

# Due Process

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# 1 Due Process

Remember that civil law deals with private rights and relationships, obligations, and responsibilities. Cases are brought by plaintiffs, usually private parties. Remedy is relief or compensation.

## Origination of Civil Law

Civil law is based on common law, which is based on decisions by judges based on precedent. Judges look at past decisions to help decide cases.

**Statutory law** is law that has been passed by legislative bodies and is written in code books.

**Types of Civil Law** The list he presents is real stupid

- Common-law marriage
- Homestead laws
- Probate
- Corporations
- Right to work laws
- Negligence
- Slander/libel

## Issues in Civil Law

### Tort Reform

- Restricting lawsuits by prison inmates
- Reducing frivolous lawsuits
- Limiting liability in civil cases involving multiple defendants (avoids people with deep pockets)
- Capping jury awards of punitive damages (this caps punitive damages awards as an incentive for doctors to come to Texas)

## Criminal Law

Criminal law deals with public morality, and concepts of right and wrong. Cases are prosecuted by public attorneys. The aim is punishment.

### 2 types of crime

#### 1. Federal

- only 5% of crimes are prosecuted under federal law
- Crime on the high seas
- Crime on federal property
- Crime involving the crossing of state or national boundaries
- Crime interfering with interstate commerce

- Crime committed against the national government
2. State Crime (2 types)
- (a) Felony (degrees) - serious crime such as murder or robbery
  - (b) Misdemeanor (letters) - lower level crimes like traffic violations
  - (c) Victimless crimes - maybe gambling, etc.

## **Participants**

### **The Criminal**

- Young
- Poor
- Racial or ethnic minority
- Gender (males more)
- May have acute emotional problems
- Little value for the law (?)
- Gang membership

### **The Victim**

- Crime has declined since 1991
- Usually in poor urban areas
- Victims have the right to be informed of the investigation and court proceedings

## **Law Enforcement**

The state legislature is in charge of defining crime, and state agencies and local law officials are responsible for enforcement.

### **State agencies**

- Department of Public Safety
  - Handles emergency management
  - Conduct driver examinations
  - Collect crime statistics
  - Operate regional crime labs if needed
  - Highway patrol in rural areas
- Texas Alcoholic Beverage Commission

### **Local Agencies**

- The Sheriff

- The major enforcer of law in the county
  - Elected for 4 year terms
  - Manages the county jail
  - Executes court orders
  - Apprehends violators of state law in the county
- Constables
  - Relatively minor county officials
  - Elected for 4 year terms
- City Police - Bear the greatest burden
- Law enforcement is expensive, many cities spend as much as 30% of their budget for law enforcement

## **Detection of Crime**

Crimes may go unreported when

- Individuals believe the police won't assist when a crime is reported
- Mistrust of authorities
- Unwillingness to report a friend or relative

## **Gathering Evidence**

- Map v Ohio prevents unreasonable searches and seizures. Warrants are not always required.
- Illegally obtained evidence is now allowed in court
- Illegally obtained confessions are unconstitutional (Miranda v Arizona)

## **Formal Charges**

In a felony

- Case is bound over for a grand jury
- If 9/12 vote yes, the grand jury will issue an indictment

## **Arrest**

- Arrest itself is a form of punishment
- Judges issue arrest warrants
- Police officers may arrest without a warrant if:
  - There is probable cause
  - When circumstances do not permit their obtaining one

### **Pre-trial activities**

- The accused is presented before a judge
- Charges and basic rights are explained
- Suspect is reminded of their rights
- Suspect is informed of the right to an examining trial
- Bail may be set

### **Pre-trial Hearings**

- Defendant enters a plea
- If the plea is guilty, a later hearing is scheduled to set punishment
- If the defendant pleads not guilty, the case is placed on the docket for trial
- Motions may be presented for
  - Continuance
  - Suppression of evidence
  - Possible insanity
  - Change of venue

**Plea Bargaining** Most cases end in a plea bargain. It's a secret bargaining session with the prosecutor. This saves tax money and court time

### **The Trial**

- Either the judge or jury determines verdict
- Texas law requires all jurors to agree on the verdict in a criminal case
- Prosecutor must prove guilt beyond a reasonable doubt
- a "hung jury" exists when jurors cannot agree.
- Judge or jury decides sentence

### **Post trial proceedings**

- A person who has been acquitted can not be tried again for the same offense (double jeopardy)
- State cannot appeal a not guilty verdict

### **Special case of juvenile courts**

- Juvenile proceedings are civil
- Records may be sealed from the public with the approval of the juvenile judge
- Some juveniles can be certified to stand trial as an adult

**Texas Department of Criminal Justice** Supervises the state's adult correctional functions

- Probation - pre-incarceration
- Prison
- Parole - after incarceration, prisoner gets let out early with restrictions

**Clemency** Board of pardons and paroles makes recommendation to the governor

- Pardon
- Commutation
- Reprieve

## **Jails or Prisons**

4 purposes

1. Punishment
2. Deterrence
3. Isolation of criminal elements
4. Rehabilitation