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## Introduction

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# ANNUAL SURVEY OF TEXAS LAW

## INTRODUCTION

### I.

With this issue of the *Southwestern Law Journal*, the students and faculty of Southern Methodist University School of Law launch a new project—the *Annual Survey of Texas Law*. Each year one issue of the *Journal* will be devoted to a complete survey of meaningful appellate court decisions which tend to illuminate the law in particular areas as it has been, is, and will be in the foreseeable future. The project should be challenging to the author-professors who recognize that research and writing are as essential as teaching to achievement of standing in the profession. Of even greater significance is the contribution which the project, well managed and well executed, can make to the judiciary and the bar.

Neither trial nor appellate judges have adequate time to research exhaustively, case by decided case, the many questions of substantive and procedural law which are presented in nearly every case they must try or decide. Overloaded dockets and the need for expeditious disposition result, more often than judges would wish, in notice of only a few decided cases of significant precedential value. And if the press of "getting on with it" leaves little time for judicial research, the atmosphere it develops dulls incentive for analytical or creative judicial thinking. Lawyers are also beset by the twin plagues of press of business and scarcity of time, and all too often their research and briefing are of little real help to the judges. The *Journal's* annual survey issue can relieve the time problem and fill the research vacuum for both bench and bar.

A cursory examination of cases in the early Texas Reports will disclose that the determining issues, although usually important in building a judge-made body of law, were in most cases sharp and uncomplicated. Civil and criminal codes of statute law in early state history were also basically simple and uncomplicated. The rule of stare decisis was easy to apply and often solved the only issue in the case. One hundred and thirty years of population growth, legislative sessions, judicial precedents and social progress has slowly thrust the courts into a different world. The simple judicial life of deciding land titles, interpreting simple contracts and worrying about actions in trespass *quare clausum fregit*, ended with the age of the automobile, workmen's compensation laws, discovery of oil and gas, expanding growth of the corporate form of doing business and licensing of public transportation. In the offing and already claiming legislative

and judicial attention is the law of airspace and the law of waters. New codes have become the order of the day. Uniform interstate codes, new probate, corporation, commercial and criminal procedure codes challenge our best legal minds to strive for careful and sound interpretation and application.

Where once the areas of activity of the three departments of government were sharply defined, the advent and increasing multiplication of administrative agencies have dimmed the lines of demarcation and eroded the powers of each. Impact of these agencies on the judicial process and the legal rights of litigants is not yet fully explored. Hundreds upon hundreds of appellate court decisions fill sixty-five volumes of the Texas Reports, and more than seven hundred volumes of the Southwestern Reporter pose an ever growing research problem. A judge of one of our courts of civil appeals once said to me that he was surprised that the Supreme Court did not occasionally overlook one of its prior decisions and write a conflicting opinion. I, too, am somewhat surprised.

It is in this judicial environment, then, that the *Journal's* annual survey of Texas law is launched. In addition to the survey's importance as a research source, it can be genuinely helpful in charting the course of the law. It will only be so if it winnows sound principles of law from decided cases to light the way for the courts in their search for justice for the individual litigant in a society of laws equally applicable to all litigants.

*Robert W. Calvert\**

## II.

I am honored to join Chief Justice Robert W. Calvert in launching this *Annual Survey of Texas Law*. The Chief Justice notes the plethora of decisions ground out each year by the appellate courts and the highest court of the state. Add these to the number of decisions in the other states, the District of Columbia, and the federal courts and then add the multiplicity of administrative decisions, regulations, rulings, opinions, releases from federal and state agencies, and one can easily appreciate the task of the busy lawyer attempting to assay a single problem presented by his client. The effort of the *Journal* to present in survey the decisional rules of the state which have evolved in the recent past cannot help but assist the practitioner in knowing better the path the law has traveled and perceiving what its future course may be.

Forty-one years ago when the School of Law of Southern Methodist University first opened, the jurisprudence of Texas probably seemed as difficult and complex to that generation as the present state of the law seems

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\* Chief Justice, Supreme Court of Texas.

to us. Yet there lay ahead developments not then envisioned in the law of contracts, torts, property, commercial transactions, business organizations, estates and trusts, administrative law, and other fields, not to mention a welter of federal rules and decisions yet to come in the fields of taxation, securities regulation, labor law, antitrust law, the marking and packaging of goods, and so on.

Where does it all take us? The young men in law school now will be in full bloom of their professional careers in the year 2000. How many volumes of United States Reports, Federal and Southwestern Reporters, Annotated Statutes, other reporters and services will make up the minimum "working library" of the lawyer of that day? No one can know with certainty, but one thing is certain: the systematic and careful review and analysis of the law as it *is* today will facilitate the orderly and logical evaluation of the law as it *ought* to be in the year 2000.

We commend this endeavor of the editors of the *Journal* and wish them well in their work.

*Charles O. Galvin\*\**

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