1. Minimum liability limits

The minimum liability limits are $30,000 for each injured person, up to a total of $60,000 per accident, and $25,000 for property damage per accident. This basic coverage is called 30/60/25 coverage.

2. Negligence laws (Is the jurisdiction a pure contributory negligence state; what type of comparative fault is applicable, etc?)

Modified comparative fault - 51% bar rule contributory negligence
The plaintiff may have his damages reduced by the amount of his fault. Tex. Civ. Prac. & Rem. Code Ann. §§33.001-33.017. For example, if the plaintiff is awarded $100,000 in damages and is found to be 40% at fault, the plaintiff will only recover $60,000 in damages.

3. Bodily Injury Statute of Limitations

There is a two (2) year statute of limitations for negligence.

4. Property Damage Statute of Limitations

The statute of limitations is two (2) to four (4) years depending on if the action is tied to a contractual duty.
5. Are punitive damages insurable in the jurisdiction?
Yes

6. Is there an intrafamily immunity defense?
No

7. Is there a bodily injury damage threshold? If so, what is it?
No

8. What are the quick rules on Subrogation MP/PIP?
One can subrogate on MP in Texas but not PIP (unless against an uninsured motorist). See V.T.C.A. § 1952.155(c).

9. Are there no fault laws in the jurisdiction?
No

10. Is the customer’s insurance primary?
Yes

11. Is there a seat belt defense?
For actions filed before July 1, 2003, the use or nonuse of a safety belt or a child passenger safety seat system is not admissible evidence in a civil trial. Former Tex. Transp. Code § 545.413(g) - repealed effective for cases file on or after July 1, 2003. For actions filed on or after July 1, 2003, the admissibility of evidence of the use or non-use of an available safety belt is governed by the Texas Rules of Evidence and common law.

12. Is there a last clear chance defense?
Not as a stand alone defense; it has been subsumed under contributory negligence

13. Is there an assumption of risk defense?
No, unless there is a knowing and express oral or written consent to the dangerous activity or condition.

14. Is there a UM requirement?
Uninsured motorist coverage is mandatory in Texas, unless the insured rejects the coverage in writing.
15. Is there a physical contact requirement?
No.

16. Is there a mandatory ADR requirement?
Only in large city/country jurisdictions

17. Are agreements reached at mediation enforceable?
A written settlement agreement between parties that disposes of the dispute is enforceable
§154.071(a). The elements of an enforceable contract are: (1) an offer; (2) and
acceptance in strict compliance with the terms of the offer; (3) a meeting of the minds;
(4) a communication that each party consented to the terms of the contract; (5) execution
and delivery of the contract with an intent it become mutual and binding on both parties;
and (6) consideration. Advantage Physical Therapy, Inc. v. Cruse, 165 S.W.3d 21, 24
(Tex. App. – Houston 2005). If a court so chooses, it may incorporate the terms of the
settlement agreement into the court’s final decree. See Tex. Civ. Prac. & Rem. Code
Ann. §154.071(b).

The enforceability of an agreement reached at mediation also depends on whether it
complies with Rule 11 of the Texas Rules of Civil Procedure. That rule provides that
“[u]nless otherwise provided in these rules, no agreement between attorneys or parties
touching any suit pending will be enforced unless it be in writing, signed and filed with
the papers as part of the record, or unless it be made in open court and entered of record.”
See Tex. R. Civ. P. 11. Therefore, if a dispute arises regarding an agreement reached at
mediation, the agreement must be filed before enforcement is sought in court. Padilla v.
LaFrance, 907 S.W.2d 454, 461 (Tex. 1995).

18. What is the standard of review for a new trial?
Sufficiency of evidence.

19. Is Pre-judgment interest collectable? If so, at what rate?
Yes, at the published rate, which is usually five (5) percent.

20. Is post-judgment interest collectable? If so, at what rate?
Yes, at the published rate.

21. Is there a workers compensation exclusive remedy defense?
22. Is the doctrine of joint and several liability applicable?
   Yes.

23. Is there a self critical analysis privilege?
   No.

24. Is accident reconstruction data admissible?
   Yes.

25. What is the rule on admissibility of medicals paid/reduced vs. total bills submitted?
   Medical bills actually paid owed by plaintiff only.

26. What is the jurisdiction's rule on offers judgment?
   The Texas Rule is complicated but is usually predicated upon original offer or whether
   the demand that is rejected is “significantly less favorable” to the rejecting party than the
   outcome at trial. If so, then the “offering” party can recover attorney and expert fees.

27. What is the jurisdiction's rule on spoliation of evidence?
   Rule of evidence with instruction of presumption against spoliating party.

28. Are there damages caps in place?
   There are damages caps for medical malpractice claims and for punitive damages.

29. Is CSA 2010 data admissible?
   Undetermined, but will vary with each venue.

30. Briefly, does the jurisdiction have any unique rules on electronic discovery?
   The Texas rule essentially follows the federal rule.

31. Is the sudden emergency doctrine recognized in the jurisdiction?
   The sudden emergency doctrine is recognized in Texas. More precisely, the sudden
   S.W.3d 429, 432 (Tex. 2005). By providing an instruction on the sudden emergency
defense, the court informs the jury that they do not have to place the blame on a party to the suit if there were conditions beyond the control of the party that caused the accident. *Id.* An instruction on sudden emergency will be given to a jury if the evidence at trial supports the elements of the sudden emergency defense: (1) an emergency situation arose suddenly and unexpectedly; (2) the emergency situation was not proximately caused by the negligent act or omission of the person whose conduct is under inquiry; and (3) after an emergency situation arose that to a reasonable person would have required immediate action without time for deliberation, the person acted as a person of ordinary prudence would have acted under the same or similar circumstances. *Jordan v. Sava, Inc.*, 222 S.W.3d 840, 847 (Tex. App. – Houston 2007). While the sudden emergency doctrine exists and is still applied, the Texas Supreme Court has recognized that the doctrine is subsumed by the broader doctrine of unavoidable accident. *Reinhart v. Young*, 906 S.W.2d 471, 474 (Tex. 1995) (quoting Keeton, et al., *Prosser and Keeton on the Law of Torts* § 29 at 162 n. 1(5th Ed. 1984).

32. Are there any rules prohibiting or limiting the use of the reptile theory at trial?

The reptile theory is based on neuroscientist Paul MacLean’s concept that the human brain consists of the following three parts: 1) the reptilian complex; 2) the paleomammalian complex; and 3) the neomammalian complex. According to MacLean, the reptilian complex (also known as the reptilian brain) maximizes “survival advantages” and attempts to minimize “survival danger.” See David Ball & Don Keenan, *Reptile: The 2009 Manual of the Plaintiff’s Revolution*, 13-14 (Balloon Press, 2009). The reptile trial strategy attempts to exploit the reptilian brain’s need to avoid “survival dangers.” See Alex Craigie, *Beware the “Reptile” Lawyer*, At Counsel Table (May 20, 2013), http://atcounseltable.wordpress.com/2013/05/20/beware-the-reptile-lawyer/. In order to do this, plaintiffs’ lawyers attempt to convince jurors that the defendant’s conduct threatens the jurors’ community, families, and the jurors themselves. *Id.* The reptile strategy is designed to make jurors believe that they are protecting their community by rendering a large verdict against the defendant.

In Texas, “Golden Rule” arguments, or those arguments that ask the jury to place themselves in the position of the victim, generally are not permissible. *Williams v. State*, No. 01-02-00166-CR, 2003 Tex. App. LEXIS 345, at *18-19 (Tex. App. - Houston [1st Dist.] Jan. 16, 2003, pet. ref’d) (not designated for publication) (citing *Boyington v. State*, 738 S.W.2d 704, 709 (Tex. App. - Houston [1st Dist.] 1985, no pet.) (providing that “[t]he repeated urging for the jury to place themselves in the shoes of the victim...could only be designed to inflame the passions of the jury...and is manifestly improper...”). Golden Rule arguments attempt to destroy impartiality and encourage jurors to decide the case on personal interest and bias. David C. Marshall, *Lizards and Snakes in the Courtroom*, For the Defense, April 2013 at 68.

Texas courts have provided that “[a]n argument that asks the jury to consider the case from an improper viewpoint, such as by putting themselves in the place of a party in order to decide the case as they would want a jury to decide it if they were that party is improper.” *Arocha v. State Farm Mut. Auto. Ins. Co.*, 203 S.W.3d 443, 447 (Tex. App. -
Houston [14th Dist.] 2006, no pet.) (mem. op.) (citing Fambrough v. Wagley, 169 S.W.2d 478, 481-82 (Tex. 1943)). At first glance, this standard seems fairly straightforward. However, it is often difficult to predict when a Texas court will determine that counsel’s argument has crossed the line into the impermissible Golden Rule zone.

In Arocha, the plaintiff, who was hit by an underinsured motorist while riding a bicycle, argued that the trial court erred by overruling his objection to the closing argument in which one of the defendant insurers’ counsel improperly admonished the jurors to put themselves in the driver’s position:

[Insurer’s Counsel]: I think your greatest challenge as jurors in this case is to do this, to take yourself back to Thursday of last week before you became involved in this case, before you became fact finders in this case, before you heard this story; your challenge is not to let what we call hindsight bias affect your decision making. It’s easy now that we know he ran into her [the driver] and caused this to happen, that something happened. But take yourself back to your driving last Thursday when you’re at an intersection and what you’re doing to make sure it’s safe to go, and you’re about to turn –

[Arocha’s Counsel]: Objection, Your Honor, improper jury argument. He’s asking the jury to put themselves in the place of [the driver].

The Court: Overruled.

See Arocha, 203 S.W.3d at 447. The appellate court upheld the trial court’s ruling and provided that the challenged portion of the argument did not ask the jury to put themselves in the shoes of the driver, but, instead, asked the jury to make their decision based on what conduct would have been objectively reasonable for a person in the driver’s position. Id. Plaintiffs’ lawyers utilizing the reptile theory will likely rely on cases like this to argue that jurors should be allowed to consider community safety threats in order to establish the “reasonable person” standard.

Texas courts have also held that it is not improper for an attorney, in his closing argument, to mention the actual Golden Rule, i.e. do unto others as you would have them do unto you, because that alone “merely asks the jury to follow the Golden Rule and would require the jury to look with equal solicitude to the right of both plaintiff and defendant.” World Wide Tire Co. v. Brown, 644 S.W.2d 144, 145-46 (Tex. App. - Houston [14th Dist.] 1982, writ ref’d n.r.e.). In World Wide Tire, the court held that the argument went beyond proper jury argument in that it “amounted to a direct appeal to the jury to consider the case from an improper viewpoint, because its effect was to ask the members of the jury to put themselves into the plaintiff’s shoes and to give the plaintiff what they would want if they were injured, rather than what the evidence showed plaintiff was entitled to receive as compensation.” Id. at 146. Similarly, defense lawyers should object to any argument by plaintiffs’ lawyers that instructs the jurors to step into the
shoes of the plaintiff in an attempt to make the jurors feel personally threatened by the defendant’s conduct.

Defense lawyers should also utilize Texas evidentiary rules to combat these reptile theories based on safety rules and potential harm to the public/community. Rules 401 and 403 of the Texas Rules of Evidence can be used to exclude the reptile strategy. *Id.* at 52. Pursuant to Rules 401 and 403, a plaintiff cannot rely on irrelevant or unfairly prejudicial evidence to support her claim for damages. *See* Tex. R. Evid. 401, 403. As such, Texas defense lawyers should rely on Rules 401 and 403 to argue that any evidence that goes beyond the scope of the specific plaintiff’s damages and addresses the potential harm to the public in general is irrelevant and unfairly prejudicial. *See* Litigating Reptiles at 52.

Rule 404 of the Texas Rules of Evidence provides another means to exclude the reptile strategy at trial. Pursuant to Rule 404, prior bad acts are not admissible to prove the character of a person for the purpose of showing action in conformity therewith on the occasion in question. *See* Tex. R. Evid. 404. As such, plaintiffs’ lawyers utilizing the reptile theory cannot introduce evidence of the defendant’s prior bad acts (e.g., reckless driving) to establish that the defendant has a propensity for driving recklessly and will probably do so again in the future, which places the jurors and the community at risk, unless the jury punishes him by rendering a large verdict.

It is imperative that defense lawyers in Texas are aware of and on the lookout for the reptile strategy. Identifying that the opposition is utilizing the strategy is one of the key factors in successfully combating it. This summary discusses only a few of the possible objections in Texas to the reptile strategy. As the popularity of the strategy continues to grow, the Texas defense bar should take a proactive approach to developing new ways to slay the reptile.

33. What are the jurisdictional limits of the jurisdiction’s civil courts – i.e. Small Claims, District Court, Superior Court?

Justice Courts (small claims courts): Amount in controversy not more than $10,000 including attorney’s fees, but excluding interest and court costs. Justice Courts have original exclusive jurisdiction over civil cases in which the amount in controversy is $200 or less. Above $200 the Justice Courts have concurrent jurisdiction with district and county courts up to $10,000.

County Courts at Law: Most County Courts at Law have concurrent jurisdiction with District Courts in which the amount in controversy exceeds $500 but does not exceed $200,000, excluding attorney’s fees, interest and court costs. There are some statutory exceptions.

District Courts: District Courts are the primary trial courts in Texas with general jurisdiction. District Courts have original jurisdiction in civil cases in which the amount
in controversy exceeds $500, excluding interest, and there is no upper limit to the amount in controversy jurisdiction.

34. Are state judges elected or appointed?

All state judges are elected every four years in contested party elections.