



Texas Justice and Corrections Part I

You know, the courts may not be working any more, but as long as everyone is videotaping everyone else, justice will be done.

Marge Simpson, *The Simpsons*

The Texas Judicial Branch



In the US, law and order are chiefly the states' job. The total number of cases handled by national district courts (less than 370,000 new cases) is significantly less than the number of cases handled by Texas state district courts alone (more than 1,457,000 new cases).*

It is likely that you will one day be in a Texas court - for a traffic ticket dismissal, for a child custody hearing or a divorce proceeding or a contested will, as a witness in a civil trial or to sit on a jury in a capital murder trial.

If you watch local television news, you will often be exposed to the state court trials of murderers, robbers and frauds covered by local reporters. News media coverage of criminal and civil trials greatly exceeds the coverage of the governor's and state legislators' activities.

* 2016 figures

The Texas Judicial Branch



- The judicial branch interprets the law and adjudicates disputes under the law between individuals and the community (criminal law) and between private individuals or groups (civil law).
- The justice system in Texas is vast and complex, one of the most complex in the US.
- Texas has a political culture that demands strong punishment for criminal offenders and the state spends billions on the judiciary and corrections.



The Texas Judicial Branch



- The highest offices on both the local and state levels of our justice system are occupied by elected officials who often succumb to their worst political instincts when upholding the law, while striving to maintain a public image of being unstintingly tough on crime.
- Three characteristics of the judicial system in Texas distinguish it from the national norm.
 - It has two appellate courts of last resort.
 - Its trial courts do not have uniform jurisdiction of subject matter.
 - Its judges are chosen in partisan elections.

Roots of the Texas Judiciary: Frontier Justice



- In the 19th century, Texas had a reputation for arbitrary frontier justice.
 - example: appellate courts upheld a conviction of "guily" (where the *t* was omitted) in 1879 but reversed a conviction of "guity" (where the *l* was omitted) in 1886 ... the latter decision attempted to distinguish itself from the earlier one by trying to explain why the letter *l* was more important than the letter *t*
- The poor quality of early Texas justice has been attributed in part to the state's shortage of proper law schools and law libraries.
 - traditional preference of Texans for **self-help justice** as practiced in the courts of Judge Winchester (Winchester rifle) and Judge Lynch (lynching: practice of murder by extrajudicial action/summary execution)



Judge Roy Bean, Justice of the Peace
and "The Law West of the Pecos"

Roots of the Texas Judiciary: The 1836 Constitution

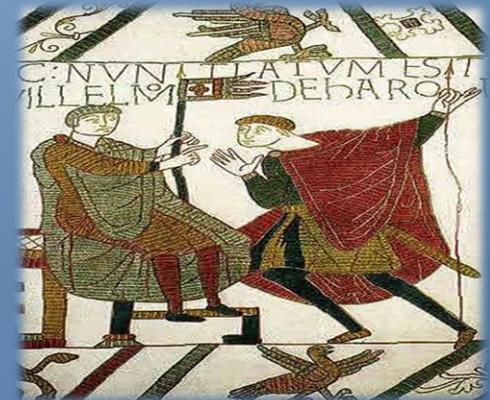


- In 1836 the Constitution of the Republic of Texas established a judicial department that was predominantly Anglo-American.
- Judicial power was vested in one Supreme Court, which had jurisdiction over appeals only, and *such inferior courts as Congress might establish*.
- Congress divided the republic into judicial districts, each having a judge who served as both trial judge and member of the Supreme Court.
- The chief justice and district judges were elected by joint ballot of both houses of Congress.
- Each county had a county court and justice of the peace courts. Judges were elected by popular vote.
- Subsequent changes in structure were made through constitutional amendments.
- As caseloads increased, more courts and judges were created.

Roots of the Texas Judiciary: English Tradition, Spanish Law



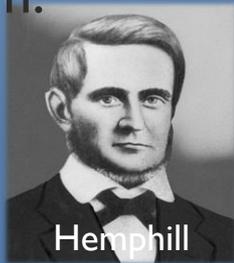
- **common law system:** developed somewhat inadvertently as the result of the English practice of sending itinerant judges around to various villages to try pending cases
- Judges usually relied on general knowledge of the law, their own reasoning abilities and their knowledge of similar prior cases that they had adjudicated. Judges would match up the facts of the case at hand with preceding cases, and make rulings accordingly.
- This process helped provide some consistency in rulings (in the absence of any other higher authority), plus adaptability to local circumstances, as well as flexibility over time.



Roots of the Texas Judiciary: English Tradition, Spanish Law



- Common law systems also use written laws and codes, but they give considerable sway to the rulings and the reasoning of preceding legal cases, also known as precedents or case law.
- John Hemphill, Chief Justice of the Texas Supreme Court from 1841 to 1858, was fluent in Spanish and often used Spanish civil law to decide cases.
 - Hemphill was an expert in Spanish law and had a large library of Spanish legal texts. Libraries were rare in Texas at that time.
 - Hemphill and his Supreme Court colleagues upheld the Republic's laws on Spanish land grants and continued the important legal protections that women had under the Spanish civil law system.



Hemphill

Roots of the Texas Judiciary: The Texas High Courts



- An 1891 constitutional amendment gave Texas two high courts instead of one: the Texas Supreme Court and the Texas Court of Criminal Appeals.
- The Texas Supreme Court hears appeals involving civil matters, and the Texas Court of Criminal Appeals hears appeals involving criminal matters. Both are co-equal.
- The Supreme Court was originally the highest court for both civil and criminal cases.
- The change was made because the Supreme Court could not keep up with its fast-growing caseload, especially in civil law.



Roots of the Texas Judiciary: The Texas High Courts



- Texas was the first state to have two high courts. Oklahoma later followed the example. Texas and Oklahoma are still the only two states in the nation to have two high courts.
- Sometimes, the dividing line between the two courts' cases is murky, especially with respect to jurisdiction in mandamus and *habeas corpus* cases.
 - **mandamus**: a judicial remedy in the form of an order from a superior court
 - ***habeas corpus***: a writ requiring a person under arrest to be brought before a judge or into court, especially to secure the person's release unless lawful grounds are shown for their detention

Roots of the Texas Judiciary: Intermediate Courts of Appeal



- The first intermediate appellate court in Texas was created by the Constitution of 1876, which created a Court of Appeals with appellate jurisdiction in all criminal and civil cases originating in the county courts.
- An 1891 constitutional amendment authorized the Legislature to establish an intermediate courts of civil appeal level in Texas, with courts located at various places throughout the state.
- The purpose of this amendment was to stop large quantities of civil litigation from further congesting the docket of the Supreme Court, while providing for a more convenient and less expensive system of intermediate appellate courts for civil cases.
- In 1980, a constitutional amendment extended intermediate appellate jurisdiction to include criminal cases as well.



Roots of the Texas Judiciary: Complicated and Confusing



- Modern Texas society has become so complex that the court system in the state has naturally developed into an extensive and sometimes unwieldy structure.
- Of course, this complexity also reflects the accumulation of more than a century of politically influenced changes to the original constitutional design of the law and the court system.
- The original constitutional design of the state's court system was complex, fragmented and decentralized. It continues that way today, only more so because of the accumulation of statutory (legislatively created) courts.



State Courts



- primary function: settle disputes
 - Most disputes are a matter of state law.
 - criminal behavior
 - family law
 - contracts, liability, land use
- State court systems are separate systems with their own rules and procedures.
- The only time state and national courts converge is when
 - a case involves a claim that a state law or practice violates a national law
 - a state court judge has interpreted the US constitution

State Court Characteristics



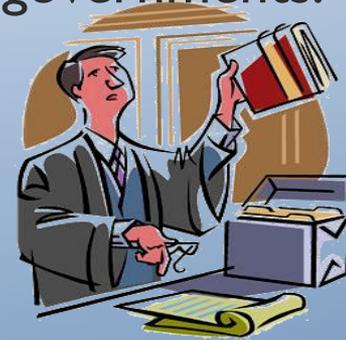
- **inclusion:** principle that state courts will apply national laws when those laws directly conflict with the laws of the state
- State courts hear most **criminal** cases, **probate** cases (involving wills and estates) and most **contract** cases, **tort** cases (personal injuries), and **family law** cases (marriages, divorces, adoptions), etc.
- Most state cases (54%) fall under the **traffic category**, which captures non-criminal traffic and local ordinance violations.
- **Specialized courts** (family disputes, traffic, probate, etc) do not use juries.
- State court **judges** are selected in a **variety of ways**, including election (as in Texas), appointment for a given number of years, appointment for life and combinations of these methods, e.g., appointment followed by election.
- Only certain cases are eligible for review by the **US Supreme Court**.



Types of Legal Disputes in Texas: Civil Disputes



- A **civil case** is a legal dispute concerning a private conflict between two or more parties - individuals, corporations or governments.
- parties
 - **plaintiff**: the party initiating the lawsuit
 - **civil defendant**: the responding party
- **burden of proof**: the legal obligation of one party in a lawsuit to prove its position to a court
 - In a civil case, the plaintiff has the burden to prove the case by a **preponderance of the evidence**.
- outcome
 - If found **liable**, the defendant is ordered to pay **monetary damages** and/or to do or not do something



Types of Civil Disputes



- **tort case:** a civil suit involving personal injury or damage to property ... Legislature has put limits on awards in Texas.
- **contract case:** a civil suit dealing with disputes over written or implied legal agreements
- **property case:** a civil suit over the ownership of real estate or personal possessions such as land, jewelry or an automobile
- **domestic-relations case:** a civil suit based on the law involving the relationship between husband and wife, parents and children, etc



Types of Legal Disputes in Texas: Criminal Cases



- A criminal case is a legal dispute dealing with an alleged violation of a penal law/criminal code.
- parties
 - criminal defendant: party charged with the criminal offense
 - prosecutor: attorney who tries criminal case on behalf of the state
- burden of proof
 - In a criminal case, the prosecutor has the burden of proof to show the defendant's guilt beyond a reasonable doubt.
- outcome
 - If the defendant is found guilty, a judge may allow probation or community supervision, rather than a jail or prison sentence and/or a fine, especially if it is the defendant's first conviction.

Classification of Criminal Offenses



- The **penal code** (body of law that relates to crime) classifies criminal cases according to their severity.
- A **misdemeanor** offense constitutes a relatively minor criminal offense ... categories of misdemeanor offenses and some examples:
 - **Class A:** evading arrest on foot, interference with 911 call, obscenity, perjury, promoting gambling
 - **Class B:** criminal trespass, false report to police officer, harassment, prostitution, riot
 - **Class C:** disorderly conduct, gambling, issuance of bad check, leaving child in a vehicle, use of laser pointers
- Severity lies in descending order with regard to jail term and fine, with Class A being the most serious.



Classification of Criminal Offenses



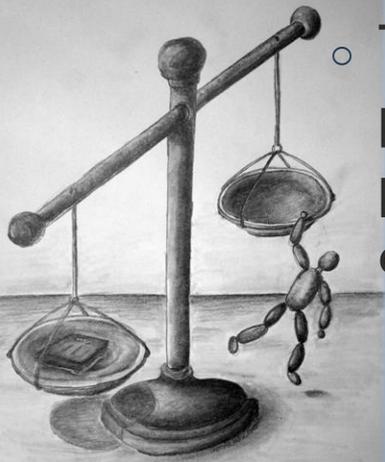
- A **felony** offense constitutes a serious criminal offense.
- Texas law divides felony offenses into the five categories listed below with some examples.
 - **capital felony** (death penalty): murder under certain [specific conditions](#)
 - **first-degree felony**: aggravated assault of public servant, arson of habitation, murder, trafficking of persons under the age of 14
 - **second-degree felony**: aggravated assault, arson, bigamy, bribery
 - **third-degree felony**: deadly conduct with a firearm, indecent exposure to a child, stalking, tampering with evidence
 - **fourth-degree (state jail) felony**: credit card abuse, cruelty to animals, evading arrest in a vehicle, unauthorized use of a vehicle
- Severity lies in descending order with regard to jail term and fine, with capital/first-degree felonies being the most serious.

Court Procedures in Texas



- In their details, rules of appropriate procedure in cases are long and complex. The rules are encapsulated in the US and Texas constitutions, elaborated in statutes and perpetually altered, updated, corrected and adapted in decisions of the courts.
- If government is to be both limited and just, its capacities to deal with the members of society alleged to have violated the law must be clearly defined and adequately counterbalanced by the rights of the accused.

- The decentralization of procedures and trials in Texas has produced uneven justice across the state. Because court procedures are carried out by local officials, the characteristics across the state vary greatly.



Court Procedures in Texas



- The judicial proceeding is generally an **adversarial proceeding**: a legal procedure in which each side presents evidence and arguments to bolster its position while rebutting evidence submitted by the other side.
- In practice most legal disputes are settled not by trials but through a process of negotiation and compromise between the parties.
- In civil cases the litigants may decide to resolve the dispute by **settling out of court** rather than going through the trial process.
- In criminal cases the defendant and the prosecutor may resolve the case through **plea bargaining**: prosecutor meets with accused or defense attorney and offers a lesser charge or lighter sentence in exchange for a plea of guilty.



Court Procedures in Texas

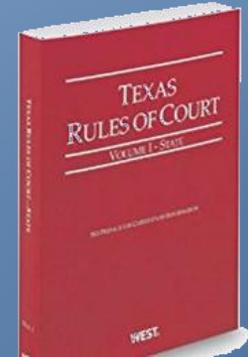


- Prosecutors must maintain high criminal conviction rates in order to keep their positions. One way high conviction rates are maintained is through plea bargaining.
- expedites long and expensive process of criminal prosecution ... important with very large caseloads
- effectively denies a fair hearing of criminal cases
- innocent defendants who can't afford good attorney's fees may accept out of fear
- emboldens prosecutors to pursue cases they would otherwise discard if they had to present evidence at trial

Court Procedures in Texas: Pre-Trial



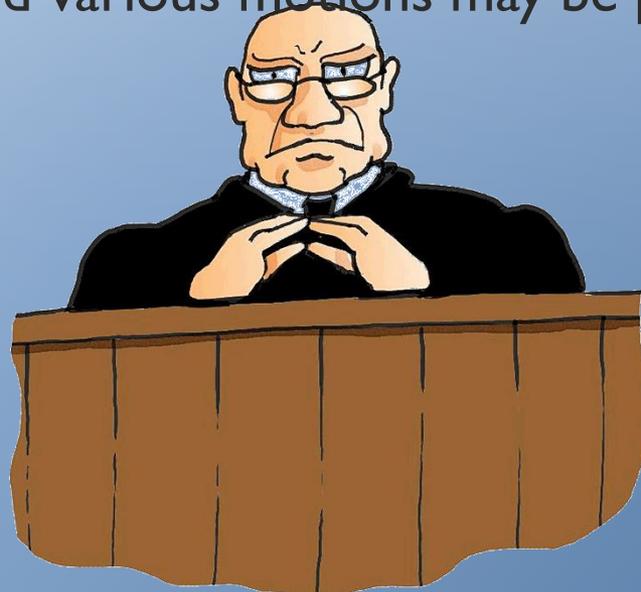
- The district attorney has prosecutorial discretion: the power to charge or not charge a person with a crime. The prosecuting attorneys are probably the most important actors in the Texas system.
- In a criminal case, there are several procedural steps that occur after a person is arrested and prior to a determination of guilt or innocence. The process may take months or even years.
- When a person is arrested for a felony or misdemeanor and jailed, he/she is arraigned before a judge. At the arraignment, the charges are explained to the accused, and he/she is reminded of the due process rights. Generally bail is set at this point.
- [Texas Court Rules](#)



Court Procedures in Texas: Pre-Trial



- After arraignment, a felony case is presented to a grand jury, which hears the case to determine if there is sufficient evidence to indict (hold the accused for trial). If the grand jury agrees that the accusation merits a trial, it issues an indictment listing the charges.
- After indictment for a felony, there are usually a number of pretrial hearings in which the accused formally pleads guilty or not guilty, the trial is scheduled, and various motions may be presented.



Court Procedures in Texas: Trials



- Judicial proceedings are basically divided into trials and appeals.
- **trial:** formal examination of a civil or criminal action in accordance with the law before a judge who has jurisdiction to hear the dispute
- **jurisdiction:** official power to make legal decisions and judgments
 - **original:** the authority of a court to provide the first hearing of a specific case
 - **concurrent:** when two different types of courts have original jurisdiction in the same type of case
 - **appellate:** the authority to hear appeals of cases that were originally tried in other (lower level) courts

Court Procedures in Texas: Trials



- involve attorneys, witnesses, testimony, evidence, judges and juries
- In general, the trial court is concerned with questions of fact and the law as it applies to those facts.
- In a civil case a jury verdict determines which party prevails in a lawsuit ... in a criminal case whether a defendant is guilty or not guilty as charged.
- **trial jury:** a body of people (usually 12) sworn to give a verdict in a legal case on the basis of evidence submitted to them in court ... decides a defendant's guilt/innocence or liability based on the facts



Court Procedures in Texas: Trials



- If the defendant is **acquitted**, he/she is set free.
- If a criminal defendant is found **guilty**, he/she will receive a jail or prison sentence or probation and/or a fine.
- A civil defendant found **liable** is usually assessed damages.
- A defendant may choose to **appeal** a **determination** of guilt/liability, meaning that he/she asks a higher court to reconsider the lower court's decision.

Court Procedures in Texas: Appeals



- **appeal:** taking a lost case from a lower court to a higher court in an effort to right a perceived wrong
- involve attorneys, briefs, written court records and oral arguments
- As grounds for appeal, the losing party may allege that the lower court failed to follow proper procedure, incorrectly applied the law, etc.
- The appellate court is concerned with issues of law and procedure.
- No new facts or evidence may be introduced. Appellate courts examine only the record of the original trial. That means that the court that originally heard the case must be a court of record.
- The ruling of the appellate court may uphold, reverse or modify the lower court decision.



Court Procedures in Texas: Criminal Procedure



- the purposes of criminal procedure
 - assure society of swift and fair justice for wrong-doers
 - prevent crime and preclude escape
 - mete out the legal consequences of crime
 - **safe-guard** rights of those accused of crime
 - fairly marshal all available evidence
 - insure a speedy, fair and impartial trial
 - Traditionalist culture is less likely to willingly safe-guard these freedoms.



Court Procedures in Texas: Defendant Rights



- due process of law
- speedy public trial
- *habeas corpus*: the need to show evidence linking a suspect to the crime
- no self-incrimination
- right to evidence against you
- right to confront and compel witnesses
- right to testify
- grand jury indictment required in felony cases
- representation by counsel
- no unreasonable searches and seizures
- bail except in capital cases
- no excess bail or cruel and unusual punishment
- no double jeopardy
- option of a jury trial
- freedom of speech and of press
- no religious tests of evidence
- no citizen may be declared an outlaw
- no one may be removed from the state for a crime committed in it
- no corruption of blood or estate forfeiture
- two witnesses in cases of treason

State Court Structure



Most state courts have the basic organization shown in the figure below.

	Jury or Bench Trials	Jurisdiction	Judges
STATE SUPREME COURT	Bench only	Appeal (limited)	Panel of judges, elected/appointed for fixed term
APPEALS COURTS	Bench only	Appeal (readily granted)	Panel of judges, elected/appointed for fixed term
CIRCUIT OR COUNTY COURTS	Jury and Bench	Original and appeal	One judge per court, elected/appointed for fixed term
MUNICIPAL AND SPECIAL COURTS	Bench only	Original	One judge per court, elected/appointed for fixed term

The Texas Court Structure

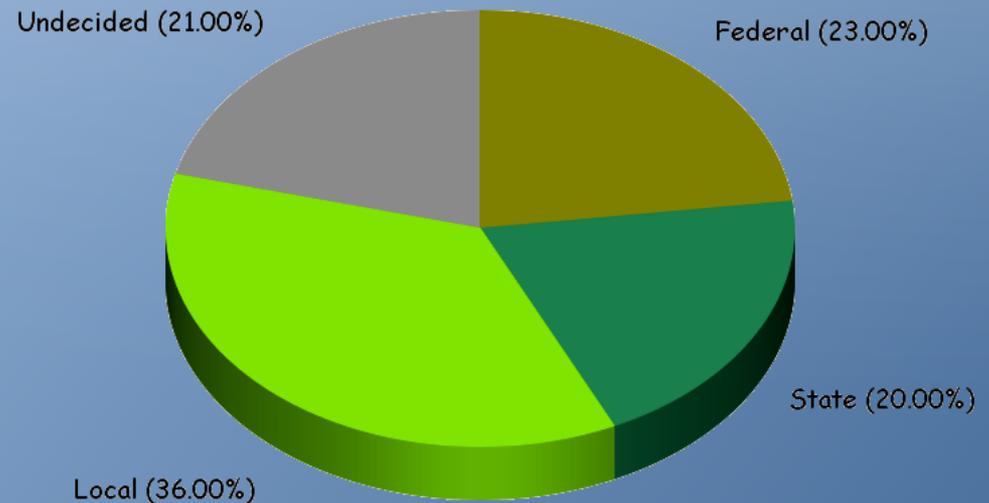


- The Texas court system has three levels.
 - local/county courts (closest to citizens)
 - district courts
 - appellate courts

WHICH LEVEL OF THE JUSTICE SYSTEM DO YOU TRUST THE MOST?

■ Federal ■ State ■ Local ■ Undecided

[Texas Judicial Directory](#)





continued in
Texas Justice and Corrections Part II