

INTRODUCTION TO THE TEXAS STATE SUPPLEMENT

This work is not a comprehensive treatment of the substantive criminal law in Texas. Not all the offenses, defenses and sentencing provisions are covered. The author has attempted to include only some of the most important and interesting points from Texas law that tie in with *Contemporary Criminal Law* by Matthew Lippman.

It is important to read the main text first to get the big picture, and then read this material to see how some of these issues are treated in the state of Texas. If you have not read the text chapter first, you will not get the full benefit of this Supplement. The text contains definitions, leading cases and other materials that are the necessary background for this work.

Occasionally herein, this author will refer you to the corresponding section in your text. However, even if there is no reference to the text, the topics in this Supplement are covered in roughly the same order as the topics in the text.

The material herein is based on statutes as added or amended by the Texas Legislature during its 79th Regular session. Most of the new material added by that legislature became effective Sept. 1, 2005. The Legislature will not meet in Regular session again until 2007.

Some Tips for Students

Reading and comprehending statutes and opinions is often a difficult task. To facilitate your learning, this author recommends the following:

I. Many statutes (and other rules of law) are structured along the lines of a general rule followed by exceptions. Language such as “except as provided by subsection (b) below . . .” suggests that there is a general rule which exceptions to be found in (b) below. Try to break down a statute, or any rule of law, into the general rule and the exceptions.

II. Reference in opinions is frequently made to the “Appellant.” The Appellant is almost always the defendant who has been convicted and has now filed an appeal.

III. Many cases revolve around the explanations of the law given to the jury (jury instructions). Before they begin deliberating, juries will receive an explanation of the relevant law from the judge. In some cases the defendant argues that the jury should have been instructed on an issue (*e.g.*, insanity), or may argue that the trial court gave an erroneous explanation of the law (*e.g.*, omitted a *mens rea* element).

IV. Some terms in statutes are defined while others are not. Be sure to look for definitions. First, look in the section itself for definitions of the key terms. Then look at the beginning of the chapter for definitions. Finally, many basic definitions are found in TPC sec. 1.07 which is available at <http://www.capitol.state.tx.us/statutes/docs/PE/content/htm/pe.001.00.000001.00.htm#1.07.00>

V. When analyzing a statute, try to isolate the elements and other facets of each offense. Elements of the offenses include:

1. the *mens rea* or culpability element (intentionally, knowingly, recklessly, with intent to . . . , etc.;
2. the *actus reus*, conduct or act element;
3. any surrounding or attendant circumstances elements, such as the victim being under a certain age;
4. any harm or result elements, such as serious bodily injury, death, etc.
5. any concurrence elements.

VI. Also be on the lookout for

1. any exceptions (e.g., TPC sec. 36.02 d), defenses, or statements that this section does not apply to certain circumstances;
2. aggravating factors which raise the level of the offense beyond the usual level (e.g., having a prior conviction for this offense, high monetary value of the items stolen or destroyed).
3. who has the burden of proof on this issue (defendant or State)? What is that burden of proof?

VII. Remember that an offense could have more than one *mens rea* or *actus reus* element and/or there may be a number of ways this offense could be committed.

VIII. Remember that a person can be guilty of a crime even though they personally did not do the act. One can be guilty of murder even though he or she did not pull the trigger. In the opinions, be sure to ascertain whether the defendant actually did the criminal act or is guilty because they are an accomplice or co-conspirator.

IX. Under the TPC, courts are authorized, in some circumstances, to read in additional culpability or mens rea elements that are not found in the statute. Further, courts sometimes give provide unexpected twists to the interpretation of a statute. To fully understand a statute, you much consult the relevant opinions interpreting this statute.

X. The drafting and approval of criminal statutes and court interpretation of statutes and constitutional provisions involves policy decisions. Although the answer is sometimes obvious (e.g., existence of criminal homicide statutes), readers should ask what is the purpose or goal of this provision, doctrine, etc. It is important to determine these purposes, for laws and legal doctrines should be interpreted and implemented consistently with their purpose. Once having determined the purpose, the reader should ask whether the provision or doctrine in issue is irrelevant to the purpose, furthers the purpose or interferes with the purpose. For instance, what is the purpose of the conspiracy statute? What is the purpose of overt act element in the Texas conspiracy statute (sec. 15.02)? Does adding this additional element make it more difficult to convict conspirators? Does this additional actus reus requirement interfere with the purpose of the conspiracy statute? Should we have an entrapment defense? What is the purpose of having an entrapment defense? Should the defense be objective, subjective or both?

XI. Where possible, compare the Texas approach with that of the Model Penal Code, the recommendations of scholars, and the laws of other states. Which approach is best?

Introduction

XII. To fully understand the meaning of a statute, the case law interpreting the statute must always be consulted. Sometimes courts come up with interpretations that are unexpected.

XIII. The law is constantly changing. Statutes can be repealed, amended or found unconstitutional. In any law book, (such as the TPC) always look for the most recent material in separately bound supplements or at the “pocket part” in the back of the volume. Court opinions can be withdrawn or overruled. There are research tools available to determine the current validity of an opinion.

Some Conventions in this Supplement

I. The Texas Penal Code is abbreviated “TPC” and the Texas Court of Criminal Appeals is abbreviated “CCA.” Chapter is abbreviated “ch.” and section is abbreviated “sec.”

II. In the interest of clarity and conciseness, in many of the opinion excerpts, footnotes and citations are occasionally omitted. Unlike more formal works, the full history of a case will not always be included in the citation.

III. In the statutes and opinions covered herein, this author occasionally will insert extra material to help clarify the information. This inserted material is found between brackets, [], and is not part of the original text. In many instances the full legal history of a case is not indicated in the citation as would be the case in a more formal document.