

**THE CONTINUED EVOLUTION OF
STANDARDS OF REVIEW IN TEXAS**

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CHAPTER 3

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THE CONTINUED EVOLUTION OF STANDARDS OF REVIEW IN TEXAS

I. INTRODUCTION.

Though often overlooked, the standard and scope of review are crucial aspects of each legal issue presented to an appellate court. The terms “standard of review” and “scope of review” are often used interchangeably; however, the terms have very different meanings. The standard of review is the level of deference a reviewing court should show for the decision of a lower court or tribunal. See *Quick v. City of Austin*, 7 S.W.3d 109, 116 (Tex. 1998). Standards of review “define the parameters of a reviewing court’s authority in determining whether a trial court erred and whether the error warrants reversal.” See W. Wendell Hall, *Standards of Review in Texas*, 34 ST. MARY’S L.J. 1, 8 (2002). The scope of review delineates the portion of the appellate record that an appellate court may consider in deciding whether the trial court erred and whether that error warrants reversal. *Id.* at 11. Effective brief writing and appellate advocacy require not only identifying the applicable standard and scope of review, but also using the standard and scope of review as the framework for presenting persuasive legal arguments to appellate courts.

Attached as Appendix A to this article is a detailed chart identifying the standards and scopes of review that apply during appellate review of a number of trial court rulings. For a comprehensive discussion on this topic, I highly recommend Wendell Hall’s article *Standards of Review in Texas*, 34 ST. MARY’S L.J. 1 (2002). Many thanks to Wendell for permitting me to use his article as a template for the chart in Appendix A.

After describing the common standards of review in Texas, this article will focus on two standard-of-review issues: (1) the development and rapid extension of the clear-and-convincing evidence standard of review; and (2) the consequences of Supreme Court Justice Brister’s complex decision in *City of Keller v. Wilson*, No. 02-2012, 2005 WL 1366509 (Tex. June 10, 2005).

II. THE FOUR BASIC STANDARDS OF REVIEW.

Before the development of the clear-and-convincing standard of review, Texas courts recognized four primary standards of review: (1) *de novo* review; (2) the abuse-of-discretion standard; (3) the legal-sufficiency standard; and (4) the factual-sufficiency standard.

A. *De Novo* Review.

De novo review is the easiest standard to define and understand. Under this standard of review, the reviewing court “exercises its own judgment and redetermines each issue of fact and law,” giving the lower court’s decision

“absolutely no deference.” *Quick*, 7 S.W.3d at 116. The reviewing court simply substitutes its judgment for the judgment of the trial court. *De novo* review primarily applies to pure questions of law. See, e.g., *FFE Transp. Servs., Inc. v. Fulgham*, 154 S.W.3d 84, 89-90 (Tex. 2004); *El Paso Natural Gas Co. v. Minco Oil & Gas, Inc.*, 8 S.W.3d 309, 312 (Tex. 1999) (“Because the issue . . . is a question of law, our review is *de novo*.”).

B. The Abuse-of-Discretion Standard.

The second standard of review, abuse of discretion, is the most commonly employed standard because it is applied to most procedural determinations. See *In re Doe*, 19 S.W.3d 249, 253 (Tex. 2000). A court abuses its discretion “if it acts in an arbitrary or unreasonable manner without reference to any guiding rules or principles.” *Walker v. Gutierrez*, 111 S.W.3d 56, 62 (Tex. 2003); *City of San Benito v. Rio Grande Valley Gas Co.*, 109 S.W.3d 750, 757 (Tex. 2003); see *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241-42 (Tex. 1985). The abuse-of-discretion standard is very deferential to a lower court’s ruling. A reviewing court “may not substitute its own judgment for the trial court’s judgment.” *Walker*, 111 S.W.3d at 62. Thus, unlike the *de novo* standard, the abuse-of-discretion standard does not permit an appellate court to second guess the trial court. “The mere fact that a trial judge may decide a matter within his discretionary authority in a different manner than an appellate judge in a similar circumstance does not demonstrate that an abuse of discretion has occurred.” *Bank One, Tex., N.A. v. Moody*, 830 S.W.2d 81, 86 (Tex. 1992) (quoting *Downer*, 701 S.W.2d at 242).

C. The Legal-Sufficiency Standard of Review.

The legal-sufficiency standard is also known as “no evidence” and “matter of law” review.

1. No-Evidence Review.

Appellate courts employ “no-evidence” review when a party challenges the fact finder’s ruling on an issue on which the party did not have the burden of proof. A reviewing court finds “no evidence” when the record discloses one of the four following situations:

- (a) a complete absence of evidence of a vital fact;
- (b) the court is barred by rules of law or of evidence from giving weight to the only evidence offered to prove a vital fact;
- (c) the evidence offered to prove a vital fact is no more than a mere scintilla;
- (d) the evidence establishes conclusively the opposite of the vital fact.

See *City of Keller v. Wilson*, No. 02-2012, 2005 WL 1366509, at *2 (Tex. June 10, 2005) (quoting Robert W. Calvert, “No Evidence” & “Insufficient Evidence” *Points of Error*, 38 TEX. L. REV. 361, 362-63 (1960)). More than a scintilla of evidence exists if “the evidence furnishes some reasonable basis for differing conclusions by reasonable minds about a vital fact’s existence.” *Id.*

Under the no-evidence standard of review, appellate courts generally “view the evidence in a light that tends to support the disputed finding and *disregard evidence and inferences to the contrary.*” *Wal-Mart Stores, Inc. v. Canchola*, 121 S.W.3d 735, 739 (Tex. 2003) (per curiam) (emphasis added); *Kerr-McGee Corp. v. Helton*, 133 S.W.3d 245, 254 (Tex. 2004); *Bradford v. Vento*, 48 S.W.3d 749, 754 (Tex. 2001). The Supreme Court has recently dubbed this scope of review—which requires reviewing courts to disregard evidence and inferences contrary to the disputed finding—to be the “exclusive standard.” See *City of Keller*, 2005 WL 1366509, at *2. But the Court has also described the no-evidence standard as requiring a reviewing court to “consider *all the evidence* in the light most favorable to the prevailing party, indulging every reasonable inference in that party’s favor.” *St. Joseph Hosp. v. Wolff*, 94 S.W.3d 513, 519-20 (Tex. 2002) (plurality op.) (emphasis added); see *Formosa Plastics Corp. USA v. Presidio Eng’rs & Contractors, Inc.*, 960 S.W.2d 41, 48 (Tex. 1998). After all, a reviewing court cannot disregard undisputed evidence that “allows of only one logical inference.” See *Keller*, 2005 WL 1366509, at *5-*6. The Supreme Court labeled this scope of review as the “inclusive standard.” See *id.* at *2.

But fear not; according to the Court, although the two standards are clearly different, the two standards “both arrive at the same point” if and “when applied properly.” *Id.* at *1. The Court distilled the standards down to the following:

Under either scope of review, appellate courts must view the evidence in the light favorable to the verdict, crediting favorable evidence if reasonable jurors could, and disregarding contrary evidence unless reasonable jurors could not.

Id. at *1. (And, as discussed in Part IV, even the Court’s distilled standard is riddled with exceptions.)

Nevertheless, the Court refused to choose between the two:

As both the inclusive and exclusive standards for the scope of legal-sufficiency review have a long history in Texas, as both have been used in other contexts to review matter-of-law

motions, as federal courts have decided the differences between the two are more semantic than real, and as both—properly applied—must arrive at the same result, we see no compelling reason to choose among them.

Id. at 14.

The Court’s failure to identify the proper standard and scope of review under the no-evidence standard is unfortunate. Even the Supreme Court recognized that its theory—*i.e.*, the inclusive and exclusive standards both arrive at the same result—is significantly qualified by the term “properly applied.” *Id.* From a practical standpoint, it remains to be seen whether a reviewing court’s choice between the two standards will affect the result of that particular court’s legal-sufficiency analysis.

One thing is certain though. A practitioner’s election between the two standards may dramatically affect the presentation of the arguments in his or her brief. The standard selected—which should provide the framework for the legal arguments—will impact the presentation of facts and the application of the no-evidence standard to those facts. Effective appellate practitioners will select the standard that permits him or her to present the facts of his case in the very best light and most encourages the reviewing court to rule on the no-evidence issue in his or her favor.

2. Matter-of-Law Review.

An appellate court employs “matter of law” review when a party challenges a factfinder’s ruling on an issue on which the party did have the burden of proof at trial. Under the matter-of-law standard, an appellate court reviews whether the evidence establishes, as a matter of law, all of the facts in support of an issue. *Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 241 (Tex. 2001). In conducting this review, the appellate court “must first examine the record for evidence that supports the [trial court’s adverse] finding, while ignoring all evidence to the contrary.” *Id.* If there is no evidence to support the trial court’s finding, the reviewing court then must “examine the entire record to determine if the contrary position is established as a matter of law.” *Id.*

D. **Factual-Sufficiency Review.**

The fourth standard of review is factual sufficiency. The factual sufficiency of a factfinder’s ruling may be reviewed by the courts of appeals, but the Supreme Court has no jurisdiction to review factual sufficiency issues. TEX. CONST. art. V, § 6; see *Golden Eagle Archery, Inc. v. Jackson*, 116 S.W.3d 757, 761 (Tex. 2003).

Under the factual-sufficiency standard of review, the party challenging the factfinder’s adverse ruling on

an issue on which the party did have the burden of proof “must demonstrate on appeal that the adverse finding is against the great weight and preponderance of the evidence.” *Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 242 (Tex. 2001). The appellate court must consider all of the evidence presented below and then decide if “the evidence is so weak or if the finding is so against the great weight and preponderance of the evidence that it is clearly wrong and unjust.” *Id.*; see *Pool v. Ford Motor Co.*, 715 S.W.2d 629, 635 (Tex. 1986). If the reviewing court decides the trial court’s finding is clearly wrong and unjust and should be reversed, the reviewing court’s decision must “detail the evidence relevant to the issue” and “state in what regard the contrary evidence greatly outweighs the evidence in support of the verdict.” *Francis*, 46 S.W.3d at 242 (quoting *Pool*, 715 S.W.2d at 635).

The four standards of review discussed above are the most common standards applied by Texas courts by far. But other standards do exist and new standards of review emerge. As discussed below, two new standards have developed in the context of the clear-and-convincing burden of proof, and the Supreme Court has applied the standards to a rapidly growing number of issues.

III. THE EVOLUTION OF THE CLEAR-AND-CONVINCING STANDARDS OF REVIEW.

The above standards of review apply in cases where the burden of proof at trial is the preponderance of the evidence. What about cases where the burden of proof at trial is higher? Should the same standards of review apply when the burden of proof at trial is higher—*e.g.*, clear and convincing evidence—or should the standard of review be heightened in such cases?

A. The Termination-of-Parental-Rights Cases.

This question arose frequently in cases involving the termination of parental rights because a termination must be supported by clear and convincing evidence. See, *e.g.*, TEX. FAM. CODE § 161.001(1)(E) (“The court may order termination of the parent-child relationship if the court finds by clear and convincing evidence that the parent has . . . engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child.”); *In re G.M.*, 596 S.W.2d 846, 847 (Tex. 1980) (extending clear-and-convincing evidence requirement to cases involving the termination of the parent-child relationship); see also *Santosky v. Kramer*, 455 U.S. 745, 747-48 (1982).

Over the years, the courts of appeals in Texas had disagreed on the proper standard of review. See *In re C.H.*, 89 S.W.3d 17, 23-24 (Tex. 2002). Some courts

applied the traditional standard of review; others applied a heightened standard of review. See *id.* And the courts of appeals that had applied a higher standard of review all described the standard “in slightly different ways.” *Id.* at 24.

In 2002, the Supreme Court addressed this issue in *In re C.H.* In that case, the Court observed that “the burden of proof at trial necessarily affects appellate review of the evidence.” *Id.* at 25. The Court concluded that “[a]s a matter of logic, a finding that must be based on clear and convincing evidence cannot be viewed on appeal the same as one that may be sustained on a mere preponderance.” *Id.* Thus, the Court adopted a modified standard for reviewing factual sufficiency in a parental-rights-termination case:

The appellate standard for reviewing termination findings is whether the evidence is such that a factfinder could reasonably form a firm belief or conviction about the truth of the State’s allegations.

Id. The Supreme Court expressly rejected the traditional standards of review in cases with a clear-and-convincing burden of proof.

Similarly, in *In re J.F.C.*, 96 S.W.3d 256, 265-66 (Tex. 2002), another parental-rights-termination case, the Supreme Court considered whether the traditional legal sufficiency standard of review sufficed when proof was required by clear and convincing evidence. The Court explained that the “same logic” at play in *In re C.H.* compelled the Court to review legal sufficiency under a heightened standard of review as well. *Id.* at 264-65. The Court adopted the following standard:

In a legal sufficiency review, a court should look at all the evidence in the light most favorable to the finding to determine whether a reasonable trier of fact could have formed a firm belief or conviction that its finding was true. To give appropriate deference to the factfinder’s conclusions and the role of a court conducting a legal sufficiency review, looking at the evidence in the light most favorable to the judgment means that a reviewing court must assume that the factfinder resolved disputed facts in favor of its finding if a reasonable factfinder could do so. A corollary to this requirement is that a court should disregard all evidence that a reasonable factfinder could have disbelieved or found to have been incredible. This does not mean that a court must disregard all evidence that does not support the finding. Disregarding

undisputed facts that do not support the finding could skew the analysis of whether there is clear and convincing evidence. If, after conducting its legal sufficiency review of the record evidence, a court determines that no reasonable factfinder could form a firm belief or conviction that the matter that must be proved is true, then that court must conclude that the evidence is legally insufficient.

In re J.F.C., 96 S.W.3d 256, 266 (Tex. 2002).

The difference between the factual-sufficiency and legal-sufficiency standards of review boils down to the applicable scope of review. *Id.* at 266. In reviewing legal sufficiency, a court looks at all the evidence in the light most favorable to the finding and then disregards all evidence that a reasonable trier of fact could have not believed or found to have been incredible. *Id.* In reviewing factual sufficiency, a court reviews the entire record to determine whether the “disputed evidence that a reasonable factfinder could not have credited in favor of the finding is so significant that a factfinder could not reasonably have formed a firm belief or conviction.” *Id.*

Thus, by the end of 2002, the Court had answered the heightened-standard-of-review question in parental-termination cases. As noted in *C.H.*, however, “parental rights are of constitutional magnitude” and, as such, require the heightened standard of review. The Court did not indicate whether these new standards should apply in every case governed by the clear-and-convincing-evidence burden of proof. Thus, the question remained open until December 31, 2004.

B. The Rapid Extension of Clear-and-Convincing Standards of Review.

On December 31, 2004, the Supreme Court decided *Southwestern Bell Telephone Co. v. Garza*, 164 S.W.3d 607 (Tex. 2004). In that case, the Court adopted the rule announced in *J.F.C.* as the proper standard for reviewing an award of punitive damages and a malice finding:

[I]n reviewing the legal sufficiency of evidence to support a finding that must be proved by clear and convincing evidence, an appellate court must “look at all the evidence in the light most favorable to the finding to determine whether a reasonable trier of fact could have formed a firm belief or conviction that its finding was true.”

Id. at 609, 619; *see* TEX. CIV. PRAC. & REM. CODE § 41.003(a)(2) (“[E]xemplary damages may be awarded only if the claimant proves by clear and convincing evidence that the harm with respect to which the claimant seeks recovery of exemplary damages results from malice.”).

But the Court in *Garza* went much further than just applying a heightened standard of review to the jury’s malice finding in that case. Rather, the Court extended the application of the clear-and-convincing standards of review dramatically:

In sum, we think that whenever the standard of proof at trial is elevated, the standard of appellate review must likewise be elevated.

In re J.F.C., 96 S.W.3d at 627.

Thus, any issue governed by a clear-and-convincing burden of proof at trial should be reviewed for legal and factual sufficiency under these heightened, clear-and-convincing standards of review. *See Diamond Shamrock Ref. Co. v. Hall*, No. 02-0566, 2005 WL 1691623, at *5 (Tex. July 8, 2005) (“The parties in this case agree that gross negligence was required to be proved by clear and convincing evidence as defined in the jury charge. Accordingly, we apply this elevated standard of review [set forth in *Garza*] in assessing the evidence.”).

The following legal issues must be proved by clear and convincing evidence and should be reviewed under the heightened, clear-and-convincing standards:

- to sustain an award of exemplary damages based on the jury’s finding of fraud, malice, or gross negligence. *See* TEX. CIV. PRAC. & REM. CODE § 41.003(a). The elements supporting an award of punitive damages must also be supported by clear and convincing evidence. TEX. CIV. PRAC. & REM. CODE § 41.003(b).
- to set aside the outcome of an election riddled by violations of the Election Code. *See Reese v. Duncan*, 80 S.W.3d 650, 655-56 (Tex. App.— Dallas 2002, pet. denied); *Price v. Lewis*, 45 S.W.3d 215, 218 (Tex. App.—Houston [1st Dist.] 2001, no pet.).
- a probate court’s determination of a right of inheritance—*i.e.*, a determination that a child is a biological child entitled to inherit from his or her deceased, biological father. *See* TEX. PROB. CODE § 42(b)(1).
- to appoint a guardian for an incapacitated person or a minor. *See* TEX. PROB. CODE § 684(a)(1)-(3). A court must find by clear and convincing evidence that the proposed ward is

incapacitated and would benefit from the appointment of the guardian to protect his rights or his property.

- to support court-ordered inpatient mental health services for a mentally ill person. TEX. HEALTH & SAFETY CODE § 574.034(a); *see J.M. v. State*, Nos. 01-05-00146-CV, 01-05-00147-CV, 2005 WL 1606931, at *5-*6 (Tex. App.—Houston [1st Dist.] 2005, no pet. h.) (“Because the clear and convincing standard of proof in this case is the same as that involved in *Garza* and *J.F.C.*, we must apply the elevated standard of review defined in *J.F.C.* to determine whether the State presented legally sufficient evidence to support J.M.’s temporary commitment. . . . Likewise, the higher burden of proof alters the appellate standard of factual sufficiency review.”).
- to overcome the presumption of community property and prove that particular property is separate property. TEX. FAM. CODE § 3.003(b); *see Irvin v. Parker*, 139 S.W.3d 703, 708-09 (Tex. App.—Fort Worth 2004, no pet.).
- a showing of actual malice in defamation cases. *See Bentley v. Bunton*, 94 S.W.3d 561, 596-97 (Tex. 2002).

This list is not exhaustive, but it demonstrates that new clear-and-convincing-evidence standards should apply in a number of different and possibly unexpected settings.

As complicated and difficult to apply as standards of review have been in the past, the present state of affairs is even more complex. These new clear-and-convincing standards of review and scopes of review are certain to add to the complexity. And, given the “exceptions” to the application of the traditional standards of review set forth in *Keller*, it is certain that disputes over the proper standard of review to apply in any given case are likely to be fruitful and multiply.

IV. THE KILLER *KELLER* EXCEPTIONS.

As noted above, in *City of Keller v. Wilson*, No. 02-2012, 2005 WL 1366509, at *3 (Tex. June 10, 2005), the Supreme Court declined to choose between the “inclusive” and “exclusive” standard as the proper method of reviewing legal sufficiency. However, the Court did caution that if a reviewing court opts for the “exclusive” standard, then a number of “exceptions” exist that may require the court to consider *all* the evidence and *not disregard* all of the contrary evidence—*i.e.*, exceptions effectively requiring a reviewing court to apply a standard more akin to the “inclusive” standard. In so ruling, the Court has forecast

a fact-specific standard of legal sufficiency review that may vary on a case-by-case basis.

For example, one exception discussed in *Keller* is “contextual evidence.” *Id.* at *3. The Court recognized that in “a number of cases, the lack of supporting evidence may not appear *until all the evidence is reviewed in context.*” *Id.* (emphasis added). The Court listed three examples where legal-sufficiency review requires a court to review all the evidence in context: (1) publications alleged to be defamatory must be viewed as a whole—*i.e.*, a reviewing court “cannot disregard parts of a publication, considering only false statements to support a plaintiff’s verdict or only true ones to support a defense verdict”; (2) a court must “construe contracts as a whole”—*i.e.*, a court cannot “consider only the parts favoring one party and disregard the remainder”; and (3) in reviewing claims of emotional distress, a court must “consider the context and the relationship between the parties”—*i.e.*, conduct that may seem outrageous at first blush may, in context, and after consideration of all the evidence, not seem so outrageous at all. *Id.*

The Court defined the contextual-evidence exception this way:

[I]f evidence may be legally sufficient in one context but insufficient in another, the context cannot be disregarded even if that means rendering judgment contrary to the jury’s verdict.

Id. at *4.

What other circumstances may require a reviewing court to consider all the evidence and not disregard the contrary evidence? The parameters of this exception are unknown. But savvy appellate practitioners are certain to keep this exception in mind and urge its use whenever the facts of his or her case are compelling and a review of all the facts “in context” might lend themselves to this more favorable scope of review.

Similarly, the Court stated that a court must consider all evidence in cases “involving what a party knew and why it took a certain course.” *Id.* at *6. In such cases, a reviewing court must consider “all of the surrounding facts, circumstances, and conditions, not just individual elements or facts.” *Id.* This “consciousness evidence” exception appears to be a variation on the “contextual evidence” exception.

The Court stated that this standard should be applied in cases involving gross negligence, bad-faith insurance cases, employment discrimination cases, and government official immunity. *See City of Keller v. Wilson*, No. 02-2012, 2005 WL 1366509, at *7-*8 (Tex. June 10, 2005). Under *Keller*, if a cause of action or a

defense involves any element of intent or knowledge, then this modified standard should apply. If the facts disregarded by the jury are compelling in your case and the issues involve knowledge or intent, then an appellate practitioner should, by all means, urge a court to consider all the facts for context and not disregard the facts that do not support the jury's verdict.

The *Keller* opinion also discussed several additional examples of evidence that cannot be disregarded on legal sufficiency review even under the exclusive standard. These exceptions should be more familiar to appellate practitioners: (1) a court cannot ignore evidence showing that certain evidence supporting the jury's verdict is, in fact, incompetent evidence; (2) a court cannot accept one inference from circumstantial evidence and disregard an equally plausible inference; and (3) a reviewing court cannot disregard evidence contrary to the jury's verdict that conclusively establishes the opposite of a vital fact. *Id.* at *4-*7.

As noted above, the *Keller* exceptions effectively set a fact-based, case-by-case inquiry regarding the proper standard and scope of review to be applied in any case. These exceptions present the appellate practitioner with a tool for crafting the most favorable standard of review, thereby creating the most effective framework for his or her presentation of a persuasive appellate argument.

V. CONCLUSION.

In sum, the four traditional standards of review no longer reign supreme. The *Keller* exceptions and the new clear-and-convincing standards of review dramatically change, or at least constitute an acknowledgement of the dramatic change, in standards of review in Texas.

Appellate practitioners should not only be aware of, and use, these new standards, but also should follow the development of the standards for they, like the traditional standards of review, are likely to evolve and begat other new standards of review over time.

TYPE OF RULING	STANDARD OF REVIEW	SCOPE OF REVIEW	CASES AND STATUTES
Amending Admissions	Abuse of discretion.	An appellate court reviews the entire record.	<i>Stelly v. Papania</i> , 927 S.W.2d 260, 622 (Tex. 1996) (per curiam).
Arbitration Award - Appellate review of a district court's order confirming an award under the Federal Arbitration Act or the Texas Arbitration Act	De novo.	The scope of review is extremely narrow. A trial court must confirm an arbitration award unless the award is vacated, modified, or corrected under the Federal or Texas Arbitration Acts. An appellate court simply reviews whether a trial court's confirmation order was proper. Note: Parties to an arbitration agreement may agree to expand the scope of judicial review. Whether an agreement to arbitrate exists is reviewed de novo.	9 U.S.C. § 9; TEX. CIV. PRAC. & REM. CODE § 171.087; <i>Gateway Techs., Inc. v. MCI Telecomm. Corp.</i> , 64 F.3d 993, 996 (5th Cir. 1995); <i>Tanox, Inc. v. Akin, Gump, Strauss, Hauer & Feld, LLP</i> , 105 S.W.3d 244, 250 (Tex. App.—Houston [14th Dist.] 2003, pet. denied).
Arbitration Award - Appellate review of an order vacating an arbitration award under the Federal Arbitration Act	De novo; any findings of fact by the district court are reviewed under the federal "clear error" standard.	An appellate court reviews whether a trial court properly vacated an award based on one of the four grounds in the FAA: (1) the award was procured by corruption, fraud, or undue means; (2) an arbitrator was partial or corrupt; (3) an arbitrator wrongly refused to postpone a hearing or hear relevant, material evidence to the prejudice of the other party; or (4) an arbitrator exceeded his authority. In addition, a trial court may vacate an award based on common-law grounds: (1) when an arbitrator manifestly disregards the law— <i>i.e.</i> , clearly recognizes the law but chooses to ignore it; (2) an award is against public policy; or (3) an award is arbitrary or capricious.	9 U.S.C. § 10; <i>see Brabham v. A.G. Edwards & Sons Inc.</i> , 376 F.3d 377, 380 (5th Cir. 2004); <i>Hughes Training Inc. v. Cook</i> , 254 F.3d 588, 592 (5th Cir. 2001).
Arbitration Award - Appellate review of an order vacating an arbitration award under the Texas Arbitration Act	De novo; any findings of fact by the district court should be reviewed under the abuse of discretion standard "which is similar to the clearly erroneous standard applied by the federal courts."	An appellate court reviews whether a trial court properly vacated an award based on one of the four grounds in the TAA: (1) an award was obtained by corruption, fraud, or other undue means; (2) the rights of a party were prejudiced by the evident partiality of a neutral arbitrator, corruption of an arbitrator, or misconduct or wilful misbehavior of an arbitrator; (3) an arbitrator exceeded his powers, refused to postpone a hearing after sufficient cause is shown, refused to hear material evidence, or improperly conducted the hearing; or (4) there was no agreement to arbitrate and the party raised an objection before any participation in the arbitration. The Supreme Court has left open whether common-law grounds for refusing to confirm arbitration awards have been preempted by the TAA.	TEX. CIV. PRAC. & REM. CODE § 171.088; <i>see Vernon E. Faulconer, Inc. v. HFI Ltd. P'ship</i> , 970 S.W.2d 36, 39 (Tex. App.—Tyler 1998, no pet.); <i>see also CVN Group, Inc. v. Delgado</i> , 95 S.W.3d 234, 237-38 (Tex. 2002); <i>Callahan & Assocs. v. Orangefield Indep. Sch. Dist.</i> , 92 S.W.3d 841, 844 (Tex. 2002); <i>Perlstein v. D. Stellar 3, Ltd.</i> , 109 S.W.3d 36, 43 (Tex. App.—Corpus Christi 2003, pet. denied).
Arbitration Award - Appellate review of trial court's order modifying or correcting arbitration award under the Federal Arbitration Act	De novo; any findings of fact are reviewed under the federal "clear error" standard.	An appellate court reviews whether a trial court properly modified or corrected an award based on one of the three grounds in the FAA: (1) when an award reflects a material miscalculation of figures or a mistake in the description of any person, thing, or property in an award; (2) when an arbitrator awards relief upon a matter not submitted to arbitration; or (3) the award is imperfect in its form but does not affect the merits.	9 U.S.C. § 11.

TYPE OF RULING	STANDARD OF REVIEW	SCOPE OF REVIEW	CASES AND STATUTES
Arbitration Award - Appellate review of a trial court's order modifying or correcting an arbitration award under the Texas Arbitration Act.	De novo.	Appellate court reviews whether trial court properly modified or corrected an arbitration award under one of three reasons in TAA: (1) an award reflects a miscalculation of numbers or a mistake in the description of a person, thing, or property; (2) an arbitrator made an award with respect to a matter not submitted to arbitration and the award may be corrected without affecting merits of the decision on issues that were properly submitted to arbitration; or (3) the form of the award is imperfect in a manner not affecting the merits of the controversy.	TEX. CIV. PRAC. & REM. CODE § 171.091.
Attorney's Fees, Discretionary Award of	A decision to award or to reduce jury's award of fees is reviewed for abuse of discretion. The award itself may be reviewed for legal and factual sufficiency.	An appellate court reviews the entire record.	<i>Ridge Oil Co. v. Guinn Invs. Inc.</i> , 148 S.W.3d 143, 163 (Tex. 2004); <i>Bocquet v. Herring</i> , 972 S.W.2d 19, 20-21 (Tex. 1998).
Bill of Review	Abuse of discretion.	An appellate court indulges every presumption in favor of the trial court's ruling in determining whether the petitioner has demonstrated: (1) a meritorious defense to the cause of action alleged to support the judgment, (2) that he was prevented from making by the fraud, accident, or wrongful act of his opponent, (3) unmingled with any fault or negligence of his own.	<i>Nguyen v. Intertex, Inc.</i> , 93 S.W.3d 288, 293 (Tex. App.—Houston [14th Dist.] 2002, no pet.); <i>Interaction, Inc. v. State of Texas</i> , 17 S.W.3d 775, 778 (Tex. App.—Austin 2000, pet. denied); TEX. R. CIV. P. 329b(f).
Challenges for Cause	Abuse of discretion; if evidence shows a prospective juror was materially biased, he will be disqualified as a matter of law.	An appellate court reviews the entire record.	<i>Cortez ex rel. Estate of Puentes v. HCCI-San Antonio, Inc.</i> , 159 S.W.3d 87, 92-93 (Tex. 2005); see <i>Malone v. Foster</i> , 977 S.W.2d 562, 564 (Tex. 1998).
Charge Error	Jury charge error is generally reviewed under an abuse-of-discretion standard. Whether the charge submits the proper theories of recovery and defenses is a legal question to be reviewed de novo. Whether a definition misstates the law is also reviewed de novo.	An appellate court considers the pleadings of the parties, the evidence presented at trial, and the charge in its entirety.	<i>St. Joseph Hosp. v. Wolff</i> , 94 S.W.3d 513, 525 (Tex. 2002); <i>In re V.L.K.</i> , 24 S.W.3d 338, 341 (Tex. 2000); <i>Tex. Dep't of Human Servs. v. E.B.</i> , 802 S.W.2d 647, 649 (Tex. 1990); <i>Island Recreational Dev. Corp. v. Rep. of Tex. Sav. Ass'n</i> , 710 S.W.2d 551, 555 (Tex. 1986) (op. on reh'g).
Class Certification Order	Abuse of discretion.	An appellate court may review all evidence presented in the record; however, the court does not review the evidence in the light most favorable to the trial court's decision or indulge every presumption in favor of the trial court's ruling because actual, not presumed, conformance with Rule 42 is required.	<i>Nat'l W. Life Ins. Co. v. Rowe</i> , 164 S.W.3d 389, 392 (Tex. 2005); <i>Henry Schein, Inc. v. Stromboe</i> , 102 S.W.3d 675, 691 (Tex. 2002); <i>Southwestern Ref. Co. v. Bernal</i> , 22 S.W.3d 425, 439 (Tex. 2000); <i>Intratex Gas Co. v. Beeson</i> , 22 S.W.3d 398, 406 (Tex. 2000).

TYPE OF RULING	STANDARD OF REVIEW	SCOPE OF REVIEW	CASES AND STATUTES
Conflict Jury Answers	In determining whether jury findings irrevocably conflict, appellate court applies de novo standard of review.	An appellate court must reconcile apparent conflicts in jury findings if “reasonably possible in light of the pleadings and evidence, the manner of submission, and the other findings considered as a whole.”	<i>Bender v. S. Pac. Transp. Co.</i> , 600 S.W.2d 257, 260 (Tex. 1980).
Consolidation	Abuse of discretion.	An appellate court reviews the entire record. If, however, facts “unquestionably require” a separate trial to prevent a manifest injustice and there are no facts supporting a contrary conclusion, the trial court has no discretion.	<i>Cherokee Water Co. v. Forderhouse</i> , 641 S.W.2d 522, 525-26 (Tex. 1982); <i>Owens-Corning Fiberglas Corp. v. Martin</i> , 942 S.W.2d 712, 715-16 (Tex. App.—Dallas 1997, no writ).
Continuance	Clear abuse of discretion.	An appellate court reviews the entire record.	<i>Joe v. Two Thirty Nine Jt. Venture</i> , 145 S.W.3d 150, 161 (Tex. 2004); <i>Villegas v. Carter</i> , 711 S.W.2d 624, 626 (Tex. 1986).
Court Costs, Award of	Abuse of discretion.	An appellate court reviews the entire record.	<i>Rogers v. WalMart Stores, Inc.</i> , 686 S.W.2d 599, 601 (Tex. 1985).
Default Judgment - Motion for New Trial	Abuse of discretion.	An appellate court reviews the entire record.	<i>Walker v. Gutierrez</i> , 111 S.W.3d 56, 62 (Tex. 2003); see <i>Craddock v. Sunshine Bus Lines, Inc.</i> , 134 S.W.2d 124, 126 (Tex. 1939).
Directed Verdict, Denial of	Legal sufficiency review.	An appellate court “must consider only evidence supporting the nonmovant’s case and disregard all contrary evidence.”	<i>King Ranch, Inc. v. Chapman</i> , 118 S.W.3d 742, 750-51 (Tex. 2003); <i>City of Keller v. Wilson</i> , No. 02-2012, 2005 WL 1366509, at *11 (Tex. June 10, 2005).
Discovery Sanctions	Abuse of discretion.	An appellate court reviews the entire record.	<i>Cire v. Cummings</i> , 134 S.W.3d 835, 838-39 (Tex. 2004); <i>Downer v. Aquamarine Operators, Inc.</i> , 701 S.W.2d 238, 241 (Tex. 1985).
Disqualification - Attorney	Abuse of discretion.	An appellate court reviews the record. “In considering a motion to disqualify, the trial court must strictly adhere to an exacting standard to discourage a party from using the motion as a dilatory trial tactic.”	<i>Metro. Life Ins. Co. v. Syntek Fin. Corp.</i> , 881 S.W.2d 319, 321 (Tex. 1994) (per curiam); <i>City of Dallas v. Redbird Dev. Corp.</i> , 143 S.W.3d 375, 387 (Tex. App.—Dallas 2004, no pet.).
DWOP	Clear abuse of discretion.	An appellate court may consider the entire record and history of the case.	<i>MacGregor v. Rich</i> , 941 S.W.2d 74, 75 (Tex. 1997) (per curiam); <i>State v. Rotello</i> , 671 S.W.2d 507, 508-09 (Tex. 1984).
<i>Edmonson</i> Challenges	Abuse of discretion.	An appellate court may consider the entire record, including the unsworn statements of counsel.	<i>Goode v. Shoukfeh</i> , 943 S.W.2d 441, 446-48 (Tex. 1997).
Evidentiary Rulings in General	Abuse of discretion. Appellate court “must uphold the trial court’s evidentiary ruling if there is any legitimate basis for the ruling.”	An appellate court reviews the entire record.	<i>Horizon/CMS Healthcare Corp. v. Auld</i> , 34 S.W.3d 887, 906 (Tex. 2000); <i>Owens-Corning Fiberglas Corp. v. Malone</i> , 972 S.W.2d 35, 43 (Tex. 1998).

TYPE OF RULING	STANDARD OF REVIEW	SCOPE OF REVIEW	CASES AND STATUTES
Expert Reports - TEX. CIV. PRAC. & REM. CODE § 74.351	Abuse of discretion.	An appellate court reviews the entire record.	<i>Am. Transitional Care Ctrs. of Tex., Inc. v. Palacios</i> , 46 S.W.3d 873, 877 (Tex. 2001); see <i>Walker v. Gutierrez</i> , 111 S.W.3d 56, 62 (Tex. 2003).
Expert Witness - Exclusion of Late Designated Expert	Abuse of discretion.	An appellate court reviews the entire record.	<i>Mentis v. Barnard</i> , 870 S.W.2d 14, 16 (Tex. 1994).
Expert Witness - Necessity of Expert Testimony	De novo.	An appellate court may review the entire record.	<i>FFE Transp. Servs., Inc. v. Fulgham</i> , 154 S.W.3d 84, 89 (Tex. 2004).
Expert Witness - Qualifications and Reliability of Testimony	Abuse of discretion.	An appellate court may review the entire record, including “applicable professional standards outside the courtroom.”	<i>Helena Chem. Co. v. Wilkins</i> , 47 S.W.3d 486, 499 (Tex. 2001); <i>Brodors v. Heise</i> , 924 S.W.2d 148, 151 (Tex. 1996).
Foreign Law	De novo.	An appellate court may consider the entire record, including any expert testimony regarding how the foreign law should apply to the facts of the case.	TEX. R. EVID. 203; <i>Long Distance Int’l, Inc. v. Telefonos de Mexico, S.A. de C.V.</i> , 49 S.W.3d 347, 351 (Tex. 2001).
Forum Non Conveniens	Abuse of discretion.	An appellate court reviews the evidence in the light most favorable to, and indulges every presumption in favor of, the trial court’s decision.	<i>Adams v. ESC Med. Sys., Inc.</i> , 161 S.W.3d 49, 50 (Tex. App.—Houston [14th Dist.] 2004, no pet.); <i>Tullis v. Ga.-Pac. Corp.</i> , 45 S.W.3d 118, 121-22 (Tex. App.—Fort Worth 2000, no pet.).
Guardian Ad Litem Fees	An award of fees is reviewed for abuse of discretion.	An appellate court reviews the entire record.	<i>Garcia v. Martinez</i> , 988 S.W.2d 219, 222 (Tex. 1999); <i>Simon v. York Crane & Rigging Co.</i> , 739 S.W.3d 793, 794-95 (Tex. 1987).
Improper Jury Argument	Whether the improper argument by its very nature constituted reversible error that could not be cured by withdrawal or proper instruction from the court.	An appellate court must examine the improper jury argument in light of the entire record.	<i>Standard Fire Ins. Co. v. Reese</i> , 584 S.W.2d 835, 839-40 (Tex. 1979).
Inherent Sanctions	Abuse of discretion.	An appellate court reviews the entire record.	<i>Fox v. Parker</i> , 98 S.W.3d 713, 728 (Tex. App.—Waco 2003, pet. denied); <i>Kutch v. Del Mar College</i> , 831 S.W.2d 506, 512 (Tex. App.—Corpus Christi 1992, no writ).
Interpleader	Abuse of discretion.	An appellate court reviews the entire record.	<i>Bryant v. United Shortline Inc. Assurance Servs., N.A.</i> , 972 S.W.2d 26, 31 (Tex. 1998); <i>Madeksho v. Abraham, Watkins, Nichols & Friend</i> , 112 S.W.3d 679, 690 (Tex. App.—Houston [14th Dist.] 2003, pet. denied).
Invoking the Rule	Abuse of discretion.	An appellate court reviews the entire record.	<i>Drilex Sys., Inc. v. Flores</i> , 1 S.W.3d 112, 117-18 (Tex. 1999).

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JNOV	Legal sufficiency standard.	An appellate court reviews the evidence tending to support the jury's verdict and must disregard all evidence to the contrary.	<i>Wal-Mart Stores, Inc. v. Miller</i> , 102 S.W.3d 706, 709 (Tex. 2003).
Joinder	De novo.	Appellate court must "determine whether the trial court's order is proper based on an independent determination from the [entire] record."	TEX. CIV. PRAC. & REM. CODE § 15.003(c)(1); <i>see Surgitek v. Abel</i> , 997 S.W.2d 598, 603 (Tex. 1999).
Judicial Notice	Abuse of discretion.	An appellate court reviews the entire record.	<i>BMW of N.A. v. Motor Vehicle Bd.</i> , 115 S.W.3d 722, 729 n.8 (Tex. App.—Austin 2003, pet. denied); <i>Alaniz v. Hoyt</i> , 105 S.W.3d 330, 351 n.6 (Tex. App.—Corpus Christi 2003, no pet.).
Jury Misconduct - Motion for New Trial	Abuse of discretion.	A finding of jury misconduct must be supported by competent evidence of misconduct from any source. If no findings of fact, an appellate court assumes the trial court made all findings in support of its judgment. If conflicting evidence of jury misconduct exists, the trial court's finding will be upheld.	<i>Golden Eagle Archery, Inc. v. Jackson</i> , 24 S.W.3d 362, 369, 372 (Tex. 2000); <i>Pharo v. Chambers County, Texas</i> , 922 S.W.2d 945, 948 (Tex. 1996).
Jury Demand, Denial of	Abuse of discretion.	Appellate court reviews the entire record. A wrongful denial of jury trial is harmful when case involves material fact questions.	<i>Mercedes-Benz Credit Corp. v. Rhyne</i> , 925 S.W.2d 664, 666-67 (Tex. 1996).
Jury Shuffle	De novo.	Appellate court reviews the record as a whole to determine whether error destroyed the degree of randomness necessary in the listing of jurors to ensure fundamental right to a jury trial.	<i>Rivas v. Liberty Mut. Ins. Co.</i> , 480 S.W.2d 610, 611-12 (Tex. 1972).
Mistrial	Abuse of discretion.	An appellate court reviews the entire record.	<i>Van Allen v. Blackledge</i> , 35 S.W.3d 61, 63 (Tex. App.—Houston [14th Dist.] 2000, pet. denied); <i>Till v. Thomas</i> , 10 S.W.3d 730, 734 (Tex. App.—Houston [1st Dist.] 1999, no pet.).
Motion for New Trial	Abuse of discretion.	An appellate court reviews the entire record. Every reasonable presumption will be made on review in favor of a trial court's order refusing to grant a new trial.	<i>Jackson v. Van Winkle</i> , 660 S.W.2d 807, 809-10 (Tex. 1983), <i>overruled on other grounds by Moritz v. Preiss</i> , 121 S.W.3d 715 (Tex. 2003).
Motion in Limine	None. The denial or grant of a motion in limine presents nothing for appellate review.		<i>State v. Wood Oil Distributing, Inc.</i> , 751 S.W.2d 863, 866 (Tex. 1988).
Motion to Disregard Jury Findings	Legal sufficiency review. A trial court may disregard jury finding that is immaterial or is unsupported by any evidence.	An appellate court reviews the entire record in the light most favorable to the jury's verdict and disregards all evidence to the contrary.	TEX. R. CIV. P. 301; <i>Spencer v. Eagle Star Ins. Co.</i> , 876 S.W.2d 154, 157 (Tex. 1994); <i>Alm v. Aluminum Co. of Am.</i> , 717 S.W.2d 588, 594 (Tex. 1986).
Motion for Leave to File Late Response to Summary Judgment	Abuse of discretion.	In reviewing for "good cause," the appellate court reviews the entire record.	<i>Carpenter v. Cimarron Hydrocarbons Corp.</i> , 98 S.W.3d 682, 686-87 (Tex. 2002).

TYPE OF RULING	STANDARD OF REVIEW	SCOPE OF REVIEW	CASES AND STATUTES
Newly Discovered Evidence - Motion for New Trial	Abuse of discretion.	An appellate court reviews the entire record, indulging every reasonable presumption in favor of the trial court's refusal to grant a new trial. The appellate court considers the weight and the importance of the new evidence and its bearing on the evidence received at trial.	<i>Jackson v. Van Winkle</i> , 660 S.W.2d 807, 809-10 (Tex. 1983), <i>overruled on other grounds by Moritz v. Preiss</i> , 121 S.W.3d 715 (Tex. 2003).
No-Evidence Summary Judgment	A no-evidence summary judgment is basically a pretrial directed verdict; appellate court reviews for legal sufficiency.	An appellate court considers the evidence in the light most favorable to the nonmovant, disregarding all contrary evidence and inferences.	<i>King Ranch, Inc. v. Chapman</i> , 118 S.W.3d 742, 750-51 (Tex. 2003).
Nunc Pro Tunc	Whether trial court previously rendered judgment is a fact question; any findings of fact are reviewed for legal and factual sufficiency. Whether error is judicial or clerical is a legal issue reviewed de novo.		<i>Escobar v. Escobar</i> , 711 S.W.2d 230, 231-32 (Tex. 1986).
Opening Statement	Abuse of discretion.	An appellate court reviews the entire record to determine if the improper comments were so inflammatory that the harm could not be cured by an instruction and likely caused the rendition of an improper judgment.	<i>Guerrero v. Smith</i> , 864 S.W.2d 797, 799-800 (Tex. App.—Houston [14th Dist.] 1993, no writ); <i>Ranger Ins. Co. v. Rogers</i> , 530 S.W.2d 162, 170 (Tex. Civ. App.—Austin 1975, writ ref'd n.r.e.).
Peremptory Challenges, Award of	Appellate court reviews award of peremptory challenges for abuse of discretion resulting in materially unfair trial. Whether antagonism exists is a question of law reviewed de novo.	An appellate court must review the entire record from the perspective of the trial judge as of the time he made the award of strikes; thus, the court may review pleadings, information disclosed by pretrial discovery, information and representations made during voir dire, and any information brought to the attention of the court before parties exercise their strikes.	<i>Lopez v. Foremost Paving, Inc.</i> , 709 S.W.2d 643, 644 (Tex. 1986); <i>Garcia v. Central Power & Light Co.</i> , 704 S.W.2d 734, 736 (Tex. 1986); <i>Patterson Dental Co. v. Dunn</i> , 592 S.W.2d 914, 919-21 (Tex. 1979).
Permanent Injunction	Abuse of discretion.	“[I]t is an abuse of discretion when the record demonstrates that the findings of the trial court necessary to sustain its order are not supported by some evidence.” If no findings of fact and conclusions of law are filed, the trial court's judgment implies all findings of fact necessary to support it. Where a reporter's record is filed, the implied findings are not conclusive and may be challenged by sufficiency of the evidence points.	<i>Operation Rescue Nat'l v. Planned Parenthood</i> , 975 S.W.2d 546, 560 (Tex. 1998); <i>All Am. Builders, Inc. v. All Am. Siding of Dallas, Inc.</i> , 991 S.W.2d 484, 487-88 (Tex. App.—Fort Worth 1999, no pet.); <i>Priest v. Tex. Animal Health Comm'n</i> , 780 S.W.2d 874, 875 (Tex. App.—Dallas 1989, no writ).
Plea in Abatement	Abuse of discretion.	On appeal, a court reviews evidence from hearing on the plea. If no evidence is presented, allegations in petition are taken as true, and appellate court indulges every reasonable inference in support of trial court's decision, unless facts are disproved.	<i>Wyatt v. Shaw Plumbing Co.</i> , 760 S.W.2d 245, 248 (Tex. 1988); <i>Dolenz v. Cont'l Nat'l Bank of Fort Worth</i> , 620 S.W.2d 572, 575 (Tex. 1981).

TYPE OF RULING	STANDARD OF REVIEW	SCOPE OF REVIEW	CASES AND STATUTES
Plea to the Jurisdiction	De novo.	An appellate court reviews the pleadings and construes the allegations in favor of the pleader. The court must consider relevant evidence if necessary to resolve jurisdiction.	<i>Tex. Dept. of Parks & Wildlife v. Miranda</i> , 133 S.W.3d 217, 226-28 (Tex. 2004); <i>Tex. Natural Res. Conservation Comm'n v. IT-Davy</i> , 74 S.W.3d 849, 855 (Tex. 2002); <i>Bland Indep. Sch. Dist. v. Blue</i> , 34 S.W.3d 547, 555 (Tex. 2000).
Protective Orders under Rule 166b	Abuse of discretion.	An appellate court reviews the entire record.	<i>Masinga v. Whittington</i> , 792 S.W.2d 940, 941 (Tex. 1990).
Punitive Damages - Unconstitutionally Excessive.	De novo.	Appellate court reviews the entire record to determine whether exemplary damages violate three factors: “(1) the degree of reprehensibility of the defendant’s misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases.” An appellate court reviews <i>each of these factors de novo</i> to decide whether the exemplary damages are “grossly disproportional” to the gravity of the defendant’s conduct.	<i>Bunton v. Bentley</i> , 153 S.W.3d 50, 53-54 (Tex. 2004); <i>see State Farm Mut. Auto. Ins. Co. v. Campbell</i> , 538 U.S. 408 (2003).
Rebuttal Witness Testimony	Abuse of discretion.	An appellate court reviews the entire record.	<i>Stevenson v. Koutzarov</i> , 795 S.W.2d 313, 318 (Tex. App.—Houston [1st Dist.] 1990, writ denied); <i>Munoz v. Mo. Pac. R.R. Co.</i> , 823 S.W.2d 766, 768 (Tex. App.—Corpus Christi 1992, no writ).
Recusal	If the motion is denied, it may be reviewed for abuse of discretion. If motion is granted, the order is not reviewable.	An appellate court reviews the entire record.	TEX. R. CIV. P. 18a(f); <i>Vickery v. Vickery</i> , 999 S.W.2d 342, 349 (Tex. 1999); <i>McElwee v. McElwee</i> , 911 S.W.2d 182, 185 (Tex. App.—Houston [1st Dist.] 1995, writ denied).
Remittitur	Appellate court reviews damage award for excessiveness under a factual sufficiency review.	Appellate court considers and weighs all evidence in record, not just evidence which supports the verdict, and makes its own “detailed appraisal of the evidence bearing on damages.”	<i>Maritime Overseas Corp. v. Ellis</i> , 971 S.W.2d 402, 406-07 (Tex. 1998); <i>Rose v. Doctors Hosp.</i> , 801 S.W.2d 841, 847-48 (Tex. 1990); <i>Larson v. Cactus Util. Co.</i> , 730 S.W.2d 640, 641 (Tex. 1987).
Restricted Appeal	Appellate court has jurisdiction to review whether the evidence is legally and factually sufficient to support the judgment.	An appellate court reviews “the face of the record” to determine whether the direct attack on the judgment is (1) brought within 6 months after the trial court signs the judgment; (2) brought by a party to the judgment; (3) who did not participate in the trial; and (4) the error complained of is apparent from the face of the record.	<i>Norman Communications v. Tex. Eastman Co.</i> , 955 S.W.2d 269, 270 (Tex. 1997) (per curiam); <i>Hubicki v. Festina</i> , 156 S.W.3d 897, 900-01 (Tex. App.—Dallas 2005, pet. filed); <i>see</i> TEX. R. APP. P. 30.

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Rule 13/Frivolous Pleadings Sanctions	Abuse of discretion.	An appellate court reviews the entire record.	<i>Sterling v. Alexander</i> , 99 S.W.3d 793, 797, 797 (Tex. App.—Houston [14th Dist.] 2003, pet. denied) (sanctions imposed under Chapter 10 of Civil Practice & Remedies Code); <i>Randolph v. Jackson Walker LLP</i> , 29 S.W.3d 271, 276 (Tex. App.—Houston [14th Dist.] 2000, pet. denied) (Rule 13); <i>Overman v. Baker</i> , 26 S.W.3d 506, 509 (Tex. App.—Tyler 2000, no pet.) (Rule 13).
Ruling Excluding Evidence Generally	Abuse of discretion.	An appellate court reviews the entire record.	<i>City of Brownsville v. Alvarado</i> , 987 S.W.2d 750, 753 (Tex. 1995).
Sealing Court Records under Rule 76a	Abuse of discretion.	An appellate court reviews the entire record.	<i>Gen. Tire, Inc. v. Kepple</i> , 970 S.W.2d 520, 526 (Tex. 1998).
Severance	Abuse of discretion.	An appellate court reviews the evidence in the light most favorable to, and indulges every presumption in favor of, the trial court’s decision.	<i>Guar. Fed. Sav. Bank v. Horseshoe Operating Co.</i> , 793 S.W.2d 652, 658 (Tex. 1990); <i>Cherokee Water Co. v. Forderhause</i> , 641 S.W.2d 522, 525-26 (Tex. 1982).
Special Appearance - No Findings of Fact or Conclusions of Law	De novo.	All facts necessary to support judgment and supported by the evidence are implied. If the appellate record includes reporter’s and clerk’s record, the implied findings are not conclusive and may be challenged for legal and factual sufficiency.	<i>BMC Software Belgium, N.V. v. Marchand</i> , 83 S.W.3d 789, 795 (Tex. 2002).
Special Appearance - Findings of Fact	Findings of fact are reviewed for legal and factual sufficiency.	In reviewing factual sufficiency of findings of fact, an appellate court may consider all of the evidence before the trial court. In reviewing legal sufficiency, a court may consider only the evidence supporting the finding and must disregard all contrary evidence or inferences.	<i>BMC Software Belgium, N.V. v. Marchand</i> , 83 S.W.3d 789, 794 (Tex. 2002).
Special Appearance - Conclusions of Law	Conclusions of law are reviewed de novo.	“[H]owever, the reviewing court may review the trial court’s legal conclusions drawn from the facts to determine their correctness.”	<i>BMC Software Belgium, N.V. v. Marchand</i> , 83 S.W.3d 789, 794 (Tex. 2002).
Special Exceptions - Granting Special Exceptions and Dismissing Case.	Abuse of discretion.	An appellate court must accept as true all material factual allegations in the pleadings and all factual statements reasonably inferred from the allegations in the pleadings.	<i>Sorokolit v. Rhodes</i> , 889 S.W.2d 239, 240 (Tex. 1994); <i>Muecke v. Hallstead</i> , 25 S.W.3d 221, 224 (Tex. App.—San Antonio 2000, no pet.).
Special Exceptions - Granting Special Exceptions and Dismissing Case for Failure to State a Cause of Action.	De novo.	The propriety of the dismissal will be judged on the pleadings, not on the evidence. An appellate court accepts as true all material factual allegations in the pleadings and all facts reasonably inferred therefrom.	<i>Shirvanian v. DeFrates</i> , 161 S.W.3d 102, 105 (Tex. App.—Houston [14th Dist.] 2004, pet. filed); <i>Pack v. Crossroads, Inc.</i> , 53 S.W.3d 492, 507 (Tex. App.—Fort Worth 2001, pet. denied).
Standing	De novo.	An appellate court must construe the petition in favor of the pleader and look to the pleader’s intent, and if necessary, review the entire record to determine if there is any evidence supporting standing.	<i>Tex. Dept. of Transp. v. City of Sunset Valley</i> , 146 S.W.2d 637, 646 (Tex. 2004); <i>Tex. Ass’n of Bus. v. Tex. Air Control Bd.</i> , 852 S.W.2d 440, 446 (Tex. 1993).

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Subject-Matter Jurisdiction	Whether a court has subject-matter jurisdiction is a question of law reviewed de novo.	An appellate court reviews the pleadings and construes the allegations in favor of the pleader. The court must consider relevant evidence if necessary to resolve jurisdiction.	<i>Hoff v. Nueces County</i> , 153 S.W.3d 45, 48 (Tex. 2004); <i>Tex. Dept. of Transp. v. City of Sunset Valley</i> , 146 S.W.3d 637, 646 (Tex. 2004).
Supersedeas Bond	An appellate court reviews the trial court's rulings concerning the amount and type of security required under an abuse of discretion standard.	An appellate court reviews the entire record.	<i>Miller v. Kennedy & Minshew, P.C.</i> , 80 S.W.3d 161, 164-65 (Tex. App.—Fort Worth 2002, no pet.); <i>Transamerican Natural Gas Corp. v. Finkelstein</i> , 905 S.W.2d 412, 414 (Tex. App.—San Antonio 1995, writ dismissed).
Supplementation of Discovery Responses	Abuse of discretion.	Evidence that is not timely disclosed in discovery may not be introduced at trial unless the party seeking to admit the evidence demonstrates and the trial court finds (1) good cause for the failure to make, amend or supplement in a timely manner, (2) the failure to timely make, amend or supplement will not unfairly surprise or unfairly prejudice the other party. Appellate court reviews the entire record to determine whether the party seeking to admit the evidence met this burden.	TEX. R. CIV. P. 193.6; <i>Parker Plaza West, Ltd. v. Boniuk Invs., Ltd.</i> , 153 S.W.3d 729, 733-34 (Tex. App.—Dallas 2005, no pet.).
Temporary Injunction	Abuse of discretion.	An appellate court “draws all legitimate inferences from the evidence in a manner most favorable to the trial court’s judgment.”	<i>Butnaru v. Ford Motor Co.</i> , 84 S.W.3d 198, 204 (Tex. 2002); <i>Miller v. K&M P’ship</i> , 770 S.W.2d 84, 87 (Tex. App.—Houston [1st Dist.] 1989, no writ).
Traditional Summary Judgment	De novo.	An appellate court takes as true all summary judgment evidence favorable to the nonmovant, and indulges every reasonable inference and resolves any doubts in the nonmovant’s favor.	<i>Provident Life & Accident Ins. Co. v. Knott</i> , 128 S.W.3d 211, 215 (Tex. 2003); see <i>Little v. Tex. Dept. of Criminal Justice</i> , 148 S.W.3d 374, 381 (Tex. 2004).
Trial Amendment	Abuse of discretion.	An appellate court reviews the entire record.	<i>State Bar of Tex. v. Kilpatrick</i> , 874 S.W.2d 656, 658 (Tex. 1994) (per curiam).
Turnover Orders	Abuse of discretion.	An appellate court reviews the entire record.	<i>Beaumont Bank, N.A. v. Buller</i> , 806 S.W.2d 223, 226-27 (Tex. 1991).
Venue	Appellate court must defer to the trial court’s determination that venue was proper if there is any probative evidence to support the venue ruling, even if preponderance of the evidence is to the contrary.	Although the trial court may consider only pleadings and affidavits, an appellate court shall conduct an independent review of the entire record, including trial on the merits.	TEX. CIV. PRAC. & REM. CODE § 15.064(a), (b); <i>Wilson v. Tex. Parks & Wildlife Dep’t</i> , 886 S.W.2d 259, 261-62 (Tex. 1994); <i>Ruiz v. Conoco, Inc.</i> , 868 S.W.2d 752, 757-58 (Tex. 1993).
Venue - Multiple Plaintiffs Under Civil Practice and Remedies Code § 15.003	De novo.	“The court of appeals shall determine whether the trial court’s order is proper based on an independent determination from the record and not under either an abuse of discretion or substantial evidence standard.”	TEX. CIV. PRAC. & REM. CODE § 15.003(c)(1).

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Voir Dire	Abuse of discretion.	An appellate court reviews the entire record.	<i>Munoz v. Berne Group, Inc.</i> , 919 S.W.2d 470, 473 (Tex. App.—San Antonio 1996, no writ); <i>Haryanto v. Saeed</i> , 860 S.W.2d 913, 918 (Tex. App.—Houston [14th Dist.] 1993, writ denied) (op. on mot. for reh'g en banc).
Withdrawing Deemed Admissions	Abuse of discretion.	An appellate court reviews the entire record.	<i>Wal-Mart Stores, Inc. v. Deggs</i> , 968 S.W.2d 354, 356 (Tex. 1998); <i>Stelly v. Papania</i> , 927 S.W.2d 620, 622 (Tex. 1996) (per curiam).