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RECENT TEXAS CASES
EXCERPTED FOR LEGISLATIVE INTENT AND HISTORY

The following cases relating to Texas law are not exhaustive on the issue of legislative intent and history. These are a few examples of recent court decisions excerpted for this topic in the state. ***You must review the entire court opinion to determine its applicability to your case.***

KAO HOLDINGS, L.P. V. YOUNG
261 S.W.3D 60
TEX., 2008. JUNE 13, 2008

[3] The purpose of article 6132b-3.05(c) is not as clear. It was enacted in 1993 as part of the Texas Revised Partnership Act.[FN11] There was no similar provision in TRPA's predecessor, the Texas Uniform Partnership Act adopted in 1961,[FN12] or in the Uniform Partnership Act of 1914, on which TUPA was modeled. TRPA was the product of a committee of the State Bar of Texas, drawing on the work of a committee of the American Bar Association [FN13] and the National Conference of Commissioners on Uniform State Laws, which had resulted in a draft in 1992 that became the Uniform Partnership Act of 1997.[FN14] The 1997 UPA contained the following provision:

FN11. Act of May 31, 1993, 73rd Leg., R.S., ch. 917, § 1, 1993 Tex. Gen. Laws 3887, 3893.

FN12. Act of May 9, 1961, 57th Leg., R.S., ch. 158, 1961 Tex. Gen. Laws 289, *expired* January 1, 1999, Act of May 31, 1993, 73rd Leg., R.S., ch. 917, 1993 Tex. Gen. Laws 3887.

FN13. *See* UPA Revision Subcomm. of the Comm. on P'ships and Unin. Bus. Orgs., *Should the Uniform Partnership Be Revised?,* 43 BUS. LAW. 121 (1987).

FN14. TEX.REV.CIV. STAT. ANN. art. 6132b cmt. (Vernon Supp.2007) (Comment of the Bar Committee 1993).

…

The first sentence of section 307(c) is identical to the first clause of article 6132b-3.05(c), but the second sentence and second clause are completely different. The only explanation for the latter in TRPA's **legislative history** is a comment appended to the provision that merely tracks its language:

Subsection (c) provides that a judgment against the partnership is not, standing alone, a judgment against any of the partners, but that a judgment may be entered against any partner who has been served in the same suit.[FN17]

FN17. TEX.REV.CIV. STAT. ANN. art. 6132b-3.05 cmt. (Vernon Supp.2007).

[16] [17] To decide the issue we must reconcile statutory language that facially allows a motion and hearing to dismiss, *see* section 21.019 ("[A] party that files a condemnation petition *may* move to dismiss." (emphasis added)), with language that results in a condemnor being allowed to dismiss its claim by amending pleadings as occurs in other civil cases, *see* TEX. PROP.CODE § 21.018(b) ("[T]he court *shall* cite the adverse party and try the case in the same manner as other civil cases." (emphasis added)). In construing statutes, we ascertain and give effect to the Legislature's intent as expressed by the language of the statute. *See State v. Shumake*, 199 S.W.3d 279, 284 (Tex.2006). We use definitions prescribed by the Legislature and any technical or particular meaning the words have acquired, but otherwise, we construe the statute's words according to their plain and common meaning unless a contrary intention is apparent from the context, or unless such a construction leads to absurd results. *See* TEX. GOV'T CODE § 311.011; *Univ. of Tex. Sw. Med. Ctr. v. Loutzenhiser*, 140 S.W.3d 351, 356 (Tex.2004). We presume the Legislature intended a just and reasonable result by enacting the statute. TEX. GOV'T CODE § 311.021(3).

We find no guidance in **legislative history** as to how the Legislature intended sections 21.018(b) and 21.019 to interact in regard to this question. Early eminent domain statutes specified that condemnation trials were to be conducted as were other civil causes. *See* Act approved Feb. 8, 1860, 8th Leg., R.S., ch. 51, § 2, 1860 Tex. Gen. Laws 60, 61-62, *reprinted in 4 H.P.N. Gammel, The Laws of Texas 1822-1897*, at 1422, 1423-24 (Austin, Gammel Book Co. 1898) ("if either party be dissatisfied with the decision of said Commissioners, he or they shall have the right to file a petition in the District Court, as in ordinary cases, reciting the cause of action, and the failure to agree, and such suit shall proceed to judgment as in ordinary cases."). Section 21.018(b) includes the substance of that language. Thus, we seek legislative intent in the plain words of the statutory provisions, mindful that we presume the Legislature to have intended a just and reasonable result, and not an absurd one.

…

[22] We cannot agree with the University that the plain wording of section 21.019(b) always requires complete and strict dismissal of the entire action before the landowner's right to fees and expenses arises. As the University points out, the statute does not make reference to a "partial dismissal," but it likewise does not specifically provide that the condemnor must move to dismiss the condemnation proceeding in its entirety or use similar all-inclusive language. It simply makes reference to dismissal of "a condemnation ****635*** proceeding." We think the Legislature's language is sufficiently flexible to encompass the uncommon factual circumstances presented in this case.[FN11]

FN11. The University also says a fee-shifting provision of the Model Eminent Domain Code should persuade us that an award of fees under section 21.019 is unavailable for a "partial dismissal" of the proceedings. Under section 1303(b) of this Code, fees are available "[i]f the scope of the property to be taken is reduced as the result of (1) a partial dismissal, (2) a dismissal of one or more plaintiff, or (3) a final judgment determining that the plaintiffs cannot take part of the property originally sought to be taken." MODEL EMINENT DOMAIN CODE § 1303(b) (1974). We are unpersuaded. Pointing out that a model code expressly allows fees for partial dismissals, no matter how small, does not go very far in establishing that a differently worded Texas statute never allows such fees, no matter how radically the proposed taking is reduced.

…

[27] [28] We have no quarrel with the dissent's reading of the statutory language. We simply disagree that the Legislature could have intended to allow a landowner such as FKM to recover fees and expenses only if a condemning authority files a formal motion to dismiss as to every small part of the originally-sought land. As we note above, the Legislature has long prescribed that condemnation cases be tried as other civil cases, thus incorporating the mechanism of dismissal by amending pleadings and notice of dismissal so long as another party is not prejudiced. That fulfills the purpose of the statutory language precluding a condemnor from discontinuing a proceeding in some manner without a court and the landowner being able to examine the circumstances of the former claim to determine if fees and expenses are recoverable by the landowner. The Legislature has directed courts to presume it intended a just and reasonable result by its enactments. *See* TEX. GOV'T CODE § 311.021(3). If it is just and reasonable for landowners to obtain relief from fees and expenses they incur in condemnation proceedings that are fully dismissed, surely it is so if the functional effect of an amended pleading by a condemnor is dismissal of the original proceeding while effectively pursuing a different claim. However, we agree with the dissent that the Legislature plainly has not provided for partial or full recovery of fees and expenses merely because a partial dismissal occurs.

IN RE JORDEN
249 S.W.3D 416
TEX., 2008. MARCH 28, 2008

Accordingly, the plain terms of the statute stay "all discovery" but for the three listed exceptions. Although those exceptions include depositions of nonparties under Rule 205, they do not include presuit depositions governed by Rule 202. As the Legislature explicitly provided that this statute overrides any conflicting laws or rules of procedure, the statute's plain language appears to prohibit presuit depositions.[FN17]

FN17. *See* TEX. CIV. PRAC. & REM.CODE § 74.002(a) ("In the event of a conflict between this chapter and another law, including a rule of procedure or evidence or court rule, this chapter controls to the extent of the conflict.").

…

Nothing in this definition limits "health care liability claim" to filed suits; instead, it extends coverage to "a cause of action." That term generally applies to facts, not filings:

A cause of action has been defined "as a fact or facts entitling one to institute and maintain an action, which must be alleged and proved in order to obtain relief." [FN19]

FN19. *A.H. Belo Corp. v. Blanton*, 133 Tex. 391, 129 S.W.2d 619, 621 (1939) (quoting 1 TEX. JUR. 1st *Actions* § 15 (1929)); *accord*, *Mercantile Bank & Trust Co. v. Schuhart*, 115 Tex. 114, 277 S.W. 621, 624 (Tex.1925) (quoting *Western Wool Comm'n Co. v. Hart*, 20 S.W. 131, 132 (Tex.1892)).

Similarly, Black's Law Dictionary defines "cause of action" as "[a] group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in court from another person." [FN20] In many different contexts, Texas law recognizes that a "cause of action" relates to facts, whether or not suit is ever filed:

FN20. BLACK'S LAW DICTIONARY 235 (8th ed.2004).

…

The court of appeals also relied on **legislative history**, pointing out that drafts during the legislative process initially prohibited Rule 202 depositions, then partially allowed them, and finally removed any reference to them altogether.[FN29] But one cannot infer that removing an

explicit ban on presuit depositions means they are allowed, because the statute as finally passed expressly states that *all discovery* is prohibited, and the three exceptions it allowed did not include Rule 202. "If Parliament does not mean what it says, it must say so." FN30

FN29. 191 S.W.3d at 487-88.

FN30. *Brazos River Auth. v. City of Graham,* 163 Tex. 167, 354 S.W.2d 99, 109 n. 3 (1961) (citing A.P. HERBERT, THE UNCOMMON LAW, 313 (7th ed.1950)).

…

Allan argues that construing section 74.351(s) to prohibit Rule 202 depositions would lead to absurd results.FN32 To the contrary, given the findings made in this legislation, it is hard to see how Rule 202 could apply in these circumstances.

FN32. *See* TEX. GOV'T CODE § 311.021(3) ("In enacting a statute, it is presumed that ... a just and reasonable result is intended...."); *Tex. Dep't of Protective & Regulatory Servs. v. Mega Child Care, Inc.,* 145 S.W.3d 170, 177 (Tex.2004) ("If the statutory text is unambiguous, a court must adopt the interpretation supported by the statute's plain language unless that interpretation would lead to absurd results."); *Gilmore v. Waples,* 108 Tex. 167, 188 S.W. 1037, 1038 (1916) ("There are instances where the literal meaning of a statute may be disregarded. But it is only where it is perfectly plain that the literal sense works an absurdity or manifest injustice.").

OWENS & MINOR, INC. v. ANSELL HEALTHCARE PRODUCTS, INC.
251 S.W.3D 481
TEX., 2008.MARCH 28, 2008

[1] [2] [3] Our focus when construing a statute is the intent of the Legislature. *City of LaPorte v. Barfield,* 898 S.W.2d 288, 292 (Tex.1995). To give effect to the Legislature's intent, we rely on "the plain and common meaning of the statute's words." *Liberty Mut. Ins. Co. v. Garrison Contractors, Inc.,* 966 S.W.2d 482, 484 (Tex.1998). "[I]t is a fair assumption that the Legislature tries to say what it means, and therefore the words it chooses should be the surest guide to legislative intent." *Fitzgerald v. Advanced Spine Fixation Sys., Inc.,* 996 S.W.2d 864, 866 (Tex.1999).

[4] At common law, a seller was not entitled to indemnification from a manufacturer unless and until there was a judicial finding of negligence on the part of the manufacturer. *Humana Hosp. Corp. v. Am. Med. Sys., Inc.,* 785 S.W.2d 144, 145 (Tex.1990). In 1993, the Texas Legislature supplemented the common law by enacting Section 82.002,FN1 which allows an ****484*** innocent seller to seek indemnification from the manufacturer of an allegedly defective product. Act of Feb. 23, 1993, 73d Leg., R. S., ch. 5, § 1, 1993 Tex. Gen. Laws 13, 13; TEX. CIV. PRAC. & REM.CODE § 82.002(a); *see also Fitzgerald,* 996 S.W.2d at 866 ("The duty [to indemnify] is a new, distinct statutory duty...."). Thus, under Section 82.002, the manufacturer is now liable to the seller regardless of how the injury action is resolved. § 82.002(e)(1). The manufacturer's duty begins when it is given notice that a seller has been sued. *See Meritor Auto., Inc. v. Ruan Leasing Co.,* 44 S.W.3d 86, 89 (Tex.2001) (stating that the plaintiff's pleadings are sufficient to invoke the manufacturer's duty under Section 82.002).

…

In the absence of language indicating that the Legislature intended for one manufacturer to hold an innocent seller harmless for losses caused by products made by another manufacturer, we decline to assign such broad liability. Doing so would lead to absurdities and inequities the Legislature certainly did not intend. *See C & H Nationwide, Inc. v. Thompson,* 903 S.W.2d 315, 322 n. 5 (Tex.1994) ("Statutory provisions will not be so construed or interpreted as to lead to absurd conclusions ... if the provision is subject to another, more reasonable construction or

interpretation."). For example, Owens's ***487*** interpretation of the scope of Section 82.002's duty to indemnify could result in manufacturers such as Ansell and Becton being placed in the awkward, if not impossible, position of defending someone else for injuries caused by products they did not make.

…

The Legislature specifically incorporated that requirement into the statute by defining a manufacturer as a person who "places the product or any component part thereof in the stream of commerce." TEX. CIV. PRAC. & REM.CODE § 82.001(4). If the Legislature intended to change the common law by establishing liability for another manufacturer's product, it would have done so expressly.[FN6]

FN6. The dissent asserts that our holding "creates an exception to the indemnity obligation that does not exist in the text." 251 S.W.3d at 495. We disagree. We merely recognize the scope of indemnity obligation imposed by the Legislature. Under the statute, an innocent seller is guaranteed indemnity from any person who qualifies as a manufacturer under Section 82.001(4). Naming a party as a manufacturer in a lawsuit does not automatically trigger an unlimited indemnity obligation under Section 82.002. A party's indemnity obligation is limited by the definition of manufacturer, which relates specifically to a person's own products that have been placed in the stream of commerce.

STATE V. CROOK
248 S.W.3D 172
TEX.CRIM.APP., 2008. FEBRUARY 06, 2008

The **legislative history** of Section 3.03(a) also does not support the claim that the Legislature's use of the term "run" in Section 3.03(a) was intended to make a distinction between terms of imprisonment and fines for concurrent sentencing purposes. What is presently Section 3.03(a) was enacted by the 63rd Legislature in 1973 as part of the complete revision of the Texas Penal Code.[FN13] Prior to the enactment of Section 3.03(a) in 1973, the state could not obtain multiple convictions in the same criminal proceeding when a person committed multiple crimes during the same criminal episode. Section 3.03(a) changed prior law by providing for multiple convictions in one criminal proceeding under these circumstances with the defendant having the right to "concurrent sentences." [FN14]

FN13. *See* Acts 1973, 63rd Leg., ch. 399, § 3.03, eff. January 1, 1974.

FN14. In a hearing before the Senate Jurisprudence Committee on May 8, 1973, Senator Santiesteban described what Chapter 3 was intended to accomplish. In describing then current law, Senator Santiesteban stated that if a person broke into a store, robbed and killed the storekeeper, and then set fire to the store, this person had to be tried on different indictments and in different trials for each of these crimes. Senator Santiesteban stated that, under the proposed Chapter 3, this person could be indicted for all these crimes in one multi-count indictment and tried for them in one trial, and the judge "shall sentence him with concurrent sentences." Senator Santiesteban described Chapter 3 as a "drastic change" in the law. *See* www. tsl. state. tx. us Senate Jurisprudence Committee hearing on 5/8/73, File 894 (13:17-14:42).

Testifying on behalf of the Criminal Defense Lawyers Association at a Senate ***176*** Sub-Committee on Criminal Matters hearing on March 27, 1973, Frank Maloney described the structure of Chapter 3. He testified that Chapter 3 was intended to permit the state to obtain multiple convictions and sentences in one criminal proceeding for multiple offenses committed during the same "criminal episode." He testified that *all* sentences in convictions obtained under Section 3.03(a) would run concurrently with the defendant being required to serve the harshest one imposed. He further described the defendant's right to sever,[FN15] which, if exercised, would expose the defendant to the possibility of consecutive sentences in the trial court's discretion.[FN16]

FN15. *See* Section 3.04(a), TEX. PEN.CODE.

FN16. *See* Section 3.04(b), TEX. PEN.CODE; www. tsl. state. tx. us Senate Sub-Committee on Criminal Matters hearing on 3/27/73, File 966 (0-46:45)

Testifying on behalf of the Texas County and District Attorneys Association at a House Criminal Jurisprudence Sub-Committee hearing on February 26, 1973, Tom Hanna, who was the Jefferson County District Attorney, agreed with Frank Maloney's description of Chapter 3. Mr. Hanna also testified that one of the purposes of Chapter 3 was to provide prosecutors with the ability to clear crowded dockets and to save tax-payer money by disposing of multiple crimes in one trial. He further testified that sentences under Section 3.03(a) must "run concurrently" unless the defendant exercised the right to sever, in which case the trial court would have the discretion to stack the sentences. Mr. Hanna testified that Chapter 3 was a "finely worked out balance" with prosecutors receiving the ability to clear crowded dockets and defendants receiving the right to concurrent sentences.[FN17]

FN17. *See* House Criminal Jurisprudence Sub-Committee hearing on February 26, 1973: Tape 1, Side 2 (145-600); Tape 2, Side 1 (0-600).

[2] There is nothing in the **legislative history** of Section 3.03(a) or any other provision of the 1974 Penal Code to indicate that anyone at any time ever took the position or even suggested that the concurrent sentences provision of Section 3.03(a) should not apply to fines.[FN18] The main dispute***177*** or point of debate among the interested parties centered on the definition of "criminal episode" in Section 3.01 and not on whether some distinction should be made between terms of imprisonment and fines for concurrent sentencing purposes under Section 3.03(a).[FN19] Nothing in the **legislative history** of Section 3.03(a) indicates that the Legislature intended for the concurrent sentences provision of Section 3.03(a) to apply to anything but the entire sentence, including fines. This would be consistent with the language that the Legislature used in Section 3.03(a) that "the sentences shall run concurrently." We decide that the concurrent sentences provision of Section 3.03(a) applies to the entire sentence, including fines.[FN20]

FN18. *See* www. tsl. state. tx. us (1) Senate Sub-Committee on Criminal Matters hearing on February 13, 1973: Files 930, 931; (2) Senate Sub-Committee on Criminal Matters hearing on February 14, 1973: Files 932, 933, 934; (3) Senate Sub-Committee on Criminal Matters hearing on February 20, 1973: Files 935, 936, 937, 938, 939; (4) Senate Sub-Committee on Criminal Matters hearing on February 21, 1973: File 940; (5) Senate Sub-Committee on Criminal Matters hearing on February 27, 1973: Files 941, 942, 943; (6) Senate Sub-Committee on Criminal Matters hearing on February 28, 1973: Files 944, 945, 946, 947; (7) Senate Sub-Committee on Criminal Matters hearing on March 7, 1973: Files 948, 949, 950, 951; (8) Senate Sub-Committee on Criminal Matters hearing on March 13, 1973: Files 952, 953, 954; (9) Senate Sub-Committee on Criminal Matters hearing on March 14, 1973: Files 956, 957; (10) Senate Sub-Committee on Criminal Matters hearing on March 20, 1973: Files 958, 959, 960; (11) Senate Sub-Committee on Criminal Matters hearing on March 21, 1973: Files 961, 962, 963, 964, 965; (12) Senate Sub-Committee on Criminal Matters hearing on March 27, 1973: Files 966, 967, 968, 969, 970, 971; (12) Senate Sub-Committee on Criminal Matters hearing on April 3, 1973: Files 972, 973, 974; (13) Senate Sub-Committee on Criminal Matters hearing on April 4, 1973: Files 975, 976; (14) Senate Sub-Committee on Criminal Matters hearing on April 10, 1973: Files 977, 978; (15) Senate Sub-Committee on Criminal Matters hearing on April 24, 1973: Files 979, 980; (16) Senate Sub-Committee on Criminal Matters hearing on April 25, 1973: File 981; (17) Senate Sub-Committee on Criminal Matters hearing on May 1, 1973: File 982; (18) Senate Sub-Committee on Criminal Matters hearing on May 2, 1973: Files 983, 984, 985. *See* www. tsl. state. tx. us (1) Senate Jurisprudence Committee hearing on May 8, 1973: Files 894, 895.

See www. tsl. state. tx. us (1) Senate Floor Session on May 15, 1973: Files 140, 141, 142; (2) Senate Floor Session on May 16, 1973: Files 143, 144, 145, 146, 147.

See (1) House Criminal Jurisprudence Sub-Committee hearing on February 26, 1973: Tapes 1, 2; (2) House Criminal Jurisprudence Sub-Committee hearing on March 5, 1973: Tapes 1, 2, 3; (3)

House Criminal Jurisprudence Sub-Committee hearing on March 12, 1973: Tapes 1, 2; (4) House Criminal Jurisprudence Sub-Committee hearing on March 14, 1973: Tapes 1, 2; (5) House Criminal Jurisprudence Sub-Committee hearing on March 19, 1973: Tapes 1, 2; (6) House Criminal Jurisprudence Sub-Committee hearing on March 21, 1973: Tapes 1, 2.

See (1) House Criminal Jurisprudence Committee hearing on May 16, 1973: Tape 1-A.

See (1) House Floor Proceeding on May 18, 1973: Tape 1-B; (2) House Floor Proceeding on May 19, 1973: Tape 2-A; (3) House Floor Proceedings on May 21 and 23, 1973: Tapes 2-B, 3-A, 3-B, 4-A, 4-B.

FN19. *See* www. tsl. state. tx. us: (1) Senate Sub-Committee on Criminal Matters hearing on 2/13/73, File 931 (21:14-31:30); (2) Senate Sub-Committee on Criminal Matters hearing on 3/27/73, File 966 (0:00-46:45); (3) Senate Jurisprudence Committee hearing on 5/8/73, File 894 (13:17-14:42); (4) Senate Floor Session on 5/15/73, File 140 (42:00-45:20). *See also* (1) House Criminal Jurisprudence Sub-Committee hearing on 2/26/73, Tape 1, Side 2 (145-610); (2) House Criminal Jurisprudence Sub-Committee hearing on 2/26/73, Tape 2, Side 1 (0-610); House Floor Session on 5/21/73, Tape 2-B (22-83).

See also (1) State Bar of Texas Committee on Revision of the Penal Code, Working Papers on Title I, Draft 1 (8/10/70) (generally providing that a defendant "may not be sentenced for more than one offense" if the "defendant is adjudged guilty of more than one offense arising out of the same criminal episode"); (2) State Bar of Texas Committee on Revision of the Penal Code, Final Draft (October 1970) (same).

FN20. The dissenting opinion claims that our holding in this case changes a "long-standing rule of cumulating fines for multiple counts of the same criminal episode." *See* Dissenting op. at 5 (suggesting that the "thought of changing the long-standing rule of cumulating fines for multiple counts of the same criminal episode did not even occur to the participants [in the legislative process], precisely because it has been such a long-standing and well-established rule"). There was, however, no such long-standing rule prior to 1973 when the Legislature enacted Section 3.03(a) authorizing a single criminal prosecution for multiple offenses arising out of the same criminal episode. As the **legislative history** of Chapter 3 indicates, this (i.e., authorizing a single criminal prosecution for multiple offenses arising out of the same criminal episode) was a "drastic change" in the law. *See* www. tsl. state. tx. us Senate Jurisprudence Committee hearing on 5/8/73, File 894 (13:17-14:42). Therefore, prior to 1973, there could not have been a long-standing rule for the Legislature to deviate from with respect to concurrent sentences for same-criminal-episode multiple convictions prosecuted in a single criminal action. Under these circumstances, we believe that it is more reasonable to conclude that, when the participants in the 1973 legislative process referred to "sentences" under Section 3.03(a) running concurrently, they meant what they said and intended for "sentence" to refer to the entire sentence (including fines). This is consistent with the language of Section 3.03(a), particularly the term "sentence," and the "finely worked out balance" that Section 3.03(a) was intended to accomplish. *See* House Criminal Jurisprudence Sub-Committee hearing on February 26, 1973: Tape 1, Side 2 (145-600); Tape 2, Side 1 (0-600). We believe that the overwhelming majority of the materials that we have examined support a conclusion that "sentence" in Section 3.03(a) should be construed to encompass the entire sentence (including fines). We decline to decide otherwise by essentially quibbling over the term "run."

II. Standard of Review

[3] [4] [5] [6] [7] [8] Statutory construction is a legal question we review de novo. In construing statutes, we ascertain and give effect to the Legislature's intent as expressed by the language of the statute. *See State, Texas Parks and Wildlife Dept. v. Shumake*, 199 S.W.3d 279, 284 (Tex.2006). We use definitions prescribed by the Legislature and any technical or particular meaning the words have acquired. TEX. GOV'T CODE § 311.011(b). Otherwise, we construe the statute's words according to their plain and common meaning, *Texas Department of Transportation v. City of Sunset Valley*, 146 S.W.3d 637, 642 (Tex.2004), unless a contrary intention is apparent ***626** from the context, *Taylor v. Firemen's and Policemen's Civil Service Commission of City of Lubbock*, 616 S.W.2d 187, 189 (Tex.1981), or unless such a construction leads to absurd results. *Univ. of Tex. S.W. Med. Ctr. v. Loutzenhiser*, 140 S.W.3d 351, 356 (Tex.2004); *see also Tex. Dep't of Protective and Regulatory Servs. v. Mega Child Care, Inc.*, 145 S.W.3d 170, 177 (Tex.2004) (noting that when statutory text is unambiguous, courts must adopt the interpretation supported by the statute's plain language unless that interpretation would lead to absurd results). We presume the Legislature intended a just and reasonable result by enacting the statute. TEX. GOV'T CODE § 311.021(3).[FN6] When a statute's language is clear and unambiguous, it is inappropriate to resort to rules of construction or extrinsic aids to construe the language. *See St. Luke's Episcopal Hosp. v. Agbor*, 952 S.W.2d 503, 505 (Tex.1997); *Ex parte Roloff*, 510 S.W.2d 913, 915 (Tex.1974).

FN6. We may also consider **legislative history** in construing a statute that is not ambiguous. *See* TEX. GOV'T CODE § 311.023(3). In this instance we are at a disadvantage because the language in question was crafted by a conference committee, and **legislative history** does not provide illumination as to how it was formulated.

…

[12] But we are not persuaded that the process and result called for by the plain language of the statute is illogical, much ***628** less absurd. Subchapters 43C and 43C-1 contain extensive provisions in regard to annexations…. *See Cameron v. Terrell & Garrett, Inc.*, 618 S.W.2d 535, 540 (Tex.1981) ("It is a rule of statutory construction that every word of a statute must be presumed to have been used for a purpose ... [and] we believe every word excluded from a statute must also be presumed to have been excluded for a purpose.").

[13] Contrary to the Estate's position, we see benefits from reading the statute's language literally. One significant benefit is that by not reading language into the statute when the legislature did not put it there, we do not risk crossing the line between judicial and legislative powers of government as prescribed by article II of the Texas Constitution. TEX. CONST. art. II, § 1. ("[N]o person, or collection of persons, being of one of these [three governmental] departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted."). Another benefit is that by interpreting statutes such as this in a straightforward manner, we build upon the principle that "ordinary citizens [should be] able 'to rely on the plain language of a statute to mean what it says.' " *Fitzgerald v. Advanced Spine Fixation Sys.*, 996 S.W.2d 864, 866 (Tex.1999) (quoting *Addison v. Holly Hill Fruit Prods. Inc.*, 322 U.S. 607, 618, 64 S.Ct. 1215, 88 L.Ed. 1488 (1944))…

[14] But in any event, our standard for construing statutes is not to measure them for logic. *See Lee v. City of Houston*, 807 S.W.2d 290, 293 (Tex.1991) ("Our function is not to question the wisdom of the statute; rather, we must apply it as written."). As previously noted, our standard is to construe statutes to effectuate the intent of the Legislature, with the language of the statute as it was enacted to be our guide unless the context or an absurd result requires another construction.

See Fitzgerald, 996 S.W.2d at 866 (Tex.1999) ("[I]t is a fair assumption that the Legislature tries to say what it means, and therefore the words it chooses should be the surest guide to legislative intent."); *Jones v. Del Andersen & Assocs.,* 539 S.W.2d 348, 350 (Tex.1976) ("[The intention of the Legislature] is to be found in the language of the statute itself ... we cannot give Section 28 the limited construction advocated by Andersen. To do so would require that we read into the statute words which are not there."). In this instance, the context does not indicate that the plain meaning of the language was not intended. The sentence in question addresses a separate subject from the surrounding language: the circumstances under which a city can be requested to arbitrate. It would not have been inconsistent with the context of the sentence for the Legislature to have provided that a landowner could request arbitration if the municipality failed to act favorably upon the landowner's petition or failed to include the landowner's property in a three-year annexation plan. Clearly, though, there is a difference between the meaning of the statute as it is written and the statute as contended for by the Estate.

…

Justice WILLETT, joined by Justice HECHT, Justice O'NEILL, and Justice BRISTER, dissenting.

…

The Court aptly describes, then misapplies, the pertinent ground rules for construing statutory language. Words and phrases must be read "in context and construed according to the rules of grammar and common usage." [FN1] The import of language, plain or not, must be drawn from the surrounding context, particularly when construing everyday words and phrases that are inordinately context-sensitive.[FN2] Given the power of context to transform the meaning of language, courts should resist rulings anchored in hyper-technical readings of isolated words or phrases,[FN3] or forced readings that are exaggerated or, at the other extreme, constrained.[FN4]

FN1. TEX. GOV'T CODE § 311.011(a).

FN2. *Id.* Some familiar words, depending on how they are used, convey polar opposite meanings. For example, the word "sanction" may indicate approval ("I sanction eating that bowl of ice cream.") or disapproval ("My wife will sanction me for eating that bowl of ice cream."). *See* WEBSTER'S NEW WORLD DICTIONARY & THESAURUS 566 (Michael Agnes, ed., 2d ed.2002). Its meaning-permission or prohibition-turns entirely on context.

FN3. *Tex. Dep't of Transp. v. City of Sunset Valley,* 146 S.W.3d 637, 642 (Tex.2004) ("We must read the statute as a whole and not just isolated portions.").

FN4. *Cities of Austin, Dallas, Ft. Worth, & Hereford v. Sw. Bell Tel. Co.,* 92 S.W.3d 434, 442 (Tex.2002).

AIC MANAGEMENT V. CREWS
246 S.W.3D 640
TEX., 2008. JANUARY 25, 2008

Under section 25.1032's plain language, the county civil courts at law in Harris County have exclusive jurisdiction over eminent-domain proceedings and may decide issues of title to real property. AIC contends, however, that this specific jurisdictional grant does not extend to title disputes which exceed the maximum $100,000 jurisdictional limit for statutory county courts. Because the property at issue in this case exceeds $100,000 in value, AIC contends, section 21.002 of the Property Code divested the county court of jurisdiction and required transfer of the case to the district court. We disagree.

…

In interpreting statutes, we examine the language the Legislature chose and may also consider the object sought to be obtained. *See id.* § 311.023(1). The **legislative history** indicates that section 25.1032, which vested exclusive jurisdiction over eminent-domain proceedings in Harris County in the county civil courts, was originally enacted to alleviate a caseload imbalance between underutilized county courts and overburdened district courts in Harris County. House Comm. on Judicial Affairs, Bill Analysis, Tex. H.B. 1110, 69th Leg., R.S. (1985). The statute was subsequently amended to "raise the amount in controversy limit ... and expand [county courts'] jurisdiction with respect to other causes of action," again due to the heavy pending caseload in the Harris County district courts and the availability of speedier resolution in the county courts. *See* Act of May 15, 1989, 71st Leg., R.S., ch. 445, § 1, 1989 Tex. Gen. Laws 1605, 1606; TEX. GOV'T CODE ANN. § 25.1032, Historical and Statutory Notes; Tex. Sen. Jurisprudence Comm., Bill Analysis, Tex. H.B. 1795, 71st Leg., R.S. (1989). The statutory language vesting jurisdiction in the county courts based on the type of claim rather than the amount in controversy is consistent with this purpose. We conclude that the county court at law had subject-matter jurisdiction to resolve any title dispute between AIC and the Crewses arising out of the City's eminent-domain proceeding, and now turn to the deeds themselves.

…

Justice WILLETT, concurring in the judgment.

My only quibble with the Court's decision is that it peeks unnecessarily into the **legislative history** surrounding the 1985 enactment and 1989 amendment of section 25.1032. I agree with the Court that section 25.1032 constitutes "the Legislature's specific jurisdictional grant to county civil courts at law in Harris County over eminent-domain and title issues." [FN1] But our analysis on jurisdiction should end with ***650** that declarative sentence. The statutory text is unequivocal, which makes it dispositive, which makes the tag-along paragraph examining the **legislative history** unnecessary.

FN1. 246 S.W.3d 644.

True, in today's case, the cited history happens to be consonant with section 25.1032's unambiguous text, but it is not difficult to imagine cases where a shrewd snippet from a committee hearing or floor debate could contradict a result that the face of the statute plainly requires. Citing such background materials even to confirm the clear meaning of dispositive text suggests that the text alone is in fact not dispositive, but rather vulnerable to challenge by a stray floor-debate comment from an individual legislator or a witness testifying at a post-midnight committee hearing or a bill analysis drafted by a legislative staffer (or, just as likely, ghost-drafted by a lobbyist). The statute itself is what constitutes the law; it alone represents the Legislature's singular will, and it is perilous to equate an isolated remark or opinion with an authoritative, watertight index of the collective wishes of 181 individual legislators, who may have 181 different motives and reasons for voting the way they do.[FN2]

FN2. Frank H. Easterbrook, *Text, History, and Structure in Statutory Interpretation,* 17 HARV. J.L. & PUB. POL'YY 61, 68 (1994) ("Intent is elusive for a natural person, fictive for a collective body.").

This Court recognizes that legislative intent is best embodied in legislative language. We recently cautioned that "over-reliance on secondary materials should be avoided, particularly where a statute's language is clear. If the text is unambiguous, we must take the Legislature at its word and not rummage around in legislative minutiae." [FN3] Faced with clear statutory language, "the judge's inquiry is at an end." [FN4] It may be a widespread practice to mine the minutiae of legislative records to discern what lawmakers had in mind, but as we have held, relying on these materials is verboten where the statutory text is, as here, absolutely clear.[FN5]

FN3. *Alex Sheshunoff Mgmt. Servs., L.P. v. Johnson,* 209 S.W.3d 644, 652 n. 4 (Tex.2006).

FN4. *Id.* at 652.

FN5. *Id.* at 651-52. Justice Scalia, the foremost critic of supplementing clear statutory text with **legislative history**, has stated his position plainly:As today's opinion shows, the Court's disposition is required by the text of the statute.... That being so, it is not only (as I think) improper but also quite unnecessary to seek repeated support in the words of a Senate Committee Report-which, as far as we know, not even the full committee, much less the full Senate, much much less the House, and much much much less the President who signed the bill, agreed with. Since, moreover, I have not read the entire so-called **legislative history**, and have no need or desire to do so, so far as I know the statements of the Senate Report may be contradicted elsewhere.Accordingly, because the statute-the only sure expression of the will of Congress-says what the Court says it says, I join in the judgment. *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 267, 124 S.Ct. 2466, 159 L.Ed.2d 355 (2004) (Scalia, J., concurring in the judgment).

Accordingly, because the jurisdictional question can be decided without recourse to **legislative history**, we should decide the jurisdictional question without recourse to **legislative history**.

BIGON V. STATE
252 S.W.3D 360
TEX.CRIM.APP., 2008. JANUARY 16, 2008

Felony murder and intoxication manslaughter are no longer in the same statutory section, but they were until 1994. Prior to 1994, intoxication manslaughter was called involuntary manslaughter by driving while intoxicated. [FN9] The offense was contained in the same section as all of the homicide offenses and was considered an alternative way to commit manslaughter. In 1994, involuntary manslaughter by driving while intoxicated was moved to the chapter that addresses intoxication offenses. The committee testimony and the house and senate journals addressing the senate bill that made this change do not mention the reasoning for moving the statute, but we have suggested that it was largely for housekeeping purposes. *Ervin*, 991 S.W.2d. at 816. Despite the fact that intoxication manslaughter was moved to the chapter regarding intoxication offenses, it is still an offense that addresses homicide. As we held in *Ervin*, we cannot say that, by moving the statute, the legislature intended to create a completely separate offense for double-jeopardy purposes. *Id.* Because the two offenses are distinct and in separate statutory sections, they cannot be phrased in the alternative, therefore this factor is not applicable in this case.

FN9. Former TEX. PEN.CODE ANN. § 19.05(a)(2) (Vernon 1993).

Although intoxication manslaughter was moved to a different section of the Penal Code, it kept the title of manslaughter, indicating that it is still considered a homicide. Felony murder and intoxication manslaughter are clearly similarly named. Murder and manslaughter denote similar offenses that differ only in degree. As such, this factor weighs in favor of the two offenses being considered the "same" in these circumstances.

STATE V. NEESLEY
239 S.W.3D 780
TEX.CRIM.APP., 2007. NOVEMBER 07, 2007

[1] In its first ground for review, the State argues that the court of appeals erred in holding that the statute's requirement that officers take "a specimen" was actually a limitation prohibiting officers from taking more than one specimen even where the first specimen was not usable. Our role in interpreting the wording of § 724.012(b) is limited by the holding in *Boykin v. State*,[FN8] which maintains:

FN8. *Boykin v. State*, 818 S.W.2d 782 (Tex.Crim.App.1991).

If the plain language of a statute would lead to absurd results, or if the language is not plain but rather ambiguous, then and only then, out of absolute necessity, is it constitutionally permissible for a court to consider, in arriving at a sensible interpretation, such extratextual factors as executive or administrative interpretations of the statute or **legislative history**.[FN9]

FN9. *Id.* at 785-86.

Thus, the first step of our analysis is to determine whether the plain language of § 724.012 is either ambiguous or it leads to absurd results. In the context of statutory construction, "ambiguity exists when a statute is capable of being understood by reasonably well-informed persons in two or more different senses." [FN10] In contrast, a statute is unambiguous where it "admits of no more than one meaning." [FN11] The segment of § 724.012(b) that we are called upon to interpret reads that "a peace officer *shall require* the taking of *a specimen* of the person's breath or blood." [FN12] The one thing that this segment of the statute clearly and unambiguously provides is that, under certain prescribed circumstances, a peace officer *must take at least one specimen* of the person's breath or blood. But it is unclear from the face of § 724.012(b), at least read in isolation, how many specimens it *permits* to be taken.

FN10. 2A Norman J. Singer, *Sutherland Statutory Construction* § 45.02, at 6 (5th ed.1992).

FN11. *Id.*

How Many Specimens Are Permitted?

[2] With respect to the question of how many specimens are *permitted*, the § 724.012(b), by itself, could be interpreted to mean:

◆ **Interpretation A:** The taking of one and only one specimen is permitted.

***784** ◆ **Interpretation B:** The taking of an unlimited number of specimens is permitted (though constitutional concerns, such as due process, might independently impose an upper limit).

◆ **Interpretation C:** The taking of as many specimens as are needed to acquire a usable sample is permitted (again, within constitutional bounds).

It might appear, then, that the statute is ambiguous with respect to this question, read in isolation. However, reading § 724.012(b) *in pari materia* with the balance of Chapter 724, Subchapter B ("Taking and Analysis of Specimen") of the Transportation Code, the seeming ambiguity is resolved.

Section 724.012(a) of the Transportation Code permits a peace officer to take "one or more specimens" whenever he has reasonable grounds to believe a DWI offense has occurred. And the DWI suspect "is deemed to have consented" to the taking of "one or more specimens" under Section 724.011 of the Transportation Code, the so-called "implied consent" statute. These provisions alone, however, cannot answer the question how many "specimens" a peace officer is permitted to take under subsection (b) of Section 724.012, the provision that *requires* that at least one specimen be taken under certain enumerated circumstances. The reason for this is the operation of Section 724.013 of the Transportation Code.[FN13] Section 724.013 does not permit the taking of *any* specimens, except under the circumstances enumerated in 724.012(b), if the suspect refuses to submit. Therefore, while Section 724.012(b) actually *requires* the taking of one specimen under the circumstances there enumerated, reading that provision in combination with Sections 724.011, 724.012(a), and, most importantly, 724.013, the statutory scheme as a whole clearly *permits* no more than the one specimen that is required when the suspect refuses to submit.

…

What Does "Specimen" Mean?

[3] Nowhere in the statute is the word "specimen" defined.[FN14] Reasonably well-informed persons could interpret it in more than one sense. For example:

FN14. While there are two sections within Chapter 724 of the Texas Transportation Code-§ 724.016, titled "Breath Specimen," and § 724.017, titled "Blood Specimen"-neither of these sections defines the term "specimen." Rather, these two sections address the procedural requirements of taking breath and blood specimens.

◆ **Interpretation 1:** A specimen refers to any sample taken, regardless of its content (e.g., A sample that is 99.99% saline and 0.01% blood is a specimen of blood).

◆ **Interpretation 2:** A specimen refers to a pure sample. (e.g., Only a sample that is 100% blood is a specimen of blood).

◆ **Interpretation 3:** A specimen refers to a sample containing a substantial, but not necessarily usable, percentage of a particular material (e.g., A sample that is 0.01% less pure than usable is a specimen).

***785** ◆ **Interpretation 4:** A specimen refers to a sample that is usable.

Since reasonably well informed persons could interpret the word "specimen" in any of these different senses, we hold that the statute is ambiguous. Consequently, we are permitted, in accordance with *Boykin*, to look to extratextual factors in order to arrive at a sensible interpretation. Thus, the second step of our analysis is to determine which of the above interpretations is best supported by extratextual factors.

In relevant part, the Code Construction Acts provides that, in construing a statute, whether or not the statute is ambiguous on its face, a court may consider among other matters, the:

(1) object sought to be attained;

(2) circumstances under which the statute was enacted;

(3) **legislative history**;

* * *

(5) consequences of a particular construction.[FN15]

FN15. TEX. GOV'T CODE ANN. § 311.023.

…

Subsection (b) of § 724.012 can be traced back to Senate Bill 1 of the 68th Legislature.[FN17] The object sought to be attained by this bill was to "save lives and decrease the number of casualties caused by drunken drivers." [FN18] When signed into law in 1984, subsection (b) originally required that a specimen be taken only in cases where a person had died or would die as a result of the accident. In 2003, subsection (b) was amended to also require the taking of a specimen in cases where a person suffered serious bodily injury as the result of the accident.[FN19] The discussion surrounding this amendment focused on the fact that "Texas [had] the nation's worst problem with drunk driving in terms of total deaths and injuries, with 50% of traffic fatalities involving alcohol." [FN20]

FN17. Act of January 1, 1984, 68th Leg., R.S., ch. 303, 1983 Tex. Gen. Laws 1568, 1584 (amended 1993, 1995, 1997, 2003).

FN18. HOUSE COMM. ON CRIMINAL JURISPRUDENCE, BILL ANALYSIS, Tex. S.B. 1, 68th Leg., R.S. (1983).

FN19. Act of September 1, 2003, 78th Leg., R.S., ch. 422, 2003 Tex. Gen. Laws 1669. FN20. HOUSE COMM. ON LAW ENFORCEMENT, BILL ANALYSIS, Tex. H.B. 292, 78th Leg., R.S. (2003).

Each of the extratextual factors cited weigh in favor of interpreting "specimen" to mean a usable sample.

TEXAS A & M UNIVERSITY SYSTEM V. KOSEOGLU
233 S.W.3D 835
TEX., 2007. SEPTEMBER 07, 2007

[12] [13] [14] [15] Our sole objective in construing Section 51.014(a)(8) is to give effect to the Legislature's intent. *Monsanto Co. v. Cornerstones Mun. Util. Dist.*, 865 S.W.2d 937, 939 (Tex.1993). In determining the Legislature's intent, we begin by looking to the plain meaning of the statute's ***841** words. *Liberty Mut. Ins. Co. v. Garrison Contractors, Inc.*, 966 S.W.2d 482, 484 (Tex.1998). Section 51.014(a) contains two provisions that could arguably be relevant to interlocutory appeals of jurisdictional decisions relating to sovereign immunity:

…

[17] Section 51.014(a)(8) differs from Sections 51.014(a)(5) and 51.014(a)(6) because, by its plain language allowing for interlocutory appeals of orders granting or denying pleas to the jurisdiction, it cannot be read as applying solely to a governmental unit, the entity which it describes.

…

The **legislative history** of Section 51.014(a) underscores the Legislature's concern with preventing such inefficiency. For example, Section 51.014(a)(8) was designed to reduce litigation expenses for all parties involved in suits against state entities by resolving the question of sovereign immunity prior to suit rather than after a full trial on the merits.[FN2] These cost savings apply equally regardless of whether the plaintiff chooses to style his petition against a governmental entity or a state official. Likewise, the purpose of the provision was to allow state agencies to more quickly ascertain whether or not a trial court could assert jurisdiction over a dispute. *See* Debate on Tex. S.B. 453 Before the House Comm. on Civil Practices, 75th Leg., R.S. (1997) (statement of Representative Pete Gallego). That concern too is equally justified regardless of whether a plaintiff has chosen to style his petition against a state official or the governmental entity itself.

FN2. Supporters of the provision believed "incorrect rulings on [jurisdictional pleas] needlessly waste the time of the courts and can cost litigants hundreds of thousands of dollars as they defend cases which should have been dismissed." *See* HOUSE COMM. ON CIVIL PRACTICES, BILL ANALYSIS, Tex. S.B. 453, 75th Leg., R.S. (1997).

As may typically occur, an official sued in both his official and individual capacities ***846** can file a plea to the jurisdiction in defense of the official capacity claims against him and at the same time file a motion for summary judgment on official immunity grounds on the individual capacity claims against him. If either is denied, he may immediately appeal under Section 51.014(a)(8) or 51.014(a)(5), whichever applies. In this case, McLellan filed a plea to the jurisdiction in defense of claims against him in his official capacity [FN3] Accordingly, Section 51.014(a)(8) vests the appellate courts with jurisdiction to hear McLellan's interlocutory appeal.

…

With respect to McLellan's appeal, having examined the plain language of Section 51.014(a)(8), its logical application, and the **legislative history**, we hold a state official may seek interlocutory appellate review from the denial of a jurisdictional plea.

ENERGY SERVICE CO. OF BOWIE, INC. v. SUPERIOR SNUBBING SERVICES, INC.
236 S.W.3D 190
TEX., 2007. AUGUST 24, 2007

We granted Energy's petition for review to determine whether the Legislature intended, as part of its 1989 overhaul of the Workers' Compensation Act, to make a substantive change in the 26-year-old provision that is now section 417.004.[FN13] That overhaul, enormously controversial, was not completed until December 1989, in the second called session of the 71st Legislature, after efforts to revise the Act during the regular session and the first special session had failed.[FN14] But the controversy did not extend to the provision that is now section 417.004. Nothing in the lengthy history of the revision process indicates that the Legislature had any reason to change the substance of that provision.[FN15]

FN13. 49 Tex. Sup.Ct. J. 7 (Oct. 14, 2005).

FN14. *See generally Texas Workers' Comp. Comm'n v. Garcia,* 893 S.W.2d 504 (Tex.1995).

FN15. As originally introduced in the regular session of the 71st Legislature, the bill to replace the Workers' Compensation Act did not carry forward the provision regarding indemnification agreements in the prior law; the bill was silent on the subject. Tex. H.B. 1, 71st Leg., R.S. (1989). But the House added the language that is now section 417.004 by floor amendment without objection, H.J. OF TEX., 71st Leg., R.S. 466 (1989), and it was included in all bills to replace the Act introduced in the first and second called sessions, Tex. H.B. 1, 71st Leg., 1st C.S. (1989); Tex. S.B. 1, 71st Leg., 1st C.S. (1989); Tex. H.B. 4, 71st Leg., 2d C.S. (1989); Tex. S.B. 2, 71st Leg., 2d C, S. (1989); Tex. S.B. 9, 71st Leg., 2d C.S. (1989); Tex. S.B. 18, 71st Leg., 2d C.S. (1989), including the Senate bill that was ultimately enacted, Tex. S.B. 1, 71st Leg., 2d C.S., 1989 Tex. Gen. Laws 1. During the regular session, after the addition of the present text on the House floor, a Senate subcommittee staff member stated at a hearing that "[t]he third party liability, uh, that, that covers the next several sections-and for the most part that is, uh, current law. The one of the big differences from the current law is the disposition of the attorney's fees." *Hearing on Senate Committee Substitute to Tex. H.B. 1 Before the Committee of the Whole Senate, Subcommittee on Workers' Compensation,* 71st Leg., R.S., Tape 1 at 21 (April 19, 1989) (transcript available from Senate Staff Services Office). In the first called session, a House committee bill analysis stated that the section regarding indemnification "[p]rovides that an employer is not liable to a third party for reimbursement or damages based on a judgment or settlement against the third party for a work-related injury unless the employer has agreed to assume such liability, *as provided in the current law."* HOUSE COMM. ON BUSINESS AND COMMERCE, BILL ANALYSIS, Tex. H.B. 1, at 10, 71st Leg., 1st C.S. (June 20, 1989) (emphasis added). In the second called session, when the legislation finally passed, a House committee bill analysis noted no difference between the indemnity section and prior law, HOUSE COMM. ON BUSINESS AND COMMERCE, BILL ANALYSIS, Tex. S.B. 1, at 3, 71st Leg., 2d C.S. (Nov. 27, 1989), and the conference committee report stated simply that the section "[p]rovides that an employer is not liable to a third party unless there is a prior written agreement to that effect", CONFERENCE COMM. REPORT, Tex. S.B. 1, at 9, 71st Leg., 2d C.S. (Dec. 12, 1989). The **legislative history** contains no other pertinent references to the provision.

***194** [2] [3] [4] The common law allows parties to contract for the benefit of others-in effect, *with* others-if they do so explicitly, and when they do, the beneficiary can enforce the promisor's obligation in his favor as if he were himself a party.[FN16] The pre-1989 predecessor to

section 417.004 was consistent with that rule, allowing indemnification agreements to benefit a party's non-signatory contractors, but the present section, as construed by the court of appeals, is not. Of course, statutes can modify common law rules, but before we construe one to do so, we must look carefully to be sure that was what the Legislature intended.[FN17]

FN16. *E.g. Stine v. Stewart*, 80 S.W.3d 586, 589 (Tex.2002) (per curiam); *MCI Telecomms. Corp. v. Texas Utils. Elec. Co.*, 995 S.W.2d 647, 651 (Tex.1999); *see generally* RESTATEMENT (SECOND) OF CONTRACTS § 304 (1981) ("A promise in a contract creates a duty in the promisor to any intended beneficiary to perform the promise, and the intended beneficiary may enforce the duty.").

FN17. *Cash Am. Int'l, Inc. v. Bennett*, 35 S.W.3d 12, 16 (Tex.2000) ("A statute that deprives a person of a common-law right will not be extended beyond its plain meaning or applied to cases not clearly within its purview. Abrogating common-law claims is disfavored and requires a clear repugnance between the common law and statutory causes of action." (internal quotations and citation omitted)); *Satterfield v. Satterfield*, 448 S.W.2d 456, 459 (Tex.1969) ("While Texas follows the rule that statutes in derogation of the common law are not to be strictly construed, it is recognized that if a statute creates a liability unknown to the common law, or deprives a person of a common law right, the statute will be strictly construed in the sense that it will not be extended beyond its plain meaning or applied to cases not clearly within its purview.").

The Legislature has directed that "[i]n interpreting a statute, a court shall diligently attempt to ascertain legislative intent and shall consider at all times the old law, the evil, and the remedy."[FN18] Superior has not pointed to anything suggesting that allowing indemnification agreements to cover persons working with the contracting parties was perceived to be an "evil" before the 1989 amendment. Superior argues that a contractor working in the oil field should not be economically pressured into surrendering its statutory immunity from liability for indemnity of an employee's personal injury claims, but the Texas Oilfield Anti-Indemnity Act, enacted in 1973, limits that liability,[FN19] and nothing***195*** suggests that the Legislature thought those limits should be modified by amending the Workers' Compensation Act in 1989. Superior concedes that restricting such agreements to the parties themselves simply makes the protections such agreements afford much harder and costlier to obtain, especially in a work setting like the oilfield, where many contractors may come and go on a project over a long period of time. Trying to be sure that everyone working at a wellsite has a signed agreement may well be impractical. Superior also concedes that the continued widespread use after 1989 of standard mutual indemnification agreements like those in this case strongly suggests that the industry does not consider the practice an "evil" to be remedied. Indeed, the parties tell us that no one even appears to have noticed the 1989 change in language until this case.

FN18. TEX. GOV'T CODE § 312.005.

FN19. Generally, the Texas Oilfield Anti-Indemnity Act voids certain agreements to indemnify against liability for which the indemnitee or contractors responsible to him are at fault unless the agreement is supported by insurance. Liability for a mutual indemnity obligation is limited to the amount of coverage each indemnitor has agreed to obtain, and a unilateral obligation is limited to $500,000. TEX. CIV. PRAC. & REM.CODE §§ 127.003, .005.

Absent any identifiable reason for a substantive change to have been made in the statutory provision, or any extra-textual indication that one was intended, or any resulting change in industry practice, we think the most reasonable construction of section 417.004 is the same as its pre-1989 predecessors. In these circumstances, we think that when the Legislature required that a subscribing employer contract "with the third party" seeking indemnity, it considered that an agreement intending to cover third party beneficiaries was an agreement with the beneficiaries. The issue for us, of course, is not whether this is good policy, but whether it is what the Legislature intended by the 1989 amendments. We think it was.

This is not a situation like the one in *Fleming Foods of Texas, Inc. v. Rylander*, where the statutory text admitted of but one meaning, however doubtful it was that the Legislature intended it.[FN20] In that case, the prior law allowed a person to claim a refund of sales taxes only if he had

paid the taxes "directly to the State".[FN21] The recodified law omitted the quoted phrase, thus ostensibly allowing a refund claim by any taxpayer, even if taxes were made through an intermediary.[FN22] Consistently, the statute defined "taxpayer" as "a person liable for a tax".[FN23] Fleming Foods claimed a refund of taxes it had paid, but through a vendor, not directly to the State.[FN24] Although the Legislature expressly provided that the recodification was nonsubstantive, we held that the plain language of the recodified law could not admit the limitation of the prior law.[FN25] The revised text gave no indication that the limitation of the prior law might still apply, and a person reading the new statute, unaware of its history, could not reasonably know of the limitation.[FN26] The statute in this case, unlike that one, is not so clear. An agreement *with* a third party does not necessarily exclude a third party beneficiary not identified expressly by name. Indeed, under the common law, an indemnity agreement could ordinarily include an obligation by the promisor to an unnamed third party beneficiary. The text of section 417.004 would not indicate ***196** to an ordinary reader that the third party was required to sign the agreement.

FN20. 6 S.W.3d 278, 283-284 (Tex.1999).

…

The dissent argues that construing the 1989 amendment to mean the same thing as the prior law deprives the added phrase, "with the third party", of any meaning. But that argument assumes that the Legislature intended the added phrase to mean something different than existing law, when there is simply no indication that it did. In fact, the words "third party" were inserted throughout the 1989 version to serve as a shorthand substitute for the multiple word descriptions-"a person other than the subscriber" and "such other person"-used throughout the pre-1989 version. The dissent also argues that because the Legislature did not expressly include third party beneficiaries, it must have intended to exclude them. But as we have already explained, the Legislature was charged with the knowledge that the common law would ordinarily include third party beneficiaries, and thus it had no reason to reiterate what was already the law.

STATE V. COLYANDRO
233 S.W.3D 870
TEX.CRIM.APP., 2007. JUNE 27, 2007

Over fourteen years after interpreting Section 1.03(b) in *Moore* and *Baker*, we issued our decision in *Boykin*.[FN56] There, we said that when interpreting a statute to give effect to the "collective legislative intent or purpose," we concentrate "on the literal text of the statute in question and attempt to discern the fair, objective meaning of that text at the time of its enactment." [FN57] We will give effect to the plain meaning if, "when read using the ***877** established canons of construction relating to such text," the meaning of the text "should have been plain to the legislators who voted on it[.]" [FN58] We will not apply the plain language, however, if (1) the "application of a statute's plain language would lead to absurd consequences that the Legislature could not *possibly* have intended," or (2) the language is ambiguous.[FN59] In those instances, we will consult extratextual sources to reach a rational interpretation.[FN60]

…

Although we did not invoke *Boykin's* rules for statutory construction when discerning the meaning of Section 1.03(b) in *Moore* and *Baker*, our approach nevertheless conformed to *Boykin's* mandate. In *Moore* and *Baker*, we focused on the literal text of Section 1.03(b) and found that Section 1.03(b) does not apply to the criminal attempt and conspiracy statutes.[FN61] Because Section 1.03(b) references only Titles 1, 2, and 3 of the Penal Code, we concluded that the criminal attempt and conspiracy statutes in Title 4 of the Penal Code did not apply to offenses defined in the Controlled Substances Act.[FN62] Our review of the predecessor statutes to the Controlled Substances Act in *Moore* was ancillary to our holding.[FN63] Those statutes were reviewed solely to address the State's argument that the Legislature intended the criminal attempt statute to apply to the Controlled Substances Act.[FN64] This determination is bolstered by our subsequent decision in *Baker*. As the court below correctly observed, *Baker's* holding was based

exclusively on our "interpretation of section 1.03(b) of the penal code to limit the applicability of title 4's conspiracy provision to offenses found within the penal code." FN65

…

[2] [3] When faced with a challenge to a prior judicial construction of a statute, we have long recognized that prolonged legislative silence or inaction following a judicial interpretation implies that the Legislature has approved of the interpretation.FN66 ***878** "[W]e presume the Legislature intends the same construction to continue to apply to a statute when the Legislature meets without overturning that construction." FN67 In recognition of this, we have, on occasion, when reaffirming a prior judicial construction of a statute, stated that the prior interpretation was correct when, over the course of many years, it had not been legislatively overruled.FN68

FN66. *Moore v. State*, 868 S.W.2d 787, 790 (Tex.Crim.App.1993) (citing *Watson v. State*, 532 S.W.2d 619, 622 (Tex.Crim.App.1976); *Lockhart v. State*, 150 Tex.Crim. 230, 235, 200 S.W.2d 164, 167-68 (1947) (op. on reh'g)); *State v. Hall*, 829 S.W.2d 184, 187 (Tex.Crim.App.1992); *Lewis v. State*, 58 Tex.Crim. 351, 361-62, 127 S.W. 808, 812 (1910); *see also Watson v. State*, 900 S.W.2d 60, 67 (Tex.Crim.App.1995) (Clinton, J., concurring); *Garcia v. State*, 829 S.W.2d 796, 803 n. 2 (Tex.Crim.App.1992) (Miller, J., concurring).

FN67. *Awadelkariem v. State*, 974 S.W.2d 721, 725 (Tex.Crim.App.1998) (citing *State v. Hardy*, 963 S.W.2d 516, 523 (Tex.Crim.App.1997)); *see also Lewis*, 58 Tex.Crim. at 361, 127 S.W. at 812.

FN68. *Connolly v. State*, 983 S.W.2d 738, 741 (Tex.Crim.App.1999); *Hall*, 829 S.W.2d at 187; *see also Smith v. State*, 5 S.W.3d 673, 678 (Tex.Crim.App.1999).

[4] More recently, however, we stated that "legislative inaction does not necessarily equate to legislative approval." FN69 When implying legislative ratification, we observed that there is a distinction between legislative inaction after judicial construction and the Legislature's reenactment of a statute following judicial construction:

FN69. *State v. Medrano*, 67 S.W.3d 892, 903 (Tex.Crim.App.2002).

Certainly when a legislature *reenacts* a law using the same terms that have been judicially construed in a particular manner, one may reasonably infer that the legislature approved of the judicial interpretation. There is considerably less force (though still some) to the argument that if a legislature does not agree with the judicial interpretation of the words or meaning of a statute, the legislature would surely have immediately changed the statute.FN70

FN70. *Id.* at 902 (emphasis in original).

Therefore, the following statement, the substance of which originated from a case before us in 1946, remains true today: "where a statute has been reenacted by the Legislature with knowledge of the judicial construction thereof a court would not be justified in overruling such decision." FN71

FN71. *Collier v. Poe*, 732 S.W.2d 332, 345 (Tex.Crim.App.1987) (citing *Brown v. State*, 150 Tex.Crim. 386, 389, 196 S.W.2d 819, 821 (1946)).

The Legislature's actions following *Moore* and *Baker* and their progeny demonstrate that it has ratified our interpretation of Section 1.03(b). Since those decisions, the Legislature has carefully crafted statutes to make offenses defined in Title 4 of the Penal Code directly applicable to offenses defined outside the Penal Code. The Legislature has also retained extra-Penal Code criminal statutes incorporating conspiracy or attempt or both. In other instances, the Legislature has amended or enacted extra-Penal Code criminal statutes to include either conspiracy or attempt or both. At the same time, the Legislature has abstained from amending Section 1.03(b) of the Penal Code to include Title 4.

Shortly after the *Moore-Baker* line of cases, in 1981, the 67th Legislature added Section 4.011 to the Controlled Substances Act, which made Title 4 applicable to Section 4.052, the offense of illegal investment,[FN72] and offenses designated as aggravated under Subchapter 4 of the Act.[FN73] The Legislature, therefore, did not provide for the unlimited application of Title 4 to offenses in the Controlled Substances Act. Punishment for an offense was designated to be "the same as the punishment prescribed***879** for the offense that was the object of the preparatory offense." [FN74] The 68th Legislature, during the 1983 Regular Session, amended Section 4.011 to include the identical text that was added by the 67th Legislature when Section 4.011 was first enacted.[FN75] Accordingly, the same qualifications placed on the application of Title 4 by the 67th Legislature remained intact when the next Legislature amended Section 4.011.

…

Notably, despite the addition of a provision making Title 4 applicable to specific offenses in the Controlled Substances Act and subsequent amendments to that provision, all of which were made during a nine-year period, the Legislature never amended Section 1.03(b) of the Penal Code to include Title 4.

STATE V. BEAM
226 S.W.3D 392
TEX., 2007. JUNE 01, 2007

The State argues, and we agree, that article 55.01(a)'s recent amendment supports the Dallas court of appeals' view that the limitations requirement of article 55.01(a)(2)(A)(i) applies to both felonies and misdemeanors. Paragraph (2) authorizes expunction for felonies and misdemeanors only if "*each* of the following conditions exist," and then sets forth three conditions, (2)(A), (2)(B), and (2)(C). CODE CRIM. PROC. art. 55.01(a)(2) (emphasis added). Paragraph (2)(A) first requires that an indictment or information charging the person with committing a felony must not have been presented, or if presented, it must have been dismissed or quashed. *Id.* art. 55.01(a)(2)(A). This condition will always be satisfied in a misdemeanor case. But (2)(A) contains an additional requirement: the limitations period must have expired before the petition was filed. *Id.* art. (a)(2)(A)(i). The statute uses the word "and" to connect paragraph (2)(A) and (2)(A)(i), meaning that both requirements must be met before a party is entitled to expunction. *Id.* art. 55.01(a)(2)(A). Although parts of (2)(A) are expressly limited to felonies, (2)(A)(i) is not. Because it is not, we conclude that it applies to misdemeanors as well.[FN3] *Id.*art. 55.01(a)(2)(A)(i). To the extent that some courts of appeals have held otherwise, we disapprove those decisions. *In re Expunction of K.E.L.*, 225 S.W.3d at 639, 2006 WL 2382503, at *1; *Ex parte M.R.R.*, 223 S.W.3d at 500.

FN3. We note that this interpretation is supported by the **legislative history**. *See* HOUSE COMM. ON CRIMINAL JURISPRUDENCE, BILL ANALYSIS, Tex. H.B. 1323, 77th Leg., R.S. (2001) ("House Bill 1323 amends the Code of Criminal Procedure to provide that a person is entitled to have all records and files relating to the person's felony or misdemeanor arrest expunged if an indictment or information has been dismissed or quashed, and the limitations period has expired.").