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Foreword

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FOREWORD

*Nathan L. Hecht**

When the current editor, Stacie Cargill, invited me to introduce this edition of the *Annual Survey of Texas Law*, I asked her for a table of contents. Much to my dismay, I saw that for the first time since 1967, when the *Annual Survey* debuted in the *SMU Law Review*'s predecessor, the *Southwestern Law Journal*, Professor Joseph W. McKnight did not contribute an article on family law. Every year for forty-one years, we have had the benefit of Professor McKnight's take on recent developments in family law. Joe's study and understanding of the subject reaches from its origins on this continent to the present. Throughout his long career, Joe has been, not a mere spectator of family law, but a player on the field, contributing to its development through briefs and legislation, not to mention through his instruction of tens of thousands of law students. I was one of those students thirty-four years ago and have remained a personal admirer. Professor McKnight is the kind of friend a judge needs: he has never hesitated to tell me when he thought the Texas Supreme Court got a family case wrong and even when we got one right, and why. Not having his thoughts in the *Annual Survey* is a serious loss.

No contributor to the *Annual Survey* matches Joe's record, but several have provided analysis for many years. Professor John Kraemer writes again on commercial transactions (28th year), Cindy Ohlenforst on taxation (21st year), Steve Waters on partnerships (20th year), Don Colleluori on civil procedure (17th year), Scott Deatherage on environmental law (16th year), Richard Brown on oil, gas, and mineral law (14th year), and LaDawn Conway on appellate procedure (14th year). All of these authors are highly regarded lawyers whose scholarship and insights the bar respects.

A new author on a new subject is Will Pryor on alternative dispute resolution. When I was on the trial bench in the early 1980s, mediation is what the lawyers and judge did in chambers while the jury panel sat in the hallway. I was never asked to "send" a case to mediation. I never ruled on a motion to compel arbitration, nor did I review such a ruling on the court of appeals. By my count, the word "arbitration" appeared in only 414 Texas cases in the 120 years up to 1967, and since then the number has more than doubled. Mediation is now routinely required in civil cases throughout the state, and mandamus filings to review rulings on

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motions to compel arbitration have become a staple of appellate dockets. Over the years, the *Annual Survey* has adjusted its coverage not only to reflect developments in particular areas but also, as Chief Justice Calvert urged in his introduction to the first edition, “in charting the course of the law”.¹ It is time to give ADR attention in these pages, and Will is well-suited by background and experience to inform us on this subject of growing importance.

ADR has grown as verdicts in civil cases have declined.² If dispute resolution continues to move out of the courts and into more private arenas, we may expect fewer appeals, fewer reported decisions, and some stifling of growth in the common law.³ Already these changes and no doubt others in our society seem to have contributed to increased legislative activity. In more and more cases, statutes supply the rule of decision. Sometimes statutory provisions are clear and part of a carefully wrought, comprehensive scheme. But often their text is ambiguous, whether due to inattention, or as a result of political compromise, or because the myriad applications were not, and perhaps could not be, fully anticipated. Construing statutes to effectuate legislative intent can be difficult work. Deciding what the rule in a case should be is hard, but not nearly as hard as deciding what others have decided the rule should be. The Texas Legislature has directed that courts take into account a number of factors in determining legislative intent,⁴ but the judiciary’s basic approach—you write, we interpret—is the same. In the future, as legislation continues to increase, this strictly formal relationship between the two Branches may have to give way to a smoother and fuller means of communication. Developments in the law of statutory construction may be the next new topic for the *Annual Survey*.

Though new topics are added, some will never lose their place in the *Annual Survey*, and family law is one. I am told that Professor McKnight has promised an article for next year’s edition covering two year’s developments. I look forward to it.

1. Robert W. Calvert, *Introduction to the Annual Survey of Texas Law*, 21 Sw. L.J. 1 (1967).

2. See Nathan L. Hecht, *The Vanishing Civil Jury Trial: Trends in Texas Courts and an Uncertain Future*, 47 So. TEX. L. REV. 163 (2005).

3. See Nathan L. Hecht, *Jury Trials Trending Down in Texas Civil Cases*, 69 TEX. B.J. 854 (2006).

4. Code Construction Act, TEX. GOV’T CODE §§ 311.001-034.