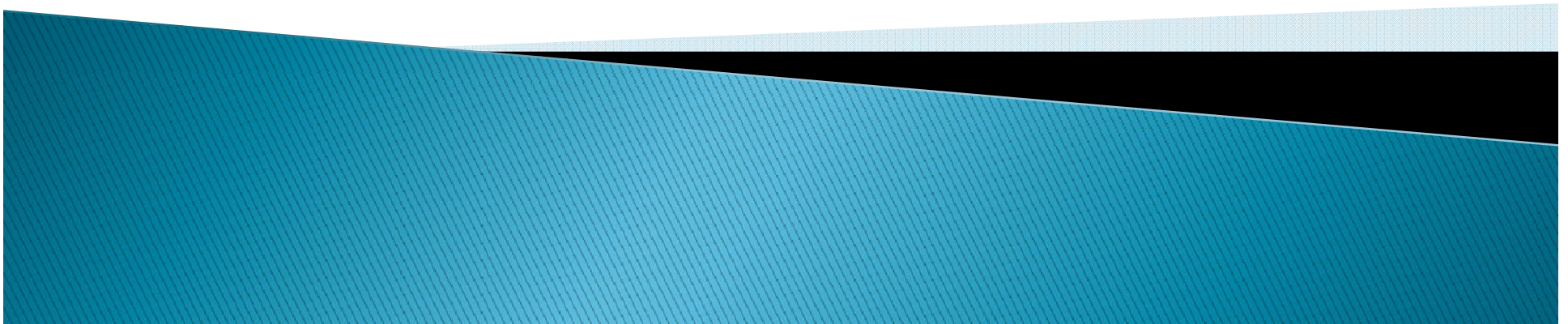


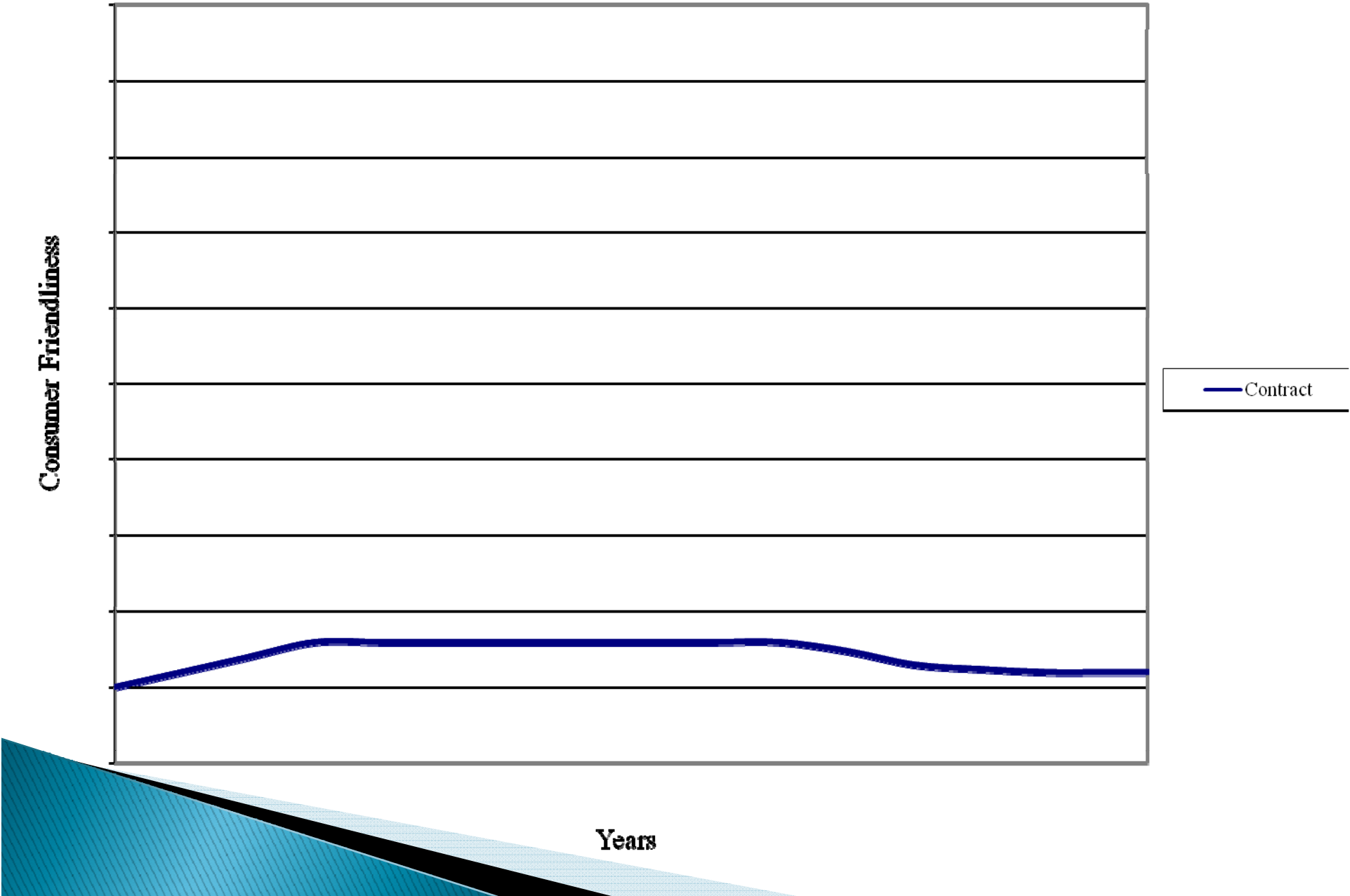
# An Introduction to the Deceptive Trade Practices Act

Dean Richard M. Alderman

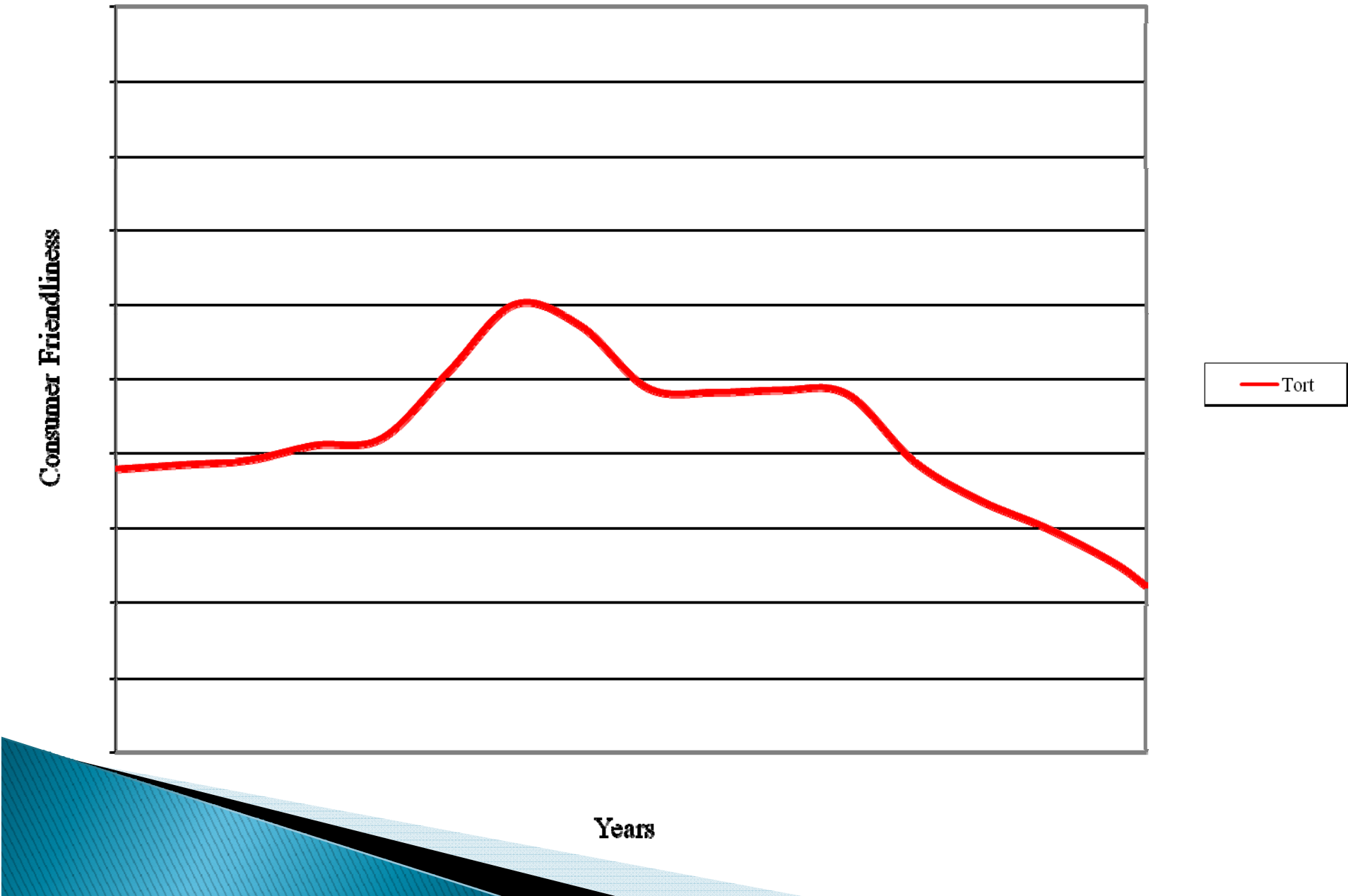
CONSUMER LAW BASICS – KNOW THE LAW!  
PRESENTED BY: THE CENTER FOR CONSUMER LAW  
HOUSTON, TEXAS  
FRIDAY, OCTOBER 23, 2009



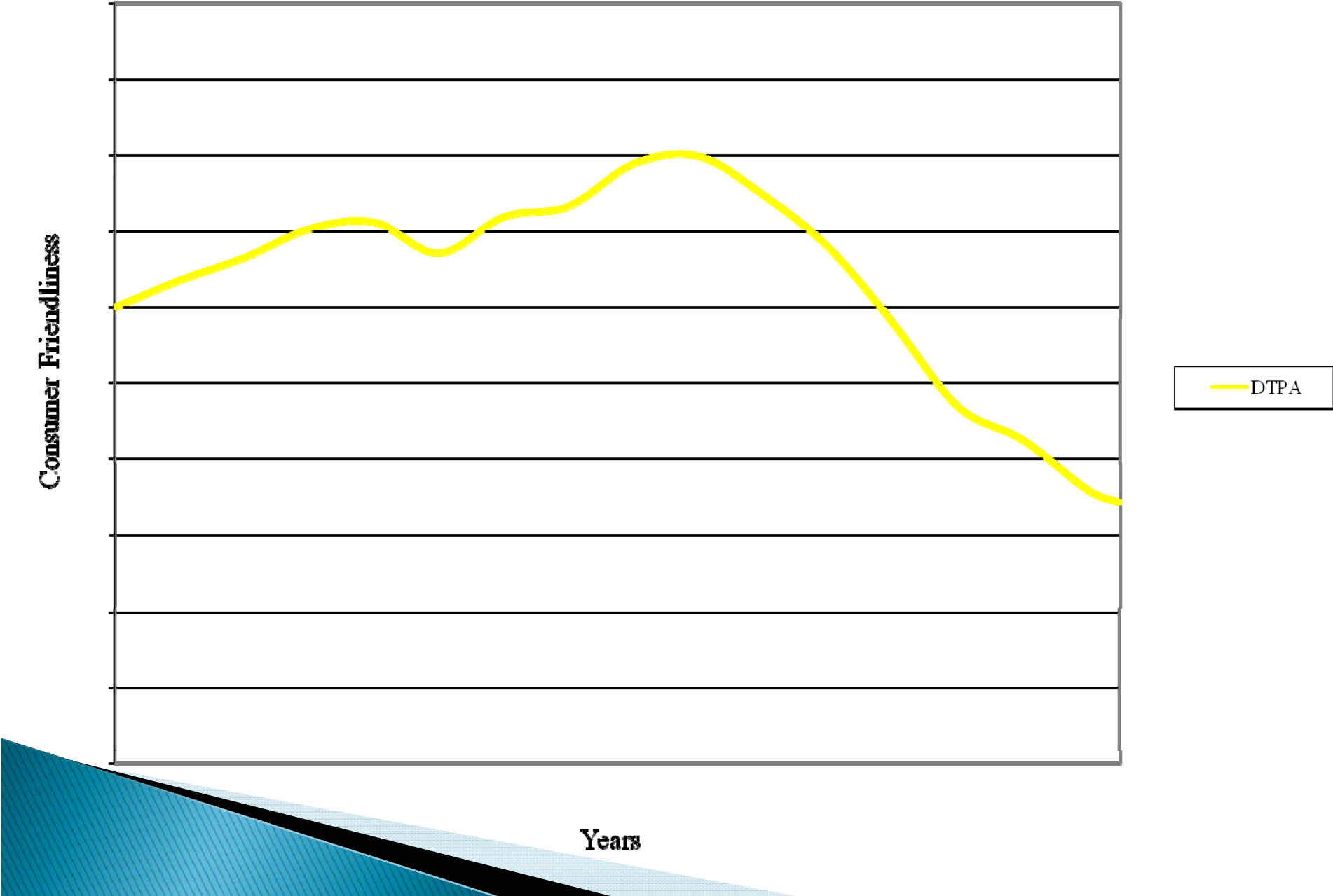
Consumer Friendliness



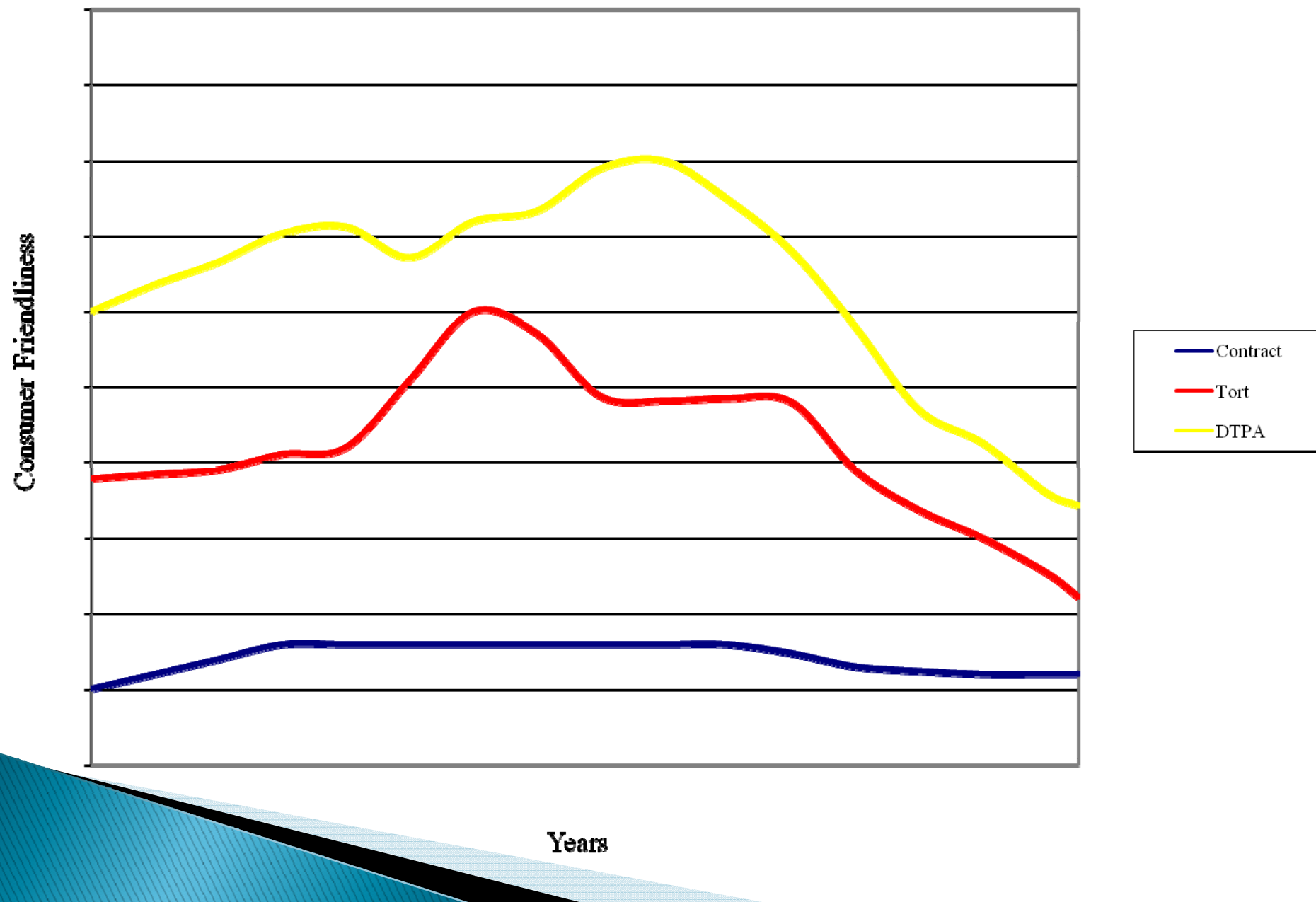
# Consumer Friendliness



Consumer Friendliness

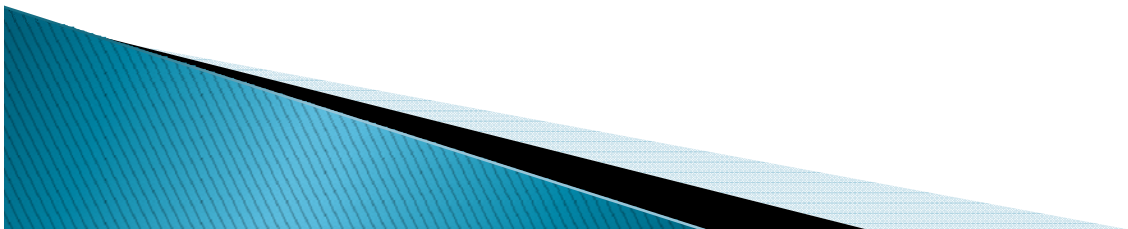


## Consumer Friendliness



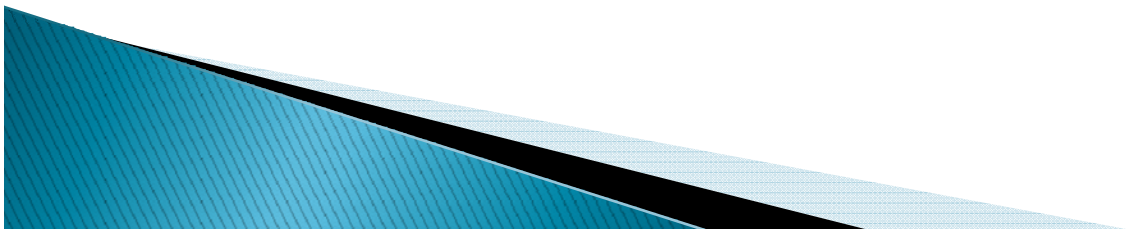
# Benefits of DTPA

- ▶ Broad applicability–Consumer
- ▶ Basically no–fault liability
- ▶ Lowest causation standard [Producing cause]
- ▶ Economic damages and damages for mental anguish
- ▶ Lowest standard for award of punitive damages [Knowingly]
- ▶ Attorneys' Fees



# Generally may not be Waived

- ▶ 17.42—Against public policy and unenforceable
- ▶ Waiver is enforceable only if:
  - It is in writing
  - Consumer is not in a significantly disparate bargaining position, and
  - Consumer is represented by legal counsel in seeking or acquiring the goods



# CONSUMER

An individual, partnership, corporation, this state or an agency of this state who:

“seeks or acquires by purchase or lease any goods or services”  
17.45(4)

Includes business consumers with less than \$25 million in assets

- Eckman v. Centennial Savings Bank, 784 S.W.2d 672





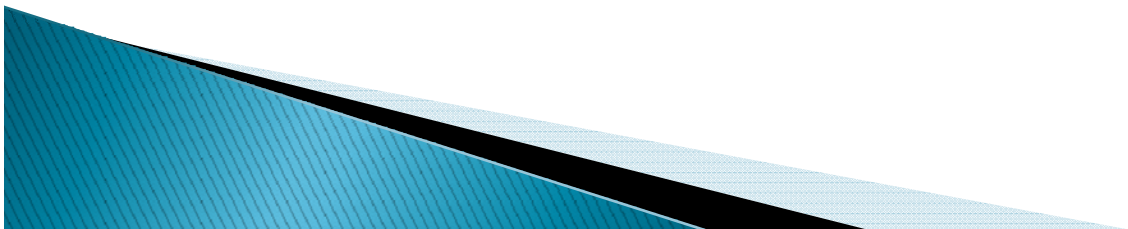
# Seek or Acquire

- ▶ Wellborn v. Sears, Roebuck & Co., 970 F.2d 1420
- ▶ Birchfield v. Texarkana Memorial Hosp., 747 S.W.2d 361
- ▶ Must act in good faith
  - Holeman v. Landmark Chevrolet, 989 S.W.2d 395



# Purchase or Lease

- ▶ Free goods or services
  - Exxon v Dunn, 581 S.W.2d 500
- ▶ Who pays?
  - Kennedy v. Sale, 689 S.W.2d 890



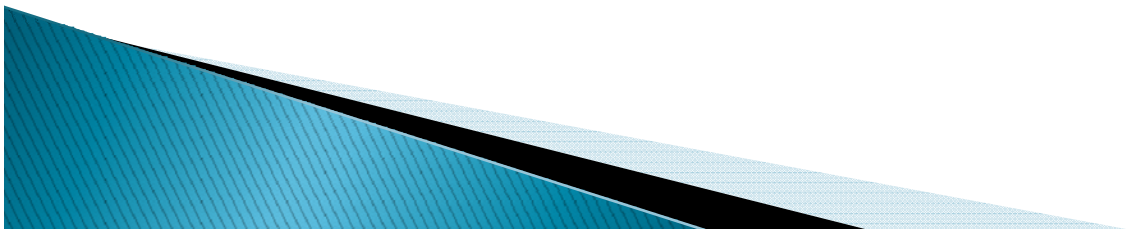
# Goods or Services

- ▶ Goods 17.45(1)
- ▶ Services
  - Legal services, Latham v. Castillo, 972 S.W.2d 66
  - Banking services, Riverside National Bank v. Lewis, 603 S.W.2d 169



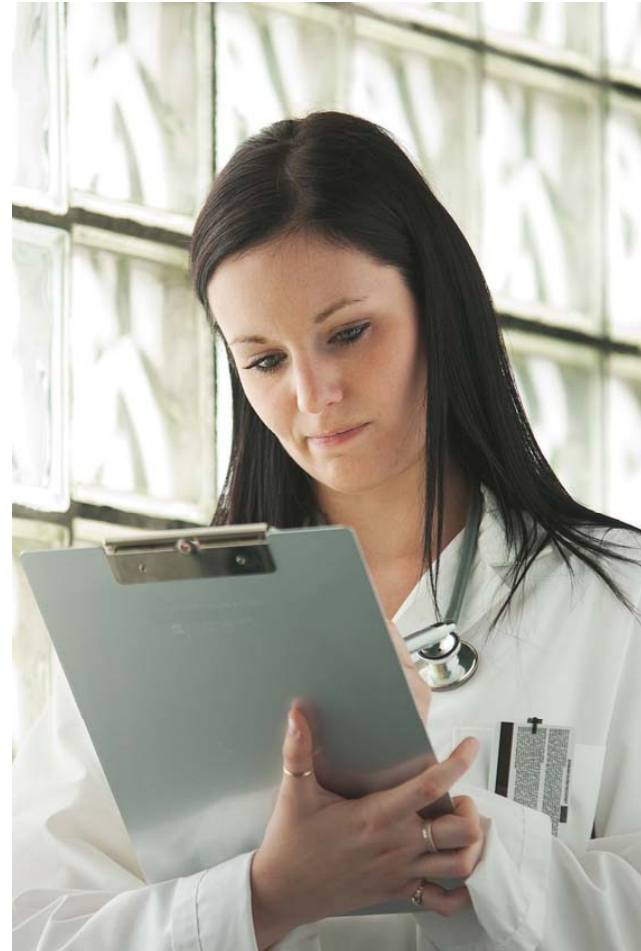
## In Connection With....

- ▶ *Amstadt v. U.S. Brass* 919 S.W.2d 644
- ▶ Products Liability Act, Chapter 82, Civil Practice and Remedies Code



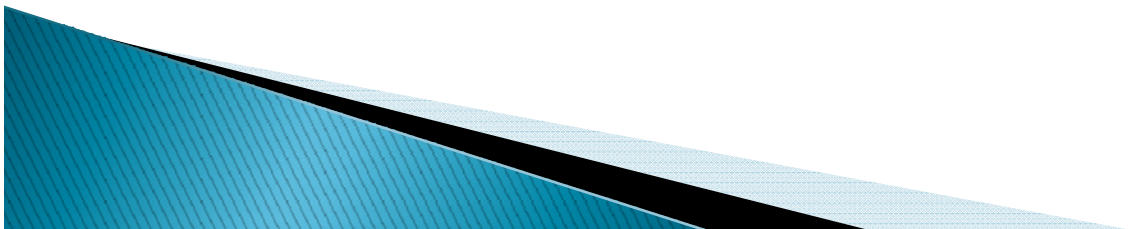
# Professional Service Exemption 17.49(c)

- ▶ Nothing in this subchapter shall apply to a claim for damages based on the rendering of a professional service, the essence of which is the providing of advice, judgment, opinion, or similar professional skill.
- ▶ But.....



# **This exemption does not apply to:**

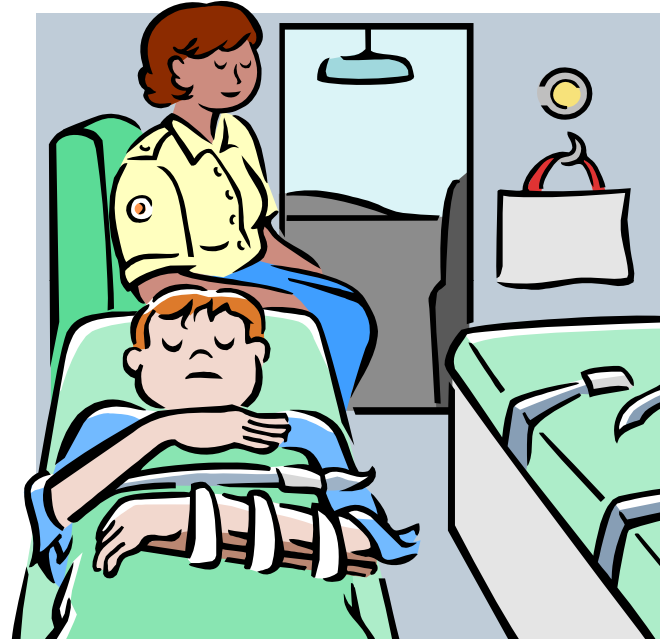
- ▶ (1) an express misrepresentation of a material fact that cannot be characterized as advice, judgment, or opinion;
- ▶ (2) a failure to disclose information in violation of Section 17.46(b)(24);
- ▶ (3) an unconscionable action or course of action that cannot be characterized as advice, judgment, or opinion;
- ▶ (4) breach of an express warranty that cannot be characterized as advice, judgment, or opinion; or





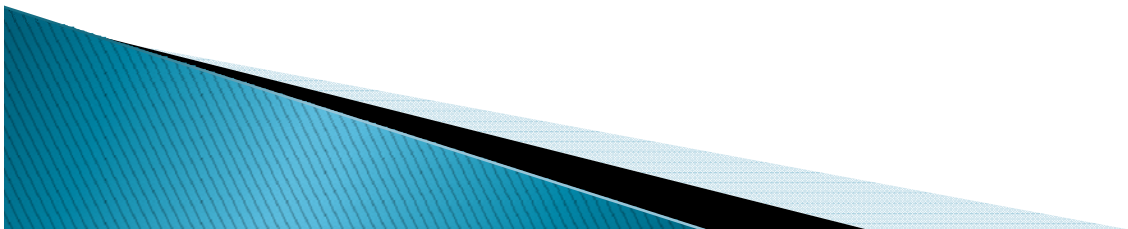
# Personal Injury:17.49(e)

- ▶ Except as specifically provided by Subsections (b) and (h), Section 17.50, nothing in this subchapter shall apply to a cause of action for bodily injury or death or for the infliction of mental anguish.



# Large Transaction Exemption

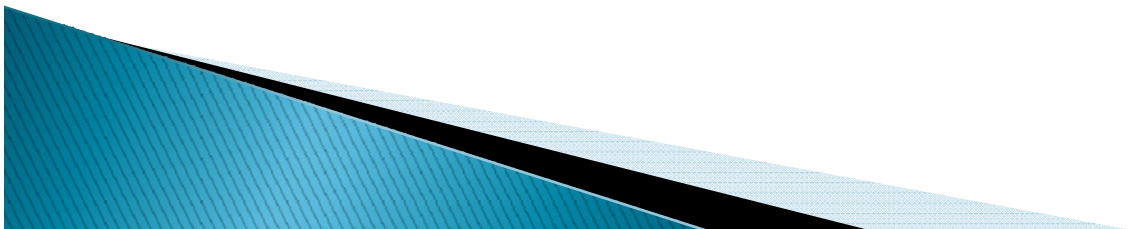
- ▶ Transactions over \$500,000 are exempt, 14.49(g)
- ▶ Applies to a “transaction, a project, or a set of transactions relating to the same project
- ▶ Exemption does not apply to a residence





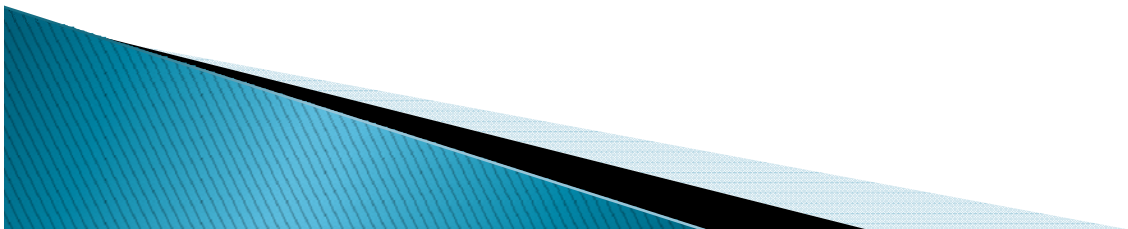
# CLAIMS UNDER THE ACT

- ▶ Laundry List, 17.46(b)
  - Generally, no culpable mental state
  - *Pennington v. Singleton* 606 S.W.2d 682 (Tex. 1980).
  - Includes failure to disclose



# Unconscionability

- ▶ 17.45(5)—grossly unfair
- ▶ Chastain v. Koonce, 700 S.W.2d 579
- ▶ Latham v. Castillo, 972 S.W.2d 66



# Breach of Warranty

- ▶ Breach of Warranty

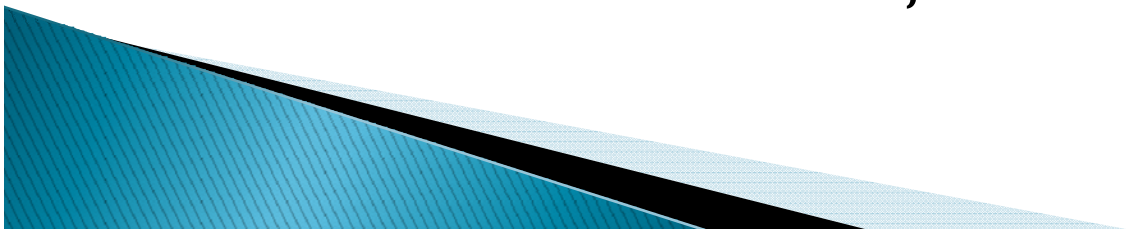
La Sara Grain Company v. First National Bank of Mercedes, 678 S.W.2d 558

- ▶ Express

- ▶ Implied

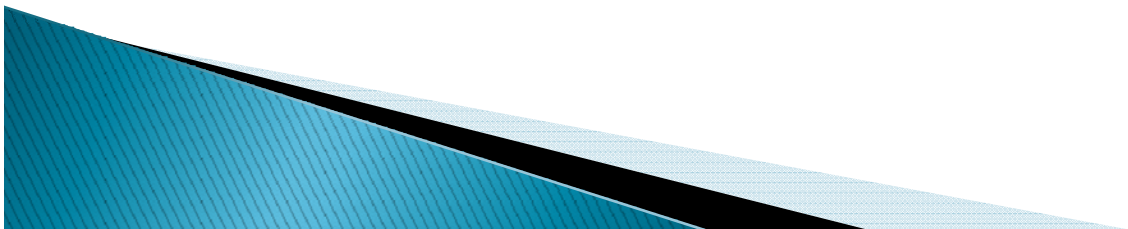
- Melody Home v. Barnes, 741 S.W.2d 349

- Murphy v. Campbell, 964 S.W.2d 265
  - Dennis v. Allison, 698 S.W.2d 94



# NOTICE AND SETTLEMENT

- ▶ 1995 Amendments increase benefits of offering settlement, 17.505
- ▶ Settlement may be “in kind”
- ▶ Pre-suit notice [60 days]
- ▶ Defendant gets two “shots” at offering settlement
- ▶ Consumer’s damages and attorney’s fee are limited if reasonable offer rejected



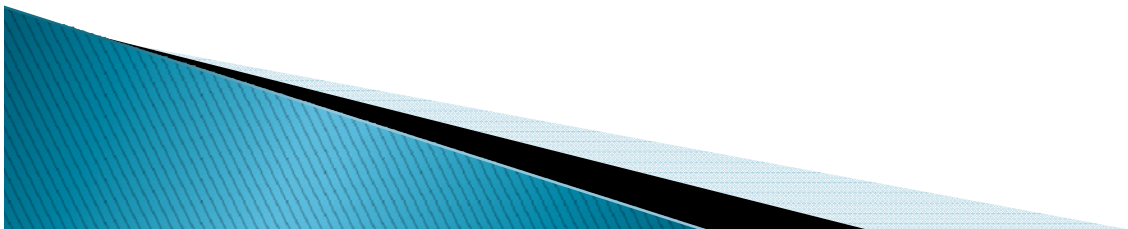
# DAMAGES

- ▶ Producing cause
  - Archibald v. Act III Arabians, 755 S.W.2d 84 (Tex. 1988)
- ▶ Economic damages 17.50(b)
- ▶ If “Knowingly” damages for mental anguish
  - Latham v. Castillo, 972 S.W.2d 66 (Tex. 1998)



# Additional Damages

- ▶ Chapter 41, Civil Practice and Remedies Code does not apply
- ▶ If knowingly, up to three times economic damages 17.50(b)
- ▶ If “Intentionally,” up to three times economic damages and damages for mental anguish
  - Tony Gullo Motors v. Chapa, 212 S.W.3d 299



# CONSUMER'S ATTORNEYS' FEES

## 17.50(d)

- ▶ 17.50(d) Each consumer who prevails shall be awarded court costs and reasonable and necessary attorneys' fees
  - Arthur Anderson v. Perry, 945 S.W.2d 812



# DEFENDANTS' ATTORNEYS' FEES

## 17.50(c)

- ▶ If the suit was groundless in fact or law or brought in bad faith, or brought for the purpose of harassment, the court shall award...reasonable and necessary attorneys' fees and court costs.
- ▶ Defendant may recover attorneys' fees if suit was,
  - Groundless in law or fact, or
  - Brought in bad faith, or
  - Brought for the purpose of harassment.





# TIE-IN STATUTE

- ▶ 17.50(h) allows recovery of “actual damages,” plus up to three times actual damages if the action was committed “knowingly,” when the claim is brought through a “tie-in” statute

