Tex. Civ. Prac. & Rem. Code Ann. § 65.023 – Injunctions

Section 65.023 of the Texas Civil Practice and Remedies Code provides for mandatory venue in suits seeking injunctive relief, stating that:

(a) Except as provided by SubSection (b), a writ of injunction against a party who is a resident of this state shall be tried in a district or county court in the county in which the party is domiciled. If the writ is granted against more than one party, it may be tried in the proper court of the county in which either party is domiciled.

(b) A writ of injunction granted to stay proceedings in a suit or execution on a judgment must be tried in the court in which the suit is pending or the judgment was rendered.<sup>520</sup>

In contrast to Section 15.012,<sup>521</sup> Texas courts have long held that the mandatory venue provision in Section 65.023 “applies only to suits in which the relief sought is purely or primarily injunctive.”<sup>522</sup> In essence, this

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statute] exclusively in the county” provided by the statute); *see also* *Wichita Cty. v. Hart*, 917 S.W.2d 779, 781 (Tex. 1996) (“When considering venue, we have noted that the Legislature’s use of the word ‘shall’ in a statute generally indicates the mandatory character of the provision.”). Similarly, Texas courts have long interpreted the ordinary meaning of the word “must” to be of mandatory effect. *See, e.g.,* *Helena Chem. Co. v. Wilkins*, 47 S.W.3d 486, 493 (Tex. 2001) (The word “must” is “mandatory, creating a duty or obligation.”); *In re Hartford Underwriters Ins. Co.*, 168 S.W.3d 293, 295 (Tex. App.—Eastland 2005, orig. proceeding) (holding that a statute providing that “the petition must be filed in Travis County district court” was a mandatory venue provision requiring that the action be filed in Travis County).

<sup>520</sup> TEX. CIV. PRAC. & REM. CODE ANN. § 65.023.

<sup>521</sup> *See id.* § 15.012.

<sup>522</sup> *See In re Cont’l Airlines, Inc.*, 988 S.W.2d 733, 736 (Tex. 1998) (orig. proceeding) (citing *Ex parte Coffee*, 328 S.W.2d 283, 287 (Tex. 1959)); *cf. O’Quinn v. Hall*, 77 S.W.3d 452, 456 (Tex. App.—Corpus Christi 2002, orig. proceeding) (interpreting Section 15.012 of the Texas Civil Practice and Remedies Code and holding that “[w]e find nothing in the plain language of Section 15.012 limiting this mandatory venue Section to suits that are primarily injunctive. Accordingly we determine the scope of this mandatory venue provision involving anti-suit

means that the mandatory venue provision in Section 65.023 applies “when the petition discloses the issuance of a perpetual injunction is the primary and principal relief sought[.]”<sup>523</sup> The Fort Worth Court of Appeals has explained the longstanding adherence to this mandatory-venue statute by Texas courts, stating that:

The important right provided to a defendant under [Section 65.023] to defend a suit for permanent injunction in the county of the defendant’s domicile originated with our first state legislature in 1846, and it has been preserved since that time by all successive legislatures.<sup>524</sup>

In determining whether a lawsuit constitutes a suit for permanent injunction for the purpose of determining proper venue, courts only look to the express relief sought in the allegations and prayer of the plaintiff’s petition.<sup>525</sup> When the plaintiff’s pleadings request an injunction that is “merely ancillary” to the primary relief requested, Section 65.023 has no application.<sup>526</sup> This limiting principle on the applicability of the mandatory

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injunctions includes primarily injunctive relief suits and suits in which injunctive relief sought is ancillary to other relief.”)

<sup>523</sup>See *In re Dole Food Co.*, 256 S.W.3d 851, 854 (Tex. App.—Beaumont 2008, orig. proceeding) (citing *Brown v. Gulf Television Co.*, 306 S.W.2d 706, 708 (Tex. 1957) (analyzing predecessor statute to Section 65.023)).

<sup>524</sup>*In re City of Dall.*, 977 S.W.2d 798, 803, 803 n.17 (Tex. App.—Fort Worth 1998, orig. proceeding) (citing Act approved May 13, 1846, 1st Leg., R.S. § 152, 1846 Tex. Gen. Laws 363, 406, reprinted in 2 H.P.N. GAMMEL, THE LAWS OF TEXAS 1838-1846, at 1669, 1812 (Austin, Gammel Book Co. 1898); TEX. REV. CIV. STAT. art. 2996 (West 1895); TEX. REV. CIV. STAT. ANN. art. 4656 (West 1952), repealed by Act of May 17, 1985, 69th Leg., R.S., ch. 959, § 9, 1985 Tex. Gen. Laws 3242, 3322 (codified at TEX. CIV. PRAC. & REM. CODE ANN. § 65.023)).

<sup>525</sup>See *In re City of Dall.*, 977 S.W.2d at 803–06 (holding that because the City of Fort Worth’s pleadings plainly showed that the City of Fort Worth was seeking a declaratory judgment that the City of Dallas and Dallas Love Field Airport remained restricted by a previously entered agreement and the issuance of a permanent injunction would only be necessary if a party contravened the trial court’s decision regarding the declaratory judgment, the primary relief sought in the City of Fort Worth’s suit was a declaratory judgment and Section 65.023 of the Texas Civil Practice and Remedies Code did not apply) (citing *Renwar Oil Corp. v. Lancaster*, 276 S.W.2d 774, 775 (Tex. 1955)).

<sup>526</sup>See *In re Hardwick*, 426 S.W.3d 151, 158 (Tex. App.—Houston [1st Dist.] 2012, no pet.) (citing *Brown v. Gulf Television Co.*, 306 S.W.2d 706, 708 (Tex. 1957)); see also *In re Adan Volpe Props., Ltd.*, 306 S.W.3d 369, 375 (Tex. App.—Corpus Christi 2010, orig. proceeding), *mand. granted*, *In re Adan Volpe Props., Ltd.*, No. 04-14-00615-CV, 2014 WL 7437005 (Tex. App.—San Antonio Dec. 31, 2014, orig. proceeding) (mem. op., not designated for publication) (stating that “where the main purpose of suit is for something other than injunctive relief and the

venue provision in Section 65.023 means that the mere possibility of a court resorting to its injunctive powers to enforce a judgment does not by itself transform a suit into one for a writ of injunction within the meaning of Section 65.023.<sup>527</sup> Along these lines, many Texas courts have found that suits for specific performance of a contract are not suits primarily seeking injunctive relief, and therefore, Section 65.023 would not require mandatory venue in the county of the defendant's domicile.<sup>528</sup>

## 2. Tex. Civ. Prac. & Rem. Code Ann. § 101.102(a) – Texas Tort Claims Act

Section 101.102(a) of the Texas Civil Practice and Remedies Code addresses venue for suits brought under the Texas Tort Claims Act, providing that a suit under the Texas Tort Claims Act “shall be brought in state court in the county in which the cause of action or a part of the cause of action arises.”<sup>529</sup> Thus, by its terms, this statute is a mandatory-venue statute.<sup>530</sup>

Where a cause of action or a part of a cause of action arises can sometimes be a blurry line, especially in negligence suits under the Texas Tort Claims Act. For example, in interpreting the mandatory venue provision in Section 101.102(a), the Supreme Court of Texas has “distinguished between causes of action based on negligent activities and those based on premise defects.”<sup>531</sup> In *In re Texas Department of Transportation*, the plaintiffs' daughter, while driving her car across a

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injunction is ‘ancillary, incidental, or adjunctive,’ Section 65.023(a) does not apply.” (quoting *O’Quinn v. Hall*, 77 S.W.3d 452, 456 (Tex. App.—Corpus Christi 2002, orig. proceeding)).

<sup>527</sup> See *In re Hardwick*, 426 S.W.3d at 158 (citing *In re Cont’l*, 988 S.W.2d at 736–37).

<sup>528</sup> See, e.g., *Hogg v. Prof’l Pathology Assocs., P.A.*, 598 S.W.2d 328, 330 (Tex. Civ. App.—Houston [14th Dist.] 1980, writ dism’d) (finding that in a suit for specific performance of a non-compete contract, the principal relief sought was through breach of contract and not injunctive); see also *Karagounis v. Bexar Cty. Hosp. Dist.*, 70 S.W.3d 145, 147 (Tex. App.—San Antonio 2001, pet. denied) (holding that a suit for specific performance of a contract did not primarily seek injunctive relief).

<sup>529</sup> TEX. CIV. PRAC. & REM. CODE ANN. § 101.102(a).

<sup>530</sup> See *In re Tex. Dep’t of Transp.*, 218 S.W.3d 74, 76 (Tex. 2007) (per curiam) (“Section 101.102(a) is such a mandatory provision.”); see also *In re Fort Bend Cty.*, 278 S.W.3d 842, 844 (Tex. App.—Houston [14th Dist.] 2009, orig. proceeding) (“The venue provision in Section 101.102(a) of the Tort Claims Act is one such mandatory provision.”).

<sup>531</sup> See *In re Tex. Dep’t of Transp.*, 218 S.W.3d at 77–78 (“A negligent activity claim arises from activity contemporaneous with the occurrence, whereas a premises defect claim is based on the property itself being unsafe.”).



bridge over the Pedernales River in Gillespie County, slid off the roadway.<sup>532</sup> Because there was a gap left in the guardrail on the bridge, the plaintiffs' daughter unfortunately slid off the bridge, into the river, and drowned.<sup>533</sup> The plaintiffs brought a negligence suit, based on different theories of negligence, against the Texas Department of Transportation (TxDOT) and Gillespie County, alleging that the defendants failed to use ordinary care in designing, inspecting, maintaining, and employing others to inspect and maintain the bridge with the gap in the guardrail.<sup>534</sup> As opposed to having to litigate against Gillespie County in the courts of Gillespie County, the plaintiffs relied upon Section 101.102(a) to establish venue against TxDOT in Travis County, where TxDOT maintained its bridge division.<sup>535</sup> The plaintiffs claimed that negligent actions by TxDOT's employees and agents in Travis County resulted in the condition of the premises at the accident site in Gillespie County, making these actions part of the premise defect cause of action.<sup>536</sup>

The Supreme Court of Texas, however, found that because the plaintiffs did not allege that TxDOT's activities were "actively ongoing at the time of the accident" or "contemporaneous activities proximately causing the accident[.]" the plaintiffs failed to "properly plead" a negligence cause of action for which Travis County would be proper venue.<sup>537</sup> In sum, the Court held that while the plaintiffs properly pled premise and special defect causes of action, neither of those claims arose, "in any part, in Travis County."<sup>538</sup> The takeaway for Texas practitioners is that because of the pleading and proof requirements for establishing venue in Texas,<sup>539</sup> when relying upon Section 101.102(a), practitioners should put considerable thought into their venue theory, then explicitly plead those specific facts that support the theory.

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<sup>532</sup> *See id.* at 75.

<sup>533</sup> *Id.*

<sup>534</sup> *See id.* at 75–76.

<sup>535</sup> *See id.* at 76.

<sup>536</sup> *See id.*

<sup>537</sup> *See id.* at 77–78.

<sup>538</sup> *See id.* at 78–79.

<sup>539</sup> *See* TEX. R. CIV. P. 86–88.

### 3. Tex. Civ. Prac. & Rem. Code Ann. § 171.096 – Arbitration Application

Section 171.096 of the Texas Civil Practice and Remedies Code addresses venue for suits seeking to enforce arbitration agreements and provides as follows:

(a) Except as otherwise provided by this Section, a party must file the initial application:

(1) in the county in which an adverse party resides or has a place of business; or

(2) if an adverse party does not have a residence or place of business in this state, in any county.

(b) If the agreement to arbitrate provides that the hearing before the arbitrators is to be held in a county in this state, a party must file the initial application with the clerk of the court of that county.

(c) If a hearing before the arbitrators has been held, a party must file the initial application with the clerk of the court of the county in which the hearing was held.

(d) Consistent with Section 171.024, if a proceeding is pending in a court relating to arbitration of an issue subject to arbitration under an agreement before the filing of the initial application, a party must file the initial application and any subsequent application relating to the arbitration in that court.<sup>540</sup>

Texas courts have held that based on the use of the word “must,” Section 171.096 is a mandatory-venue statute.<sup>541</sup> Therefore, when an arbitration agreement is at play, a Texas practitioner should check the

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<sup>540</sup>TEX. CIV. PRAC. & REM. CODE ANN. § 171.096 (West 2011).

<sup>541</sup>*See, e.g., In re Lopez*, 372 S.W.3d 174, 177 (Tex. 2012) (orig. proceeding) (“Section 171.096(c) is a mandatory venue provision, as it says that a party ‘must’ file the initial application in the county where the arbitration hearing was held.” (citing *Helena Chem. Co. v. Wilkins*, 47 S.W.3d 486, 493 (Tex. 2001) (recognizing the word “must” as “mandatory, creating a duty or obligation”))); *see also In re Sosa*, 370 S.W.3d 79, 81–82 (Tex. App.—Houston [14th Dist.] 2012, orig. proceeding) (holding that Section 171.096(b) of the Texas Civil Practice and Remedies Code provided for mandatory venue).

applicability of each of the subSections (a) – (d) of Section 171.096 in order to determine where venue may properly be mandated for their suit.

#### 4. Texas Family Code Ann. – Suits Affecting Parent-Child Relationship

Within the Texas Family Code, the Texas Legislature has enacted specific rules regarding proper venue for suits affecting parent-child relationships (SAPCRs).<sup>542</sup> Specifically, Section 103.001 provides the general rule that an original SAPCR “shall be filed in the county where the child resides.”<sup>543</sup> The statute carves out exceptions to this general mandatory venue rule, applying when another court has continuing exclusive jurisdiction over the SAPCR under Chapter 155 of the Texas Family Code<sup>544</sup> or when venue is fixed in a suit for dissolution of a marriage under Subchapter D of Chapter 6 of the Texas Family Code.<sup>545</sup>

Section 155.201(b) of the Texas Family Code provides for a mandatory transfer of a SAPCR to a county where the child has lived for six months or more upon a timely, uncontroverted motion.<sup>546</sup> In addition, if venue is improperly laid for a SAPCR, or if a divorce is pending in another county, the court where the original SAPCR was filed is required to transfer the SAPCR to the county where venue is proper.<sup>547</sup> While this selection of statutes merely scratches the surface of the various procedural requirements for suits under the Texas Family Code, the important point is that Texas practitioners should be aware that mandatory-venue statutes are at play in family law proceedings because “the general rules for establishing venue in civil cases are not applicable to [SAPCRs].”<sup>548</sup>

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<sup>542</sup> See *In re Lovell-Osburn*, 448 S.W.3d 616, 619 (Tex. App.—Houston [14th Dist.] 2014, orig. proceeding) (“The Legislature has adopted venue rules specific to SAPCRs.”).

<sup>543</sup> TEX. FAM. CODE ANN. § 103.001(a) (West 2014).

<sup>544</sup> See *id.*

<sup>545</sup> See *id.*

<sup>546</sup> See *id.* § 155.201(b).

<sup>547</sup> See *id.* § 103.002.

<sup>548</sup> See *In re Nabors*, 276 S.W.3d 190, 199 (Tex. App.—Houston [14th Dist.] 2009, orig. proceeding).

### 5. Tex. Trust Code Ann. § 115.002 – Suits By or Against a Trustee of a Trust

The Texas Trust Code is found in Subchapter B of Title 9 of the Texas Property Code.<sup>549</sup> Within the Texas Trust Code, the Legislature has provided for mandatory venue in suits by or against a trustee and all proceedings concerning trusts.<sup>550</sup> Under the Texas Trust Code, venue for suits by or against a trustee is mandatory, however the county of mandatory venue is potentially different depending on the type of trustee that is administering the trust at issue.<sup>551</sup> Importantly, the Texas Legislature amended Section 115.001 in 2007 to provide that a district court has original and exclusive jurisdiction over “all proceedings by or against a trustee.”<sup>552</sup> Since that amendment, Texas courts of appeals have differed over whether or not the suit must actually involve an action relating to the trust or operation of the trust itself or whether the suit must simply be one that is by or against a trustee for the mandatory venue provision to apply.<sup>553</sup>

Specifically, if the suit involves a single, noncorporate trustee, the action “shall be brought” in either: (1) the county in which the trustee

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<sup>549</sup> See TEX. PROP. CODE ANN. § 111.001 (West 2014) (“This subtitle may be cited as the Texas Trust Code.”).

<sup>550</sup> See *id.* §§ 115.001, 115.002; see also *In re Wheeler*, 441 S.W.3d 430, 434 (Tex. App.—Waco 2014, orig. proceeding) (“Section 115.002 of the Texas Property Code is a mandatory-venue provision.” (citing *In re J.P. Morgan Chase Bank, N.A.*, 373 S.W.3d 610, 613 (Tex. App.—San Antonio 2012, orig. proceeding))).

<sup>551</sup> See TEX. PROP. CODE ANN. § 115.002.

<sup>552</sup> See Act of May 16, 2007, 80th Leg., R.S., ch. 451, § 11, 2007 Tex. Gen. Laws 801, 804–05 (codified at TEX. PROP. CODE ANN. § 115.001(a)).

<sup>553</sup> Compare *In re J.P. Morgan Chase Bank, N.A.*, 361 S.W.3d 703, 706–07 (Tex. App.—Corpus Christi 2012, orig. proceeding) (holding that Section 115.001 of the Texas Property Code does not encompass tort claims and non-administrative matters against a trustee because “[a]ll of the actions enumerated in Section 115.001(a) involve actions relating to the trust itself or the operation thereof, and none involves anything resembling a tort action”) with *In re J.P. Morgan Chase Bank*, 373 S.W.3d at 614 (“While [the Corpus Christi Court of Appeals] acknowledges that in 2007 Section 115.001 was amended by adding subSection (a-1), which provides that the list of proceedings enumerated in the statute are not ‘exhaustive,’ the court does not acknowledge that subSection (a) was also amended to include suits by or against a trustee. We find the addition of that language controlling in this case; therefore, we respectfully disagree with the court’s conclusion that the suit must ‘concern a trust’ in order for Section 115.001 to apply.”) and *In re Wheeler*, 441 S.W.3d at 435–36 (“Thus, like the [San Antonio Court of Appeals], we find the amended language of subSection (a) to be controlling in this case. As such, we respectfully disagree with the [Corpus Christi Court of Appeals]’ conclusion that a suit must ‘concern a trust’ for Section 115.001 to apply.”) (citation omitted).

resides or has resided at any time during the four-year period preceding the date the action is filed; or (2) the county in which the situs of administration of the trust is maintained or has been maintained at any time during the four-year period preceding the date the action is filed.<sup>554</sup> If there are multiple noncorporate trustees and the trustees maintain a principal office in Texas, the action “shall be brought” in either: (1) the county in which the situs of administration of the trust is maintained or has been maintained at any time during the four-year period preceding the date the action is filed; or (2) the county in which the trustees maintain the principal office.<sup>555</sup> If there are multiple noncorporate trustees and the trustees do *not* maintain a principal office in this state, the action “shall be brought” in either: (1) the county in which the situs of administration of the trust is maintained or has been maintained at any time during the four-year period preceding the date the action is filed; or (2) the county in which any trustee resides or has resided at any time during the four-year period preceding the date the action is filed.<sup>556</sup>

If there are one or more corporate trustees, the action “shall be brought” in either: (1) the county in which the situs of administration of the trust is maintained or has been maintained at any time during the four-year period preceding the date the action is filed; or (2) in the county in which any corporate trustee maintains its principal office in Texas.<sup>557</sup> For purposes of the statute, the terms “Corporate trustee”, “Principal office”, and “Situs of administration” are defined.<sup>558</sup>

## 6. Tex. Prop. Code Ann. § 21.013 – Eminent Domain

Section 21.013 of the Texas Property Code addresses proper venue for condemnation proceedings in Texas.<sup>559</sup> The Supreme Court of Texas has declared that Section 21.013 is a mandatory-venue statute.<sup>560</sup> Specifically, this statute provides that the proper venue of a condemnation proceeding is

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<sup>554</sup> See TEX. PROP. CODE ANN. § 115.002(b).

<sup>555</sup> See *id.* § 115.002(b-1).

<sup>556</sup> See *id.* § 115.002(b-2).

<sup>557</sup> See *id.* § 115.002(c).

<sup>558</sup> See *id.* § 115.002(f).

<sup>559</sup> See *id.* § 21.013.

<sup>560</sup> See *In re Transcon. Realty Inv'rs, Inc.*, 271 S.W.3d 270, 271 (Tex. 2008) (orig. proceeding) (per curiam) (“Section 21.013 is a mandatory venue statute, so it is enforceable by mandamus.”).

the county in which the owner of the property being condemned resides if the owner resides in a county in which part of the property is located.<sup>561</sup> When the owner of the property being condemned does not reside in a county in which part of the property to be condemned is located, the proper venue of a condemnation proceeding is any county in which at least part of the property is located.<sup>562</sup>

While the statute does not define the “owner of the property being condemned,” the Supreme Court of Texas has held that “landowners who are businesses—just like landowners who are individuals—can insist on venue where they reside if the condemned property is partly located there.”<sup>563</sup> Texas courts have, however, limited this definition, finding that a mortgagee of the property sought to be condemned is not an “owner of the property being condemned” for venue purposes under this mandatory-venue statute.<sup>564</sup>

#### 7. Tex. Nat. Res. Code Ann. § 11.078 – Public Lands

Section 11.078 of the Texas Natural Resources Code addresses venue for suits involving state-owned land.<sup>565</sup> The statute provides that suits for unlawful enclosure of public lands, as well as suits for possession, rent, or to recover damages on public lands, “shall be brought in the county in which the land or any part of the land is located.”<sup>566</sup> Texas courts have found that the language of this statute makes the statute a mandatory-venue statute.<sup>567</sup>

#### 8. Tex. Labor Code Ann. § 410.252 & Tex. Gov. Code § 2001.176– Judicial Review of Workers’ Compensation Decisions

The Legislature has enacted two separate mandatory venue provisions that pertain to suits seeking judicial review of decisions by the Texas

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<sup>561</sup> See TEX. PROP. CODE ANN. § 21.013(a).

<sup>562</sup> See *id.*

<sup>563</sup> *In re Transcon.*, 271 S.W.3d at 272.

<sup>564</sup> See, e.g., *Sands v. City of Dall.*, 398 S.W.2d 428, 431 (Tex. Civ. App.—Tyler 1965, writ dismissed) (interpreting predecessor statute TEX. REV. CIV. STAT. ANN. art. 3264, *repealed by* Act of May 26, 1983, 68<sup>th</sup> Leg., R.S., ch. 576) 1983 TEX. GEN. LAWS 3475, 3499.

<sup>565</sup> See TEX. NAT. RES. CODE ANN. § 11.078 (West 2011).

<sup>566</sup> See *id.* (citing TEX. NAT. RES. CODE ANN. §§ 11.076, 11.077).

<sup>567</sup> See, e.g., *Trice v. State*, 712 S.W.2d 842, 846 (Tex. App.—Waco 1986, writ refused n.r.e.).

Workers' Compensation Commission (TWCC) appeals panel.<sup>568</sup> These two statutes are located in the Texas Labor Code<sup>569</sup> and the Texas Government Code.<sup>570</sup> Understanding *when* each statute applies is crucial. The distinction between the two statutes can be synthesized into the following two rules: (1) When the claimant seeks judicial review of a final decision of the TWCC appeals panel regarding *compensability, eligibility for, or the amount of income, or for death benefits*, venue is mandatory under Section 410.252(b) of the Texas Labor Code,<sup>571</sup> and (2) When the claimant seeks judicial review of a final decision of the TWCC appeals panel regarding *any other issue*, venue is mandatory under Section 2001.176 of the Texas Government Code *in the Travis County district court*.<sup>572</sup>

Chapter 410 of the Texas Labor Code addresses the adjudication process in workers' compensation disputes.<sup>573</sup> Section 410.255(a) provides that judicial review of final administrative decisions in workers' compensation cases *not covered by Section 410.301(a) of the Texas Labor Code* is to be conducted in accordance with Section 2001.171 of the Texas Government Code, a specific provision within the Texas Administrative Procedure Act.<sup>574</sup> Section 410.301(a) of the Texas Labor Code covers "[j]udicial review of a final decision of the [TWCC] appeals panel regarding compensability or eligibility for or the amount of income or death benefits."<sup>575</sup> For such a suit, venue is mandatory under Section 410.252 of the Texas Labor Code venue in either: (1) the county where the employee resided at the time of the injury or death, if the employee is deceased; or (2) in the case of an occupational disease, in the county where the employee resided on the date disability began or any county agreed to by the

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<sup>568</sup> *In re Hartford Underwriters Ins. Co.*, 168 S.W.3d 293, 295 (Tex. App.—Eastland 2005, orig. proceeding) ("There are two mandatory venue provisions for petitions to review [TWCC] appeals panel decisions: Section 2001.176 of the Texas Government Code and Section 410.252 of the Texas Labor Code.").

<sup>569</sup> See TEX. LAB. CODE ANN. § 410.252 (West 2015).

<sup>570</sup> See TEX. GOV'T CODE ANN. § 2001.176 (West 2008).

<sup>571</sup> See TEX. LAB. CODE ANN. §§ 410.252(b), 410.255, 410.301.

<sup>572</sup> See *id.* § 410.255 (titled "Judicial Review of Issues Other Than Compensability or Income or Death Benefits"); see also TEX. GOV'T CODE ANN. § 2001.176(b)(1) ("[T]he petition must be filed in a Travis County district court . . .").

<sup>573</sup> See TEX. LAB. CODE ANN. ch. 410; see also *Hernandez v. Tex. Workers' Comp. Ins. Fund*, 946 S.W.2d 904, 905 (Tex. App.—Eastland 1997, no writ).

<sup>574</sup> See TEX. LAB. CODE ANN. § 410.255(a).

<sup>575</sup> See *id.* § 410.301(a).

parties.<sup>576</sup> For any other suit (one not regarding compensability, eligibility for, or the amount of income, or death benefits), venue is mandatory under the Texas Administrative Procedures Act in a Travis County district court.<sup>577</sup>

For a more thorough analysis of these statutes, practitioners would benefit from a review of two opinions from the Eastland Court of Appeals, styled *In re Hartford Underwriters Ins. Co.*<sup>578</sup> and *Hernandez v. Texas Workers' Comp. Ins. Fund.*<sup>579</sup>

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<sup>576</sup> See *id.* § 410.252(b).

<sup>577</sup> See *id.* § 410.255; TEX. GOV'T CODE ANN. § 2001.176(b)(1). Note also that the Texas Administrative Procedures Act requires a party to first exhaust all administrative remedies available before the party may be entitled to judicial review. See TEX. GOV'T CODE ANN. § 2001.171 ("A person who has exhausted all administrative remedies available within a state agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter.").

<sup>578</sup> 168 S.W.3d 293, 296 (Tex. App.—Eastland 2005, orig. proceeding) (finding that "[a] [TWCC] appeals panel decision dealing only with attorney's fees is not a decision regarding compensability or eligibility for or the amount of income or death benefits," and therefore, venue was mandatory for the petition in Travis County).

<sup>579</sup> 946 S.W.2d 904, 906 (Tex. App.—Eastland 1997, no writ) (finding that because the claimant sought review regarding the TWCC appeals panel's decision about impairment rating and maximum medical improvement rating, the suit addressed the amount of benefits, and thus, venue for judicial review was not mandatory in Travis County but in Taylor County, the claimant's county of residence).