

Framing Issues in Your Petition for Review

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CHAPTER 7

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FRAMING ISSUES IN YOUR PETITION FOR REVIEW

Introduction¹

Based on statistics over the last several years, a petition for review stands a 10-14% change of being granted. One of the most important factors in bringing your case within this 10-14% range is framing the issues in the petition for review. For many Justices (who may spend only a few minutes reviewing each petition because of the volume of petitions (25+) they must review every week), the issues presented are likely the first part of the petition they review (and it may very well be the last before moving onto to the next case). If the issue is not framed to get the Court's attention, the case will likely fall off the "conveyor belt" and be automatically denied. Presenting issues at the Texas Supreme Court is thus more than just identifying and listing those issues in a concise form to meet the minimum requirements of Rule 53.2(f). Getting the Court's attention with a well-crafted issue is critical to success at the Texas Supreme Court. Effectively drafted issues—in addition to concisely stating and preserving the issue for review—reveal the factual and legal context of the case and demonstrate how an issue will affect the state's jurisprudence.² This paper will explore several strategies (and pitfalls) in framing issues in a petition for review.³

Issues Presented—Rule 53.2(f)

Rule 53.2(f) provides as follows:

The petition must state concisely all issues or points presented for review. The statement of an issue or point will be treated as covering every subsidiary question that is

fairly included. If the matter complained of originated in the trial court, it should have been preserved for appellate review in the trial court and assigned as error in the court of appeals.

A baseline consideration in preparing the issue is whether it has in fact been preserved. First, the issue must have preserved in the lower court. *See Arkoma Basin Exp. Co. v. FMF Assocs. 1990-A, Ltd.*, 249 S.W.3d 380, 387-88 (Tex. 2008) (legal sufficiency complaint must be preserved in the trial court and court of appeals); *Willis v. Donnelly*, 199 S.W.3d 262, 270 (Tex. 2006) (concluding that the issue had been preserved in the court of appeals by reviewing petitioner's court of appeals' briefing). If the "complaint. . . arises from the court of appeals' judgment itself, however, [it] may be raised either in a motion for rehearing in the court of appeals or in a petition for review in this Court." *Bunton v. Bentley*, 153 S.W.3d 50, 53 (Tex. 2004) (per curiam).

Second, the issue must be raised in the petition for review itself. If not, the issue is waived. *See Guitar Holding Co., L.P. v. Hudspeth County Underground Water Conservation Dist.*, 263 S.W.3d 910, 918 (Tex. 2008) (abandonment of issues); *Ramos v. Richardson*, 228 S.W.3d 671, 673 (Tex. 2007) (per curiam) (waiver of whether special exceptions extend appellate timetable); *Columbia Med. Ct. of Las Colinas, Inc. v. Hogue*, 271 S.W.3d 238, 248 (Tex. 2008) (issue presented only whether evidence supported gross-negligence predicate to exemplary damages—not the amount of the exemplary damages award). A broadly stated issue can preserve a more specific complaint. TEX. R. APP. P. 53.2(f) ("The statement of an issue will be treated as covering subsidiary question that is fairly included."). Thus, for example, a complaint challenging the sufficiency of accident-reconstruction expert testimony was held sufficient to preserve a challenge to an expert about whom specific arguments were not advanced until the reply brief on the merits. *Volkswagen of Am., Inc. v. Ramirez*, 159 S.W.3d 897, 909-10 (Tex. 2004); *but see id.* at 914 n.1 (complaining that "the Court

¹ My thanks to Ryan Paulsen of Haynes and Boone, LLP for his assistance with this paper.

² Attached at Appendix "A" is a Bibliography of other excellent papers and articles on presenting issues on appeal.

³ Attached at Appendix "B" is a sampling of issue statements from petitions for review filed in the 2008 term that fall into several of the categories discussed in this paper.

has essentially concluded that Rules 53.2(f) and 55.2, although stated as mandates, are merely aspirational”) (Jefferson, C.J., dissenting).

Once you are satisfied that the issues are adequately preserved, the focus in drafting the issues should be on framing them to get the Court’s attention. In crafting the issues presented in a petition for review, the goal is to formulate an issue that is (i) clear and concise, and (ii) demonstrates why the Court should grant review.

Issue Selection and Framing—Craft the Issue to Show its Importance

In deciding what issues to present, it is important to remember that the Court is not interested in correcting every error or perceived injustice. Thus, simply re-drafting the statement of issues from briefing at the court of appeals will not be effective. Although the Court does grant review to correct errors (and has been increasingly willing to do so over the last several years), in most cases, you should focus on the traditional factors the Court considers in granting review.

Rule 56.1(a) identifies the following factors the Court considers in deciding whether to grant the petition for review:

- Whether the *justices* of the *court of appeals disagree* on an important point of law.
- Whether there is *conflict* in the courts of appeals.
- Whether the case involves a *statutory construction* or *constitutional* question.
- Whether the case raises an issue that is *important* to the *state’s jurisprudence*.
- Whether the issue is one of *first impression*.

TEX. R. APP. P. 56.1(a).

In the end, the key inquiry will be—does the petition raise an issue that is important to the state’s jurisprudence? The issues that are important change over time so it is useful to closely monitor the Court’s docket. Nevertheless, certain concepts have historically been important.

In trying to frame the issue for review, consider the following questions:

- Does the case raise an issue of first impression that is likely to recur?
- Is a statutory construction issue involved?
- Does a procedural holding affect an entire class of cases?
- Is statewide uniformity important?
- Does the case present an opportunity to align Texas jurisprudence with other jurisdictions (*e.g.*, RESTATEMENT; 50-state surveys)?
- Is a constitutional question presented?

See ELIZABETH V. RODD, *What is Important to the Jurisprudence of the State?*, State Bar of Texas, Practice Before the Supreme Court of Texas (2002).

If your issue is written such that it appears that the case is highly fact-specific, implicates no important jurisprudential concerns, or begs the question whether the issue raised is likely to recur, it is highly unlikely to get the Court’s attention. The key is to frame the issue in a way that ties it to one of the Rule 56.1 factors. If the issue involves a statutory construction problem, a split in the lower courts, or an unresolved constitutional issue, make that clear in the issue. If the issue, although narrow, has the potential to affect a broad category of similar disputes, encourage future litigation, or work against some broad policy concern, it is important to preview that in the issue presented. Does the court of appeals’ opinion create a new form of liability or legal rule? Does it approve a measure of damages never before recognized? Does an issue have consequences for a long-standing common-law doctrine? Another sound piece of advice is crafting the issue is to focus on specific language in the court of appeals’ opinion, keeping in mind that Justices often focus their initial review of a petition on the court of appeals’ opinion. See DAVID M. Gunn, *How to be a Petitioner in the Supreme Court*, Practice Before the Texas Supreme Court (April 2005). These types of considerations should be built into the statement of issues as well. On the other hand, a broadly stated (and technically proper issue) that simply asks the Court to resolve whether the court of appeals erred in applying the law to the facts or

reviewing a summary judgment decision is unlikely to get the Court's attention.

Number of Issues

Although limiting and appropriately focusing the issues is necessary at all stages of appellate review, it is particularly important at the Texas Supreme Court. *First*, the petition for review is limited to 15 pages. It is difficult, if not impossible, to effectively brief more than one or two issues in the petition. *Second*, there is a credibility factor. Very few cases will have more than two or three issues that rise to the level of being important to the state's jurisprudence (even if there are six that are important to your client). Most Justices agree that 2-3 issues presented is about the right number and tend to have strong negative reactions to petitions that present too many issues. This is not to say you should not preserve additional issues. That option exists under Rule 53.2(i), which permits parties to identify unbriefed issues.

Order of Presentation

In deciding the order of issue presentation (if the petition presents more than one issue), the issue that is most likely to attract the Court's attention should typically be listed first. To the extent the petition raises a case-dispositive issue, consider putting that issue first.

One-Sentence Issues, Multi-Sentence Issues, and "Deep" Issues

Lawyers, commentators, and judges have debated whether issues should be presented in a single-sentence issue or in a deep, multi-sentence issue. A "deep issue," as explained by Brian Garner, is a multi-sentence syllogism (limited to 75 words), culminating in a precise question typically with only one possible answer. See Bryan A. Garner, *The Deep Issue: A New Approach to Framing Legal Questions*, 5 SCRIBES J. LEGAL WRITING 1 (1994/95). The first couple of sentences explain the factual and legal context of the case. The last sentence poses the question presented by the case, typically in a way that could result in only one answer. In a recent study (2007) of whether advocates preferred a one-

sentence or "deep" issue, the author concluded that the vast majority (at least 72%) of issues were presented in less than two sentences. ROBERT B. DUBOSE, *Trends in Texas Supreme Court Briefwriting*, 21st Annual Advanced Civil Appellate Practice Course, Chapter 15 (2007).⁴

One of the dangers of a one-sentence issue statement is that such an issue often provides little or no context for the case and gives the advocate little opportunity to demonstrate the importance of the issue. Garner has also criticized one-sentence issues as "either surface issues that are either too abstract, or else they're meandering, unchronological statements that can't be understood on fewer than three very close readings." BRYAN A. GARNER, *Issue-Framing: The Upshot of It All*, State Bar of Texas 11th Annual Advanced Civil Appellate Practice Course (1997). In other words, a one-sentence issue runs the risk of telling the reader nothing or not concisely presenting the issue—both of which are harmful to your case given how little time Justices can devote to each petition for review. There are several examples of this problem in Appendix "B." While an issue of this type is certainly broad enough to preserve any subsidiary questions, it provides little information to the Court about the context (factual or legal) of the case.

In some instances, a "deep" issue may be the most effective. Cases that involve regulatory issues or have some background that may not be self-evident to the Court are particularly suitable for multi-sentence issues. One of the pitfalls of "deep" issues, however, is that the format does not necessarily lend itself to highlighting why the issue is important to the state's jurisprudence. In fact, a "deep" issue may do more harm than good because it may reveal the fact-specific nature of the case. That is not to say that the deep-issue format cannot be adopted to fit within a petition for review. There are several examples in Appendix B of syllogistic multi-sentence contextual issues that build to a single precise question.

⁴ For other brief writing findings, including the number of issues, level of detail, neutrality of issues, and whether issues are included in the table of contents, *see id.*

Despite Garner's apt criticism of the one-sentence approach, several leading Texas Supreme Court practitioners endorse that approach in favor of the "deep" issue. In their view, the single-sentence issue, if crafted properly, can convey the context of the issue and why the issue should matter to the Court. DOUGLAS W. ALEXANDER & LORI PLOEGER, *Crafting Your Petition for Review*, Practice Before the Texas Supreme Court, Ch. 5, at 10-11 (April 16, 2004). In contrast, a multi-sentence, deep issue runs the risk of undermining the importance of the issue presented because it emphasizes the specifics of a particular case over big-picture concerns in which the Court is most interested. *Id.* One final problem with the deep-issue approach is that it relies on a question that leads to only one answer. But at the petition stage, the goal is to present an interesting question, not necessarily one that leads to the result your client ultimately wants. (That is what briefs on the merits and oral argument are for).

While many of these criticisms of the deep-issue approach are valid, this author recommends that practitioners not adopt rigid views on this question and instead evaluate each particular case on its own. It is possible to craft a one-sentence issue that provides some of the context without overloading the single sentence with too much information (*e.g.*, procedural history, descriptions of the parties). Frequently, practitioners use more than one sentence to convey the importance of the issue but not necessarily in the deep-issue format. This approach allows you to break up concepts into digestible pieces and may be followed by a series of short questions. Many successful petitions for review use the multi-sentence approach in a way that not only provides appropriate context (one of the principal advantages of the deep issue) but also links the question to a jurisprudentially important issue. In short, there are ways to adopt a modified deep issue to achieve the goals of context, clarity, and importance. There are examples of this approach in Appendix "B" as well. The real question you should ask is—what is the best way to present the particular issues in your case. Sometimes, one sentence will work; in other cases, you need more than one sentence to convey the issues.

Regardless of the particular approach utilized, the goal must be to give the Court a clear understanding of the issue and how that issue will affect the state's jurisprudence. If that takes several well-written and concise sentences, then take that route. If a one sentence issue conveys the message, then go with that approach.

Neutral or Persuasive Issues

One additional consideration in crafting issues in a petition for review is whether the issues should be framed in a neutral or persuasive manner. A neutrally phrased issue presents an important question to be answered regardless of the specific answer. This approach may elicit several possible answers (some of which may be unfavorable). A persuasive question probably will generate only a favorable answer. One reason to frame the issues neutrally, particularly at the petition stage, is that it may allow you to convey that the case has broader implications. Remember the goal at the petition stage is to get the Court's attention and develop momentum for full briefs on the merits and eventually a grant. Explaining what the answers should be is better left to the briefs on the merits

Placement of Issues Presented

In addition to the ordering requirements of Rule 53.2(d), under which the statement of issues follows the statement of jurisdiction and appears before the statement of facts, advocates should give some consideration to including the statement of issues in the table of contents. This is because the Justices may begin their review of the petition with the table of contents. Along with well-labeled headings in the statement of facts and argument, including the statement of issues will complete the picture and provide the Court with a comprehensive overview of what is in the petition.

Appendix A

Bibliography

JUSTICE DEBORAH HANKINSON, *Framing Issues Under the New Rules: A View from the Supreme Court*, 5 THE APPELLATE LAWYER 1 (Houston Bar Ass'n Appellate Practice Session Winter 1998-99)

JUSTICE CRAIG T. ENOCH & MICHAEL S. TRUESDALE, *Issues and Petitions: The Impact on Supreme Court Practice*, 31 ST. MARY'S L. J. 565 (2000)

JUSTICE DEBORAH HANKINSON, *et al.*, *Issue Drafting/Issue Spotting*, State Bar of Texas, 17th Annual Advanced Civil Appellate Practice Course (2003)

DOUGLAS W. ALEXANDER & LORI PLOEGER, *Crafting Your Petition for Review*, Practice Before the Texas Supreme Court (April 16, 2004)

PAMELA STANTON BARON, *Drafting Issues in the Texas Supreme Court*, State Bar of Texas 15th Annual Advanced Civil Appellate Practice Course 6 (2001)

Appendix B

Sample Issues

Statutory Construction

Did the Legislature intend, through the enactment of TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(9) (Vernon Supp. 2006), to create interlocutory appellate jurisdiction for the courts of appeals to review an order denying a challenge to the legal adequacy of a timely served expert report pursuant to TEX. CIV. PRAC. & REM. CODE ANN. § 74.351(1) (Vernon 2005)?

“Deep” Issues

The loss of business income is not a compensable damage in a Texas condemnation case. Thus, gross revenues and profits from a business cannot be the basis for ascertaining the market value of real property acquired by a governmental entity. Nonetheless, the Court of Appeals held that valuation of real property utilized as a billboard site must be based upon the advertising revenues received by the billboard operator. The Court of Appeals affirmed the exclusion of the State’s appraisal expert because his appraisal was not based strictly on the advertising revenues received by the billboard operator. Did the Court of Appeals err and was it an abuse of discretion to exclude the testimony of the State’s appraisal expert?

* * * * *

Under the Uniform Commercial Code, a secured creditor who seeks to recover the unpaid amount of a loan after a foreclosure must prove that it acted in a commercially reasonable manner. Section 9.627 of the UCC sets forth three “safe harbors” that, if shown, prove commercial reasonableness conclusively. The court of appeals construed a jury instruction submitted in accordance with that statute not as an optional safe harbor, but as a mandatory burden of proof. That ruling raises two questions of importance:

- A. Does a jury instruction using the term “if” mean “only if,” transforming the instruction into a mandatory burden of proof?
- B. Should a jury instruction that is legally correct and based on the language of a statute be given the same legal meaning as the statute itself?

* * * * *

This case involves significant issues concerning the interpretation of and the interplay between chapters 37 and 38 of the Texas Civil Practices and Remedies Code. The plaintiff coupled its breach of contract and fraud claims with declaratory relief claims that duplicated the contract and fraud claims. The court of appeals held that the plaintiff could not recover attorney’s fees for its fraud or breach of contract claims. Nonetheless, the court of appeals held that the plaintiff could recover attorney’s fees under the Declaratory Judgment Act, chapter 37 of the Texas Civil Practices and Remedies Code. The decision of the court of appeals raises the following issues related to the Declaratory Judgment Act:

(a) Whether TWOC is entitled to recover attorney's fees under the Declaratory Judgment Act?

(b) In what circumstances should a party be able to join a claim for declaratory relief to claims for breach of contract and fraud in order to recover attorney's fees?

(c) In what circumstances should a party who has not met the statutory requirements imposed by chapter 38 nonetheless be entitled to recover attorney's fees under the Declaratory Judgment Act?

(d) Chapter 38 does not permit the recovery of attorney's fees for the defense of a breach of contract claim. Can a party avoid the application of chapter 38 by seeking a declaration that it complied with its contractual obligations and thereby recover attorney's fees under chapter 37?

* * * * *

This Court's unanimous opinion in *Mayhew v. Town of Sunnyvale* establishes that a regulatory taking claim is ripe only if the governmental unit that has been sued issued a "final decision regarding the application of the regulations to the property at issue." 964 S.W.2d 922, 929 (Tex. 1998). "A 'final decision' usually requires both a rejected development plan and the denial of a variance from the controlling regulations," thereby assuring that the governmental unit has been provided "an opportunity to 'grant different forms of relief or make policy decisions which might abate the alleged taking.'" *Id.* At 929, 930 (citations omitted). Disregarding these principles, the majority's Opinion in this proceeding holds that Respondents did not need to take *any* action – not even apply for a drilling permit – to ripen their inverse condemnation claims. Did the Court of Appeals err in concluding that, contrary to this Court's holding in *Mayhew*, Respondents were not required to undertake *any* effort to secure a drilling permit in order to ripen their claims?

Per Curiam Searching Issue

1. Should the post-answer default judgment be set aside?
2. [Unbriefed] Does this record contain evidence that Dollar General's negligence proximately caused the plaintiffs more than \$1 million in damages?

Contextual/Multi-Sentence Issue

Did the court of appeals err in refusing to consider venue facts and grounds set forth in the plaintiffs' response to motions to transfer venue when:

- (1) the trial court's order states that it considered the response;
- (2) the defendants' pleadings reflect that the parties joined issue on the matters raised in the response; and
- (3) TEX. CIV. PRAC. & REM. CODE § 15.003(c)(1) provides that, in an interlocutory appeal, the court of appeals must "determine whether the trial court's order is proper based on an independent determination from *the record*," which would include a response to motions to transfer:

When proper consideration is given to the response, did the court of appeals err in reversing the trial court's order denying the motions to transfer venue?

Scope of Relief in a Venue Appeal

Did the court of appeals err in directing that each plaintiff's suit be splintered into at least three separate actions in at least three different counties, and potentially as many as 16 separate actions in 16 counties when:

- (1) the statute cited by the court of appeals does not permit the splintering of a single plaintiff's claim into several suits, as it directs that, "[i]f a plaintiff cannot independently establish proper venue, *that plaintiff's part of the suit, including all of that plaintiff's claims and causes of action*, must be transferred to a county of proper venue," TEX. CIV. PRACT & REM. CODE § 15.003(a) (emphasis added);
- (2) none of the defendants requested a severance, but asked instead that the case in its entirety be transferred to a county of proper venue;
- (3) each plaintiff's claim is not severable as each plaintiff seeks damages for a single, indivisible injury; and
- (4) the court of appeals' severance results in a multiplicity of suits and the consequent risk of inconsistent verdicts, including conflicting allocations of proportionate responsibility?

A jury awarded \$1.25 million in punitive damages against a cattle raiser and a corporate landowner for the sale of thirteen head of a neighbor's cattle that wandered onto the corporation's land. The cattle raiser was acquitted of criminal charges for the sale and the civil jury awarded the \$5,327.11 fair market sales price as full compensatory damages.

1. Was the evidence of malice legally insufficient to warrant punitive damages when the cattle raiser merely sold some cattle that were not his, but did not cause or threaten "death, grievous physical injury, or financial ruin"?
2. Is the \$1.25 million punitive damages award—which is 235 times the compensatory damages awarded—within the limits allowed by constitutional due process?

* * * * *

When does Rule 26.1(b)'s twenty-day clock begin to run for perfecting an agreed interlocutory appeal under Section 51.014(d) of the Civil Practice and Remedies Code —when the substantive interlocutory order itself is signed, or when the trial judge signs the order authorizing an appeal from the substantive order? In accord with Chief Justice Hedges's dissent, petitioners urge the Court to hold that the appeal was timely because it was filed within twenty days of the trial court's order granting permission to appeal.

* * * * *

Commercial general liability policies exclude coverage for another's liability that, by contract, was assumed by the insured. The Texas Supreme Court has suggested, and the United States Fifth Circuit, other Texas courts, and the majority of other states' courts have held that exclusion does not exclude coverage for property damage claims against the insured though the claims are based on breach of contract. Because the court of appeals concluded otherwise, it erred.

Examples of One-Sentence Issues

Whether the court erroneously reversed the take-nothing judgment rendered against plaintiff based on its determination that material fact issues precluded a rendition of the no-evidence summary judgment because the record contains not more than a scintilla of evidence from which a jury could reasonably find that the grain-hopper was defectively designed so as to be unreasonably dangerous taking into consideration its utility and the risk involved in its use as a catwalk for the reparation of equipment belonging to another?¹

* * * * *

Whether an adoptive parent may successfully sue an adoption agency under the Deceptive Trade Practices Act due to undiagnosed illness of the child to be adopted, after having been informed in writing that the child may be diagnosed with medical problems, agreeing to be responsible for all medical care for the child, and then deciding to proceed with the adoption of the child after learning of the child's previously undiagnosed medical condition.

* * * * *

The Fifth Court of Appeals' opinion conflicts with other appellate courts regarding whether the 2004 Amendment to TEX. GOV'T CODE § 311.034, making notice a jurisdictional prerequisite to suit, is to be applied retrospectively to claims under the Texas Tort Claims Act, and since the amendment is procedural in nature, and as applied, it does not destroy or impair rights vested before the effective date of the statute.

* * * * *

The issues raised by this petition for review are:

1. The trial court properly granted summary judgment as to Allen's DTPA claim, and the court of appeals erred in reversing the summary judgment.

* * * * *

¹ Plaintiff presents a general issue sufficient to support its fairly included subsidiary issues. TEX. R. APP. P. 38.1(e); see generally *Malooly Bros., Inc. v. Napier*, 461 S.W.2d 119, 121 (Tex. 1970).

The Court of Appeals erred in holding that the reports of [the physician] did not represent a good faith effort on the part of Petitioners to establish a causal relationship between the care provided and the injuries suffered.

* * * * *

Whether the court of appeals erred in holding the evidence was legally insufficient to award damages for fraud related to the Memorandum of Settlement Agreement.

* * * * *

POINTS PRESENTED FOR REVIEW:

Points of errors: Error # 1: Were Arthur Anderson's elements properly answered by the expert witness? Error # 2: Could a court of appeals judge a case without considering the complete record?

Error # 3: Could a court of appeals conclude with an incomplete record that the Jury Award was not supported by evidence.

Error #4: Was the Eleventh Court of Appeals bias in its decision?

* * * * *

1. May an appellate court excuse an expert's failure to test readily testable assumptions by applying the Gammill "analytical gap" test, thereby rendering the six-factor Robinson test irrelevant?
2. May an appellate court reviewing a legal sufficiency challenge to the reliability of expert testimony apply an "abuse of discretion" standard rather than a de novo standard of review?
3. What is the difference between "plausible" and "conclusive" disproof of an expert's theory under the legal sufficiency standards described by this Court in *City of Keller v. Wilson*, 168 S.W.3d 802 (Tex. 2005)?
4. Must expert testimony on a claimed "safer alternative design" meet Daubert/Robinson standards of reliability?
5. Is there legally sufficient evidence to support the jury's verdict on Plaintiffs' design defect cause of action?

* * * * *

Did the court of appeals-by ignoring the plain language of a defined term in an ordinance and overlooking the chaotic effects of its interpretation-defy well established rules of statutory construction to reach the untenable conclusion that

the holder of a vested rights permit is wholly exempt from complying with regulatory procedures?

* * * * *

Whether the Court of Appeals' opinion misinterprets this Court's instruction in *Trinity River Authority v. URS Consultants, Inc.*, to erroneously conclude the 10-year statute of repose for medical malpractice claims set forth in section 74.251(b) of the Texas Civil Practice & Remedies Code abrogates a well-established common-law claim?

* * * * *

Does the United States Constitution require courts to presume, in all suits for grandparent visitation, including modification proceedings, that fit parents act in the best interest of their children?

Number of Issues

1. Whether the Court of Appeals erred in holding that the transaction between Chesapeake and Gastar was a "package deal" that invoked the preferential right?
2. Whether the Court of Appeals erred in holding that Navasota did not have to purchase the interest in the Hilltop Prospect for the "stated consideration on the same terms and conditions" as Chesapeake when Navasota never objected to doing so within 10 days of receiving Gastar's notice, as provided by *Texas State Optieal v. Wiggins*, 882 S.W.2d 8 (Tex. App.-Houston (1st Dist.) 1994, no writ) and *West Texas Transmission, L.P. v. Enron Corp.*, 907 F.2d 1554 (5th Cir. 1990)?
3. Whether the Court of Appeals erred in holding that a binding contract was created between Gastar and Navasota, even though Navasota failed to accept all of the terms and conditions of Gastar's offer and Navasota never requested clarification of it?
4. Whether the Court of Appeals erred in holding that the exercise of the preferential right, as applied to the facts of this case, does not constitute an unreasonable restraint on the alienation of property?
5. Whether the Court of Appeals erred in holding that Navasota is entitled to specific performance?
6. Whether genuine issues of material fact, including, without limitation, the issues of whether the preferential right in the JOA is ambiguous, whether Navasota properly invoked its right of first refusal, and the determination of the correct valuation of the Hilltop Prospect, exist such that the case should be remanded for further proceedings?
7. Whether there are additional reasons to reverse as to particular Defendants, including the Gastar Defendants, the GeoStar Defendants, and Chesapeake?

* * * * *

1. Does an Obligor Owe All Unpaid Child Support that Accrues between the Divorce Judgment and Emancipation?
2. In 1993 the Legislature Specifically Deleted the Ten-Year Limitation on the Collection of Unpaid Child Support from Family Code §14.41(b)
3. Seven Courts of Appeals have Ruled that the Deletion of the 10 Year Limitation on Collecting Arrearages from §14.41(b) Means Just That
4. This Court's Analysis in Grapevine Compels Civil Practice and Remedies Code §§34.001 and 31.006 do not Apply to Periodic Child Support Payments

5. The Dallas Court's Decision Harshly Impacts Child Support Arrearages for Minors
6. Do the Dormancy Provisions of the Civil Practice and Remedies Code Apply to a Judgment that is Neither Rendered Nor Signed?
7. The Legislative Purpose of Family Code §157.261 was Misconstrued by the Dallas Court
8. The Specific Provisions of the Family Code Control Over the General Provisions of the Civil Practice and Remedies Code
9. Time Periods for Jurisdiction Under Family Code §157.005 do not Apply to Time Periods for Jurisdiction Under §§158.102, 157.318, and 157.269
10. Dormancy Not Tried By Consent