CHAPTER 27 The Texas Legal System and the Courts

Learning Objectives

After reading this chapter you should be able to

* Define the key terms at the end of the chapter.
* Explain the Court Structure of Texas and describe the powers and duties of each judge.
* Differentiate between original jurisdiction and appellate jurisdiction.
* Differentiate between a misdemeanor and a felony.
* Describer the difference in crime and punishment between capital murder and a first-degree felony.
* Differentiate between criminal law and civil law.
* Explain what a plea bargain is.
* Differentiate between a grand jury and a trial, or petit, jury.
* Explain the three factors which appear to facilitate the Death Penalty in Texas.

# WHERE HAVE THE JURY TRIALS GONE?

Fear of crippling judgments, huge court costs and lost time, have reduced the number of jury trials by 45% over the last two decades in Texas. Many litigants are opting for arbitration as a viable alternative. If that doesn’t work, then a bench trial is the next best option for many. This could be a tragedy, because a “jury trial is to prevent oppression by the government.” Everyone deserves their day in court, and it would a shame to lose that just for the sake of saving a few extra dollars.

Chapter Overview

The Texas legal system is not like the federal legal system. We have two high courts and we elect our judges through partisan elections. More than 3000 judges and courts deal with all our civil and criminal problems. Yet this confusing and complicated system plays a significant role in the life of every Texan.

## Texas Court Structure and Organization

According to the Texas Constitution, judicial cases can start at three different levels of the Texas judicial system. Most minor misdemeanors are handled through Justice of the Peace and Municipal courts. County courts handle more serious misdemeanor cases and the District Courts handle all felonies. The two highest courts in Texas are both the Texas Supreme Court, which handles all civil and juvenile appeals, and the Texas Court of Criminal Appeals, which handles all criminal appeals. Each court has its own qualifications and regulations.

Each Texas court has its own distinctive flavor. For example, Justices of the Peace do not need a law degree to run their court. Municipal judges are hired by cities. Some County Court judges do not have any legal duties and just oversee the Commissioners Court. The upper-level Appellate Courts review the lower courts’ trials to make sure the proper procedures were followed and to consider any new arguments on either side. Although complex, the Texas system gets the job done.

## The Legal Process in Texas

The American legal system has its roots in English Common Law, which is based on the rule of precedent, or stare decisis. The final decision of every case is based on what happened in similar cases before, but to reach that decision, we developed the adversarial system. Two lawyers will apply legal tactics of questioning in the court room to try and prove or disprove the charge. Although our system is not a mirror of common law, we have learned our system well, and it works for us.

We designed criminal law to forbid and punish certain conduct, and Texas takes its crime prevention very seriously. As such, Texas has more people incarcerated than any other state. Texans see incarceration as a punishment for those who break the law, and as a preventative measure for those who are thinking of breaking the law. Yet through it all, the Texas crime rate remains much higher than the national average. Most criminal cases are processed not through a trial, but through a plea bargain. Plea bargains provide lesser sentences for a guilty plea. While criminal cases are a concern of the government, civil cases are not a concern of the government.

For civil cases, the government’s job is to provide a forum for people to work out their differences. These cases cover torts, contracts and family law and usually involve money. Whether civil or criminal, we count on our judges and lawyers to be fair and play by the rules.

## Participants in the Texas Legal System

Our legal system is composed of judges, attorneys and juries. We expect, and need, them to act fairly and follow the procedures as created for the judicial system. Although they may be trying hard, we still have a ways to go.

We want our judges to be impartial, but Texans choose their judges through partisan elections. Many ask how judges with a bias can be fair? Both sides go back and forth on the issues, but the reality is that our system is much less biased than it used to be.

With almost 90,000 licensed attorneys in Texas, attorneys are crucial to the system. Each has passed a rigorous program of law studies from one of Texas’ nine accredited law schools, and all who pass the standardized bar exam meet the minimum qualifications to practice law. Each attorney also takes a pledge of professionalism.

There are two kinds of juries in the legal system, grand juries and trial, or petit, juries. A grand jury looks only at evidence and reaches a decision on if enough evidence exists to warrant a trial on a person’s guilt of innocence. Trial juries determine a person’s guilt or innocence based on the evidence and testimony presented during a trial. Juries can be of six or twelve individuals, and the resident of every county can be called at anytime to serve.

## The Politics of Judicial Selection

The controversy over judicial selection will remain strong no matter which side you are on. Both sides can make very strong and valid arguments. The current trend is to make slow reforms to the current system to try and address some of the opponents concerns. Many of these reforms sound promising, such as removing judicial races from straight party ballot selection, increasing minimum required experience and/or automatic dismissal of a judge, if a case involves a campaign contributor.

One major reform underway is for the death penalty. There are three main factors keeping the death penalty in place. First, Texas judges are elected, so they need to hand down tough penalties, or they will not get re-elected. Second, Texas relies on court-appointed attorneys to defend many accused of capital murder, and most have little or no experience in these cases, which puts them at a disadvantage. And finally, before the 1990’s the juries were not required to consider other factors, like youth, mental status, etc… Put these all together and you get lots of people being sent to death row. Although Texas no has life without parole as an option in capital murder cases, proponents of the death penalty are in the driver’s seat, and the opponents of the death penalty have a long way to go before they can even think of stopping it.

Key Terms

jurisdiction

misdemeanors

felony

magistrate

criminal law

precedent

common, or judge-made, law

adversarial system

civil law

plea bargain

**affirmative action**

**grand jury**

**trial jury (petit jury)**

**judicial independence**

**recusal**

# Research and Resources

Access to general information and links to numerous Texas Courts can be found at the Texas Court Online website: <[www.courts.state.tx.us/](http://www.courts.state.tx.us/)>.

Texas Supreme Court: <[www.supreme.courts.state.tx.us/](http://www.supreme.courts.state.tx.us/)>.

Texas Court of Criminal Appeals: <[www.cca.courts.state.tx.us/](http://www.cca.courts.state.tx.us/)>.

# Using Your Knowledge

1. Does your town have a Municipal Court or Justice of the Peace? Go to the Texas Court Online website and check to see if there is a Municipal Court or Justice of the Peace in your town. Look at their biography, in your opinion, are they qualified? How does a Justice of the Peace compare to a Municipal Court judge?

2. Now look for all the District Judges in your County. Do you know any of them? Do you know anything about them? Most people don’t, and yet we vote them into office. Look at their biographies, check the local newspapers, talk to people about them. Inform yourself about these judges before the next election.

3. Why not do the same thing for the Texas Supreme Court and Texas Court of Criminal Appeals Justices? These justices run our legal system, and their opinions matter, a lot. Make sure the right people are sitting in those chairs, so educate yourself about them.

# Getting Involved

Did you skip out on jury duty? Not only will that get you in trouble, but you missed one of your civic duties. Our government, and the legal system, do not run themselves. It takes participation by citizens to work. The next time you get a jury summons, serve with pride.

Sample Exam Questions

Multiple-Choice Questions

1. Which of the following are reasons why many litigants do not want a jury trial?

a. Jury trials can cost too much.

b. Jury trials are less powerful, than a bench trial.

c. Jury trials don’t take enough time.

d. Jury trials are too confusing.

e. All of these

2. What does our legal system provide for our society?

a. a means of conflict resolution

b. organization and rules for society

c. provide security and predictability

d. enforcing conformity to society’s values

e. all of these

3. What term do we use to describe the less serious criminal offenses, usually punishable by a fine and/or incarceration of one year or less?

a. jurisprudence

b. plea bargain

c. felony

d. jurisdiction

e. misdemeanor

4. Which of the following is the only judge in Texas that needs no law degree?

a. Justice of the Peace

b. Municipal Judge

c. District Court Judge

d. Appellate Court Judge

e. Supreme Court Judge

5. Which of the following is the only judge in Texas that is hired as an employee?

a. Justice of the Peace

b. Municipal Judge

c. District Court Judge

d. Appellate Court Judge

e. Supreme Court Judge

6. Which of the following is the first judge to handle felony cases?

a. Justice of the Peace

b. Municipal Judge

c. District Court Judge

d. Appellate Court Judge

e. Supreme Court Judge

7. Which of the following has the final say in all juvenile cases within the state of Texas?

a. County Courts

b. District Courts

c. Texas Supreme Court

d. Texas Court of Criminal Appeals

e. None of these

8. What is the current incarceration punishment for a third degree felony?

a. 2 to 10 years

b. 2 to 20 years

c. 3 to 30 years

d. 5 to 50 years

e. 5 to 99 years

9. What is the maximum amount of jail time for a class B misdemeanor?

a. 90 days

b. 180 days

c. 1 year

d. 3 years

e. 5 years

10. What is the most important function of the County Judge?

a. Presiding over the commissioner’s court.

b. Presiding over the processing speeding tickets.

c. Presiding over misdemeanor cases.

d. Presiding over felony cases.

e. Presiding over the processing of plea bargains.

11. Which of the following has no original jurisdiction and only has written records to work from?

a. TX County Courts

b. TX Court of Appeals

c. TX Municipal Courts

d. TX Supreme Court

e. TX Justice of the Peace Courts

12. Which of the following is the claim that a prisoner is unlawfully detained?

a. nolo contendre

b. habeas corpus

c. stare decisis

d. en banc

e. voir dire

13. What term describes the common law practice of deciding cases through clash of opposing sides, moderated by a neutral judge?

a. nolo contendre

b. stare decisis

c. adversarial system

d. plea bargaining

e. jurisprudence

14. In its simplest form, what can we say that criminal law does?

a. deters all crime

b. equal punishment for all

c. preemptive deterrence

d. restricts ability to make wrong choices

e. forbids and punishes particular conduct

15. What state has the highest rate of incarceration?

a. Alabama

b. California

c. Delaware

d. Louisiana

e. Texas

16. What method is used to settle most criminal cases?

a. jury trial

b. plea bargain

c. nolo contendre

d. judge trial

e. grand jury

17. How many law schools does the state of Texas currently have accredited?

a. 9

b. 11

c. 12

d. 13

e. 15

18. Which ruling ended affirmative action in Texas in 1995?

a. *Hazelwood v Texas*

b. *Hopwood v Texas*

c. *Gratz v Bollinger*

d. *Smith v Texas*

e. *Brown v Board of Education*

19. Which entity indicts someone for felony charges, but does not prove guilt or innocence?

a. jury trial

b. plea bargain

c. nolo contendre

d. judge trial

e. grand jury

20. What entity may remove a judge from office, suspend them, censure them or discipline them?

a. the State Commission on Judicial Conduct

b. the Texas Attorney General

c. the Secretary of State

d. the Texas Supreme Court

e. the Texas Legislature

21. Unlike Texas’ partisan elections to choose judges, what system do most states use?

a. Gubernatorial Appointment

b. Merit Selection

c. Legislative Appointment

d. Non-Partisan Election

e. Combination of all

22. The Texas Constitution requires all Supreme and Appellate Court Justices to be how old?

a. 25 years old

b. 30 years old

c. 35 years old

d. 40 years old

e. 45 years old

23. What is the prevailing sentiment behind the selection of judges by our Texas Governor and voters?

a. compassion and equality

b. conservative and pro-business

c. studious and scholarly

d. “good old boy/girl” from a Texas Law School

e. flamboyant and famous

24. Why must most judges take a tough stance on crime, and along with prosecutors, push the death penalty?

a. because they are naturally mean spirited

b. because they have compassion for the victims

c. because “eye for an eye” equality makes sense

d. because they vie for the attention

e. because they are elected in partisan elections

25. On average, how long do convicts wait on death row before the death penalty is carried out?

a. 2 ½ years

b. 3 ½ years

c. 5 ½ years

d. 7 ½ years

e. 9 ½ years

Essay Questions

1. Does it work to have two high courts in Texas instead of just one? Describe the pros and cons of the Texas court system.

2. What are the differences between Justices of the Peace and Municipal Judges?

3. Explain the differences between grand jury and a petit jury.

4. Describe the problems with selecting judges in Texas and explain what Texas reforms are being considered.

5. Explain the pros and cons of the death penalty as it relates to Texas.

Answers to Multiple-Choice Questions

1. a

2. e

3. e

4. a

5. b

6. c

7. c

8. a

9. b

10. a

11. b

12. b

13. c

14. e

15. d

16. b

17. a

18. b

19. e

20. a

21. b

22. c

23. b

24. e

25. d