

Selected Targeted Research Exercises

Below please find three targeted research exercises I regularly use in class to back up research instruction from our research faculty. I spend about 30-40 minutes of class time completing these exercises. First I ask students to read the prompts before coming to class. Then, in class, we follow the 4-step research process our librarians have introduced.

Together we formulate a research plan, then I turn the students loose to conduct their research for the next 15-20 minutes. Then we discuss their results. I tell students I am as interested in their research process as the result.

Below you can see written work product from two of our upper-level Legal Writing Fellows, who often work with me to assist students as they complete the research in class.

#1 encourages students to begin research using a secondary source. #2 places an emphasis on using Notes of Decisions to research a statutory issue. #3 combines both statutory and common law research.

Selected Targeted Research Exercises

Please research the factual scenario set forth below and answer the question posed. You practice in Houston, Texas, and the lawsuit that is the subject of this exercise has been properly filed in a state district court in Harris County, Texas (Houston is in Harris County).

1. *You represent Box Media, Inc. Last year, Box Media employee John Fowler renewed his employment contract with Box. Among other provisions, the contract provided that Fowler’s duties were limited to selling radio and digital advertising for Box, and the contract included a provision that, for a period of one year after Fowler left Box’s employ, Fowler would refrain from selling advertising in the Houston market, defined to consist of two counties: Harris and Fort Bend. Last week, Fowler voluntarily quit his job at Box and went to work for Magnolia Advertising selling billboard advertising in a two-county area covering both Harris and Fort Bend counties.*

Does Box have a cause of action against Fowler for violating a covenant not to compete? If not, why not? If so, can Box enjoin Fowler from selling billboard advertising in the Houston market?

Box has a cause of action against Fowler. Under Texas law, Box can enforce its non-compete covenant if it is part of an enforceable agreement, included in the agreement at the time the agreement was made, contains limitations on time, geography, and scope of restrained activities, and the restrictions are reasonable and do not impose too great a restraint. Tex. Bus. & Com. Code Ann. § 15.50(a) (West 2021).

Fowler signed an enforceable employment contract with Box, which included a non-compete provision at the time it was made. As a matter of law, a covenant is ancillary to an employment agreement when it contains provisions usually associated with an employment contract, such as “title, position, duration of employment, . . .” *Martin v. Credit Prot. Ass’n, Inc.*, 793 S.W.2d 667, 669 (Tex. 1990). In addition to Fowler’s employment provisions, his contract contained the non-compete provision, rendering it enforceable. *Id.*

The restrictions included in the provision are reasonable. The non-compete provision included a one-year restriction, in the Houston market, on selling advertising. The covenant’s geographical restriction overlaps with Fowler’s previous employment territory, making it reasonable. *Butler v. Arrow Mirror & Glass, Inc.*, 51 S.W.3d 787, 793 (Tex. App.—Houston [1st Dist.] 2001, no pet.). One-year restrictions are reasonable as a matter of law. *Meineke Disc. Muffler v. Jaynes*, 999 F.2d 120, 123 (5th Cir. 1993); *see also Gallagher Healthcare Ins. Servs. v. Vogelsang*, 312 S.W.3d 640, 655 (Tex. App.—Houston [1st Dist.] 2009, pet. denied). The covenant’s scope is reasonable because it conforms to his job duties and does not function as a blanket restriction. *Curtis v. Ziff Energy Grp., Ltd.*, 12 S.W.3d 114, 119 (Tex. App.—Houston [14th Dist.] 1999, no pet.); *see McNeilus Companies, Inc. v. Sams*, 971 S.W.2d 507, 511 (Tex. App.—Dallas 1997, no writ) (finding a restriction “in any capacity” too broad).

Further, because the court finds the non-compete enforceable, it can enjoin Fowler from engaging in billboard advertising. Tex. Bus. & Com. Code Ann. § 15.51(c) (West 2021); *see also Marsh USA Inc. v. Cook*, 354 S.W.3d 764 (Tex. 2011) (holding that the court can enjoin a party for violating a non-compete covenant).

2. *At the time Fred Smith died, he and his wife, Ginger, had a foster child, Dorothy, living with them. Fred and Ginger were in the process of adopting Dorothy when Fred died, but the adopting was not yet complete.*

Related to Fred's death, Ginger has filed suit under the Texas wrongful death statute.

Is Dorothy a proper party to the wrongful death action?

Dorothy is not a proper party to the wrongful death action because she lacks standing. *Transp. Ins. Co. v. Faircloth*, 898 S.W.2d 269, 275 (Tex. 1995), *see also* Tex. Civ. Prac. & Rem. Code Ann. § 71.002 (West 2021) (establishing the cause of action for wrongful death). Only biological or legally adopted children have standing. *Id.* The adoption was not complete, which means Dorothy remained a foster child. The earlier case cited by the Texas Supreme Court in *Faircloth* indicated that a foster child, regardless of the time spent in the family, and even if “treated as a natural child,” could not serve as a proper party in a wrongful death suit unless adoption proceeds had been completed. *Goss v. Franz*, 287 S.W.2d 289, 290 (Tex. App.—Amarillo 1956, writ ref'd.).

3. *Jackson and Emily grew up together. Their families always expected they would marry and, indeed, they became engaged on Emily's twenty-second birthday two years ago, on October 2. Their families were intimately involved in planning the engagement party and shared in the couple's joy when Jackson proposed. At the party, Jackson gave Emily a beautiful four-carat diamond engagement ring that had originally belonged to his great, great grandmother. Until he gave it to Emily, Jackson's mother had worn the ring. Jackson and Emily planned to marry in early June the following year in a lavish ceremony in Houston, where they currently reside.*

In April, approximately two months before the wedding, their plans went awry. Jackson met Samantha at a work function. The two really hit it off. She was the girl of his dreams, and not surprisingly, this new relationship caused Jackson to rethink his wedding plans with Emily.

In May, still a month before the wedding, Jackson quietly explained to Emily that he believed the two of them were getting married because it was what their parents expected of them; that they should marry instead for love; and that the best thing for both of them would be to call off the wedding. Emily did not take the news well.

After Jackson broke the engagement, Emily refused to return Jackson's great, great grandmother's ring. She refused even to sell it back to Jackson or his family. She wrote a letter to Jackson's mother explaining that she plans to keep the ring “forever, out of spite.”

Jackson would like to pursue legal action to retrieve the ring from Emily.

Is Emily legally obligated to return the ring to Jackson?

Emily is not legally obligated to return the ring to Jackson. Because Emily and Jackson did not have an agreement in place governing ownership of the ring upon a dissolution of their engagement, the conditional-gift rule governs here. *Curtis v. Anderson*, 106 S.W.3d 251, 255 (Tex. App.—Austin 2003, pet. denied). The rule requires return of the ring if the donee is at fault for ending the engagement. *Id.* (quoting *Mclain v. Gilliam*, 389 S.W.2d 131, 132 (Tex. App.—Eastland 1965, writ ref'd n.r.e.)). Here, though, Jackson is at fault, not Emily. Because Jackson broke off the engagement without a written agreement governing ownership of the ring, and because Texas courts apply a fault-based conditional-gift rule, Jackson “is not entitled to the return of [his] engagement ring if he terminate[d] the engagement.” *Id.* at 256.

The conditional-gift rule binds Houston courts. Though predicated upon a situation involving a contribution to a non-profit, *Eshelman v. True the Vote, Inc.* acknowledged the application of the conditional-gift rule within its jurisdiction, citing the engagement ring cases as establishing the rule. 655 S.W.3d 493, 498 (Tex. App.—Houston [14th Dist.] 2022, no pet.).

Search Process

1. I began this search by going to the secondary sources tab on Westlaw. In the search bar, I typed “noncompete Texas.” Westlaw provided me with a selection of secondary sources relating to the topic and I chose *Keeping your Secrets Secret: An Employer’s Primer on Trade Secret Protection, Noncompetition Agreements, and Unfair Competition in Texas*, published in the Texas Journal of Business Law. The article provided a breakdown of the different elements of the Non-compete Act and provided links to cases for support. I either used these cases, or found more recent cases which cited those cases by using Westlaw’s “citing references” dropdown.
2. For this search, I began by searching “wrongful death” in the westlaw search bar with the jurisdiction limited to Texas. I filtered the content to just statutes and chose the Vernon’s wrongful death statute. I clicked on the Notes of Decisions link and then used ctrl+F to search for adopt. That brought me to the section dealing with parties. The cases within that section provided the answers I needed.
3. For this search, I began with a westlaw search for “engagement ring” with jurisdiction limited to Texas. *Curtis v. Anderson* was the first case on the list, which included a headnote related to the conditional-gift rule. I used that to find *Eshelman*. Those two cases provided what I needed.

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Research Process

- Starting in State Materials – Texas
- Select Contract Law-Texas Practice Series
- Search non compete
- 49 Tex. Prac., Contract Law § 3.29
- Tex. Bus. & Com. Code Ann. § 15.50
- *John R. Ray & Sons, Inc. v. Stroman*, 923 S.W.2d 80, 85 (Tex. App.—Houston [14th Dist.] 1996, writ denied) (the business-wide prohibition of an employee's ability to work in the insurance industry was unenforceable).
 - o Citing References, filter by search within results “advertising”
- *Poole v. U.S. Money Reserve, Inc.*, No. 09-08-137CV, 2008 WL 4735602 (Tex. App.—Beaumont Oct. 30, 2008, no pet.)
- *Wright v. Sport Supply Group, Inc.*, 137 S.W.3d 289, 298 (Tex. App.—Beaumont 2004, no pet.) (finding a covenant overbroad and unreasonable when it prohibited solicitations beyond customers with whom the employee dealt with during the course of his employment).
- *Peat Marwick Main & Co. v. Haass*, 818 S.W.2d 381, 387 (Tex. 1991) (“[Covenants not to compete] rest on requiring a connection between the personal involvement of the former firm member with the client acquired for reasonableness.”).

A court would likely find that Box's covenant not to compete is an unreasonable restraint of trade and thus unenforceable upon Fowler. While the covenant would likely meet the limitations to time and geographical area standards, it is overbroad in that it restrains Fowler's ability to practice in the advertising industry generally. Box has a legitimate interest in protecting its information regarding

radio and digital advertising, but this likely does not extend to billboard advertising, a field Fowler had no dealings with under his employment.

5. *At the time Fred Smith died, he and his wife, Ginger, had a foster child, Dorothy, living with them. Fred and Ginger were in the process of adopting Dorothy when Fred died, but the adopting was not yet complete.*

Related to Fred's death, Ginger has filed suit under the Texas wrongful death statute.

Is Dorothy a proper party to the wrongful death action?

Research Process

- Search "Texas wrongful death act"
- 42 Tex. Jur. 3d Government Tort Liability § 8
- Tex. Civ. Prac. & Rem. Code Ann. § 71.001
- Tex. Civ. Prac. & Rem. Code Ann. § 71.004
 - o Notes of decision Section 11. Adopted children
- *Amos v. Cent. Freight Lines, Inc.*, 575 S.W.2d 636 (Tex. App.—Houston [1st Dist.] 1978, no writ) (affirming a finding that minor children are not entitled to recover under the previous wrongful death act because they were not naturally born nor legally adopted, even if a petition for adoption had been filed but not consummated).

Dorothy is not a proper party to the wrongful death action because they are not yet a legally adopted child of the deceased. This finding holds as long as the petition for adoption was not completed.

6. *Jackson and Emily grew up together. Their families always expected they would marry and, indeed, they became engaged on Emily's twenty-second birthday two years ago, on October 2. Their families were intimately involved in planning the engagement party and shared in the couple's joy when Jackson proposed. At the party, Jackson gave Emily a beautiful four-carat diamond engagement ring that had originally belonged to his great, great grandmother. Until he gave it to Emily, Jackson's mother had worn the ring. Jackson and Emily planned to marry in early June the following year in a lavish ceremony in Houston, where they currently reside.*

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After Jackson broke the engagement, Emily refused to return Jackson's great, great grandmother's ring. She refused even to sell it back to Jackson or his family. She wrote a letter to Jackson's mother explaining that she plans to keep the ring "forever, out of spite."

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Is Emily legally obligated to return the ring to Jackson?

Research Process

- 41 Tex. Jur. 3d Gifts § 13
- 41 Tex. Jur. 3d Gifts § 15
- *Curtis v. Anderson*, 106 S.W.3d 251, 255-56 (Tex. App.—Austin 2003, pet. denied) (though a ring in consideration of marriage is a conditional gift contingent upon marriage, the common law only requires the donee to return the ring if the donee is at fault for terminating the engagement).
- *McLain v. Gilliam*, 389 S.W.2d 131, 132 (Tex. App.—Eastland 1965, writ ref'd n.r.e.) (finding that if the donee breaks the engagement, recovery of any gift or its value is allowed if given in consideration of marriage).

Emily is not legally obligated to return the ring to Jackson. The ring is a conditional gift in consideration of marriage, but the conditional gift rule considers fault of termination. Because Jackson called off the wedding, he is not entitled to the engagement ring.