Effective:[See Text Amendments]

Vernon's Texas Statutes and Codes Annotated Currentness
Constitution of the State of Texas 1876 (Refs & Annos)
Article I. Bill of Rights (Refs & Annos)
§ 15. Right of trial by jury

Sec. 15. The right of trial by jury shall remain inviolate. The Legislature shall pass such laws as may be needed to regulate the same, and to maintain its purity and efficiency. Provided, that the Legislature may provide for the temporary commitment, for observation and/or treatment, of mentally ill persons not charged with a criminal offense, for a period of time not to exceed ninety (90) days, by order of the County Court without the necessity of a trial by jury.

CREDIT(S)

Amended Aug. 24, 1935.

INTERPRETIVE COMMENTARY

2007 Main Volume

One of the most characteristic elements of the American constitutional inheritance from England is that of trial by jury. In origin it grew from a practice in Norman times known as an inquest which was composed of a selected group from the community to tell the facts about certain situations, *e. g.*, to tell who was guilty of a crime, or who had title to land. From this institution the jury developed, changing through time from a body of people chosen because they knew the facts to a body whose function is to determine the facts on the basis of evidence given at the trial.

Trial by jury has been considered as a fundamental safeguard of constitutional liberty. The Declaration of Independence complains of the British Government for denying the colonists in many cases a trial by jury. The Texas Declaration of Independence makes the same indictment against Mexico, declaring that Mexico "has failed and refused to secure, on a firm basis, the right of trial by jury, that palladium of civil liberty, and only safe guarantee for the life, liberty, and property of the citizen." As a result the right was placed in the Bills of Rights of both the United States Constitution and that of Texas.

The words of Section 15 declare that trial by jury shall remain inviolate. This has been interpreted to mean that in each case where the issue is raised, an inquiry should be made into the practice before the constitution was adopted to determine whether such issues were tried by a jury; hence, any right to a

jury trial that existed at the time of the adoption of the constitution is confirmed. *White v. White*, 108 T. 570, 196 S.W. 508, L.R.A.1918A, 339 (1917).

Section 15 further grants to the legislature the power to regulate the right of trial by jury, and to maintain its purity and efficiency. This clause does not permit reduction of the right. It does permit the legislature to deny the right in cases where no right to jury trial existed at common law, the section merely protecting the right as it existed at the time the constitution went into effect. *Johnson v. State*, Civ.App., 267 S.W. 1057 (1925).

Historically in equity proceedings, the chancellor was judge of fact as well as of law, there being no right of trial by jury. In Texas, however, ever since the first state constitution of 1845, a party is not deprived of a jury trial in a suit of an equitable nature. *San Jacinto Oil Co. v. Culbertson*, 100 T. 462, 101 S.W. 197 (1907).

In civil cases for the trial of a cause, wherein a fact situation is raised by the pleadings, either party is entitled to a jury upon a demand made to the court and the payment of the jury fee. See *Hammond v. Ashe*, 103 T. 503, 131 S.W. 539 (1910); *Thorne v. Moore*, 101 T. 205, 105 S.W. 985 (1907); *Blair v. Paggi*, Com.App., 238 S.W. 639 (1922). If these conditions are met, the right is inviolate.

In civil cases and misdemeanor cases a jury may be waived. *Neill v. Tarin*, 9 T. 256 (1852); *Wagner v. State*, 87 Cr.R. 47, 219 S.W. 471 (1920); *Armstrong v. State*, 98 Cr.R. 335, 265 S.W. 701 (1924). However, in a capital case the defendant may not waive the right, but in felony cases less than capital he may, upon entering a plea of guilty, waive a jury trial in open court in person with the approval and consent of the court and of the state's attorney. See Vernon's Ann.C.C.P. [1925] art. 518 [see, now, Vernon's Ann.C.C.P. art. 27.14].

The right to trial by jury means, of course, the right to a trial by an impartial jury. See *Pierson v. State*, 18 Tex.App. 524 (1885). Within the limits of denying the parties an impartial jury, the legislature may prescribe the procedure for impanelling the jury and the qualifications of jurors. However, it is violative of the due process clause of the fourteenth amendment of the Federal Constitution, as well as of the state constitution, to exclude any citizen because of race or color. *Jackson v. State*, 63 Cr.R. 351, 139 S.W. 1156 (1911); or to discriminate on other grounds where such discrimination would tend to prejudice or favor an accused person. See *Lively v. State*, Crim.App., 73 S.W. 1048 (1903).

HISTORICAL NOTES

2007 Main Volume

The 1935 amendment, proposed by Acts 1935, 44th Leg., p. 1217, H.J.R. No. 39 and approved Aug. 24, 1935, added the third sentence.

Earlier Constitutions:

Const.1845, Art. 1, § 12.

Const.1861, Art. 1, § 12, and Art. 4, § 16.

Const.1866, Art. 4, § 20.

Const.1869, Art. 1, §§ 8, 12.

CROSS REFERENCES

County court, juries, see Const. Art. 5, §§ 17, 29.
County officers, trial by jury for removal, see Const. Art. 5, § 24.
Criminal prosecutions, accused's right to trial by impartial jury, see Const. Art. 1, § 10.
Disbarment of attorneys, see V.T.C.A., Government Code § 81.001 et seq.
District court, see Const. Art. 5, § 10.
Justice court, see V.T.C.A., Government Code § 62.301 et seq.; Vernon's Ann.Rules Civ.Proc., Rule 544 et seq.
Mental Health Code, court-ordered temporary mental health services, hearing before jury, see V.T.C.A., Health & Safety Code § 574.032.
Probate and mental illness proceedings, see V.A.T.S. Probate Code, § 21.
Right to jury, generally, see Vernon's Ann.C.C.P. arts. 1.12, 1.15.
Small Claims Court, see V.T.C.A., Government Code § 28.001 et seq.
Special pleas in criminal prosecutions, see Vernon's Ann.C.C.P. art. 27.07.
Waiver of jury trial, see Vernon's Ann.C.C.P. arts. 1.13, 1.14.

TEXAS ANNOTATED CODE SERIES REFERENCES

Suit for Dissolution of Marriage, Jury, Sampson & Tindall's Texas Family Code, Family § 6.703.

LAW REVIEW COMMENTARIES

Annual survey of Texas law: Divorce proceedings. Joseph W. McKnight, 35 Sw.L.J. 121 (1981).

Civil Jury Trials R.I.P.? Can it Actually Happen in America?. Royal Fergeson, 40 St.Mary's L.J. 795. (2009).

Discussion of jury reform. Tom M. Dees, III, Special Issue, SMU L.Rev. (2001).

Jury erosion: Effects of Robinson, Havner & Gammill. Ricky J. Poole, Kimberly S. Keller, 32 St. Mary's L.J. 383 (2001).

Jury trial in employment discrimination cases. 53 Tex.L.Rev. 483 (1975).

Procedural and Judicial Limitations on Voir Dire--Constitutional Implications and Preservation of Error in Civil

Cases. R. Brent Cooper and Diana L. Faust, 40 St.Mary's L.J. 751 (2009).

Remember the Alamo: The seventh amendment of the United States constitution, the doctrine of incorporation, and state caps on jury awards. James L. “Larry” Wright, M. Matthew Williams, 45 South Texas L.J. 449 (2004).

Standards of appellate review in civil appeals. W. Wendell Hall, 21 St. Mary's L.J. 865 (1990).

Standefer v. State: The creation of the criminal defendant's diminished right to a trial by a fair and impartial jury. Esperanza Guzman, 37 St. Mary's L.J. 477 (2006).

Study of jury pool in Dallas County. Ted M. Eades, Special Issue, SMU L.Rev. (2001).

Trial by jury. Allan Ashman and James McConnell, 27 Sw.L.J. 436 (1973).

Trial by jury: A way to preserve it. Robert P. Woodruff, 20 Tex B.J. 699 (1967).

Unlawful discrimination in jury selection. 21 Baylor L.Rev. 73 (1969).

Voir dire in Texas after *Babcock v. Northwest Memorial Hospital.* 28 Hous.L.Rev. 487 (1991).

LIBRARY REFERENCES

2007 Main Volume

Jury 9, 19(6.5).
Westlaw Topic No. 230.
C.J.S. Juries §§ 7 to 20, 22 to 32, 45, 60, 63, 65, 73, 83, 99, 107, 109, 126, 148, 177, 243, 247.

RESEARCH REFERENCES

2011 Electronic Update

ALR Library

92 ALR, Federal 688, Contractual Jury Trial Waivers in Federal Civil Cases.

75 ALR 5th 295, Disqualification or Exemption of Juror for Conviction Of, or Prosecution For, Criminal Offense.

41 ALR 5th 47, Constitutionality, Construction, and Application of Statutes Requiring Bond or Other Security in Taxpayers' Action.

42 ALR 5th 53, Contractual Jury Trial Waivers in State Civil Cases.

12 ALR 5th 508, Right to Jury Trial in Action Under State Civil Rights Law.

56 ALR 4th 955, Right to Jury Trial in State Court Divorce Proceedings.

90 ALR 3rd 17, Propriety and Prejudicial Effect of Gagging, Shackling, or Otherwise Physically Restraining Accused During Course of State Criminal Trial.

46 ALR 2nd 919, Withdrawal of Waiver of Right to Jury Trial in Criminal Case.

145 ALR 1362, Lease of Property by Municipality or Other Political Subdivision, With Option to Purchase Same, as Evasion of Constitutional or Statutory Limitation of Indebtedness.

113 ALR 1179, What Amounts to Conviction or Satisfies Requirement as to Showing of Conviction, Within Statute Making Conviction a Ground for Refusing to Grant or for Canceling License or Special Privilege.

117 ALR 9, Right to Jury Trail in Suit to Remove Cloud, Quiet Title, or Determine Adverse Claims.

83 ALR 1362, Constitutionality of Statute Which Makes Specified Punishment or Penalty Mandatory and Permits No Exercise of Discretion on Part of Court or Jury.

32 ALR 1068, Constitutionality of Statute Providing for Disbarment of Attorney Convicted of Crime.

Encyclopedias

TX Jur. 3d Constitutional Law § 136, Rights Protected by State Constitution--Restrictions on Criminal Justice System.

TX Jur. 3d Constitutional Law § 140, Who is Entitled to Constitutional Protection.

TX Jur. 3d Criminal Law § 1660, in General; Constitutional and Statutory Provisions.

TX Jur. 3d Criminal Law § 1662, Waiver; Felony Cases.

TX Jur. 3d Delinquent Children § 16, Designation of Juvenile Court.

TX Jur. 3d Employer & Employee § 93, Common-Law Action.

TX Jur. 3d Equity § 59, Right to Jury Trial; Verdict.

TX Jur. 3d Extraordinary Writs § 67, Denial of Trial by Jury.

TX Jur. 3d Incompet., Addict., & Disorder. Person. § 8, Generally; Constitutional Provisions.

TX Jur. 3d Injunctions § 207, Right to Jury.

TX Jur. 3d Jury § 9, Right to Jury Trial Under Texas Constitution, Generally.

TX Jur. 3d Jury § 10, Under the Bill of Rights.

TX Jur. 3d Jury § 14, Appeal from or Review of Administrative Decisions or Agency Orders.

TX Jur. 3d Jury § 15, Appeal from or Review of Administrative Decisions or Agency Orders--Workers' Compensation Cases.

TX Jur. 3d Jury § 16, Probate and Mental Illness Proceedings.

TX Jur. 3d Jury § 20, Conditions on Right to Jury Trial, Generally.

TX Jur. 3d Jury § 23, Rules of Civil Procedure Requirements.

TX Jur. 3d Summary Judgment § 6, Content of Motion for Summary Judgment--No-Evidence Motion for Summary Judgment.

TX Jur. 3d Suretyship & Guaranty § 224, Evidence; Burden of Proof.

TX Jur. 3d Trial § 26, Fairness and Impartiality.

TX Jur. 3d Work Injury Compensation § 390, Contest of Supplemental Income Benefits by Insurance Carrier; Attorney's Fees.

Forms

Texas Forms Legal and Business § 14:15, Unconditional Guaranty of Payment--Corporation as Guarantor.

Texas Jurisprudence Pleading & Practice Forms 2d Ed § 214:5, Master's Report.

Texas Jurisprudence Pleading & Practice Forms 2d Ed § 68:13, Petition--Allegation--Enactment Denies Right to Trial by Jury.

Texas Jurisprudence Pleading & Practice Forms 2d Ed § 84:49, Introductory Comments.

Texas Jurisprudence Pleading & Practice Forms 2d Ed § 181:33, Petition--By Municipality--To Enjoin Common Nuisance--Motel Serving as Location for Prostitution.

Texas Jurisprudence Pleading & Practice Forms 2d Ed § 232:5.70, Response to Motion to Strike Jury Demand--By Plaintiff--Contractual Waiver of Right to Jury Trial was Not Conspicuous or Clear.

3 West's Texas Forms Ch. 1.6 Intro., Introduction.

5 West's Texas Forms § 31.3.1, Request for a Jury Trial.

5 West's Texas Forms Ch. 31 Intro., Introduction.

5 West's Texas Forms Ch. 31.3 Intro., Introduction.

Treatises and Practice Aids

McDonald & Carlson Texas Civil Practice § 2:57, Compulsory Discipline.

McDonald & Carlson Texas Civil Practice § 2:62, Disbarment.

McDonald & Carlson Texas Civil Practice § 21:5, Right to Jury Trial.

McDonald & Carlson Texas Civil Practice § 3:52, Jurors.

McDonald & Carlson Texas Civil Practice § 31:70, Right to Jury.

Texas Family Law Service § 10:39, Right to Jury.

Texas Family Law Service § 10:40, Limitations on Right to Jury.

Cochran, 27 Tex. Prac. Series § 1.4, Constitutional Issues.

Brooks, 36 Tex. Prac. Series § 22.13, Such Other Courts.

Lerner, 37 Tex. Prac. Series § 1.5, Constitutionality of 1989 Workers' Compensation Act.

Dix and Dawson, 42 Tex. Prac. Series § 26.25, Jury Trial on Competency--In General.

Dix and Dawson, 43 Tex. Prac. Series § 35.58, Absolute Disqualification--Harm--The Statute.

Civins, Hall & Sahs, 45 Tex. Prac. Series § 4.4, Authority.

UNITED STATES SUPREME COURT

Actions requiring trial by jury, see Curtis v. Loether, U.S.Wis.1974, 94 S.Ct. 1005, 415 U.S. 189, 39 L.Ed.2d 260.

Bankruptcy,

> Fraudulent transfer actions, see Granfinanciera, S.A. v. Nordberg, U.S.Fla.1989, 109 S.Ct. 2782, 492 U.S. 33, 106 L.Ed.2d 26.
>
> Preferential transfers, suits by trustees, see Langenkamp v. Culp, U.S.Okla.1990, 111 S.Ct. 330, 498 U.S. 42, 112 L.Ed.2d 343, rehearing denied 111 S.Ct. 721, 498 U.S. 1043, 112 L.Ed.2d 709, on remand 924 F.2d 997.

Contempt, jury trial, see Codispoti v. Pennsylvania, U.S.Pa.1974, 94 S.Ct. 2687, 418 U.S. 506, 41 L.Ed.2d 912, dissenting opinion 94 S.Ct. 2707, 418 U.S. 506, 41 L.Ed.2d 912, conformed to 459 Pa. 241, 328 A.2d 484.

Death penalty,

> Invalid aggravating circumstances, reweighing of aggravating and mitigating circumstances by appellate court, see Clemons v. Mississippi (U.S.Miss. 1990) 110 S.Ct. 1441, 494 U.S. 738, 108 L.Ed.2d 725, on remand 593 So.2d 1004.
>
> Necessity of jury findings of aggravating circumstances, see Hildwin v. Florida, U.S.Fla.1989, 109 S.Ct. 2055, 490 U.S. 638, 104 L.Ed.2d 728, rehearing denied 109 S.Ct. 3268, 492 U.S. 927, 106 L.Ed.2d 612.

Due process, jury trial, elements of offense, proof beyond reasonable doubt, hate crimes penalty enhancement, see Apprendi v. New Jersey, U.S.N.J.2000, 120 S.Ct. 2348, 530 U.S. 466, 147 L.Ed.2d 435.

Exclusion of women on jury, standing of male defendant to challenge, see Taylor v. Louisiana, 1975, 95 S.Ct. 692, 419 U.S. 522, 42 L.Ed.2d 690; Daniel v. Louisiana, 1975, 95 S.Ct. 704, 420 U.S. 31, 42 L.Ed.2d 790.

Guilty plea, intelligent and voluntary waiver of rights, procedural default, claim of actual innocence, see Bousley v. U.S., U.S.Minn.1998, 118 S.Ct. 1604, 523 U.S. 614, 140 L.Ed.2d 828.

Jury selection, peremptory challenges, sex discrimination, see J.E.B. v. Alabama ex rel. T.B., 1994, 114 S.Ct. 1419, 511 U.S. 127, 128 L.Ed.2d 89, on remand 641 So.2d 821.

Jury trial guarantee, entry of appellate court judgment on sufficiency-of-the-evidence grounds, see Weisgram v. Marley Co., 2000, 120 S.Ct. 1011, 528 U.S. 440, 145 L.Ed.2d 958.

Jury trial, death penalty, aggravating circumstances, judicial determination see Walton v. Arizona, U.S.Ariz.1990, 110 S.Ct. 3047, 497 U.S. 639, 111 L.Ed.2d 511, rehearing denied 111 S.Ct. 14, 497 U.S. 1050, 111 L.Ed.2d 828.

Labor unions, breach of duty of fair representation, backpay, see Chauffeurs, Teamsters and Helpers, Local No. 391 v. Terry, 1990, 110 S.Ct. 1339, 494 U.S. 558, 108 L.Ed.2d 519.

Petty offenses, driving under influence of alcohol, see U.S. v. Nachtigal, U.S.Cal.1993, 113 S.Ct. 1072, 507 U.S. 1, 122 L.Ed.2d 374, on remand 37 F.3d 1421.

Reasonable doubt instructions, harmless error, see Sullivan v. Louisiana, U.S.La.1993, 113 S.Ct. 2078, 508 U.S. 275, 124 L.Ed.2d 182, on remand 623 So.2d 1315.

Retroactivity,

Batson rule, standard for proving abuse of peremptory challenges, see Allen v. Hardy, U.S.Ill.1986, 106 S.Ct. 2878, 478 U.S. 255, 92 L.Ed.2d 199.

Prima facie case of racial discrimination based on peremptory challenges, see Griffith v. Kentucky, U.S.Okla.1987, 107 S.Ct. 708, 479 U.S. 314, 93 L.Ed.2d 649, on remand 817 F.2d 674.

Right to jury trial,

Civil damages, remittitur, see Hetzel v. Prince William County, Va., 1998, 118 S.Ct. 1210, 523 U.S. 208, 140 L.Ed.2d 336, on remand 143 F.3d 835, leave to file for rehearing denied 118 S.Ct. 2336, 524 U.S. 934, 141 L.Ed.2d 708.

Copyright infringement, determination of damages, see Feltner v. Columbia Pictures Television, Inc., U.S.Cal.1998, 118 S.Ct. 1279, 523 U.S. 340, 163 A.L.R. Fed. 721, 140 L.Ed.2d 438, 46 U.S.P.Q.2d 1161, on remand 152 F.3d 1171, 47 U.S.P.Q.2d 1863.

Summary procedure to recover real property, jury trial, see Pernell v. Southall Realty, U.S.Dist.Col.1974, 94 S.Ct. 1723, 416 U.S. 363, 40 L.Ed.2d 198.

NOTES OF DECISIONS

Withdrawal of case from jury 83
Withdrawal of guilty plea 63
Withdrawal of waiver of jury 96
Workers' compensation 17
Workers' compensation, administrative proceedings 14.5
Writing, waiver of jury 86
Zoning ordinances, administrative proceedings 16

1. In general

Right of trial by jury is guaranteed by the Constitution and the statutes of the state. Hunt v. Garrett (Civ.App.1925) 275 S.W. 96, modified on other grounds , Garrett v. Hunt (Com.App.1926) 283 S.W. 489; Meyer v. Henery (Civ.App.1966) 400 S.W.2d 933.

Right to a trial by jury is a valuable right which will be jealously guarded. Rayson v. Johns (Civ.App. 1975) 524 S.W.2d 380, ref. n.r.e. ; Jones v. Jones (Civ.App. 1979) 592 S.W.2d 19.

Constitution section which provides the right to a jury trial for those actions or analogous actions which were tried by a jury when the Constitution was adopted in 1876 only applies if, in 1876, a jury would have been allowed to try the action or analogous action. Tex. Const. art. Transcontinental Ins. Co. v. Crump (App. 14 Dist. 2008) 274 S.W.3d 86, rehearing overruled , review granted , reversed 2010 WL 3365339. Jury 12(1.1)

Although the right to jury trial under the Judiciary Article of the state constitution is potentially broader than that available under the state Bill of Rights, because it covers all "causes" regardless of whether a jury was available at the time the Bill of Rights was enacted, it can also be narrower, because not all adversary proceedings are "causes" within the meaning of the Judiciary Article. R.R. Street & Co., Inc. v. Pilgrim Enterprises, Inc. (App. 1 Dist. 2001) 81 S.W.3d 276, rehearing overruled, review granted , reversed in part 166 S.W.3d 232. Jury 12(1)

Although right to jury trial under judiciary article of Texas Constitution is potentially broader than under bill of rights in that it covers all "causes" regardless of whether jury trial was available in 1876, it can also be narrower in that not all adversary proceedings are "causes" within meaning of judiciary article. Texas Workers' Compensation Com'n v. Garcia (Sup. 1995) 893 S.W.2d 504. Jury 12(1)

Access to jury need not be provided at initial adjudication, so long as right to appeal and jury trial on appeal are secured. Texas Workers' Compensation Com'n v. Garcia (Sup. 1995) 893 S.W.2d 504. Jury 9; Jury 16(1)

Jury findings under Texas Constitution are inviolate. St. Elizabeth Hosp. v. Graham (App. 9 Dist. 1994) 883 S.W.2d 433, rehearing overruled, writ denied , rehearing of writ of error overruled. Appeal And Error 999(1)

Trial court should safeguard inviolate constitutional right to jury trial. Sunwest Reliance Acquisitions Group, Inc. v. Provident Nat. Assur. Co. (App. 5 Dist. 1993) 875 S.W.2d 385. Jury 31

Generally, party has right to trial by jury. Grossnickle v. Grossnickle (App. 6 Dist. 1993) 865 S.W.2d 211, rehearing denied. Jury 9

Right to jury trial remains inviolate in civil cases, even though denied in court of first instance, if right to appeal and jury trial on appeal are secured; access to jury trial of disputed issues of fact at some stage of proceeding is required to satisfy the Texas Constitution. Texas Workers' Compensation Com'n v. Garcia (App. 4 Dist. 1993) 862 S.W.2d 61, rehearing denied , writ granted , reversed 893 S.W.2d 504. Jury 9

Laws which diminish right to jury trial are unconstitutional. Trapnell v. Sysco Food Services, Inc. (App. 13 Dist. 1992) 850 S.W.2d 529, on rehearing, rehearing overruled , writ granted , affirmed 890 S.W.2d 796. Jury 31 ; Jury 31.1

Section of Texas Constitution giving plaintiff or defendant right to trial by jury in all causes in district court upon demand is significantly broader than that granted in Seventh Amendment, since it affords right to trial by jury regardless of whether cause existed at common law; effect of section is to guarantee right to jury in constitutional causes. Trapnell v. Sysco Food Services, Inc. (App. 13 Dist. 1992) 850 S.W.2d 529, on rehearing, rehearing overruled , writ granted , affirmed 890 S.W.2d 796. Jury 12(1.1)

State has legitimate interests, representing the collective citizenry as it does, in the method of trial of criminal accusations, and thus, if a prosecutor believes that it is essential to the interest of doing justice that a particular accused be tried by a fair and impartial jury of his peers, legislature has provided a means of vindicating that interest, and nothing in the Constitution is contravened thereby. State ex rel. Turner v. McDonald (Cr.App. 1984) 676 S.W.2d 371. Jury 83(1)

Courts have held that right to trial by jury is right to trial by an impartial jury. Flowers v. Flowers (Civ.App. 1965) 397 S.W.2d 121.

Citizen's right to have his cause submitted to fair and impartial jury is guaranteed under constitution and laws of state. Swartout v. Holt (Civ.App. 1954) 272 S.W.2d 756, ref. n.r.e.. Jury 10

Fair and impartial trial by jury is right accorded to all litigants. Evans v. Galbraith-Foxworth Lumber Co (Civ.App. 1929) 31 S.W.2d 496. Jury 33(2)

An invasion of the right of trial by jury by withdrawing material issues amounts to a denial thereof. Masterson v. Cline (Civ.App. 1924) 264 S.W. 204. Jury 34(3)

Parties should not lightly be deprived of the constitutional right of trial by jury, but only where the case is

clearly one for the court. Young v. Blain, 1922, 245 S.W. 65.

Under the Constitution, and in view of Vernon's Ann.C.C.P. 1911, art. 22 (see, now, Vernon's Ann.C.C.P. art. 1.14), the right of trial by jury had to be inviolate. Crisp v. State (Cr.App. 1920) 87 Tex.Crim. 137, 220 S.W. 1104. Jury 10

The right of trial by jury cannot be defeated by a legislative enactment. Central & M. R. Co. v. Morris (Sup. 1887) 68 Tex. 49, 3 S.W. 457.

2. Common law or statutory right at time of adoption

Right of trial by jury as guaranteed by Constitution is limited to right as it existed at common law or as provided by statutes in effect when Constitution was adopted in 1876. Texas Liquor Control Board v. Jones (Civ.App.1938) 112 S.W.2d 227; Hickman v. Smith (Civ.App.1951) 238 S.W.2d 838, error refused; Walsh v. Spender (Civ.App.1955) 275 S.W.2d 220; Welch v. Welch (Civ.App.1963) 369 S.W.2d 434; In re Adoption of Pate (Civ.App.1969) 449 S.W.2d 372; Smallwood v. Swarner (Civ.App.1974) 510 S.W.2d 156, ref. n.r.e.

The provision of the Constitution that the right of trial by jury shall remain inviolate relates to the right of trial by jury when the Constitution was adopted. Ex parte Garner (Cr.App. 1922) 93 Tex.Crim. 179, 246 S.W. 371. Jury 10

The right of trial by jury shall be available in those cases in which the right existed at the date of the adoption of the constitution, that is, in those cases where right to trial by jury was provided at common law. Swinford v. Logue (Civ.App. 1958) 313 S.W.2d 547, mandamus overruled. Jury 10

If trial to jury was available at time of adoption of constitution, statute specifically denying right of trial by jury in first instance in county court, and not providing for an appeal to district court or elsewhere where a jury trial can be obtained is violative of this section. Swinford v. Logue (Civ.App. 1958) 313 S.W.2d 547, mandamus overruled. Jury 31.2(7)

Under provision of this section to the effect that the right to trial by jury shall remain inviolate, litigant is entitled to trial by jury in the full constitutional sense if that practice prevailed in this State, according to the then existing laws, at time of adoption of constitutional provision. Huguley v. Board of Adjustment of City of Dallas (Civ.App. 1960) 341 S.W.2d 212. Jury 10

Provisions of this section that right of trial by jury shall remain inviolate apply only to those issues and causes which, either by common law or statute existing prior to adoption of Constitution, were tried to jury. Hatten v. City of Houston, 1963, 373 S.W.2d 525, ref. n.r.e.. Jury 12(1.1)

Right to trial by jury is not limited to precise form of common-law action but exists where action involves rights and remedies of sort typically enforced in action at law. State v. Credit Bureau of Laredo, Inc. (Sup. 1975) 530

S.W.2d 288. Jury 13(1)

This section, stating that right of trial by jury shall remain inviolate, continues right to jury in all actions where that right existed at time the Constitution was adopted. State v. Credit Bureau of Laredo, Inc. (Sup. 1975) 530 S.W.2d 288. Jury 10

Right to trial by jury relates only to those matters wherein such right existed at common law or in statutory provisions in existence at time of adoption of State Constitution. City of Houston v. Blackbird (App. 1 Dist. 1983) 658 S.W.2d 269, dismissed. Jury 10

An accused has an absolute right to trial by jury in disposition of a felony, but neither an historical nor express right to have a felony accusation tried by the court, sitting without a jury; latter is a right conveyed by statute and is not absolute; instead, it is subject to procedural conditions. State ex rel. Turner v. McDonald (Cr.App. 1984) 676 S.W.2d 371. Jury 29(2)

Texas Constitution assures trial by jury in those actions, or analogous actions, tried to jury at time 1876 constitution was adopted and jury trial is not required for any other judicial proceedings. EnRE Corp. v. Railroad Com'n of Texas (App. 3 Dist. 1993) 852 S.W.2d 661. Jury 12(1.1)

Provision in bill of rights of Texas Constitution guaranteeing right to jury trial maintains right to trial by jury for those actions, or analogous actions, tried by jury when Constitution was adopted in 1876. Texas Workers' Compensation Com'n v. Garcia (Sup. 1995) 893 S.W.2d 504. Jury 12(1.1)

Right to trial by jury is protected and inviolate in those cases where jury would have been proper at common law. Holmans v. Transource Polymers, Inc. (App. 2 Dist. 1995) 914 S.W.2d 189, rehearing overruled , writ denied. Jury 12(1.1)

State constitutional provision declaring that right to trial by jury remains inviolate applies only for those actions, or analogous actions, which were tried by jury when Texas Constitution was adopted. Barshop v. Medina County Underground Water Conservation Dist. (Sup. 1996) 925 S.W.2d 618, rehearing overruled. Jury 12(1)

No governmental scheme existed at time of adoption of State Constitution to regulate natural resources such as Edwards Aquifer and, thus, no right to jury trial under constitutional provision preserving jury right attaches to appeals from well permit adjudications under Edwards Aquifer Act since such appeals are not actions, or analogous actions, which were tried to jury at the time Constitution was adopted. Barshop v. Medina County Underground Water Conservation Dist. (Sup. 1996) 925 S.W.2d 618, rehearing overruled. Jury 17(1)

Constitutional provision which grants to legislature the power to regulate the right of trial by jury, and to maintain its purity and efficiency does not permit reduction of the right but does permit legislature to deny the right

in cases where no right to jury trial existed at common law, as it merely protects the right as it existed at the time the Constitution went into effect. Granger v. Folk (App. 9 Dist. 1996) 931 S.W.2d 390, rehearing overruled , mandamus overruled. Jury 10; Jury 31.1

3. Absoluteness of right to jury trial--In general

Right to trial by jury is not absolute; special circumstances may justify its qualification. Bergeron v. Sessions (Civ.App. 1977) 561 S.W.2d 551, ref. n.r.e.. Jury 9

Although this section provides that "The right of trial by jury shall remain inviolate," this right is not absolute in civil cases. Coleman v. Sadler (Civ.App. 1980) 608 S.W.2d 344. Jury 10

4. ---- Validity of statutes, absoluteness of right to jury trial

Criminal code requirement for reversal of conviction on the basis of service on jury by a disqualified juror, that a defendant show significant harm resulting from service of the challenged juror, was unconstitutional as applied with state constitutional prohibition against jury service by convicted felons; conviction of a theft or any felony was an absolute disqualification to jury service, and thus no showing of harm was required for reversal of defendant's conviction. Perez v. State (App. 13 Dist. 1998) 973 S.W.2d 759, petition for discretionary review granted , reversed 11 S.W.3d 218, on remand 41 S.W.3d 712, rehearing overruled. Criminal Law 1005; Criminal Law 1166.15

5. Speedy trial

Court of Civil Appeals will not sanction denial of right to jury trial in any case where it reasonably appears to be guaranteed by Constitution, even though public interest would be served by speedy adjudication of issues involved and trial by jury would necessarily involve considerable delay. Hatten v. City of Houston (Civ.App.1963) 373 S.W.2d 525, ref. n.r.e. ; Knickerbocker v. Haley Transports, Inc. (Civ.App.1965) 386 S.W.2d 621.

Provision of § 10 of this Article that accused shall have speedy public trial by impartial jury must be construed with provision of this section that right of trial by jury shall remain inviolate. Dabney v. State (Cr.App. 1933) 124 Tex.Crim. 21, 60 S.W.2d 451. Jury 10

6. Masters and referees

Litigants are entitled to a trial by jury when demanded and this right may not be denied by shunting the case to a master. Garrison v. Garrison (Civ.App. 1978) 568 S.W.2d 709. Jury 25(1); Jury 31.2(6)

Hearing before master is not the trial, and presentation of evidence to master does not waive right to jury, even when demand is made after master's hearing. Minnich v. Jones (App. 6 Dist. 1990) 799 S.W.2d 327. Jury 28(5); Reference 61

7. Tort liability

Justice of the peace was not subject to tort liability for improperly denying jury trial to defendant pleading "not guilty" in criminal case. Turner v. Pruitt (Sup. 1961) 161 Tex. 532, 342 S.W.2d 422. Justices Of The Peace 25

8. Procedural rules

Inviolate right to a jury trial is regulated by rules which specify its availability. Green v. W. E. Grace Mfg. Co. (Sup. 1968) 422 S.W.2d 723. Jury 31.4

Right to trial by jury is not an absolute right in civil cases but is subject to certain procedural rules. Mills v. Rice (Civ.App. 1969) 441 S.W.2d 290. Jury 9

It is important to distinguish between procedural right to jury trial and substantive right to preservation of common-law causes of action; although legislation altering or restricting cause of action is subject to scrutiny under open courts doctrine, that substantive change does not implicate right to jury trial, as long as relevant issues under modified cause of action are decided by jury. Texas Workers' Compensation Com'n v. Garcia (Sup. 1995) 893 S.W.2d 504. Jury 12(1.1)

Right to trial by jury in criminal matters is among those fundamental rights guaranteed by Texas and Federal Constitutions; in order to effectuate that right, there is minimal requirement that jury instructions not be exactly opposite of what law actually is. Hutch v. State (Cr.App. 1996) 922 S.W.2d 166, rehearing on petition for discretionary review denied. Criminal Law 772(1); Jury 21

9. Elements of jury trial

In felony prosecution, the essential elements of "trial by jury" are a jury of 12 men, a judge qualified as and having power of a district judge presiding over the trial, and a unanimous verdict. Randel v. State (Cr.App. 1949) 153 Tex.Crim. 282, 219 S.W.2d 689. Jury 31.3(1)

10. Equitable proceedings

The province of the jury, in the trial of all causes in equity, was the same as in the trial of causes at law; if the evidence was admissible, as conducing in any degree to maintain the issue, whether it should satisfy the jury of the truth of the fact which it conduced to prove, was a question which must, of necessity, belong to them to determine; and the court, especially an appellate court, would not set aside their verdict, merely because the evidence might not be deemed by a Chancellor sufficient proof of the disputed fact. Carter v. Carter (1849) 5 Tex. 93 .

The province of the jury was, in general, the same in cases of equitable, as in those of legal cognizance; and the sufficiency of their verdict would be determined by the application of the same rules. Wells v. Barnett (1852) 7

Tex. 584.

On submitting issues in an equity case, only such matters of fact as in some way tend to establish or defeat a cause of action need be submitted. Henyan v. Trevino (Civ.App. 1911) 137 S.W. 458, error refused. Trial 370(3)

The right of trial by jury applies in Texas to both law and equity cases without distinction. Franzetti v. Franzetti (Civ.App. 1938) 120 S.W.2d 123. Jury 13(1)

Generally, in absence of express constitutional or statutory requirement, the right of jury trial in suits of equity does not exist, it being the peculiar province of the chancellor to determine all issues of fact as well as of law. Dallas Joint Stock Land Bank of Dallas v. State ex rel. Cobb (Civ.App. 1939) 133 S.W.2d 827, affirmed 135 Tex. 25, 137 S.W.2d 993. Jury 13(1)

Under Art. 5, § 10, parties to equitable proceedings are entitled to have controverted issues of fact determined by the jury. Dallas Joint Stock Land Bank of Dallas v. State ex rel. Cobb (Civ.App. 1939) 133 S.W.2d 827, affirmed 135 Tex. 25, 137 S.W.2d 993. Jury 13(5.1)

Right of trial by jury is preserved in an equitable action, but only ultimate issues of fact are to be so determined. Alamo Title Co. v. San Antonio Bar Ass'n (Civ.App. 1962) 360 S.W.2d 814, ref. n.r.e.. Jury 13(5.1)

In equity, right to jury trial does not exist unless expressly provided by constitution or statute. Welch v. Welch (Civ.App. 1963) 369 S.W.2d 434. Jury 13(1)

Article 5, § 10, protecting right to jury, was intended to broaden right to jury afforded by this section, by including causes in equity. State v. Credit Bureau of Laredo, Inc. (Sup. 1975) 530 S.W.2d 288. Jury 10

Although right to jury trial extends to disputed fact issues in equitable, as well as legal proceedings, such questions as whether the delay is slight or whether an unconscionable hardship results are not the type of disputed fact issues that may be decided by the jury. Reynolds-Penland Co. v. Hexter & Lobello (Civ.App. 1978) 567 S.W.2d 237, cause dismissed by agreement. Jury 13(5.1)

Although a litigant has right to a trial by jury in an equitable action, only ultimate issues of fact are submitted to jury for determination; jury does not determine the expediency, necessity, or propriety of equitable relief. State v. Texas Pet Foods, Inc. (Sup. 1979) 591 S.W.2d 800. Jury 13(5.1)

Right to jury trial in equity extends to disputed issues of fact in equitable and legal proceedings; jury, however, should not determine expediency, necessity, or propriety of equitable relief. Casa El Sol-Acapulco, S.A. v. Fontenot (App. 14 Dist. 1996) 919 S.W.2d 709, rehearing overruled , writ dismissed by agreement. Jury 13(5.1)

Historically in equity proceedings, chancellor was judge of fact as well as of law, there being no right of trial by jury, but in Texas, ever since the first State Constitution of 1845, party is not deprived of a jury trial in a suit of an equitable nature. Granger v. Folk (App. 9 Dist. 1996) 931 S.W.2d 390, rehearing overruled , mandamus overruled. Jury 13(1)

11. Election contests

Contestants of school bond election had no right to trial by jury. Frias v. Board of Trustees of Ector County Independent School Dist. (Civ.App. 1979) 584 S.W.2d 944, dismissed w.o.j. , certiorari denied 100 S.Ct. 531, 444 U.S. 996, 62 L.Ed.2d 426. Jury 19(1)

Vernon's Ann.Civ.St. art. 717m-1 authorizing dismissal of a challenge to a bond issue election, including school bonds, on failure to file a bond to insure payment of all damages caused by delay, did not deny taxpayers' right to trial by jury under this section and § 10 of this Article, and bond requirement did not have a "chilling effect" denying taxpayers substantive and procedural due process and any basic right to prosecute a lawsuit did not insulate taxpayers from damages caused to the public agency if their suit proved unfounded and bond was required only if taxpayers failed to show entitlement to temporary injunction. Buckholts Independent School Dist. v. Glaser (Sup. 1982) 632 S.W.2d 146. Constitutional Law 4195; Jury 31; Schools 97(4.5)

12. Taxation

Plaintiff's right to trial by jury in a suit to restrain the collection of certain taxes was waived. Nalle v. City of Austin (Civ.App. 1906) 41 Tex.Civ.App. 423, 93 S.W. 141, error refused.

Abutting property owners contesting assessments levied against their property for cost of paving improvements under section 9 of Vernon's Ann.Civ.St. art. 1105b, prohibiting assessments in excess of special benefits to the property, were not entitled to jury trial of issues relating to benefits accruing from the improvements, and jury's answers to special issues should have been disregarded. City of Houston v. Blackbird (Sup. 1965) 394 S.W.2d 159. Judgment 199(3.14); Jury 19(1)

13. Municipal charters and ordinances

Under Const.1845, Art. 1, § 12, it was held that a provision in the charter of a town, "that the mayor shall, in a summary way, try all offenses against the laws passed by the council, without a jury, give judgment, and issue execution for the same," was unconstitutional and void. Burns v. La Grange (1856) 17 Tex. 415; Smith v. San Antonio (1856) 17 Tex. 643.

Paris City Charter, §§ 138 and 147, relating to public improvements and assessments of property is not violative of this section. City of Paris v. Brenneman (Civ.App. 1910) 59 Tex.Civ.App. 464, 126 S.W. 58.

Dallas City Charter (Acts 1907, 30th Leg., Sp. Laws, p. 568, ch. 71) providing for the recall of city officers on petition and election is not violative of this section. Bonner v. Belsterling (Civ.App. 1911) 137 S.W. 1154, error

granted , affirmed 104 Tex. 432, 138 S.W. 571. Constitutional Law 2314; Municipal Corporations 154

San Antonio ordinance of August 27, 1917, regulating automobiles used for hire, was not invalid as depriving any person of the right of trial by jury. Craddock v. City of San Antonio (Civ.App. 1917) 198 S.W. 634, error refused. Constitutional Law 4752

14. Administrative proceedings--In general

Only when payment of administrative penalty is prerequisite to judicial review does payment run afoul of State Constitution's open courts, right to trial by jury, and separation of powers provisions. Barshop v. Medina County Underground Water Conservation Dist. (Sup. 1996) 925 S.W.2d 618, rehearing overruled. Constitutional Law 2317; Constitutional Law 2625(1); Jury 17(1)

Edwards Aquifer Act expressly provides that person may file petition for judicial review of administrative decision of Edwards Aquifer Authority without paying amount of penalty and, thus, Act does not unconstitutionally require prepayment of penalty prior to seeking judicial review. Barshop v. Medina County Underground Water Conservation Dist. (Sup. 1996) 925 S.W.2d 618, rehearing overruled. Constitutional Law 4426; Water Law 1867

Judicial review of agency orders under substantial evidence rule does not per se violate right to trial by jury; depending on particular order being appealed, and nature and scope of administrative scheme in general, judicial review proceeding may not be analogous to action tried by jury in 1876 and, thus, may be exempt from provision in bill of rights in Texas Constitution guaranteeing right to jury trial. Texas Workers' Compensation Com'n v. Garcia (Sup. 1995) 893 S.W.2d 504. Jury 31.2(7)

Party has no right to jury trial in suit for judicial review of Railroad Commission's order imposing administrative penalty for violation of safety or pollution control provisions under Natural Resources Code; regulatory mechanisms erected to prevent and remedy pollution did not exist at time of adoption of Texas Constitution in 1876 and, thus, suits contesting administrative penalties are not analogous to any action tried to jury in 1876. EnRE Corp. v. Railroad Com'n of Texas (App. 3 Dist. 1993) 852 S.W.2d 661. Jury 19(15)

Discharged policeman did not have right to jury trial on appeal from city's civil service trial board decision upholding policeman's discharge. Baca v. City of Dallas (App. 5 Dist. 1990) 796 S.W.2d 497. Jury 17(1)

Legislature may constitutionally provide for judicial review of agency action by nonjury trial if jury trial would be incompatible with concept of agency adjudication under relevant statute and result in substantial interference with agency's role in valid statutory scheme enacted by Legislature for protection of public health, safety, comfort or welfare. Adams v. Texas State Bd. of Chiropractic Examiners (App. 3 Dist. 1988) 744 S.W.2d 648. Jury 31.1

On appeal to district court from order of the banking board which granted charter to new bank, protestant was not entitled to jury trial on issue of whether applicants for the charter were acting in good faith; the issue of good faith was triable under the substantial evidence rule. Bank of North America v. State Banking Bd. (Civ.App. 1972) 482 S.W.2d 923, ref. n.r.e. 492 S.W.2d 458. Banks And Banking 6; Jury 19(1)

Suspended policeman was not entitled to trial by jury upon appeal to district court of suspension order which had been upheld by city firemen's and policemen's civil service commission, but only to trial to determine issues of whether agency's ruling was free of taint of illegality and was reasonably supported by substantial evidence. Firemen's and Policemen's Civil Serv Com'n v. Hamman (Civ.App. 1965) 393 S.W.2d 406, error granted, affirmed in part , reversed in part 404 S.W.2d 308. Jury 19(12); Municipal Corporations 185(12)

The cancellation of a retail liquor permit under the Liquor Control Act [Vernon's Ann.P.C. (1925) art. 666-12 et seq. (repealed; see, now, V.T.C.A. Alcoholic Beverage Code, § 11.61 et seq.)] and the principles of law governing such matters was not a “civil suit” or “cause of action” so as to entitle licensee to jury trial on trial de novo on appeal from order of Liquor Control Board or administrator canceling license. Texas Liquor Control Board v. Jones (Civ.App. 1937) 112 S.W.2d 227. Jury 17(1)

The denial of the right of trial by jury under Vernon's Ann.P.C. (1925) art. 666-14 (repealed; see, now, V.T.C.A. Alcoholic Beverage Code, § 11.67) did not violate constitutional provisions relating to jury trial. Texas Liquor Control Board v. Jones (Civ.App. 1937) 112 S.W.2d 227. Jury 17(1)

14.5. ---- Workers’ compensation, administrative proceedings

Statute governing attorney fees paid to workers' compensation claimant's counsel, which required amount of attorney fees to be awarded under statute to be decided by trial court, did not violate rights of employer's insurance carrier pursuant to provision of State Constitution protecting right to a jury trial for those actions or analogous actions which were tried by a jury when the State Constitution was adopted, as claimant's request for attorney fees was not analogous to common law civil penalty actions. Texas Mut. Ins. Co. v. Boetsch (App. 5 Dist. 2010) 307 S.W.3d 874, petition for review filed. Jury 19(1)

15. ---- Trial court appeal, administrative proceedings

Department of Agriculture Produce Recovery Fund Board, by imposing money damages on carrot buyer licensed by Board, for breach of contract between buyer and carrot grower, without providing a jury trial to buyer, and with appeal of Board's decision limited to substantial evidence review by state district court, as opposed to a right to trial de novo in the district court, violated buyer's state constitutional right to jury trial. McManus-Wyatt Produce Co., Inc. v. Texas Dept. of Agriculture Produce Recovery Fund Bd. (App. 3 Dist. 2004) 140 S.W.3d 826, review denied. Jury 31.2(1)

16. ---- Zoning ordinances, administrative proceedings

In proceeding by landowners to set aside permit for construction of parking lot as an exception to zoning ordinance, where there were no disputed facts concerning question of disqualification of certain members of Board of

Adjustment, and such questions were determined as a matter of law, court did not err in denying jury trial on such issues. Moody v. City of University Park (Civ.App. 1955) 278 S.W.2d 912, ref. n.r.e.. Jury 12(3)

In proceeding by landowners to set aside permit for construction of parking space as an exception to zoning ordinance, alleged capricious action of Board of Adjustment amounting to an abuse of discretion was a question of law, and landowners were not entitled to jury trial on that issue. Moody v. City of University Park (Civ.App. 1955) 278 S.W.2d 912, ref. n.r.e.. Jury 12(3)

17. Workers' compensation

The Workers' Compensation Act is a substitute for the common law negligence remedy, which was an action tried to a jury in 1876, therefore, at least with regard to the recovery of income and death benefits, the Workers' Compensation Act is analogous to a claim for which the right to a jury trial is constitutionally preserved. Tex. Const. art. Transcontinental Ins. Co. v. Crump (App. 14 Dist. 2008) 274 S.W.3d 86, rehearing overruled , review granted , reversed 2010 WL 3365339. Jury 19(1)

With regard to central issues regarding income and death benefits, Workers' Compensation Act's remedy is analogous to claim for which right to jury trial is constitutionally preserved; Act is substitute for common-law negligence remedy, which was action tried to jury in 1876. Texas Workers' Compensation Com'n v. Garcia (Sup. 1995) 893 S.W.2d 504. Jury 14(1.4)

Provisions of Workers' Compensation Act tying benefits to physical impairment did not violate right to jury trial, even though, in many cases, jury would be foreclosed from considering, on appeal to district court of administrative decision, evidence with respect to true nature of worker's disability, loss of earning capacity, or future loss of earnings; legislature replaced common-law cause of action which based compensation in part of loss of earning capacity with statutory cause of action which based compensation in part on impairment, and jury was allowed, under Act, to determine impairment. Texas Workers' Compensation Com'n v. Garcia (Sup. 1995) 893 S.W.2d 504. Jury 31.2(7)

Workers' Compensation Act provision requiring that jury, on appeal to district court, be informed of Workers' Compensation Commission's decision did not violate right to jury trial; as jury was not required to accord decision any particular weight, provision did not impinge on jury's discretion in deciding relevant factual issues. Texas Workers' Compensation Com'n v. Garcia (Sup. 1995) 893 S.W.2d 504. Jury 31.2(7)

Workers' Compensation Act provision limiting extent of evidence presented to jury, on appeal to district court, to that presented to Workers' Compensation Commission, unless court determined that claimant's condition substantially changed since Commission's decision, did not violate right to jury trial; provision encouraged parties to present relevant evidence during administrative proceedings, thus increasing accuracy and efficiency of those proceedings, and requiring party to marshal and disclose evidence diligently does not violate right to trial by jury. Texas Workers' Compensation Com'n v. Garcia (Sup. 1995) 893 S.W.2d 504. Jury 31.2(7)

Workers' Compensation Act provision requiring jury, on appeal of administrative decision to district court, to

adopt specific impairment rating arrived at by one of physicians in case, rather than considering entirety of testimony to find impairment rating, did not violate right to jury trial; requirement that impairment rating match one of physician's findings was part of substantive statutory scheme, disputed issue of fact on appeal was which physician's rating would prevail, and that issue was presented to and decided by jury. Texas Workers' Compensation Com'n v. Garcia (Sup. 1995) 893 S.W.2d 504. Jury 31.2(7)

That issues might be judicially reviewed sequentially under Workers' Compensation Act, rather than in single proceeding, did not implicate right to trial by jury. Texas Workers' Compensation Com'n v. Garcia (Sup. 1995) 893 S.W.2d 504. Jury 31.2(7)

Workers' Compensation Act provision imposing threshold of 15% impairment on receipt of supplemental income benefits did not violate right to jury trial, notwithstanding contention that threshold imposed arbitrary presumption; threshold was substantive part of benefit scheme, and jury decided whether claimant was at least 15% impaired. Texas Workers' Compensation Com'n v. Garcia (Sup. 1995) 893 S.W.2d 504. Jury 31.1

The 1989 Workers' Compensation Act's establishment of “designated doctor” whose findings would be given “presumptive weight” on issues of impairment ratings and determinations of maximum medical improvement did not violate due course of law, equal protection, or jury trial provisions of the Texas Constitution, in that presumption could be rebutted by great weight of other medical evidence before Workers' Compensation Commission and by preponderance of other medical evidence at substantial change of condition hearing before court, and presumption did not operate in purely arbitrary manner by excluding such factors as doctor's medical qualifications, his or her familiarity with worker's condition, and nature and extent of examination. Texas Workers' Compensation Com'n v. Garcia (App. 4 Dist. 1993) 862 S.W.2d 61, rehearing denied , writ granted , reversed 893 S.W.2d 504. Constitutional Law 4186; Workers' Compensation 26

The 1989 Workers' Compensation Act's provisions regarding use of American Medical Association (AMA) impairment guidelines, 15% impairment rating threshold for supplemental income benefits, and judicial review violated right to trial by jury under Texas Constitution by removing factual determinations regarding extent of impairment, likelihood of future employment, and future loss of earnings from jury. Texas Workers' Compensation Com'n v. Garcia (App. 4 Dist. 1993) 862 S.W.2d 61, rehearing denied , writ granted , reversed 893 S.W.2d 504. Workers' Compensation 26

Employer's insurer was denied its right to fair and impartial jury in workers' compensation case where insurer's motion for supplementary voir dire was denied, even though insurer alleged that three jurors served in another workers' compensation case in which claimant suffered similar back injury, in which claimant had been treated by same physician, in which claimant had worked for same employer, and in which same attorney served as defense counsel. Texas Employers Ins. Ass'n v. Beattie (App. 4 Dist. 1987) 733 S.W.2d 700, ref. n.r.e.. Jury 31.2(1)

18. Licenses and permits

Chiropractor had no right under this section to jury trial in judicial review of license revocation, though license

was property right, in that such right was statutorily created, and hence its revocation did not constitute taking of property without due process. Adams v. Texas State Bd. of Chiropractic Examiners (App. 3 Dist. 1988) 744 S.W.2d 648. Constitutional Law 4286; Jury 10

19. Attorney discipline

Mandatory disbarment for attorney's criminal conviction does not violate state constitutional prohibition against excessive fines or deny attorney his right to jury trial; disbarment is not excessive penalty for criminal conviction, and there is no right to jury trial before imposition of disciplinary sanctions against attorney, except in connection with criminal charges. Sanchez v. Board of Disciplinary Appeals (Sup. 1994) 877 S.W.2d 751, rehearing overruled. Attorney And Client 59.14(4); Fines 1.3; Jury 19(18)

Jury trial is not statutorily required in mandatory disbarment proceedings, and constitutional right to jury is satisfied so long as disbarred attorney's underlying criminal conviction was obtained in court of competent jurisdiction by constitutionally adequate procedures. Matter of Humphreys (Sup. 1994) 880 S.W.2d 402, rehearing overruled , certiorari denied 115 S.Ct. 427, 513 U.S. 964, 130 L.Ed.2d 340. Jury 19(18)

20. Legal malpractice

Allowing trial court to determine causation in cases of appellate legal malpractice as question of law would not violate parties' right to a jury trial; party is entitled to jury trial only on factual elements of his case. Millhouse v. Wiesenthal (Sup. 1989) 775 S.W.2d 626. Jury 34(3)

21. Court-martial

Defendant member of the Texas National Guard who was convicted by summary court-martial of behaving with disrespect toward his superior officer was not denied right to trial by jury in violation of this section. Vernon v. State (Military App.) June 5, 1978, No. 77-1.

22. Contempt--In general

Under a judgment of contempt, which partakes of the nature of a criminal proceeding, one may be punished by fine, imprisonment, or both, without trial by jury. Ex parte, Miller (Cr.App. 1922) 91 Tex.Crim. 607, 240 S.W. 944. Jury 24.5

Courts have power to punish for contempt without intervention of a jury. Ex parte Howell (Cr.App. 1972) 488 S.W.2d 123, appeal dismissed 94 S.Ct. 114, 414 U.S. 803, 38 L.Ed.2d 38, rehearing denied 94 S.Ct. 558, 414 U.S. 1052, 38 L.Ed.2d 341, rehearing denied 96 S.Ct. 1151, 424 U.S. 936, 47 L.Ed.2d 343. Jury 24.5

Vernon's Ann.Civ.St. art. 1911a authorizing a court to find an officer of the court guilty of contempt does not violate due process and equal protection clauses because of failure to provide for trial by jury. Ex parte Howell (Cr.App. 1972) 488 S.W.2d 123, appeal dismissed 94 S.Ct. 114, 414 U.S. 803, 38 L.Ed.2d 38, rehearing denied

94 S.Ct. 558, 414 U.S. 1052, 38 L.Ed.2d 341, rehearing denied 96 S.Ct. 1151, 424 U.S. 936, 47 L.Ed.2d 343. Constitutional Law 3773; Constitutional Law 4494; Contempt 31

There is a constitutional right to jury trial in contempt proceedings where permissible penalty is in excess of that permitted for punishment of a petty offense. Credit Bureau of Laredo, Inc. v. State (Civ.App. 1974) 515 S.W.2d 706, error granted , affirmed 530 S.W.2d 288. Jury 22(2)

Right to jury trial in contempt cases depends not only upon whether contempt charged was civil or criminal, and whether it was direct or constructive, but also whether it was petit or serious; lacking legislative authorization of more serious punishment, sentence of as much as six months in prison, plus normal periods of probation, may be imposed without jury trial, but imprisonment for longer than six months is constitutionally impermissible without opportunity for jury trial. Ex parte Werblud (Sup. 1976) 536 S.W.2d 542. Jury 22(2)

Imposition of two $500 fines for contempt did not take case out of petty offense category, so as to require jury trial, where fines constituted punishment for two separate acts of constructive contempt committed on separate dates; in any event, fine exceeding $500 did not of itself necessitate use of jury. Ex parte Werblud (Sup. 1976) 536 S.W.2d 542. Jury 22(2)

Alleged contemnor has constitutional right to jury trial on “serious” charge of criminal contempt; charge for which confinement may exceed six months is “serious.” Ex parte Sproull (Sup. 1991) 815 S.W.2d 250. Jury 24.5

Contempt order sentencing defendant to 25 years in jail and $25,000 in fines for failing to answer 50 questions during postjudgment deposition was void where defendant was not given and did not waive jury trial. Ex parte Minns (App. 1 Dist. 1994) 889 S.W.2d 16. Jury 24.5

Contemnor has constitutional right to jury trial on serious charge of criminal contempt; any sentence greater than six months is serious. Ex parte Suter (App. 1 Dist. 1995) 920 S.W.2d 685. Jury 24.5

Defendant could be charged with attempted capital murder of two persons and attempted murder of a third individual without violating double jeopardy prohibition; defendant shot three individuals, and the shooting of each individual qualified for the offense of attempted murder because the individual in each count was different and would require the proof of a fact the other counts did not require. Valadez v. State (App. 14 Dist. 1998) 979 S.W.2d 18, petition for discretionary review refused. Double Jeopardy 150(1)

23. ---- Child support, contempt

Ex-husband was not entitled to jury trial in contempt proceeding arising from an alleged failure to pay child support, where sentence imposed did not exceed six months. In re Corder (App. 1 Dist. 2009) 2009 WL 1025755, subsequent habeas corpus proceeding 2009 WL 1635381. Jury 24.5

Record showed that trial court did not inform contemnor sentenced to over 22 years' confinement for failure to pay child support of his right to jury trial, or that contemnor affirmatively waived that right, warranting habeas relief. Ex parte Sproull (Sup. 1991) 815 S.W.2d 250. Habeas Corpus 730

Former husband who was charged with contempt for failure to make child support payments as ordered in divorce decree waived trial by jury at contempt proceeding by failing to request a trial by jury. Ex parte Roberts (Civ.App. 1979) 582 S.W.2d 910. Jury 25(2)

A respondent was not entitled to a jury in connection with contempt proceedings brought under Vernon's Ann.Civ.St. art. 2328b-4 (repealed; see, now, V.T.C.A. Family Code, § 21.01 et seq.), the Uniform Reciprocal Enforcement of Support Act. Op.Atty.Gen.1974, No. H-218.

24. ---- Injunctions, contempt

A party prosecuted by contempt proceedings for the violation of an injunction cannot demand a jury trial. Ex parte Allison (Cr.App. 1905) 48 Tex.Crim. 634, 90 S.W. 492.

The act of 1907, authorizing injunctions restraining persons from selling intoxicating liquors within any county wherein the sale of intoxicating liquor has been prohibited by law, is not invalid as denying the right of trial by jury, because the matter inquired into in proceedings for contempt for violating an injunction relates merely to a violation of the injunction, and not to a violation of the local option law. Ex parte Roper (Cr.App. 1910) 61 Tex.Crim. 68, 134 S.W. 334. Jury 14(12)

Where an injunction against keeping of a disorderly house by relator had been issued after trial by jury, imprisonment ordered in contempt proceedings without jury trial for violation of the injunction is not illegal, though the act complained of was also a crime. Ex parte Houston (Cr.App. 1920) 87 Tex.Crim. 8, 219 S.W. 826. Jury 24.5

25. Juvenile proceedings

Right to jury hearing to determine whether juvenile defendant is fit to proceed is inviolate. M.A.V., Jr. v. Webb County Court at Law (App. 4 Dist. 1992) 842 S.W.2d 739, rehearing denied, writ denied , rehearing of writ of error overruled. Jury 19.5

V.T.C.A. Family Code, § 54.05, subsec. (c), precluding a juvenile from demanding a jury trial in a modification of disposition hearing when determination of delinquency is made upon a criminal charge is not unconstitutional as violative of right to trial by jury considering that such a trial is afforded juvenile at original disposition hearing. Matter of A.M.B. (App. 1 Dist. 1984) 676 S.W.2d 448. Jury 19.5

Juvenile has right to jury trial provided that he desires one and makes request. Yzaguirre v. State (Civ.App. 1968) 427 S.W.2d 687. Jury 19.5

Where record disclosed that natural parents were present at trial when minor child was declared to be a dependent and neglected child and custody awarded to another, that parents subsequently filed their petition to have custody of the child changed and former order set aside, that they were given a jury trial, that judgment was rendered against parents, and that they did not appeal, parents could not complain that they had been deprived of their natural and legal parental rights without notice and consent. Matthews v. Whittle (Civ.App. 1941) 149 S.W.2d 601. Infants 191

The court's refusal to submit to the jury the question of whether accused was less than 17 years old, and therefore entitled under Vernon's Ann.C.C.P.1911, art. 1195 (see, now, V.T.C.A. Family Code, §§ 51.02, 51.03) to be tried as a juvenile delinquent, was not a violation of this section, since whether tried as juvenile delinquent or as a felon he had, under Vernon's Ann.C.C.P.1911, art. 1198 (see, now, V.T.C.A. Family Code, § 54.03) the right to have the merits of his case tried by jury. Robertson v. State (Cr.App. 1922) 93 Tex.Crim. 39, 245 S.W. 443. Jury 19.5

The Delinquent Child Law (Vernon's Ann.C.C.P.1911, art. 1197 et seq.) did not violate the right of trial by jury. Gordon v. State (Cr.App. 1920) 89 Tex.Crim. 59, 228 S.W. 1095.

Much latitude must be given in the administration of the law concerning juvenile crimes, but the authorities cannot be too careful to see that no right is lost to one accused of a violation of the law through ignorance of the legal and constitutional guaranties of trial by jury and to be represented by counsel. Ex parte Brooks (Cr.App. 1919) 85 Tex.Crim. 252, 211 S.W. 592. Infants 68; Jury 29(1)

Acts 1913, 33rd Leg., p. 214, ch. 112 and Acts 1913, 33rd Leg., 1st C.S., p. 7, ch. 6, providing for proceedings against infants as delinquent children, in place of the ordinary common-law criminal procedure, were not unconstitutional as depriving the infants of trial by jury; the proceeding not being criminal in its nature. Ex parte Bartee. (Cr.App. 1915) 76 Tex.Crim. 285, 174 S.W. 1051. Jury 21.3

26. Misdemeanors, generally

One charged with a misdemeanor has right to trial by jury or to waive jury irrespective of whether plea be guilty or not guilty. White v. State (Cr.App. 1950) 154 Tex.Crim. 497, 228 S.W.2d 183. Jury 22(1); Jury 29(2); Jury 29(4)

Defendant in misdemeanor case has same right to trial by jury as in felony cases. (Per Onion, P. J., with two Judges concurring and three Judges concurring in the result). Franklin v. State (Cr.App. 1978) 576 S.W.2d 621. Jury 22(1)

Right to trial by jury is no less protected because trial is for misdemeanor Bearden v. State (Cr.App. 1983) 648 S.W.2d 688. Jury 22(1)

Provision in State Constitution guaranteeing right to trial by jury applies to all criminal prosecutions, and con-

sequently defendant in misdemeanor case has same right of trial by jury as in felony cases. Chaouachi v. State (App. 4 Dist. 1993) 870 S.W.2d 88. Jury 22(.5)

27. Driving while intoxicated

Where defendant, who was charged with drunken driving, requested a jury trial when case was called, trial court was without jurisdiction to proceed to try defendant without a jury when he subsequently appeared before the court, unless and until he withdrew his request and waived jury trial. Dillon v. State (Cr.App. 1957) 165 Tex.Crim. 217, 305 S.W.2d 956. Jury 25(6)

28. Obscenity

Under Texas law, final adjudication of film's obscenity can only be made in criminal proceeding by jury trial unless jury is waived. Bradford v. Wade, N.D.Tex.1974, 386 F.Supp. 1156, affirmed 530 F.2d 973. Jury 24.2

29. Assault

Evidence did not indicate that defendant, who was convicted of aggravated assault upon a female, was denied a trial by jury, or time to prepare for trial, or the right to obtain an attorney. Clark v. State (Cr.App. 1967) 417 S.W.2d 402. Criminal Law 577; Criminal Law 1852; Jury 31.3(1)

30. Drug offenses

Defendant, who was charged with possession of two ounces of marijuana and who elected to proceed under Controlled Substances Act (Vernon's Ann.Civ.St. art. 4476-15), had right to jury trial at guilt stage. Jones v. State (Cr.App. 1973) 502 S.W.2d 771. Jury 24.5

31. Probation revocation

Proceeding to revoke probation is not “trial” as such term is used by Constitution in reference to criminal cases; thus, probationer is not entitled to jury trial in such proceeding. Wilson v. State (1951) 156 Tex.Crim. 228, 240 S.W.2d 774; Lynch v. State (1954) 159 Tex.Crim. 267, 263 S.W.2d 158; Hood v. State (Cr.App.1970) 458 S.W.2d 662.

Hearing on motion to revoke probation is not such a “criminal prosecution” as would entitle an accused to a jury trial. Rhodes v. State (Cr.App.1973) 491 S.W.2d 895; Barrow v. State (Cr.App.1974) 505 S.W.2d 808.

Defendant on probation was not first entitled to jury trial with reference to offense committed while he was on probation; probation could be revoked upon finding by court that terms of probation had been violated. Martinez v. State (Cr.App. 1973) 493 S.W.2d 954. Jury 24.1

Probationer had no right to trial by jury at probation revocation hearing, in which it was alleged that he violated

conditions of his probation by receiving and concealing stolen property. Mann v. State (Cr.App. 1973) 490 S.W.2d 545. Jury 24.1

Probationer was not entitled to jury trial at revocation proceeding. Wickware v. State (Cr.App. 1972) 486 S.W.2d 801. Jury 24.1

Probationer had no right to a trial by jury at probation revocation hearing; rather, the trial judge is the sole trier of the facts, the credibility of witnesses and the weight to be given their testimony. Harris v. State (Cr.App. 1972) 486 S.W.2d 317. Criminal Law 737(1); Criminal Law 741(1); Criminal Law 742(1); Jury 24.1

Probation subject to condition that probationer commit no offense against federal or state laws could be revoked, on ground that he had unlawfully carried pistol on his person, without jury trial on issue whether he had committed such offense. Hood v. State (Cr.App. 1970) 458 S.W.2d 662. Jury 24.1; Sentencing And Punishment 2004

If motion to revoke probation is filed alleging that defendant has committed an offense, he is not entitled to jury trial on issue of whether he is guilty of offense alleged for revocation. Hood v. State (Cr.App. 1970) 458 S.W.2d 662. Jury 24.1

A proceeding to revoke probation is not a criminal trial, and probationer is not entitled to jury trial. Shelby v. State (Cr.App. 1968) 434 S.W.2d 871. Jury 24.1

In hearing to revoke probation, where motion to revoke was grounded on allegation that defendant had violated a law, defendant was not entitled to a jury trial on such issue. Jones v. State (Cr.App. 1953) 159 Tex.Crim. 24, 261 S.W.2d 317, certiorari denied 74 S.Ct. 53, 346 U.S. 836, 98 L.Ed. 358. Jury 24.2

Defendant was not entitled to have a jury trial upon the fact issue arising upon the revocation of his probated sentence. Garbs v. State (Cr.App. 1951) 156 Tex.Crim. 203, 240 S.W.2d 304. Jury 24.2

32. Habitual offenders

Charging petitioners under the habitual offender provisions of subsec. (d) of V.T.C.A. Penal Code, § 12.42, only after they had refused to plead guilty to an unenhanced offense did not, in light of the Supreme Court's Bordenkircher decision, amount to prosecutorial vindictiveness for choosing to demand a jury trial and plead not guilty. Montgomery v. Estelle, C.A.5 (Tex.)1978, 568 F.2d 457, certiorari denied 99 S.Ct. 135, 439 U.S. 842, 58 L.Ed.2d 141. Sentencing And Punishment 1355

Fact that defendant was indicted as an habitual offender did not constitute a denial of his right to trial by jury and his right to due process, on ground that such indictment denied him the right to testify in his defense because he would have been impeached with the prior convictions and would have been forced to incriminate him-

self. Mathis v. State (Cr.App. 1971) 471 S.W.2d 396. Constitutional Law 4579; Jury 31.3(1)

33. Enhancements

Admission of certified copy of defendant's prior conviction and sentence, pursuant to guilty plea, with his photographs and fingerprints, together with testimony of fingerprint expert that fingerprints contained in exhibit were identical with defendant's known fingerprints, was approved method of proving defendant's prior conviction; once judgment and sentence were introduced and defendant was identified with them, regularity of conviction was presumed unless defendant affirmatively showed that he did not waive his right to trial by jury, thereby showing conviction was void and unusable for enhancement. Morton v. State (App. 7 Dist. 1994) 870 S.W.2d 177, petition for discretionary review refused. Sentencing And Punishment 1377; Sentencing And Punishment 1381(2); Sentencing And Punishment 1381(6)

Defendant's objection to exhibit consisting of certified copy of prior conviction and sentence pursuant to guilty plea with his photographs and fingerprints that exhibit failed to show he personally executed his waiver of trial by jury was not affirmative showing required of defendant to exclude exhibit for enhancement purposes; at most, objection merely called attention to absence of waiver of right to jury trial in exhibit and did not show that defendant did not execute such waiver at proper time in prior proceedings or that he was denied his constitutional right to jury trial. Morton v. State (App. 7 Dist. 1994) 870 S.W.2d 177, petition for discretionary review refused. Sentencing And Punishment 1379(2)

34. Habeas corpus, generally

Party confined to mental hospital is not entitled to jury trial in habeas corpus proceeding testing legality of confinement. Eidinoff v. Connolly, N.D.Tex.1968, 281 F.Supp. 191. Jury 19(19)

There is no right to trial by jury in habeas corpus proceedings. Ex parte Selby (Cr.App. 1969) 442 S.W.2d 706. Jury 19(19)

Relief was not available by postconviction writ of habeas corpus to defendant who claimed that he did not sign written jury form waiving his right to trial by jury, where record reflected that defendant agreed to waiver and defendant did not claim that he desired and was deprived of trial by jury or that he was otherwise harmed; overruling *Ex parte Felton*, 590 S.W.2d 471. Ex parte Sadberry (Cr.App. 1993) 864 S.W.2d 541. Habeas Corpus 496

Denial of constitutional right to jury trial is matter for habeas corpus review, given its fundamental nature. Ex parte Lyles (Cr.App. 1995) 891 S.W.2d 960. Habeas Corpus 496

Habeas corpus relief was warranted when defendant did not expressly waive, in any form to trial court, his right to jury trial; therefore, judgment of conviction would be set aside and defendant would be returned to custody of county sheriff to answer indictment. Ex parte Lyles (Cr.App. 1995) 891 S.W.2d 960. Habeas Corpus 496; Habeas Corpus 791

35. Mental illness--In general

The commission to try lunacy charges provided for by Acts 1913, 33rd Leg., p. 341, ch. 163 (see, now, Vernon's Ann.Civ.St. art. 5547-26 et seq.) was not a jury within the constitutional guarantee of right to a trial by jury. Loving v. Hazelwood (Civ.App. 1916) 184 S.W. 355, error refused. Jury 33(1)

There being a right to jury trial in lunacy proceedings at the date of the adoption of this section, Acts 1913, 33rd Leg., p. 341, ch. 163, amending Rev.Civ.St.1911, arts. 150 to 165 (see, now, Vernon's Ann.Civ.St. art. 5547-26 et seq.), substituting a commission for a jury in such proceeding, was invalid. White v. White (Sup. 1917) 108 Tex. 570, 196 S.W. 508. Jury 19(1)

Denial of a jury in trial upon original commitment for mental illness or in a restoration hearing is unconstitutional. Swinford v. Logue (Civ.App. 1958) 313 S.W.2d 547, mandamus overruled. Jury 19(6.5)

A jury trial is required for hearing on issue of present insanity. Townsend v. State (Cr.App. 1968) 427 S.W.2d 55. Jury 21.5

36. ---- Temporary commitment, mental illness

A county court has general jurisdiction to commit a mentally ill person to state hospital for period not exceeding 90 days without jury trial for lunacy. Ex parte Giannatti (Civ.App. 1945) 189 S.W.2d 191. Jury 19(6.5)

The County Court at Law No. 2 of Tarrant County was a “probate court” or “the court having probate jurisdiction” and, hence, was vested with jurisdiction to issue an order pursuant to a sworn application filed by husband temporarily committing wife to a state hospital for a period of not more than 90 days. Higgins v. State (Civ.App. 1979) 591 S.W.2d 646. Courts 200; Mental Health 33

37. ---- Juveniles, mental illness

Juvenile defendant was entitled to jury hearing on issue of whether he should be hospitalized temporarily, once juvenile court recognized that juvenile might be mentally ill and initiated proceedings for temporary hospitalization. M.A.V., Jr. v. Webb County Court at Law (App. 4 Dist. 1992) 842 S.W.2d 739, rehearing denied, writ denied , rehearing of writ of error overruled. Jury 19(6.5)

Juvenile defendant was entitled to jury in hearing to determine defendant's fitness to proceed respecting potential juvenile court waiver of jurisdiction and discretionary transfer to criminal district court on charges of murder, capital murder, burglary, theft, and robbery. M.A.V., Jr. v. Webb County Court at Law (App. 4 Dist. 1992) 842 S.W.2d 739, rehearing denied, writ denied , rehearing of writ of error overruled. Jury 19.5

There is no prerequisite to right to jury hearing to determine whether juvenile defendant is fit to proceed that juvenile present evidence that he is of unsound mind. M.A.V., Jr. v. Webb County Court at Law (App. 4 Dist. 1992) 842 S.W.2d 739, rehearing denied, writ denied , rehearing of writ of error overruled. Jury 19.5

38. ---- Guardianship, mental illness

In guardianship proceedings, an issue as to the ward's sanity was formed, which the court could determine without a jury where no jury was demanded. Ferguson v. Ferguson. (Civ.App. 1910) 128 S.W. 632, error refused.

One over whom a guardian was appointed for alleged unsoundness of mind prior to taking effect of Acts 1921, 37th Leg., p. 15, ch. 11 as amending Rev.Civ.St.1911, art. 4081 (see, now, V.A.T.S. Probate Code, §§ 114 and 115) relating to appointment of guardians of persons of unsound mind or habitual drunkards, was entitled at least to an opportunity of requesting a jury and being heard on the issue of his alleged unsoundness of mind. Greenwood v. Furr (Civ.App. 1923) 251 S.W. 332.

Where statutes were properly followed and service and notice had on person alleged to be non compos mentis, as provided by Vernon's Ann.Civ.St. art. 4114 et seq. (see, now, V.A.T.S. Probate Code, § 109 et seq.) appointment of guardian without actual jury trial was valid, though it would have been error to refuse jury trial if one were demanded. Bearden v. Texas Co., 1933, 60 S.W.2d 1031. Mental Health 141

39. ---- Restoration proceedings, mental illness

Vernon's Ann.Civ.St. art. 5547-82, subd. (e) (see, now, Vernon's Ann.Civ.St. art. 5547-56) which specifically denied trial by jury in restoration proceeding for re-examination, hearing and discharge of persons who had been adjudicated mentally ill and which did not provide for appeal to a forum where jury trial can be obtained, was violative of this section's provision that right of trial by jury shall remain inviolate. Swinford v. Logue (Civ.App. 1958) 313 S.W.2d 547, mandamus overruled. Jury 31.2(7)

Petitioners in proceedings for restoration of mental capacity are entitled to trial by jury. Hulick v. Mormino (Civ.App. 1968) 435 S.W.2d 628. Mental Health 60

Defendant was not entitled to jury at restoration of competency hearing where jury had been waived by agreement of parties, defendant failed to point to any constitutional or statutory provision that mandated jury trial in every restoration of competency hearing, defendant did not claim jury waiver was not voluntarily and knowingly made, and defendant produced no evidence or data that all persons previously found to be incompetent to stand trial and represented by counsel could not execute valid jury waiver. Eastham v. State (Cr.App. 1980) 599 S.W.2d 624. Jury 29(7)

40. ---- Criminal insanity, mental illness

Allowing same jury which heard evidence concerning defendant's sanity to determine guilt after finding him sane did not deprive defendant of due process of law, equal protection of law, fundamental fairness and effective assistance of counsel. Morris v. State (Cr.App. 1969) 440 S.W.2d 855. Constitutional Law 3830; Constitutional Law 4783(1); Criminal Law 624; Criminal Law 1852

Person of unsound mind who has been charged with commission of criminal offense has state constitutional right to trial by jury. M.A.V., Jr. v. Webb County Court at Law (App. 4 Dist. 1992) 842 S.W.2d 739, rehearing denied, writ denied , rehearing of writ of error overruled. Jury 19(6.5)

41. Divorce

In suits for divorce, neither the trial court nor the court of civil appeals is bound by the finding of the jury upon questions of fact, but may, in their sound discretion, disregard the verdict and render the judgment that justice requires. De Fierros v. Fierros (Civ.App. 1913) 154 S.W. 1067. Divorce 149; Divorce 184(9)

Under Rev.Civ.St.1911, art. 4633, judge may refuse to render judgment for divorce, if evidence is not satisfactory to himself, even though it is a jury case, but under this section, § 10 of Art. 5, Rev.Civ.St.1911, arts. 1984a, 1986 and 4633 (repealed; see, now, Vernon's Ann. Rules Civ.Proc., rules 277, 290 and V.T.C.A. Family Code, § 3.61), the court, where jury has found by special verdict that necessary facts constituting legal grounds for divorce are wanting, may not disregard its verdict and grant a divorce to either party. Grisham v. Grisham (Civ.App. 1916) 185 S.W. 959.

Under Vernon's Ann.Civ.St. art. 4632 (repealed; see, now, V.T.C.A. Family Code, § 3.61) authorizing either party to divorce suit to demand a jury, trial court, though not bound by jury's verdict, had to seek at least an advisory finding from jury on issues of fact raised by evidence as to truth of allegations of petition. Skop v. Skop, 1947, 201 S.W.2d 77. Divorce 144

Where divorce action had been pending on jury docket prior to wife's death, husband had a right to trial by jury on issues of fact such as good faith and probable cause on part of wife, as a prerequisite to establishment of a reasonable attorney's fee in such action, raised on a motion by wife's executor seeking a final dismissal of the cause. Gunther v. Gunther (Civ.App. 1957) 301 S.W.2d 207, error dismissed. Jury 16(9)

No error in refusing husband a jury trial in a divorce case was shown by record, if considered, consisting of a recital on judgment that jury trial was waived, and evidence on new trial hearing that husband expressly waived a jury trial in open court. Hughes v. Hughes (Civ.App. 1966) 407 S.W.2d 14. Divorce 183

Error in disregarding timely demand for jury in divorce suit required reversal, where case involved custody of children, as to which verdict would be binding upon court. Jerrell v. Jerrell (Civ.App. 1966) 409 S.W.2d 885. Divorce 184(12)

Constitutional provision securing right to trial by jury includes divorce suit. Goetz v. Goetz (Civ.App. 1976) 534 S.W.2d 716. Jury 19.10(1)

In divorce proceeding, trial court committed reversible error in refusing to impanel a jury to hear and determine issues of fact, since husband timely complied with all conditions precedent to jury trial, and there existed disputed issues of fact for jury resolution. Jones v. Jones (Civ.App. 1979) 592 S.W.2d 19. Divorce 184(12)

Either party in divorce action is entitled to a jury trial after report of the master is filed. Mann v. Mann (Sup. 1980) 607 S.W.2d 243. Divorce 144

Former husband was entitled to jury trial in order to determine unresolved factual issue necessary to enforce provision of divorce judgment relating to disposition of marital home according to its terms. Harris v. Harris (App. 5 Dist. 1984) 679 S.W.2d 75, dismissed. Jury 12(1)

After master in chancery was appointed to report on parties' property and debts and to suggest fair property division in divorce action, husband had right to jury trial as to those fact-findings by master to which he objected, although husband did not object to original nonjury setting and proceeded to present evidence to master without demanding jury. Minnich v. Jones (App. 6 Dist. 1990) 799 S.W.2d 327. Jury 28(5)

42. Custody of children--In general

In an action by a parent to recover the custody of her minor child, an order overruling plaintiff's motion for a new trial, and upon court's own motion decreeing that plaintiff should have custody of the child for one month in each year, was an invasion of the province of the jury. Cobb v. Works (Civ.App. 1910) 58 Tex.Civ.App. 546, 125 S.W. 349.

Question of custody of children was for court and not for jury. Northcutt v. Northcutt (Civ.App. 1926) 287 S.W. 515, dismissed w.o.j. Jury 18

Where a suit involving the custody of a minor is tried with the aid of a jury, findings of jury with respect to child's welfare and interests are advisory only and are not binding on courts which have responsibility not only of exercising general control over the minor but of weighing the evidence and ultimately determining under all the facts what is best for the child. Oldfield v. Campbell (Civ.App. 1945) 191 S.W.2d 897. Child Custody 510

43. ---- Waiver of jury, custody of children

Any right of mother to a jury trial in proceeding to obtain custody of minor child, was waived by failure to assert such right until after hearing before the court. Roberts v. Jolly (Civ.App. 1955) 282 S.W.2d 436. Jury 25(6)

In maternal grandparents' dependent and neglected child proceeding against father who sought custody by habeas corpus, the grandparents waived their right to trial by jury by not demanding jury trial and by voluntarily submitting the merits of all matters in controversy to the court sitting without a jury. Selman v. Ross, 1957, 302 S.W.2d 752. Jury 25(2); Jury 28(6)

Former husband was not entitled to jury in proceedings on his motion to restrain former wife from removing child from state and, even if right to jury trial existed, such right was waived when former husband made jury deposit but upon appearance immediately before hearing did not make any requests for jury. Wash v. Menn

(Civ.App. 1979) 588 S.W.2d 637, dismissed. Jury 14(11); Jury 25(2)

44. ---- Habeas corpus, custody of children

In habeas corpus hearings to determine the matter of custody of children subsequent to divorce proceedings, there is no constitutional right to a trial by jury. Foster v. Foster (Civ.App. 1921) 230 S.W. 1064, error dismissed as moot. Jury 19(19)

Since efficacy of writ of habeas corpus lies in prompt and speedy hearing given applicant therefor, neither party to habeas corpus proceeding to recover child's custody is entitled to jury trial as matter of right. Strode v. Silverman (Civ.App. 1949) 217 S.W.2d 454, error refused. Jury 19(19)

Where the custody of a minor child is sought in a habeas corpus proceeding, no party to such proceeding is entitled as a matter of right to a jury trial. Erwin v. Williams (Civ.App. 1952) 253 S.W.2d 303, ref. n.r.e. Habeas Corpus 744; Jury 19(19)

In habeas corpus proceeding for custody of minor child, neither party is entitled to a jury trial as a matter of right. Roberts v. Jolly (Civ.App. 1955) 282 S.W.2d 436. Jury 19(19)

45. Adoption

Adoption was unknown to common law, so that persons opposing petition for adoption of their minor child were not entitled to jury trial, in absence of provision therefor in adoption statute in effect at time of adoption of state Constitution or present adoption statutes. Hickman v. Smith (Civ.App. 1951) 238 S.W.2d 838, error refused. Jury 19.10(1)

Denial of jury trial in adoption proceeding was not error. In re Pate's Adoption (Civ.App. 1969) 449 S.W.2d 372 . Jury 19.10(1)

In proceeding for adoption, to which child's natural mother and adoptive father did not consent, such parents were not entitled to trial by jury. Smallwood v. Swarner (Civ.App. 1974) 510 S.W.2d 156, ref. n.r.e. Jury 19.10(1)

45.5. Termination of parental rights

Trial court denial of father's request for a jury trial was not an abuse of discretion, in termination of parental rights proceeding; father paid the jury fee more than thirty days before trial on two separate occasions, but he did not file a written request for a jury trial until one week before the trial setting, he did not attempt to demonstrate that granting the request for a jury trial would not interfere with the court's docket, delay the trial, or injure the opposing parties, and no parties moved for a continuance following the denial of the jury request. Monroe v. Alternatives in Motion (App. 1 Dist. 2007) 234 S.W.3d 56, rule 53.7(f) motion granted. Jury 25(6)

46. Property rights--In general

The act of 4th February, 1858, to ascertain what land certificates had been illegally issued by the County Courts of counties in Peters' colony, and to provide for issuing patents on such of said certificates as were legal, provided that the issues of fact made by the petition and the statutory traverse should be tried by the court, and in this respect was not unconstitutional. Pelham v. The State (1867) 30 Tex. 422.

In action of trespass to try title defendants are entitled to jury trial on issue whether their deed was intended as an absolute conveyance or as a mortgage. Wood v. De Winter (Civ.App. 1926) 280 S.W. 303. Jury 14(4)

All persons are entitled to trial by jury of any facts affecting their property rights. Clayton v. Clayton (Civ.App. 1957) 308 S.W.2d 557. Jury 12(3)

Where no pretrial order limiting issues was entered and defendant, in amended answer in suit for title to and possession of real estate, pleaded general denial, plea of not guilty, parol gift together with possession and valuable permanent improvements, adverse possession for ten years, and adverse possession under claim of title and valuable improvements, burden of establishing prima facie case rested on plaintiff, and dismissal of jury panel and proceeding to trial without jury denied defendant jury trial requiring reversal. Mason v. Tobin, 1966, 408 S.W.2d 243. Appeal And Error 1035; Jury 34(3); Trespass To Try Title 38(.5)

Property owners had right to jury trial in district court action for damages and fees resulting from condemnor's temporary possession of land before condemnation proceeding was dismissed. Eppoleto v. Bournias (App. 10 Dist. 1988) 764 S.W.2d 284, motion to file mandamus overruled. Jury 19(11)

47. ---- Partition, property rights

Disputed issues of fact in partition proceedings will be treated as being for the jury when a proper demand has been made for a trial by jury. Rayson v. Johns (Civ.App. 1975) 524 S.W.2d 380, ref. n.r.e.. Partition 70

Where an issue of fact was raised in partition proceeding on question of susceptibility of property to division in kind, and where plaintiffs made proper request for a trial by jury, plaintiffs were entitled to a jury determination of issue. Rayson v. Johns (Civ.App. 1975) 524 S.W.2d 380, ref. n.r.e.. Partition 70

Plaintiffs, each of whom owned one-fourth of the property in which the defendant held an undivided one-half interest, were entitled to a jury trial under this section and Art. 5, § 10, in the resolution of the factual dispute as to the realty's partitionability and were entitled to that trial at the initial determination as to the realty's susceptibility to partition in kind when such matter was in dispute. Azios v. Slot (App. 3 Dist. 1983) 653 S.W.2d 111. Jury 14(10)

The constitutional guarantee of a jury trial is not in conflict with any provision of the law or the rules relating to partition and is to be read as encompassing the resolution of such disputed factual issues in partition suits as the

partitionability of land. Azios v. Slot (App. 3 Dist. 1983) 653 S.W.2d 111. Jury 14(10)

48. ---- Eminent domain, property rights

As eminent domain proceedings did not exist at common law and are special creations of legislature, which did not provide for right to jury at hearing of amounts of condemnee's reasonable and necessary attorney fees for dismissed proceedings, condemnor does not have right to jury trial. City of Houston v. Blackbird (App. 1 Dist. 1983) 658 S.W.2d 269, dismissed. Jury 19(11)

49. Dissolution of corporation

A plaintiff's right to trial by jury was not infringed when plaintiff's action against dissolved corporation was denied on basis that the corporation no longer existed and the claims arose after the corporation's dissolution. Anderson v. Hodge Boats & Motors, Inc. (App. 9 Dist. 1991) 814 S.W.2d 894, writ denied. Jury 31.2(1)

50. Corporate stock subscriptions

In a proceeding under Rev.Civ.St.1895, art. 671 (see, now, V.A.T.S. Bus.Corp.Act, art. 2.21) to enforce payment by stockholders for unpaid subscriptions the stockholders were entitled to a jury trial upon paying the jury fee. McFarland v. Martin & Moodie (Civ.App. 1905) 86 S.W. 639.

51. Conversion

Where plaintiff suing for current wages converted by defendant and for an attorney's fee and for punitive damages demanded a jury trial, defendant could not complain of trial by jury. Trinity County Lumber Co. v. Conner (Civ.App. 1915) 176 S.W. 911. Jury 25(1)

52. Receivership

Intervening landowners in receivership proceedings against an irrigation plant have no right to have their water rights determined by jury trial, the court which appointed receiver having right to fix rates, and landowners' remedy being appeal. McHenry v. Bankers' Trust Co. (Civ.App. 1918) 206 S.W. 560, error refused, error dismissed 41 S.Ct. 321, 255 U.S. 559, 65 L.Ed. 785. Jury 13(19)

Denial of jury trial of objections to final report of receiver appointed in partition suit was not error, since property in hands of receiver was in custody of the law and its management and control were that of the court and interposition of a jury upon issues before the court in such proceeding would transfer such control from court to jury. Ferguson v. Ferguson (Civ.App. 1948) 210 S.W.2d 268, ref. n.r.e. , certiorari denied 69 S.Ct. 1498, 337 U.S. 943, 93 L.Ed. 1447, rehearing denied 70 S.Ct. 81, 338 U.S. 853, 94 L.Ed. 523, rehearing denied 70 S.Ct. 559, 339 U.S. 916, 94 L.Ed. 1341. Jury 19(9)

Executor of estate of person, who had disappeared and was declared legally dead, was not entitled to a jury trial

on the issue of final award of fees to be made to receiver of assets of such person and to receiver's accountant. Bergeron v. Sessions (Civ.App. 1977) 561 S.W.2d 551, ref. n.r.e.. Jury 19(7)

53. Probate proceedings

A contest of the probate of a will must on demand be tried by a jury. Cockrill v. Cox (1886) 65 Tex. 669.

Heir, who claimed share of excess fund resulting from tax foreclosure sale and party claiming fund as assignee of all heirs, were entitled to have fact issue as to rights to fund decided by a jury. Walsh v. Spencer (Civ.App. 1954) 275 S.W.2d 220. Jury 19(17)

54. Debtor-creditor proceedings

A jury trial was available to debtor on issue of excess value upon timely demand in proceeding by creditor to collect his judgment against debtor from excess nonexempt value of debtor's homestead property. Steenland v. Texas Commerce Bank Nat. Ass'n (App. 12 Dist. 1983) 648 S.W.2d 387, ref. n.r.e.. Jury 14(14)

Former employee was not required to exhaust all administrative remedies through Texas Employment Commission (TEC), pursuant to Payday Act, before filing suit against employer for severance pay; Constitution provides right to jury trial in all common-law actions where right existed prior to its enactment, such as action for recovery of debt, and because Act was neither cumulative of common-law remedy for recovery of debt nor did it expressly or impliedly negate or deny common-law remedy, it would be unconstitutional if it was mandatory remedy. Bloch v. Dowell Schlumberger Inc. (App. 1 Dist. 1996) 925 S.W.2d 301. Jury 14(2); Labor And Employment 2194

55. Collateral estoppel

Application of collateral estoppel, based on findings by federal judge in nonjury proceeding under Federal Tort Claims Act against United States Navy, to Texas product liability suit against food manufacturers and distributors would have violated plaintiffs' right to trial by jury as protected by Texas Constitution. Trapnell v. Sysco Food Services, Inc. (App. 13 Dist. 1992) 850 S.W.2d 529, on rehearing, rehearing overruled , writ granted , affirmed 890 S.W.2d 796. Jury 31.2(1)

Plaintiffs in products liability action arising out of death of sulfite-sensitive patron of salad bar did not waive right to jury trial when, by series of fortuitous events, their suit against Navy, which had to be brought in federal court under Federal Tort Claims Act and tried to federal judge, was tried first, particularly where plaintiffs' entire course of conduct demonstrated that they sought jury trial first in state district court against food manufacturers and distributors, and thus they were not collaterally estopped from relitigating issue determined adversely to them in suit against Navy. Trapnell v. Sysco Food Services, Inc. (App. 13 Dist. 1992) 850 S.W.2d 529, on rehearing, rehearing overruled , writ granted , affirmed 890 S.W.2d 796. Jury 28(5)

Lack of opportunity for jury trial in federal court did not, in and of itself, preclude application of defensive collateral estoppel in state court. Johnson & Higgins of Texas, Inc. v. Kenneco Energy, Inc. (Sup. 1998) 962 S.W.2d 507. Judgment 829(3)

56. Mandamus

Mandamus review was warranted, as to trial court's order granting in part plaintiff's motion for new trial in medical malpractice action, which order explained the trial court's action only as being "in the interests of justice and fairness," without further explanation of trial court's reasons for setting aside jury's verdict; mandamus petition presented significant issue regarding protection of state constitutional right to jury trial, absent mandamus review the defendants seemingly would have no appellate review of order granting new trial, and even if defendants obtained reversal of verdict after second trial such appellate remedy would be inadequate, because they would have lost the benefit of final judgment based on first jury verdict without ever knowing why, and would have endured the time, trouble, and expense of second trial. In re Columbia Medical Center of Las Colinas, Subsidiary, L.P. (Sup. 2009) 290 S.W.3d 204. Mandamus 4(4); Mandamus 50

Husband who objected to master's findings of fact in divorce proceeding did not have adequate and efficient remedy at law and was entitled to writ of mandamus requiring trial judge to set his exceptions on jury docket; husband had clear right to jury trial, and it would have been useless and militated against judicial efficiency to require him to try his case without a jury and secure judgment that was subject to nullification on appeal. Minnich v. Jones (App. 6 Dist. 1990) 799 S.W.2d 327. Mandamus 4(3)

City mayor was entitled to jury trial on fact issues raised in petition for writ of mandamus to compel him to order disincorporation election. Deal v. Bonner (App. 9 Dist. 1985) 700 S.W.2d 721. Jury 19(3)

Although right to jury trial does not exist in all situations where mandamus is applicable, it does exist in situation where corporation, in resisting a stockholder's attempt to inspect books and records, raises by its pleadings a fact issue over whether stockholder has a proper purpose for wanting to see the books. Uvalde Rock Asphalt Co. v. Loughridge (Sup. 1968) 425 S.W.2d 818. Jury 19(3)

In stockholders' mandamus action for access to corporate books and records, grant of discovery improperly deprived corporation of jury trial of issue of proper purpose raised by corporation's allegations that stockholders desired information to obtain competitive advantage over corporation and to harass corporation and force it to sell certain assets to stockholders at inadequate price or to buy stockholders' stock at inflated price. Uvalde Rock Asphalt Co. v. Loughridge (Sup. 1968) 425 S.W.2d 818. Jury 31.2(1)

In view of this section, declaring that jury trial shall remain inviolate, and Art. 5, § 10, district judge, though authorized to issue a writ of mandamus in vacation, cannot issue a writ where facts are disputed and jury trial is demanded. Roberts v. Munroe (Civ.App. 1917) 193 S.W. 734, dismissed w.o.j.. Jury 19(3)

57. Declaratory judgments

Special proceeding by city under Vernon's Ann.Civ.St. art. 717m (repealed; see, now, Vernon's Ann.Civ.St. art. 717m-1) for declaratory judgment establishing validity of water system revenue bonds was "cause" of action or civil suit within provisions of this section that right of trial by jury shall remain inviolate. Hatten v. City of Houston, 1963, 373 S.W.2d 525, ref. n.r.e.. Jury 19(1)

57.5. Waiver

Waiver of a jury in one trial does not affect either party's right to demand a jury in the second trial after remand where the demanding party has complied with Rules of Civil Procedure by making a written request to the clerk of the court and paying the jury fee. In re Lesikar (App. 14 Dist. 2009) 285 S.W.3d 577. Jury 28(17)

Grandmother who sought possession of or access to her grandchildren waived for appellate review claim that statute precluding action for child custody or visitation by blood relative of former parent whose parental rights have been terminated violated state and federal constitutional rights of equal protection, trial by jury, and due process of law, where grandmother failed to raise claims at the trial level. In re I.M.S. (App. 14 Dist. 2008) 2008 WL 5059179, Unreported. Child Custody 904

58. Injunctions, generally

In a suit for a mandatory injunction to compel obedience to a decree that defendant open a public highway across its property, it was not error to grant a jury trial. Santa Fe Townsite Co. v. Norvell (Civ.App. 1909) 55 Tex.Civ.App. 488, 118 S.W. 762.

A suit to enjoin the keeping of a bawdyhouse is not a criminal case, but a civil matter as regards right to jury trial. Campbell v. Peacock (Civ.App. 1915) 176 S.W. 774. Jury 14(12)

In a suit where relief by way of injunction is sought the parties are entitled to jury trial on disputed fact issues, on regular assignment of the case, if demanded. Oil Lease & Royalty Syndicate v. Beeler (Civ.App. 1920) 217 S.W. 1054, error refused. Jury 13(12)

Where, upon the trial upon the merits of a landlord's action to restrain tenant from pasturing stock on a portion of the land, there was a controverted issue of fact as to what the agreement was between the parties as to pasturing stock, the denial of right to jury trial on such issue was error requiring reversal in view of this section and Rev.Civ.St.1911, arts. 5173 to 5185 (see, now, Vernon's Ann.Civ.St. art. 2123; Vernon's Ann. Rules Civ.Proc., rule 216 et seq.). Williams v. Tyler (Civ.App. 1923) 258 S.W. 886. Jury 13(12)

Rendering final judgment in vacation of court perpetuating injunction enjoining interference with building alterations was deprivation of right to trial by jury upon all issues of fact arising in trial. White v. Perkins (Civ.App. 1933) 65 S.W.2d 423. Jury 31.2(4)

In suit for an injunction, as in all equitable actions, the right to a jury trial exists but only ultimate fact issues are

to be determined by the jury. Townplace Homeowners' Ass'n, Inc. v. McMahon (Civ.App. 1980) 594 S.W.2d 172, ref. n.r.e.. Injunction 130; Jury 14(11)

Bank was entitled to jury trial at hearing on request of partnership and partners to enjoin bank from foreclosing its lien on property owned by partnership and to declare liens invalid. Citizens State Bank of Sealy, Tex. v. Caney Investments (Sup. 1988) 746 S.W.2d 477. Jury 14(11); Jury 14(12.5)

59. Jurisdiction

Constitutional guaranty of right of trial by jury relates to procedure after jurisdiction has been acquired and cannot be looked to in determining such jurisdiction. Roquemore v. Roquemore (Civ.App. 1968) 431 S.W.2d 595. Jury 31.2(1)

Constitutional guaranty of jury trial cannot be looked to in determining jurisdiction, especially in civil cases. Bearden v. Texas Co. (Civ.App. 1931) 41 S.W.2d 447, error granted , affirmed 60 S.W.2d 1031. Courts 39

A requirement meant to assure that Texas' constitutional right to trial by jury remains inviolate requires a direct-appeal court to exercise its factual-sufficiency jurisdiction with deferential standards of review to jury verdicts. Const. art. Johnson v. State (App. 10 Dist. 2008) 263 S.W.3d 405, petition stricken 2008 WL 4417196, petition for discretionary review refused. Criminal Law 1159.2(1)

60. Plea of privilege

A party has a right to a jury trial upon a plea of privilege. Holmes v. Coalson (Civ.App. 1915) 178 S.W. 628, error granted , affirmed 111 Tex. 502, 240 S.W. 896. Jury 16(1)

61. Guilty plea--In general

The right of trial by jury does not apply when the offense charged is an ordinary felony and the accused enters a plea of guilty. Ex parte Kelley (Cr.App. 1955) 161 Tex.Crim. 330, 277 S.W.2d 111.

Where there is no evidence of plea bargain, and plea is voluntarily and understandingly made, all nonjurisdictional defects, including claimed deprivations of due process, are waived. Dumas v. State (App. 13 Dist. 1993) 853 S.W.2d 184, petition for discretionary review refused, untimely filed. Criminal Law 273.4(1)

62. ---- Waiver of jury, guilty plea

Conviction may be held void in collateral attack if accused was convicted upon plea of guilty before court without first waiving his right to jury trial. Morton v. State (App. 7 Dist. 1994) 870 S.W.2d 177, petition for discretionary review refused. Sentencing And Punishment 1314

Defendant waived claim of error in trial court's refusing his request to withdraw jury waiver almost immediately after waiver was entered by entering open plea of guilty, where defendant did not claim that his pleas were involuntary. Dumas v. State (App. 13 Dist. 1993) 853 S.W.2d 184, petition for discretionary review refused, untimely filed. Criminal Law 273.4(1)

Defendant waived claim of error in trial court's refusing his request to withdraw jury waiver almost immediately after waiver was entered by entering open plea of guilty, where defendant did not claim that his pleas were involuntary. Dumas v. State (App. 13 Dist. 1993) 853 S.W.2d 184, petition for discretionary review refused, untimely filed. Criminal Law 273.4(1)

Absent any evidence that a written waiver of trial by jury was not in fact executed and filed in a prior case in which accused had pled guilty to felony theft, accused, who was convicted of burglary of building with intent to commit theft and who contended that the prior conviction was not admissible for purpose of enhancement of punishment because the “pen papers” did not include written waiver of right of trial by jury, failed to overcome the presumption of regularity accorded to the prior judgment which stated that accused had waived his right of trial by jury and that such waiver was in writing and had been filed. McCoy v. State (Cr.App. 1975) 529 S.W.2d 538. Sentencing And Punishment 1377

A defendant who enters a plea of guilty must affirmatively waive trial by jury, or judge must empanel a jury, and just as a written statement signed by defendant is acceptable as evidence of that waiver, a written statement from defendant is also admissible as evidence that defendant was uninfluenced by such factors as fear, persuasion or delusive hope of pardon. Williams v. State (Cr.App. 1975) 522 S.W.2d 483. Criminal Law 273.1(5)

Defendant, who had pleaded guilty to offense of selling whiskey in dry area, waived by not requesting two days to prepare for trial, trial by jury, and legal counsel. Townsel v. State (Cr.App. 1955) 162 Tex.Crim. 221, 283 S.W.2d 944. Criminal Law 273.4(1); Criminal Law 1753; Jury 29(6)

In prosecution for violation of liquor laws, wherein defendant consented to trial on his plea of guilty before court, he waived thereby his right to a jury trial. White v. State (Cr.App. 1950) 154 Tex.Crim. 497, 228 S.W.2d 183. Jury 29(4)

Defendant who consented to trial of his case on his plea of guilty before the court could not after assessment of punishment complain that he should have been tried before a jury although punishment was more severe than he expected. White v. State (Cr.App. 1950) 154 Tex.Crim. 497, 228 S.W.2d 183. Jury 29(7)

Where defendant testified that he entered plea of guilty voluntarily and did not deny that he was informed of his right of trial by jury or to have counsel, such evidence without any indication that defendant acted under undue influence or fear was insufficient to support defendant's contention that he did not waive right of trial by jury or that he was denied right to be represented by counsel. Bumguardner v. State (Cr.App. 1944) 147 Tex.Crim. 188, 179 S.W.2d 768. Criminal Law 1753; Jury 29(4)

63. ---- Withdrawal of guilty plea

Defendant's motion to set aside his plea of guilty, wherein he requested court to instruct jury to acquit him, was insufficient to apprise trial court that he desired to place his guilt in issue for the jury to determine by withdrawing his plea of guilty, entering a plea of not guilty, and thereby asserting his right to trial by jury but, rather, action on part of the trial court defendant was manifestly seeking was that the court determine as a matter of law that venue had not been proved, and accordingly, instruct the jury that defendant should be acquitted as a matter of law, and thus trial court did not err in failing to set aside defendant's plea of guilty. Fairfield v. State (Cr.App. 1981) 610 S.W.2d 771. Criminal Law 274(1)

Since plea of guilty withdraws guilt as a fact question from the case, a defendant need only remove that impediment in order to place his guilt or innocence in issue for jury resolution, by withdrawing it and entering a plea of not guilty, and the right of a defendant to do so before the cause is submitted for deliberation is an unqualified one, derived directly from inviolate right to trial by jury. Fairfield v. State (Cr.App. 1981) 610 S.W.2d 771. Criminal Law 274(1)

Where defendant entered plea of nolo contendere to charge of indecency with a child and waived jury trial, finding of guilt based on evidence and plea was entered, defendant was subsequently allowed to change plea to not guilty, then demanded jury trial in trial before court, change of plea acted as revocation of prior jury waiver; thus, defendant could demand jury trial despite signing jury waiver. Wilson v. State (App. 5 Dist. 1984) 669 S.W.2d 792, petition for discretionary review granted , affirmed and remanded 698 S.W.2d 145. Criminal Law 275.2; Jury 29(4)

A defendant's express desire to withdraw a guilty plea and to enter plea of not guilty invokes power of jury to arbitrate issue of guilt and acts as revocation of defendant's waiver of trial by jury. Wilson v. State (App. 5 Dist. 1984) 669 S.W.2d 792, petition for discretionary review granted , affirmed and remanded 698 S.W.2d 145. Criminal Law 274(10)

Trial court erred in denying defendant's request to withdraw his guilty plea before jury had retired, since defendant was entitled to withdraw plea at any time before jury retired as a matter of right, and thus court had no discretion but to grant defendant's request. Abrego v. State (App. 2 Dist. 1998) 977 S.W.2d 835, petition for discretionary review refused, habeas corpus dismissed 2002 WL 220065. Criminal Law 274(1)

Error in denying defendant's request to withdraw his guilty plea to charge of aggravated sexual assault of child before jury had retired was harmless, in light of overwhelming evidence of defendant's guilt; victim was 11 years old, pregnant, had a baby, there was no evidence suggesting that anyone other than defendant committed crimes, defendant confessed to his crime twice, tried to bribe victim's mother into dropping charges, and fled country to escape prosecution. Abrego v. State (App. 2 Dist. 1998) 977 S.W.2d 835, petition for discretionary review refused, habeas corpus dismissed 2002 WL 220065. Criminal Law 1167(5)

64. Pleading

In an action by a husband to set aside part of a judgment of divorce granted his wife, which required him to pay money to the wife, on the ground that he had never been served with notice of the suit or process, court was not authorized by Rev.Civ.St.1911, art. 1951 (see, now, Vernon's Ann.Rules Civ. Proc., rule 265), or otherwise, to hear testimony and require the plaintiff to introduce testimony for the purpose of ascertaining whether or not there was sufficient testimony contesting the service in the complaint to authorize the submission of such an issue to the jury; it being the duty of the court to pass on all matters of pleading without hearing evidence, and, if a good cause of action is pleaded, to empanel a jury and let plaintiff introduce his evidence. Becker v. Becker (Civ.App. 1920) 218 S.W. 542. Jury 25(11)

65. Summary judgment

A plaintiff, whose pleading in effect involved merely law questions, could not complain of lack of due process because of denial of jury trial by rendition of summary judgment for defendant on motion thereby under Vernon's Ann.Rules Civ.Proc., rule 166-A. Schroeder v. Texas & Pac. Ry. Co. (Civ.App. 1951) 243 S.W.2d 261. Constitutional Law 3990

Summary judgment did not deprive defendant of constitutional right to jury trial, where there was no genuine issues as to any material fact. Wyche v. Works (Civ.App. 1963) 373 S.W.2d 558, ref. n.r.e.. Jury 31.2(4)

The rule governing no-evidence summary judgment motions does not deprive litigants of a jury trial where there exists a material question of fact; when a party cannot show a material fact issue, there is nothing to submit to a jury. Lattrell v. Chrysler Corp. (App. 6 Dist. 2002) 79 S.W.3d 141, rehearing overruled , review denied. Jury 31.2(4)

When a party cannot show a material fact issue, there is nothing to submit to a jury, and the grant of summary judgment to the opposing party does not violate the constitutional right to a jury trial. Fertic v. Spencer (App. 8 Dist. 2007) 247 S.W.3d 242, review denied. Jury 31.2(4)

Client was not entitled to a trial by jury on his breach of contract, quantum meruit,and promissory estoppel claims against his former attorney, where client failed to present summary judgment evidence to show that there was more than a scintilla of evidence to raise a genuine issue of material fact as to the challenge elements of his claims. Fertic v. Spencer (App. 8 Dist. 2007) 247 S.W.3d 242, review denied. Jury 31.2(4)

The no-evidence summary judgment rule, as applied to motorist's strict products liability, wrongful death, and breach-of-warranty claims against car manufacturer, did not violate the trial by jury provision of the state constitution; motorist's right to trial by jury was not absolute, and in the absence of a material fact issue, there was nothing to submit to a jury. Miller v. General Motors Corp. (App. 14 Dist. 2002) 2002 WL 1963493, Unreported, review denied. Jury 31.2(4)

66. Discovery

Providing explanation for peremptory challenges does not in and of itself waive work product privilege that ap-

plies to notes made by counsel during voir dire. Goode v. Shoukfeh (Sup. 1997) 943 S.W.2d 441. Pretrial Procedure 359

Edmonson movant has right to examine voir dire notes of opposing attorney when attorney relies upon those notes while giving sworn or unsworn testimony in *Edmonson* hearing; absent such reliance, voir dire notes are privileged work product, and movant may not examine them. Goode v. Shoukfeh (Sup. 1997) 943 S.W.2d 441. Pretrial Procedure 359

In bill of discovery, trial court's error in denying defendant's request for jury was harmless, where there was no issue of controversial nature, tending to establish or defeat the right of discovery, to be submitted to the jury. Dallas Joint Stock Land Bank of Dallas v. State ex rel. Cobb (Civ.App. 1939) 133 S.W.2d 827, affirmed 135 Tex. 25, 137 S.W.2d 993. Appeal And Error 1035

67. Continuances

This section does not prohibit the passage of a law regulating continuances, and the granting or refusing of new trials. Lillard v. State (1884) 17 Tex.Crim. 114.

C.C.P.1879, art. 560 (see, now, Vernon's Ann.C.C.P. art. 29.06) did not, by giving the court discretion to deny a continuance on account of the absence of witnesses, deprive accused of his right to a trial by jury. Lillard v. State (1884) 17 Tex.Crim. 114.

68. Stipulations

Where stipulation was entered into for purposes of determining extent to which issues in divorce proceeding might be adjusted and satisfied and provided that it was not to be considered as an admission or evidence in the event settlement attempt was not completed, where stipulation provided that husband accepted responsibility of settling with wife's attorneys in amount which had been discussed, with understanding that either party might “carry this matter to the Court for determination” if agreement was not mutual at the time of final judgment, and where settlement was not consummated and prior property settlement was set aside, stipulation did not bar husband from right to trial by jury on the matter of attorney's fees. Harding v. Harding (Civ.App. 1972) 485 S.W.2d 297. Stipulations 14(4)

69. Presumptions, generally

Where judgment, reciting that upon hearing the court decided that there was no question to be submitted to the jury, is the only evidence before the court on appeal of what the actual proceedings were, the conclusive presumption arises that defendants waived any right to a jury trial; no exception having been taken to court's action. Andrle v. Fajkus (Civ.App. 1919) 209 S.W. 752. Appeal And Error 921

70. Evidence--In general

A strong preponderance of evidence on one side or other is not sufficient to justify trial court in denying right to jury trial. Owens v. Ridgeway (Civ.App. 1965) 395 S.W.2d 704, ref. n.r.e.. Trial 139.1(10)

Findings of jury are inviolate and jury has right to weigh evidence and assess its valuation to evidence. Knupp v. Miller (App. 9 Dist. 1993) 858 S.W.2d 945, writ denied, rehearing of writ of error overruled. Trial 139.1(3)

71. ---- Admissibility of evidence

Erroneous admission, in penalty phase of capital murder prosecution, of that portion of testimony of jailhouse informant which had been obtained in violation of defendant's Sixth Amendment right to counsel was harmless beyond a reasonable doubt, where jury already had before it details of defendant's crime itself and those solicitations of murder to which informant could properly testify, upon which to base its finding of future dangerousness, and improperly admitted testimony concerning defendant's desire to expand his hit list was of minimal consequence. (Per Mansfield, J., with two judges concurring and two judges concurring in result.) Wesbrook v. State (Cr.App. 2000) 29 S.W.3d 103, certiorari denied 121 S.Ct. 1407, 532 U.S. 944, 149 L.Ed.2d 349, habeas corpus denied 2007 WL 841763, subsequent habeas corpus proceeding 318 Fed.Appx. 265, 2009 WL 382230, denial of habeas corpus affirmed 585 F.3d 245, certiorari denied 130 S.Ct. 1889, 176 L.Ed.2d 373. Sentencing And Punishment 1789(9)

Trial court's proper refusal to admit, under hearsay exception for former testimony by unavailable witness, defendant's testimony from previous suppression hearing did not deprive defendant of his right to trial by jury, despite defendant's contention that exclusion of his previous testimony prevented jury from considering voluntariness of his confession. Dennis v. State (App. 1 Dist. 1997) 961 S.W.2d 245, petition for discretionary review refused. Criminal Law 539(2); Jury 31.3(1)

Constitutional guarantee of jury trial did not preclude trial judge from determining fact issues preliminary to ruling upon admissibility of evidence under parol evidence rule. Arkansas Oak Flooring Co. v. Mixon (Civ.App. 1963) 369 S.W.2d 804. Jury 34(1)

72. ---- Prima facie evidence

Acts 1893, 23rd Leg., p. 179, ch. 121, § 7, providing that the payment of the United States special tax as a seller of intoxicating liquors would be prima facie evidence that the person paying the tax was engaged in selling such liquors did not infringe the constitutional right to a trial by jury. Floeck v. State (Cr.App. 1895) 34 Tex.Crim. 314, 30 S.W. 794. Jury 31.1

The Legislature may within certain limits establish rules of evidence such as that contained in Vernon's Ann.P.C.1911, art. 640c (repealed; see, now, V.T.C.A. Penal Code, § 25.05), making proof of a husband's neglect or refusal to provide for his wife's support and maintenance prima facie evidence that the neglect or refusal was willful. O'Brien v. State (Cr.App. 1921) 90 Tex.Crim. 276, 234 S.W. 668. Constitutional Law 2362; Husband And Wife 4

Dean Act, § 2e, as added by Acts 1923, 38th Leg., 2nd C.S., p. 54, ch. 22, § B, providing that proof of possession of intoxicating liquor of more than certain quantity would be prima facie evidence of possession for sale, being within power of Legislature in exercise of right to change rules of evidence within proper limits was not violative of this section. Stoneham v. State (Cr.App. 1925) 99 Tex.Crim. 54, 268 S.W. 156. Constitutional Law 4001; Jury 31.1

In Acts 1935, 44th Leg., Sp.Laws, p. 1210, ch. 45, §§ 1 to 5, as amended, Acts 1937, 45th Leg., 1st C.S., p. 1829, ch. 47, Acts 1943, 48th Leg., p. 323, ch. 207; Acts 1947, 50th Leg., p. 400, ch. 227, governing unlawful transportation of minnows, provision as to prima facie evidence of guilt merely created a rebuttable presumption and therefore did not deprive accused of right to trial by jury. Smith v. State (Cr.App. 1953) 158 Tex.Crim. 410, 256 S.W.2d 109.

73. ---- Sufficiency of evidence

In absence of evidence supporting claim to offset asserted by owner of home against supplier of materials, refusal of requested special issues pertaining to offset did not deny owner right of trial by jury guaranteed by the State Constitution. Ritter v. Kendrick (Civ.App. 1972) 482 S.W.2d 369. Jury 34(3)

74. Credibility of witnesses

In view of this section and Rev.Civ.St.1911, art. 2024 (see, now, Vernon's Ann.Rules Civ.Proc., rule 326), limiting the number of new trials, it was the province of the jury to determine the credibility of witnesses and the weight of testimony, and the court might not assume its functions by deciding that testimony was entitled to no credit because overborne by contradictory testimony, or that it was so contradictory to circumstances and proof as to be improbable. Drew v. American Auto. Ins. Co. (Civ.App. 1918) 207 S.W. 547. Jury 34(3)

Defendant testifying in his own behalf is subject to all the tests that are applied to other witnesses and entitled to have the credibility of his testimony passed on by the jury in view of this section. Hays v. State (Cr.App. 1921) 90 Tex.Crim. 192, 236 S.W. 463. Criminal Law 743

75. Comments by judge

Comment by judge on the weight of evidence of a medical witness was prejudicial and violative of this section. American Express Co. v. Chandler, 1921, 231 S.W. 1085.

The right to trial by jury is inviolate, and denies right of a trial judge in presence and hearing of jury to comment upon credibility of a witness or weight to be given his testimony. Thompson v. Janes (Civ.App. 1950) 227 S.W.2d 330. Jury 34(1)

76. Exchange of judges during trial

Exchange of judges during murder trial did not deny defendant's constitutional right of “trial by jury”. Randel v.

State (Cr.App. 1949) 153 Tex.Crim. 282, 219 S.W.2d 689. Jury 31.3(1)

77. Directed verdict

The direction of a verdict in a civil action was not a violation of the constitutional guaranty of trial by jury. Henry v. McNew (Civ.App. 1902) 29 Tex.Civ.App. 288, 69 S.W. 213, error refused.

Constitutional right of trial by jury was not violated in instructing a verdict for defendants. Henry v. Thomas (Civ.App. 1903) 74 S.W. 599, error refused.

Farm laborer seeking to enforce lien was entitled to jury trial on issue of value of property, raised on plea to jurisdiction of county court, but where evidence was undisputed it would have been proper to direct verdict. Ball v. Beaty (Civ.App. 1917) 223 S.W. 552. Jury 13(11)

Rule 301 of civil procedure authorizing rendition of judgment non obstante veredicto if a directed verdict would have been proper does not authorize direction of a verdict in divorce suit tried before a jury where evidence raises issues of fact, since Vernon's Ann.Civ.St. art. 4632 (repealed; see, now, V.T.C.A. Family Code, § 3.61) expressly provides for trial by jury upon demand by either party to divorce suit. Skop v. Skop, 1947, 201 S.W.2d 77. Divorce 147

Where petition stated a cause of action for divorce on ground of cruel treatment and evidence raised issues of fact as to whether such averments were true, direction of verdict against plaintiff and entry of judgment adversely to her, based wholly on such directed finding without any independent finding by court that evidence was insufficient to establish ground for divorce was error in view of Vernon's Ann.Civ.St. art. 4632 (repealed; see, now, V.T.C.A. Family Code, § 3.61) authorizing either party to demand a jury. Skop v. Skop, 1947, 201 S.W.2d 77. Divorce 147

78. Law questions

Where case involved question of validity of city ordinance, so that question was one of law for court to decide, it was proper to overrule request of defendant for a jury. Humble Oil & Refining Co. v. City of Georgetown (Civ.App. 1968) 428 S.W.2d 405. Jury 12(3)

Question arising from plaintiff's motion to strike defendant's pleadings and defenses was one of law for determination of trial court and defendant was not entitled to jury trial in such connection. Roquemore v. Roquemore (Civ.App. 1968) 431 S.W.2d 595. Jury 12(3)

In evaluating whether explanation offered for peremptory challenge is race-neutral, court must determine whether peremptory challenge violates equal protection clause as matter of law, assuming reasons for peremptory challenge are true. Goode v. Shoukfeh (Sup. 1997) 943 S.W.2d 441. Jury 33(5.15)

79. Fact questions

In criminal cases, save such as are specially excepted, the only mode of trying an issue of fact is by a jury. Short v. State (1879) 16 Tex.Crim. 44.

It is the province of the jury to determine questions of fact; but it is in the power of the trial judge to set aside the finding and to award a new trial; clearly the trial court cannot set aside the verdict of the jury and substitute its finding instead of the finding of a jury and render judgment accordingly. Choate v. San Antonio & A. P. Ry. Co. (Sup. 1898) 91 Tex. 406, 44 S.W. 69.

Primarily all questions of fact are for the jury, and unless it appears without doubt that what would ordinarily be a question of fact has, from the state of the evidence, become a question of law, a court cannot deprive a party of his constitutional right of trial by jury by deciding the question. Merritt v. State ex rel. Tom (Civ.App. 1906) 42 Tex.Civ.App. 495, 94 S.W. 372. Jury 34(3)

If the pleadings and evidence present a controverted question of fact, it is error to refuse a jury trial. Burnett v. Ft. Worth Light & Power Co. (Civ.App. 1908) 117 S.W. 175. Jury 12(3)

Issues of fact presented by a plea of privilege are triable by a jury, unless a jury is waived. Kolp v. Shrader (Civ.App. 1910) 131 S.W. 860, error refused. Jury 16(1)

In view of this section, it is the province of the jury to determine questions of fact. Detro v. Gulf, C. & S. F. R. Co. (Civ.App. 1916) 188 S.W. 517.

The right of trial by jury does not require submission of an action for death to the jury when there is no evidence that injuries alleged to be due to negligence caused the death. Mathews v. North Tex Traction Co (Civ.App. 1922) 243 S.W. 718, dismissed w.o.j..

The constitutional right to a “jury trial” does not include those cases where, under the evidence, there is no controverted issue of fact for determination. Nolan v. Smith (Civ.App. 1942) 166 S.W.2d 750, error refused. Jury 12(3)

The constitutional right to trial by jury ultimately depends upon the existence of a material issue of fact to be submitted to jury. In re Higganbotham's Estate (Civ.App. 1946) 192 S.W.2d 285. Jury 12(3)

Where no jury issue was developed in suit by relatives to annual marriage of purported wife after her death, guaranty of right of trial by jury under this section was not violated by basing judgment against relatives on V.T.C.A. Family Code, § 2.47, providing that voidable marriage is not subject to challenge instituted after the death of either party. Coulter v. Melady (Civ.App. 1972) 489 S.W.2d 156, ref. n.r.e. , certiorari denied 94 S.Ct. 123, 414 U.S. 823, 38 L.Ed.2d 56. Jury 31.2(1)

Defendants in action by appointee to vacancy in office of county commissioner to compel payment to him of salary were not entitled to jury trial as no issues of fact existed. Ramirez v. Flores (Civ.App. 1973) 505 S.W.2d 406, ref. n.r.e.. Jury 12(3)

Issue of whether race-neutral explanation for peremptory strike should be believed is purely question of fact for trial court. Goode v. Shoukfeh (Sup. 1997) 943 S.W.2d 441. Jury 33(5.15)

80. Demand for jury--In general

A party not having demanded a jury cannot complain that the court had discharged several of the jurors. Doll v. Mundine (Civ.App. 1894) 7 Tex.Civ.App. 96, 26 S.W. 87.

The law as to how a jury shall be demanded in order to entitle a party to jury trial should be strictly enforced, where, even admitting his witnesses would testify as he states, a directed verdict for the other party would be justified. Gibson v. Singer Sewing Mach. Co. (Civ.App. 1912) 147 S.W. 285. Jury 25(8)

Defendant, against whom a default was rendered under Rev.Civ.St.1911, art. 1936 (see, now, Vernon's Ann.Rules Civ.Proc., rule 239), for failure to appear and answer in an accounting suit, not having demanded a jury, under Vernon's Sayles' Ann.Civ.St.1914, art. 1939 (see, now, Vernon's Ann.Rules Civ.Proc., rule 243), to assess damages, was not entitled to a writ of inquiry therefor, though he could have demanded one. Dunn v. Gasso (Civ.App. 1922) 241 S.W. 201. Jury 25(2)

Where defendants made seasonable and regular demand for jury and seasonably paid appropriate fee to proper officer, right to trial by jury became fixed and inviolate. Finnell v. Byrne (Civ.App. 1928) 7 S.W.2d 139. Jury 25(1)

Right to trial by jury became fixed upon party timely demanding a jury and depositing correct jury fee with proper officer. First Bankers Ins. Co. v. Lockwood (Civ.App. 1967) 417 S.W.2d 738. Jury 25(1); Jury 26

Although state Constitution provides that right of trial by jury shall remain inviolate, such a right is not absolute in civil cases but is subject to compliance with Vernon's Ann. Rules Civ.Proc., rule 216, permitting jury trial if application therefor is made in proper court and the specified fee is deposited on or before date set for trial of cause but not less than 10 days in advance. First Bankers Ins. Co. v. Lockwood (Civ.App. 1967) 417 S.W.2d 738 . Jury 25(2)

Provision of state Beer Industry Fair Dealing Law that required that issues of good cause for termination of distribution contracts be submitted to arbitration at option of either manufacturer or distributor did not violate distributor's right to jury trial, where neither distributor nor manufacturer paid jury fee and requested jury trial. Glazer's Wholesale Distributors, Inc. v. Heineken USA, Inc. (App. 5 Dist. 2001) 95 S.W.3d 286, review granted, judgment vacated , and remanded by agreement. Jury 31.2(1)

Litigant perfects its right to a jury trial by demanding a jury trial and paying the appropriate fee, but the right to a jury trial is not self executing. Glazer's Wholesale Distributors, Inc. v. Heineken USA, Inc. (App. 5 Dist. 2001) 95 S.W.3d 286, review granted, judgment vacated , and remanded by agreement. Jury 25(2); Jury 26

81. ---- Severance, demand for jury

Trial court's action in severing out computer lessee's defensive cause of action, thereby altering position of parties in litigation 11 days before trial, was justifiable reason to request jury trial, and since there was no evidence presented and no finding made that granting of jury trial would operate to injure adverse party or that granting of jury trial would have disrupted court's docket or otherwise impeded ordinary handling of trial court's business, jury trial should have been granted. McCrann v. Tandy Computer Leasing, Div. of Tandy Electronics, Inc. (App. 13 Dist. 1987) 737 S.W.2d 10. Jury 25(11)

82. ---- Time, demand for jury

Family code provisions requiring the “court,” rather than a jury, to make the findings regarding an applicant's entitlement to a family violence protective order did not deprive former girlfriend of her constitutional right to jury trial as applied, in proceeding in which former boyfriend obtained protective order against former girlfriend; trial court would have had discretion to deny former girlfriend's request for jury trial, regardless of the constitutional argument, because the former girlfriend did not make the jury trial request until 15 days before trial, which was untimely under rule of civil procedure. Teel v. Shifflett (App. 14 Dist. 2010) 309 S.W.3d 597, rehearing en banc denied , review denied. Jury 31.1

To show that trial court has abused its discretion in denying request for a jury trial, complaining party must establish that granting of late request would not have interfered with orderly handling of court's docket, delayed trial of case, and operated to injury of other party. Ricardo N., Inc. v. Turcios de Argueta (App. 13 Dist. 1993) 870 S.W.2d 95, rehearing overruled, writ granted, affirmed in part , reversed in part 907 S.W.2d 423. Jury 25(6)

Defendants in wrongful death action arising from loss at sea failed to meet burden of showing abuse of discretion in denial of their initial, untimely request for jury trial by showing that granting jury trial would not have operated to injury of plaintiffs and would not have interfered with orderly handling of court docket; plaintiffs affirmatively stated prior to defendants' demand that they wanted bench trial and waived any prior requests for jury trial that they might have made, no other indicia of impending jury trial existed, and clerk testified that selecting jury would require parties to remain until late that night. Ricardo N., Inc. v. Turcios de Argueta (App. 13 Dist. 1993) 870 S.W.2d 95, rehearing overruled, writ granted, affirmed in part , reversed in part 907 S.W.2d 423 . Jury 25(6); Jury 25(11)

Trial court erred in denying wife's timely request for jury trial; record did not indicate that granting of jury trial would have injured any party or caused undue disruption to trial court. Grossnickle v. Grossnickle (App. 6 Dist. 1993) 865 S.W.2d 211, rehearing denied. Jury 19.10(1)

Request for jury trial made not less than 30 days before trial is presumed to have been made within reasonable time before trial. Grossnickle v. Grossnickle (App. 6 Dist. 1993) 865 S.W.2d 211, rehearing denied. Jury 25(6)

Adverse party may rebut presumption that request for jury trial was made within reasonable time by showing that granting of request would operate to injure adverse party, disrupt court's docket, or impede ordinary handling of court's business. Grossnickle v. Grossnickle (App. 6 Dist. 1993) 865 S.W.2d 211, rehearing denied. Jury 25(6)

Demand for jury trial on master's findings is timely if it is made before trial court's adoption of master's report. Minnich v. Jones (App. 6 Dist. 1990) 799 S.W.2d 327. Jury 25(6)

When jury demand is made more than ten days in advance of date set for trial, such demand is presumed to be made within reasonable time. Coleman v. Sadler (Civ.App. 1980) 608 S.W.2d 344. Jury 25(6)

Under circumstances wherein case was set on court's nonjury docket for some time and on day set for trial, at about 9:00 a.m., plaintiffs announced ready, but no one appeared for defendant and counsel for defendant appeared at about 10:30, but made no immediate demand for a jury and only at subsequent recess did he pay jury fee and then, at about 11:05, make his demand for jury, trial court did not abuse discretion in trying case without a jury. Gulf Ins. Co. v. Dunlop Tire and Rubber Corp. (Civ.App. 1979) 584 S.W.2d 886, ref. n.r.e.. Jury 25(6); Jury 26

Where final trial in proceeding to terminate mother's parental rights as to child started on October 27, and for various reasons was thereafter continued until finally concluded on December 1, request for jury trial by mother which was not made until November 8 was not timely made. Shapley v. Texas Dept. of Human Resources (Civ.App. 1979) 581 S.W.2d 250. Infants 209

Jury demand made 10 days prior to date case was set for nonjury trial was “not less than 10 days in advance” of that date as required by Vernon's Ann.Rules Civ.Proc., rule 216, governing application for jury trial so that the jury demand was timely and disregard of it required reversal of judgment and remand of cause. First Bankers Ins. Co. v. Lockwood (Civ.App. 1967) 417 S.W.2d 738. Jury 25(6)

A demand for jury in divorce suit, made more than 10 days before date set for trial on nonjury docket, was timely in absence of contention that jury was not available on the date set, or of showing that jury trial would have seriously interfered with or impeded the orderly handling of the court's docket. Jerrell v. Jerrell (Civ.App. 1966) 409 S.W.2d 885. Jury 25(6)

Cross-plaintiff's failure to file formal motion, with notice to cross-defendants, to set aside default judgment was not sufficient reason for refusing to set aside such judgment and for depriving cross-plaintiff of jury trial which he had demanded, notwithstanding that filing of such motion would have been better practice, where cross-plaintiff's attorney, when he appeared about one hour after cross-action had been set, made known to trial court

and opposing counsel his desire to have judgment set aside and cross-action tried by jury which would be available the same afternoon. Boothe v. Durrett (Civ.App. 1961) 343 S.W.2d 553, ref. n.r.e.. Judgment 151

Demand for a jury made by defendants joined by plaintiff during the trial was properly refused. Goldman v. Broyles (Civ.App. 1911) 141 S.W. 283. Jury 25(11)

Rev.Civ.St.1897, art. 3189 (see, now, Vernon's Ann. Rules Civ.Proc., rule 216 et seq.), providing that party desiring jury trial had to make application therefor on first day of term at which suit was to be tried, enacted pursuant to this section, was not mandatory, and a litigant might only be deprived of a jury trial when his delay in demanding a jury and tendering the jury fee would probably work injury to the adverse party. Kenedy Town & Imp. Co. v. First Nat. Bank of Victoria (Civ.App. 1911) 136 S.W. 558.

In the absence of a clear showing of an abuse of discretion, the refusal of the trial court to grant a jury trial, where the demand for a jury was not made within the time prescribed by statute, will not be disturbed on appeal. Kenedy Town & Imp. Co. v. First Nat. Bank of Victoria (Civ.App. 1911) 136 S.W. 558. Appeal And Error 956(1)

83. Withdrawal of case from jury

Fact that employee demanded a jury and timely paid jury fee did not secure to employer the right to a jury trial, and absence of employer and failure to object to withdrawal of the case from the jury did not prevent withdrawal of the case from the jury at request of employee who had made the original demand. Green v. W. E. Grace Mfg. Co. (Sup. 1968) 422 S.W.2d 723. Jury 28(17)

A party who does not timely demand a jury and pay the fee must object to withdrawal of the case from the jury in order to preclude such withdrawal by party who made original demand and paid jury fee. Green v. W. E. Grace Mfg. Co. (Sup. 1968) 422 S.W.2d 723. Jury 25(6)

84. Waiver of jury--In general

The constitutional right to trial by jury may be waived via contract so long as the waiver is made knowingly, voluntarily, and intelligently with sufficient awareness of the relevant circumstances and likely consequences. In re Columbia Medical Center of Lewisville Subsidiary, L.P. (App. 2 Dist. 2009) 273 S.W.3d 923. Jury 28(5)

Violation of defendant's constitutional right to a jury trial for felony driving while intoxicated (DWI), which occurred when defendant was tried without a jury in absence of an express waiver of that right, was structural constitutional error. Davidson v. State (App. 2 Dist. 2007) 225 S.W.3d 807. Criminal Law 1166(1)

A defendant's mere acquiescence in proceeding to trial without a jury does not constitute an express waiver of the statutory and constitutional right to a jury trial. Davidson v. State (App. 2 Dist. 2007) 225 S.W.3d 807. Jury

29(6)

Defendant did not make an express waiver of his statutory and constitutional right to a jury trial for felony driving while intoxicated (DWI), and thus defendant was denied that right when he was tried without a jury. Davidson v. State (App. 2 Dist. 2007) 225 S.W.3d 807. Jury 29(6)

When a party agrees to have a dispute resolved through arbitration rather than judicial proceeding, that party has waived its right to a jury trial. In re Wells Fargo Bank Minnesota N.A. (App. 14 Dist. 2003) 115 S.W.3d 600, mandamus denied. Jury 28(7)

Right to a jury trial at the guilt stage is both a statutory right and a constitutional right which cannot be relinquished except by an express waiver. Lowery v. State (App. 5 Dist. 1998) 974 S.W.2d 936. Jury 21.1; Jury 21.2; Jury 29(1)

Defendant's right to jury trial is not extinguished by inaction alone. Ex parte Lyles (Cr.App. 1995) 891 S.W.2d 960. Jury 29(6)

If defendant wants to relinquish right to jury trial, he must expressly do so. Ex parte Lyles (Cr.App. 1995) 891 S.W.2d 960. Jury 29(6)

No federal or state constitutional provision prohibits defendant from knowingly and intelligently waiving his right to trial by jury in felony or misdemeanor case in state court. Chaouachi v. State (App. 4 Dist. 1993) 870 S.W.2d 88. Jury 29(2); Jury 29(6)

Whether facts found by judge in prior proceeding have preclusive effect in Texas depends upon whether right to jury trial was waived. Trapnell v. Sysco Food Services, Inc. (App. 13 Dist. 1992) 850 S.W.2d 529, on rehearing, rehearing overruled , writ granted , affirmed 890 S.W.2d 796. Judgment 644

Resetting of case for court trial is not equivalent to expressly waiving constitutionally protected right to jury trial. Hall v. State (App. 14 Dist. 1992) 843 S.W.2d 190. Jury 29(6)

Having obtained unfavorable ruling from trial court on his jury demand, defendant did not waive his right to jury trial by announcing “ready” at nonjury trial, since adverse ruling, in effect, left defendant without conscious choice between jury and nonjury trial. Coleman v. Sadler (Civ.App. 1980) 608 S.W.2d 344. Jury 28(10)

The constitutional right to a trial by jury is not an absolute right but is a right that is available to litigants should they choose to exercise it and not available to litigants if they choose to waive or give it up. Baker v. Story (Civ.App. 1978) 564 S.W.2d 166. Jury 9

A statute may validly permit waiver of constitutional right of trial by jury. Trevino v. Barrera (Civ.App. 1976) 536 S.W.2d 75. Jury 28(2)

A litigant must take affirmative action to avoid waiver of right to jury trial. Texas Oil & Gas Corp. v. Vela (Civ.App. 1966) 405 S.W.2d 68, error granted , set aside 429 S.W.2d 866. Jury 25(2)

When defendant consents to trial before court and enters his plea, he thereby waives a jury and cannot complain after judgment has been pronounced that he should have been tried before a jury. Buouome v. State (Cr.App. 1958) 165 Tex.Crim. 502, 309 S.W.2d 71. Jury 29(6)

Where defendant, who was charged with drunken driving, requested a jury trial when case was called, trial court was without jurisdiction to proceed to try defendant without a jury when he subsequently appeared before the court, unless and until he withdrew his request and waived jury trial. Dillon v. State (Cr.App. 1957) 165 Tex.Crim. 217, 305 S.W.2d 956. Jury 25(6)

The legislature may not deny right of trial by jury, but may provide for waiving of such right. Ex parte Padgett (Cr.App. 1955) 161 Tex.Crim. 498, 278 S.W.2d 865. Jury 31

Where question of making of contract was submitted to jury, but question of agent's authority to make contract, a component element of ground of recovery, was not submitted, plaintiff “waived” jury's determination of issue of agent's authority and defendant was entitled to have question determined by trial court upon the evidence. Rodriguez v. Higginbotham-Bailey-Logan Co. (Civ.App. 1943) 172 S.W.2d 991, error refused. Trial 351.2(5)

A judgment of conviction was not void on ground that defendant had been deprived of a jury trial where defendant's complaint was not that he was denied a trial by jury but that he was not asked if he waived a jury. Ex parte Clinnard (Cr.App. 1943) 145 Tex.Crim. 460, 169 S.W.2d 181. Jury 31.4

While a jury trial can be waived by the parties, it cannot be by any action of the court if the demand were timely made and the jury fee paid. Davis v. Kight (Civ.App. 1923) 252 S.W. 227. Jury 28(1)

Where defendants answered plea of intervention, at the same time demanding a jury and paying lawful fee therefor, though the jury for the week had been discharged, and only six days of the term remained after defendants' answer was filed, filing did not amount in law to announcement of ready for trial, nor waiver of right to trial by jury. Finkelstein v. Roberts (Civ.App. 1920) 220 S.W. 401, dismissed w.o.j.. Jury 25(6)

85. ---- Knowing and voluntary, waiver of jury

Commercial landlord's waiver of right to jury trial, as stated in lease, was knowing and voluntary, where landlord was experienced in negotiating leases, landlord was represented by counsel when the first amendment to lease was negotiated and executed which modified portions of the lease and ratified the unmodified portions of

the original lease, including the jury waiver provision, landlord had an opportunity to review the jury waiver provision and make it part of the negotiations that occurred with respect to the amended lease, negotiations concerning both the original lease and the lease amendment were extensive, and relative bargaining power of the parties was fairly equal. In re Columbia Medical Center of Lewisville Subsidiary, L.P. (App. 2 Dist. 2009) 273 S.W.3d 923. Jury 28(5)

Record was sufficient to support finding that defense counsel at trial adequately informed defendant of right to trial by jury and his performance was not deficient; although defendant contended that trial counsel admitted he was not satisfied that defendant understood what he said through use of interpreter, reviewing context in which statement was made, it was clear that trial counsel was responding to line of questioning regarding his conversation with defendant as to range of punishment which could be imposed and there was no indication that defendant did not understand that he had right to jury trial. Vernon's Ann.Texas C.C.P. art. 1.13; Vernon's Ann.Texas Const. Hoang v. State (App. 14 Dist. 1992) 825 S.W.2d 729, petition for discretionary review refused. Criminal Law 1937

Vietnamese defendant knowingly and voluntarily waived right to jury trial; court asked defendant whether he understood that he had right to jury trial and whether he wished to waive right, defendant's trial counsel testified at motion for new trial that he informed defendant of right to trial by jury and had discussed pros and cons of jury trial, and court's questions were translated through interpreter. Hoang v. State (App. 14 Dist. 1992) 825 S.W.2d 729, petition for discretionary review refused. Jury 29(6)

Record supported finding that defendant knowingly and intelligently waived his constitutional right of trial by jury. Bruce v. State (Cr.App. 1967) 419 S.W.2d 646. Jury 29(6)

86. ---- Writing, waiver of jury

Right to jury trial is fundamental to American scheme of justice, and because of fundamental nature of that right, Texas law requires waiver of jury trial to be made in person in writing in open court. Marquez v. State (Cr.App. 1996) 921 S.W.2d 217, rehearing on petition for discretionary review denied. Jury 9; Jury 29(6)

Absence of written jury waiver is not ground for setting aside conviction by habeas corpus. Ex parte Lyles (Cr.App. 1995) 891 S.W.2d 960. Habeas Corpus 496

Judgment recital indicating that defendant waived right to jury trial and defendant's acquiescence to proceeding to trial without jury did not satisfy statutory requirement that defendant make written waiver of jury trial. Chaouachi v. State (App. 4 Dist. 1993) 870 S.W.2d 88. Jury 29(6)

Statute requiring written waiver of trial by jury and appointment of counsel before defendant makes such waiver applies to misdemeanors despite contrary legislative history suggesting statute would only apply to felonies. Chaouachi v. State (App. 4 Dist. 1993) 870 S.W.2d 88. Jury 29(6)

There is no provision in Code of Criminal Procedure requiring that defendant's waiver of trial by jury in misdemeanor case be in writing. Chaouachi v. State (App. 4 Dist. 1993) 870 S.W.2d 88. Jury 29(6)

State has no constitutional right to trial by jury and it is only through legislative enactments that prosecutor must consent to written waiver to trial by jury in felony case. Chaouachi v. State (App. 4 Dist. 1993) 870 S.W.2d 88. Jury 29(2)

Defendant's failure to execute statutorily mandated written waiver of trial by jury was reversible error, even though defendant was charged with only misdemeanor and defendant orally waived jury right in open court. Chaouachi v. State (App. 4 Dist. 1993) 870 S.W.2d 88. Criminal Law 1166(1)

Neither Federal nor State Constitution requires that trial by jury be waived in writing. Ex parte Sadberry (Cr.App. 1993) 864 S.W.2d 541. Jury 29(6)

Failing to have defendant sign and file written jury waiver rendered conviction a nullity and dictated reversal without analysis of harm. Meek v. State (Cr.App. 1993) 851 S.W.2d 868. Criminal Law 1166.6

Trial court's failure to secure written waiver of trial by jury prior to proceeding to bench trial in criminal matter constituted reversible error; four separate agreed settings signed by defendant and her attorney, all of which indicated that court trial was being reset, were not equivalent of expressly waiving constitutionally protected right to jury trial. Hall v. State (App. 14 Dist. 1992) 843 S.W.2d 190. Criminal Law 260.11(6); Jury 29(6)

Form entitled “Waiver of Constitutional Rights, Agreement to Stipulate, and Judicial Confession” waived defendant's right to jury trial; form was signed by defendant, his attorney, assistant district attorney, and presiding trial judge; it was sworn before deputy district clerk; trial judge ascertained that defendant knowingly and voluntarily waived rights after discussion with counsel; and defendant testified that he signed form and read statement before signing. Blackmon v. State (App. 14 Dist. 1989) 783 S.W.2d 11, petition for discretionary review refused. Jury 29(6)

87. ---- Contractual waiver of jury

Contractual jury waivers are enforceable in Texas; no law prohibits parties from waiving right in Texas Constitution to a jury trial in a civil case, Constitution implies that the right can be waived by providing a party must demand a jury trial and pay the jury fee in order to have a jury empaneled, Texas allows parties to contractually waive the right by enforcing arbitration agreements, and Texas has a strong commitment to the principle of contractual freedom and its indispensable partner, contract enforcement. In re Wells Fargo Bank Minnesota N.A. (App. 14 Dist. 2003) 115 S.W.3d 600, mandamus denied. Jury 28(5); Jury 28(7)

Lease provision waiving right to trial by jury was not contrary to the public policy expressed in jury trial rule and state constitutional provisions on trial by jury, access to the courts, and due course of law; public policy favoring arbitration permitted waiver of trial altogether, and the tenant could thus waive right to trial by jury in fu-

ture disputes. In re Prudential Ins. Co. of America (Sup. 2004) 148 S.W.3d 124, rehearing denied. Jury 28(5)

88. ---- Failure to object, waiver of jury

In view of Rev.Civ.St.1911, art. 1714 (see, now, Vernon's Ann.Civ.St. art. 1915), permitting a trial without a jury on consent of parties, where both parties voluntarily engaged in the trial of an action by the judge in vacation, and offered no objection, the judgment would not be reversed, though no written agreement to try the case was made, any act of the parties clearly evincing a willingness to try it being sufficient. Berry v. American Rio Grande Land & Irr Co (Civ.App. 1921) 233 S.W. 781. Jury 28(6)

Though plaintiff may have made timely request for jury, when he entered upon hearing on plea in abatement before court without jury without objection and called upon court to decide issue of fact, after court ruled adversely to plaintiff's position, he would not be heard to complain that he was entitled to have jury decide fact question. Hernandez v. Light Pub. Co. (Civ.App. 1952) 245 S.W.2d 553, error refused. Jury 28(6)

Where defendant, who was charged with drunken driving, requested jury trial when case was called and he entered plea of not guilty, County Court was without jurisdiction to conduct trial without jury when defendant subsequently appeared before court without withdrawing his request for jury trial and without waiving jury trial, though defendant said nothing about absence of jury until he was found guilty, and though judgment erroneously recited that defendant had waived jury trial. Dillon v. State (Cr.App. 1957) 165 Tex.Crim. 217, 305 S.W.2d 956. Jury 25(6)

Shareholder, who did not object to evidentiary hearing on issue of whether he was adequate class representative for derivative action against bank's president on ground that he was being denied jury trial and who did not demand jury trial or pay jury fee, waived any right to a jury trial regarding that matter. Huddleston v. Western Nat. Bank (Civ.App. 1979) 577 S.W.2d 778, ref. n.r.e.. Jury 25(2); Jury 26; Jury 28(6)

Failure of defendant to object at trial for offense of felony-driving while intoxicated to introduction of proof of allegedly infirm prior misdemeanor conviction precluded defendant from thereafter attacking felony conviction which utilized the prior conviction, despite fact that alleged infirmity was failure to waive jury trial. Damian v. State (App. 10 Dist. 1985) 684 S.W.2d 787, petition for discretionary review refused. Automobiles 359.6

Defendant was not required to preserve error in proceeding to bench trial without written waiver of jury trial by motion for new trial or motion in arrest of judgment. Hall v. State (App. 14 Dist. 1992) 843 S.W.2d 190. Criminal Law 260.10

89. ---- Unclean hands, waiver of jury

Defendants in wrongful death action arising from loss at sea had unclean hands that should have worked as waiver of their right to complain of trial court's refusal to grant jury trial in 1987, on remand of case from federal court to state court in 1991; defendants, upon denial of their request for jury trial in 1987, did not even at-

tempt to file motion for continuance, but instead immediately launched into limitation of liability issue, which could only be resolved by federal court, even though they could have removed at any time over the prior year and four months. Ricardo N., Inc. v. Turcios de Argueta (App. 13 Dist. 1993) 870 S.W.2d 95, rehearing overruled, writ granted, affirmed in part , reversed in part 907 S.W.2d 423. Equity 65(2)

90. ---- Absence, waiver of jury

Absence of party or his attorney from trial does not constitute waiver of or impair that party's right to have issues in case tried by jury. Jerrell v. Jerrell (Civ.App.1966) 409 S.W.2d 885; Roberts v. Mullen (Civ.App.1967) 417 S.W.2d 74, affirmed 423 S.W.2d 576, appeal after remand 446 S.W.2d 86, ref. n.r.e.

When a demand for a jury has been made, and the fee therefor paid by one of the parties when the case is regularly reached, neither the judge nor the opposite party has authority, in his temporary absence and without his assent, to proceed in the trial without a jury. Lacroix v. Evans, 1 App.C.C. § 749.

Where a defendant at a previous term demanded a trial by jury and paid the fee, it was improper at a subsequent term and in his and his attorney's absence for the court, upon a statement by the plaintiff's attorney that the defendant would waive a jury, to pass on the action himself. Hays v. Housewright (Civ.App. 1911) 133 S.W. 922. Jury 28(1)

Having properly and seasonably demanded a jury and paid appropriate fee to proper officer, defendant's right to trial by jury became fixed and inviolate, and fact that neither defendant nor his counsel who had demanded and paid the fee for jury was present when case was tried did not amount to waiver or impair defendant's right to have issue of contributory negligence on part of plaintiff raised by defendant's pleadings tried by jury. Barker v. Kidd (Civ.App. 1962) 357 S.W.2d 490. Jury 28(9)

Where there had not been a proper service of citation on defendant foreign corporation, such corporation was under no duty to appear at trial, and its absence was not waiver of right to jury trial after a jury fee had been paid and case had been placed on jury docket. White Motor Co. v. Loden (Civ.App. 1963) 373 S.W.2d 863. Jury 28(9)

After one party demands jury and pays jury fee right thus secured to him inures to all other parties to suit, and absence of a party at trial does not waive or impair his right to have issues tried by jury. White Motor Co. v. Loden (Civ.App. 1963) 373 S.W.2d 863. Jury 25(8); Jury 26; Jury 28(9)

Absence of defendant and his counsel when case was tried did not amount to waiver of defendant's previous timely demand for jury trial. Jerrell v. Jerrell (Civ.App. 1966) 409 S.W.2d 885. Jury 28(9)

Defendant's general denial raised a meritorious defense as to amount of damages due on unliquidated demand and defendant who had made demand for jury trial and paid jury fee was entitled to have jury ascertain amount of damages plaintiffs were entitled to, whether defendant's absence from court was negligent or not. Roberts v.

Mullen (Civ.App. 1967) 417 S.W.2d 74, affirmed 423 S.W.2d 576. Jury 28(9)

If it is to be implied that under Vernon's Ann.Rules Civ.Proc., rule 220, regarding withdrawing cause from jury docket, failure of one party to object gives to adverse party right to withdraw case from jury docket, or waive jury unilaterally, it must also be implied that nonobjecting party is not thus deprived of his right under this section to jury trial unless present, in person or by attorney, with opportunity to make free choice as to whether he desires to insist on or waive right. Roberts v. Mullen (Civ.App. 1967) 417 S.W.2d 74, affirmed 423 S.W.2d 576. Jury 28(8)

Mere absence from the courtroom cannot be construed as a waiver of right to a jury trial, and neither the judge nor the opposite party have the authority to dispense with a jury without the assent of the party originally demanding it. Green v. W. E. Grace Mfg. Co. (Sup. 1968) 422 S.W.2d 723. Jury 28(9)

Trial court did not abuse discretion in proceeding to try case without jury, where party asking for jury trial paid fee one day prior to trial, but did not appear at time of trial, and where there was no showing that jury was available on day of trial. Wooten v. Dallas Hunting & Fishing Club, Inc. (Civ.App. 1968) 427 S.W.2d 344. Jury 28(9)

Where defendant had demanded jury and paid required fee, his absence from courtroom on day set for trial did not operate as waiver of his demand and disregard of demand was error requiring reversal of judgment and remand of case. Moreno v. Villela Hernandez (Civ.App. 1968) 430 S.W.2d 125. Appeal And Error 1046.1; Jury 28(9)

91. ---- Misdemeanors, waiver of jury

In a misdemeanor case defendant may waive a trial by jury or by a legal jury. Rasberry v. State (1877) 1 Tex.Crim. 664; Marks v. State (1881) 10 Tex.Crim. 334; Stell v. State (1883) 14 Tex.Crim. 59; Johnson v. State (1898) 39 Tex.Crim. 625, 48 S.W. 70; Ex parte Jones (1904) 46 Tex.Crim. 433, 80 S.W. 995; Otto v. State (Cr.App.1905) 87 S.W. 698; Mackey v. State (1913) 68 Tex.Crim. 539, 151 S.W. 802; Schulman v. State (1915) 76 Tex.Crim. 229, 173 S.W. 1195; Bumguardner v. State (1944) 147 Tex.Crim. 188, 179 S.W.2d 768; Dillon v. State (1957) 165 Tex.Crim. 217, 305 S.W.2d 956.

One on trial for a misdemeanor was not entitled to waive a jury after the hearing of the evidence and require the court to assess the punishment on a plea of guilty. Johnson v. State (Cr.App. 1909) 55 Tex.Crim. 507, 116 S.W. 1148.

Where defendant in a misdemeanor case waives a jury, the findings of fact by the trial court are as conclusive on the Court of Criminal Appeals as the verdict of a jury. Salinas v. State (Cr.App. 1911) 65 Tex.Crim. 18, 142 S.W. 908. Criminal Law 1158.1; Criminal Law 1159.1

Offense of carrying pistol on or about person being misdemeanor, accused might waive jury and submit fact

question to court. Armstrong v. State (Cr.App. 1924) 98 Tex.Crim. 335, 265 S.W. 701. Jury 29(3)

When jurisdiction of district court is invoked by return of indictment charging a felony offense which includes a misdemeanor, and upon motion of state the charges reduced to a misdemeanor, the defendant may elect to waive a jury and plead guilty before the court. Bruce v. State (Cr.App. 1967) 419 S.W.2d 646. Jury 29(3)

92. ---- Capital offenses, waiver of jury

Vernon's Ann.C.C.P.1925, art. 10a (see, now, Vernon's Ann.C.C.P. art. 1.13) permitting waiver of jury trial in felony cases less than capital was not violative of constitutional right to trial by jury. Dabney v. State (Cr.App. 1933) 124 Tex.Crim. 21, 60 S.W.2d 451. Jury 29(2)

A murder indictment charges a noncapital felony, in respect to which waiver of jury trial and plea of guilty before court is permitted, only where there is no allegation that killing was upon malice or where such allegation is waived or abandoned. Ex parte Padgett (Cr.App. 1955) 161 Tex.Crim. 498, 278 S.W.2d 865. Jury 29(4)

Where certified copy of judgment which trial court had been given opportunity to correct showed that defendant had waived jury and entered plea of guilty to capital offense of robbery with firearms, defendant was entitled to release on habeas corpus to answer the indictment. Ex parte Short (Cr.App. 1957) 303 S.W.2d 949. Habeas Corpus 475.1

Defendant in prosecution for murder with malice aforethought could waive jury trial where it appeared that he had been under 17 years of age at time of offense, so that offense was not capital offense. Ex parte Adams (Cr.App. 1964) 383 S.W.2d 596. Jury 29(3)

Defendant in prosecution for murder with malice aforethought could waive jury trial where it appeared that he had been under 17 years of age at time of offense, so that offense was not capital offense. Ex parte Adams (Cr.App. 1964) 383 S.W.2d 596. Jury 29(3)

Defendant in capital murder case cannot waive trial by jury. Eads v. State (Cr.App. 1980) 598 S.W.2d 304. Jury 29(2)

93. ---- Presumptions, waiver of jury

Evidence of the following nonexclusive factors may be considered in determining whether the party seeking to enforce a contractual waiver of the right to a jury trial has rebutted the presumption against the waiver by prima facie evidence that the waiver was knowingly and voluntarily made: (1) the parties' experience in negotiating the particular type of contract signed, (2) whether the parties were represented by counsel, (3) whether the waiving party's counsel had an opportunity to examine the agreement, (4) the parties' negotiations concerning the entire agreement, (5) the parties' negotiations concerning the waiver provision, if any, (6) the conspicuousness of the provision, and (7) the relative bargaining power of the parties. In re Columbia Medical Center of Lewisville

Subsidiary, L.P. (App. 2 Dist. 2009) 273 S.W.3d 923. Jury 28(5); Jury 28(15)

There is a presumption against the waiver of jury trial; the burden is on the party seeking to enforce a prelitigation contractual jury waiver to rebut this presumption with prima facie evidence that the waiver was knowingly and voluntarily made with full awareness of the legal consequences. In re Columbia Medical Center of Lewisville Subsidiary, L.P. (App. 2 Dist. 2009) 273 S.W.3d 923. Jury 28(5); Jury 28(15)

Docket notation indicating that defendant waived jury in prior evading arrest case created presumption that he waived his right to trial by jury, for purposes of determining admissibility of evidence of prior evading arrest conviction during punishment phase of trial for delivery of cocaine. Liggins v. State (App. 10 Dist. 1998) 979 S.W.2d 56, petition for discretionary review refused. Sentencing And Punishment 305; Sentencing And Punishment 1377

When an official record of the court recites that a defendant waived his right to a jury trial, presumption of jury waiver attains until and unless the contrary is made to appear, although a silent record cannot support a presumption that the defendant formally waived his right to trial by jury. Liggins v. State (App. 10 Dist. 1998) 979 S.W.2d 56, petition for discretionary review refused. Criminal Law 1142; Criminal Law 1144.10

Presumption of regularity in judgment's recital concerning written jury waiver had been overcome by evidence in support of habeas corpus application, where trial court found that there was no written waiver in record, that there was no oral waiver in statement of facts, and that trial court did not ask defendant if he waived his right to jury trial. Ex parte Lyles (Cr.App. 1995) 891 S.W.2d 960. Habeas Corpus 702

Principle that waiver of right to trial by jury can never be presumed from silent record applies where conviction is challenged on direct appeal because record does not show that accused formally waived his right of trial by jury; however, principle does not apply to collateral attack on prior conviction based on lack of waiver. Morton v. State (App. 7 Dist. 1994) 870 S.W.2d 177, petition for discretionary review refused. Criminal Law 1144.9; Sentencing And Punishment 1315

Although issue of jury waiver may be raised for first time on direct appeal, there must be evidence in record sufficient to overcome judgment's presumption of regularity. Ex parte Sadberry (Cr.App. 1993) 864 S.W.2d 541. Criminal Law 1144.10

Supreme Court will not presume from silent record that contemnor has waived his right to jury trial. Ex parte Sproull (Sup. 1991) 815 S.W.2d 250. Contempt 66(7)

94. ---- Burden of proof, waiver of jury

When trial court makes finding that no written waiver of jury trial was ever executed, approved by court or filed with clerk of court, defendant has met his burden of overcoming presumption of regularity and truthfulness of formal judgment of trial court containing recitation that jury was waived by accused. Hall v. State (App. 14 Dist.

1992) 843 S.W.2d 190. Criminal Law 1144.17

If recitation that jury was waived by accused is present in formal judgment, burden is then on accused to establish otherwise, if he claims that contrary is true. Hall v. State (App. 14 Dist. 1992) 843 S.W.2d 190. Jury 29(6)

Where in prosecution for possession of a controlled substance, record was silent, State had failed to meet its constitutional burden of establishing waiver of jury trial. Guillett v. State (Cr.App. 1984) 677 S.W.2d 46. Jury 29(1)

95. ---- Retrial, waiver of jury

That a case had been partly tried at a former term, and then, because of illness of counsel, suspended until a definite date in the following term during the week set aside for nonjury cases, did not estop plaintiffs from demanding a jury at the subsequent term at a time when a jury was still in attendance, and available for three weeks, the last week of which was not needed for other jury trials. Blair v. Paggi, 1922, 238 S.W. 639. Jury 28(1)

Fact that husband waived jury at first trial in divorce proceeding did not constitute waiver on partial remand of the cause for a new trial solely on the issue of attorney's fees. Harding v. Harding (Civ.App. 1972) 485 S.W.2d 297. Jury 28(17)

Waiver of jury on one trial generally does not affect the right of either party to demand a jury on a second trial. Harding v. Harding (Civ.App. 1972) 485 S.W.2d 297. Jury 28(17)

Where there has been a reversal of entire case, waiver of jury on one trial generally does not affect right to demand one on second trial. Wilson v. State (App. 5 Dist. 1984) 669 S.W.2d 792, petition for discretionary review granted , affirmed and remanded 698 S.W.2d 145. Criminal Law 1190; Jury 29(7)

96. ---- Withdrawal of waiver of jury

Trial court's approval of “waiver” of jury trial in face of defendant's timely wish to withdraw waiver, at time when withdrawal of waiver would not have resulted in unreasonable delay of trial, impedance of justice, prejudice to State or inconvenience to witnesses, denied defendant's right to jury trial. Collins v. State (App. 2 Dist. 1982) 642 S.W.2d 80. Jury 29(7)

Trial court did not violate defendant's rights under Sixth and Fourteenth Amendments of the United States Constitution and under State Constitution by refusing request to withdraw jury waiver, made almost immediately after entering waiver, where defendant signed jury waivers and they were approved by both state and court. Dumas v. State (App. 13 Dist. 1993) 853 S.W.2d 184, petition for discretionary review refused, untimely filed. Jury 29(7)

Question of who has burden of proof with respect to defendant's motion to withdraw waiver of jury trial is not part of the substantive claim of the right to withdraw jury waiver. Marquez v. State (Cr.App. 1996) 921 S.W.2d 217, rehearing on petition for discretionary review denied. Jury 29(7)

Placing burden on state to show adverse consequences from granting a defendant's request to withdraw waiver of jury trial is not necessary to preserve the inviolate right to a jury trial; right is preserved by fact that defendant need only show the absence of prejudice to other participants rather than demonstrating existence of prejudice to himself. Marquez v. State (Cr.App. 1996) 921 S.W.2d 217, rehearing on petition for discretionary review denied. Jury 29(7)

When an accused validly waives trial by jury, a subsequent request by the accused to withdraw the jury waiver is addressed to the discretion of the trial court. Marquez v. State (Cr.App. 1996) 921 S.W.2d 217, rehearing on petition for discretionary review denied. Jury 29(7)

Defendant should be permitted to withdraw a previously executed jury waiver if he establishes on the record that his request to do so is made sufficiently in advance of trial so that granting request will not interfere with the orderly administration of the business of the court, result in unnecessary delay or inconvenience to witnesses, or prejudice the state. Marquez v. State (Cr.App. 1996) 921 S.W.2d 217, rehearing on petition for discretionary review denied. Jury 29(7)

If defendant's claims that granting his request to withdraw a previously executed jury waiver will not have adverse consequences for the state, for witnesses, or for trial court are rebutted by the state, by the trial court, or by the record itself, trial court does not abuse its discretion in refusing to allow withdrawal of waiver. Marquez v. State (Cr.App. 1996) 921 S.W.2d 217, rehearing on petition for discretionary review denied. Jury 29(7)

Trial court did not abuse discretion in refusing to allow defendant to withdraw his waiver of jury trial, where request came at very moment trial was to begin, where state had announced ready and an interpreter had been sworn, and where appellant failed to claim or demonstrate that, in spite of the untimeliness of request, granting the withdrawal would not prejudice the state, inconvenience witnesses, or interfere with orderly administration of the court. Marquez v. State (Cr.App. 1996) 921 S.W.2d 217, rehearing on petition for discretionary review denied. Jury 29(7)

Requirements for reclaiming a previously-waived Sixth Amendment right to jury trial are that the record show a request to revoke the waiver sufficiently in advance of trial, such that granting the request will not: (1) interfere with the orderly administration of the business of the court, (2) result in unnecessary delay or inconvenience to witnesses, or (3) prejudice the State. Medley v. State (App. 7 Dist. 2000) 47 S.W.3d 17, petition for discretionary review refused, appeal after new trial 2004 WL 1839315, rehearing overruled, rehearing on petition for discretionary review denied , certiorari denied 126 S.Ct. 621, 546 U.S. 1002, 163 L.Ed.2d 504, rehearing denied 126 S.Ct. 1135, 546 U.S. 1132, 163 L.Ed.2d 933, habeas corpus dismissed 2008 WL 763075. Jury 29(7)

97. Jury fee--In general

Rev.Civ.St.1879, art. 3066 (see, now, Vernon's Ann.Rules Civ.Proc., rule 216) did not require a defendant who paid the jury fee of three dollars in the county court to pay an additional fee when the case was removed to the district court because the county judge was related to one of the parties; when a jury had been demanded in the county court and fee paid, on the transfer of the case to the district court the party making the demand had a right to a jury. Warner v. Crosby (Sup. 1889) 75 Tex. 295, 12 S.W. 745.

Where the one demanding a jury trial withdraws the jury fee, he cannot complain that the case was not tried by a jury. Harris v. Kellum & Rotan Inv. Co. (Civ.App. 1898) 43 S.W. 1027. Jury 26

Where no jury fee has been paid, plaintiff is entitled to have the case tried as a nonjury case, although it is entered on the jury docket. Ranson v. Leggett (Civ.App. 1905) 90 S.W. 668, error dismissed. Trial 10

The refusal of a jury trial was not error, where plaintiff neither offered to pay the jury fee nor made affidavit of his inability to pay it. Kruegel v. Murphy & Bolanz (Civ.App. 1910) 59 Tex.Civ.App. 482, 126 S.W. 680, motion denied 157 S.W. 1182. Jury 26

Where a case docketed as a jury case for five years was then consolidated with a subsequent suit and transferred to the same district, plaintiff was entitled to a jury trial in the consolidated action, though the record did not show payment of the jury fee. Arlington Heights Realty Co. v. Citizens' Ry. & Light Co. (Civ.App. 1913) 160 S.W. 1109. Jury 26

Where defendants at a prior term demanded a jury, but failed to pay the fee, and the cause was continued on the nonjury docket, and plaintiffs did not ask jury until the day of trial, when they announced they would take advantage of defendants' demand, they had no right to a jury trial. Arispe v. Clark (Civ.App. 1918) 204 S.W. 373. Jury 25(6)

The right to trial by jury in Texas is not an absolute right in civil cases but is subject to certain procedural rules, one of which is the requirement that a jury fee shall be paid. Aronoff v. Texas Turnpike Authority (Civ.App. 1957) 299 S.W.2d 342. Jury 26

98. ---- Time, jury fee

Rev.Civ.St.1879, art. 3066 (see, now, Vernon's Ann.Rules Civ.Proc., rule 216), directing that jury fee be paid on first day of term, was not mandatory regarding the deposit, which might be made, on the second day and before the case was called for trial. Hardin v. Blackshear (1884) 60 Tex. 132; Gallagher & Co. v. Goldfrank, Frank & Co. (1885) 63 Tex. 473; Allen v. Plummer (1885) 71 Tex. 546, 9 S.W. 672.

A jury was demanded by the plaintiff at the proper time and the cause was placed on the jury docket, but the jury fee was not then paid; a motion to strike the case from the jury docket on the ground that the jury fee was not paid on the first day of the term, although it appeared that it was paid before the motion was filed, should not have been sustained. Allyn v. Willis (1885) 65 Tex. 65.

The failure to pay the jury fee on the day required should not deprive a party of a jury trial when the plaintiff is not prejudiced thereby or the business of the court disturbed. Western Union Tel. Co. v. Everheart (Civ.App. 1895) 10 Tex.Civ.App. 468, 32 S.W. 90.

Failure to object to the discharge of the last jury for the term when present and failure to deposit a jury fee until after its discharge justified the trial court in refusing defendant's demand for a jury. Downs v. Wilson (Civ.App. 1916) 183 S.W. 803. Jury 26

Refusal of demand duly made for jury trial because fee was not paid until the day the case was called was error where jury was in attendance, the court was in session all week, and there were only six other cases set for that week, and the trial in question was short. Hemman v. Hemman (Civ.App. 1923) 251 S.W. 313. Jury 26

Right to trial by jury is not an absolute right in civil cases but is subject to certain procedural rules, one of which is requirement that jury fee be paid within reasonable time. Wooten v. Dallas Hunting & Fishing Club, Inc. (Civ.App. 1968) 427 S.W.2d 344. Jury 26

99. ---- Number of jurors

Vernon's Ann.Civ.St. art. 2338-3 (repealed), permitting use of six-man jury in the Court of Domestic Relations in and for Potter County, violated this section. Jordan v. Crudgington (Sup. 1950) 149 Tex. 237, 231 S.W.2d 641 .

“Jury” means a body of 12 members unless express provision for smaller number is contained in the Constitution. Jordan v. Crudgington (Sup. 1950) 149 Tex. 237, 231 S.W.2d 641. Jury 32(1)

This section requires that juries in courts of record, except justice and police courts, be composed of 12 men. Jordan v. Crudgington (Sup. 1950) 149 Tex. 237, 231 S.W.2d 641. Jury 32(1)

An essential element in right of trial by jury in a felony case is that jury must be composed of twelve jurors. Clark v. State (Cr.App. 1955) 161 Tex.Crim. 278, 276 S.W.2d 819. Jury 29(2); Jury 32(1)

In prosecution for cutting merchantable timber upon land of another without consent of owner, wherein counsel for State and defendant agreed to excuse juror during course of trial so that he might be with his sick wife, judgment entered on verdict returned by remaining eleven jurors was void since defendant could not waive constitutional right to be tried by jury of twelve. Clark v. State (Cr.App. 1955) 161 Tex.Crim. 278, 276 S.W.2d 819. Jury 29(5)

Prior to introduction of testimony, trial court is not without authority, upon consent of defendant and his counsel, to stand aside a juror, who has been sworn to try the case, but who has become unable to do so, and, with consent of defendant, to proceed with organization of jury by selection of another juror to take place of excused juror, and such action does not constitute a trial by a jury of more than 12 or a waiver of right to a jury trial.

Houston v. State (Cr.App. 1956) 162 Tex.Crim. 551, 287 S.W.2d 643, certiorari denied 76 S.Ct. 1042, 351 U.S. 975, 100 L.Ed. 1492, rehearing denied 77 S.Ct. 28, 352 U.S. 861, 1 L.Ed.2d 72, motion denied 77 S.Ct. 152, 352 U.S. 905, 1 L.Ed.2d 115. Jury 29(5); Jury 149

In prosecution for driving while intoxicated, defendant's going to trial with a jury of five without making any objection known to trial court constituted a waiver of his constitutional and statutory rights to jury trial under both state and federal law. Buck v. State (Cr.App. 1980) 599 S.W.2d 810. Jury 29(5)

100. ---- Right to serve on jury

This section guarantees the right of trial by jury but does not guarantee the right to be called to serve on a jury. Glover v. Cobb (Civ.App. 1938) 123 S.W.2d 794, error refused. Jury 58

101. Improperly composed jury

Party, whether he be party to civil action or defendant in criminal action, has not been afforded his constitutional rights if jury composition in his case includes person who had been convicted of felony and has not been pardoned by Governor. R.R.E. v. Glenn (App. 2 Dist. 1994) 884 S.W.2d 189, writ denied. Jury 33(2.10); Jury 45

102. Selection of jury--In general

Appellate court will uphold the trial court's decision to exclude a prospective juror when that juror's answers on a challenge for cause issue are vacillating, unclear, or contradictory. Rocha v. State (Cr.App. 2000) 16 S.W.3d 1, habeas corpus denied 2008 WL 5245553, denial of habeas corpus affirmed 2010 WL 3516466. Criminal Law 1158.17

Granting state's challenge for cause against prospective juror did not violate constitutional proscription against excluding jurors with conscientious scruples concerning death penalty, though at one point juror stated that she did not have belief so fundamental that she would have to refuse to take oath as juror, where juror then stated that she could not participate in death penalty trial because she could not live with it on her conscience. Rocha v. State (Cr.App. 2000) 16 S.W.3d 1, habeas corpus denied 2008 WL 5245553, denial of habeas corpus affirmed 2010 WL 3516466. Jury 33(2.15); Jury 108

Defendant could not complain for first time in motion for new trial of manner in which jury panel was selected. Lopez v. State (Cr.App. 1968) 437 S.W.2d 268. Criminal Law 918(10)

Under Art. 1, § 10, this section, and Vernon's Ann.C.C.P.1911, art. 22 (see, now, Vernon's Ann.C.C.P. art. 1.14), member of law and order league, obligated to assist in prosecution and conviction for violation of local option laws, was disqualified as a juror in trial for selling intoxicating liquor in prohibition territory, so as to require reversal of a conviction. Counts v. State (Cr.App. 1916) 78 Tex.Crim. 410, 181 S.W. 723. Jury 97(3)

103. ---- Voir dire, selection of jury

Trial court abuses its discretion on voir dire when its denial of right to ask proper question prevents determination of when grounds exist to challenge for cause or denies intelligent use of peremptory challenges; if such abuse of discretion exists, result is to deny party the right to trial by a fair and impartial jury, a right guaranteed by Texas Constitution and by statute. Southwestern Elec. Power Co. v. Martin (App. 6 Dist. 1992) 844 S.W.2d 229, rehearing denied , writ denied. Jury 131(3); Jury 131(4)

Voir dire statements and questions of counsel for resident alien hotel employee to ascertain whether prospective jurors had any connection or relationship with alien hotel guest or guest's family and whether jurors were biased or prejudiced in favor of or against guest because of his nationality, wealth, and status were within scope of proper voir dire examination in employee's action against guest for false imprisonment, gross negligence, terroristic threat, assault, reckless conduct, and intentional infliction of emotional distress. Haryanto v. Saeed (App. 14 Dist. 1993) 860 S.W.2d 913, rehearing denied, writ denied , rehearing of writ of error overruled. Jury 131(6); Jury 131(15.1)

Alien hotel guest's absence from trial, criminal versus civil nature of guest's conduct, and prospective jurors' attitudes toward purpose of punitive damages were proper subjects of voir dire examination in resident alien hotel employee's action against guest for false imprisonment, gross negligence, terroristic threat, assault, reckless conduct, and intentional infliction of emotional distress. Haryanto v. Saeed (App. 14 Dist. 1993) 860 S.W.2d 913, rehearing denied, writ denied , rehearing of writ of error overruled. Jury 131(15.1); Jury 131(17)

Law firm in legal malpractice action who alleged that juror was disqualified because he had previously been convicted of felony and his rights had not been restored did not waive its constitutional right to jury of twelve members, even though firm did not further question juror on voir dire after juror stated that he had been convicted of offense of solicitation of capital murder, where defense attorney was confronted with rule that forbids questioning prospective juror concerning prior felony convictions and where it was not discovered until after trial that juror had not been pardoned by Governor. R.R.E. v. Glenn (App. 2 Dist. 1994) 884 S.W.2d 189, writ denied. Jury 28(13); Jury 142

Refusal to allow defendant's voir direquestions concerning parole did not violate defendant's due process rights in capital murder prosecution; parole was not issue applicable to capital murder case. Collier v. State (Cr.App. 1997) 959 S.W.2d 621, rehearing denied, certiorari denied 119 S.Ct. 335, 525 U.S. 929, 142 L.Ed.2d 276, habeas corpus denied 2001 WL 498095. Constitutional Law 4760; Jury 33(4)

Trial court commits error if it prohibits defense counsel from asking proper voir direquestions. Collier v. State (Cr.App. 1997) 959 S.W.2d 621, rehearing denied, certiorari denied 119 S.Ct. 335, 525 U.S. 929, 142 L.Ed.2d 276, habeas corpus denied 2001 WL 498095. Jury 131(1)

Voir dire question is proper if it seeks to discover a venireperson's views on an issue applicable to case. Collier v. State (Cr.App. 1997) 959 S.W.2d 621, rehearing denied, certiorari denied 119 S.Ct. 335, 525 U.S. 929, 142 L.Ed.2d 276, habeas corpus denied 2001 WL 498095. Jury 131(1)

Restriction of voir dire to 45 minutes was unreasonable limitation on right of counsel to question jury panel in order to intelligently exercise preemptory challenges, warranting reversal in trial for aggravated assault with deadly weapon; counsel's use of 20 percent of allotted time to discuss religion was justified by defense involving devil worship and demonic possession and was not attempt to prolong voir dire, and counsel was not permitted to ask proper voir dire questions of three panel members who served on jury concerning problems with expert and police officer testimony. Morris v. State (App. 3 Dist. 1999) 1 S.W.3d 336. Jury 131(4)

Defendant's Sixth Amendment right to impartial jury and his Fourteenth Amendment right to due process of law were not violated by trial court's refusal to alternate, as between State and defense, opportunity to initiate questioning of each venireman during voir dire, despite defendant's argument that the attorney who was able to question venireman first would have greater ability to shape venireman's views. Ladd v. State (Cr.App. 1999) 3 S.W.3d 547, certiorari denied 120 S.Ct. 1680, 529 U.S. 1070, 146 L.Ed.2d 487, denial of habeas corpus affirmed 311 F.3d 349. Constitutional Law 4756; Jury 33(4)

Trial court is neither required to allow, nor prohibited from allowing, a party to review written questionnaires before deciding whether to request a shuffle of potential jurors; it is within the court's discretion to allow it or disallow it. Garza v. State (Cr.App. 1999) 7 S.W.3d 164, on remand 18 S.W.3d 813, petition for discretionary review refused. Jury 131(13)

State's request for a shuffle of potential jurors was timely, despite fact that counsel had read jury questionnaires before making request. Garza v. State (Cr.App. 1999) 7 S.W.3d 164, on remand 18 S.W.3d 813, petition for discretionary review refused. Jury 64

To allow a jury to proceed after an untimely shuffle has been granted destroys the randomness inherent in the original jury panel list and of the renumbered list after a timely requested shuffle, implicating the right to a jury trial. Carr v. Smith (App. 2 Dist. 2000) 22 S.W.3d 128, review denied. Jury 33(4); Jury 64

104. ---- Jury commissioners, selection of jury

A defendant may not arbitrarily be deprived of his statutory right of a trial by a jury selected by the jury commissioners. Kansas City, M. & O. Ry. Co. of Texas v. Bigham (Civ.App. 1911) 138 S.W. 432.

105. Race-based peremptory challenges--In general

Exercising peremptory challenge based on juror's race is an unconstitutional violation of juror's equal protection rights regardless of whether proceeding is a criminal prosecution or civil lawsuit. Mayr v. Lott (App. 10 Dist. 1997) 943 S.W.2d 553. Constitutional Law 3309; Jury 33(5.15)

When asserting *Batson* challenge to exercise of peremptory strike, complaining party must make prima facie showing that striking party exercised peremptory strike in racially discriminatory manner; if complaining party establishes prima facie case of discrimination, then rebuttable presumption arises that peremptory strike was racially motivated, and to rebut presumption, striking party must present race-neutral explanation for strike. Mayr

v. Lott (App. 10 Dist. 1997) 943 S.W.2d 553. Jury 33(5.15)

Racial discrimination does not necessarily exist in every situation where one of the State's bases for striking a venireperson would technically apply to another venireperson whom the State found acceptable. Lee v. State (App. 3 Dist. 1997) 949 S.W.2d 848, petition for discretionary review refused. Jury 33(5.15)

Defendant in murder prosecution failed to show that peremptory strike of African-American juror who indicated she had relatives or friends charged or convicted of a crime was race-based, though four white jurors who also responded affirmatively to that question were not struck; struck juror testified to having three relatives in trouble with the law while white jurors testified to having a single relative charged or convicted, and strike was also based on information from district attorney's office about felonies charged to persons with same last name as struck juror. Whitaker v. State (App. 9 Dist. 1998) 977 S.W.2d 869, petition for discretionary review refused. Jury 33(5.15)

Racial discrimination does not necessarily exist in every situation where one of the state's bases for using a peremptory strike against a venire person would technically apply to another venire person whom the state found acceptable. Ealoms v. State (App. 10 Dist. 1998) 983 S.W.2d 853, petition for discretionary review refused. Jury 33(5.15)

Characteristics which a prosecutor finds offensive in a juror need not relate to the exact subject matter of the case in order to defeat *Batson*challenge. Ealoms v. State (App. 10 Dist. 1998) 983 S.W.2d 853, petition for discretionary review refused. Jury 33(5.15)

106. ---- Presumptions and burden of proof, race-based peremptory challenges

Once opponent of peremptory challenge has made out prima facie case of racial discrimination, burden of production shifts to proponent of strike to come forward with race-neutral explanation. Goode v. Shoukfeh (Sup. 1997) 943 S.W.2d 441. Jury 33(5.15)

Once opponent of peremptory strike has made out prima facie case of racial discrimination and proponent of strike has offered race-neutral explanation for strike, trial court must determine if opponent has proven purposeful racial discrimination, and trial court may believe or not believe explanation offered by proponent. Goode v. Shoukfeh (Sup. 1997) 943 S.W.2d 441. Jury 33(5.15)

Party raising *Batson*objection must first make a prima facie showing that the other party has used a peremptory challenge to remove a venireman on account of race. Ladd v. State (Cr.App. 1999) 3 S.W.3d 547, certiorari denied 120 S.Ct. 1680, 529 U.S. 1070, 146 L.Ed.2d 487, denial of habeas corpus affirmed 311 F.3d 349. Jury 33(5.15)

Once the party making a *Batson*objection has made a prima facie showing of purposeful discrimination, the burden of production shifts to the other party to come forward with a race-neutral explanation. Ladd v. State

(Cr.App. 1999) 3 S.W.3d 547, certiorari denied 120 S.Ct. 1680, 529 U.S. 1070, 146 L.Ed.2d 487, denial of habeas corpus affirmed 311 F.3d 349. Jury 33(5.15)

If a race-neutral explanation is tendered for the use of peremptory challenge, the trial court must then decide whether the party making the *Batson*objection has proven purposeful discrimination. Ladd v. State (Cr.App. 1999) 3 S.W.3d 547, certiorari denied 120 S.Ct. 1680, 529 U.S. 1070, 146 L.Ed.2d 487, denial of habeas corpus affirmed 311 F.3d 349. Jury 33(5.15)

107. ---- Race-neutral explanation, race-based peremptory challenges

No Supreme Court case clearly establishes, for purposes of habeas relief, that a judge, in ruling on an objection to a peremptory challenge under *Batson*, must reject a demeanor-based explanation for the challenge unless the judge personally observed and recalls the aspect of the prospective juror's demeanor on which the explanation is based. Thaler v. Haynes, 2010, 130 S.Ct. 1171, rehearing denied 130 S.Ct. 2141, 176 L.Ed.2d 758. Habeas Corpus 496

Where a prosecutor's explanation for a peremptory challenge is based on a prospective juror's demeanor, the judge should take into account, among other things, any observations of the juror that the judge was able to make during the voir dire, in ruling on an objection to the challenge. Thaler v. Haynes, 2010, 130 S.Ct. 1171, rehearing denied 130 S.Ct. 2141, 176 L.Ed.2d 758. Jury 33(5.15)

Even if *Snyder v. Louisiana* established rule favorable to habeas petitioner challenging district court's rejection of his *Batson* challenge, *Snyder* could not have constituted clearly established federal law as determined by Supreme Court, so as to warrant habeas relief, where *Snyder* was decided nearly six years after petitioner's conviction became final and more than six years after relevant state-court decision. Thaler v. Haynes, 2010, 130 S.Ct. 1171, rehearing denied 130 S.Ct. 2141, 176 L.Ed.2d 758. Habeas Corpus 496

Once the responding party has offered a race-neutral explanation for a peremptory challenge and the trial court has ruled on the ultimate question of purposeful discrimination, the preliminary issue of whether the party raising the *Batson*challenge made a prima facie case becomes moot. Ladd v. State (Cr.App. 1999) 3 S.W.3d 547, certiorari denied 120 S.Ct. 1680, 529 U.S. 1070, 146 L.Ed.2d 487, denial of habeas corpus affirmed 311 F.3d 349. Jury 33(5.15)

State's explanation for use of peremptory challenge of African-American potential juror in capital murder trial was sufficient to support conclusion that peremptory challenge was not racially-motivated, where State indicated that potential juror was struck because her son had extensive criminal record and she believed capital punishment was cruel. Ladd v. State (Cr.App. 1999) 3 S.W.3d 547, certiorari denied 120 S.Ct. 1680, 529 U.S. 1070, 146 L.Ed.2d 487, denial of habeas corpus affirmed 311 F.3d 349. Jury 33(5.15)

State's explanation for use of peremptory challenge of African-American potential juror in capital murder trial

was sufficient to support conclusion that peremptory challenge was not racially-motivated, where State indicated that potential juror believed capital punishment should never be invoked, and State had concern that he would find guilt for lesser offense of murder even if evidence supported guilt for capital murder. Ladd v. State (Cr.App. 1999) 3 S.W.3d 547, certiorari denied 120 S.Ct. 1680, 529 U.S. 1070, 146 L.Ed.2d 487, denial of habeas corpus affirmed 311 F.3d 349. Jury 33(5.15)

State's explanation for use of peremptory challenge of African-American potential juror in capital murder trial was sufficient to support conclusion that peremptory challenge was not racially-motivated, where State indicated that potential juror vacillated in her support of capital punishment, did not want to be on jury, and had niece facing drug prosecution. Ladd v. State (Cr.App. 1999) 3 S.W.3d 547, certiorari denied 120 S.Ct. 1680, 529 U.S. 1070, 146 L.Ed.2d 487, denial of habeas corpus affirmed 311 F.3d 349. Jury 33(5.15)

Assuming *Batson* doctrine applied to State's request for random shuffle of venire, State's explanation was sufficient to support conclusion that shuffle request was not racially-motivated, where State indicated that first group of veniremen had more criminal history, first group did not have as many coats and ties and elderly professional people, and first group included probation officer. Ladd v. State (Cr.App. 1999) 3 S.W.3d 547, certiorari denied 120 S.Ct. 1680, 529 U.S. 1070, 146 L.Ed.2d 487, denial of habeas corpus affirmed 311 F.3d 349. Jury 33(1.15); Jury 64

Appearance is a valid, race-neutral reason for exercising a peremptory strike against a venire member. Ealoms v. State (App. 10 Dist. 1998) 983 S.W.2d 853, petition for discretionary review refused. Jury 33(5.15)

Failure to complete the juror questionnaire is a valid race-neutral reason to exercise a peremptory strike against a venire member. Ealoms v. State (App. 10 Dist. 1998) 983 S.W.2d 853, petition for discretionary review refused. Jury 33(5.15)

Fact that a potential juror has had a family member formally accused of a crime is a sufficiently valid race-neutral reason to exercise a peremptory strike against that potential juror. Ealoms v. State (App. 10 Dist. 1998) 983 S.W.2d 853, petition for discretionary review refused. Jury 33(5.15)

Failure to reveal a formal accusation of crime against a family member is a valid race-neutral reason to exercise a peremptory strike against a potential juror. Ealoms v. State (App. 10 Dist. 1998) 983 S.W.2d 853, petition for discretionary review refused. Jury 33(5.15)

Youth and employment, or lack thereof, are acceptable race-neutral explanations for using peremptory strike against a prospective juror. Ealoms v. State (App. 10 Dist. 1998) 983 S.W.2d 853, petition for discretionary review refused. Jury 33(5.15)

Fact that potential juror thought it was improper for an officer to “pull a gun” during traffic stop was sufficiently race-neutral reason for exercise of peremptory strike against potential juror in case in which officer drew his gun during second traffic stop after defendant fled from initial traffic stop. Ealoms v. State (App. 10 Dist. 1998) 983

S.W.2d 853, petition for discretionary review refused. Jury 33(5.15)

Failure to reveal an arrest record is a proper race-neutral reason for use of peremptory challenge against a potential juror. Ealoms v. State (App. 10 Dist. 1998) 983 S.W.2d 853, petition for discretionary review refused. Jury 33(5.15)

Prosecutor's race-neutral explanations were sufficient to justify use of peremptory strikes against black venire members, even if some jurors who were not struck had some of the same characteristics of challenged members, where none of the remaining jurors possessed same combination of characteristics as any of challenged venire members. Ealoms v. State (App. 10 Dist. 1998) 983 S.W.2d 853, petition for discretionary review refused. Jury 33(5.15)

State offered sufficiently racially neutral explanation for striking five of eight black venire members; score cards did not reveal the race of the potential jurors, and the profiler who evaluated the cards testified that she did not know the race of the potential jurors at the time she reviewed and evaluated the cards. Matthews v. State (App. 11 Dist. 1998) 979 S.W.2d 720. Jury 33(5.15)

For purposes of *Batson* challenge, while a lack of questioning of juror prior to peremptory strike might expose the weakness of state's race-neutral explanation, the state is not required to ask a specified rubric of questions. Whitaker v. State (App. 9 Dist. 1998) 977 S.W.2d 869, petition for discretionary review refused. Jury 33(5.15)

Prosecutor's reasons for striking African-American venire members, that she wore nose ring, was inattentive during voir dire, and raised her hand when asked by defense counsel if anyone had ever been falsely accused of anything, were race-neutral and overcame defendant's prima facie showing of discrimination. Whitaker v. State (App. 9 Dist. 1998) 977 S.W.2d 869, petition for discretionary review refused. Jury 33(5.15)

Decision to allow strike of two African-American potential jurors was not clearly erroneous, even though defendant made prima facia case that their removal was racially motivated, as state provided uncontradicted evidence that one person was struck because he had known defendant's mother, who would be called as witness, all of his life, and other was struck because he knew defendant and his family and had dealt with them as a minister. Burns v. State (App. 14 Dist. 1997) 958 S.W.2d 483. Jury 33(5.15)

That Hispanic venireperson stricken by prosecutor had long hair and a goatee and looked “nonconforming” was race-neutral explanation, though prosecutor did not strike another panel member, who had long hair but not a goatee, and merely assumed without investigating that venireperson was nonconforming, and though answer to only question asked of him was favorable to state. Lee v. State (App. 3 Dist. 1997) 949 S.W.2d 848, petition for discretionary review refused. Jury 33(5.15)

That Hispanic venireperson stricken by prosecutor was the youngest member of the panel was a race-neutral explanation for the strike, even without any proof that the juror was biased against the State. Lee v. State (App. 3

Dist. 1997) 949 S.W.2d 848, petition for discretionary review refused. Jury 33(5.15)

Court is required to accept facially neutral explanation which is given for exercise of peremptory strike which is challenged under *Batson* as improperly based on race unless discriminatory intent is inherent in explanation. Mayr v. Lott (App. 10 Dist. 1997) 943 S.W.2d 553. Jury 33(5.15)

Once party offers race-neutral explanation for peremptory challenge and trial court has ruled on ultimate question of intentional discrimination, preliminary issue of prima facie case is moot. Goode v. Shoukfeh (Sup. 1997) 943 S.W.2d 441. Jury 33(5.15)

"Race-neutral explanation" for striking jurors means that peremptory challenge was based on something other than juror's race; unless discriminatory intent is inherent in explanation for peremptory strike, reason offered will be deemed race-neutral. Goode v. Shoukfeh (Sup. 1997) 943 S.W.2d 441. Jury 33(5.15)

In medical malpractice action, physician's counsel's reason for peremptorily striking African-American juror, that she knew member of patient's family, was race-neutral, as required by *Edmonson*equal protection principles. Goode v. Shoukfeh (Sup. 1997) 943 S.W.2d 441. Constitutional Law 3309; Jury 33(5.15)

In medical malpractice action, physician's counsel's reason for peremptorily striking African-American juror, that she was former employee of hospital, was race-neutral, as required by *Edmonson*equal protection principles. Goode v. Shoukfeh (Sup. 1997) 943 S.W.2d 441. Constitutional Law 3309; Jury 33(5.15)

In medical malpractice action, physician's counsel's reasons for peremptorily striking African-American juror, that she said she could not sit in judgment and because she made misstatements on her juror information card, were race-neutral, as required by *Edmonson*equal protection principles. Goode v. Shoukfeh (Sup. 1997) 943 S.W.2d 441. Constitutional Law 3309; Jury 33(5.15)

In medical malpractice action, physician's counsel's reason for peremptorily striking Hispanic juror, that she was unmarried, unemployed, mother of four, apparently on welfare, whom he believed would be "bad defense juror," was race-neutral, as required by *Edmonson*equal protection principles. Goode v. Shoukfeh (Sup. 1997) 943 S.W.2d 441. Constitutional Law 3309; Jury 33(5.15)

108. Misconduct of jurors--In general

Court must resolve any doubt regarding whether misconduct influenced verdict against verdict. Casstevens v. Texas & P. R. Co. (Sup. 1930) 119 Tex. 456, 32 S.W.2d 637. New Trial 44(1)

Statement by juror in a motor vehicle accident case to effect that defendant was innocent until proven without a reasonable doubt that he was guilty did not amount to the jury going outside the charge and adopting its own rule of law as measure of facts but indicated merely a misconstruction of the definition given by the court of "preponderance of the evidence" and juror was not guilty of misconduct. Compton v. Henrie (Sup. 1963) 364

S.W.2d 179. Trial 304

Rule limiting testimony regarding jury misconduct did not deny defendant constitutional right to fair and impartial jury. Sanders v. State (App. 3 Dist. 1999) 1 S.W.3d 885. Jury 33(2.10)

Rule limiting juror testimony on jury misconduct only to issue of outside influence that was improperly brought to bear upon any juror does not violate constitutional right to fair trial, even though limiting type of evidence admissible to prove jury misconduct may prevent defendant from proving jury misconduct in some circumstances, in light of policy concerns favoring the finality of judgments, the privacy of the jury deliberation process, and the prevention of jury tampering. Hines v. State (App. 6 Dist. 1999) 3 S.W.3d 618, petition for discretionary review refused. Criminal Law 957(1)

Evidence rule providing that, upon inquiry into validity of verdict or indictment, juror may testify as to whether outside influence was improperly brought to bear upon juror and as to whether juror was not qualified to serve does not violate due process or right to fair and impartial trial. Rhinehardt v. State (App. 8 Dist. 2003) 2003 WL 21674198, Unreported. Constitutional Law 4646; Criminal Law 957(6)

Evidence rule that prohibited jurors from impeaching their verdicts by testifying about deliberative process did not violate defendant's rights under state and federal constitutions to trial by fair and impartial jury; rule protected confidentiality of jury deliberations, and was based on public policy that required choice between injury which might occur to losing party if jury misconduct went undiscovered, and injury to public if all verdicts could be attacked by endless inquiry into jury's deliberative process, and by harassment of individual jurors, thereby destroying frankness and freedom necessary to jury's deliberation. Samples v. State (App. 8 Dist. 2003) 2003 WL 22024964, Unreported. Criminal Law 957(1)

109. ---- Standard of misconduct of jurors

Appellant need not show injury beyond a reasonable probability in order to secure reversal of judgment because of misconduct of jury, improper communication with jury, or erroneous answer given by juror on voir dire examination. Texas Employers' Insurance Association v. McCaslin (Sup. 1958) 159 Tex. 273, 317 S.W.2d 916. Appeal And Error 1170.6

110. ---- Internal communications, misconduct of jurors

Where jury agreed in advance to determine issues by majority vote, verdict was tainted with misconduct. Casstevens v. Texas & P. R. Co. (Sup. 1930) 119 Tex. 456, 32 S.W.2d 637. Trial 315

In will contest, where an issue before jury was testatrix' mental capacity while under influence of drugs, record established that misconduct of jury in considering their personal experiences with narcotics was calculated to and probably did injure contestants. Burkett v. Slauson (Sup. 1951) 150 Tex. 69, 237 S.W.2d 253. Appeal And Error 1069.1

Rule requiring confidentiality of jury deliberations did not operate to deny defendant convicted of aggravated sexual assault of a child his right to a fair trial under the Federal or State Constitutions, even though defendant presented affidavit of a juror which stated that another juror failed to disclose during voir dire that she had been sexually abused as a child, and other jurors expressed sympathy for her during deliberations. Samples v. State (App. 8 Dist. 2003) 2003 WL 22024818, Unreported. Criminal Law 857(1)

111. ---- Outside communications, misconduct of jurors

Vernon's Ann.C.C.P.1911, art. 748 (see, now, Vernon's Ann.C.C.P. art. 36.22), carrying into effect the provisions of this section, was mandatory, and in a misdemeanor case permitted the jury to converse with another person only when allowed to separate by the court but not about the case, and in a felony case did not permit a juror to converse with any person on any subject except by permission. Mann v. State (Cr.App. 1918) 84 Tex.Crim. 109, 204 S.W. 434. Criminal Law 855(8)

Any outside communication of a juror, forbidden by Vernon's Ann.C.C.P.1911, arts. 748 and 837 (see, now, Vernon's Ann.C.C.P. arts. 36.22 and 40.03), enacted under this section, to preserve the integrity of jury trial, was therefore presumed to have injured the accused; and, where the state had failed to rebut the presumption that the uncensored receipt of mail by jurors injured the accused and a new trial was denied, reversal was imperative. Newman v. State (Cr.App. 1922) 91 Tex.Crim. 559, 240 S.W. 312. Criminal Law 1163(6)

Where the evidence showed a violation of Vernon's Ann.C.C.P.1911, arts. 748, 749 and 837 (see, now, Vernon's Ann.C.C.P. arts. 36.22, 36.23 and 40.03), prohibiting conversations between jurors and others, and providing for the granting of a new trial where misconduct of jury prevented a fair and impartial trial, enacted pursuant to this section, authorizing legislation to maintain the purity and efficiency of the jury, a presumption of injury was indulged, and a new trial had to be granted, unless the presumption was overcome by evidence. Toussaint v. State (Cr.App. 1922) 92 Tex.Crim. 374, 244 S.W. 514. Criminal Law 956(12)

Statement of officer in charge of jury, telling the latter that the judge would detain them for another week and carry them into another county in the event of a failure to agree, was misconduct, constituting cause for reversal, in view of Vernon's Ann.C.C.P.1911, arts. 748 to 750 (see, now, Vernon's Ann.C.C.P., arts. 36.22 to 36.24), enacted to preserve right to trial by jury. Mills v. State (Cr.App. 1924) 97 Tex.Crim. 111, 260 S.W. 578. Criminal Law 855(7)

Plaintiff's brother, who had no pecuniary interest in lawsuit, who was not witness therein, who was not attorney in case, and who was not managing or directing his brother's case did not have sufficient connection with case to place him in category of person “interested in or connected with case” within rule relating to jury misconduct such as would render his giving of unsolicited ride to one juror such grave misconduct as to warrant new trial in personal injury action. Hunnicutt v. Clark (Civ.App. 1968) 428 S.W.2d 691. New Trial 48.1

Acts of juror in having lunch, dinner, and other social contacts with deputy sheriff, who was employee of county which was defendant in action in which juror was participating, did not constitute juror misconduct as would potentially entitle motorist who brought action against county to new trial where deputy had no pecuniary interest

in suit, was not witness or attorney in case, and was not so intimately connected with county in its capacity as party that his contacts with juror violated trial court's instructions not to mingle with or talk to parties; consortium did not rise to level of being so inimical to fairness that it denied motorist fair trial. Pharo v. Chambers County (App. 1 Dist. 1995) 893 S.W.2d 264, rehearing denied , writ granted , affirmed 922 S.W.2d 945. New Trial 44(1)

To prevail on appeal claiming reversible prejudice resulting from external juror influence, defendant must show either actual or inherent prejudice. Howard v. State (Cr.App. 1996) 941 S.W.2d 102, rehearing granted, on rehearing, rehearing denied, certiorari denied 122 S.Ct. 1935, 535 U.S. 1065, 152 L.Ed.2d 840, for denial of stay of execution, see 2005 WL 2453274, stay denied 157 Fed.Appx. 667, 2005 WL 2473590. Criminal Law 1166.6

To determine “inherent prejudice” resulting from external juror influence, Court of Criminal Appeals looks to whether unacceptable risk is presented of impermissible factors coming into play. Howard v. State (Cr.App. 1996) 941 S.W.2d 102, rehearing granted, on rehearing, rehearing denied, certiorari denied 122 S.Ct. 1935, 535 U.S. 1065, 152 L.Ed.2d 840, for denial of stay of execution, see 2005 WL 2453274, stay denied 157 Fed.Appx. 667, 2005 WL 2473590. Criminal Law 1166.6

Test to determine “actual prejudice” resulting from external juror influence is whether jurors actually articulated consciousness of some prejudicial effect. Howard v. State (Cr.App. 1996) 941 S.W.2d 102, rehearing granted, on rehearing, rehearing denied, certiorari denied 122 S.Ct. 1935, 535 U.S. 1065, 152 L.Ed.2d 840, for denial of stay of execution, see 2005 WL 2453274, stay denied 157 Fed.Appx. 667, 2005 WL 2473590. Criminal Law 1166.6

112. ---- New trial, misconduct of jurors

Where a motion for new trial on ground of jury misconduct discloses a reasonable explanation and excuse why affidavits cannot be secured and exhibited, in connection with sufficient allegations of material misconduct, it is reversible error for trial court to decline to hear testimony on motion. Roy Jones Lumber Co. v. Murphy, 1942, 139 Tex. 478, 163 S.W.2d 644. Appeal And Error 1072

Where affidavits are attached to a motion for new trial showing material jury misconduct, it is reversible error for the trial court to refuse to hear testimony on the motion. Roy Jones Lumber Co. v. Murphy, 1942, 139 Tex. 478, 163 S.W.2d 644. Appeal And Error 1072

Vernon's Ann.Civ.St. art 2234 and Vernon's Ann.Rules Civ.Proc., rule 327, superseding it, providing for new trial for misconduct of jury were each enacted to maintain purity and efficiency of trial by jury. Cloudt v. Hutcherson (Civ.App. 1943) 175 S.W.2d 643, error refused. New Trial 44(1)

To obtain new trial on ground of jury misconduct, complaining party must show that misconduct occurred, that it was material, and that misconduct resulted in harm. Pharo v. Chambers County (App. 1 Dist. 1995) 893 S.W.2d 264, rehearing denied , writ granted , affirmed 922 S.W.2d 945. New Trial 44(1); New Trial

56

113. Bias or prejudice of jurors

The provision that the defendant could not waive a jury in a felony case meant that he could not waive trial by a jury of men who had expressed no opinion as to his guilt. Duncan v. State (Cr.App. 1916) 79 Tex.Crim. 206, 184 S.W. 195. Jury 29(2)

Where, in a personal injury case against a railroad company, it appeared that a juror stated to the others that the lawyers usually got half of the recovery, and that the case was worked up by them, and that another juror stated that one of the attorneys in the case had gotten all of the recovery in another case, such bias and prejudice against plaintiff was exhibited as to disqualify such jurors from sitting in the case, plaintiff being deprived of his right to trial before a fair and impartial jury, as guaranteed by this section, and Rev.Civ.St.1911, art. 5117 (see, now, Vernon's Ann.Civ.St. art. 2134), disqualifying a juror for bias or prejudice; the court being given discretion to grant a new trial, under Rev.Civ.St.1911, art. 2021 (see, now, Vernon's Ann.Rules Civ.Proc., rule 327). Rhoades v. El Paso & S W R Co, 1923, 248 S.W. 1064. New Trial 42(2)

Disqualification of one prejudiced juror deprives parties of right to fair and impartial trial; court erred in refusing to grant insurance association new trial of action on policy because of disqualification of juror, stating in other jurors' presence that association's manager, who had personal supervision of matters in issue, was a "crook." Texas Mut Life Ins Ass'n v. Morris (Civ.App. 1932) 55 S.W.2d 146. New Trial 42(2)

A verdict being adverse, the presence of a biased or prejudiced juror on the jury requires granting of new trial to appealing party. Allmon v. Texas Elec. Service Co. (Civ.App. 1951) 242 S.W.2d 806, ref. n.r.e.. New Trial 42(2)

"Trial by jury" means trial by a jury unaffected by bribes, promises of reward, or improper requests for assistance in obtaining a favorable verdict. Texas Employers' Insurance Association v. McCaslin (Sup. 1958) 159 Tex. 273, 317 S.W.2d 916. Jury 33(1)

Statements by juror in a motor vehicle collision case that he did not believe in such suits and that he was in an accident and did not sue did not disqualify juror as a matter of law because of bias or prejudice. Compton v. Henrie (Sup. 1963) 364 S.W.2d 179. Jury 97(1)

Party is entitled to trial by jury unaffected by bribes, promises of reward, or improper requests. Pharo v. Chambers County (App. 1 Dist. 1995) 893 S.W.2d 264, rehearing denied , writ granted , affirmed 922 S.W.2d 945. Trial 304; Trial 305

Evidence was sufficient to support trial court decision that juror who had unauthorized conversation about case with outside party was not biased by conversation, so that new trial was not required on ground that jury had not been impartial, based on juror's testimony that he kept open mind about case, and did not make decision regard-

ing defendant's guilt or punishment until all evidence was received on those matters. Quinn v. State (Cr.App. 1997) 958 S.W.2d 395. Criminal Law 956(10)

114. Instructions

Action of a court, in peremptorily instructing a jury, was equivalent to a denial of the right of trial by jury. Buckholts State Bank v. Graf (Civ.App. 1918) 200 S.W. 858. Jury 34(3)

Texas Constitution's guarantee of jury trial does not prohibit altering manner in which factual questions in particular cause of action are submitted to jury. Texas Workers' Compensation Com'n v. Garcia (Sup. 1995) 893 S.W.2d 504. Jury 34(1)

115. Polling of jury

Failure to interrogate each juror individually as required by Vernon's Ann.Rules Civ.Proc., rule 294 upon request by a party that jury be polled did not deny party that made request his constitutional right of trial and was not so highly prejudicial as to deprive him of a fair trial, where each juror acknowledged in open court on three separate occasions that answers in the verdict were his answers. Wilkerson v. Darragh & Lyda, Inc. (Civ.App. 1966) 408 S.W.2d 542, ref. n.r.e.. Appeal And Error 1170.7

116. Sentence and punishment

Constitutional right to trial by jury in criminal cases does not include right to have jury assess punishment. Jones v. State (Cr.App.1967) 416 S.W.2d 412, appeal after remand 442 S.W.2d 698, certiorari denied 90 S.Ct. 967, 397 U.S. 958, 25 L.Ed.2d 143; Johnson v. State (Civ.App.1968) 436 S.W.2d 906, appeal after remand 456 S.W.2d 119; Martin v. State (Cr.App.1970) 452 S.W.2d 481; Emerson v. State (Cr.App.1972); Hill v. State (Cr.App.1973) 493 S.W.2d 847; Ex parte Giles (Cr.App.1973) 502 S.W.2d 774; Tinney v. State (Cr.App.1979) 578 S.W.2d 137; Ex parte Moser (Cr.App.1980) 602 S.W.2d 530; Johnson v. State (Cr.App. 1973) 492 S.W.2d 505.

This provision does not preclude the Legislature from providing that the jury shall only pass on the question of guilt or innocence and that the punishment shall be assessed by the court. Ex parte Marshall (Cr.App. 1913) 72 Tex.Crim. 83, 161 S.W. 112.

Where aggravated sentences exceed six months, jury trial is required, unless waived. Ex parte Suter (App. 1 Dist. 1995) 920 S.W.2d 685. Jury 22(1)

A serious criminal penalty necessitating protection of criminal jury trial is one exceeding six months confinement. Ex parte Minns (App. 1 Dist. 1994) 889 S.W.2d 16. Jury 21.1

There is no constitutional impediment to determination of sentence by same jury that has determined guilt. Hathorn v. State (Cr.App. 1992) 848 S.W.2d 101, rehearing denied, certiorari denied 113 S.Ct. 3062, 509 U.S.

932, 125 L.Ed.2d 744, rehearing denied 114 S.Ct. 28, 509 U.S. 946, 125 L.Ed.2d 779. Jury 33(2.15)

Defendant was not entitled to impanel a second jury during punishment phase of trial, even though he contended that by having same jury determine guilt-innocence punishment, he was deprived of adequate voir dire of prospective jurors on alleged enhancement of punishment without prejudicing his rights to impartial jury on issue of guilt-innocence. Robinson v. State (App. 4 Dist. 1986) 705 S.W.2d 293. Jury 33(2.10)

Having statutorily created assessment of punishment by the jury, the Legislature may alter or abolish that procedure within the bounds of due process and other constitutional strictures. Ex parte Moser (Cr.App. 1980) 602 S.W.2d 530. Jury 31.1

Although there were fact questions to be determined at new penalty hearing, this section did not call for jury to determine such questions since questions related to penalty to be assessed and thus were properly for the trial court, which was to assess punishment. Bullard v. State (Cr.App. 1977) 548 S.W.2d 13. Criminal Law 749

Vernon's Ann.C.C.P. art. 37.07 providing for assessment of punishment by trial judge when defendant in a non-capital case does not elect to have jury assess punishment and has not filed motion for probation does not infringe upon substance of right of trial by jury as protected by this section and U.S.C.A. Const. Art. 3 § 1, neither of which give a defendant right to have jury assess punishment. Bullard v. State (Cr.App. 1977) 548 S.W.2d 13. Jury 31.3(1)

A defendant in a criminal case is not entitled to have jury assess punishment because of any common-law right derived through the Constitution of 1876. Bullard v. State (Cr.App. 1977) 548 S.W.2d 13. Jury 24

Vernon's Ann.C.C.P. art. 42.08 governing cumulative and concurrent sentences is not in conflict with right to trial by jury or with Vernon's Ann.C.C.P. art. 37.07 concerning general verdict and separate hearing on proper punishment. Johnson v. State (Cr.App. 1973) 492 S.W.2d 505. Jury 31.3(1); Sentencing And Punishment 505

A defendant pleading not guilty in a capital case where the state is seeking the death penalty is denied no constitutional or statutory right when, without objection or at his request, separate trials are had before same jury on issues of guilt and punishment to be assessed. Jones v. State (Cr.App. 1967) 416 S.W.2d 412. Jury 34(9)

Criminal procedure statute requiring a trial court to conduct only a new punishment hearing when an appellate court remands a non-capital case solely because of error in sentencing phase, rather than requiring a new trial on both guilt and punishment, does not, on its face, violate a defendant's constitutional right to jury trial; since constitutional right to trial by jury does not include any right to have a jury assess punishment, defendant has no constitutional right to have the same jury decide guilt and punishment. Erazo v. State (App. 14 Dist. 2008) 260 S.W.3d 510, petition for discretionary review refused. Jury 31.1

117. Civil penalties

In action for civil penalties against credit bureau in potential amount of $70,000 for alleged violation of injunction against deceptive practices, credit bureau was entitled to jury trial on fact issues relating to whether credit bureau had knowingly violated the injunction and, if so, the amount of penalty to be assessed. Credit Bureau of Laredo, Inc. v. State (Civ.App. 1974) 515 S.W.2d 706, error granted , affirmed 530 S.W.2d 288. Jury 19(15)

Where state's action against company engaged in debt collection to enjoin allegedly deceptive practices was resolved by agreed injunction prohibiting company from continuing the practices, state's later petition seeking assessment of civil penalties for seven separate violations in same court that had issued the injunction was not an action for civil contempt and the company was entitled to a jury trial. State v. Credit Bureau of Laredo, Inc. (Sup. 1975) 530 S.W.2d 288. Antitrust And Trade Regulation 386; Jury 19(15)

This section, stating that right of trial by jury shall remain inviolate, preserved right to jury trial in suit for collection of civil penalties. State v. Credit Bureau of Laredo, Inc. (Sup. 1975) 530 S.W.2d 288. Jury 19(15)

118. Judgment notwithstanding verdict

In trespass to try title, it is improper for the trial court, after verdict by the jury for plaintiffs, to render judgment for defendant upon findings of fact made without the aid of the jury, upon what was claimed to be uncontroverted evidence. Payne v. Ellwood (Civ.App. 1914) 163 S.W. 93. Jury 34(3)

After rendering decree on a verdict responsive to the issues, a new decree directly opposite thereto is not authorized, since it would deprive the parties of the right of trial by a jury by substituting the finding of the court for that of the jury. Beamer Syndicate v. Stewart (Civ.App. 1922) 236 S.W. 795. Judgment 256(1); Jury 37

The right of trial by jury does not require the courts to uphold verdicts manifestly in disregard of the positive testimony of unimpeached witnesses or of natural laws, notwithstanding testimony of a party in support thereof. Schaff v. Verble (Civ.App. 1922) 240 S.W. 597, error granted , affirmed 251 S.W. 1023. Jury 37

Vernon's Ann.Civ.St. art. 2211 (repealed; see, now, Vernon's Ann. Rules Civ. Proc., rule 301), as amended in 1931 so as to authorize trial court to render judgment notwithstanding the verdict, was based upon the theory that no factual issue exists and that the case presented only a question of law for trial judge, and hence did not contravene any constitutional provision for trial of fact issues by juries. Sheppard v. City and County of Dallas Levee Imp. Dist. (Civ.App. 1937) 112 S.W.2d 253.

Points of error merely asserting that judgment non obstante veredicto was contrary to laws of procedure and denied due process and equal protection of law but directing court's attention to no specific evidence supporting any part of verdict nor demonstrating how constitutional rights were violated must be overruled. Sitton v. American Title Co. of Dallas (Civ.App. 1965) 396 S.W.2d 899, ref. n.r.e. , certiorari denied 87 S.Ct. 501, 385 U.S.

975, 17 L.Ed.2d 437, rehearing denied 87 S.Ct. 739, 385 U.S. 1033, 17 L.Ed.2d 681. Appeal And Error 758.3(11)

Proper rendition of a judgment notwithstanding the verdict (JNOV) does not violate any constitutional provision, including right to trial by jury. Favaloro v. Commission for Lawyer Discipline (App. 5 Dist. 1999) 994 S.W.2d 815, rehearing overruled , petition stricken. Judgment 199(1); Jury 31.2(4)

119. New trial, generally

Statement by trial court, that it is granting a new trial "in the interest of justice," is an insufficient explanation for setting aside a jury verdict; disapproving of *Johnson v. Fourth Court of Appeals*, 700 S.W.2d 916. In re Columbia Medical Center of Las Colinas, Subsidiary, L.P. (Sup. 2009) 290 S.W.3d 204. New Trial 163(1)

Manufacturer was not deprived of jury trial when trial court granted new trial at conclusion of first trial of products liability case, nor were any of its substantive rights diminished by granting of motion. Ingersoll-Rand Co. v. Harrington (App. 9 Dist. 1991) 805 S.W.2d 597, writ denied. Jury 31.2(5)

120. Remittitur

This section was not violated by the appellate court when it found that a verdict was excessive by a specified amount and suggested that if appellee would remit such amount within a certain time it would affirm the case, and if he did not that it would reverse and remand the cause for another trial. Rev.Civ.St. 1895, art. 1029a (see, now Vernon's Ann.Rules Civ.Proc., rule 440) was not repugnant to this section. Texas & N. O. R. Co. v. Syfan (Sup. 1898) 91 Tex. 562, 44 S.W. 1064.

Remittitur of stated amount as condition on which motion for new trial will be overruled or judgment affirmed does not violate constitutional guaranty of trial by jury. World Oil Co. v. Hicks, 1937, 129 Tex. 297, 103 S.W.2d 962. Jury 37

121. Attorney's fees

Because there was no common law action to recover attorney's fees under a common law negligence claim, a claim for attorney's fees brought pursuant to statute providing attorney fees to a workers' compensation death benefit claimant when an insurer appeals is not an action or analogous action that was tried to a jury in 1876; accordingly, a claimant's action to recover attorney's fees is not covered by constitutional provision preserving the right to jury trial. Tex. Const. art. Transcontinental Ins. Co. v. Crump (App. 14 Dist. 2008) 274 S.W.3d 86, rehearing overruled , review granted , reversed 2010 WL 3365339. Jury 19(1); Workers' Compensation 1980.20

Corporation and its president were entitled to jury trial to determine necessity and reasonableness of costs and expenses, including attorney fees, incurred subsequent to mandamus action ordering inspection of corporate books and records. Accounting Search Consultants, Inc. v. Christensen (App. 14 Dist. 1984) 678 S.W.2d 593.

Jury 16(1)

122. Review--In general

Restrictions on right to jury trial are subjected to utmost scrutiny. Bell Helicopter Textron, Inc. v. Abbott (App. 6 Dist. 1993) 863 S.W.2d 139, rehearing denied, error denied, rehearing of writ or error dismissed; Grossnickle v. Grossnickle (App. 6 Dist. 1993) 865 S.W.2d 211, rehearing denied.

In view of this section, the Court of Civil Appeals, on reversing judgment for insufficiency of conflicting evidence to sustain the verdict, has no right to render judgment, but must remand the case to the lower court. Wisdom v. Chicago, R I & G R Co, 1921, 231 S.W. 344. Appeal And Error 1175(5)

Where evidence on issues of negligence and proximate cause was conflicting and would have warranted either an affirmative or negative answer, Court of Civil Appeals was without authority to substitute its findings on issues for those of the jury. Safeway Stores of Tex. v. Webb (Civ.App. 1941) 164 S.W.2d 868, error refused. Appeal And Error 1002

The right of appeal in a criminal case being subject only of statute the constitutional guarantee of trial by a jury ends with a decision of the trial court. Savage v. State (Cr.App. 1950) 155 Tex.Crim. 576, 237 S.W.2d 315. Jury 31.3(2)

Review of jury's verdict in seaman's action under Jones Act (46 U.S.C.A. § 688), with reversal for want of sufficient evidence, was not a denial by Court of Civil Appeals of right to trial by jury. Hopson v. Gulf Oil Corp. (Sup. 1951) 150 Tex. 1, 237 S.W.2d 352. Jury 37

Where trial court's judgment sustaining defendants' plea of res judicata and estoppel as to validity of oil and gas leases, and cancellation and reformation of same, was affirmed by Supreme Court, without prejudice to right of plaintiffs to an accounting for moneys due under the oil and gas lease, judgment of Supreme Court was not a denial to plaintiffs of their day in court, nor a deprivation of right to trial by jury, since judgment was but affirmance of adjudication that the issues presented had once before been tried and finally determined. Humble Oil & Refining Co. v. Fisher (Sup. 1952) 152 Tex. 29, 253 S.W.2d 656. Constitutional Law 2311; Jury 31.2(1); Jury 31.2(4)

Mere denial of right of trial by jury raises inference of probable harm. P. T. Whitlock Gas & Oil, Inc. v. Brooks (Civ.App. 1965) 396 S.W.2d 922, dismissed. Appeal And Error 1031(1)

Where defendant in a civil action had reasonably demanded a jury and had paid the jury fee, and had not waived a jury trial, action of court in disregarding the demand for a jury trial, and in rendering a default judgment, was reversible error. Meyer v. Henery (Civ.App. 1966) 400 S.W.2d 933. Appeal And Error 1035; Appeal And Error 1073(2); Judgment 109; Jury 31.2(4)

In rare cases Court of Appeals may "unfind" facts which have been determined by jury, but a Court of Appeals may not "find" opposite facts. Knupp v. Miller (App. 9 Dist. 1993) 858 S.W.2d 945, writ denied, rehearing of writ of error overruled. Appeal And Error 999(1)

Erroneous refusal to grant jury trial is harmful error unless record reveals that no material issue of fact exists and that instructed verdict would have been authorized. Bell Helicopter Textron, Inc. v. Abbott (App. 6 Dist. 1993) 863 S.W.2d 139, rehearing denied , writ denied , rehearing dismissed. Appeal And Error 1035

Denial of constitutional right to trial by jury is reversible error. McDaniel v. Yarbrough (Sup. 1995) 898 S.W.2d 251, rehearing overruled. Appeal And Error 1035

123. ---- Standard of review

Trial court's denial of murder defendant's request to withdraw his waiver of right to counsel trial required reversal without review for harm, absent showing that defendant made request to postpone trial or that standby counsel was unwilling, unable, or unprepared to immediately assume role of trial counsel for defendant, where defendant did not advise judge that he was not ready to represent himself until after his motion for continuance was denied. Medley v. State (App. 7 Dist. 2000) 47 S.W.3d 17, petition for discretionary review refused, appeal after new trial 2004 WL 1839315, rehearing overruled, rehearing on petition for discretionary review denied , certiorari denied 126 S.Ct. 621, 546 U.S. 1002, 163 L.Ed.2d 504, rehearing denied 126 S.Ct. 1135, 546 U.S. 1132, 163 L.Ed.2d 933, habeas corpus dismissed 2008 WL 763075. Criminal Law 1166.10(2)

Denial of defendant's right to jury trial at guilt stage was constitutional structural error not subject to harm analysis, and thus, error was harmful. Lowery v. State (App. 5 Dist. 1998) 974 S.W.2d 936. Criminal Law 1166(1); Jury 31

Appellate court must review trial court's ruling regarding voir dire questioning of jurors under an abuse of discretion standard. Collier v. State (Cr.App. 1997) 959 S.W.2d 621, rehearing denied, certiorari denied 119 S.Ct. 335, 525 U.S. 929, 142 L.Ed.2d 276, habeas corpus denied 2001 WL 498095. Criminal Law 1152.2(2)

Standard of review for Batson challenge is whether decision was clearly erroneous. Burns v. State (App. 14 Dist. 1997) 958 S.W.2d 483. Criminal Law 1158.17

Appellate court we will not disturb trial court's finding that peremptory strikes which are challenged under *Batson* were not racially motivated unless finding is clearly erroneous. Mayr v. Lott (App. 10 Dist. 1997) 943 S.W.2d 553. Appeal And Error 1024.3

In reviewing *Edmonson* challenge to use of peremptory strikes as having been impermissibly motivated by race, Supreme Court will adhere to abuse of discretion standard of review. Goode v. Shoukfeh (Sup. 1997) 943 S.W.2d 441. Appeal And Error 968

In reviewing *Edmonson* challenge, reviewing court will not be bound by finding of no discrimination under either abuse of discretion standard or clearly erroneous standard if justification offered for striking potential juror is simply too incredible to be accepted. Goode v. Shoukfeh (Sup. 1997) 943 S.W.2d 441. Appeal And Error 968

When party offers facially race-neutral explanation for peremptory strike, reviewing court cannot reweigh evidence and reach conclusion different from that of trial court unless explanation offered is too incredible to be believed. Goode v. Shoukfeh (Sup. 1997) 943 S.W.2d 441. Appeal And Error 1024.3

Civil appellate standard of review is deferential to jury verdict, which deference is not result of courtesy, but is necessary component of review standard to balance factual conclusivity provision and trial by jury provision of Texas Constitution. Clewis v. State (App. 5 Dist. 1994) 876 S.W.2d 428, petition for discretionary review granted , vacated 922 S.W.2d 126, rehearing on petition for discretionary review denied , on remand 1996 WL 640586. Appeal And Error 999(1)

It is inappropriate for Court of Appeals, in exercising its conclusive factual jurisdiction in criminal case, to undertake undeferential reweighing of all evidence. Clewis v. State (App. 5 Dist. 1994) 876 S.W.2d 428, petition for discretionary review granted , vacated 922 S.W.2d 126, rehearing on petition for discretionary review denied , on remand 1996 WL 640586. Criminal Law 1158.9

124. ---- Failure to object, review

An appellant failing to object in the trial court to submission of controverted fact issues to jury could not complain on appeal that controverted fact issues are determinable solely by the court and not by the jury in a suit in equity. Wentworth v. Collins (Civ.App. 1938) 115 S.W.2d 442, dismissed. Appeal And Error 218.2(2)

Failure to fairly and adequately submit issue as to whether plaintiff had sustained injury would require reversal of judgment for plaintiff, regardless of whether Supreme Court could say, upon review of evidence, that, if afforded opportunity to do so, jury would probably have found that plaintiff had not been injured. Texas & P. Ry. Co. v. Van Zandt (Sup. 1958) 159 Tex. 178, 317 S.W.2d 528. Appeal And Error 1170.6

In absence of objection a trial or a record of proceedings at divorce hearing, question of whether court erred in denying husband a jury trial was not preserved for review, and it could not be reached by a transcript of evidence on hearing of motion for new trial. Hughes v. Hughes (Civ.App. 1966) 407 S.W.2d 14. Divorce 179; Divorce 183

125. ---- Waiver of jury, review

Defendant adequately preserved for review claim that exhibit evidencing prior conviction pursuant to guilty plea did not reflect waiver of right to jury trial so as to preclude its use for enhancement purposes, even though at trial defendant relied on United States constitutional law and on appeal he relied on Texas law, where defendant's complaint at trial was specific and so obvious to court and to opposing counsel that there was no procedural de-

fault. Morton v. State (App. 7 Dist. 1994) 870 S.W.2d 177, petition for discretionary review refused. Criminal Law 1042.5

126. ---- Harmless error, review

A judgment will not be reversed on account of the denial of the right of trial by jury, when no other judgment could be rendered on the facts. County of Caldwell v. Crocket (Sup. 1887) 68 Tex. 321, 4 S.W. 607.

Plaintiff, after the erroneous denial of its motion for a jury trial, having submitted its entire case to the court, could not insist on a reversal where the undisputed evidence required a verdict for the defendants. Wm. D. Cleveland & Sons v. Smith. (Civ.App. 1908) 113 S.W. 547, reversed 102 Tex. 490, 119 S.W. 843. Jury 28(6)

Refusal to grant jury trial is harmless error only if record shows that no material issues of fact exist and instructed verdict would have been justified. Grossnickle v. Grossnickle (App. 6 Dist. 1993) 865 S.W.2d 211, rehearing denied. Appeal And Error 1035

Vernon's Ann. Texas Const. Art. 1, § 15, TX CONST Art. 1, § 15

Current through the end of the 2009 Regular and First Called Sessions of the 81st Legislature

END OF DOCUMENT