

# Jury Trials

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1

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2

# Today's Class

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Trial Basics (*Criminal & Civil*)

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Before Taking the Bench (*Criminal & Civil*)

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Pre-Trial Issues (*Criminal & Civil*)

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Voir Dire/Jury Selection (*Criminal & Civil*)

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Criminal Trial - State of Texas v. Jeff Grajek

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Civil Trial - Bruce Ways v. Bewitching Bark Salon

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Questions

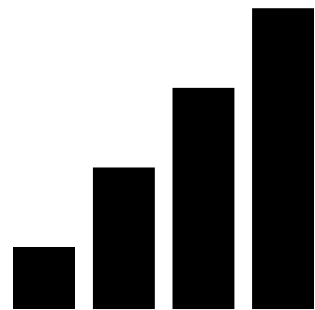
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# Trial Basics

4

Poll: Have you presided over a jury trial as a judge yet?

- 1. Yes
- 2. No



5

# Trial Scripts

Trial Notebook

6

# Texas Rules of Evidence (TRE)

Criminal Cases	Civil Cases
Always apply	Only apply if judge chooses to apply them for fairness
Code of Criminal Procedure Art. 45.011.	Rule 500.3(e)



7

## Control of the Courtroom

The court should exercise reasonable control over the presentation of evidence and examination of witnesses.

TRE 611

*Good Rule to apply even in civil cases!*

8

## Courtroom Control Discussion - Phones

- What is the best way to handle cell phones going off?
- Make everyone turn in their cell phones?
- Remove someone if their cell phone goes off?
- What if it happens again?
- Three strikes and you are out rule?

9

## Assisted Representation (criminal)

Not allowed in criminal cases.

Defendant has 2 choices.

1. Hire an attorney, or
2. Be self-represented.

10

# Assisted Representation (civil)

Is allowed in civil cases.

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## Individual

- Himself or herself,
- An attorney, or
- An authorized agent (ONLY in an eviction case)

Rule 500.4(a)

## Corporation or Entity

- An employee, owner, officer, or partner of the entity who is not an attorney,
- An attorney, or
- A property manager or other authorized agent (ONLY in an eviction case)

Rule 500.4(b)

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11

## Right to a Jury Trial

Parties in a criminal case are **entitled to a jury trial - it is the default!**

Parties in a civil case can request a jury trial - **it is not the default!**

12

# Right to a Criminal Jury Trial

## Criminal Cases

- All cases for trial must be set for jury trials **unless** the defendant waives the jury trial in writing. CCP 45.024
- Offenses occurring prior to 1/1/2020 - \$3 jury fee added to court costs
- For offenses after 1/1/2020, part of the local consolidated cost ends up in the jury fund

13

# Right to a Civil Jury Trial

## Civil Cases

- Either party is entitled to a jury trial, upon request.
- Requesting Party must file a written demand (usually in petition, answer, or counterclaim) for a jury no later than 14 days before the date the case is set for trial.
- Jury fee is \$22 (or Statement of Inability to Afford Court Costs)
- If the demand is not timely, then the right to a jury trial is waived unless the late filing is excused by the judge for good cause. Rule 504.1

14

# Before Taking the Bench

15

## Criminal Cases

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What type of case is this?

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What statutes should I have easy access to?

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Keep a copy of the Rules of Evidence on your bench  
(physically or digitally).

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Has a jury charge been submitted to the court?

16



# Civil Cases

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What type of case is this?

---

What statutes should I have easy access to?

---

Keep a copy of the Rules of Civil Procedure on your bench (physically or digitally).

---

Has a verdict form been submitted to the court?

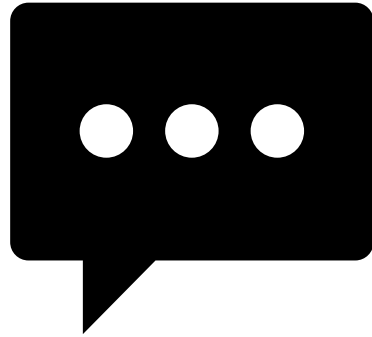
17

# Look at your Handouts!

Criminal Jury Trial Elements Checklist and Statutes  
Example

18

Do you do anything special to prepare for trial?



19

# Pre-Trial Issues

20

## Motion To Dismiss Questions

- Now what do you do?
- Take up the motion to dismiss?
- Is that even a motion in justice court?
- Do you explain what a motion for summary disposition is?
- Should you give both sides an SRL packet and reset the trial date or set it for a pretrial conference?
- Should you have set it for a pretrial conference to begin with?

21

## Summary Disposition (Civil Cases Only)

Elements:

- There are no genuinely disputed facts that would prevent a judgment in favor of the party;
- There is no evidence of one or more essential elements of a defense which the defendant must prove to defeat the plaintiff's claim; or
- There is no evidence of one or more essential elements of the plaintiff's claim.

22

## Ruling on Summary Disposition (Civil Cases Only)

- Should be granted **very rarely!**
- The court must not consider a motion for summary disposition unless it has been on file for at least 14 days

23

## Pretrial Hearing/Conference

- Criminal & Civil Cases
- *Remember:* The court may hold a pretrial conference at the request of either party, or on its own, in any case once the parties have appeared (the defendant has filed an answer).
- Issues for a pretrial conference:
  - Discovery
  - Amendment or clarification of pleadings (civil)
  - Admission of facts or documents
  - Others?
- Great idea if you have SRLs

24

## Pretrial Topics

- Settlement or Plea Bargain
- Mediation
- Trial Dates
- Interpreters
- Limitation or identification of number of witnesses/timing
- Identification of facts that parties agree on
- Any other issue that the court believes is appropriate

25

## Continuances

### Criminal Cases

- If a defendant gets less than three business days' notice of the trial, the court must grant the motion for continuance, which may be oral or written.
- Otherwise, judicial discretion applies.

Code of Criminal Procedure Art. 29.035, 29.04-29.08.

### Civil Cases

- A party may file a motion requesting that the trial be postponed.
- The motion must state why a postponement is necessary.
- The judge, for good cause, may postpone any trial for a reasonable time.

Rule 503.3(b)

26

## Self-Represented Litigant (SRL) Resources

- [www.tjctc.org/srl](http://www.tjctc.org/srl)
- <http://www.texascourthelp.gov>
- <http://www.texaslawhelp.org>
- <http://www.sll.texas.gov>
- <https://www.txcourts.gov/rules-forms/rules-standards>

27

Want to see what  
a trial might  
actually look like?

28

# Jury Selection

*also called*

# Voir Dire

29

**How many jurors sit on a justice court jury?**

1. 5

2. 10

3. 6

4. 12

30

# Voir Dire Bench Card



Look on the TJCTC Flowcharts, Bench Cards, and Checklists page for this under the Trial Procedure section.



<https://www.tjctc.org/tjctc-resources/Charts-and-Checklists.html>

31

# General Juror Qualifications

Voir Dire Bench Card

32



# Exemptions from Jury Service

Voir Dire Bench Card

33

## Excuses

The Court can excuse a party who they believe has a sufficient excuse.

The Court cannot excuse a prospective juror for an economic reason without both parties being present and approving the release of that juror for that reason.

34

# De-selection vs. Selection

*Jurors aren't really "picked"...*

35

Strike, you  
are out!

- **Peremptory Challenges/Strikes**

Each side can strike three (3) people from the jury pool without telling the court a reason

**Batson Challenge** - either side can argue that the other has used preemptory strikes to eliminate otherwise eligible jurors because of **race, ethnicity, or sex**

*This is discussed further in the Trial Notebook*

36

- **Challenge/Strike for Cause**

A request that a prospective juror be struck, meaning removed or dismissed, because there is a specific reason to believe the person can't be fair, unbiased, or capable of serving as a juror

Strike, you are out!

37

## Things that the parties can't ask:

Repetitious questions

Irrelevant or immaterial questions

**Commitment Questions** - a party can't try to make a potential juror commit to a verdict based on facts other than something that would prove they were not impartial.

- **EXAMPLES:**

- ✓ *If I proved all of the elements of the offense beyond a reasonable doubt, could you convict?*
- ✗ *If the Defendant refused a breath test, would you convict?*

38

## Common challenges for cause

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Unfair bias for/against law enforcement (*criminal cases*)

---

Personal relationship with one of the parties that creates bias/prejudice

---

Experience with the justice system that creates bias/prejudice

---

Sovereign citizens - couldn't find anyone guilty or don't believe courts have authority

---

Can't hear/see

---

Witness in this case

---

Related to party within 3rd degree consanguinity or affinity (Government Code Ch. 573)

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Can't consider full range of punishment (*criminal cases*)

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Others?

39

# Does anyone know Deputy Williams?

40

Can the  
prosecutor or  
defendant ask?



Has anybody here ever  
attended AA?



Anyone ever had one beer  
and walked home?

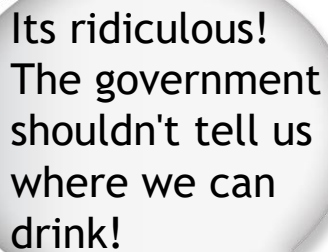


Who thinks public  
intoxication law is stupid?

41

**Question 1:**  
Who doesn't agree with  
being arrested for public  
intoxication?

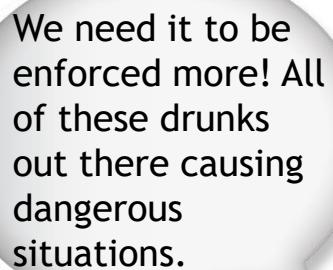
42



Its ridiculous!  
The government  
shouldn't tell us  
where we can  
drink!

Question 1  
Juror 1

43



We need it to be  
enforced more! All  
of these drunks  
out there causing  
dangerous  
situations.

Question 1  
Juror 4

44



Question 1  
Juror 6

45

**Question 2:**  
Who has had a  
bad experience  
with law  
enforcement?

46

All of the men  
in my family are  
police, and they  
would never do  
anything  
improper!

Question 2  
Juror 2

47

I have. These  
days police just  
don't know  
how to do their  
jobs right!

Question 2  
Juror 3

48



Question 2  
Juror 5




I  
haven't.

49

### **Question 3:**

Who will promise me that if they only believe I had 2 beers, they won't find me guilty?


50



We all just  
need to chill  
and let people  
do what they  
want to do!

Question 3  
Juror 3


51



No  
promises.

Question 3  
Juror 4

52

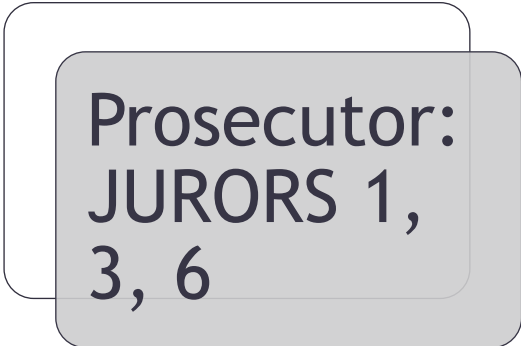


I just couldn't  
be fair to  
someone who  
drinks beer.

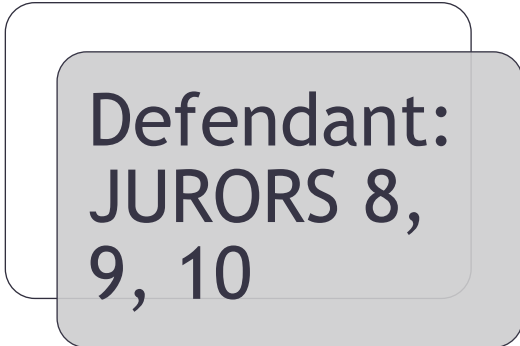
Question 3  
Juror 7

53

## Peremptory Strikes by Each Party:



Prosecutor:  
JURORS 1,  
3, 6



Defendant:  
JURORS 8,  
9, 10

54



# Prosecutor makes a Batson Challenge

What do you do???

55

Defendant says: “So, my strikes don’t count?!”

How do you respond???



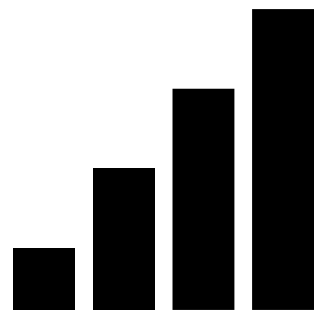
56

# Each Party's Case

57

Poll: Have you watched the evidence portion of a jury trial?

- 1. Yes
- 2. No



58

# The Judge is the Umpire/Referee

- The next part of trial is where each party (Prosecutor/Defendant or Plaintiff/Defendant) call witnesses and submit evidence to the jury
- The judge's job is to keep things fair and make sure that parties follow court procedures
- In criminal cases, the prosecutor goes first
- In civil cases, the plaintiff goes first

59

# Criminal Burden of Proof

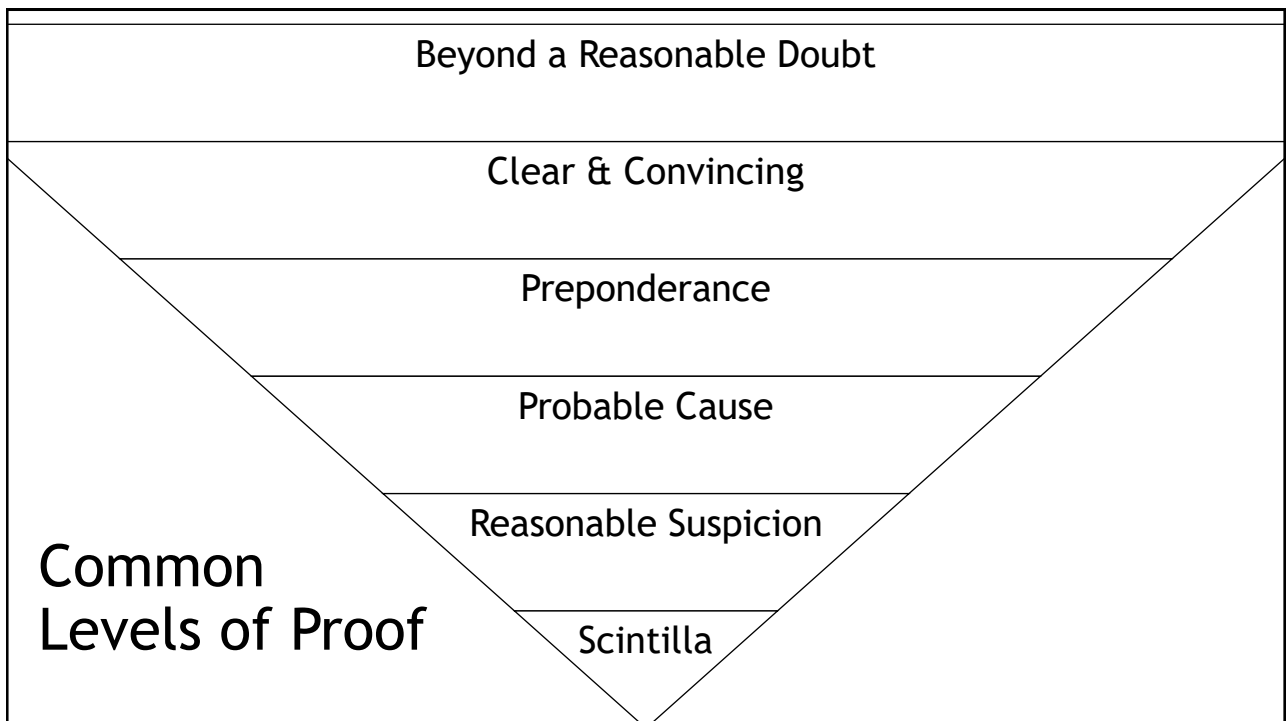
**Beyond a Reasonable  
Doubt**

60

# Civil Burden of Proof

**Preponderance**  
**(more likely than not)**

61



62

## Common Terminology Used During Trial

Pass the witness

Step down

Approach the bench

Outside the presence of the jury

63

## Exclusion of Witnesses

- Witness who aren't parties can be kept out of the courtroom while others are testifying
- Attorneys will request this by "invoking the rule"
- The court *MAY* do this on their own, but *MUST* do it if a party requests it
- Another good rule to apply in civil cases

TRE 614

64



# Criminal Trial

## *State vs. Jeff G.*

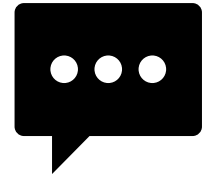
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Why did the prosecutor do that?



- Sometimes the parties (especially attorneys) will handle things in your court just like if they were in a court of record.
- Why?
  - Habit
  - To draw the jury/judge's attention to something
  - To show the jury that this case is just as important as a higher-level offense to them

66



# How would you rule??

Would you give the defendant any instructions?

67



Did you know there can be written hearsay?

- How would you respond to the defendant?
- What if the prosecutor changes her mind and says, “I withdraw my objection”?

68

How do you handle the defendant's motion?



Did the state prove all the elements?

69

# Jury Deliberation & Verdict

70

## Jury Deliberations

After the evidence is finished, the jury will go to the jury room where they can discuss and make a decision on the case.

They will provide their decision in the form of a verdict that the judge will read in open court

71

## Jury Instructions & Charges

- In all cases you may give basic instructions
  - *Juror Instruction Handouts*
- In Criminal cases, you also formally charge a jury with instructions that include definitions of the law and elements of the offense
  - TMCEC has a jury charge bank that can be found on their website here: <https://www.tmcec.com/resources/jury-charges/>
  - *Also see your handouts for a few examples.*

72

# Questions During Deliberations

- If jurors have a question during deliberations, they should write it down and have the bailiff take it to the judge
- The judge will then speak with the parties in open court to draft the agreed-upon answer
- The then judge sends back a written response or brings the jurors into court to provide them with the answer

- The most common appropriate answer:

***“Thank you for your question. My response to you is the following: you should rely on your memory as to what was said and what you saw.”***

73

# Polling the Jury

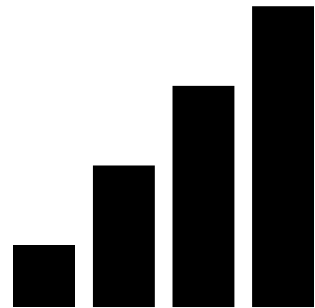
- A party may request that the jury be “polled” after the verdict is read.
- This means that the judge will ask each juror individually what their verdict is.

Code of Criminal Procedure 37.05

74

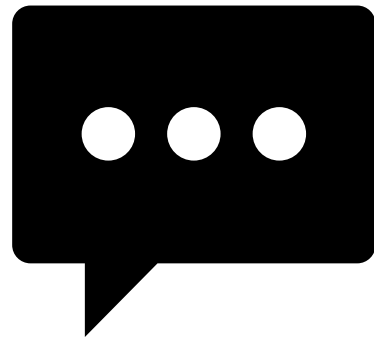
Poll: Does the jury verdict have to be unanimous?

1. Yes
2. No
3. Sometimes



75

What happens if the jury can't come to a decision?



76

# Judgment

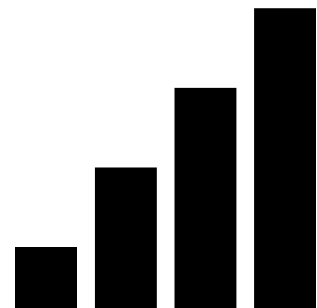
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There must be a written  
judgment in **every case!**

78

Poll: Should information about a payment plan be in a criminal judgment of conviction?

- 1. Yes
- 2. No



79

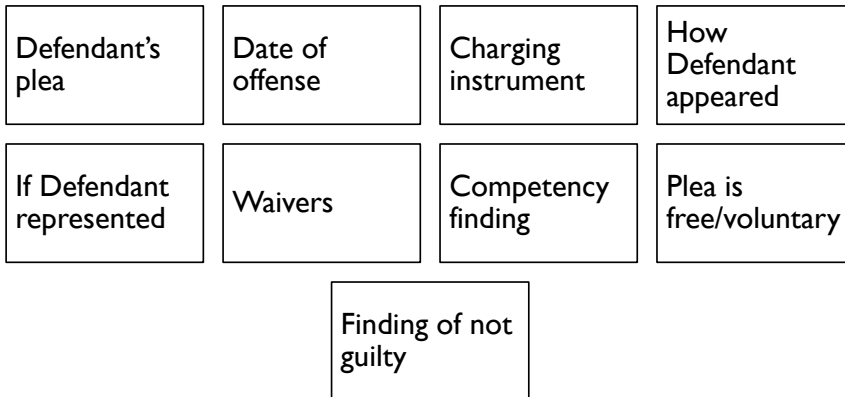
## Key Parts of a Criminal Judgment of Conviction

Fine	Court costs	Defendant's plea	Date of offense	Jail credit
Restitution	Charging instrument	How Defendant appeared	If Defendant represented	Waivers
Competency finding	Plea is free/voluntary	Ability to pay	Finding of guilt	Additional sanctions or findings

80



## Key Parts of a Criminal Judgment of Acquittal



81

## Civil Trial *Bruce Ways v. Bewitching Bark Salon, LLC*

82

## The Rules of Evidence Do Not Apply To Cases In Justice Court:



Unless the judge decides that a particular rule must be followed to ensure the proceedings are fair to all parties; or



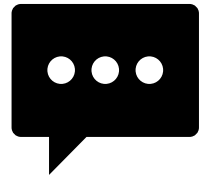
Unless specifically provided by law or the rules of civil procedure. *Rule 500.3(e)*



Good Examples: Evidence of offers to compromise and if someone had liability insurance=not admissible. *TRE 408 and 411*

83

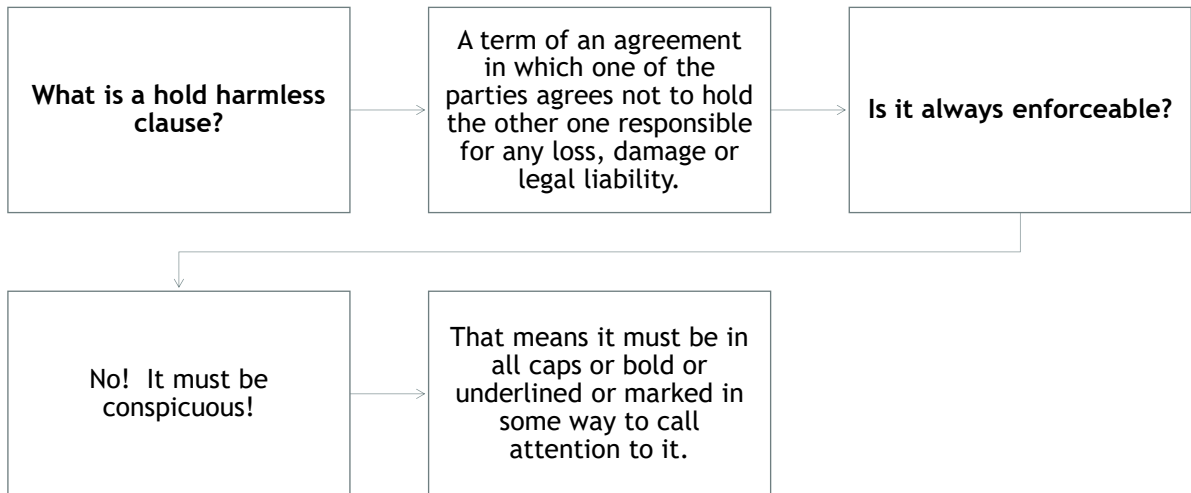
## How would you rule?



- “I will give it the weight to which it is entitled.”
- “The objection is overruled.”
- “The objections is sustained.”
- You do not need to explain your ruling; just rule and move on.

84

# Legal Issue 1



85

# Legal Issue 2

## What is an independent contractor?

- A person who performs services for an entity free from the control of the entity paying for the services.
- An independent contractor works under his own name, uses his own equipment, and manages the details of the work.
- An employee works under the control of their employer.
  
- *What counts is what they actually do, not what is in a contract between the entity and a third party (for example, a customer).*

86

## How do you know this??



### If you are aware of the issues before trial:

- Search the TJCTC Legal Board for similar questions
- Post a question on the TJCTC Legal Board
- Call TJCTC
- Check with another judge
- Do an online search to find some authority

### If you become aware of them at trial:

- Ask the parties for authority
- Take a recess and do the above if possible
- Use your common sense!

87

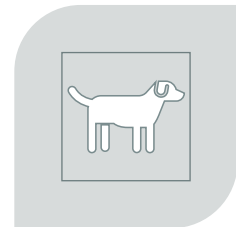
## Reviewing the Evidence



Go through case documents



Determine what is most important and why



Determine the table's favorite dog name from groomer's calendar!

88

## Judge to Develop the Facts of the Case

- In order to develop the facts of the case, a judge may question a witness or party and may summon any person or party to appear as a witness when the judge considers it necessary to ensure a correct judgment and a speedy disposition.

*Rule 500.6*

89

## Developing the Case

- What else would you want to know?
- What questions do you have?
- What can you do to learn more?
- Do you need to hear from the groomer?
- If so, what questions would you want to ask her?

90

## What do you think?

- Is this procedure okay?
- Can you still use Zoom?

91

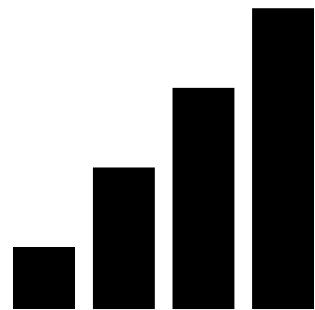
## Jury Instructions & Charges

- In all cases you may give basic instructions
  - *Juror Instruction Handouts*
- In Civil cases, you **cannot** charge the jury. *Rule 504.3*

92

Poll: Does the jury verdict have to be unanimous?

1. Yes
2. No
3. Sometimes



93

# Judgment

94

There must be a written judgment in **every case!**

95

## Requirements in Rule 505.1

- Clearly state the determination of the rights of the parties in the case
- State who must pay the costs
- Signed by the judge
- Dated the date of the judge's signature

96



## Key Parts of a Small Claims Judgment

- Money or property awarded
- Court costs
- Attorney's fees (*if applicable*)
- Post-judgment interest rate
- Pre-judgment interest rate (*if applicable*)

97

## Personal Property Awarded

- Must order the plaintiff recover **specific articles** *if they can be found*
- If they can't be found - then the plaintiff shall recover their **value as assessed by the judge or jury** (plus interest)

*Rule 505.1(e)*

98

## Court Costs

- ❑ Judge **MUST** award costs allowed by law to the successful party, even if they don't specifically ask for them.

*Rule 505.1(c)*

99

## Attorney's Fees

- ❑ If a party is awarded a judgment, they may also be awarded attorney's fees if there is a **statute** or an **agreement** between the parties that allows for attorney's fees.

100

## Post-Judgment Interest

- Every civil judgment **MUST** have a post-judgment interest rate
- The rate might be 0%
- TJCTC has recently issued a memo on this topic that can be found on the main TJCTC webpage under “Announcements”

101

## Pre-Judgment Interest

- There are 2 Types:
  - Statutory Pre-Judgment Interest - found in Finance Code 304.102.
  - Contractual Interest - agreed to in a contract.

102

## Pre-Judgment Interest Details

- Applies in wrongful death, **personal injury**, and **property damage** cases
- Rate is the same as the post-judgment interest rate applicable at the time of judgment
- Cannot be recovered on an award of future damages
- Written settlement offers pause the accrual for the time period they are open if the judgment amount is equal to or less than the offer amount

103

## What **NOT** to Include in Civil Judgments



Payment plans



Injunctive relief

104

# Payment Plans

- Parties are free to **negotiate and agree to payment plans**, but they should not be part of the judgment.
- →
- Remember, a JP only has the authority to order **\$\$ or personal property** to the prevailing party!

105

# Injunctive Relief

Only in special cases can a JP order a party to do or refrain from doing an action. There has to be a statute saying you can do it!

*Ex: repair & remedy cases, driver's license hearings, tow hearings, and disposition of stolen property hearings.*

*Crawford v. Sandidge; Poe v. Ferguson; Kieschnick v. Martin*

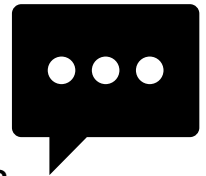
106

# Judgment Forms



107

## Judgment Time



- Who wins: Bruce Ways or Bewitching Bark Salon?
- How much in damages do you award to whoever wins?
- What do you say to the parties when you announce your decision/jury decision?
- What do you sign?

108