

## 4 In the Courtroom

### Section Preview

#### OBJECTIVES

1. **Identify** and define the kinds of law applied in Texas State courts.
2. **Compare** and contrast civil law and criminal law.
3. **Describe** the jury system in Texas.

#### WHY IT MATTERS

Five forms of law make up the code of conduct by which Texas and the rest of the nation are governed. One of the most important of these is common law, which developed through precedent. Law can also be classified as either criminal or civil. Grand juries are sometimes used to indict in criminal cases; a simpler process known as the information is also used. Petit juries decide cases in trials.

#### POLITICAL DICTIONARY

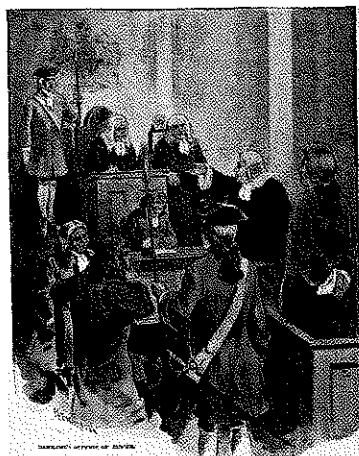
- ★ **common law**
- ★ **precedent**
- ★ **criminal law**
- ★ **felony**
- ★ **misdemeanor**
- ★ **civil law**
- ★ **jury**
- ★ **information**

The principal function of the Texas State courts, as for all the State courts, is to decide disputes between private persons and between private persons and government. In addition, because nearly all of these courts can exercise the power of judicial review, they act as potent checks on the conduct of all of the other agencies of both State and local government.

### Kinds of Law Applied in Texas State Courts

The role of all courts in the United States is to resolve conflicts and interpret the law.<sup>10</sup> The law is the code of conduct by which society is governed. It is made up of several different forms, including constitutional law, statutory law, administrative law, common law, and equity.

1. **Constitutional Law.** The highest form of law in this country is based on the provisions of the United States Constitution and the



◀ Colonial courts, like this one, followed British legal tradition.

fifty State constitutions and on judicial interpretations of these documents.

2. **Statutory Law.** This form of law consists of the statutes (laws) enacted by legislative bodies, including the United States Congress, the Texas legislature, the people (through the initiative or referendum), and city councils and other local legislative bodies.

3. **Administrative Law.** This form of law is composed of the rules, orders, and regulations that are issued by federal, State, or local executive officers, acting under proper constitutional or statutory authority.

4. **Common Law.** The common law makes up a large part of the law of each State except Louisiana.<sup>11</sup> **Common law** is unwritten, judge-made law that has developed over centuries from those generally accepted ideas of right and wrong that have gained judicial recognition. It covers nearly all aspects of human conduct. State courts apply common law except when it is in conflict with written law.

<sup>10</sup> In its overall sense, the term *law* may be defined as the whole body of "rules and principles of conduct which the governing power in a community recognizes as those which it will enforce or sanction, and according to which it will regulate, limit, or protect the conduct of its members"; *Bouvier's Law Dictionary*, 3rd revision, Vol. II.

<sup>11</sup> Because of an early French influence, Louisiana's legal system is largely based on French legal concepts, derived from Roman law. Nevertheless, the common law has worked its way into Louisiana law.

The common law originated in England. It grew out of the decisions made by the king's judges on the basis of local customs. It developed as judges, coming upon situations similar to those found in earlier cases, applied and reapplied the rulings from those earlier cases. Thus, little by little, the law of these cases became common throughout England and, in time, throughout the English-speaking world. That is, the common law developed as judges followed earlier decisions and applied the rule of *stare decisis*, "let the decision stand."

American courts generally follow that same rule. A decision, once made, becomes a **precedent**, or a guide to be followed in all later, similar cases, unless compelling reasons call for its abandonment and the setting of a new precedent.

The common law is not a rigidly fixed body of rules controlled in every case by a clear line of precedents that can be easily found and applied. Judges are regularly called on to interpret and reinterpret the existing rules in the light of changing times and circumstances.

In other words, most legal disputes in American courts are fought out largely over the application of precedents. The opposing lawyers try to persuade the court that the precedents support their side of the case or that the general line of precedents should not, for some reason, be followed.

The importance of the common law in the American legal system cannot be overstated. Statutory law does override common law, but many statutes are based on the common law. Those statutes are, in effect, common law translated into written law.

5. **Equity.** This branch of the law supplements common law. It developed in England to provide equity—"fairness, justice, and right"—when remedies under the common law fell short of that goal.

Over the years, English common law became somewhat rigid. Remedies were available only through various writs, or orders, issued by the courts. If no writ was issued to the relief sought in a case, the courts could not act.

Those who were thus barred from the courts—for whom there was no adequate remedy at common law—appealed to the king for justice. These appeals were usually referred to the chancellor, a member of the king's council. By the



▲ Some people feel that trial juries should be abolished. **Critical Thinking** Do you agree, or do you feel that juries are an important part of our legal system? After reading this section, explain your answer.

middle of the fourteenth century, a special court of chancery, or equity, was set up. Over time, a system of rules developed in the chancery court, and equity assumed a permanent place in the English legal system.

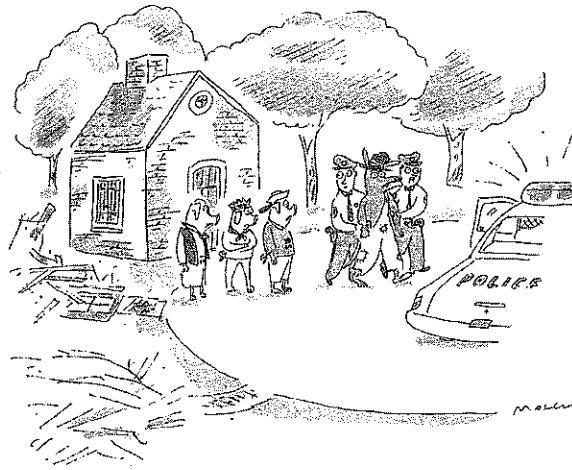
Today, the most important difference between common law and equity is this: The common law is mostly remedial, while equity is preventative. Thus, the common law applies to or provides a remedy for matters after they have happened; equity seeks to stop wrongs before they occur.

To illustrate this point, suppose your neighbors plan to add a room to their house. You think that a part of the planned addition will be on your land and will destroy your rose garden. You can prevent the construction by getting an injunction, which is a court order prohibiting a specified action by the party named in the order.

A court is likely to grant the injunction for two reasons: (1) the threat to your property is immediate, and (2) the law can offer no fully satisfactory remedy once your garden has been destroyed. It is true that money damages might be assessed under common law, but no amount of money can give back the pride or the pleasure your roses now give you.

The early colonists brought both equity and the common law to America. At first, different courts administered the two forms of law. In time, though, most States provided for the administration of both forms by the same courts, and the procedural differences between the two are disappearing.

Interpreting  
Political Cartoons  
According to this  
cartoon, what  
kinds of decisions  
do juries make? Is  
that an accurate  
interpretation of  
the jury system?



"He's big, all right, and he's definitely a wolf, but it'll be up to a jury to decide whether or not he's bad."

## Criminal and Civil Law

You have probably heard reference to criminal law and civil law. The law is generally split into these two categories.

The area of the law that defines public wrongs—offenses against the public order—and provides for their punishment is the **criminal law**. A criminal case is brought by the State against a person accused of committing a crime. The State, as the prosecution, is always a party in a criminal case.

Crimes are of two kinds: A **felony** is the greater crime and may be punished by a heavy fine or imprisonment or even death. A **misdemeanor** is the lesser offense, punishable by a small fine and/or a short jail term.

The **civil law** relates to human conduct, to disputes between private parties, and to disputes between private parties and government that are not covered by criminal law. Civil cases are usually referred to as suits, or lawsuits, and often lead to the award of money or a fine. Civil law can involve a wide range of issues, including divorce and custody disputes, torts (private wrongs against a person or property), and contracts.

## The Jury System

A **jury** is a body of persons selected according to law who hear evidence and decide questions of fact in a court case. There are two basic types of juries in the American legal system: (1) the grand jury and (2) the petit jury.

The major function of the grand jury is to

determine whether the evidence against a person charged with a crime is sufficient to justify a trial. The grand jury is used almost exclusively in criminal proceedings. The petit jury is the trial jury, and it is used regularly in both civil and criminal cases.

## The Grand Jury

Grand juries vary greatly in size from State to State. In Texas, the grand jury consists of 12 people. At least nine of those jurors must agree that an accused person is probably guilty before a formal accusation is made.

The Texas constitution states that no person may be tried for a major (felony) crime without being indicted by a grand jury. Grand juries may inquire into a minor (misdemeanor) crime; however, the county attorney or the district attorney usually files misdemeanor indictments.

When a grand jury is impaneled, or selected, the judge instructs the jurors to find a true bill of indictment against any and all persons whom the prosecuting attorney brings to their attention and identifies as probably guilty. The judge also instructs them to bring a presentment, or accusation, against any persons who they, of their own knowledge, believe have violated the State's criminal laws.

The grand jury generally meets in secret. To preside over its sessions, the jurors select one of their number to be foreperson. The prosecuting attorney (who in Texas may be a private party serving as a *pro tempore* prosecutor) or citizen with a complaint presents witnesses and evidence against the accused. The jurors may question those witnesses and may summon others to testify against a suspect.

After receiving the evidence and hearing witnesses, the grand jury deliberates alone and in secret. The jurors then move to the courtroom, where their report, including any indictments they may have returned, is read in their presence.

The grand jury has several disadvantages: It is expensive, cumbersome, and time-consuming. Therefore, most States, including Texas, depend more heavily on a much simpler process of accusation: the information.

## The Information

An **information** is a formal charge filed by the prosecutor, without the action of a grand jury. It is now used in Texas for most minor offenses.

The information has much to recommend it. It is far less costly and time-consuming than a grand jury. Also, since grand juries most often follow the prosecutor's recommendations, many argue that a grand jury is really unnecessary.

The chief objection to abandoning the grand jury appears to be the fear that some prosecutors may abuse their powers and be overzealous at the expense of both defendants and justice.

## The Petit Jury

Anyone who is indicted on a criminal charge is entitled to trial by a jury. The defendant in a civil case is also entitled to a jury. If a defendant in either type of case chooses to waive a jury trial, the decision will be left in the hands of the judge. In either criminal or civil cases, a jury trial is heard by a petit jury, which reviews the evidence and decides the disputed facts.

The number of trial jurors may vary. As it developed in England, the jury consisted of "twelve men good and true." In Texas at the county level, the petit jury consists of six persons; in the State district court, it numbers twelve.

In a criminal case in Texas, the jury's verdict must be unanimous in order to convict. Otherwise, it must report a verdict of guilty or guilt not proved (beyond a reasonable doubt). In a civil case in county court, five of the six jurors must agree on a verdict. Civil cases heard at the district level require ten of the twelve jurors to reach a decision. If the jurors cannot agree on a verdict (a so-called hung jury), usually a new jury is impaneled and the case tried again.

## Selection of Jurors

Petit jurors in Texas are chosen mainly from lists of registered voters and licensed drivers. All jurors in Texas must meet the same qualifications. They must be at least 18 years old, they must be qualified to vote in the county in which they are to serve as a juror, they must be able to read and write English, and they must not have been convicted of or be under indictment for a felony. Legal exemptions are minimal: anyone over age 70, anyone with legal custody of a child under 10 (usually the mother), and students. However, the judge routinely dismisses others, and the attorneys involved frequently eliminate still more potential jurors.

As with the grand jury, the States are moving away from the use of the trial jury. Leading reasons are the greater time and cost of jury trials. The competence of the average jury and the impulses that may lead it to a verdict are often questioned, as well. Much criticism of the jury system is directed not so much at the system itself as at its operation.

Several things should be said in favor of the jury system, however. It has a long and honorable place in the development of Anglo-American law. Its high purpose is to promote a fair trial, by providing an impartial body to hear the charges. A jury tends to bring the common sense of the community to bear on the law and its application. The jury system gives citizens a chance to take part in the administration of justice, and it fosters a greater confidence in the judicial system.

## Section 4 Assessment

### Key Terms and Main Ideas

1. Define **common law**, **criminal law**, and **civil law**.
2. What is the difference between a **felony** and a **misdemeanor**?
3. Name two kinds of **juries**, and tell what they do.
4. What does it mean when a judge follows a legal **precedent**?

### Critical Thinking

5. **Checking Consistency** Most processes of government in this country must be open to public scrutiny, but a grand jury works in secret. (a) Why might this be so? (b) Do you think this secrecy is a good idea? Explain your answer.
6. **Identifying Alternatives** Describe a situation in which someone might seek an injunction. Then write a brief

argument in favor of granting the injunction and a brief argument against granting this remedy.

### Take It to the Net

7. Read about grand juries and how they operate in the American judicial system. Create an outline of the most important facts about grand juries. Then tell which fact you found most surprising and why. Use the links provided in the Social Studies area of the following Web site for help in completing this activity. [www.phschool.com](http://www.phschool.com)