

CHAPTER 3: PUNISHMENT AND SENTENCING

THE PURPOSES OF TEXAS CRIMINAL LAW

As discussed in your text under “The Purpose of Criminal Law” the criminal law can have multiple functions. The Texas Legislature attempted to lay out these purposes in Texas Penal Code (TPC) sec. 1.02, “Objectives of Code:”

- (1) to insure the public safety through:
 - (A) the deterrent influence of the penalties hereinafter provided;
 - (B) the rehabilitation of those convicted of violations of this code; and
 - (C) such punishment as may be necessary to prevent likely recurrence of criminal behavior;
- (2) by definition and grading of offenses to give fair warning of what is prohibited and of the consequences of violation;
- (3) to prescribe penalties that are proportionate to the seriousness of offenses and that permit recognition of differences in rehabilitation possibilities among individual offenders;
- (4) to safeguard conduct that is without guilt from condemnation as criminal;
- (5) to guide and limit the exercise of official discretion in law enforcement to prevent arbitrary or oppressive treatment of persons suspected, accused, or convicted of offenses; and
- (6) to define the scope of state interest in law enforcement against specific offenses and to systematize the exercise of state criminal jurisdiction.

Note that while deterrence and rehabilitation are mentioned, there is no explicit recognition of retribution. However, the proportionality requirement in (3) is arguably based on that principle. Incapacitation is arguably covered by (1)(C).

Contrast this legislative statement with that of the Texas Court of Criminal Appeals (CCA) in *Holberg v. State*, 38 S.W.3d 137 (Tex.Crim.App. 2005, rehearing den.). There, a First Amendment Establishment Clause challenge to the death penalty forced the CCA to find secular justifications for the death penalty:

- (1) the death penalty is the only proportional punishment for certain crimes;
- (2) the death penalty ensures, at a minimum, that the offender will never harm anyone again;
- (3) the death penalty may deter some persons (professional criminals and those already imprisoned for life), and possibly others, from committing murder; and
- (4) life imprisonment without parole is not a viable alternative to the death penalty because (a) capital offenders are a danger to others in the prison environment, (b) persons imprisoned literally for life have little incentive to behave properly, and (c) it is undesirable, costly, and possibly inhumane to keep persons in prison until they actually die from old age or disease. (38 S.W.3d at

140)

Arguably (1) comes from retribution, (2) is incapacitation and (3) is deterrence. Part (4) applies only to murder cases, and is no longer totally applicable as the legislature later changed the life sentence for capital murder from life with parole to life without parole.

CATEGORIES OF CRIME AND PUNISHMENT IN TEXAS

Texas law currently recognizes five types of felonies and three types of misdemeanors. Every crime in the TPC is classified as one of these eight types. The possible punishment is, therefore, determined by where each offense is designated in this eight-part classification. In some instances, probation, shock probation and other forms of punishment will also be available. Texas has a parole system and offers good-time credit opportunities to convicts. Many of these topics are not covered in the TPC and are found in the Texas Code of Criminal Procedure ch. 37, 42 and 43.

Felonies

The types of felonies are capital, first, degree, second degree, third degree and state jail. The most serious offenses are capital felonies.

§ 12.31. CAPITAL FELONY. (a) An individual adjudged guilty of a capital felony in a case in which the state seeks the death penalty shall be punished by imprisonment in the institutional division for life without parole or by death. An individual adjudged guilty of a capital felony in a case in which the state does not seek the death penalty shall be punished by imprisonment in the institutional division for life without parole.

Capital punishment is available only for one offense, Capital Murder, sec. 19.03.

§ 12.32. FIRST DEGREE FELONY PUNISHMENT. (a) . . . shall be punished by imprisonment in the institutional division for life or for any term of not more than 99 years or less than 5 years.

(b) In addition to imprisonment, an individual adjudged guilty of a felony of the first degree may be punished by a fine not to exceed \$10,000.

Murder, Aggravated robbery, and Aggravated sexual assault are examples of this category.

§ 12.33. SECOND DEGREE FELONY PUNISHMENT. (a) . . . shall be punished by imprisonment in the institutional division for any term of not more than 20 years or less than 2 years.

(b) In addition to imprisonment, an individual adjudged guilty of a felony of the second degree may be punished by a fine not to exceed \$10,000.

Manslaughter, Intoxication Manslaughter, and Robbery are examples of this degree of felony

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§ 12.34. THIRD DEGREE FELONY PUNISHMENT. (a) . . . shall be punished by imprisonment in the institutional division for any term of not more than 10 years or less than 2 years.

(b) In addition to imprisonment, an individual adjudged guilty of a felony of the third degree may be punished by a fine not to exceed \$10,000.

Examples are Kidnapping and Impersonating a Public Servant.

§ 12.35. STATE JAIL FELONY PUNISHMENT. (a) Except as provided by Subsection (c), shall be punished by confinement in a state jail for any term of not more than two years or less than 180 days.

(b) In addition to confinement, an individual adjudged guilty of a state jail felony may be punished by a fine not to exceed \$10,000.

Subsection (c) of this section provides that a State Jail Felony can be punished as a third degree felony if it is shown at trial of the state jail felony that

(1) a deadly weapon as defined by Section 1.07 was used or exhibited during the commission of the offense or during immediate flight following the commission of the offense, and that the individual used or exhibited the deadly weapon or was a party to the offense and knew that a deadly weapon would be used or exhibited; or

(2) the individual has previously been finally convicted of any felony:

(A) listed in Section 3g(a)(1), Article 42.12, Code of Criminal Procedure; or

(B) for which the judgment contains an affirmative finding under Section 3g(a)(2), Article 42.12, Code of Criminal Procedure.

Criminally negligent homicide, and interference with child custody are examples of this type of offense. This category of felony was added by the legislature in 1993, and a whole new type of penal institution, the state jail, was created. The main purpose of these changes was to deal with overcrowding at regular prisons and create a less-expensive category of institution. These changes would probably have not been made except for the court-ordered changes to the Texas prison system in the long-running federal court case *Ruiz v. Estelle*

Misdemeanors

The three types of misdemeanors are class A, B, and C. Misdemeanor sentences are served in county jails.

§ 12.21. CLASS A MISDEMEANOR. . . .shall be punished by:

(1) a fine not to exceed \$4,000;

(2) confinement in jail for a term not to exceed one year; or

(3) both such fine and confinement.

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Promotion of Prostitution, Abuse of Corpse and Failure to Report a Felony are examples of this class of misdemeanor.

§ 12.22. CLASS B MISDEMEANOR. . . . shall be punished by:

- (1) a fine not to exceed \$2,000;
- (2) confinement in jail for a term not to exceed 180 days; or
- (3) both such fine and confinement.

Indecent Exposure and False Report to a Police Officer are examples.

A class C misdemeanor is punishable by fine only. The maximum possible fine is \$500.

Public intoxication, Smoking in Unauthorized Place, and Possession of an Alcoholic Beverage in a Motor Vehicle are examples of this category.

ENHANCED PUNISHMENTS

There are enhanced penalties for hate crimes (crimes committed because of bias or prejudice) in TPC sec. 12.47), and for repeat misdemeanor offenders (sec. 12.43). There are also enhanced punishments for repeat felony offenders. Some of these require automatic life sentences for repeat felony sex-crime offenders.

PUNISHMENTS FOR ASSOCIATIONS AND CORPORATIONS

Subchapter E of ch. 12 sets out the possible punishments for Corporations and Associations. If the only specified punishment is a fine, the corporation or association may be assessed that fine. However,

(b) If a corporation or association is adjudged guilty of an offense that provides a penalty including imprisonment, or that provides no specific penalty, a court may sentence the corporation or association to pay a fine in an amount fixed by the court, not to exceed:

- (1) \$20,000 if the offense is a felony of any category;
- (2) \$10,000 if the offense is a Class A or Class B misdemeanor;
- (3) \$2,000 if the offense is a Class C misdemeanor; or
- (4) \$50,000 if, as a result of an offense classified as a felony or Class A misdemeanor, an individual suffers serious bodily injury or death.

ASSESSING PUNISHMENT

Unlike the federal courts and most state courts, defendants in Texas can elect to have jury sentencing. As in most, if not all states, sentence will be imposed after a hearing separate from the trial on guilt or innocence. A pre-sentence may be utilized in some cases.

As is true nationwide, a majority of convictions are obtained by plea bargain and, if the judge accepts the bargain, the sentence is determined by the terms of the plea bargain. Sentences in Texas are determinate.

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Although the statutes provides for a range of punishments, the sentence will be for a definite term (*e.g.*, 10 years) rather than an indeterminate range (*e.g.*, not less than three nor more than 10 years). How much time the offender serves will be dependent on good-time credits, parole eligibility laws, and parole board discretion.

EXERCISE

Texas' provisions for life sentences for repeat felony offenders came before the U.S. Supreme Court in *Rummel v. Estelle*. In 1964, Rummel was convicted of fraudulent use of a credit card to obtain \$80 worth of goods. This was a felony. He was sentenced to three years in prison. In 1969 was convicted of passing a forged check for \$28.36. This was also a felony and he was sentenced to four years in prison. In 1973 he was charged with the felony of obtaining \$120.75 by false pretenses. The prosecution utilized a provision that allowed life imprisonment upon the third conviction of the felony. Rummel was sentenced to life in prison. Rummel argued that these sentencing provisions violated the ban on cruel and unusual punishment, because the sentence was disproportionately harsh relative to the offenses. He contended that a theft of only \$28.36 should be a misdemeanor theft and not a felony theft. Further, a life sentence was unconstitutional because all of his crimes were non-violent and less than \$230 was involved in all three crimes.

1. Do you agree or disagree that the sentence was disproportionate and a violation of the Eight Amendment? Explain your position.
2. Would it make a difference if there was or was not a possibility of parole for Rummel? Explain your position.
3. What if Rummel would be eligible for parole in 12 years. Would this make a difference. Explain your position.

Compare your position with that of the Supreme Court majority. Read *Rummel v. Estelle*, 100 S.Ct. 1133 (1980).

<http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=case&court=us&vol=445&page=263>

To obtain a fuller understanding of this area of the law, you also need to read *Solem v. Helm*, 103 S.Ct. 3001 (1983)

<http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=case&court=us&vol=463&page=277>

REVIEW QUESTIONS

Multiple Choice (Answers are found at the end of this chapter)

1. Under Texas law there are _____ types of felonies
 - a. three
 - b. four
 - c. five
 - d. six

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- e. seven
2. Under Texas law there are _____ types of misdemeanors.
 - a. three
 - b. four
 - c. five
 - d. six
 - e. seven
 3. Both the Eighth Amendment and Texas law require that that the punishment be _____ to the offense.
 - a. proportionate
 - b. analogous
 - c. symmetrical
 - d. synergic
 - e. copasetic
 4. According to the U.S. Supreme Court's decisions in *Rummel v. Estelle* and *Solem v. Helm*, life sentences for repeat felony offenders does not violate the ban on cruel and unusual punishment as long as
 - a. all of the felonies involved violence.
 - b. at least one of the felonies involved violence.
 - c. there is a possibility of parole.
 - d. the defendant has the opportunity to obtain a pardon.
 - e. the defendant has the opportunity to obtain executive clemency.
 5. In Texas, the sentence handed down by a judge or jury will be a/n _____ one.
 - a. indeterminate
 - b. determinate
 - c. indefinite
 - d. incontinent
 - e. definitive
 6. The state of Texas
 - a. does not offer probation as a sentencing option.
 - b. offers parole but not good time credit.
 - c. offers both parole and good time credit.
 - d. offers both parole and good time credit but only for misdemeanors.
 - e. offers parole only for misdemeanor sentences.

REFERENCES AND RESOURCES

Belbow, B. A. (1999). A Guide to Criminal Law for Texas. Belmont, CA: West/Wadsworth, ch 6,7.

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Teague, M.O. & Helft, B. P. (2006). *Texas Criminal Practice Guide*. San Francisco: Matthew Bender, vol. 5 ch. 120.

Texas Jurisprudence 3d (2006). *Criminal Law*, sec. 3-6, 47-49.

ANSWER KEY CHAPTER 3, PUNISHMENT AND SENTENCING

1. c
2. a
3. a
4. c
5. b
6. c